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Before the
FEDERAL COMMUNICATIONS COMMISSION FCC 96-236
Washington, D.C. 20554

In the Matter of:	)	
	)	
Grandfathered Short-Spaced	)	MM Docket No. 96-120
FM Stations	)	RM-7651

FCC MAIL SECTION
JUN 18 11 46 AM '96

NOTICE OF PROPOSED RULE MAKING

Adopted: May 23, 1996 **Released: June 14, 1996**

Comment date: July 22, 1996
Reply Comment date: August 5, 1996

By the Commission:

INTRODUCTION

1. The Commission, in this Notice of Proposed Rule Making ("Notice"), proposes to eliminate unnecessary regulations and streamline the current method of modifying pre-1964 grandfathered short-spaced FM stations.[1] We propose to lift restrictions which unnecessarily impede flexibility as to site selection for grandfathered stations and substitute the currently required interference showings in applications, which have proven ineffective, with showings that directly relate to the impact such modification proposals have on other stations and the public.

2. Section 73.213(a) limits how grandfathered short-spaced FM station licensees may modify operating facilities and/or relocate transmitter sites. Based on our experience with this provision since the current version was adopted in 1987, we find that re-examination of Section 73.213(a) is appropriate. Specifically, we propose changing three aspects of Section 73.213(a) as follows: 1) use of predicted interference area analysis based on field strength protection ratios, instead of the current ambiguous limitation based on the relative locations of the 1 mV/m (60 dBu) service contour of the short-spaced stations; 2) eliminating the second-adjacent-channel and third-adjacent-channel protection criteria; and 3) eliminating the provision for agreements between grandfathered stations. By this notice, we are also responding to the "Joint Petition" for rule making filed February 1, 1991, by the firms of Hatfield and Dawson; du Treil, Lundin and Rackley, Inc.; and Cohen, Dippell and

[1] Throughout this notice, the term "grandfathered stations" refers only to those FM stations at locations authorized prior to November 16, 1964, that did not meet the separation distances required by the later adopted Section 73.207 and have remained short-spaced since that time.

Everist, P.C., ("Joint Petitioners").[2] In this Notice, we invite comments relating to possible modification of these rule sections.

BACKGROUND

3. In 1962, the Commission began a series of rule making actions specifying requirements for the FM broadcast service, including station distance separation requirements.[3] A number of existing stations were operating from transmitter sites that did not comply with the distance separation requirements adopted then, and the Commission grandfathered these as permitted short-spaced stations. In 1964, the Commission adopted provisions in Section 73.213 to govern facilities modifications of those grandfathered stations.[4] At that time, Section 73.213(a) of the rules contained a table of routinely permissible power and antenna height limits that applied only to modifications by grandfathered stations.[5] Section 73.213 also included provisions for applications for change of transmitter site.

4. Nearly twenty years later, in 1983, the Commission adopted a major amendment of the FM channel allotment rules (commonly referred to as Docket 80-90 rule amendments) by creating additional classes of stations (Classes B1, C1, and C2), with new operating maximum power and antenna height limits and associated separation distances.[6] The above mentioned table in Section 73.213(a), however, was not modified to accommodate the new classes. Moreover, some of the grandfathered stations from 1964 were reclassified because their authorized facilities conformed to one of the new classes. Those reclassified stations which met the new spacing requirements lost their grandfathered status.

5. Subsequently in 1987, Section 73.213 was amended, not by adding the new station classes, but rather by replacing the table and the entire text of the rule section with a single paragraph that proscribes any change in grandfathered stations which would extend the predicted distance of the 1 mV/m contour towards the 1 mV/m contour of short-

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[2] See RM-7651 in Public Notice (Report No. 1839) of March 6, 1991.

[3] See First Report and Order in Docket 14185, 33 FCC 309 (1962).

[4] See Fourth Report and Order in Docket 14185 ("Grandfather Order"), 40 FCC 868 (1964).

[5] For example, the former Section 73.213(a) table titled "Facilities To Be Authorized For Short-Spaced FM Stations" permitted short-spaced Class A co-channel stations separated at a distance of 72 to 105 kilometers (45 to 65 miles) to operate with 3 kW at 300 feet HAAT.

