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Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
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1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes	)	MM Docket No. 98-43
	)	
Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities	)	MM Docket No. 94-149

MEMORANDUM OPINION AND ORDER

Adopted: September 29, 1999 **Released: October 6, 1999**

By the Commission: Commissioner Furchtgott-Roth approving in part, dissenting in part and issuing a statement.

I. INTRODUCTION AND BACKGROUND

1. The Commission has before it petitions for reconsideration of the Report and Order in MM Docket Nos. 98-43 and 94-149, 13 FCC Rcd 23,056 (1998) (the "Streamlining Order") and related responsive pleadings.[1] In the Streamlining Order, the Commission significantly modified its broadcast

[1] A list of parties filing petitions, oppositions to petitions, and replies to oppositions is attached as Appendix A. Petitioner Z-Spanish Media, et al. ("Z-Spanish"), submitted a request for stay as part of its petition for reconsideration, and subsequent to the petition period, on May 12, 1999, petitioner W. Russell Withers, Jr. ("Withers") filed a "Motion for Stay or, in the Alternative, Request for Waiver or 'Tolling'". In view of our action in this Memorandum Opinion and Order, we will dismiss as moot the motions for stay. The Bureau staff will, if necessary, consider Withers' request for "waiver or tolling" at a subsequent time.

Additionally, John Harvey Rees filed a Petition for Review of the Streamlining Order with the Court of Appeals for the Tenth Circuit, Case No. 99-9503. The Commission has filed a Petition to Hold in Abeyance pending disposition of the petitions for reconsideration.

We also note that Entravision Holdings, L.L.C. filed a Petition for Rule Making to amend 47 C.F.R. § 73.3598 to permit broadcasters "with significant minority participation" or those "proposing to meet the needs of minority group populations" to obtain construction permits that would otherwise be declared forfeited under the new streamlined rules and to receive additional time to complete construction of such permits. See Public Notice, DA 99-648 (released April 8, 1999). The petition has been denominated RM-9567. Entravision's petition is beyond the scope of this proceeding and will not be considered here.

application and licensing procedures to make them more efficient and eliminate unwarranted regulatory burdens. Specifically, in the Streamlining Order, we (1) adopted an electronic filing mandate for key Mass Media Bureau broadcast application and reporting forms, establishing a "phase-in" period of six months between the date that the pertinent form becomes available for filing electronically and the date that electronic filing would become mandatory; (2) substantially revised key forms to replace many narrative exhibits with "yes" or "no" certifications, supplemented with detailed instructions and worksheets; (3) adopted a system of random audits to ensure the integrity of our application process, as well as compliance with the Communications Act and the Commission's Rules, under the streamlined application procedures; (4) extended the construction period for all broadcast stations to three years (from 18 months for radio stations and 24 months for television stations) and provided for automatic forfeiture of the permit if a station is not operational with an application for covering license on file by the end of that period; (5) adopted a formal system by which the construction period would be "tolled" in the event that (a) an "act of God" interfered with construction efforts, or (b) a permit itself was the subject of administrative or judicial review; (6) eliminated the restriction on payment allowable for the sale of an unbuilt construction permit; (7) eliminated the requirement that broadcast station ownership reports be filed every year on the date of the station's license renewal and substituted a requirement that the report be filed only every two years; and (8) modified the ownership report form to require the provision of information on the racial and gender identity of broadcast licensees/principals.

2. Thirty-eight parties have now filed petitions for reconsideration of the Streamlining Order. The majority of petitions addressed the adoption and application of the three-year construction period and concomitant "tolling" provisions. Additionally, we received petitions regarding several issues associated with our certification-based applications. In this Order, we will grant reconsideration with respect to several issues raised by the petitioners, deny reconsideration of other issues, and clarify certain aspects of the rules adopted in the Streamlining Order.

II. DISCUSSION

A. REVISED APPLICATION FORMS

3. As noted, in the Streamlining Order, we determined to recast key Mass Media Bureau forms into an "electronic filing friendly" format, replacing required exhibits with questions that require only "yes" or "no" answers.[2] We received no requests for reconsideration of the mandatory electronic filing requirements or the streamlined application forms per se. However, various petitioners did request reconsideration of our determinations regarding retention of application worksheets, submission of contour maps with assignment/transfer applications, a post-grant random audit enforcement mechanism, and the submission of race and gender data in broadcast licensee ownership reports.

1. Worksheets

4. Background. In the Streamlining Order, we decided to assist applicants in completing the new certification-based forms accurately and completely by providing them with detailed worksheets and instructions to explain processing standards and rule interpretations. The Streamlining Order emphasized that the application worksheets were "available to applicants as instruments to provide guidance in

[2] Electronic versions of the following 15 forms have been developed: FCC Forms 301, 302-AM, 302-FM, 302-TV, 302-DTV, 314, 315, 316, 340, 345, 346, 347, 349, 350, and 5072. See Streamlining Order, 13 FCC Rcd at 23,059 n. 5. The FCC Form 398, used for documenting compliance with the Commission's Children's Television requirements, had previously been recast into electronic format and is currently in use.

completing certification questions," and that they were "designed to clarify Commission processing standards and rule interpretations and to enhance the reliability of applicant certifications and responses." 13 FCC Rcd at 23,067-68. The Streamlining Order determined, however, not to require applicants to retain worksheets or file them with the Commission or place them in their public files.

5. Pleadings. The Federal Communications Bar Association ("FCBA"), challenges our decision regarding the retention and filing of application worksheets.[3] It contends that, because the Commission is requiring each applicant to complete the worksheets, it is a minimal additional burden on the applicant to place a copy of completed worksheets in the applicant's local public file and to file a copy of the worksheets in the Commission's Reference Information Center. Such filing and retention requirements, the FCBA maintains, would ensure the integrity of the application process. It additionally argues that certain questions on the worksheets (such as those concerning cross-interests, familial relationships and investor and creditor disclosures) prejudge the outcome of the Commission's pending broadcast multiple ownership rule making proceedings, and that a number of worksheet questions request new information that appears unrelated to application questions and the Commission's processing of the application.

6. Discussion. We disagree with these assertions regarding the application worksheets. We emphasize that, as stated in the Streamlining Order, applicants' certifications are to be based on their "review of application instructions and worksheets," which are intended "to provide guidance," "to clarify" processing standards and rule interpretations, and to "help applicants focus on material facts and documents" in making their certifications. 13 FCC Rcd at 23,067-68. We also emphasize that applicants are encouraged to retain worksheets, "as well as other data or documentation used to support certifications, for use in response to Commission audits and inquiries . . . ." Id. at 23,069. However, although applicants must certify in their applications that they answered each question based on their review of application instructions and worksheets, it would be contrary to the purpose of streamlining to treat these detailed worksheets as part of all broadcast applications and require first that they be completed in a manner that could be readily reviewed and understood by all others and then retained in the applicants' local public files and the Commission's Reference Information Center.

7. Nor do we believe that imposing such regulatory burdens is necessary to ensure the integrity of our application processes. Despite our general reliance on certifications in the streamlined broadcast applications forms, we note that the Commission always retains the discretion to request additional information from any particular applicant. As discussed in detail in paragraphs 12-16, infra, we will also randomly select up to five percent of all broadcast applications for pre-grant and post-grant audits. In addition, we may, as stated in the Streamlining Order, conduct an audit even if an application does not fall into the group chosen by random selection, if the application raises concerns on its face or presents particularly significant public interest concerns. 13 FCC Rcd at 23,086. We are therefore not persuaded at this time that our streamlined application procedures, based on certifications coupled with detailed instructions and worksheets and buttressed by a formal audit program, are inadequate to ensure applicants' understanding of, and compliance with, Commission rules and policies. We accordingly deny the petition with regard to the retention and filing of application worksheets.

8. We also are not persuaded that the substance of any worksheet question is inappropriate. None of the questions on the worksheets was intended to prejudge the outcome of any pending proceeding, including the broadcast multiple ownership proceeding, and none requires disclosure of information that is not directly related to application processing. Rather, the worksheet questions reflect the Commission's existing policies on various matters. Those questions specifically noted by the petitioner on Worksheet

[3] See FCBA petition at 2-8.

3F pertaining to "Investor Insulation and Non-Party Influence over Applicant" concern matters that, in our experience, have consistently triggered requests for further information in the processing of broadcast applications because they directly bear upon the ability of an applicant to exercise de facto control of a licensee. We note, however, that in light of the Commission's recent adoption of new ownership and attribution rules,[4] we will revise the application worksheets and instructions accordingly and announce their revision and release by a subsequent Public Notice.

2. Contour Maps

9. Background. Prior to the implementation of the Streamlining Order, FCC Forms 314 and 315 (the "long-form" assignment and transfer forms, respectively) required radio applicants to submit a contour map if the buyer was acquiring a radio station that has a principal community contour that overlaps the principal community contour of a commonly owned, same-service station. The map was reviewed by the staff to determine compliance with the local radio ownership rules. In the Streamlining Order, noting that we had developed detailed instructions and worksheets that would help applicants understand the relevant rules and concepts themselves, we eliminated the requirement that applicants submit the contour overlap map for staff review and decided to rely instead on applicant certifications. However, we required that one copy of the contour overlap map upon which the certification of compliance was based be submitted with the application for retention in the Commission's Reference Information Center and that one copy of the map be retained in the public inspection file(s) of the station(s) involved in the transaction.

