

53. **Requirement that the FM Measured Directional Composite Antenna Pattern Be At Least 85% RMS of the Authorized FM Directional Composite Pattern.** For FM commercial and noncommercial educational stations, the *Notice* proposed to add a new 47 C.F.R. Section 73.316(c)(9) to require that the "area" within the final measured FM pattern be at least 85% of the "area" within the authorized directional composite pattern. The *Notice* indicated that this proposed rule would codify existing policy, and cited two letters as examples of the application of this policy.⁴¹ The *Notice* indicated that the staff adopted the 85% policy after some applicants proposed final measured patterns which were greatly reduced from the authorized composite directional pattern, and indicated that a standard was necessary to ensure efficient use of scarce FM broadcast spectrum. The *Notice* also concluded that a standard would also deter applicants from proposing directional antenna patterns which could not be achieved in practice. Finally, the *Notice* indicated that this rule would conform the FM service to the AM service in this regard.

54. *Definition of RMS.* Before discussing specific comments, we note that most commenters questioned the use of the term "area" in the *Notice* rather than RMS ("root mean square").⁴² The RMS value is related to the area within the relative field pattern (not service area) by the *square root*, and is a less restrictive requirement. In fact, the existing staff policy utilizes RMS, not area, and our use of the term "area" was not intended to alter that policy. Accordingly, all further discussion and the rule adopted by this *Order* will be expressed in terms of RMS.⁴³

55. *Comments.* AFCCE agrees that there is a "need to eliminate those composite patterns which result in contours in which the areas unrealistically correspond to the measured pattern." Mullaney believes that the RMS threshold should be lowered to 70%, but that any rule adopted should not require any more than 85% RMS. Gallagher notes that the 85% RMS policy was "easy to apply and not difficult to achieve in the field [and that] the RMS of a relative field pattern is an indicator of the overall efficiency of the pattern." Gallagher and Crawford separately note that the corresponding rule for the AM service (47 C.F.R. Section 73.151(a)) requires that the RMS of the measured AM pattern must be at least 85% of the standard pattern. Crawford concludes that an 85% RMS standard is "reasonable and not overly burdensome, [and that] antenna manufacturers are keyed to this policy."

⁴¹ *Letter to Sunbury Broadcasting Corp.*, concerning license application BLH-940805KC, Reference No. 1800B3-EPD, dated February 22, 1996; *Letter to Randolph Victor Bell*, concerning license application BLH-951027KA, Reference No. 1800B3-JAG, dated November 21, 1995. The difficulties with these license applications have since been resolved, and the licenses granted.

⁴² The RMS values for a composite pattern in relative field may be determined from the following formula:

RMS = the square root of

$$\frac{[(\text{relative field value } 1)^2 + (\text{relative field value } 2)^2 + \dots + (\text{last relative field value})^2]}{\text{number of relative field values summed}}$$

where the relative field values are taken from at least 36 evenly spaced radials for the entire 360° of azimuth.

⁴³ Many of the comments on this topic were centered on this confusion about whether RMS, coverage area, or the area within the relative field pattern was being used by the Commission to define its proposed 85% rule.

Shively Labs ("Shively"), a manufacturer of directional antennas, states that it presently "manufactures FM directional antenna systems that comply with the [85% RMS] policy," and states that the policy should remain, but finds that the comments submitted by DLR may support eliminating the requirement altogether. GBI supports adoption of an 85% RMS requirement, while Osenkowsky also voices "general support".

56. DLR, on the other hand, opposes the adoption of an 85% RMS rule, believing that the proposed rule is unnecessary and that an 85% RMS requirement places an "unwarranted burden on stations which must use, or choose to use a directional antenna."⁴⁴ DLR also inquires whether an 85% rule would apply to those stations which employ a directional antenna solely to avoid wasting energy over unpopulated areas such as the ocean or the Florida Everglades. DLR also disagrees with the *Notice* statement which indicated that adoption of an 85% RMS policy would conform the FM service to the AM service in this regard, stating that in the case of AM stations, the limitation was adopted "because of the design of certain [AM] antenna systems which produced . . . internal losses": these factors are not present in FM antennas. Sunbury agrees with DLR that a rule section should not be adopted. CGC also agrees, concluding that any rule, if adopted, should be the focus of a separate general rulemaking on directional antennas. CGC also adds that, should we adopt a rule here, we should grandfather those stations that may have been authorized despite noncompliance with this requirement.

57. DLR also questions the reference in the *Notice* which stated that a directional pattern which did not meet the proposed 85% requirement represented an inefficient use of spectrum, in that the larger authorized composite pattern would protect service which did not exist. As an example, DLR compares maximum and minimum Class A operations on a commercial channel, reaching the conclusion that the present commercial allocations scheme (which is based on minimum spacing requirements) is also inefficient in this regard, in that it protects facilities as if they are operating with maximum facilities even when they are not. Mullaney provides a similar example for a Class C station. CGC, referring to DLR's analysis, also asks whether DLR's example constitutes "wasted spectrum."

58. Regarding the mounting of directional antennas on a tower, AFCCE notes that the location of tower members can make it difficult to achieve a desired composite pattern, particularly since the tower affects the vertically polarized component. AFCCE notes that changes in measurement equipment by the antenna manufacturer can make duplication of older directional patterns difficult. AFCCE also contends that the advent of advanced television could increase the competition for tower space, thereby making site location more difficult and causing some stations to move to sites where a directional antenna will be necessary. Shively Labs ("Shively") concludes that the Commission "has

⁴⁴ DLR also notes that for some directional antennas, the vertically polarized component and the horizontally polarized component may have different composite radiation patterns. DLR is concerned that while the combination of the vertically polarized component and the horizontally polarized component exceed 85% RMS, the standard horizontally polarized component by itself may have a much smaller RMS. However, we do not examine the RMS of the individual components, but only of the combined pattern: if the combined pattern is 85% RMS of the authorized pattern, the license application is acceptable.

chosen to look only at small parts of a very complex issue."⁴⁵ Shively also states (and offers an example to show) that it is often more difficult to fabricate a directional antenna with a small null than a larger one, while still complying with the 85% RMS policy. Shively also states that in many cases the broadcaster may not have foreknowledge as to the dimensions and type of tower the owner will erect and without that information, pattern prediction may be difficult. Consequently, Shively concludes that a more thorough review of the FM directional antenna rules and policies is warranted.

59. *Discussion.* We will first provide a summary of the policy objective of the proposed rule, and then we will discuss the proposed 85% RMS rule itself in Paragraph 63 below. Based on the comments received, it would appear that the policy objective behind the proposed rule is not well understood and merits further clarification. This requires an understanding of the assignment principles used in authorizing the various types of FM stations. The vast majority of stations in the commercial portion of the FM band have been and continue to be assigned solely on the basis of distance separation requirements found in 47 C.F.R. Section 73.207. Stations assigned in this manner are protected from interference from new or modified assignments solely on the basis of these distance separation requirements. In the noncommercial educational portion of the FM band portion, however, assignments are made without regard to distance separations. Instead, service field strength contours are protected against overlap from interfering field strength contours.⁴⁶ See 47 C.F.R. Section 73.509. Thus, the distance to a station's service contour determines the degree to which it receives protection from other stations and the degree to which it precludes other potential cochannel and adjacent channel stations from locating nearby. Certain stations in the commercial portion of the FM band are also assigned utilizing a contour protection scheme similar to that used for noncommercial educational FM stations, although these stations must also meet some distance spacing requirements. These stations are assigned under the provisions of 47 C.F.R. Section 73.215.