[6] See Report and Order in BC Docket 80-90, 94 FCC 2d 152 (1983) and Memorandum Opinion and Order in BC Docket 80-90, 97 FCC 2d 279 (1984).

spaced stations.[7] Thus, the new requirement was significantly different from the rules it replaced in two respects. First, stations were restricted from increasing their authorized facilities in the direction of a short-spaced station, or to move closer to such a station; those options had been available under the previous rules. Second, the new rule did not exempt short-spaced stations operating on second-adjacent channels or third-adjacent channels from the spacing or other protection criteria, as was done in the former Section 73.213. The combination of these two rule changes substantially reduced the potential number of grandfathered stations able to increase facilities, or change transmitter location. The new rule, however, did continue the Commission's policy of considering mutual agreements between grandfathered stations.[8]

6. On February 1, 1991, a Joint Petition was filed by the firms of Hatfield and Dawson; du Treil, Lundin and Rackley, Inc.; and Cohen, Dippell and Everist, P.C., ("Joint Petitioners"). We received comments supporting the petition from Mullaney Engineering, Inc. ("Mullaney") and Par Broadcasting Company ("Par");[9] and comments opposing the petition from King Broadcasting Company ("King") (with an accompanying engineering statement from Hammett and Edison, Inc.) and National Association of Broadcasters ("NAB").

7. The Joint Petitioners propose amendment of Section 73.213(a) to: 1) permit stations which are short-spaced to second-adjacent-channel or third-adjacent-channel station(s) to change location without regard to further short-spacing and to increase station parameters to the maximum permitted by Section 73.211[10]; 2) permit stations which are short-spaced to co-channel or first-adjacent-channel stations to apply for facilities with up to the maximum permitted parameters for the class of station involved, provided the pertinent predicted interfering contour produced by the proposed facility does not extend any further in

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[7] See Second Report and Order in MM Docket 86-144 ("Modification Order"), 2 FCC Rcd 5693 (1987).

[8] This policy was established in 1964 (see Grandfather Order) and clarified in 1975. See §73.4235 and Public Notice ("Agreement Notice"), 57 FCC 2d 1263 (1975).

[9] On May 3, 1991, Par Broadcasting Company submitted a supplementary statement accompanied by a "Request to File Supplement to Statement" under Section 1.405(c). Par wishes to supplement its earlier and timely filed Statement of April 4, 1991, to introduce into the record a Memorandum Opinion and Order subsequently released by the Commission concerning a waiver of second-adjacent-channel protection criteria in the non-commercial educational band. See Educational Information Corporation, 6 FCC Rcd 2207 (1991). In light of the relevancy of that Commission action to this proceeding, we GRANT Par's request and ACCEPT its Supplement to Statement.

[10] Section 73.211 sets forth the power and antenna height requirements for each class of station.

the direction of the protected short-spaced station's predicted 1 mV/m contour (60 dBu F(50,50)), or if contour overlap already occurs, such overlap area is not increased. They propose that a 40 dBu F(50,10) contour be used for predicting co-channel interference and a 54 dBu F(50,10) contour for first-adjacent-channel interference.[11]

PROPOSALS

8. Based wholly or in part on the Joint Petition, we propose the following changes to Section 73.213 and seek comments on these proposals.

Proposal 1:

We propose to replace the current Section 73.213(a) restriction on extending the 1 mV/m contour with straight-forward interference showings based on the desired to undesired signal strength ratio ("D/U ratio") method.

Proposal 2:

We propose to eliminate both the second and third-adjacent channel spacing requirements for grandfathered short-spaced stations.

Proposal 3:

Finally, we propose to eliminate the need to obtain agreements by grandfathered stations proposing increased facilities.