10. Pleadings. One petitioner states that this contour map filing requirement imposes an unreasonable expense and burden on applicants that can certify compliance with the local radio ownership rules without reference to such a map.[5] In many situations, this petitioner states, an applicant proposing to own more than one same-service station in a community can certify compliance simply by showing that there are greater than the requisite number of stations licensed to that community. For example, if a broadcaster desires to own two FM stations licensed to Anchorage, Alaska, it should be able to demonstrate compliance with the local radio ownership rules without submitting a contour map simply by demonstrating that there are at least five stations licensed to Anchorage.

11. Discussion. We agree with petitioner and will adopt a limited exception to the contour map submission requirement: when the acquisition will result in same service overlap of stations licensed to the same community (and no other station outside the community of license is involved), an applicant will be permitted to certify compliance with the local radio ownership rules based upon a written showing that a sufficient number of operating stations are licensed to that community. This practice is currently followed by the Bureau staff, and we find that it is an appropriate means to reduce applicant burden at no cost to the reliability of the certification process. Applicants who certify compliance with the multiple ownership rules based upon this methodology should include a list of stations as an exhibit to the application.

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[4] See Report and Order in MM Docket Nos. 94-150, 92-51, and 87-154, FCC 99-207, 14 FCC Rcd ___ (adopted August 5, 1999); Report and Order in MM Docket Nos. 91-221 and 87-8, FCC 99-208, 14 FCC Rcd ___ (adopted August 5, 1999).

[5] See Petition of David Tillotson ("Tillotson") at 1-3.

3. Enforcement and Audits

12. Background. In the Streamlining Order, we concluded that a strong enforcement program, including random audits, was needed to ensure the integrity of a streamlined broadcast application process. As part of this enforcement program, we adopted a formal system of random audits, which would subject up to five percent of all broadcast applications to heightened scrutiny prior to grant and would additionally subject up to five percent of all applications to audit after grant. As explained in the Streamlining Order, pre-grant audits would normally be conducted during the 30-day petition to deny period and would generally be limited to an examination of information that we have previously utilized to ensure compliance with Commission rules, such as sale agreements and contour maps. Because time constraints would limit the breadth of these pre-grant audits, we also determined to randomly subject up to five percent of all applications to more extensive post-grant audits. These post-grant audits could include comparison of the application being audited with all relevant Commission files and databases as well as other available sources of pertinent information. 13 FCC Rcd at 23,085-86.

13. Pleadings. One petitioner argues that the decision to conduct post-grant audits raises questions as to when a Commission action granting an application will become a "final order" in the sense that it is no longer subject to further administrative or judicial reconsideration or review.[6] This petitioner asserts that the adoption of a post-grant audit procedure casts a "long shadow across the concept of finality," and has made it "impossible" for attorneys to give unqualified opinions that Commission actions with respect to applications subject to random post-grant audits are "final orders." According to this petitioner, lending institutions and investors will be reluctant to advance funds based upon qualified opinions regarding finality, which must disclose that an application that has been granted may still be subjected to a random audit. To resolve this problem, the petitioner suggests, as one alternative, that the Commission identify, by public notice prior to their "final order date," those applications that have been selected for post-grant audits. This procedure would eliminate the alleged finality problem for at least those applications not selected for post-grant audit. As a preferred alternative, this petitioner urges the Commission to eliminate post-grant audits altogether and conduct all audits pre-grant.[7]

14. Discussion. We do not agree that the post-grant audit program adopted in the Streamlining Order alters the concept of "finality" with regard to grants of broadcast applications or affects an attorney's ability to advise lenders and investors (or other parties) that the grant of an application is "final" pursuant to Commission regulation. The Commission, as explicitly authorized by Section 312 of the Communications Act of 1934, has always had the ability to institute a proceeding to revoke a construction

[6] Petitions for reconsideration of Commission actions must be filed within 30 days from the date of public notice of the action, and the Commission may, on its own motion, set aside any action made or taken by it within 30 days from the date of public notice of such action. 47 C.F.R. §§ 1.106(f); 1.108. Applications for review by the Commission of actions taken pursuant to delegated authority must be filed within 30 days of public notice of such delegated action. 47 C.F.R. § 1.115. Within 40 days after public notice of any action taken pursuant to delegated authority, the Commission may on its own motion order the record of the proceeding before it for review. 47 C.F.R. § 1.117. In addition, appeals involving, inter alia, the Commission's denial or grant of construction permits or station licenses may be taken to the U.S. Court of Appeals for the District of Columbia, and any such notice of appeal must be filed within 30 days from the date of public notice of the challenged Commission decision. 47 U.S.C. § 402.

[7] See Tillotson petition at 3-6.

permit or station license at any time after grant.[8] Since permits and licenses are already subject to revocation or forfeiture after their grant, see 47 U.S.C. § 312(a)(1), (2), institution of a post-grant audit procedure will not make grants of construction permits or licenses any less "final" than under existing law.

15. We also reject the petitioner's suggestion that the Commission identify, by public notice prior to their "final order date," those applications selected for post-grant audits. The petitioner makes this suggestion to ameliorate a problem that, for the reasons described above, we do not believe exists. Moreover, by specifically identifying in advance a discrete group of applications that will definitely be audited, the Commission could conceivably encourage lenders or investors to delay committing to a loan or investment in particular situations until the audit is completed, thus greatly disadvantaging the licensees or permittees involved in those situations. If on the other hand all broadcast applications are equally at risk for being subjected to a post-grant audit, none will be disadvantaged.

16. Finally, we do not agree with the petitioner that all audits should be conducted prior to grant. As explained in the Streamlining Order, pre-grant audits will normally be conducted during the 30-day petition to deny period and, given this time frame, will necessarily be limited in scope. Conducting more thorough pre-grant audits would inevitably cause delays in the grant of applications that do not warrant denial. Because time constraints will limit the breadth of pre-grant audits, we believe post-grant audits will play a vital role in our enforcement program. Moreover, these more thorough audits can be conducted post-grant without delaying the grant of permits and licenses to applicants. For all these reasons, we deny the petition regarding the appropriateness of conducting post-grant audits.

4. Collection of Information on Minority and Female Ownership

17. Background. In the Streamlining Order, we adopted a proposal, initially made in 1995,[9] to revise our Annual Ownership Report, FCC Form 323, to collect gender and race information about the attributable owners of broadcast licensees. As we explained in the Streamlining Order, we decided to amend Form 323 to collect gender and race data because:

> [d]oing so will allow the Commission to determine accurately the current state of minority and female ownership of broadcast facilities, to determine the need for measures designed to promote ownership by minorities and women, to chart the success of any such measures that we may adopt, and to fulfill our statutory mandate under Section[s] 257 . . . and . . . 309(j) . . . to promote opportunities for small businesses and businesses owned by women and minorities in the broadcasting industry.[10]

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[8] Section 312(a) provides that the "Commission may revoke any station license or construction permit--

(1) for false statements knowingly made either in the application or in any statement of fact which may be required pursuant to section 308;

(2) because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application . . . ."

47 U.S.C. § 312(a)(1), (2).

[9] See Notice of Proposed Rule Making In the Matter of Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities, MM Docket Nos. 94-149 and 91-140, 10 FCC Rcd 2788 (1995).

[10] 13 FCC Rcd at 23,095 (citations omitted).

Section 257 of the Act requires the Commission, in identifying and eliminating market barriers for entrepreneurs and other small businesses in the provision of telecommunications and information services, to "promote the policies and purposes of this Act favoring diversity of media voices . . . ."[11] Section 309(j) of the Act requires the Commission, in resolving mutually exclusive applications for commercial broadcast licenses by competitive bidding, to promote the public policy of "disseminating licenses among a wide variety of applicants, including . . . businesses owned by members of minority groups and women."[12]

18. Pleadings. The National Association of Broadcasters ("NAB"), asks the Commission to reconsider this decision. It states that the requirement imposes a "significant burden" on broadcasters, and that the National Telecommunications and Information Administration ("NTIA") already collects data on minority ownership, so that the Commission needs no additional information to study minority ownership trends among commercial broadcasters.[13]

19. Discussion. We decline to amend our decision, which we believe is consistent with the statutory mandates and public policies expressed in the Act. We recognize that NTIA already collects information on minority ownership; as the petitioner points out, we sometimes rely on this information. As we explained in the Streamlining Order, however, NTIA's methodology for collecting the information, which includes reviewing various periodicals and contacting radio and television stations, does not ensure that its report is a complete listing of all commercial stations owned by minorities.[14] In addition, NTIA's data do not include information on women.[15] Moreover, because NTIA does not license the stations about which it collects information, it has no legal mechanism to ensure their participation or the accuracy of information reported. Under these circumstances, we continue to believe that, while NTIA's data may complement that of the Commission derived from our revised ownership form, NTIA's data are not a substitute for that of the Commission. Rather, the Commission, which licenses broadcasters and has a statutory duty to ensure that it does so in a manner that disseminates licenses "among a wide variety of applicants, including . . . businesses owned by members of minority groups and women," is appropriately and uniquely situated to collect information on the gender and race of the attributable owners of its licensees. Further, as we explained in the Streamlining Order, we continue to believe that collection of this information will not unduly burden broadcasters, because our new form will not require broadcasters to obtain information from anyone whose interests are not already reportable.[16] We thus affirm our decision to require the submission of race and gender data for attributable owners of broadcast stations.

