

NTSC application. Parties with pending petitions for new NTSC channel allotments or those requesting modified channel allotments must identify reference facilities (site coordinates and elevation above mean sea level (msl), effective radiated power, antenna radiation center height above msl, and, if desired, antenna radiation pattern and orientation) for the purpose of showing the necessary contour protection.

68. We will adopt a 45 dB D/U ratio for co-channel interference protection for situations where a Class A station proposal does not specify a carrier frequency offset or where the proposed and protected co-channel stations specify the same offset.¹²² Where different offsets are specified between the proposed and protected stations, a 28 dB D/U ratio will apply. The TV Table of Allotments is constructed on the basis of frequency offsets; that is, all full-service TV stations operate on different offset frequencies with respect to their nearby co-channel stations. Offset operation permits significantly more efficient utilization of the broadcast spectrum; there is a difference of 17 dB between the co-channel D/U ratios for offset and nonoffset operations. The LPTV rules permit, but do not require offset operation. As a means of facilitating a "minimization of interference and maximization of service" we agree with du Triel, Lundin & Rackley, Inc. (du Triel) that analog Class A stations should operate with a carrier frequency offset and realize the advantages of offset operation wherever possible.¹²³ Many LPTV stations already operate on this basis. Nevertheless, we will not make operation with a carrier offset a condition for an initial Class A license. However, we will require Class A licensees seeking facilities increases to specify an offset in their modification applications unless they can demonstrate it would not be possible to realize the efficiencies of offset operation. For example, a Class A station could be situated between three or more neighboring co-channel NTSC, LPTV or translator stations that use all available carrier offsets: plus, minus and zero. Any offset chosen by the Class A station would be the same as that of one of the neighboring stations, rendering the 28 dB co-channel D/U ratio inapplicable. In that event, use of the 28 dB ratio could result in interference to the Class A station, and, therefore, the 45 dB co-channel D/U ratio will be applied.¹²⁴

69. Section 74.705 (a) of the LPTV rules generally requires the site of a proposed UHF LPTV station to be located at least 100 kilometers from the site of a protected full-service station operating on the 7th adjacent channel above the proposed channel. It also requires LPTV proposals for stations with more than 50 kilowatts of effective radiated power to be separated by at least 32 kilometers from full-service stations operating on the 2nd, 3rd, and 4th adjacent channel above or below the requested channel. We disagree with du Triel's proposal that we eliminate the 14th adjacent channel protection requirements in Table 1 above and the 32-kilometers spacing requirements for protection of Class A stations.¹²⁵ Du Triel states that the potential for interference to a Class A station from stations operating on these "UHF taboo channels"¹²⁶ is limited to the immediate vicinity of the "taboo channel" station's transmitter site. It also

¹²² Frequency offsetting involves shifting the visual carrier frequency from its nominal position of 1.25 MHz from the lower edge of a TV channel. Standard offsets are of 10 kHz above the nominal frequency (plus offset), 10 kHz below (minus offset) or no shift (zero offset). Stations operating on the same channel but with different offsets may be located closer together with no additional interference potential than for stations operating without frequency offsets or on the same carrier offset. To maintain the stability of frequency offset relationship, stations must employ transmitters with a frequency tolerance of at least +/- 1 kHz.

¹²³ See Comments of du Triel, Lundin & Rackley, Inc. (du Triel) at 3-4.

¹²⁴ The LPTV rules specify a co-channel D/U protection ratio of 45 dB in situations where the proposed and protected stations do not specify different frequency offsets. See 47 C.F.R. § 74.705(d)(1).

¹²⁵ See Comments of du Treil at 4-5. See also Comments of Paxson at 5.

¹²⁶ The following protected channels in the LPTV rules are sometimes referred to as the "UHF Taboo" channels: 2 adjacent, 3rd adjacent, 4th adjacent, 7th adjacent, 14th adjacent and 15th adjacent.

notes that because of their secondary status, LPTV stations have been authorized without consideration of interference that would be caused to them by "taboo channel" stations and that it is unaware of any instances of significant interference to LPTV stations by "taboo channel" full-service stations. Du Triel concludes that, with declining spectrum availability, it is "unreasonable" to require other NTSC stations (full-service, Class A and LPTV) to protect Class A stations operating on any "taboo" channel other than the upper 15th adjacent channel, which has a greater potential for interference. DLR does not propose eliminating the "taboo" interference requirements for Class A, LPTV and TV translator protection of full-service NTSC stations. If the operation of a full-service "taboo channel" TV station, with 1 megawatt or more of power, would pose a minimal interference risk to Class A service, the much lower power levels of Class A stations would pose even less risk to the service of full-power stations. Thus, if we were to eliminate requirements to protect Class A stations from interference on the "taboo channels," we would also eliminate all remaining requirements that Class A stations protect full-service stations operating on these channels. In the recently concluded DTV proceeding, the Commission relaxed several interference protection requirements for LPTV stations. While we understand du Triel's reasoning, it would not be appropriate to adopt further relaxation on the basis of the scant record on this issue in this proceeding. However, we believe du Triel's suggestions may warrant further consideration in a subsequent proceeding. We will also adopt our proposal in the *Notice* to accept applications for NTSC facilities modifications that would not create new interference to Class A stations, beyond the interference already predicted by the authorized facilities of such NTSC stations; these would include, for example, facilities modifications that would not further decrease the D/U ratios at the Class A protected contour.

2. Analog LPTV, TV Translator, and Class A Protection to Analog Class A

70. We are adopting the proposal in the *Notice* to apply the protection requirements in Section 74.707 to protect Class A stations from LPTV, TV translators, and other Class A stations. Commenters supported this proposal to use the protection methods by which LPTV stations protect each other.¹²⁷ This method is well-established and has been well-tested.

3. Full-Service DTV Protection to Analog Class A

71. Where interference protection to Class A stations is required, full-service DTV proposals must protect the Class A service contours in accordance with the D/U ratios in Section 73.623(c)(2) of the DTV rules for "DTV into analog TV" protection.¹²⁸ We will not eliminate protection requirements from DTV stations proposing operation on the "taboo" channels, as suggested by du Triel.¹²⁹ The potential for interference to Class A stations, du Triel contends, would be limited to the immediate vicinity of the "taboo" channel DTV station's transmitter site. However, neither du Triel nor any other commenter analyzes the extent of such interference. Moreover, digital Class A stations, with significantly lower power levels, will be required to protect NTSC stations on the taboo channels. Parties filing petitions to amend the DTV Table, where required to protect Class A stations, must specify reference facilities that meet the above criteria. Several commenters favor basing protection on the provisions in Sections 73.622 of the DTV rules and OET Bulletin 69 ("OET 69") or, alternatively, allowing use of this methodology where contour protection requirements cannot be met.¹³⁰ We agree that use of the methods by which DTV stations

¹²⁷ See, e.g., Comments of MSTV/NAB at 25-26; Comments of St. Clair at 2.

¹²⁸ 47 C.F.R. § 73.623(c)(2).

¹²⁹ See Comments of du Triel at 6.

¹³⁰ See, e.g., Comments of du Triel at 4-5; AFCCE at 2; SBE at 5; Ruarch Associates LLC (Ruarch) at 2; Blade Communications (Blade) at 5 and Fox at 4.

protect full-service NTSC stations would permit flexibility and could provide more accurate predictions of interference. However, at this time we will not adopt Class A protection standards centered around these methods. To do so would require extensive revisions to the computer interference model (FLR) used by the Commission and outside engineers to include the effects of LPTV, TV translator, and Class A stations. For now, the contour protection approach is straight forward and can be readily implemented without unduly affecting the preparation and processing of DTV applications. We will, however, permit use of the Longley-Rice terrain dependent propagation model and OET Bulletin 69 to support waivers of the Class A interference protection requirements. We will also permit Class A station and full-service station parties to negotiate interference agreements.