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[11] Although short-spaced stations can be identified by means of computer programs, grandfathered short-spaced stations affected by this proceeding are not easily identifiable because only a fraction of all short-spaced stations were granted prior to 1964 and, of these stations, many have implemented facility changes which changed their file numbers, making identification by file number impossible. Research of Commission records must be performed on a station-by-station basis to identify grandfathered stations. We invite all engineering firms and other parties with knowledge about grandfathered stations to assist us in identifying these stations so that these can be classified in the Commission's engineering database. Anyone with knowledge of pre-1964 grandfathered short-spaced pairs of stations may call or write to Jim Bradshaw (202-418-2740), Audio Services Division, Mass Media Bureau, FCC, 1919 M Street, NW, Washington, DC 20554. After confirmation of grandfathered status, and notification in the Commission's engineering database, this information will be available to all database users.

DISCUSSION

9. Proposal 1. Predicted interference contours and population consideration. As adopted in the 1987 Modification Order, Section 73.213(a) specifies that a grandfathered station may be modified or relocated provided the predicted distance to its 1 mV/m field strength contour is not extended toward the 1 mV/m field strength contour of the station to which it is short-spaced. The Commission adopted this limit after concluding that grandfathered stations had been afforded 22 years to optimize their facilities by taking advantage of the more lenient permissible parameters previously allowed by the Section 73.213(a) table.[12] The Commission observed that FM channel allotments were becoming increasingly occupied, and speculated that continuing to allow the grandfathered stations to routinely modify their facilities according to the former rule would increase the risk of causing interference.[13]

10. The Joint Petitioners contend that the current requirement to consider the 1 mV/m field strength contours unnecessarily restricts stations wishing to optimize their parameters. Instead, the Joint Petitioners suggest that the object of the requirement should be to ensure that predicted interference to grandfathered stations is not increased as a result of changes in location or operating parameters. Thus, the Joint Petitioners propose the prohibition of an increase in the distance to the predicted F(50,10) interference contour of a grandfathered station in the direction of the 1 mV/m F(50,50) service contour of the other station.[14] To demonstrate the advantages of this approach, the Joint Petitioners present two examples of short-spaced Class C stations showing that greater facilities could be achieved without increasing the extent of the interference, if the rules were amended to permit their proposed signal contour analysis.

11. NAB and King, in opposing the petition, suggest that changing the current protection criteria to one of "no extension of the interfering contour" would allow modifying stations to operate with greater power toward the short-spaced station, which they maintain will result in increased interference.

12. The current consideration of the 1 mV/m service contours under Section 73.213(a) is an adaptation of its earlier use under former Section 73.213(f)(iii), and was adopted as an administratively convenient and simplified way to restrict interference between

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[12] See note 4, supra.

[13] See paragraph 34 in the Modification Order.

[14] The Joint Petitioners recommend that the 1 mV/m contour should be the level of protected service for all classes of stations.

grandfathered stations. However, this rule can be unduly restrictive on some broadcasters.[15] Furthermore, in certain circumstances, this simplified procedure can allow predicted interference to occur.[16] Since the current procedure does not always achieve the intended result -- no increase in interference -- we agree with the Joint Petitioners that our focus should be on controlling interference directly, and not by the current indirect method that only considers the proximity of service contours. Many grandfathered stations currently cause and receive interference from other grandfathered stations. We want to provide these stations the greatest flexibility in making modifications without compromising the technical integrity of the FM broadcast service. Prediction of electromagnetic interference is a more direct measure of the impact facility changes have on the public and of the efficiency with which the FM broadcast spectrum is utilized.

13. The ready availability of computer-supported analysis now allows both the Commission and the broadcast industry to adopt a more accurate and flexible approach. The simplified restriction based on the 1 mV/m service contour method is no longer justified in light of the availability of more accurate interference analysis. However, because interference is predicted to occur only in a portion of the prohibited contour overlap area, accurately predicting the area where interference would occur requires analysis that is more refined than the Joint Petitioners' contour overlap approach. We agree with NAB and King, that simply determining the interfering contours, as the Joint Petitioners suggest, could under certain circumstances result in an unintended increase in interference.