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[11] 47 U.S.C. § 257(b).

[12] 47 U.S.C. § 309(j)(3); 47 U.S.C. § 257(b).

[13] See NAB petition at 6-7.

[14] 13 FCC Rcd at 23,096-97. As we explained in the Streamlining Order, we recognize that our data may not be complete either because our rules do not require certain commercial broadcasters (those composed of sole proprietorships or partnerships consisting only of natural persons) to complete Form 323. However, "we encourage these licensees to file information voluntarily regarding gender and racial identity, so that we may more accurately measure minority and female broadcast ownership." 13 FCC Rcd at 23,098.

[15] 13 FCC Rcd at 23,097.

[16] *Id.*

B. REVISED CONSTRUCTION PERIODS

20. Section 319 of the Communications Act of 1934, as amended, 47 U.S.C. § 319, provides that the Commission (except in certain carefully defined circumstances) cannot grant a license for a broadcast station without specifying the operating and construction parameters for the facility, including the date on which the facility must be completed and ready for operation. Section 319 also states that a construction permit "will be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow, unless prevented by causes not under the control of the grantee."[17] Prior to adoption of the Streamlining Order, the Commission's rules established a construction period of 24 months for a full-power television station and 18 months for other broadcast facilities. If the station was not "ready for operation" within that period, it was to be declared forfeit.[18] A permittee could request additional time if it failed to complete construction by the established date by filing FCC Form 307. Additional time would be authorized if the permittee demonstrated one of the following three conditions: (1) construction is complete and testing is underway looking toward the prompt filing of a license application; (2) substantial progress has been made, i.e., demonstration that equipment is on order or on hand, site acquired, site cleared, and construction proceeding to completion; or (3) no progress has been made for reasons clearly beyond the control of the permittee (such as delays caused by governmental budgetary processes and zoning problems), but the permittee has taken all possible steps to resolve the problem expeditiously and proceed with construction.[19] A permittee making a satisfactory showing under these criteria would be afforded up to an additional six months to complete construction.[20] Furthermore, the rules afforded permittees an additional six months to construct from the grant of a modification application and an additional one year to construct from consummation of an assignment or transfer.[21] Where an applicant failed to apply for an extension or make the necessary showing, the Commission's long-standing practice, despite the automatic forfeiture provision of Section 319(b) of the Act, was to declare a broadcast construction permit forfeit rather than considering it to have lapsed and been forfeit automatically.[22]

21. While the ostensibly strict extension policies were designed to encourage prompt construction

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[17] 47 U.S.C. § 319(a), (b).

[18] 47 C.F.R. §§ 73.3598, 73.3599 (1997).

[19] 47 C.F.R. § 73.3534(b) (1997).

[20] 47 C.F.R. § 73.3534(d) (1997).

[21] Because the grant of a modification or assignment/transfer could have the practical effect of extending a permit beyond its authorized period, the rules established a bifurcated scheme of evaluating these applications: if the modification or assignment/transfer application was filed within the first half of the construction period (twelve months for full-power television stations, 9 months for other broadcast services), the rules required only that the permittee (or assignee/transferee) certify that it would commence construction immediately upon grant of the modification or consummation of the assignment/transfer. If the modification or assignment/transfer application was filed after that time, the rules dictated that the permittee make the "one-in-three" showing in addition to the requisite certification. See 47 C.F.R. § 73.3535 (1997).

[22] See Streamlining Order, 13 FCC Rcd at 23,089; see also Edward A Baker v. FCC, 834 F.2d 181 (D.C. Cir. 1987); MG-TV Broadcasting Company v. FCC, 408 F.2d 1257 (D.C. Cir. 1968); Mass Communicators, Inc. v. FCC, 266 F.2d 681 (D.C. Cir. 1959), cert. denied, 361 U.S. 828 (1959) .

of broadcast facilities, see generally Broadcast Construction Periods, 102 FCC 2d 1054 (1985), we found, as stated in the Streamlining Order, that a significant number of permittees did not succeed in constructing their proposed facilities prior to permit expiration. As a result, we continued to receive large numbers of extension applications each year and substantial staff resources were required for the fact-intensive analysis involved in processing and disposing of these applications.[23] Thus, to reduce the time spent in applicant preparation and staff study of extension applications, we determined in the Streamlining Order to: (1) apply a uniform three-year term to all construction permits; (2) exclude from the calculation of this term those periods during which the permit itself was the subject of administrative or judicial review or where construction delays were caused by an "act of God," i.e., "toll" the construction period for these events; (3) eliminate the practice of providing extra time for construction after a permit has been modified or assigned/transferred; and (4) make construction permits subject to automatic forfeiture upon expiration.[24] Petitioners challenge the scope of application of the new rules and the tolling provisions of the new rules.

1. Scope of New Rules

22. Background. Though in the NPRM in this proceeding we had "tentatively concluded" and sought comment on whether we should apply the revised rules to all permits still within the initial construction period, but not those beyond that period, 13 FCC Rcd 11349, 11374, we ultimately concluded in the Streamlining Order that "the fairer approach is to allow all permittees to take advantage of the extended construction period." 13 FCC Rcd at 23,091. Thus, all existing permittees would be allowed three unencumbered years to complete construction and would be subject to the revised extension procedures. While this gave many permittees the benefit of an extended period, it also placed in jeopardy construction permits that had been outstanding for an extended period and yet never implemented; we stated that "[n]o additional time will be granted when the permittee has had, in all, at least three unencumbered years to construct." 13 FCC Rcd at 23,093.

23. Pleadings. Petitioners challenge the application of the new rules to existing permits outside the initial construction period on various grounds. Several petitioners charge that the NPRM provided insufficient notice that the new rules would be applied to all outstanding construction permits, not just to those in their initial period, and therefore that the Commission must establish a new notice-and-comment period under the Administrative Procedure Act ("APA"), 5 U.S.C. § 551 et seq.[25] These and other petitioners also charge that the application of the revised rules to permits issued and extended under the "one-in-three" rules violates the APA prohibition on retroactive rule making.[26] They state that "legislative rules" -- ones, as here, adopted pursuant to notice-and-comment rule making procedures -- must be applied

[23] 13 FCC Rcd at 23,088.

[24] See Streamlining Order, 13 FCC Rcd at 23,091-92; see also the revised text of 47 C.F.R. § 73.3598 as adopted in the Streamlining Order.

[25] See Petitions of Aspen FM, Inc. ("Aspen FM") at 4-9; Browne Mountain Television ("Browne") at 3-5; Brunson Communications, Inc. ("Brunson") at 9-10; Family First at 4-5; Michael L. Horvath ("Horvath") at 6; Isaac Max Jaramillo ("Jaramillo") at 9-10; Pollock Broadcasting Co. ("Pollock") at 9-10; Starr County Historical Foundation, Inc. ("Starr") at 9-11; and Sungilt Corporation, Inc. ("Sungilt") at 4-5.

[26] See Petitions of Aspen FM at 10-12; Brunson at 10-12; Horvath at 3-5; Jaramillo at 10-12; Long Island Multimedia, LLC ("Long Island") at 7-8; Milwaukee Area Technical College ("Milwaukee") at 5; Pollock at 10-12' Royce International Broadcasting Co. ("Royce") at 12-18; Starr at 11-12; Sungilt at 5-6; and Z-Spanish at 8-9.

prospectively only and that the Streamlining Order impermissibly "reaches back" into the history of a permittee who took actions believing that further extensions could be obtained under the "one-in-three" standard. Some petitioners claim that it is inequitable not to continue to take into account for existing permittees circumstances that, under the old rules, were sufficient to justify an extension, since these permittees invested time and money, formulating business plans, on the basis of existing rules that enabled them to receive extensions.[27] Several petitioners claim that the forfeiture of authorizations resulting from the application of the revised construction period to outstanding construction permits amounts to a "taking" without due process of law in violation of the Fifth Amendment to the United States Constitution.[28] Two permittees filed requests that the decision to apply the revised rules to existing permittees be stayed.[29]

24. Discussion. *Insufficient notice.* We reject petitioners' claim that the NPRM provided insufficient notice that the rules would be applied to all outstanding permits and therefore violated the APA. The Court of Appeals for the District of Columbia, as well as several other circuits, have held that APA notice requirements are satisfied where the final rule is a "logical outgrowth" of the proposed rule. Public Service Commission of the District of Columbia v. FCC, 906 F.2d 713, 717 (D.C. Cir. 1990).[30] A final rule will be deemed the logical outgrowth of a proposed rule if a new round of notice and comment would not provide commenters with their first opportunity to offer new and different criticisms that the agency might find convincing. American Water Works Association v. EPA, 40 F.3d 1266, 1274 (D.C. Cir. 1994); Fertilizer Institute v. EPA, 935 F.2d 1303, 1311 (D.C. Cir. 1991).[31] Alternatively, courts will consider "whether parties affected by a final rule were put on notice that 'their interests were at stake.'" American Medical Association v. U.S., 887 F.2d 760, 768 (7th Cir. 1989) (citing Spartan Radiocasting Co. v. FCC, 619 F.2d 314, 321 (4th Cir. 1980) and South Terminal Corp. v. EPA, supra, 504 F.2d at 659). See also American Iron and Steel Institute v. EPA, 568 F.2d 284, 293 (3d Cir. 1977) (agency's notice must "fairly apprise interested persons of the 'subjects and issues' [of the rule making].")[32]

25. Clearly, our decision to apply the revised rules to all outstanding permits was a logical outgrowth of the "tentative conclusion" in the NPRM. In the NPRM, we stated: "Because many [permits

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[27] See Petitions of Brown at 5-6; Brunson at 5-7; Central Florida at 5-9; Covenant at 6-8; Family First at 5-7; Floyco Inc. at 3-4; Horvath at 3-5; Jaramillo at 5-7; KM at 9-11; Harry J. and Stella A. Pappas ("Pappas") at 7-10; Pollock at 5-7; Reece at 3-4; Starr at 6-7; UP Wireless at 3-7; and Workman at 5-7.