60. The contour protection system works efficiently provided that service is actually provided to the contour which is being protected. If it is not, other stations are unnecessarily precluded from providing service to nearby areas. Gaps between protected contours and actual service contours represent wasted spectrum, in that the capacity of the FM band to provide actual service is diminished. The protected contours of stations authorized under 47 C.F.R. Sections 73.215 and 73.509 are determined in part by their radiated power. For non-directional FM stations this is simply the ERP specified on their license or permit. For directional FM stations, where the radiated power varies with

⁴⁵ Shively believes that the Commission should review all aspects of FM directional antennas in a comprehensive rulemaking proceeding devoted to that issue, so that antenna manufacturers, broadcasters, consultants, and the Commission's staff will all know what the requirements are for FM directional antenna operation. For example, Shively suggests that a single format be adopted to standardize licensing of FM directional antennas, citing as an example varying procedures between manufacturers regarding installation instructions and pattern measurements. Shively suggests that such a format would permit the Commission to know for certain that a directional antenna installation was completed properly. Shively also questions whether any policy is needed at all, noting that the person completing the Form 301 or Form 340 construction permit application does not need to know the final antenna configuration. To require a broadcaster to supply a measured pattern with a construction permit application is expensive, according to Shively, and risky since the Commission may reject the application.

⁴⁶ Stations in the AM broadcast service are also assigned using the contour protection method.

direction, a composite radiation pattern is used to determine the location of the protected contour.⁴⁷ Directional stations are authorized and subsequently protected from interference from other stations based upon a composite radiation pattern submitted with the application for construction permit. Following grant of the application, the antenna is manufactured and its radiation pattern measured. The measured pattern must be completely encompassed by the authorized composite pattern in order to assure that interference will not be caused. However, in some instances the measured pattern may be substantially less than the authorized composite pattern in some directions. In these directions the distance to the actual service contour (as determined by the measured pattern) would be substantially less than the distance to the protected contour (as determined by the authorized composite pattern). As discussed above, this represents wasted spectrum and potentially forecloses service to nearby areas from other cochannel and adjacent channel stations. The policy objective of the proposed rule is to prevent this. Thus, we will apply the proposed rule only to directional noncommercial educational FM stations authorized pursuant to 47 C.F.R. Section 73.509 and directional stations authorized pursuant to 47 C.F.R. Section 73.215. It will not be applied to fully spaced commercial stations utilizing a directional antenna simply to conserve energy by restricting radiation over unpopulated areas.⁴⁸

61. As indicated in the comments above, some parties noted that commercial FM stations assigned pursuant to the minimum spacing requirements of 47 C.F.R. Section 73.207 are permitted to operate with the minimum facilities allowed for their station class, yet are generally protected from interference caused by other stations by virtue of the minimum spacing rules as though they were operating with the maximum facilities for their class. The comments ask why this occurrence is not considered an inefficient use of spectrum, if the apparently less-egregious directional antenna shortfall (where the reduced contour occurs only in some directions) is deemed so. The answer is that the rules adopted to govern the assignment of commercial FM stations were developed to achieve policy objectives in addition to spectrum efficiency. Specifically, the Commission concluded in 1962 that minimum distance separation requirements in conjunction with a Table of Allotments (which are now embodied in rule sections 47 C.F.R. Sections 73.207 and 73.202(b), respectively) formed the best means to:

- 1) insure efficiency of channel use (as compared to the random pattern of application filing);
- 2) make provision for future needs, such as needs of smaller communities where support for radio service may be lacking at the present time; and

⁴⁷ Directional antennas are used extensively by noncommercial educational FM stations authorized under 47 C.F.R. Section 73.509 and FM contour protection stations authorized under 47 C.F.R. Section 73.215 in order to operate from locations where non-directional operation would be precluded due to interference to other nearby cochannel and adjacent channel stations.

⁴⁸ Stations authorized pursuant to 47 C.F.R. Section 73.207, which are authorized by spacing and not contour protection, are always permitted to operate with maximum facilities nondirectionally in the absence of other constraints. Contour protection applicants applying pursuant to 47 C.F.R. Section 73.215 must also protect that Section 73.207 station as if that station were operating with the maximum facilities permitted for its class.

- 3) ensure compliance with 47 U.S.C. Section 307(b), which calls for fair and equitable distribution of facilities, than does random application filing for communities.

Revision of FM Rules, First Report and Order, Docket 14185, 23 R.R. 1801, 1817. In adopting these rules, however, the Commission recognized also that many stations, for economic reasons or otherwise, would not immediately be able to provide service to the full maximum facilities for the authorized station class. Therefore, the Commission decided that it was better to allow commercial FM stations the opportunity for future growth and expanded service within their specified station class, which would allow improved service at a later date in and around the community of license, as opposed to fixing a commercial station's protected service at the present level.⁴⁹ Consequently, the fact that a commercial FM station is currently operating with less than the maximum facilities for the station class does not, by itself, represent a permanent inefficient use of spectrum.

63. We believe that a rule section should be adopted to require that the RMS of the measured pattern be at least 85% of the authorized composite antenna pattern RMS for stations covered under 47 C.F.R. Sections 73.509 and 73.215, for the reasons explained above. This figure achieves a reasonable balance between the needs of antenna manufacturers for an adequate tolerance in adjusting directional antennas and the policy objectives discussed above regarding efficient utilization of the FM broadcast spectrum. It does so without requiring antenna manufacturers to predict distances to field strength contours. Moreover, as the comments show, the present 85% RMS policy has proven to be reasonable. As we stated above, we agree with DLR that the rule section need not apply to those stations employing a directional antenna for purposes for other than contour protection. These non-contour protection stations will be excluded from the rule. In addition, we will provide a simplified procedure for those stations covered by this new rule section that cannot meet the 85% RMS requirement. Our present procedure has been to require the filing of an application to modify the construction permit to change the directional pattern by shrinking the composite antenna pattern until it complies with the 85% policy. In light of the changes to the Communications Act referenced in Paragraph 1 above, this is no longer necessary. Consequently, we will permit reductions in the authorized relative field values to be specified along pertinent azimuths in a license application, so as to reduce the authorized composite antenna pattern to comply with the 85% RMS rule. We will also revise the rules adopted herein to accommodate this procedure. Moreover, as suggested by CGC, we will not perform a "backwards review" to find authorized stations where the 85% issue has not been raised and which do not meet this policy, nor will we require such stations to comply until a change is made at some future date.

64. We decline, however, to consider in this rulemaking the effects of tower mounting on a directional pattern, or the other directional antenna matters raised by Shively. Consideration of these matters falls outside the scope of this rulemaking, which is simply concerned with codifying an existing policy and streamlining the application process.

⁴⁹ For 35 years now, this policy objective has been maintained, with the result that many stations which were previously operating with minimum facilities for their station classes are now fully serving their allotted service areas. Many more continue to upgrade their operations to the maximum permitted facilities as circumstances permit.

65. **Fees for Modification of License Applications.** The *Notice* indicated that the Commission does not charge an application filing fee for modification of license applications, and stated that we would not charge a fee for the additional modification of license applications generated by the new procedures adopted herein.

66. *Comments.* No comments were received in opposition to this issue. Consequently, we will adopt revisions to 47 C.F.R. Section 1.1104 to accommodate this new procedure.⁵⁰ However, although an application form is no longer required, main studio waiver requests must be submitted with the minor change filing fee of \$690.00 and the Fee Form 159. See Paragraph 39 above.