4. Full-Service NTSC and DTV Protection to Digital Class A

72. We will require full-service NTSC and DTV proposals to protect digital Class A service contours based on the protection ratios (D/U) in Section 73.623(c)(2) of the DTV rules for "Analog TV into DTV" and "DTV into DTV."¹³¹ These ratios must be met or exceeded at the protected digital signal contours of Class A stations. Where protection to a Class A station is required, parties filing petitions to amend the TV or DTV allotment tables must specify reference facilities that meet the applicable requirements. We will permit the use of OET 69 type showings in support of requests to waive these requirements, and we will permit interference agreements among the affected parties.

5. LPTV, TV Translator, and Class A Modification Protection to Digital Class A

73. We will adopt the requirements in Section 74.706 of the LPTV rules for the contour protection of digital Class A stations.¹³² Application proposals for analog LPTV, TV translator and those of Class A facilities modifications must protect the service contours of digital Class A stations to the extent provided by the D/U ratios in this rule. Application proposals for digital Class A stations must protect the service contours of other digital Class A stations to the extent provided by the "DTV into DTV" D/U ratios of Section 73.623(c) of the Commission's Rules. For both analog and digital applicants, we will permit terrain shielding, OET 69-type analysis, or interference agreements in support of requests to waive the protection requirements.

6. Alternative Means of Interference Protection

74. LPTV and TV translator applicants currently are permitted to support requests for waiver of certain interference protection rules on the basis of D/U ratio protection for co-located stations on 1st and 14th adjacent channels, terrain shielding and Longley-Rice terrain dependent propagation and OET 69-type methods.¹³³ We are not adopting protection standards for Class A service based on these methods. However, we agree with AFCCE and other commenters that we should permit use of available means of interference analysis to support requests to waive the Class A contour protection requirements.¹³⁴ We will permit waiver requests to be supported by interference analysis based on OET Bulletin 69, D/U ratios,

¹³¹ 47 C.F.R. § 73.623(c)(2).

¹³² 47 C.F.R. § 74.706. The protection ratios in this rule are also included in Section 73.623.

¹³³ See 47 C.F.R. §§ 74.705 and 74.707.

¹³⁴ See, e.g., Comments of AFCCE at 1-2; du Trier at 5; Technical Supplement to Reply Comments of the CBA at 1.

terrain shielding and other considerations. With regard to OET Bulletin 69 studies, we will not permit a *de minimis* interference allowance. Interference among full-service stations that is *de minimis* usually occurs in the outer reaches of a station's service area between the NTSC Grade A and Grade B contours. Analog and digital Class A stations will not receive interference protection to the Grade B contour. Their protected service contours will be similar in extent to an NTSC station's Grade A contour, which is not nearly as vulnerable to *de minimis* service population reductions. Class A service areas will be smaller and to a greater extent more interference-limited than those of full-service stations. The viewing audience beyond the Class A LPTV service contour is unprotected, and we believe it would be unfair to subject Class A stations to additional reductions in service population. For these reasons we will not at this time apply a *de minimis* interference allowance to the protection of Class A stations.¹³⁵ Where analysis is based on OET Bulletin 69 methods, we will allow a "service population" rounding tolerance of 0.5%, which is also allowed for NTSC applicants protecting DTV service. We will permit OET 69-type studies to take into account reductions in a Class A service population due to predicted interference from existing full-service, LPTV and TV translator stations (the "masking" of service) and, on this basis, applicants may demonstrate that their proposed facilities would not result in additional interference within the protected contours of Class A stations.¹³⁶

75. We concur with commenters who favor permitting Class A stations to enter into interference or relocation agreements with full-service, LPTV, TV translator and other Class A licensees, permittees or applicants.¹³⁷ Paxson notes that full-service stations may now enter into voluntary channel coordination and interference agreements and believes that Class A stations with "quasi-primary" status should similarly be permitted to enter into agreements to resolve interference concerns.¹³⁸ Our rules permit DTV stations to negotiate interference agreements with other analog and DTV stations, including the exchange of money or other compensation.¹³⁹ Agreements will be approved if the Commission finds them

¹³⁵ Analysis involving the DTV *de minimis* interference criteria is exceedingly complex. It would require determining a "baseline" service population for each Class A station, from which to calculate the allowable reductions to the station's service population. Baseline populations would have to account for interference already caused to Class A stations by other full-service, LPTV and TV translator stations, which would require significant revisions to the computer adaptations of OET 69 used by the Commission and consulting engineers. This would be a time consuming process and could affect not only the timely implementation of the Class A service, but also DTV application processing.

¹³⁶ CBA expressed concern that the current computer implementation of the OET Bulletin 69 methods may not be compatible with the LPTV service contours. This is due to the assumed use in the computer program of outdoor receiving antennas that provide as much as 14 dB of discrimination between desired and undesired signals. CBA suggests that much viewing of LPTV stations is done with indoor antennas and that use of OET Bulletin 69 methods could mistakenly predict service where, in fact, interference would occur. See Technical Supplement to Comments of CBA at 2-3. CBA is correct that the current computer implementation of OET Bulletin 69 does assume use of an outdoor receiving antenna, which attenuates the field strength of unwanted signals. However, CBA provides no basis for quantifying the extent to which LPTV viewers use only indoor antennas. Some LPTV station viewers, as well as those of full-service stations, do use outdoor antennas at locations other than the periphery of a station's service contour. We cannot conclude from CBA's comments that use of OET Bulletin 69 methods would result in "severe" interference to the reception of Class A stations.

¹³⁷ See, e.g., Comments of Paxson at 5; WB at 18; Connecticut Public Broadcasting (Connecticut) at 9; Cosmos Broadcasting (Cosmos) at 6.

¹³⁸ See Comments of Paxson at 5.

¹³⁹ 47 C.F.R. § 73.623(g).

to be consistent with the public interest.¹⁴⁰ LPTV and TV translator licensees, permittees and applicants are also permitted to enter into interference agreements, such as those involving terrain shielding. We are persuaded that Class A stations should also be permitted to negotiate interference agreements or relocation arrangements with full-service, low power service and other Class A licensees, permittees or applicants. Agreements may include monetary compensation or other considerations from one station to another. Agreements must be submitted with the related applications for initial or modified broadcast facilities. The Commission will grant applications submitted pursuant to agreements if it finds the public interest would be served.

E. Methods of Interference Protection by Class A to Other Facilities

1. Class A Protection of NTSC

76. Background. With respect to NTSC facilities, Section (f)(7)(A) of the CBPA provides that a Class A license or modification of license may not be granted where the station will cause interference "within the predicted Grade B contour ..." ¹⁴¹ In the *Notice*, we proposed that applicants for Class A stations protect the NTSC Grade B contour in the manner given in Section 74.705 of the LPTV rules, indicating that would be more appropriate than establishing a new and different form of interference protection. We tentatively concluded that Class A applicants should be permitted to utilize all means for interference analysis afforded to LPTV stations in the DTV proceeding, including the Longley-Rice terrain-dependent propagation model.

77. Decision. We are adopting the proposal from the *Notice*. It is supported by most of the commenters that addressed this issue.¹⁴² However, SBE suggests a different analysis based on the Longley-Rice propagation model with an NTSC TV station allowed to object if a Class A station would be the source of unique (not masked) interference to any viewers.¹⁴³ SBE also indicates that this interference analysis should be based on the proposed main beam effective radiated power (ERP) and not on the ERP toward the radio horizon that LPTV and TV translator applicants are now permitted to use.¹⁴⁴ We believe the SBE proposals would add unnecessary complexity to a well-established and well-tested process. Class A stations can be established without undue risk of excessive interference to NTSC TV stations if the Class A facilities conform to the LPTV protection standards contained in Section 74.705 of our rules. Moreover, where a requested Class A station does not provide the protection required by that rule, Section 74.705(e) specifies that a waiver can be requested based on terrain shielding and use of the Longley-Rice model to demonstrate that actual interference would not be predicted to occur.