[28] See Petitions of Aspen FM at 12-14; Covenant Network ("Covenant") at 5-6; Horvath at 5-6; and Withers at 6-8.

[29] See note 1, supra.

[30] Cf. South Terminal Corp v. EPA, 504 F. 2d 646, 659 (1st Cir. 1974) (the first case to use the "logical outgrowth" formula); accord, BASF Wyandotte Corp. v. Costle, supra; Taylor Diving & Salvage Co. v. United States Department of Labor, 599 F.2d 622, 626 (5th Cir. 1979).

[31] Compare American Federation of Labor and Congress of Industrial Organizations v. Donovan, 757 F.2d 330, 339 (D.C. Cir. 1985) (when notice of proposed rule making contained "no indication" that changes to specific rule provisions were being considered, modification of those regulations held not a "logical outgrowth" of proposal.)

[32] Accord, Consolidated Coal Co. v. Costle, 604 F.2d 239, 248 (4th Cir. 1979), rev'd on other grounds sub nom. EPA v. National Crushed Stone Association, 449 U.S. 64 (1980).

beyond their initial construction period] have already been afforded a construction period close to (or in many instances, in excess of) the three-year term proposed in this notice, we propose to continue to apply our current rules to construction permits that are beyond their initial periods." 13 FCC Rcd at 11374. However, we specifically invited comment on that proposal, and several parties filed comments in response to the invitation. See Streamlining Order, 13 FCC Rcd at 23,091-92. Therefore, a new round of comments would not provide commenters with their first opportunity to address the proposed ruling.

26. Likewise, the invitation of comment on our "tentative conclusion" apprised anyone interested that the application of the new rules to existing permittees beyond the initial construction period was an issue "on the table" and a subject ripe for comment. That our ultimate conclusion differed from the NPRM's "tentative conclusion" does not indicate that the notice was inadequate. An agency "need not subject every incremental change in its conclusions after each round of notice and comment to further public scrutiny before final action. Wayerhaeuser v. Costle, 590 F.2d 1011, 1031 (D.C. Cir. 1978); Brazos Electric Power Cooperative, Inc. v. Southwestern Power Administration, 819 F. 2d 537, 542-3 (5th Cir. 1987). To require in each case a new notice and a new round of comments after revision of a proposed rule would unduly burden and delay the rule making process. Id. See also Public Service Commission of the District of Columbia v. FCC, 906 F.2d 713, 717-8 (D.C. Cir. 1990).

27. *Retroactivity.* We also reject the contention that application of the revised rules to all outstanding permits constitutes impermissible retroactive rule making. As petitioners note, "legislative rules" adopted pursuant to notice-and-comment rule making procedures are "primarily retroactive" and thus impermissible when they "change [ ] the past legal consequences of past actions" without statutory authority to do so. See generally Bowen v. Georgetown University Hospital, 488 U.S. 204, 208, 219 (Scalia, J, concurring) (1988). Such is not the case here. We are not in this matter "changing the past legal consequences of past actions." For example, we did not invalidate any extensions granted under the former "one-in-three" standard and declare those permits forfeit. Neither did we examine existing permits and retroactively cancel those of permittees who had already had at least three unencumbered years in which to construct their stations or in any other way "reach back" into a past construction period and alter the legal consequences of those actions which previously justified extensions.

28. Nor are our rules impermissible under the standard for "secondary" retroactivity, i.e., they do not unreasonably affect the future legal consequences of past actions. Id. We recognize that the Streamlining Order may force some permittees who have received repeated extensions under the old standards, and who may have formulated business plans based on the expectation that they would continue to receive extensions indefinitely, to instead find a way to resolve existing problems and construct immediately or lose their permits in the near future. However, there is ample precedent that upsetting expectations that current rules or laws would continue is not unlawful retroactive rule making.[33] Moreover, grant of repeated construction extensions was by no means certain even under our old rules. Therefore, business plans based on the expectation of an indeterminate construction period were per se

[33] Landgraf v. USI Film Products, 511 U.S. 244, 269 & n. 24 (1994) (a law does not act retrospectively merely because it is applied in a case arising from conduct antedating its enactment or upsets expectations based in prior law; rather, the issue is whether the new provision attaches new legal consequences to events completed before its enactment"); DIRECTTV, Inc. v. FCC, 110 F.3d 816, 826 (D.C. Cir. 1997) ("a new rule or law is not retroactive 'merely because it . . . upsets expectations based on prior law,'" quoting Landgraf); Chemical Waste Management, Inc. v. EPA, 869 F.2d 1526, 1536 (D.C. Cir. 1989) ("it is often the case that a business will undertake a certain course of conduct based on the current law and will then find its expectations frustrated when the law changes. This has never been thought to constitute retroactive lawmaking").

unreasonable and there is no legal support for the charge that the Commission acted unlawfully in enacting the revised rules.

29. Nonetheless, though not legally compelled to do so, we will provide relief to permittees holding valid initial authorizations or extensions on February 16, 1999, the effective date of the Streamlining Order, including permittees whose authorizations have already expired but for which forfeiture is not final.[34] Pursuant to the action we take today, these permittees' authorizations will now be automatically forfeit either (a) one year from the effective date of this Order or (b) on the existing expiration date, whichever is later. Furthermore, concerning the additional time hereby granted, permittees may employ the tolling provisions adopted in the Streamlining Order as revised infra.[35] Our action in no way signals a retreat from our view that three years is an adequate time to construct. Rather, it reflects our acknowledgement of the fact that, because of the uncertainty engendered by various petitions for reconsideration objecting specifically to application of the new rules to existing permits, some permittees may not have taken all actions necessary to meet their existing construction deadlines. We also want to ensure beyond any doubt that permittees who may in fact have invested significant time and money constructing facilities under the old rules and who are in imminent danger of losing their permits have a final opportunity to bring service to the public.[36]

30. *Unconstitutional taking.* Finally, we reject petitioners' claims that forfeiture of existing permits pursuant to the new rules may lead to an unconstitutional taking of private property. We recently addressed the issue of whether Commission licensees have a property interest in their authorizations that can support such a claim when Commission action results in loss of the authorization. We reiterate here our statements in Reauction of Defaulted PCS C-Block Licenses, 12 FCC Rcd 17,688, 17,692 (1997), concerning the auctioning of certain wireless communications authorizations:

> Section 301 of the Communications Act provides that no license granted pursuant to the act "shall be construed to create any right beyond the terms, conditions, and periods of the license." Furthermore, courts have long held that licensees have no property interest in their licenses [citing FCC v. Sanders Brothers Radio Station, 309 U.S. 470, 475 (1940); Quincy Cable TV, Inc. v. FCC, 768 F.2d 1434, 1460 (D.C. Cir. 1985), National Association of Broadcasters v. FCC, 740 F.2d 1190,1198 (D.C. Cir. 1984).] Consequently, [there was no] . . . property interest in any of the 18 licenses that were the subject of the reauction. As such, the decision to reauction does not and indeed could not violate the Fifth Amendment's prohibition against the taking of private property for public use without just compensation.

See also Mass Communicators, Inc. v. FCC, 408 F.2d at 1264-65 n. 21 ("[a] license is merely a temporary permission to make use of rights belonging to the public, and confers no proprietary interest"); Joseph F. Bryant, 6 FCC Rcd 6121, 6123 (1991) ("[a] broadcast license does not confer a property right. Rather, it is a valuable, though limited, privilege to utilize the airwaves"); Marr Broadcasting Co., Inc., 2 FCC Rcd 3466, 3467 (Rev. Bd. 1987) ("[l]ittle discussion is necessary to affirm that a broadcast license

[34] We take this action pursuant to the discretion vested in us by 47 U.S.C. § 319(b). See infra paras. 35-36.

[35] See infra paras. 31-41.

[36] In light of this action, which in essence grants petitioners Z-Spanish and Withers the relief they seek, their stay requests will be dismissed as moot.

incorporates no property rights, 47 U.S.C. §§ 301, 304 . . . .")[37] [38] Since permittees have no property interest in their construction permits, forfeiture of the permit upon expiration of the term cannot constitute a "taking." Moreover, because construction permits are by their own terms granted for a limited period, when the permit expires, even the privilege to construct a station conferred by the permit ceases.