14. Accordingly, we seek comments on a proposal to amend Section 73.213(a) to allow station licensees with grandfathered co-channel and first-adjacent-channel short-spacings to modify their facilities based on a showing that meets three criteria. First, there must be no increase in either the <u>total</u> predicted interference area or the associated population.[17] Total interference is the sum of all interference caused and received by a station. Second, there must be no increase in interference predicted from the proposed

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[15] For example, where one station is inside the 1 mV/m contour of another station, any move by the first station would generally be prohibited because it would extend its 1 mV/m contour in the direction of the other station's 1 mV/m contour.

[16] For example, consider a Class A grandfathered station operating with an over height antenna (i.e. 1 kilowatt ERP/140 meters HAAT). Without changing site, if the station were to reduce its HAAT, it could maintain its 1 mV/m contour by increasing its ERP. However, the new co-channel interfering contour would extend considerably farther than the interfering contour of the original facility.

[17] For the purposes of this notice, the term "interference" refers to the area of interference, and the population within that area.

facilities to any individual grandfathered short-spaced station.[18] Third, applicants must demonstrate that any new area predicted to lose service as a result of interference has adequate service remaining.[19] The areas of concern would be determined using the desired-to-undesired (D/U) signal strength ratio analysis and the standard F(50,50) and F(50,10) propagation curves contained in Section 73.333 of our rules.[20] In order to assure uniform application of these rules and efficient preparation and processing of these applications, except in extraordinary circumstances, we would not consider supplemental showings for determining distances to coverage and interference contours, such as those relying on terrain or diffraction considerations.

15. While the Joint Petitioners suggest that such interference predictions should be analyzed with respect to the 1 mV/m service contour for all classes of FM stations, our initial view is that interference determinations based on that aspect of the proposal would be inconsistent with the separation criteria for commercial Class B and Class B1 stations. For instance, a short-spacing involving a Class B station may not show contour overlap when analyzed in conjunction with its 1 mV/m (60 dBu) service contour but may show significant areas of overlap with its normally protected 0.5 mV/m (54 dBu) service contour. Therefore, we believe that Class B and Class B1 stations should be analyzed using service contours of 0.5 mV/m (54 dBu) and 0.7 mV/m (57 dBu), respectively.

16. An alternative to this proposal would be to require the extent of both interference caused and interference received to be individually maintained or reduced. However, in many instances, grandfathered stations are short-spaced to 2 or more grandfathered stations, so maintaining or reducing both interference caused and received would be impossible without a major reduction in service area. Relying on staff experience, we believe that such a standard would be overly restrictive to this group of stations. However, we welcome comments as to whether this alternative proposal would be more in the public interest.

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[18] Consequently, for example, a grandfathered applicant could propose a change which would increase the interference it received provided there was an offsetting decrease in interference caused.

[19] Reception from five aural sevices is considered adequate service. See Memorandum Opinion and Order, Bay City, Brenham, Cameron, Centerville, Edna, Ganado, Giddings, Harker Heights, Hearne, LaGrange, Matagorda, New Ulm, Point Comfort, Rollingwood, Rosenberg, and Seadrift, Texas, 10 FCC Rcd 3337, 3337 (1995).

[20] Co-channel interference is predicted to exist at all locations within the desired station's coverage contour where the undesired (interfering) F(50,10) field strength exceeds a value 20 dB below the desired (protected) F(50,50) field strength. In addition, first-adjacent-channel interference is predicted to exist at all locations within the desired station's coverage contour where the undesired (interfering) F(50,10) field strength exceeds a value 6 dB below the desired (protected) F(50,50) field strength.

17. Proposal 2. Second-adjacent-channel and third-adjacent-channel protection. The original provisions under Section 73.213 excluded protection of existing second-adjacent-channel and third-adjacent-channel grandfathered stations.[21] In adopting the Modification Order, however, we concluded that to continue routine short-spaced authorizations, without regard to all adjacent channels, would increase the risk of interference. Thus, second-adjacent-channel and third-adjacent-channel protection was included as an additional safeguard so as to be consistent with the general separation requirements applicable to non-grandfathered stations pursuant to Section 73.207.[22]

18. The Joint Petitioners note that one type of short-spaced situation involves grandfathered stations on the second-adjacent channels or third-adjacent channels that are located within the 1 mV/m contours of the short-spaced stations. In such cases, any move by one grandfathered station would be prohibited because it would extend its 1 mV/m contour in the direction of the other station's 1 mV/m contour. To address this situation, the Joint Petitioners request the reinstatement of the original rule, which would remove the restrictions on changes involving second-adjacent-channel and third-adjacent-channel grandfathered stations. They suggest that reinstating the old rule would not only eliminate the above described problem, but it would permit all second-adjacent-channel and third-adjacent-channel grandfathered stations some flexibility to increase operating facilities and relocate to other short-spaced sites.