2. Class A Protection of DTV

78. Background. With respect to DTV, the statute provides that Class A applicants must protect the DTV service areas provided in the DTV Table of Allotments and the areas protected in the

¹⁴⁰ *Id.*

¹⁴¹ 47 U.S.C. § 336(f)(7)(A)(i).

¹⁴² See Comments of NAB/MSTV at 4, 5; Apogee at 5; Connecticut at 6-7; Sherjan at 6; and Skinner at 3.

¹⁴³ See Comments of SBE at 5-6.

¹⁴⁴ See Comments of SBE at 11-12.

Commission's digital television regulations (47 C.F.R. 73.622(e) and (f)).¹⁴⁵ Thus, Class A stations may not interfere with DTV broadcasters' ability to replicate insofar as possible their NTSC service areas.¹⁴⁶ In the *Notice*, we indicated we believed it would be appropriate for Class A applicants to determine noninterference to DTV in the same manner as applicants for full-service NTSC facilities. Thus, we proposed that Class A facilities would not be permitted to increase the population receiving interference within a DTV broadcaster's replicated service area or other protected service area. We would not permit Class A stations to cause *de minimis* levels of interference to DTV service, other than a 0.5% rounding allowance.¹⁴⁷ Criteria for protecting DTV service are given in Sections 73.622 and 73.623 of our rules and in OET Bulletin 69.¹⁴⁸

79. Decision. We are adopting the proposal from the *Notice* regarding Class A protection of DTV service. Analog and digital Class A station proposals generally will be subject to the protection criteria in Sections 73.622 and 73.623 of our rules and in OET Bulletin 69. Commenters generally supported this proposal.¹⁴⁹ Some commenters question allowing interference to 0.5% of the DTV service population as a rounding tolerance. NAB/MSTV are concerned about the cumulative effect of several Class A stations. SBE suggests that a DTV station should be allowed to object if a Class A station would be the source of unique (not masked) interference to any viewers in its authorized service area, although it agrees with use of the 0.5% criteria for interference to allotted DTV facilities.¹⁵⁰ Media-Com Television, Inc. (Media-Com) supports the DTV interference analysis procedure, but suggests that we should allow interference to 2% of the population served by the DTV station to be considered *de minimis*, as we generally allow that amount of interference to be caused by other DTV stations. We are not persuaded that more than 0.5% interference should be allowed. Full-service NTSC stations are limited to that amount and the statute does not require higher status for Class A stations in this regard. Neither are we convinced that any one DTV station will be subject to interference from so many Class A stations that the cumulative loss of DTV service would be significant. Finally, we note that the statute provides that Class A applicants also

¹⁴⁵ 47 U.S.C. § 336(f)(7)(A)(ii)(I), (II).

¹⁴⁶ DTV allotment parameters to achieve service areas that replicate the areas within the NTSC Grade B service contours are specified in Appendix B of the second DTV reconsideration order. *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders* in MM Docket No. 87-268, 64 FR 4322 (1998).

¹⁴⁷ In the DTV proceeding, we permitted DTV stations in the initial allotment table to decrease by two percent the populations served by NTSC and other DTV stations, not to exceed a total reduction of ten percent. Unlike this DTV allowance, applicants seeking facilities modifications of full-service NTSC stations may not cause any additional interference to DTV service, other than a 0.5% reduction in service population to account for rounding and calculation tolerances. *See Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket No. 87-268, 13 FCC Rcd 7418 (1998).

¹⁴⁸ OET Bulletin 69, Longley-Rice Methodology for Evaluating TV Coverage and Interference (July 2, 1997), available at FCC Internet address <http://www.fcc.gov/oeft/info/documents/bulletins/#69>. *See also* the Mass Media Bureau Public Notice "Additional Application Processing Guidelines for Digital Television (DTV)," August 10, 1998.

¹⁴⁹ *See, e.g.*, Comments of WB at 18-19; NAB/MSTV at 4-5; SBE at 5-6; Ruarch at 4; and Media-Com Television Inc. (Media-Com) at 5.

¹⁵⁰ *See* Comments of SBE at 5-6.

must protect the DTV service areas provided in the DTV Table of Allotments and the DTV Table includes approximately 40 vacant noncommercial educational DTV allotments that must be protected.¹⁵¹

3. Protection of LPTV and TV Translators

80. Background. The CBPA requires Class A stations to protect previously authorized LPTV and low-power TV translator stations (license and/or construction permit), as well as previously filed applications for these facilities. Specifically, section (f)(7)(B) of the statute provides that the Commission may not grant an application for a Class A license or modification of license unless the applicant shows that the Class A station will not cause interference within the protected contour of any LPTV or low-power TV translator station that was licensed, or for which a construction permit was issued, or for which a pending application was filed, prior to the date the Class A application was filed.¹⁵² In the *Notice*, we proposed to require that Class A stations protect the LPTV and TV translator protected contours on the basis of the standards given in Section 74.707 of the LPTV rules, *i.e.*, on the basis of compliance with certain desired-to-undesired signal strength ratios.

81. Decision. We are adopting the proposal from the *Notice*. Commenters generally supported this proposal.¹⁵³ SBE did request that we clarify that the specified LPTV and TV translator protection rule involves contour overlap prohibitions and not simply application of desired-to-undesired signal strength ratios. We will require protection pursuant to all provisions in Section 74.707 of the rules, which are based on prohibited contour overlap. For purposes of implementing Section (f)(7)(B) of the CBPA, we agree with K Licensee, Inc. (K Licensee) that interference caused within the protected contour of a licensed LPTV or TV translator station or that of a construction permit or pending application should not be counted against an applicant for a Class A authorization if that interference is permitted by the LPTV rules, taking into account the manner in which LPTV and TV translator stations are authorized.¹⁵⁴ The rules require new LPTV stations to protect existing LPTV and TV translator stations within their defined protected contours.¹⁵⁵ However, the rules do not prohibit new stations from receiving interference from existing stations. LPTV and TV translator stations may also enter into written agreements to accept interference from other LPTV or TV translator stations.¹⁵⁶ As a result of these provisions, many LPTV stations or proposed stations may be predicted to receive interference within their protected contours from

¹⁵¹ See Appendix B of the *Sixth Report and Order*, 12 FCC Rcd at 14639. Note that Appendix B does not contain facilities or service and interference statistics for these allotments. They can be activated through the construction permit application process and may use the maximum facilities permitted by Section 73.622(f) of the rules. Analysis of the 0.5% interference criteria for these allotments will require the Class A applicant to determine the population that would be served by a maximum facilities DTV station at the designated reference coordinates contained in Table 2 of Appendix B.

¹⁵² 47 U.S.C. § 336(f)(7)(B).

¹⁵³ See, *e.g.*, Comments of SBE at 9-10; and K Licensee at 4-10.

¹⁵⁴ *Id.* See also the Comments of CBA at 7 and Equity Broadcasting Corporation at 5.

¹⁵⁵ 47 C.F.R. § 74.703(a). See also 47 C.F.R. § 74.707, which provides that an application for a new or modified LPTV station will not be accepted if it is located within or predicted to interfere with the protected contour of an authorized station in the LPTV service.

¹⁵⁶ *Id.*

earlier-authorized stations.¹⁵⁷ We believe it would be inconsistent with the objectives of the CBPA to count such permissible interference against applicants for Class A stations, nor should interference resulting from a negotiated agreement be counted. We are not permitting LPTV licensees to request facilities modifications in their applications for initial Class A authorizations. Therefore, any interference from existing LPTV facilities within the protected contours of later authorized and proposed LPTV and TV translator facilities is permitted by the LPTV rules and will be grandfathered for the purposes of Section (f)(7)(B) of the CBPA.