2. Tolling Provisions

31. Background. As noted above, in the Streamlining Order we adopted a system by which the three-year construction period will be "tolled" in the event that construction delays are caused by an act of God or the permit itself is the subject of administrative or judicial review. An act of God was defined in terms of natural disasters (e.g., floods, tornados, hurricanes, or earthquakes). Administrative or judicial review includes (1) petitions for reconsideration and applications for review of a permit or extension grant, and any subsequent court appeal thereof; or (2) any cause of action pending before any court of competent jurisdiction relating to any necessary local, state, or federal requirement for the construction or operation of the station, including any environmental requirement. We indicated in the Streamlining Order that we believed the three-year construction period provided sufficient time for permittees to overcome other obstacles to construction and therefore that we did not need to permit tolling for those circumstances. Regarding zoning, we specifically stated that "a three-year construction period provides ample time to complete [the zoning approval] process and construct the station or choose a new site free of zoning difficulties." 13 FCC Rcd at 23,052. However, we noted that, in keeping with our decision to toll the three-year period for administrative or judicial review, "the pendency of an appeal in a local court of a final zoning board determination would qualify for tolling." Id.

32. Pleadings. Petitioners challenge our tolling provisions on various grounds. Several claim that they are too narrow and violate Section 319(b) of the Communications Act, 47 U.S.C. § 319(b).[39] This provision, which is the source of the Commission's permit-extension policy, indicates that a broadcast construction permit:

> shall provide that said permit will be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow,

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[37] 47 U.S.C. § 304 requires applicants to "waive any claims to the use of any particular frequency . . . as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise."

[38] Although a broadcast permit or license does not confer a property right on its holder, procedural due process rights inherent in the APA attach when the Commission changes the terms or conditions of a permit or license. For example, the dismissal of an application is a sufficiently grave sanction to trigger "[t]raditional concepts of due process incorporated into administrative law" that "preclude an agency from penalizing a private party for violating a rule without first providing adequate notice of the rule." Satellite Broadcasting Co., Inc. v. FCC, 824 F.2d 1, 2 (D.C. Cir. 1987); Radio Athens, Inc. v. FCC, 401 F.2d 398, 404 (D.C. Cir. 1968). Thus, while "a license confers no 'property right,' and [. . .] licensees accept their licenses subject to the Commission's regulations . . . [those regulations] are subject to amendment [only] by rule making in which licensees may be heard." That having been accomplished, all procedural requirements have been met here. Amendment of Section 97.1114 of the Amateur Radio Service Rules, 59 RR 2d 436, 437 (1985), citing United States v. Storer Broadcasting Co., 351 U.S. 192, 202-04 (1956); WBEN Inc. v. United States, 396 F.2d 601, 618 (2d Cir. 1968).

[39] See Petitions of the Board of Regents of the University of Wisconsin System ("Wisconsin") at 6-7; Long Island at 1, 6-7; Milwaukee at 4-5; Pappas at 6-7: Royce at 4; Clinton County Broadcasting ("Clinton") at 6.

unless prevented by causes not under the control of the grantee.

On the other hand, one petitioner complains that our revised rules violate Section 319(b) because they are too lenient and consider factors not beyond a permittee's control.[40]

33. Other petitioners, including the NAB, focus especially on zoning matters as circumstances that should permit tolling.[41] Three petitioners maintain that zoning is a "real world" encumbrance beyond a permittee's control that cannot be ignored. They believe that refusing to take zoning matters into account would allow tower opponents and local authorities to "wait out" a broadcaster and "prevail by attrition."[42]

34. Additionally, several petitioners offer specific circumstances that they contend warrant tolling a permittee's construction period. For example, two petitioners argue that the construction period should be tolled during the pendency with the Commission of modification or assignment applications.[43] Three petitioners indicate that the construction period should likewise be tolled during the pendency of petitions for rule making affecting a station's frequency and/or class.[44] Two petitioners holding noncommercial educational construction permits indicate that the loss of an approved tower site warrants tolling a permittee's construction period, especially for noncommercial educational stations for whom "the most common source of delay is the loss of a painstakingly selected transmitter site."[45] A third petitioner echoes that the construction period should be tolled for the pendency of a modification application necessitated by the loss of a transmitter site due to the denial of federal, state, or local approvals.[46] One petitioner offers that the construction period should be tolled during the pendency of civil litigation affecting the permittee's ability to construct, such as breach-of-contract litigation over the use of the transmitter site.[47] Two petitioners request that the tolling provisions should include receipt of permits which contain a condition that program testing on the subject station may not commence until another station commences program testing on a new channel.[48] Such permits include, for example, those issued out of channel-change allotment proceedings. Three petitioners argue the construction period should be tolled during periods of inclement weather conditions which delay construction, such as winter snow or

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[40] See Long Island petition at 2-3.

[41] See Petitions of NAB at 2-4; Pappas at 5-6; Be-More Broadcasting, Inc. ("Be-More") at 2-4; Wisconsin at 4-5; Reece at 7-8; Royce passim; Sungilt at 8-10; and Z-Spanish at 11-14. NAB and Pappas had previously filed comments pursuant to the NPRM requesting that zoning problems be retained as a justification for further time to construct.

[42] See Petitions of Be-More at 2; NAB at 3; and Pappas at 7.

[43] See Petitions of Michael R. Birdsill ("Birdsill") at 3-4 and Z-Spanish at 13-15.

[44] See Petitions of Claire B. Benezra et al. ("Benezra") at 2-9; Birdsill at 4-5; and KCWE-TV, Inc. ("KCWE") at 2.

[45] See Petitions of Cornerstone at 4-5 and Growing Christian at 5.

[46] See Petition of Z-Spanish at 13-14.

[47] Id.

[48] See Petitions of Covenant at 7 and KRTS at 1-3.

spring rains.[49] Four petitioners argue that low power television ("LPTV") permittees should be accorded special tolling treatment because of LPTV filing restrictions and digital television ("DTV") displacement issues.[50]

35. Discussion. *Section 319(b) requirements.* We affirm our conclusion in the Streamlining Order that our tolling provisions are "responsive to statutory requirements" and, except as noted below, affirm the limitations on tolling adopted in the Streamlining Order. 13 FCC Rcd at 23,092. We believe that the adopted provisions "strike the balance between the fundamental public interest in expediting new broadcast service and preventing the warehousing of spectrum, and our recognition that there are some legitimate obstacles that may prevent construction." Id. at 23,094. By adding a full year to the length of time television broadcasters had to construct under our former rules and a full one and one-half years to the length of time radio broadcasters had, we believe that we have "built in" an adequate safety valve for diligent permittees to complete construction within a permit's term. While we acknowledge that factors other than those we delineated as tolling circumstances can cause delay, we do not believe those delays are generally so insurmountable that their effects cannot be overcome during the course of three years, necessitating, under the statute, that they excuse failure to construct.

36. Our intention is simply, within the bounds of the statute, to establish an incentive for all potential applicants to plan construction carefully even prior to applying for a permit and, once the permit is received, to bring to the construction process the same degree of urgency brought to other business endeavors. From the number of extension requests filed under the former rules, this has clearly not been the case in past years; we note that we received over 1000 such requests between January 1, 1998 and February 12, 1999, the last day extension requests could be filed under the former rules. In fact, our experience indicates that despite financial and site availability certification requirements, applicants have in some instances filed for permits without taking preliminary steps to ensure that they can begin -- much less complete -- construction once an authorization is received. Such tactics deprive the public of the prompt initiation of additional broadcast service and represent an abuse of the Commission's processes. We believe the new rules minimize instances when those who do not have the intent or foresight to ensure the prompt initiation and conclusion of construction "tie up" the spectrum indefinitely.

37. *Zoning Matters.* We affirm the exclusion of zoning matters from the category of circumstances triggering the tolling provisions.[51] It is our experience that diligent permittees will not find zoning difficulties to be an insurmountable problem because permittees can, in the vast majority of cases, find a way to resolve zoning issues either by securing an alternate site or obtaining the necessary approvals. We concur with commenter EBT Broadcasting, L.L.C.'s view that zoning delays often stem simply from misjudgments in specifying tower sites; the thousands of conforming sites attest to the ability of diligent and reasoning applicants to designate sites suitable for their intended purpose.[52]

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[49] See Petitions of Wisconsin at 5-7, Milwaukee at 3-5, and Sungilt at 7-8.

[50] See Petitions of Browne at 5-6, Equity Broadcasting Corporation and Luis Martinez ("Equity") at 4-8; UP Wireless, LLC and Mark Silberman ("UP Wireless") at 4-8, and Z-Spanish at 6-8.

[51] We note that, prior to revision of the permit extension rules in 1985, zoning difficulties were not considered a circumstance beyond the permittee's control. See, e.g., Business Radio Communications Systems, Inc., 102 FCC 2d 714, 716-7 (1985) (zoning difficulty was "a problem related to [the permittee's] selection of a transmitter site which was an independent business decision," not a circumstance beyond the permittee's control).

[52] See Reply comments of EBT Broadcasting, L.L.C. at 2.