19. Par and the Joint Petitioners cite the findings of the 1964 Grandfather Order which indicated that second-adjacent-channel and third-adjacent-channel interference occurs in a small area around the transmitter site of the station causing the interference. Par and Joint Petitioners contend that the conclusions reached by the Commission in 1964 remain valid today. They maintain that the record has not shown that second-adjacent-channel or third-adjacent-channel short-spaced situations are particularly troublesome. In addition, Par and Joint Petitioners argue that the usually small amounts of additional interference that may result will, in many cases, fall in less densely populated areas.

20. Par also refers to a Commission decision which granted waivers of second-adjacent-channel contour overlap standards to two FM noncommercial applicants.[23] Par observes that in that decision, the Commission concluded that while second-adjacent-channel or third-adjacent-channel overlap may result in the replacement of one signal by

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[21] Existing short-spaced second-adjacent-channel and third-adjacent-channel stations were not restricted by former Section 73.213(d), which stated: "Stations will be authorized maximum facilities for their class in those directions in which they are short-spaced to other stations on second or third adjacent channels."

[22] See paragraph 35 in the Modification Order.

[23] See Educational Information Corporation, supra.

another, it will not result in the complete loss of service. In granting those waivers, the Commission again noted that such overlap is confined to a very small area around the transmitter of the interfering station. In addition, we further stated that the potential for such interference to occur depends, to a great extent, on the quality of the receivers used within the affected area.

21. Par notes that the Commission decided to grant waivers allowing noncommercial educational FM stations to accept second-adjacent-channel or third-adjacent-channel signal contour overlap in circumstances where the benefit of increased service heavily outweighs the potential for interference in very small areas. In addition, Par observes that while the waiver grant was for noncommercial stations, the 'laws of physics' do not change on the basis of an FM station's commercial or noncommercial status. Par concludes that the Commission's recently granted waivers support the proposal of the Joint Petitioners. Mullaney also notes that regular-spaced Class A stations have been granted a general increase in power and suggests that the higher power provision be allowed in grandfathered situations.[24]

22. In opposition, NAB counters that the Joint Petitioners' reliance on the Commission's 1964 decision to permit grandfathered stations to disregard second-adjacent-channel and third-adjacent-channel stations is misplaced. NAB and King note that the FM band is significantly more crowded today than in 1964. NAB asserts that the circumstances considered in the evaluation of likely interference made at that time have changed and do not support a similar decision today. King also references the rationale for the provision adopted in 1987, and concludes that it remains applicable today. Moreover, NAB and King suggest that conditions are even more conducive for FM interference than in 1987.

23. FM radio broadcasting is a dynamic service. In any given year, a significant number of stations change some aspect of their transmission facilities. For example, with approximately 5300 authorized commercial FM stations in 1995, the Commission granted approximately 600 permits for modifications. Many changes reflect forced site re-locations and antenna height adjustments. Under the current rules, many of the grandfathered stations do not even have the flexibility to maintain their existing coverage areas if circumstances require them to make such a change. Under the former rules, however, grandfathered stations were permitted some flexibility by not being constrained by second-adjacent-channel and third-adjacent-channel criteria. Lack of flexibility to move or make changes is particularly a problem for those grandfathered stations located inside the service contour of a second-adjacent-channel or third-adjacent-channel station. In such situations, the stations have no ability to file applications pursuant to the contour protection provisions of Section 73.215 and they can only decrease their coverage under the current Section 73.213(a).