4. Land Mobile Radio Services and TV Channel 16

82. **Background.** Section (f)(7)(C) of the CBPA provides that the Commission may not grant a Class A license or modification of license where the Class A station will cause interference within the protected contour 80 miles from the geographic center of the areas listed in Sections 22.625(b)(1) or 90.303 of the Commission's rules (47 C.F.R. §§ 22.625(b)(1), 90.303) for frequencies in the 470-512 megahertz band identified in sections 22.621 or 90.303 of our rules (47 C.F.R. §§ 22.621, 90.303), or in the 482-488 megahertz band in New York. This provision protects land mobile radio services, which have been allocated the use of TV channels 14-20 in certain urban areas of the country, as well as Channel 16 in New York City metropolitan area. In the *Notice*, we proposed that these land mobile operations be protected by Class A applicants in the manner prescribed in Section 74.709 of the LPTV rules.

83. We also sought comment on whether the requirement to protect channel 16 in the New York metropolitan area applies to low power television station WEBR-LP, licensed to K Licensee, Inc. (K Licensee) for New York City and discussed details of its history.¹⁵⁸ In view of a Senate colloquy between Senators Burns, Moynihan and Hatch, and the terms of a condition on the grant of the waiver that permitted the land mobile use of channel 16 in New York, we indicated that we were inclined to agree that station WEBR-LP is excepted from the requirement to show interference protection to use of channel 16 in the New York City metropolitan area.

84. **Decision.** With respect to general land mobile protection, we are adopting our proposal to use the criteria in Section 74.709 of the rules. This proposal was supported by the NY Police and no commenters opposed it.¹⁵⁹ With respect to the Channel 16 New York City situation, the NY Police object to the premise that there is no obligation for WEBR-LP, due to the waiver, to protect land mobile operations, indicating that the *Notice* ignores the current practice between the member public safety agencies and WEBR-LP to coordinate actions and ensure that neither party interferes with the other's transmission. K Licensee argues that the Commission must implement specific interference requirements in a manner consistent with congressional intent and with sensitivity to the impact such implementation will have on deserving stations such as WEBR-LP, the only free Korean-language licensee serving New York City metropolitan area.¹⁶⁰ We believe that it is most consistent with the statutory scheme and with the waiver granted for public safety land mobile use of Channel 16 in New York City that WEBR-LP and the NY Police continue to cooperate to ensure that neither party interferes with the other's transmission on

¹⁵⁷ Communications Technologies, Inc. (CTI) notes that many licensees of displaced LPTV stations have elected to receive interference from existing stations in their recently filed applications for replacement channels. Comments of CTI at 3.

¹⁵⁸ See *Notice* at ¶40.

¹⁵⁹ See Comments of NY Police at 2-3.

¹⁶⁰ See Comments of K Licensee at 2-4.

Channel 16. The parties have entered into a written agreement pursuant to which they will advise each other at least 60 days in advance of any change, alteration, or modification in its transmission facilities that may adversely affect or cause interference to the other party's communications system(s).¹⁶¹ As requested by both parties, we have included a copy of this agreement in the record of this proceeding, and will include it in the record of any application filed by WEBR-LP to become a Class A television station. We believe that the current situation is satisfactory and that continued cooperation between the parties will permit maximal use of the spectrum in New York City.

F. Change Applications

85. Background. Section (f)(1)(E) of the CBPA provides for protection of a DTV station that has been granted a construction permit to maximize or significantly enhance its digital television service area and later files an application for a change in facilities that reduces its digital television service area. In such a case, the statute provides that the protected contour of the DTV station "shall be reduced in accordance with such change modification."¹⁶² In the *Notice*, we stated our belief that the protection of the reduced coverage area would become effective upon grant of the application that requested the reduced facilities and that, in these circumstances, Class A stations would no longer need to protect the service area produced by the "replication" facilities established in the initial DTV Table of Allotments. We stated our expectation that few, if any, DTV stations would follow this course, and invited comment on our interpretation of this provision.¹⁶³

86. Decision. In the event that a DTV station that has been granted a construction permit to maximize or significantly enhance its digital television service area later files an application to reduce its digital television service area, the protected contour of that station will be the reduced digital service area as long as that area is not less than the area resulting from the "replication" facilities provided in the DTV Table of Allotments. Where a DTV station chooses to operate with technical parameters less than those allotted in DTV Table, we will require Class A stations to nonetheless protect the service area produced by the "replication" facilities established in the Table. We agree with MSTV/NAB that the service areas in the DTV Table represent the minimum degree of interference protection that must be accorded by Class A stations to full-service stations.¹⁶⁴ Section (f)(7)(A)(ii)(I) of the CBPA requires that Class A stations cause no interference to the digital service areas provided in the Table.¹⁶⁵

87. ALTV argues that the Commission should distinguish between full-service stations that intend to lower their coverage areas permanently, and those that file change applications to lower power on only a temporary basis to, for example, avoid technical problems or meet short-term marketplace realities during the DTV transition.¹⁶⁶ We will not adopt the ALTV proposal. The CBPA itself does not draw a distinction between a temporary and a permanent reduction in service area. Moreover, as a practical matter, a station given the option would be likely to characterize any reduction in service area as

¹⁶¹ See Letter from WEBR-LP and the New York Metropolitan Advisory Committee to Roy Stewart, Chief, Mass Media Bureau, dated March 27, 2000.

¹⁶² 47 U.S.C. § 336(f)(1)(E).

¹⁶³ See *Notice* at ¶ 17.

¹⁶⁴ See Comments of MSTV/NAB at 10. See also Comments of AFCCE at 3.

¹⁶⁵ 47 U.S.C. § 336(f)(7)(A)(ii)(I).

¹⁶⁶ See Comments of ALTV at 6-7. See also Reply Comments of MSTV/NAB at 7-8.

“temporary,” if only to preserve the value of the station even if larger facilities for the station are not contemplated in the future. We believe it is most consistent with the intent underlying section (f)(1)(E) of the statute, and with Congress’ goal of balancing the competing needs of DTV and Class A stations, to require Class A stations to protect only the reduced service area of full-service stations in the circumstances described by (f)(1)(E), as long as those facilities are not less than the replication facilities provided in the DTV Table of Allotments.

G. Common Ownership

88. Background. The CBPA provides that no LPTV station “authorized as of the date of the enactment of the [CBPA] may be disqualified for a Class A license based on common ownership with any other medium of mass communication.”¹⁶⁷ Thus, stations authorized as of November 29, 1999 may seek Class A status without regard to the station owner’s interest in any other media entity. In the *Notice*, we sought comment on the appropriate interpretation of this provision. We asked whether the ownership exemption confers a right to convert only, or whether it also confers a right to transfer the station regardless of the buyer’s cross media interests, and whether it insulates an owner from application of the common ownership rules with respect to any new cross media ownership acquired after conversion to Class A. We tentatively concluded that no LPTV station, regardless of when authorized, should be disqualified from Class A status based on common ownership with other media entities.

89. Decision. After review of the record, we will adopt our initial tentative conclusion and will not impose any common ownership limitations on holders of the new Class A licenses. We agree with the commenters who argue that Congress intended that Class A stations be exempt from existing common ownership requirements and that this exemption should apply when a license is subsequently transferred to a buyer with other media interests.¹⁶⁸ As noted above, Congress directed that common ownership with any other medium of mass communication will not disqualify a potential Class A licensee. We believe that the only logical outgrowth of Congress’ language here is that the lack of common ownership rules would also apply to transferred ownership.

H. Issuance of DTV Licenses to Class A, TV Translator, and LPTV Stations

90. Background. We stated in the *Notice* that the CBPA provides that the Commission is not required to issue an additional DTV license to a Class A station licensee or to a licensee of a TV translator,¹⁶⁹ but the Commission “shall accept a license application for such services proposing facilities

¹⁶⁷ CBPA Section (f)(3).