38. Additionally, we believe that diligent permittees can eliminate or mitigate zoning delays by applying for approval from the pertinent local authorities prior to the issuance of a construction permit. Indeed, existing precedent indicates that an applicant whose use of a specified site depends upon local zoning approval will not have "reasonable assurance" of the availability of that site unless it has contacted that local authority prior to filing the application. See, e.g., Arizona Number One Radio, 103 FCC 2d 551, 555 (1986) (affected applicants had "done virtually everything in their own power to affirm 'reasonable assurance' of their proposed . . . site [with the owner of the site, the Bureau of Land Management of the United States Department of the Interior]"); El Camino Broadcasting Corporation, 14 FCC 2d 361 (Rev. Bd. 1968); Charles W. Jobbins, 5 RR 2d 783 (Rev. Bd. 1965) (where use of site dependent upon local zoning approval, FCC will presume that approval is forthcoming, and thus that applicant has reasonable assurance of use of site, so long as applicant has initiated the process and applied for zoning approval/variance).[53]

39. *Other matters.* We will, however, expand our tolling provisions to include several circumstances raised by petitioners. We will permit tolling in circumstances where, for reasons beyond the control of a permittee, there is the failure of a Commission-imposed condition precedent to commencement of operation. For example, when, to accommodate a new station or a facilities increase for an existing station, the staff issues an allotment rule making Report and Order, it will impose a condition on the permit subsequently issued to the initiating party to the effect that: "Program testing for the subject facility will not be authorized until [the affected station has commenced program testing on its new channel], and a license application for the subject facilities will not be granted until [a license application has been granted for the affected station to operate on its new channel]." There are occasions where the initiating party promptly constructs its facility but cannot commence operations because the affected station has not completed its modified facilities.[54] In such cases, we will not consider the permit of the initiating party forfeit provided that the permittee notifies the staff that construction is complete and the station is ready for operation prior to the expiration of the permit.[55]

40. We will also permit tolling in certain limited circumstances involving LPTV permittees due to the unique nature of this secondary service and the impact of the advent of DTV upon the spectrum

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[53] Three petitioners argue that the Commission cannot draw a meaningful distinction between seeking zoning approval before the appropriate local agency and seeking judicial review of a zoning denial, and thus we cannot logically deny tolling in the former circumstance while granting it in the latter. See Petitions of Pappas at 5, Royce at 10, and Sungilt at 9. Our decision to permit tolling for "any cause of action pending before any court of competent jurisdiction relating to any necessary local, state, or federal requirement for the construction or operation of the station, including any environmental requirement" is, however, clearly consistent with our decision to permit tolling for judicial appeals in general and, we believe, is an appropriate "safety valve."

[54] See Petitions of Covenant at 7 and KRTS at 1-3.

[55] After the allotment rule making has become final, the affected station has at best an "implied STA" to remain on its old frequency until it is ready for operation on its new frequency. In cases where the affected station is unnecessarily impeding the other station's ability to move or commence operations, we affirm the staff's practice of cancelling that "implied STA" and ordering the affected station to cease broadcasting on its old frequency. See Letter to Stations KMEM(FM), Memphis, Missouri and KLBA(FM), Albia, Iowa, reference 18000B3-DCD (M.M. Bur. May 26, 1995) (station whose frequency had been amended by virtue of a final Report and Order in allocations rule making proceeding ordered to cease broadcasting on its "old" frequency to accommodate commencement of operations of new station).

available for these permittees. Specifically, we will toll the construction period for the pendency of major modification applications that were submitted during the last periodic LPTV filing window. Similarly, the construction period for LPTV permittees that file a displacement application as defined in 47 C.F.R. §73.3572(a)(2), which is necessitated by a full-service or DTV transition proposal, will be tolled during the pendency of that displacement application. Additionally, if the permittee has received special temporary authorization to operate with the facilities specified in the pending major modification or displacement application, we will not consider a permit automatically forfeited in such circumstances. Until the pending major modification or displacement application has been granted, the construction period will be tolled.[56]

41. Additionally, we take this opportunity to clarify the effect of the transition to DTV generally on analog television construction permits for commercial and non-commercial educational facilities. There are circumstances, such as those demonstrated by petitioner KCWE,[57] where a necessary modification application or rule making proposal was delayed while the Commission finalized its DTV allotment table. In such cases, we will not consider such permit automatically forfeited. We expect that only a small number of full-service television permittees will meet these criteria. Neither will we consider forfeit a construction permit when the permittee builds and begins operating pursuant to Commission authorization such as an STA because it is precluded by unique circumstances from obtaining a license. See, e.g., Syracuse Channel 62, Inc., FCC 86-331, 60 RR 2d 1161 (1986) (television station operating pursuant to STA is not an "unbuilt station" for purposes of the "no-profit" assignment rules then in effect, 47 C.F.R. § 73.3597). However, we reject the suggestion advanced by the Association of America's Public Television Stations ("APTS") that we should accord further relief to all public television station permittees because of issues relating to DTV implementation. We carefully considered the impact of DTV implementation in the Advanced Television Systems proceeding[58] and we are not persuaded to revisit that subject in a general manner as suggested. However, if presented with specific problems affecting a particular non-commercial educational licensee or permittee, we retain the discretion to fashion whatever relief is appropriate.

42. We realize that there may be rare and exceptional circumstances other than those delineated here which would warrant the tolling of construction time, i.e., circumstances in which, for reasons not discussed here, a permittee is prevented from completing construction within three years for reasons beyond its control such that the permittee would be entitled to tolling of the construction time under Section 319(b). In these very limited circumstances, we will entertain requests for waiver of our strict tolling provisions.

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[56] We reiterate that we will afford no additional time to permittees who make a business decision not to use the site approved in the construction permit: a statement that the permittee has found a better site or that the original site could not be obtained for commercially reasonable terms will not suffice. The site must have become unavailable for reasons not attributable to the permittee.

[57] Petitioner KCWE presents a unique set of circumstances. It was denied local zoning approval, and discovered that there was no fully spaced site for which it could get local approval. It then filed a petition for rule making to substitute channel 29 for its authorized channel 32; while the staff released the Notice of Proposed Rule Making in the proceeding, the rule making was delayed by the institution of DTV proceedings. Nevertheless, the staff issued special temporary authorization ("STA") to KCWE-TV to operate on Channel 32 pending resolution of those proceedings, and KCWE-TV is currently on the air on Channel 32.

[58] See, e.g., Reconsideration of the Fifth Report and Order in Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, 13 FCC Rcd 6860, 6865-66 (1998).

3. Miscellaneous issues.

43. We here clarify and modify several requirements adopted in the Streamlining Order. We take these actions partly sua sponte and partly in response to comments by petitioners.

44. *Tolling notification.* In the Streamlining Order, we replaced FCC Form 307 -- that FCC form by which broadcast permittees sought extensions and replacements of construction permits -- with a notification procedure under which a permittee must inform the Commission of the circumstances that it believes should toll its construction period. Pursuant to the Streamlining Order, a permittee is required to notify the Commission "as promptly as possible," and in all cases within 30 days, of the "act of God" that has blocked construction or of the initiation of administrative or judicial review. 13 FCC Rcd at 23,092. A permittee requiring more than six months to resume construction after a natural disaster must submit additional supporting information at six-month intervals detailing construction progress and the steps it has taken and proposes to take to resolve any remaining impediments. Finally, a permittee must notify the Commission when the relevant administrative or judicial review process is resolved.

45. We here clarify that, apart from the station-identifying information required by Paragraph 88 of the Streamlining Order (call sign, frequency, city of license, and permit file number), the tolling notification should contain the following information: (1) the grant date and original expiration date of the construction permit; (2) a brief description of the tolling event;[59] (3) a specific reference to Section 73.3598 of the Commission's rules, the Streamlining Order, or this Order demonstrating that the circumstances qualify as an approved tolling event; (4) the date(s) during which the tolling impediment prevented construction; and (5) if possible at the time of notification, the permittee's calculation of the revised permit expiration date.[60] [61]

46. *FM Minor Change Tenderability Criteria.* Prior to the institution of the competitive bidding procedures for broadcast facilities, applications for facilities in the non-reserved FM band would be acceptable for filing only if they met a two-tiered minimum filing requirement. First, the application had to include six essential elements: (1) the applicant's name and address; (2) the applicant's original signature; (3) the applicant's principal community; (4) the specified channel or frequency; (5) the class of station proposed; and (6) the transmitter site coordinates. Additionally, the applicant could omit no more than three of the "second tier" items specified in Appendix C to the Report and Order in MM Docket No. 91-347, 7 FCC Rcd 5074 (1992). See 47 C.F.R. § 73.3564(a) (1997). In order to facilitate the auction process, the Commission abolished the two-tier system for all full-service FM applications for new

[59] If the tolling event involves administrative or judicial review, the notification should supply the name of the court or administrative body, the case or docket number assigned, and the party instituting the cause of action.

[60] Those which contain the information described supra and which specify an approved tolling event will receive a brief acknowledgement of the revised permit expiration date; the Commission's data bases also will be revised to reflect that date. Those notifications that do not contain all of the requisite information, or those that specify events that have not been found to constitute a tolling event, will be rejected, and the permittee will be notified simply that its construction period remains unchanged.

[61] We disagree with those petitioners who believe that our notification process will be more burdensome on permittees and the staff than our former extension system. See Petitions of Central Florida at 8-9; Reece at 6-7, and Z-Spanish at 15-16. The tolling/notification procedures will require substantially less time for preparation and review than the fact-intensive extension requests under the old "one-in-three" standard.

facilities and major changes in the Broadcast Auction Order. See 13 FCC Rcd at 15,988 n.59. In the NPRM in this proceeding, we concluded that the rationale underlying the auction-related processing rule change applied only to new and major change applications. However, in light of the revisions to the application forms and processing procedures proposed in the NPRM, we invited comment on whether or not we should modify the "tenderability" and two-tier standards for minor change FM applications. 13 FCC Rcd at 11,366 n.68.