ADDITIONAL SUGGESTIONS MADE BY COMMENTERS

67. The *Notice* asked for suggestions concerning additional rule changes or other changes which could expedite the streamlining of applications. These are addressed in the following paragraphs.

68. **Supplemental Methods for Contour Prediction.** GBI has asked the Commission to clarify its policy on the use and acceptance of supplemental methods for contour prediction. The Commission has accepted the use of supplemental contour prediction methods, such as NBS Technical Note 101, terrain roughness, or Longley-Rice analyses, in circumstances where applicants who were faced with unusual terrain considerations have sought to demonstrate that the principal community contour will encompass the community of license or main studio location, contrary to the result which would be predicted by the standard contour prediction methods in 47 C.F.R. Section 73.313 for FM and 73.684 for television.⁵¹ Supplemental showings have also been accepted for review in the context of a noncommercial educational FM station demonstrating compliance with the Channel 6 interference provisions of 47 C.F.R. Section 73.525. Commenters in this proceeding have asked for clarifications as to what criteria apply to these types of showings.

⁵⁰ For modification of license applications, the applications should be directed to the Office of the Secretary (NOT Mellon Bank) at the following address:

Office of the Secretary (1800**)
Room 222
Federal Communications Commission
1919 M Street NW
Washington, DC 20554

* where 1800B2 applies to AM station applications,
1800B3 applies to FM station applications,
1800E1 applies to television applications.

To facilitate processing, the application should contain a cover letter explaining that an application filing fee is not required for the modification of license application. Commercial license applications to cover a construction permit, however, must continue to submit the application and appropriate filing fee to Mellon Bank.

⁵¹ Unusual terrain has included very flat terrain, or terrain which slopes downward over a long distance between the transmitter site to the community of license or main studio location.

69. *Discussion.* For clarity, we will here state our policy on supplemental showings. First and foremost, we want to emphasize that supplemental showings have not been accepted, nor will be accepted, for the purpose of determining interference or prohibited contour overlap between FM broadcast stations. Nor have supplemental showings been approved to establish city coverage from an FM allotment reference site located beyond the 70 dBu contour, as predicted by the standard contour prediction method in 47 C.F.R. Section 73.313.⁵² To employ supplemental showings for FM stations in this manner would represent a fundamental change as to how contour protection applications are processed, and would require a separate rulemaking proceeding to specify standards, methods and assumptions, and possibly revised definitions for protected service areas and interference (*e.g.*, as is ongoing for television in MM Docket 87-268 (see Footnote 54)). This is far beyond the scope of this rulemaking proceeding, and will not be considered herein.

70. However, as indicated above, where the terrain departs widely from the average elevation of the 3 to 16 km section along the pertinent radial, the staff has accepted supplemental showings to demonstrate compliance with the main studio rule or to demonstrate coverage of the principal community by the principal community contour, as required by the rules. 47 C.F.R. Section 73.313(e) permits the use of supplemental showings for demonstrating a station's *coverage*. Typically, such showings include

(1) an explanation of why use of a supplemental showing is warranted (*e.g.*, very flat, very rough, or anomalous terrain, and a showing of how the terrain departs widely from the average terrain assumed for the F(50,50) propagation curves in 47 C.F.R. Section 73.333 for FM stations (*see* 47 C.F.R. Section 73.313(e) for FM or 47 C.F.R. Section 73.699 for TV stations (*see* 47 C.F.R. Section 73.684(f) for TV));

(2) a showing that the distance to the 70 dBu contour as predicted by the supplemental method is at least 10% larger than the distance to the 70 dBu contour of the standard contour prediction method (47 C.F.R. Section 73.313(c) and (d) for FM stations or 47 C.F.R. Sections 73.684(c), (d), and (g) for TV stations);⁵³

⁵² The staff examined past allotment rulemaking proceedings in which the use of supplemental showings was considered in a rulemaking proceeding, but was unable to find any proceeding in which a supplemental showing was accepted and an allotment created which located the 70 dBu contour beyond the location predicted by the standard contour prediction method. Thus no precedent exists for such usage. Because FM commercial one-step construction permit applications to upgrade or change channel use the same procedures as allotment rulemakings with respect to the allotment reference coordinates (*see FM Channel and Class Modifications by Application*, 8 FCC Rcd 4735, 58 Fed. Reg. 38534 (1993)), no application has been granted where the applicant sought to employ a supplemental showing for the allotment reference coordinates.

⁵³ Because supplemental showings are both complex and unique to each case, staff analyses require extensive engineering review by propagation experts which places a substantial demand on our finite resources. Also, minor differences between case - specific supplemental showings and the standard contour prediction method are expected due to the statistical nature of the propagation curves in the rules, which underlie the standard contour prediction method. Therefore, in order to maintain a balance between the desires of licensees and permittees to show compliance with the main studio or city coverage rules for FM stations in instances involving unusual terrain characteristics which depart widely from the 3 to 16 km segment, and the need for administrative efficiency, supplemental showings have been, and will continue to be, considered only where the applicant shows that the location of the FM contour as predicted by the supplemental method is at least 10% greater than the same contour

- (3) coordinates of the proposed main studio location for showings of compliance with 47 C.F.R. Section 73.1125;
- (4) a map showing the relative locations of the main studio location, or legal boundaries of the community of license, and the principal community contours as predicted by the standard and supplemental contour prediction methods;
- (5) a list of assumptions and an explanation of the method used in generating the supplemental analysis; and
- (6) sample calculations using the supplemental procedure.

71. Supplemental analyses are inherently more complex than the standard contour prediction method and the underlying assumptions are often open to varying interpretations. Thus, these showings are not routine by nature, are often controversial, and the outcome is not always as the applicant would wish. This uncertainty is inappropriate in a license application, wherein the staff is simply confirming that the facility was built properly. Nor do we wish to promote the construction of facilities which later cannot be licensed. Therefore, we will not accept supplemental showings for FM stations filed in conjunction with a license application. Applicants with supplemental showings will be required to submit them for consideration in a construction permit application, prior to any construction, so that the staff may properly evaluate all pertinent factors.⁵⁴ Applicants filing supplemental showings should also be aware that, due to the additional processing required on the supplemental showing, the processing time will be greater than that of a routine application.

72. Because the exhibits provided with supplemental showings may vary from method to method, we will not set standards for such showings beyond the guidelines given here. We also clarify that an applicant is not required to provide a supplemental analysis if the contour as predicted by the standard contour prediction method covers the community of license and the main studio location.

as predicted by the standard contour prediction method. A difference of less than 10% indicates that terrain considerations do not have a significant effect on the location of the contour.

⁵⁴ However, where a licensee or permittee is filing a supplemental showing solely to obtain confirmation that a particular main studio location complies with 47 C.F.R. Section 73.1125, prior to moving to that location, it may do so in a letter to the Audio Services Division for FM stations or the Video Services Division for TV stations, with the appropriate exhibits attached. These will be reviewed concurrently with other work received at the same time. We will not expedite the processing of requests of this nature before other processing work filed on the same date.

No filing fee is required for a supplemental showing filed for this purpose, which should be filed with the Office of the Secretary at the Commission, not Mellon Bank, at the location specified in Footnote 50. Applicants seeking to use this procedure should obtain the Commission's concurrence BEFORE constructing a studio at the specified location, since it may be very costly to move the studio to another location if the Commission's results do not agree with the applicant's supplemental analysis.