¹⁶⁸ See Comments of Fox at 16. See also Comments of Airwaves, Inc. at 3; Apogee at 4; Media-Com Television, Inc. at 5; Ruarch at 3; and Turnpike at 6-7.

¹⁶⁹ TV translators rebroadcast the programs of full-service TV stations. In most respects, translators are technically equivalent to LPTV stations and are licensed in the same manner. Currently, there are approximately 4,900 licensed TV translators, most operating in the western mountainous regions of the country. *Public Notice*, “Broadcast Station Totals as [of] September 30, 1999” (*rel.* November 22, 1999). Translators deliver free over-the-air television service, mostly to rural communities that cannot directly receive the nearest TV stations because of distance or intervening terrain obstructions. They also provide “fill-in” service to terrain-obstructed areas within a full-service station’s service area.

that will not cause interference to the service area of any other broadcast facility applied for, protected, permitted, or authorized on the date of filing of the advanced television application."¹⁷⁰

91. We sought comment in the *Notice* on this provision and how to implement it. We asked whether this provision means that the Commission does not need to identify a paired DTV channel for each Class A station or TV translator, but that the Commission should authorize a paired channel for DTV operation if the Class A or TV translator station licensee identifies and applies for an acceptable channel. We noted that this interpretation might create an apparent inequity with respect to full-service permittees and licensees that do not have a paired DTV channel because they received their initial station construction permit after the April 3, 1997 date used to define eligibility for the initial paired DTV licenses.

92. Decision. As an initial matter, we note that Class A stations may convert their existing channel to digital broadcasting at any time.¹⁷¹ However, we conclude that the plain reading of the CBPA, as well as the legislative history of the Act,¹⁷² does not require us to issue an additional license for DTV services to Class A or TV translator licensees, but does require us to accept DTV applications from licensees of Class A or TV translator stations that meet the interference protection requirements that are identified in the statute.¹⁷³

93. Most commenters that address this issue agree with our interpretation of these requirements. For example, APTS notes that the statute merely requires that we "shall accept" a DTV license application from such entities and does not require approval of the application,¹⁷⁴ while Turnpike contends that LPTV stations are converting from secondary to primary status and should have the option of applying for a digital simulcast channel "just like the other television licensees in Part 73."¹⁷⁵ CBA and USAB argue that Class A stations should be permitted to apply for a second channel for DTV at any time.¹⁷⁶ WB, however, argues that we should not permit Class A stations to apply for a second DTV channel, but should limit them to filing applications to convert from NTSC to DTV on existing channels.¹⁷⁷

94. As we stated in the *Notice*, there currently are a number of full-service permittees and licensees who do not have a paired DTV channel because they received their construction permits after the cut-off date for eligibility for the initial paired DTV licenses. Some commenters contend that, if we decide to award additional channels for DTV, we should give priority to such full-service licensees and permittees who are currently precluded from applying for a paired DTV channel. WB, for example, suggests that any

¹⁷⁰ 47 U.S.C. § 336(f)(4).

¹⁷¹ The licensee may elect to convert to advanced television services on its analog channel, but is not required to convert to digital format until the end of the DTV transition. Section-by-Section Analysis at S14725.

¹⁷² Section-by-Section Analysis at S14725.

¹⁷³ The FCC "shall accept a license application for such services proposing facilities that will not cause interference to the service area of any other broadcast facility applied for, protected, permitted, or authorized on the date of filing of the advanced television application." 47 U.S.C. § 336(f)(4).

¹⁷⁴ See Comments of APTS at 14.

¹⁷⁵ See Comments of Turnpike at 7.

¹⁷⁶ See Comments of CBA at 23; USAB at 15-16. See also Comments of Lockwood at 4-5; NRB at 8.

¹⁷⁷ See Comments of WB at 31.

additional channels should first be awarded to full-service licensees, and that we should apply to Class A licensees the same technical and service rules as are applied to full-service licensees.¹⁷⁸

95. Although the statute requires us to accept Class A applications for additional DTV licenses, it does not direct us to issue such licenses to Class A licensees. We agree with MSTV and NAB that we should exercise restraint with respect to issuing additional DTV licenses in order to preserve spectrum to accommodate needs associated with the transition of full-service stations to digital service.¹⁷⁹ Moreover, we find that the various issues concerning the means of issuing additional DTV licenses for Class A stations to be outside the scope of this rulemaking. We note that the transition to DTV is scheduled to end in 2006, and that a number of issues regarding the transition are yet to be resolved in future DTV proceedings. We therefore defer matters regarding the issuance of additional DTV licenses for Class A stations to a future rulemaking.

I. Interim Qualifications

1. Stations Operating Between 698 and 806 MHz

96. Background. Section (f)(6)(A) of the CBPA provides that the Commission may not grant a Class A license to an LPTV station for operation between 698 and 806 megahertz (television broadcast channels 52 – 69).¹⁸⁰ Thus, only LPTV stations operating on channels in the core spectrum (television broadcast channels 2 through 51) are eligible for Class A status. That section also provides, however, that the Commission shall provide to LPTV stations assigned to and temporarily operating between 698 and 806 megahertz the opportunity to meet the qualification requirements for a Class A license. If a qualified Class A applicant is assigned a channel within the core spectrum, the statute further provides that the Commission shall issue a Class A license simultaneously with the assignment of the in-core channel.

97. We pointed out in the *Notice* that this provision does not address when a station operating outside the core channels becomes eligible for contour protection. We stated that we were inclined to provide protection to such stations only when the station is assigned a channel within the core spectrum, and requested comment on this proposal. We also requested comment on whether Class A status and contour protection should commence with the grant of a construction permit on the in-core channel or a license to cover construction.¹⁸¹

98. We also invited comment in the *Notice* on Section (f)(5) of the CBPA, which stipulates that the provisions of the statute do not preempt or otherwise affect Section 337 of the Communications Act.¹⁸² As we stated in the *Notice*, Section 337 addresses two matters relevant to Class A television. First, Section 337 involves the reallocation and licensing of TV channels 60-69, which, pursuant to Section (f)(6)(A) of the CBPA, are not available to Class A stations. Second, Section 337 contains certain provisions for LPTV stations already authorized to operate on TV channels 60-69. In the Balanced Budget

¹⁷⁸ See Comments of WB at 31.

¹⁷⁹ See Comments of MSTV and NAB at 26.

¹⁸⁰ 47 U.S.C. § 336(f)(6)(A).

¹⁸¹ See *Notice* at ¶ 24.

¹⁸² 47 U.S.C. § 336(f)(5).

Act of 1997 (Budget Act),¹⁸³ Congress required that the Commission "seek to assure" that a qualifying LPTV station authorized on a channel from channel 60 to channel 69 be assigned a channel below channel 60 to permit its continued operation.¹⁸⁴ In the DTV proceeding, we amended our rules to permit all LPTV stations on channels 60 to 69 to file displacement relief applications at any time requesting a channel below channel 60, even where there is no predicted or actual interference conflict.¹⁸⁵ We have received more than 300 such displacement applications from LPTV and TV translator stations operating on these channels. These applications have a higher priority than all other nondisplacement applications for LPTV and TV translators, regardless of when the applications were filed. Other LPTV and TV translator stations on channels 60 - 69 have so far elected not to file displacement applications, but may do so at any time provided they protect the proposed facilities of earlier-filed displacement applications. The Commission has not selected channels for qualifying LPTV stations; however, it has provided the opportunity for affected stations to seek channels below channel 60 on a priority basis. We believe this meets our obligation under Section 337 to assist qualifying LPTV stations on channels 60-69.