47. We received no comments on this issue, and we did not address the matter in the Streamlining Order. However, we will take this opportunity to clarify and modify the two-tier review system for FM minor change applications. This action is necessary because many of the "second tier" elements have been eliminated as a result of our streamlined application form. We will essentially incorporate the six remaining elements contained in Appendix C to the Report and Order in MM Docket No. 91-347 directly into Section 73.3564 of our rules.[62] Applicants filing minor change applications on the "paper" FCC Form 301 will be considered to meet the minimum filing requirements if they omit no more than three of the six items.[63] Applicants omitting up to three of the second-tier elements will be sent a deficiency letter by the staff and given one opportunity to correct all tender and acceptance defects, as specified in the Report and Order in MM Docket No. 91-437, 7 FCC Rcd at 5078; applications omitting more than three of the six will be returned.

48. *Broadcast Application Signature Requirement.* The following revision is being made in this proceeding in order to clarify and update an existing rule. Because this revision is a procedural change that relaxes a filing requirement, we find that notice and comment procedures are unnecessary and need not be followed prior to adoption.[64] The rule revisions are set forth in Appendix C to this Order.

49. Section 73.3513 of the Commission's rules specifies who must sign the certification section of the broadcast application or amendment on behalf of various broadcast entities.[65] It also specifies that

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[62] The requirements from Appendix C that remain relevant in light of the streamlined FCC Form 301 are: (1) a list of the other media interests of the applicant and its principals; (2) certification of compliance with the alien ownership provisions contained in 47 U.S.C. § 310(b); (3) tower/antenna heights; (4) effective radiated power; (5) whether the antenna is directional or omnidirectional; and (6) an exhibit demonstrating compliance with the contour protection requirements of 47 C.F.R. § 73.215, if applicable. Although not eliminated by the revision to the FCC Form 301 in the Streamlining Order, we note that applicants filing minor change applications do not need to comply with the local public notice requirements of 47 C.F.R § 73.3580. See 47 U.S.C. § 309(c).

[63] We note that these procedures will remain relevant only until the implementation of the mandatory electronic filing procedures. Any information omitted from an electronically filed application will be immediately identified to the applicant. The Commission's electronic filing system will not accept applications until all necessary information is included in the application. Thus, in order to "get in the door" with an electronically filed minor change application, all pertinent information requested by FCC Form 301 will need to be supplied.

[64] See 5 U.S.C. § 553(b)(3)(B); see also 47 C.F.R. § 1.412(c).

[65] The rule states, in pertinent part,

> (a) Applications, amendments thereto, and related statements of fact required by the FCC must be signed by the following persons:
>
> (1) *Individual applicant.* The applicant, if the applicant is an individual.
>
> (2) *Partnership.* One of the partners, if the applicant is a partnership.

the applicant's attorney may sign in case of the applicant's disability or absence from the United States.[66] Commission case law consistently has held that the application must bear an original signature; facsimile signatures have been held to be unacceptable. See, e.g., SBM Communications, Inc., 7 FCC Rcd 3436 (1992), and Mary Ann Salvatoriello, 6 FCC Rcd 4705 (1991), citing Jane A Roberts, 29 FCC 141 (1960). The basis for this policy is that the original signature requirement provides assurance that the applicant has personally reviewed the application and can be held responsible for the truthfulness and accuracy of the application. Mary Ann Salvatoriello, 6 FCC Rcd at 4706-07.

50. We no longer believe that the original signature requirement is the only reliable means of guaranteeing application review. In any case, applicants can be held accountable for false information and representations made in applications irrespective of whether or not the application contains an original signature. See, e.g., 47 C.F.R. § 73.1015 (requiring truthful written responses to Commission inquiries); 47 C.F.R. § 73.3513(d) (willful false statements in applications will be considered, inter alia, a violation of Section 73.1015); see also 47 C.F.R. §1.52 (facsimile signature of attorney or unrepresented party sufficient for subscription and verification of pleadings). There also may be cases -- for example, informal requests for special temporary authorization in emergency situations -- where permitting the use of facsimile signatures could expedite Commission action furthering the public interest. Accordingly, we will amend Section 73.3513 of our rules to permit facsimile signatures by the appropriate signatory.

III. PROCEDURAL MATTERS AND ORDERING CLAUSES

51. The Supplemental Final Regulatory Flexibility Analysis, pursuant to the Regulatory Flexibility Act, 5 U.S.C. § 604, is contained in Appendix B.

52. Accordingly, IT IS ORDERED, That the above-referenced reconsideration petitions ARE GRANTED IN PART AND DENIED IN PART, and the motions for stay filed by Z-Spanish Media, et al. and W. Russell Withers, Jr. IS DISMISSED.

53. IT IS FURTHER ORDERED, That, pursuant to authority in Sections 4(i) and (j), 301, 303(f), 303(g), 303(h), 303(j), 303(r), 307(c), 308(b), 319(b), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 301, 303(f), 303(g), 303(h), 303(j), 303(r), 307(c), 308(b), 319(b), and 403, this Memorandum Opinion and Order IS ADOPTED, and Part 73 of the Commission's Rules IS AMENDED as set forth in the attached Appendix C.

54. IT IS FURTHER ORDERED, That the rule amendments set forth in Appendix C WILL BECOME EFFECTIVE 60 days after their publication in the Federal Register, and the information collection contained in these rules will become effective 60 days after publication in the Federal Register,

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(3) *Corporation.* An officer, if the applicant is a corporation.

(4) *Unincorporated Association.* A member who is an officer, if the applicant is an unincorporated association.

(5) *Government Entity.* Such duly elected or appointed officials as may be competent to do so under the law of the applicable jurisdiction,if the applicant is an eligible governmental entity, such as a State or Territory of the United States and political subdivisions thereof . . . .

Only the original application, amendment, or request must contain an original signature; copies of the application may be conformed. See 47 C.F.R. § 73.3513(c).

[66] See 47 C.F.R. § 73.3513(b).

following OMB approval, unless a notice is published in the Federal Register stating otherwise.

55. IT IS FURTHER ORDERED, That the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this Memorandum Opinion and Order, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Román Salas

Magalie Román Salas
Secretary

Commissioner Harold W. Furchtgott-Roth, Dissenting In Part

In the Matter of 1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes; Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities; MM Docket Nos. 98-43, 94-149

As I did in the original Report & Order, I respectfully dissent in this reconsideration from the decision to require broadcast station owners to identify their race, ethnicity and gender on Annual Ownership Report Form 323. *See supra* at Part II.A.4. For a full explication of the reasons why I believe this governmental reporting requirement to be impractical; statutorily ill-founded; and generally inappropriate, *see* Statement of Harold W. Furchtgott-Roth, Dissenting in Part, *In the Matter of 1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes; Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities*, MM Docket Nos. 98-43, 91-140, 94-149, 13 FCC Rcd 23,056 (1998).

APPENDIX A -- LIST OF PARTIES FILING PLEADINGS

Petitions for Reconsideration:

Aspen FM, Inc., et al.
Association of America's Public Television Stations
Be-More Broadcasting
Benezra, Claire B. et al.
Birdsill, Michael Robert
Board of Regents of the University of Wisconsin System
Brown Broadcasting Service, Inc.
Browne Mountain Television
Brunson Communications, Inc.
Central Florida Educational Television, Inc. and Good Life Broadcasting, Inc.
Clinton County Broadcasting, Inc.
Cornerstone Community Radio, Inc.
Covenant Network, et al.
Equity Broadcasting Corporation and Louis Martinez
Family First
Federal Communications Bar Association
Floyco Inc.
Growing Christian Foundation
Horvath, Michael L.
Jaramillo, Isaac Max
KCWE-TV, Inc.
KM Communications, Inc.
KRTS, Inc.
Long Island Multimedia, L.L.C.
Milwaukee Area Technical College District Board
Mojave Broadcasting Company
National Association of Broadcasters
Pappas, Harry J. and Stella A.
Pollack Broadcasting Company
Reece Associates, Limited
Royce International Broadcasting Company
Starr County Historical Foundation, Inc.
Sungilt Corporation, Inc.
Tillotson, David
U.P. Wireless, L.L.C. and Mark Silberman
Withers, W. Russell
Workman, Denny d/b/a/ Wichita Communications
Z-Spanish Media Corporation, et al.

Oppositions to or Comments on Petitions:

Aspen FM, Inc., et al.
Carolina Christian Broadcasting, Inc.
Press Communications, L.L.C.

Replies:

Central Florida Educational Television, Inc. and Good Life Broadcasting, Inc.
Long Island Multimedia, L.L.C.
U.P. Wireless, L.L.C. and Mark Silberman

APPENDIX B
SUPPLEMENTAL FINAL REGULATORY FLEXIBILITY ANALYSIS
Memorandum Opinion and Order
MM Docket Nos. 98-43 and 94-149

As required by the Regulatory Flexibility Act ("RFA"), 5 U.S.C. § 603, a Final Regulatory Flexibility Analysis ("FRFA") was incorporated in Appendix B of the Report and Order in this proceeding.[67] The Commission's Supplemental Final Regulatory Flexibility Analysis ("Supplemental FRFA") in this Memorandum Opinion and Order reflects revised or additional information to that contained in the FRFA. This Supplemental FRFA is thus limited to matters raised in response to the First Report and Order that are granted on reconsideration in the Memorandum Opinion and Order. This Supplemental FRFA conforms to the RFA, as amended by the Contract with America Advancement Act of 1996.[68]

A. Need for and Objectives of Action: The actions taken in this Memorandum Opinion and Order are in response to petitions for reconsideration of the rules and policies adopted in the Report and Order to streamline the Commission's broadcast application procedures, reducing both applicant and licensee burdens as well as increasing the efficiency of application processing to conserve staff resources, while at the same time preserving the public's ability to participate in the broadcast license process. The petitions are denied, with the following exceptions.