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[24] See Second Report and Order in MM Docket No. 88-375, 4 FCC Rcd 6375 (1989) and Memorandum Opinion and Order in MM Docket No. 88-375, 6 FCC Rcd 3417 (1991).

24. While we recognize there is a small risk of interference between short-spaced second-adjacent-channel and third-adjacent-channel stations, we note, as the commenters point out, that it is well documented that the interference is localized in the immediate area of the transmitter. We also note that such interference is actually a substitution of service in that very small area.[25] For grandfathered stations, on an overall basis, creating these small areas of potential interference to some receivers is more than outweighed by enhancing the ability of existing stations to modify and improve service in response to changing conditions. A limited number of grandfathered stations existed between 1964 and 1987 with complete flexibility on second-adjacent-channel and third-adjacent-channel short-spacings and we did not receive complaints of second-adjacent-channel or third-adjacent-channel interference during that time. Thus, historically, the absence of restrictions did not result in interference complaints and we are therefore inclined to reinstate the pre-1987 provisions.

25. While we have no intention of relaxing second-adjacent-channel and third-adjacent-channel spacing requirements as allotment and assignment criteria, we nonetheless believe it is in the public interest to allow this very narrowly defined category of grandfathered stations to modify their facilities without regard to grandfathered second- and third-adjacent channel stations. In addition to the need for flexibility in site selection and the limited risk of actual interference as discussed in the preceding paragraphs, we note that other factors support our decision to propose this change. For one, there is a limited universe of eligible grandfathered stations. Only those second-adjacent-channel and third-adjacent-channel stations that were short-spaced in 1964 and have remained short-spaced since then can make use of this proposed rule change. While the FM band is without question more congested today than it was in 1964, as indicated by some of the commenters, the number of stations with grandfathered short-spacings has actually decreased since 1964 as some have relocated to fully-spaced sites or have been reclassified as a result of rule changes. In addition, these stations became short-spaced through no fault of their own due to a change in the Commission's rules. Therefore, we seek comment on this proposal to return to the pre-1987 regulation regarding second-adjacent-channel and third-adjacent-channel grandfathered short-spacings.

26. In certain situations, it may be possible that, although two second- or third-adjacent stations are short-spaced, no overlap of the appropriate signal strength contours would occur. In such situations it is possible that the station whose interfering contour does not currently overlap a short-spaced station's protected contour would not be precluded from

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[25] We are satisfied that the policy established in the Educational Information Corporation, supra, is sufficient to deal with second-adjacent-channel and third-adjacent-channel protection for noncommercial educational FM stations. We also note that the second-adjacent-channel and third-adjacent-channel contour protection criteria contained in Section 73.509 for noncommercial educational FM stations are different from the distance spacing and contour protection requirements for commercial FM stations.

causing interference to that station for the first time. Likewise, second- or third-adjacent channel grandfathered stations would not be precluded from receiving such interference for the first time. However, the number of instances where such interference could occur would be minimal. An alternative to our proposal would be to disallow the unnecessary creation of interference to second- and third-adjacent channel grandfathered stations not currently receiving interference. Under this alternative any second- or third-adjacent channel grandfathered station whose transmitter site is not inside the service contour of the short-spaced station would not be permitted to relocate to a site inside the service contour of the short-spaced station. However, any second- or third-adjacent channel grandfathered station whose transmitter site is already within the service contour of the short-spaced station would be permitted to change site to any location with respect to that short-spaced station.[26] While this standard would allow a station not currently causing interference to slightly overlap its interfering contour with the short-spaced station's protected contour, it prevents a station with its transmitter located outside of the service contour of a grandfathered short-spaced station from moving its transmitter into that service contour. This alternative proposal, which is not as lenient as the proposed standard set forth in paragraph 25, above, would still allow some flexibility in site selection for grandfathered stations, while limiting increases in interference area. This alternative would not limit an applicant from extending its service contour to encompass another grandfathered station's transmitter for the first time. In situations such as this, the station proposing to be modified could receive interference in an area that was not already served by that station. We invite comments on whether this alternative proposal should be adopted rather than the more permissive proposal set forth above, in paragraph 25.