99. In contrast, stations on channels 52-59 are not currently entitled to the presumption of displacement extended to stations on channels 60-69, and instead are entitled to seek displacement relief only where there is an actual or potential interference conflict, including a conflict with a DTV co-channel allotment. Operators on channels 52-59 nonetheless face displacement when channels 52-59 are reclaimed at the end of the DTV transition, and will be barred from becoming Class A stations if they cannot secure a replacement channel below channel 52. We sought comment in the *Notice* on whether the presumption of displacement should be extended to LPTV and TV translator stations authorized on channels 52 - 59, giving these operators an immediate opportunity to seek replacement channels while such channels might still be available.¹⁸⁶

100. Decision. We will extend the presumption of displacement to LPTV stations and TV translators authorized on channels 52-59. We will permit these stations to file displacement applications immediately if they can locate a replacement channel within the core spectrum. The majority of the commenters that addressed this issue supported extending the presumption of displacement to these stations.¹⁸⁷ Many of these stations would be barred from becoming Class A stations if they cannot secure a replacement channel below channel 52. We believe it is most consistent with Congress' intent to provide qualified LPTV stations the opportunity to obtain Class A status to permit such stations on channels 52-59 to seek a replacement channel now on which they may apply for a Class A license. Any displacement

¹⁸³ Pub. L. No. 105-33, 111 Stat. 251, §3004 (1997), adding new section number 337(e) to the Communications Act.

¹⁸⁴ Section 337(f)(2) of the Communications Act of 1934, as amended, establishes criteria for qualifying LPTV stations. The qualifications are: the station broadcasts a minimum of 18 hours per day; the station broadcasts an average of at least 3 hours per week of programming produced within the market area served by the station; and, the station complies with the requirements applicable to low-power television stations.

¹⁸⁵ *Reconsideration of the Sixth Report and Order*, 13 FCC Rcd at 7465-66.

¹⁸⁶ See *Notice* at ¶ 53.

¹⁸⁷ See, e.g., Comments of CBA at 18; NTA at 5. WB opposes extending the presumption of displacement to channels 52-59, arguing that the CBPA does not require the FCC to give these stations priority over existing full-service stations and pending applications for new NTSC stations proposing operations on channels 52-59 with respect to securing an in-core channel. Comments of WB at 32-43.

applications filed by LPTV (Class A or non-Class A) or TV translators will receive equal treatment for processing purposes.

101. We recognize that full-service NTSC broadcasters on channels 52-59 may also seek to relocate to an in-core channel and such a proposal may conflict with a displacement application filed by an LPTV station seeking to move from channels 52-59.¹⁸⁸ For the time being, these full-service stations may continue to operate on their present channel and most of them have an in-core paired DTV channel allotment. Nevertheless, we do not want to grant a displacement application that might preclude a move to an in-core channel without giving these broadcasters an opportunity to seek such a channel change. The process for the full-service station moving to an in-core channel involves filing a petition for rule making seeking to amend the TV Table of Allotments. The Commission invites comments on the proposal in a Notice of Proposed Rule Making and based on the record, decides whether or not to make the proposed change in a Report and Order. Conflicting proposals, referred to as counterproposals, must be filed during the time period for initial comments, so that an opportunity exists for comments on the counterproposal to be filed during the time period allowed for reply comments. In order to be considered in a channel-change rulemaking proceeding, a conflicting displacement application from an LPTV station that has been determined to be eligible for Class A status must be filed by the end of the initial comment filing period. Conflicting displacement applications filed after that date will be dismissed.

102. Where such a preclusive displacement application seeking to move from channels 52-59 to an in-core channel is filed by an LPTV station eligible for Class A status before a full-service rulemaking petition, we believe it is appropriate to allow a similar, limited opportunity for a conflicting proposal to be filed. Complete and acceptable displacement applications are announced in a Commission Public Notice called a "Proposed Grant List." We will identify any displacement applications filed by Class A eligible stations in future Proposed Grant Lists. Petitions for a channel change filed by a full-service NTSC licensee or permittee must be filed not later than 30 days from the release of the Public Notice proposing grant of a conflicting displacement application. Conflicting TV rulemaking petitions filed after that date must protect the Class A eligible LPTV station's displacement application. Similarly, we will apply the same procedures and time periods to other displacement applications filed by LPTV stations eligible for Class A status, seeking to move from channels 60-69, or from one in-core channel to another to avoid DTV or new NTSC interference.

103. We will require LPTV stations on channels 52-59 that are seeking Class A status to have filed a certification of eligibility within the time frame established in the statute (*i.e.*, by January 28, 2000). When a qualified LPTV station outside the core seeking Class A status locates an in-core channel, we will require the station to file a Class A application simultaneously with its application for modification of license to move to the in-core channel. We will provide interference protection to such stations on the in-core channel from the date of grant of a construction permit for the in-core channel. As the CBPA prohibits the award of Class A status to stations outside the core, we believe it would be inconsistent with the statute to provide interference protection on a channel outside the core. We believe it is appropriate to commence contour protection with the award of a construction permit on the in-core channel, rather than a license to cover construction, as these permittees will have already certified their eligibility for Class A status. Unlike other Class A applicants, we will not require LPTV licensees on out-of-core channels

¹⁸⁸ See, e.g., *Sixth Further Notice of Proposed Rule Making, In the Matter of Advanced Television Systems, and Their Impact upon the Existing Television Broadcast Services*, MM Docket No. 87-268, 11 FCC Rcd 10968, 10987 (1996); *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order*, 13 FCC Rcd 6865 (1998). See also "Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations," *Public Notice*, DA 99-2605 (Nov. 22, 1998).

seeking Class A status to file a Class A application within 6 months of the date of adoption of this order. The CBPA provides that, if a qualified applicant for a Class A license operating on an out-of-core channel locates an in-core channel, the Commission "shall issue a Class A license simultaneously with the assignment of such channel." The statute does not impose a time limit on the filing of such applications. Accordingly, we will not impose any time limit on the filing of a Class A application by LPTV licensees operating on channels outside the core. However, we believe that, in most cases, it would be in the best interest of qualified LPTV stations operating outside the core to try to locate an in-core channel now, as the core spectrum is becoming increasingly crowded and it is likely to become increasingly difficult to locate an in-core channel in the future.

2. Channels Off-Limits

104. Background. Section (f)(6)(B) of the CBPA provides that the FCC may not grant a Class A license to an LPTV station operating on any of the 175 additional channel allotments referenced in paragraph 45 of the Commission's February 23, 1998 *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket 87-268.¹⁸⁹ In that *Order*, the Commission expanded the DTV core spectrum to include all channels 2-51, and noted that this expansion would add approximately 175 additional channels for DTV stations and other new digital data services, many in top markets. The CBPA further requires that the Commission identify the channel, location and applicable technical parameters of those 175 channels within 18 months after the date of enactment of the CBPA. We stated in the *Notice* that these additional 175 DTV allotments will be part of the spectrum reclaimed at the end of the transition when existing stations end their dual channel analog TV/DTV operation and begin providing only DTV service on a single channel. Some stations will be continuing DTV operation on their DTV channel. Other stations will convert to DTV operation on their analog channel. In either case, the channel on which these stations discontinue operation may become available for other parties. We stated our belief in the *Notice* that the protection of these DTV allotments that will become available after the transition is effectively provided now because either analog TV or DTV stations are currently authorized and protected on these channels at these locations, and sought comment on our interpretation of this provision. Alternatively, we asked if we should interpret the CBPA to prohibit the authorization of Class A service on TV channels 2-6, which were added to the permanent core spectrum in the DTV proceeding.¹⁹⁰

105. Decision. We continue to believe that the requirement of section (f)(6)(B) of the CBPA that we protect the 175 channel allotments referenced in the Commission's *Sixth Report and Order*¹⁹¹ in the DTV proceeding from Class A stations is effectively accomplished now because these channels are occupied by existing NTSC or DTV allotments. These channels will become available for other parties once full-power stations discontinue operation on one of their paired channels at the end of the DTV transition. Commenters that addressed this issue agreed with this view.¹⁹² Accordingly, we need not take further steps at this time to protect these channels from Class A service, and need not adopt our alternative proposal of prohibiting the authorization of Class A service on television channels 2-6.