73. **Transmitter Operating Constants - Comments.** Osenkowsky questions the need to retain transmitter operating constants (plate current, plate voltage, and efficiency factor F) on a license application. He states that type accepted transmitters are no longer required to provide such metering. Osenkowsky concludes that the manner in which a station generates the ERP should be up to the station, and the Commission should not require transmitter operating constants, transmitter operating power, or the number of antenna bays. He would, however, require that an analysis of how the ERP was achieved be maintained in the station's file.

74. *Discussion.* We do not agree with Osenkowsky that this information is unnecessary to the Commission. The number of antenna bays and antenna type, in conjunction with the transmission line loss and other system loss, are used to determine what transmitter output power is necessary to achieve the authorized ERP. The transmitter operating constants provide a means of verifying that the proper transmitter power output (and thus ERP) is being achieved, independent of the in-line power meter. These figures are essential to determine whether the station is operating properly, and are used by members of the public as well as the Compliance and Information Bureau for this purpose. Therefore, in the absence of any other comments on this subject, we do not believe it would be in the public interest to eliminate this information from the license application at this time.

75. **50% Change in Area Constitutes A Major Change for FM Noncommercial Educational Stations - Comments.** KSBJ Educational Broadcasting Foundation ("KSBJ") has proposed that we examine whether a revision to 47 C.F.R. Section 73.3573(a) is warranted regarding the major change application definition for existing noncommercial educational FM stations. Presently, any technical change which would result in a change of more than 50% in the 1 mV/m (60 dBu) service area of a noncommercial educational FM station is defined as a major change, necessitating the release of a public notice establishing a cut off date by which competing applications and petitions to deny must be filed. KSBJ asks that we consider relaxing this requirement, so as to permit more FM noncommercial educational applications to be processed as minor change applications.

76. *Discussion.* A relaxation of the rule would require a separate rulemaking proceeding to determine the impact on notice requirements to potential competing applicants of the filing of such applications, as well as an inquiry as to what criteria would be appropriate before the major change processing rules would apply. Therefore, we find that consideration of this subject falls outside the scope of this rulemaking, which is primarily aimed at streamlining existing procedures and conforming rules and policies.

77. **Proposed Revisions to the Wording of 47 C.F.R. Sections 73.316(c) for FM Stations and 73.685(f) for Television Stations - Comments.** GBI has proposed that the wording of these two sections be revised to eliminate what it considers unnecessary information required by the Commission for FM and TV directional antennas.

78. Considering first the requested changes to the FM rule, GBI requests that the Commission delete the reference in 47 C.F.R. Section 73.316(c)(1) that the manufacturer and model number are to be submitted with an application proposing to use a directional antenna. GBI contends that in many cases where a construction permit application is being submitted, the broadcaster may not know what antenna manufacturer or antenna type will ultimately be used. Thus, GBI believes that the

requirement is unnecessary. GBI also proposes that 47 C.F.R. Section 73.316(c)(4) be revised to eliminate the required submission of a vertical plane pattern for directional antennas without beam tilt or null fill. Similarly, GBI proposes a revision to the television directional antenna rule 47 C.F.R. Section 73.685(f) to require a vertical pattern only in the case where the antenna also employs null fill or beam tilt, in addition to being directional in the horizontal plane.

79. *Discussion.* We have reviewed the suggested changes, but find that no real gain would be accomplished. Presently, we do not require that the antenna manufacturer or antenna type number be supplied with a construction permit application, recognizing that the licensee or permittee may change manufacturers or antenna types once the permittee actually commences construction. We do, however, require antenna manufacturer and antenna type information at the license application stage. Therefore, changing 47 C.F.R. Section 73.316(c)(1) would have no impact on processing. With respect to eliminating the requirement for vertical plane patterns for FM and TV applications, here too, we do not routinely ask for this information during construction permit application processing. However, because the vertical patterns may change from the corresponding nondirectional antenna due to the elements or phasing used to make the antenna directional, we believe they should be supplied with the license application. Therefore, no changes will be made to these rule sections at this time.

80. **Correction of Station Coordinates on a Modification of License Application (AM, FM, and TV) - Comments.** GBI suggests that we permit broadcast stations to correct station coordinates on a modification of license application where the correction would be less than 3 seconds latitude and 3 seconds longitude, provided that a revised FAA clearance is provided with the application. GBI notes that the new tower registration procedures will reveal numerous coordinate discrepancies, as tower owners redetermine the tower coordinates before registration.⁵⁵ This will require the filing of an application to correct the coordinates of the broadcast station. Mullaney agrees with GBI, as does CGC.

81. *Discussion.* This issue was recently addressed in the context of the antenna structure registration rulemaking in WT Docket 95-5. Therefore, we see no need to initiate a new rulemaking proceeding on this subject. See *Streamlining the Commission's Antenna Structure Clearance Procedure*, 11 FCC Rcd 4272 (released November 30, 1995), 61 Fed. Reg. 04359 (1996). In that recent proceeding, the Commission clarified the procedures to be used when correcting station coordinates. 11 FCC Rcd at 4286 (Paragraphs 34, 35, see also Appendix C therein). The Commission continues to require the filing of a construction permit application on FCC Form 301 for commercial stations and FCC Form 340 for noncommercial educational stations to make any coordinate or tower height corrections.⁵⁶ We also advised in WT Docket 95-5 that *no application filing fee would be required for an application which proposed to correct tower heights or coordinates*

⁵⁵ See *Revision of Part 17 Concerning Construction, Marking, and Lighting of Antenna Structures*, 11 FCC Rcd 4272, released November 30, 1995, 61 Fed. Reg. 04359 (1996).

⁵⁶ In addition, changes which do not alter the station coordinates by more than 1 second in latitude or longitude, or change the tower height by less than one foot, do not require notification to the Federal Aviation Administration (FAA). (However, changes which would involve a 1 second change in coordinates or 1 meter change in height must still be reported to the FCC.) Changes greater than 1 second in latitude or longitude or 1 foot in height require that a revised FAA determination be obtained prior to tower registration.

as a result of a discrepancy resulting from a redetermination of values.⁵⁷ Docket WT 95-5 also required the submission of this correcting construction permit application within 30 days of receipt of a copy of Form 854-R ("Application for Antenna Structure Registration") from the tower owner. As stated therein, however, we will not issue forfeitures, nor require licensees to cease operation, because of the filing of a construction permit application to correct the tower and antenna height data resulting from registration.

82. We believe that permitting applicants to specify corrected coordinates on a license application would likely result in abuse. For example, an applicant could specify fully spaced coordinates in a construction permit or license application, and later "correct" those coordinates to a short-spaced transmitter site or a site involving prohibited contour overlap. As a way to limit abuse, Mullaney suggests that we limit a license coordinate correction procedure to tower structures authorized after July 1996. However, we do not keep close track of when towers were authorized, nor would this procedure prevent future misuse of this procedure by an applicant correcting coordinates at some future date. Moreover, this would merely replace the two step construction permit / license application process presently in use with a two step approach in which the Commission would have to decide -- without complete information -- what type of application (construction permit or license application) the applicant must file for each case. Thus, the processing burden on the staff would not be diminished, while the safeguards inherent in the construction permit process against abuse would be lost. Consequently, the suggestions that we permit coordinate corrections on a license application will not be adopted.

83. **Suggestion for a review of effects of the new rules adopted herein after one year and after two years - Comments.** NAB has asked that the Commission formally review the impact of these new rules one and two years after they become effective, to determine whether these rules have resulted in the creation of new interference or other adverse consequences.