27. Proposal 3. Eliminating the policy on agreements between grandfathered stations. In the decision that adopted the original version of rule Section 73.213, the Commission considered and rejected a proposal to permit increases in facilities solely on the basis of agreements between grandfathered stations.[27] However, the Commission indicated that it would consider, on an ad hoc basis, increases in the facilities of grandfathered FM stations beyond the maximum facilities then provided for by the table of Section 73.213(a), where an agreement exists between the stations. The decision also indicated that the agreement must include a showing of how the public interest would be served by full implementation of the agreement.

28. Subsequently, the Commission received numerous applications with accompanying agreements proposing facilities which were in excess of the maximums then permitted in the table of Section 73.213(a). By 1975, the Commission determined that it was necessary to re-emphasize that a public interest showing be part of any such agreement proposal. Consequently, to simplify the processing of applications and aid applicants who were contemplating such an agreement, the Commission issued a Public Notice (Agreement

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[26] We note that grandfathered stations would continue to be precluded from certain site changes because of city coverage requirements and other non-grandfathered short-spacings.

[27] See Grandfather Order.

Notice) to clarify the guidelines which were used in evaluating agreements.[28] The central consideration, with respect to the required public interest showing, concerned the additional areas and populations which would receive primary service contrasted with those receiving interference, assuming full implementation of the agreement and mutual increases of affected stations. The Agreement Notice policy statement also reiterated that the agreement provisions pertain only to increases in facilities (power and height) and not to transmitter site relocations. It was further emphasized that these agreement provisions were intended only to provide a limited means by which some of the existing grandfathered FM stations could increase their facilities.

29. These provisions were codified in Section 73.213(a) in the Modification Order. In that decision, the Commission stated that it would continue to consider agreements between grandfathered stations for increases of facilities when it is shown that the public interest would be served. In addition, the provisions were extended to cover second-adjacent-channel and third-adjacent-channel short-spacing situations (for which protection requirements were added at the same time).

30. However, the Agreement Policy is rarely used today for its original purpose of providing for mutual increases by grandfathered stations, but rather has been invoked to justify unilateral modifications, including site changes. We believe that this policy is no longer useful for the extremely limited number of co-channel and first-adjacent channel grandfathered stations proposing to increase facilities at their licensed site. If Proposal 1 and Proposal 2, above, were both adopted, grandfathered stations would have a great amount of flexibility in choosing new transmitter locations, or increasing facilities, without the need for an agreement. In addition, interference and public interest considerations should be the determining factor in granting modification applications. Therefore, we believe that our proposal to apply an interference based analysis to modification proposals by grandfathered short-spaced stations will eliminate the reliance on agreements without any harmful effect on applicants, other stations, or the public.

CONCLUSION

31. Our experience working with the current rule combined with the ready availability of computers and more sophisticated software, leads us to conclude that this is an appropriate time to propose changes in our grandfathered short-spacing rules. The proposed changes properly put the focus on more accurately evaluating and controlling interference. For stations with second-adjacent-channel or third-adjacent-channel grandfathered short-spacings, the proposed deletion of our interference restrictions would return some flexibility when proposing modifications. For stations with co-channel or first-adjacent-channel grandfathered short-spacings, the changes would allow a more accurate determination of predicted interference. In addition, we propose to eliminate our policy regarding agreements

[28] See Agreement Notice.

between grandfathered stations. Any rules adopted or modified as an outcome of this preceding will be applied to all appropriate applications pending at the Commission at the time the rules become effective. Accordingly, we seek comments on the proposed changes to the rules as set forth in the attached Appendix A.

ADMINISTRATIVE MATTERS

32. Authority for the proposed rule changes upon which comments are invited is contained in Sections 4(i), 5(c)(1), 302, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 155(c)(1), 302, and 303.

33. Comment dates. Under procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415 and 1.419, interested persons may file comments on or before July 22, 1996 and reply comments on or before August 5, 1996. To file formally in this proceeding, you must file an original plus five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to have a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C.

34. Ex Parte Rules -- Non-Restricted Proceeding. This is a non-restricted notice and comment rule making proceeding. Ex Parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission Rules. See generally 47 C.F.R. Sections 1.202, 1.203 and 1.1206(a).