J. Class A Applications

¹⁸⁹ 47 U.S.C. § 336(f)(6)(B). See *Reconsideration of the Sixth Report and Order*, 13 FCC Rcd 7418 (1998).

¹⁹⁰ See *Notice* at ¶ 25.

¹⁹¹ *Sixth Report and Order*, 12 FCC Rcd at 14698-754.

¹⁹² See Comments of MSTV/NAB at 27.

1. Application Forms

106. Background. We are required, under the terms of the CBPA, to award Class A licenses within 30 days after receipt of acceptable applications.¹⁹³ In the *Notice*, we proposed to grant initial Class A status as a modification of an existing LPTV station's license, and to limit those conversions to those stations with no change in facilities. We also proposed that applications be accepted if they met a "substantially complete" standard. We further proposed to require that LPTV stations seeking Class A status file FCC Forms 302 and 301 for facilities modifications if we placed Class A service under Part 73, and Forms 347 and 346 if the service was placed under Part 74.

107. Decision. We have created a streamlined license application form to be used by LPTV stations that seek to convert to Class A status. That form, Form 302-CA, requires a series of certifications by the Class A applicant and is attached to this *Report and Order*.¹⁹⁴ Where a construction permit to modify licensed facilities has been issued, a licensee may choose whether to file its Class A application on its license or on its authorized construction permit. Until that choice is made, we will protect the facilities reflected in the construction permit. We will not require a letter perfect application, but will accept applications on a "substantially complete" basis and will process them, as required by the statute, within 30 days unless the applications contain omissions or face challenges. For subsequent modification applications, Class A stations will be required to submit modified versions of Forms 301 and 302, to be released at a later date.

108. Normally, license applicants are not required to provide local public notice of their applications. However, since the nature of the underlying service is changing from secondary to primary service, Class A license applicants will be required to provide local public notice of their applications. Two weeks before and after submission of their applications, Class A applicants must provide weekly announcements to their listeners informing them that the applicant has applied for a Class A license, and announcing the public's ability to comment on the application prior to Commission action.

2. Class A Facilities Changes

109. Background. In the *Notice*, we proposed to define Class A minor facilities modifications like full-service television stations, to permit Class A stations the flexibility to change facilities outside of filing windows. Under this flexible approach, Class A stations could seek authorization for a minor change outside both filing windows and auction procedures. Channel changes would continue to be considered major changes. The *Notice* sought comment on whether Class A stations proposing facilities changes should be required to protect the maximum facilities of full-service stations and, if so, whether we should apply a reciprocal rule to protect the maximum facilities of Class A stations.

110. Decision. We will adopt our proposal to define Class A facilities modifications in a manner that permits greater flexibility and does not require window application filings for most changes.¹⁹⁵ Channel change requests, other than changes in frequency offset, will be considered major changes. All other proposed facilities changes will be considered "minor", including changes in station power, antenna height and antenna horizontal radiation pattern and orientation of directional antenna. Proposed changes in transmitting antenna site location will also be classified as minor, provided the protected signal contour

¹⁹³ 47 U.S.C. § 336(f)(1)(C).

¹⁹⁴ See Appendix D.

¹⁹⁵ Commenters generally support this proposal. See, e.g., Comments of CBA at 21; NTA at 3-4.

resulting from the relocated site would overlap some portion of the protected contour based on the Class A station's authorized facilities.¹⁹⁶ This approach will permit flexibility, while preventing Class A stations from relocating completely away from the viewing audiences they presently serve. Proposed site relocations that do meet this requirement will be considered major changes. Proposed changes in Class A facilities must meet applicable interference protection requirements with respect to DTV allotments, authorized DTV and NTSC TV service and must protect those pending station proposals that full-service NTSC TV applicants are required to protect. In addition, the CBPA requires proposals for Class A facilities changes to protect licensed LPTV and TV translator facilities, those authorized by construction permit, and those proposed in pending applications filed with the Commission prior to the filing of the Class A application.¹⁹⁷

111. Commenters are divided on whether proposed Class A facilities changes should be required to protect NTSC TV service based on authorized or maximum permissible facilities. Several commenters favor protection of maximum facilities. MSTV and NAB contend that this is necessary so as not to threaten the ability of DTV stations to return to their analog channels at the end of the DTV transition without incurring a loss of service area.¹⁹⁸ However, we agree with du Treil and other commenters that this approach is not spectrally efficient because it would require protection of facilities that could never be authorized due to interference constraints.¹⁹⁹ As a result, Class A licensees could be unnecessarily hindered in seeking facilities changes or locating replacement channels in the event of channel displacement. Therefore, Class A facilities modification proposals will be required to protect full-service TV Grade B contours based on authorized facilities. We will, however, permit full-service NTSC and Class A station licensees and permittees to file mutually exclusive minor change applications until grant of the pending NTSC and Class A minor change applications. Mutually exclusive applications will be resolved through the auction process in the event the parties do not eliminate the mutual exclusivity through "minor" engineering amendments to their applications. We will give notice of Class A facilities minor change applications in the manner notice is given for such NTSC TV applications. We will not establish a petition to deny period for Class A minor change applications; however, these applications will be subject to the filing of informal objections. We will also adopt the above provisions for digital Class A stations. Class A stations may file minor change applications for the purpose of converting to digital operations on their analog channels.

112. As contemplated in the *Notice*, we will apply the more inclusive definition of minor facilities changes to TV translator and non-Class A LPTV stations in order to provide additional flexibility to these stations. NTA indicates that translators and non Class A LPTV stations would also benefit from the ability to file most facilities changes outside of application filing windows.²⁰⁰ We will continue authorizing in the normal manner those LPTV and TV translator applications that are filed pursuant to the

¹⁹⁶ A continuity of service provision was proposed in the Comments of the NTA at 4 and the Comments of St. Clair at 3 (citing a similar restriction in the FM translator rules at 47 C.F.R. § 74.1233(a)(1)).

¹⁹⁷ 47 U.S.C. § 336(f)(7)(B)

¹⁹⁸ See also Comments of WB at 28.

¹⁹⁹ See Comments of du Treil at 8; CBC at 3; Equity Broadcasting Corporation at 23; North Rocky Mountain Television, L.L.C. (NRMTV) at 9.

²⁰⁰ See Comments of NTA at 3.

current minor change definition in the LPTV rules.²⁰¹ Minor change application proposals of non Class A LPTV and TV translator stations, filed under the more inclusive definition, must meet all applicable interference protection requirements to authorized stations. These applications must also protect the facilities proposed in full-service NTSC TV minor change applications, regardless of which applications are earlier filed. The CBPA requires Class A facilities modification proposals to protect earlier-filed LPTV and TV translator applications.²⁰² Therefore, we are adopting a first-come, first-served policy with respect to the minor change applications of LPTV, TV translator, and Class A stations. We do not want minor change application proposals, under the more inclusive definition, to complicate the authorization of initial Class A licenses, nor displacement relief applications that may be filed shortly after adoption of this *Report and Order*. We note that displacement applications would have a higher priority than non-displacement minor change applications, regardless of which are filed earlier.²⁰³ For this reason, we will not permit the filing of Class A, LPTV and TV translator facilities change applications, pursuant to the more inclusive minor change definition, until October 1, 2000. However, minor change applications under the less inclusive definition in the LPTV rules may continue to be filed by LPTV, TV translator, and Class A permittees and licensees.