84. *Discussion.* We do not believe that a formal review at a preset interval is required for the new rules and procedures we are adopting today. These rules and procedures were chosen for modification primarily because interference and other adverse consequences were unlikely. However, should circumstances develop which warrant additional review of these matters, we will do so at that time.

85. **Licensee notification and opportunity for comment is requested for applications filed under the new rules adopted herein - Comments.** NAB suggests that the Commission require that parties filing applications under the new rules adopted herein be required to provide "notice" to all potentially affected broadcasters. If no comments in opposition are received, NAB would then permit the changes to be made and the license application filed. CGC agrees that notice to potentially affected applicants should be given.

⁵⁷ Similarly, no application filing fee would be required for a license application to cover a granted no-fee construction permit which was filed to fix discrepancies resulting from antenna structure registration. To facilitate processing, the license application should contain a cover letter explaining that an application filing fee is not required. The application should be directed to the address specified in Footnote 50.

86. *Discussion.* The procedure advocated by NAB and CGC would essentially require the staff to verify that notice had been given to all parties, presumably using presently-unspecified criteria to certify that notice had been given.⁵⁸ We do not have the resources or the staff to perform this task for every application and the imposition of such a requirement would increase the processing time for any application. Nor do we believe that participation by additional parties is necessary to reach a decision on whether a one-step license application should be granted, particularly since the Commission may revoke or modify program test authority or require additional information in instances of violation. Therefore, we will not adopt any notice requirement for applications filed under the new procedures adopted in this *Order*. We will, however, assign each modification of license application a file number, enter each into our databases, and release a public notice indicating the receipt of the application, as we do now for minor change and license applications. This will provide sufficient notice of the filing of an application. Generally there will be sufficient time between the date of the public notice and the grant of the license application to permit the filing of informal objections. However, we emphasize that we will not delay the start of automatic program test authority pursuant to 47 C.F.R. Section 73.1620 for AM, FM, or TV stations merely because an informal objection or complaint has been filed.

CONCLUSION

87. We believe that the simplified, one-step filing procedures and related rule revisions adopted herein for certain minor modifications will provide stations with greater flexibility in making changes that would not be likely to have any significant impact on other stations and the public. Stations will be able to make these types of changes on a much more expeditious basis because the applications for prior authority to make those minor changes will no longer be required and the license modification applications will not be grouped together for processing with construction permit modification applications that would likely impact other stations. However, stations utilizing these streamlined procedures must assume greater responsibility for ensuring their facilities modification applications fully comply with the Commission's rules, policies, and procedures. In addition, the rule changes we propose would allow the Commission to concentrate its limited resources on the evaluation of other types of applications which have a more significant possibility of impact on other stations and the public. Additional minor amendments to some other rules which refer to the rules that are the focus of this proceeding have also been made, for consistency and to simplify the rules. These new rules are contained in Appendix E. Accordingly, to the extent provided herein, we are amending Parts 1, 73, and 74 of the Rules to permit broadcast licensees and permittees to make changes to their stations via a one-step modification of license application in lieu of a construction permit and a license application.

88. Because Forms 302-FM and 302-TV have not yet been revised to incorporate the additional information required for the new uses permitted by this *Order*, we have included Supplements to Form 302-FM and Form 302-TV in Appendices C and D, respectively, which may be used after these new rules become effective until new forms are available.

⁵⁸ For example, we would require a definition of who an "affected broadcaster" is. Procedures would also have to be established concerning what the form of the notice should be, how that information should be transmitted to us, what happens if someone is missed, etc. This would simply increase the burden on license applicants and the Commission, which is what we are trying to avoid.

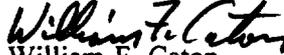
ORDERING CLAUSES

89. Accordingly, IT IS ORDERED that pursuant to the authority contained in Sections 4(i), 303(r), and 307(c) of the Communications Act of 1934, as amended, 47 U.S.C. Parts 1, 73, and 74 ARE AMENDED as set forth in Appendix E below.

90. IT IS FURTHER ORDERED that the requirements and regulations established in this *Report and Order* WILL BECOME EFFECTIVE 60 days from the date of publication in the Federal Register, or upon receipt by Congress of a report in compliance with the *Contract with America Advancement Act of 1996*, Pub. L. No. 104-121, whichever date is later. Changes to FCC Forms 302-FM and 302-TV will become effective on that date or as soon thereafter as may be approved by the Office of Management and Budget.

91. For further information contact Dale Bickel of the Audio Services Division, Mass Media Bureau at (202)-418-2720, or by e-mail at dbickel@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

Attachments

APPENDIX A

PAPERWORK REDUCTION ACT STATEMENT

This *Report and Order* contains new or modified information collections subject to the Paperwork Reduction Act of 1995 ("PRA"). It has been submitted to the Office of Management and Budget ("OMB") for review under the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collections contained in this proceeding.

FINAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act, 5 U.S.C. Section 603 ("RFA"),⁵⁹ an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in *Amendment of Parts 73 and 74 of the Commission's Rules to Permit Certain Minor Changes Without A Construction Permit*.⁶⁰ The Commission sought written public comments on the proposals in the *NPRM*, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this *Report and Order* conforms to the RFA as amended.⁶¹

A. Need For and Objectives of the Proposed Rules:

The Commission's Rules currently require a construction permit for virtually all minor changes to AM, FM, and TV broadcast stations. This procedure was required by Section 319(d) of the Communications Act. In 1996, at the request of the Commission, Congress modified Section 319(d) in the Telecommunications Act of 1996 Pub. L. No. 104-104, 110 Stat. 56 (1996), to eliminate the prohibition against waiving the permit requirement for applicants wanting to make minor changes to broadcast station facilities.⁶² The Commission therefore proposed revisions to its broadcast regulations to replace, in certain instances, the two step construction permit-license process with a single step licensing procedure.

By making these changes, the present four month period presently required to process and grant a construction permit will be eliminated for those applicants choosing to use these new procedures. In addition, the present minor change application filing fee (presently \$690.00) will not be required from applicants for one-step license applications, thereby easing the financial burden for simple changes. The changes will also expedite new and improved service to the public, with minimal impact on existing stations. The specified changes may be made without prior authorization from the Commission; however, it is the licensee's or permittee's responsibility to determine whether the particular installation complies with the Commission's rules and regulations. The circumstances in which the Commission will permit the

⁵⁹ See 47 U.S.C. Section 603.

⁶⁰ *Notice of Proposed Rulemaking* in MM Docket No. 96-58, 11 FCC Rcd 8800 (1996).

⁶¹ See 5 U.S.C. Section 604. The *Regulatory Flexibility Act*, see 5 U.S.C. Section 601 *et. seq.* has been amended by the *Contract With America Advancement Act of 1996*, P.L. No. 104-104, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the *Small Business Regulatory Enforcement Act of 1996* ("SBREFA").

⁶² Section 319(d) has been modified to read in relevant part as follows: "With respect to any broadcasting station, the Commission shall not have authority to waive the requirement of a permit for construction, except that the Commission may by regulation determine that a permit shall not be required for minor changes in the facilities of authorized broadcast stations." Pub. L. 104-104, Section 403(m), 110 Stat 56 (1996).

filing of one-step licensing applications are listed in 47 C.F.R. Section 73.1690(c) (see Appendix E of this *Report and Order*).