35. Regulatory Flexibility Act. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the expected impact on small entities of the proposals advanced herein, attached as Appendix B. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall send a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Section 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 et seq., (1981).

36. Further information may be obtained from James Bradshaw, Audio Services Division, Mass Media Bureau (202) 418-2740.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A

It is proposed to revise 47 C.F.R. Part 73 as follows:

PART 73 - RADIO BROADCAST SERVICES

1. The authority citation for Part 73 would continue to read as follows:

Authority: 47 U.S.C. 154,303

2. It is proposed to amend Section 73.213 by revising paragraph (a) to read as follows:

§73.213 Grandfathered short-spaced stations.

(a) Stations at locations authorized prior to November 16, 1964 that did not meet the separation distances required by §73.207 and have remained short-spaced since that time may be modified or relocated with respect to such short-spaced stations, provided that no new area would receive co-channel or first- adjacent-channel interference as predicted in accordance with paragraph (a)(1) of this section, or that a showing is provided pursuant to paragraph (a)(2) of this section that demonstrates that the public interest would be served by the proposed changes.

(1) Co-channel interference is predicted to exist, for the purpose of this section, at all locations where the undesired (interfering station) F(50,10) field strength exceeds a value 20 dB below the desired (service) F(50,50) field strength of the station being considered. First-adjacent-channel interference is predicted to exist, for the purpose of this section, at all locations where the undesired (interfering station) F(50,10) field strength exceeds a value 6 dB below the desired (service) F(50,50) field strength of the station being considered. The F(50,50) curves in Figure 1 of §73.333 of this part are to be used to determine the desired (service) field strength and the F(50,10) curves in Figure 1a of §73.333 of this part are to be used to determine the undesired (interfering) field strength. Predicted interference is determined only for locations where the desired (service) field strength exceeds 0.5 mV/m (54 dBu) for a Class B station, 0.7 mV/m (57 dBu) for a Class B1 station, and 1 mV/m (60 dBu) for any other class of station.

(2) A showing that the public interest would be served by the changes proposed in an application must include exhibits demonstrating that the total area and population subject to co-channel or first-adjacent-channel interference, caused and received, would be maintained or decreased. In addition, the showing must include exhibits demonstrating that the area and the population subject to co-channel or first-adjacent-channel interference caused by the proposed

facility to each short-spaced station individually is not increased. In all cases, the applicant must also show that any area predicted to lose service as a result of new co-channel or first-adjacent-channel interference has adequate aural service remaining.

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3. It is proposed to remove Section 73.4235, the reference to Section 73.4235 in the Table of Contents at the beginning of Part 73 and the reference to Section 73.4235 appearing as "short-spacing agreements: FM stations." in the alphabetical index at the end of Part 73.

APPENDIX B

Initial Regulatory Flexibility Analysis

I. Reason for Action This proposed action is necessary to provide more flexibility for the original grandfathered short-spaced FM stations to change and relocate transmitter facilities.

II. Objectives The objective of this proceeding is to allow FM radio service licensees more flexibility in the choice of operating parameters and transmitter site in order to more efficiently and effectively reach their listening audience while controlling interference.

III. Legal Basis The action taken in this Notice is authorized by Sections 4(i), 302 and 303 of the Communications Act of 1934, as amended.

IV. Description, Potential Impact and Number of Small Entities Affected The entities affected by this proposal are FM radio service licensees that have been grandfathered in short-spaced transmitter locations since 1964. The number of stations in such situations is estimated to be several hundred. Because the Notice proposes provisions for additional flexibility in operation, the option of whether or not to take advantage of the new rules rests with each licensee. There is no requirement that any licensee make any change as a result of this rule amendment. The number of licensees who might opt to modify their stations is unknown.

V. Recording, Record Keeping and Other Compliance Requirements None.

VI. Federal Rules which Overlap, Duplicate or Conflict with this Rule None.

VII. Any Significant Alternative Minimizing Impact on Small Entities and Consistent with the Stated Objectives None.