The first amendment to the rules and policies adopted in the Report and Order in this proceeding is based on petitions arguing that the promulgated provisions for seeking extension of time to construct were too restrictive and did not account for certain circumstances legitimately beyond the control of the permittee. While rejecting the majority of the petitioners' arguments, we did state that we would accord relief to permittees who are prevented form construction by operation of a Commission-imposed condition or by Commission processing requirements for permit modifications, the latter being most prevalent in the Low Power Television ("LPTV") service.

Second in response to a petition claiming that such procedure was costly and often unnecessary, we exempted applicants for assignment/transfer of control of broadcast stations from the requirement that applications proposing local radio ownership concerns must be accompanied by a contour map detailing the stations serving the pertinent broadcast "market." No map would be required if the applicant could demonstrate that a sufficient number of stations are licensed to the community in question that the numerical cap will not be approached.

Third, the Notice of Proposed Rule Making ("Notice") in this proceeding[69] invited comments on

[67] 13 FCC Rcd 23,056 (1998). Certain abbreviated references used in the Memorandum Opinion and Order are also used in this Appendix.

[68] Pub. L. No. 104-121, 110 Stat. 847 (1996) ("CWAAA"); see generally 5 U.S.C. §§ 601 et. seq. Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

[69] 13 FCC Rcd 11,349 (1998).

a streamlined approach to FM "minor change" applications, which currently are evaluated under a two-tiered review process. The Notice invited comment on a proposal that would parallel the approach previously adopted with respect to applications for new FM stations and "major change" applications. The Commission received no comments on this issue, and it was not addressed in the Report and Order. However, the streamlined application forms adopted in the Report and Order eliminated many of the second-tier review elements. Accordingly, this Memorandum Opinion and Order incorporates the remaining elements directly into the FM processing rules, specifically 47 C.F.R. § 73.3564.

Finally, this Memorandum Opinion and Order adopts sua sponte a rule permitting the use of facsimile signatures in place of the original applicant signature that had previously been required on all applications and requests for Commission action. The Commission believes that an applicant can be held accountable for false information and representations in an application whether or not the application contains an original signature, and permitting facsimile signatures will in some cases expedite the submission and processing of requests for Commission action.

B. Significant Issues Raised by Public in Response to Final Regulatory Flexibility Analysis: No petitions or comments were received in response to the FRFA. Several petitioners, however, raised indirectly small business-related issues. As indicated above, for example, several petitioners stated that the revised construction period/tolling procedures would disproportionately impact LPTV permittees;[70] another petitioner commented that the construction period/tolling procedures will disproportionately impact public television stations, especially those proposing to construct their initial facility as a digital broadcast station. One petitioner argued that the contemporaneous notification procedure would increase, as opposed to decrease, the burden on permittees.[71] Another petitioner claimed that the contour map submission requirement was unduly expensive and unnecessary in many assignment/transfer cases, even those involving the local radio ownership rules.[72] Finally, one petitioner noted that the requirement that broadcasters provide information regarding the race, ethnicity, and gender of any attributable owner was burdensome and unnecessary, given that ethnicity and gender data is already collected by the National Telecommunications and Information Administration ("NTIA").[73]

C. Description and Estimate of the Number of Small Entities to which Rules will Apply: Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. § 601(6). The RFA, 5 U.S.C. § 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. § 632. A small business 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"). Pursuant to 5 U.S.C. §

[70] See Comments of Browne, Equity, UP Wireless, and Z-Spanish.

[71] See Comments of Z-Spanish.

[72] See Comments of Tillotson.

[73] See Comments of APTS.

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 os such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

In the FRFA, we utilized the definition of "small business" promulgated by the SBA. No petitions or comments were received concerning the Commission's use of the SBA's small business definition for the purposes of the FRFA, and we will therefore continue to employ such definition for this Supplemental FRFA. We hereby incorporate by reference the description and estimate of the numbers of small entities from the FRFA in this proceeding.

D. Description of Projected Reporting, Recordkeeping, and other Compliance Requirements: The Report and Order adopted a number of rules and policies that included, but reduced, reporting, record-keeping, and compliance requirements. These were described in detail in the FRFA and are not increased in any way by the rule and policy amendments adopted in this Memorandum Opinion and Order. Those reporting and recordkeeping requirements that were amended were in fact ameliorated. For example, certain assignment/transfer applicants will not need to submit contour maps to demonstrate compliance with the local radio ownership rules.

Additionally, while the Memorandum Opinion and Order retains the requirement that permittees and licensees compile and retain information concerning the ethnicity and gender of its attributable owners, they must submit this information on a biennial, rather than annual, basis. As stated in the FRFA, not all broadcast licensees are required to file ownership reports at all; sole proprietorships and partnerships comprised solely of natural persons are exempt from the filing requirement. Furthermore, the modified reporting requirements apply only to commercial broadcast stations, not to the 2401 noncommercial educational FM and television stations authorized as of April 30, 1999.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered: The FRFA described in some detail the steps taken in the Report and Order to minimize significant economic impact on small entities and the alternatives considered. The rule and policy amendments adopted in this Memorandum Opinion and Order should also serve to minimize the adverse impact of the "streamlining" rules on small entities. Initially, with respect to the revised construction period/tolling rules, we note that small entities that might require more time to construct an authorized broadcast station than would a large corporation would likely benefit from the rules adopted in the Report and Order. These entities would now be given on extra year to construct a new television facility and 18 extra months to complete a radio station. Furthermore, these revised construction periods apply to all outstanding permits. Therefore, to the extent that such smaller entities needing some additional time will be granted up to three "unencumbered" years simply upon a written request for such treatment.

As urged by several petitioners, the Memorandum Opinion and Order modifies the rules and policies promulgated in the Report and Order in such ways that will indirectly benefit smaller broadcast entities. For example, the elimination of the need to compose and submit station service contour maps in all assignment/transfer applications implicating the local radio ownership rules will likely benefit smaller entities owning fewer broadcast stations.

F. Report to Congress: The Commission will send a copy of the Memorandum Opinion and Order in this proceeding, including this Supplemental FRFA, in a report that will be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. See 5 U.S.C. § 801(1)(1)(A). In addition, the Commission will send a copy of this Memorandum Opinion and Order, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. We will also publish a copy of the Memorandum Opinion and Order and Supplemental FRFA (or summaries thereof) in the Federal Register. See 5 U.S.C. § 604(b).

Appendix C

Part 73 of Title 47 of the U.S. Code of Federal Regulations is amended as follows:

Part 73 RADIO BROADCAST SERVICES

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

AUTHORITY: 47 U.S.C. §§ 154, 303, 334 and 336

47 CFR Part 73 is amended to read as follows:

2. Section 73.3513 is amended by revising paragraph (c) as follows:

§ 73.3513 Signing of Applications

*****

(c) Facsimile signatures are acceptable. Only the original of applications, amendments, or related statements of fact, need be signed; copies may be conformed.

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3. Section 73.3564 is amended by revising subsection (a)(2) as follows:

§ 73.3564 Acceptance of Applications

*****

(a)(2) In the case of minor modifications of facilities in the non-reserved FM band, applications will be placed on public notice if they meet the following two-tiered minimum filing requirements as initially filed in first-come/first-serve proceedings:

(i) the application must include:
(A) Applicant's name and address,
(B) Applicant's signature,
(C) Principal community,
(D) Channel or frequency,
(E) Class of station, and
(F) transmitter site coordinates; and

(ii) the application must not omit more than three of the following second-tier items:
(A) a list of the other media interests of the applicant and its principals,
(B) certification of compliance with the alien ownership provisions contained in 47

USC § 310(b),
(C) tower/antenna heights,
(D) effective radiated power,
(E) whether the antenna is directional or omnidirectional, and
(F) an exhibit demonstrating compliance with the contour protection requirements of
47 CFR § 73.215, if applicable.

Applications found not to meet minimum filing requirements will be returned to the applicant. Applications found to meet minimum filing requirements, but that contain deficiencies in tender and/or acceptance information, shall be given an opportunity for corrective amendment pursuant to § 73.3522. Applications found to be substantially complete and in accordance with the Commission's core legal and technical requirements will be accepted for filing. Applications with uncorrected tender and/or acceptance defects remaining after the opportunity for corrective amendment will be dismissed with no further opportunity for amendment.

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Commissioner Harold W. Furchtgott-Roth, Dissenting In Part

In the Matter of 1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes; Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities; MM Docket Nos. 98-43, 94-149

As I did in the original Report & Order, I respectfully dissent in this reconsideration from the decision to require broadcast station owners to identify their race, ethnicity and gender on Annual Ownership Report Form 323. *See supra* at Part II.A.4. For a full explication of the reasons why I believe this governmental reporting requirement to be impractical; statutorily ill-founded; and generally inappropriate, *see* Statement of Harold W. Furchtgott-Roth, Dissenting in Part, *In the Matter of 1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes; Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities*, MM Docket Nos. 98-43, 91-140, 94-149, 13 FCC Rcd 23,056 (1998).