B. Summary of Significant Issues Raised by the Public Comments in Response to the IFRA:

No comments were received specifically in response to the IFRA contained in the *Notice of Proposed Rulemaking*. However, commenters did address the effects of the proposed rule changes on FM and TV licensees, including small businesses. Generally, commenters favored the rule changes proposed, with minor changes, some of which have been incorporated into the rules specified in Appendix E of this *Report and Order*. See Comments at paragraphs 8, 14, 17, 23, 26, 28-29, 34, 38, 43-46, 48, 52, 55-58, 66, 68, 73, 75, 77, 80, 83 and 85 of this *Report and Order*.

C. Description and Estimate of the Number of Small Entities To Which Rules Will Apply:

1. *Definition of a "Small Business"*. The RFA generally defines "small entity" as having the same meaning as the terms "small organizations", "small businesses", and "small governmental jurisdictions", and the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities.⁶³ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").⁶⁴ According to the SBA's regulations, entities engaged in radio or television broadcasting (Standard Industrial Classification ("SIC") Code 4833 for television and 4832 for radio) may have a maximum of \$5.0 million or \$10.5 million, respectively, in annual receipts in order to qualify as a small business concern.⁶⁵ 13 C.F.R. § 121.201. This standard also applies in determining whether an entity is a small business for purposes of the RFA.

Pursuant to 5 U.S.C. Section 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the

⁶³ *Small Business Act*, 15 U.S.C. Section 632 (1996).

⁶⁴ 5 U.S.C. Section 601(b) (incorporating by reference the definition of "small business concern" in 15 U.S.C. Section 632). Pursuant to 5 U.S.C. Section 601(b), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

⁶⁵ This revenue cap appears to apply to noncommercial educational television stations, as well as to commercial television stations. See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes "Television Broadcasting Stations (SIC Code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

agency and publishes such definition(s) in the Federal Register."⁶⁶ While we believe that the foregoing definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the new rules on small business, we did not propose an alternative definition in the IRFA. Accordingly, for purposes of this *Report and Order*, we utilize the SBA's definition in determining the number of small businesses to which the rules apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to radio and television broadcast stations and to consider further the issue of the number of small entities that are radio and television broadcasters in the future. Further, in this RFA, we will identify the different classes of small radio and television stations that may be impacted by the rules adopted in this *Report and Order*.

Commercial Radio and Television Services: The proposed rules and policies adopted in this *Order* will apply to full service television broadcasting licensees, radio broadcasting licensees, potential licensees of either service and may have an effect on FM and TV translator stations as well as low power TV stations ("LPTV"). The rules will also apply to full service television stations and may have an effect on TV translator facilities and low power TV stations ("LPTV"). The SBA defines a television broadcasting station that has no more than \$10.5 million in annual receipts as a small business.⁶⁷ Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.⁶⁸ Included in this industry are

⁶⁶ While we believe that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small radio and television stations. However, for purposes of this *Report and Order*, we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to the rules adopted in this *Report and Order* and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities in the future. See *Report and Order* in MM Docket 93-48 (*Children's Television Programming*), 11 FCC Rcd 10660, 10737-38 (1996), citing 5 U.S.C. 601 (3). In our *Notice of Inquiry* in GN Docket No. 96-113B, *In the matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses*, 11 FCC Rcd 6280 (1996), we requested commenters to provide profile data about small telecommunications businesses in particular services, including television and radio, and the market entry barriers they encounter, and we also sought comment as to how to define small businesses for purposes of implementing Section 257 of the Telecommunications Act of 1996, which requires us to identify market entry barriers and to prescribe regulations to eliminate those barriers. Additionally, in our *Order and Notice of Proposed Rulemaking* in MM Docket 96-16, *In the Matter of Streamlining Broadcast EEO Rules and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines*, 11 FCC Rcd 5154 (1996), we invited comment as to whether relief should be afforded to stations: (1) based on small staff and what size staff would be considered sufficient for relief, e.g., 10 or fewer full-time employees; (2) based on operation in a small market; or (3) based on operation in a market with a small minority work force.

⁶⁷ 13 C.F.R. § 121.201, Standard Industrial Code (SIC) 4833 (1996).

⁶⁸ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 CENSUS OF TRANSPORTATION, COMMUNICATIONS AND UTILITIES, ESTABLISHMENT AND FIRM SIZE. Series UC92-S-1, Appendix A-9 (1995).

commercial, religious, educational, and other television stations.⁶⁹ Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.⁷⁰ Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.⁷¹ There were 1,509 television stations operating in the nation in 1992.⁷² That number has remained fairly constant as indicated by the approximately 1,560 operating television broadcasting stations in the nation as of June, 1997.⁷³ For 1992⁷⁴ the number of television stations that produced less than \$10.0 million in revenue was 1,155 establishments.⁷⁵

Additionally, the SBA defines a radio broadcasting station that has no more than \$5 million in annual receipts as a small business.⁷⁶ A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.⁷⁷ Included in this industry are commercial religious, educational, and other radio stations.⁷⁸ Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.⁷⁹ However, radio stations

⁶⁹ *Id.* See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes "Television Broadcasting Stations (SIC Code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 CENSUS OF TRANSPORTATION, COMMUNICATIONS AND UTILITIES, ESTABLISHMENT AND FIRM SIZE, Series UC92-S-1, Appendix A-9 (1995).

⁷¹ *Id.* SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services (producers of live radio and television programs).

⁷² FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 78, Appendix A-9.

⁷³ FCC News Release No. 75604, July 31, 1997.

⁷⁴ Census for Communications' establishments are performed every five years ending with a "2" or "7". See Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 78, III.

⁷⁵ The amount of \$10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

⁷⁶ 13 C.F.R. § 121.201, SIC 4832.

⁷⁷ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 78, Appendix A-9.

⁷⁸ *Id.*

⁷⁹ *Id.*

which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.⁸⁰ The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than \$5 million in revenue in 1992.⁸¹ Official Commission records indicate that 11,334 individual radio stations were operating in 1992.⁸² As of June, 1997 official Commission records indicate that 12,177 radio stations were operating.⁸³

Thus, the proposed rules will affect approximately 1,560 television stations; approximately 1,201 of those stations are considered small businesses.⁸⁴ Additionally, the proposed rules will affect 12,177 radio stations, approximately 11,689 of which are small businesses.⁸⁵ These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. We recognize that the proposed rules may also impact minority and women owned stations, some of which may be small entities. In 1995, minorities owned and controlled 37 (3.0%) of 1,221 commercial television stations and 293 (2.9%) of the commercial radio stations in the United States.⁸⁶ According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and non-commercial television stations and 394 (3.8%) of 10,244 commercial and non-commercial radio stations in the United States.⁸⁷ We recognize that the

⁸⁰ *Id.*

⁸¹ The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

⁸² FCC News Release No. 31327, Jan. 13, 1993.

⁸³ FCC News Release No. 77504, July 31, 1997.

⁸⁴ We use the 77 percent figure of TV stations operating at less than \$10 million for 1992 and apply it to the 1997 total of 1551 TV stations to arrive at 1,194 stations categorized as small businesses.

⁸⁵ We use the 96% figure of radio station establishments with less than \$5 million revenue from the Census data and apply it to the 12,135 individual station count to arrive at 11,649 individual stations as small businesses.

⁸⁶ *Minority Commercial Broadcast Ownership in the United States*, U.S. Dep't of Commerce, National Telecommunications and Information Administration, The Minority Telecommunications Development Program ("MTDP") (April 1996). MTDP considers minority ownership as ownership of more than 50% of a broadcast corporation's stock, voting control in a broadcast partnership, or ownership of a broadcasting property as an individual proprietor. *Id.* The minority groups included in this report are Black, Hispanic, Asian, and Native American.

⁸⁷ See Comments of American Women in Radio and Television, Inc. in MM Docket No. 94-149 and MM Docket No. 91-140, at 4 n.4 (filed May 17, 1995), citing 1987 Economic Censuses, *Women-Owned Business*, WB87-1, U.S. Dep't of Commerce, Bureau of the Census, August 1990 (based on 1987 Census). After the 1987 Census report, the Census Bureau did not provide data by particular communications services (four-digit Standard Industrial Classification (SIC) Code), but rather by the general two-digit SIC Code for communications (#48). Consequently, since 1987, the U.S. Census Bureau has not updated data on ownership of broadcast facilities by women, nor does the FCC collect such data. However, we sought comment on whether the Annual Ownership Report Form 323 should be amended to include information on the gender and race of broadcast license owners. *Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities, Notice of Proposed Rulemaking*, 10 FCC Rcd 2788, 2797 (1995).

numbers of minority and women broadcast owners may have changed due to an increase in license transfers and assignments since the passage of the 1996 Act.

It should also be noted that the foregoing estimates do not distinguish between network-affiliated⁸⁸ stations and independent stations. As of April 1996, the BIA Publications, Inc. Master Access Television Analyzer Database indicates that about 73% of all commercial television stations were affiliated with the ABC, CBS, NBC, Fox, UPN, or WB networks. Moreover, 7% of those affiliates have secondary affiliations.⁸⁹

There are currently 4991 TV translators, and 2001 LPTV stations which may be affected by the new rules, if they decide to convert to digital television.⁹⁰ The FCC does not collect financial information of any broadcast facility and the Department of Commerce does not collect financial information on these broadcast facilities. We will assume for present purposes, however, that most, if not all, LPTV stations and translator stations, could be classified as small businesses, if considered by themselves. Thus, translator stations generally can be considered affiliates, as that term is defined in the SBA regulations, with full service stations. Given this situation, these stations would likely have annual revenues that exceed the SBA maximum to be designated as small businesses.

In addition to owners of operating radio and television stations, any entity who seeks or desires to obtain a television or radio broadcast license may be affected by the proposals contained in this item. The number of entities that may seek to obtain a television or radio broadcast license is unknown.

Additionally, the proposed changes to the cable/MDS cross-ownership attribution rule will apply to cable and MDS entities. The SBA has developed a definition of small entities for cable and other pay television services under Standard Industrial Classification 4841 (SIC 4841), which covers subscription television services, which includes all such companies with annual gross revenues of \$11 million or less.⁹¹ This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,323 such cable and other pay television services generating less than \$11 million in revenue that were in operation for at least one year at the end of 1992.⁹² This figure is overinclusive since it includes other pay television services, not only cable and MDS.

Alternative Classification of Small Stations. An alternative way to classify small radio and television stations is the number of employees. The Commission currently applies a standard based on the

⁸⁸ In this context, "affiliation" refers to any local broadcast television station that has a contractual arrangement with a programming network to carry the network's signal. This definition of affiliated station includes both stations owned and operated by a network and stations owned by other entities.

⁸⁹ Secondary affiliations are secondary to the primary affiliation of the station and generally afford the affiliate additional choice of programming.

⁹⁰ FCC News Release No. 72712, March 6, 1997, Broadcast Station Totals as of February 28, 1997.

⁹¹ 13 C.F.R. §121.201.

⁹² 1992 Census, *supra*, at Firm Size 1-123. See *Memorandum Opinion and Order and Notice of Proposed Rule Making* in MM Docket No. 92-266 and CS Docket No. 96-157, 11 FCC Rcd 9517, 9531 (1996).

number of employees in administering its Equal Employment Opportunity (EEO) for broadcasting.⁹³ Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and record-keeping requirements.⁹⁴

Cable Systems. The Communications Act contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."⁹⁵ The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers is deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.⁹⁶ Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450.⁹⁷ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide.⁹⁸ Based on our most recent information, we estimate that there were

⁹³ The Commission's definition of a small broadcast station for purposes of applying its EEO rules was adopted prior to the requirement of approval by the SBA pursuant to Section 3(a) of the *Small Business Act*, 15 U.S.C. Section 632, as amended by Section 222 of the *Small Business Credit and Business Opportunity Enhancement Act of 1992*, Public Law 102-366, Section 222(b)(1), 106 Stat. 999 (1992), as further amended by the *Small Business Administration Reauthorization and Amendments Act of 1994*, Public Law 103-403, Section 301, 108 Stat. 4187 (1994). However, this definition was adopted after public notice and opportunity for comment. See *Report and Order* in Docket No. 18244, 23 FCC 2d 430 (1970), 35 FR 8925 (June 6, 1970).

⁹⁴ See, e.g., 47 CFR Section 73.3612 (Requirement to file annual employment reports on FCC Form 395 applies to licensees with five or more full-time employees); *First Report and Order* in Docket No. 21474 (*Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395*), 70 FCC 2d 1466 (1979), 50 Fed. Reg. 50329 (December 10, 1985). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. *Order and Notice of Proposed Rule Making in MM Docket 96-16 (Streamlining Broadcast EEO Rules and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines)*, 11 FCC Rcd 5154 (1996), 61 Fed. Reg. 09964 (March 12, 1996). One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees.

⁹⁵ 47 U.S.C. § 543(m)(2).

⁹⁶ 47 C.F.R. § 76.1403(b).

⁹⁷ Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

⁹⁸ 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of \$100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393

1,439 cable operators that qualified as small cable system operators at the end of 1995.⁹⁹ Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the proposal adopted in this Notice. Under the Commission's rules, a small cable system is a cable system with 15,000 or fewer subscribers owned by a cable company serving 400,000 or fewer subscribers over all of its cable systems.

MDS. The Commission redefined the definition of "small entity" for the auction of MDS as an entity that together with its affiliates has average gross annual revenues that are not more than \$40 million for the preceding three calendar years.¹⁰⁰ This definition of a small entity in the context of MDS auctions has been approved by the SBA.¹⁰¹

The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MDS is a service heavily encumbered with approximately 1,573 previously authorized and proposed MDS facilities and information available to us indicates that no MDS facility generates revenue in excess of \$11 million annually. We conclude that for purposes of this FRFA, there are approximately 1,634 small MDS providers as defined by the SBA and the Commission's auction rules.

Newspapers. Some of the proposals delineated above may also apply to daily newspapers that hold or seek to acquire an interest in a broadcast station that would be treated as attributable under the proposals. A newspaper is an establishment that is primarily engaged in publishing newspapers, or in publishing and printing newspapers.¹⁰² The SBA defines a newspaper that has 500 or fewer employees as a small business.¹⁰³ Based on data from the U.S. Census Bureau, there are a total of approximately 6,715 newspapers, and 6,578 of those meet the SBA's size definition.¹⁰⁴ However, we recognize that some of these newspapers may not be independently owned and operated and, therefore, would not be considered a "small business concern" under the Small Business Act.¹⁰⁵ We are unable to estimate at this time how

(1995).

⁹⁹ Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

¹⁰⁰ 47 C.F.R. § 21.961(b)(1).

¹⁰¹ See *Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, MM Docket No. 94-31 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589 (1995).

¹⁰² 13 C.F.R. § 121.201 (SIC 2711).

¹⁰³ *Id.*

¹⁰⁴ U.S. Small Business Administration 1992 Economic Census Industry and Enterprise Report, Table 3, SIC Code 2711 (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

¹⁰⁵ 15 U.S.C. § 632.

Appendix B

List of Commenters

Initial Comments

Association of America's Public Television Stations	("APTS")
Association of Federal Communications Consulting Engineers	("AFCCE")
Communications General Corporation	("CGC")
Crawford Broadcasting Company	("Crawford")
duTreil, Lundin, and Rackley, Inc.	("DLR")
Gallagher & Associates	("Gallagher")
Graham Brock, Inc.	("GBI")
KSBJ Educational Foundation, Inc.	("KSBJ")
National Association of Broadcasters	("NAB")
Thomas Gary Osenkowsky	("Osenkowsky")
Region-20 Public Safety	("Region-20")
Sunbury Broadcasting Corporation	("Sunbury")

Reply Comments

Communications General Corporation	("CGC")
Mullaney Engineering, Inc.	("Mullaney")
Shively Labs	("Shively")

many newspapers are affiliated with larger entities. Moreover, the proposal would apply only to daily newspapers, and we are unable to estimate how many newspapers that meet the SBA's size definition are daily newspapers. Consequently, we estimate that there are fewer than 6,578 newspapers that may be affected by the proposed rules in this *Further Notice*.

D. Description of Recordkeeping and Other Projected Compliance Requirements:

Applicants filing a one-step license application will be required to provide a reduced amount of information as compared to that currently required for a construction permit. This information may consist of a radiofrequency radiation analysis to insure public safety, directional antenna information to insure protection to other stations, etc. as set forth Appendices C and D. The information required in Appendices C and D with a one-step license application generally is the minimum necessary for the Commission to verify compliance with its rules and regulations.

It must be noted that a permittee or licensee is not required to subject itself to the new one-step license requirements if it chooses not to do so. Any permittee or licensee may, at its option, use the present two-step process of obtaining a construction permit, followed by the filing of a license application once construction is complete. However, in many instances, the new procedures will reduce the time and expense required to implement certain minor changes to broadcast stations.

Most permittees and licensees retain professional consulting engineers or legal counsel, or both in preparing construction permit applications. We do not expect this to change significantly by the adoption of the new rules and procedures. However, the time needed for the preparation of the simplified one-step applications will be reduced, translating into time and money savings for the broadcast applicant.

E. Steps Taken to Minimize Burden on Small Entities and Significant Alternatives Considered and Rejected:

Pursuant to the RFA, 5 U.S.C. § 603(c), we have considered whether there is a significant economic impact on a substantial number of small entities. The action taken does not impose additional burdens on small entities. Indeed, the opposite is true. The minor change application filing fee will be eliminated for applicants which meet the criteria for eligibility for applicants which meet the criteria for eligibility in 47 CFR § 73.1690 as set forth in Appendix E. One-step license applications also require that lesser amounts of information be submitted to the Commission as compared to a construction permit application. The rule and policy changes will have a positive economic impact, as eligible entities, including small entities, will be able to increase their service or make certain modifications without prior Commission authorization and with fewer legal challenges. All entities will still be able to file informal objections against a one-step license application, just as they may do now against a construction permit application. This should address the concerns of those commenters who sought a special notice and comment period for each one-step license application.

F. Report to Congress

The Commission shall send a copy of this Final Regulatory Flexibility Analysis along with this *Report and Order* in a report to Congress pursuant to Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, codified at 5 U.S.C. Section 801(a)(1)(A). A copy of this RFA will also be published in the *Federal Register*.

Appendix C

Supplement to FCC Form 302-FM

This supplement is intended for use with the revised procedures adopted in the *Report and Order* in MM Docket 96-58. You may use this supplement to determine whether the new procedures are applicable to your particular situation. This supplement and any related exhibits must be attached to the Form 302-FM license application.

This FM license application is filed to:

- cover construction permit (permit number) _____
(the permit number starts with BPH-, BMPH-, BPED-, BMPED-)
- modify license (license number) _____
(the license number starts with BLH- , BMLH-, BLED- , BMLED)

Purpose of Application (Check applicable boxes and provide the requested information and exhibits):

1. **Increase in a Commercial FM station's Effective Radiated Power (ERP).** An FM commercial station (also including those noncommercial educational stations authorized to operate on Channels 221 through 300 (except Class D stations)), may increase ERP via a license application where EITHER (a), (b), or (c) BELOW ARE TRUE. [Noncommercial educational permittees or licensees operating on Channels 200 through 220, or Class D stations operating on any channel, may only increase the authorized maximum ERP after grant of a construction permit application on FCC Form 340 (but see Section 8 below).] An analysis to demonstrate compliance with the Commission's radiofrequency radiation requirements must be included with the Form 302-FM application for license to cover the increased power.

(a)(i). The **commercial** Class A station was authorized pursuant to MM Docket 88-375 to increase ERP in a modification of license application in one of the following Public Notices (*see* 47 CFR Section 73.1690(c)(5)). The ERP increase must not violate the multiple ownership provisions of 47 CFR Section 73.3555. The Form 302-FM application must include an analysis demonstrating compliance with the Commission's radiofrequency radiation requirements.

___ November 3, 1989 (Reference No. 451), Page No. _____ ***See Note

___ November 17, 1989 (Reference No. 640), Page No. _____

___ December 8, 1989 (Reference No. 886), Page No. _____

___ March 2, 1990 (Reference No. 2009), Page No. _____

___ February 11, 1991 (Reference No. 11615), Page No. _____

*** Note: Certain stations included on the November 3, 1989 Public Notice were deleted from the lists of eligible stations on the November 17, 1989 Public Notice. Applicants referring to the November 3, 1989 Public Notice should also check the November 17, 1989 Public Notice.

_____ ii) the installed height of the antenna radiation center is not increased by more than two meters nor decreased by more than four meters from the authorized height for the antenna radiation center.

_____ iii) The applicant must demonstrate compliance with the AM protection requirements of 47 CFR Section 73.1692 if the increase in ERP also involves replacement of an antenna on an AM antenna tower.

(b). The **commercial** FM station is fully spaced pursuant to 47 C.F.R. Section 73.207 of the Commission's rules. See 47 CFR Section 73.1690(c)(7). The ERP increase may only be implemented where ALL OF THE FOLLOWING ARE TRUE:

_____ i) A showing must be provided to demonstrate that the FM station complies with the minimum separation requirements of 47 CFR § 73.207. The FM station may not be "grandfathered" under 47 CFR Section 73.213 or authorized under the contour protection rule 47 CFR Section 73.215.

_____ ii) If located in or near a radio quiet zone, radio coordination zone, or a Commission monitoring station, written approval has been secured from that radio quiet zone, radio coordination zone, or the Commission's Compliance and Information Bureau in the case of a monitoring station, PRIOR to implementation of the ERP increase. See 47 CFR Sections 73.1030 and 0.121(c). A copy of the written approval must be attached to the Form 302-FM application.

_____ iii) The station does not require international coordination since

_____ the transmitter site is not within 320 km of the Canadian or Mexican border; or

_____ if the transmitter site is in a border zone, the station's International Class _____ is equal to or greater than the station's Domestic Class _____

_____ iv) The power increase does not require the consideration of a multiple ownership showing pursuant to 47 CFR Section 73.3555.

_____ v) The vertically polarized ERP will not exceed the horizontally polarized ERP.

_____ vi) the installed height of the antenna radiation center is not increased by more than two meters nor decreased by more than four meters from the authorized height for the antenna radiation center.

_____ vii) The applicant must demonstrate compliance with the AM protection

requirements of 47 CFR Section 73.1692 if the increase in ERP also involves replacement of an antenna on an AM antenna tower.