3. Class A Channel Displacement Relief

113. Background. In the *Notice*, the Commission proposed that displaced Class A stations be permitted to apply for replacement channels on a first-come, first-served basis that would not be subject to mutually exclusive applications.²⁰⁴ Under that proposal, Class A stations could apply for replacement channels at any time, without waiting for a filing window. The *Notice* proposed to interpret the CBPA to grant displaced LPTV stations a higher priority than other nondisplacement LPTV applications and sought comment on this interpretation.

114. Decision. The Commission will adopt its proposal and allow displaced Class A station licensees and permittees to apply for replacement channels on a first-come, first-served basis, not subject to mutually exclusive applications. We will adopt generally the displacement relief policies and procedures that apply in the low power television service.²⁰⁵ Class A stations causing or receiving interference with full-service NTSC TV, DTV or any other service or predicted to cause prohibited interference or to receive interference may apply at any time for a replacement channel, together with any technical changes that are necessary to eliminate or avoid interference or continue serving the area within the station's protected signal contour. Site relocation proposals will be permitted in displacement applications, provided the protected signal contour resulting from the relocated site would overlap some portion of the protected contour based on the Class A station's authorized facilities. Class A displacement relief applications will be filed as major change applications, given their protected status. Applications will not be mutually exclusive with other displacement applications unless filed on the same day and, in that event, will be

²⁰¹ See 47 C.F.R. § 73.3572(a). This rule defines minor changes to include antenna site relocations not exceeding 200 meters or facilities changes that would not increase the signal range of the station in any horizontal direction.

²⁰² 47 U.S.C. § 336(f)(7)(B)

²⁰³ 47 C.F.R. § 73.3572(a)(2)(ii)

²⁰⁴ *Notice* at ¶ 50.

²⁰⁵ The LPTV displacement relief provisions are found in 47 C.F.R. § 73.3572(a)(2).

subject to the auction procedures.²⁰⁶ These applications will be placed on public notice for a period not less than 30 days and will be subject to the filing of petitions to deny. Class A displacement relief applications will be afforded a higher priority than nondisplacement Class A, LPTV and TV translator applications, to the exclusion of those applications that are mutually exclusive with a Class A displacement application.²⁰⁷ We will not prioritize among Class A displacement applications, nor will these be afforded a higher priority than LPTV and TV translator displacement applications.²⁰⁸ Displacement applications filed on the same day by Class A, non-Class A LPTV or TV translator stations will be mutually exclusive and subject to the auction procedures. In such cases, we encourage engineering solutions to remove the mutual exclusivity wherever possible.

K. Remaining Issues

1. Call Signs

115. Background. In the *Notice*, we sought comment on the call sign designation to be used for new Class A stations. Currently, LPTV stations have the option of using standard broadcast call signs with the suffix “-LP.”

116. Decision. We will allow Class A stations to use standard television call signs with the suffix “-CA” to distinguish the stations from “-LP” stations. We agree with CBA, National Minority T.V., Inc. (NMTV) and others²⁰⁹ that use of the suffix “-LP” would create confusion between LPTV, LPFM and Class A stations. Upon grant of its initial Class A application, the qualifying LPTV licensee can change its station’s existing numerical or four-letter low power call sign to a four-letter call sign with the “CA” suffix. Class A licensees should use the Mass Media Bureau’s automated call sign reservation and authorization system to effectuate this change by accessing the call sign change request screen and providing the required information. While there is no fee payment required for the initial change to a four-letter “- CA ” call sign, a subsequent change from one four-letter “- CA” call sign to another will require payment of a fee.

2. Certification of Class A Transmitters

²⁰⁶ 47 U.S.C. § 309(j)(14)(c).

²⁰⁷ Commenters generally supported the displacement relief proposals in the *Notice*. CBA states that displacement channel changes should take priority over other change applications. *See* Comments of CBA at 21. *See also* Comments of Commercial Broadcast Corporation at 3; AFCCE at 6; Alaskan Choice at 7. We disagree with SBE’s view that Class A displacement relief applications should be subject to mutually exclusive applications, contending there will be few displaced Class A stations and that a first-come, first-served policy would give a “super priority” to Class A priority of NTSC and DTV stations. *See* Comments of SBE at 10. Given their various DTV protection responsibilities, we cannot say that only a few Class A stations will be displaced, nor is this relevant to providing a relief mechanism for facilitating the survival of displaced stations. Moreover, Class A licensees do not have an absolute priority over full-service broadcasters. For example, as provided by the CBPA, they are subject to displacement by DTV stations that encounter technical problems with allotments, which require engineering solutions.

²⁰⁸ We do not believe the CBPA constrains a priority for displacement applications over nondisplacement applications. In fact it affords a displacement priority for LPTV stations displaced by Class A stations. Treating Class A, LPTV and TV translator displacement applications on an equal footing, that is, on a first-come, first-served basis, we believe, satisfies the intent of Section (f)(7)(B)(iii) of the CBPA.

²⁰⁹ *See* Comments of CBA at 17; National Minority T.V., Inc. (NMTV) at 9-10.

117. **Background.** In the *Notice*, we sought comment regarding whether Class A transmitters should be certified in a manner similar to the former "type acceptance" requirement or whether the less stringent Part 73 "verification" requirements should apply.

118. **Decision.** We have decided to use the Part 73 verification scheme for new Class A transmitters. Existing LPTV transmitters will eventually be replaced by digital equipment, so we will "grandfather" use of these analog transmitters, except where these transmitters cause interference due to spurious emissions on frequencies outside of the assigned channel. As noted above, Class A stations proposing facilities increases, such as increased power, must specify a frequency offset. Upon authorization to operate with a frequency offset, station licensees must use a transmitter capable of meeting a frequency tolerance of +1/-1 kHz.

3. Fees

119. **Background.** In the *Notice*, we proposed to apply minor modification fees to Class A applications and requested comment on treatment of Class A stations for the purposes of annual regulatory fees.

120. **Decision.** Consistent with the use of a Part 73 license application form (302-A), we will apply the existing full-service television license fee to initial Class A applications. This fee is lower than the minor modification fee. However, we will apply the low power regulatory fees to Class A stations going forward. Class A stations, while having greater rights than the preceding LPTV stations, will still be greatly limited in their power and height restrictions. To require the same regulatory fees as are required for full-power stations would be onerous to these small, local operations. We agree with the CBA that these lower regulatory fees are more appropriate in the Class A context, unless Congress legislates otherwise at some future time.²¹⁰

4. International Coordination Provisions

121. In establishing rules for Class A stations, the Commission is mindful of its obligations under its existing bilateral agreements with Canada and Mexico regarding the authorization of LPTV service in the common border areas.²¹¹ These agreements do not contain provisions for analog or digital Class A TV stations. Under the agreements, LPTV stations have a secondary status with respect to Canadian and Mexican primary television stations and allotments and must not cause interference to the reception of these stations, nor are LPTV stations protected against interference from these stations. The agreements also include provisions for notifying and coordinating LPTV station proposals in the border areas. We agree with Grupo Televisa, S.A. (Grupo) that any authorization of Class A stations must be consistent with international agreements.²¹² We will continue to apply the LPTV provisions in our existing agreements with Canada and Mexico to LPTV stations, including those that seek Class A status. Grupo believes we should not allow primary status for any LPTV station "that is required under the U.S.-Mexican

²¹⁰ See Comments of CBA at 17.

²¹¹ Agreement on the Assignment of Low Power Television Stations Along the Border, Sept. 14, 1998, United States-Mexico; Agreement on VHF and UHF Television Broadcasting Channels, Jan. 5, 1994, United States-Canada.

²¹² See Comments of Grupo Television, S.A. (Grupo) at 5. Grupo is a Mexican television broadcaster that operates a number of television stations in the U.S.-Mexican border area.

TV agreements to be operated on a secondary basis or to be coordinated between the two governments.²¹³ We will not grant an analog or digital Class A license to any LPTV station affected by the U.S.-Mexican or U.S. Canadian agreements without the expressed concurrence of Canada or Mexico. We will work over time to update the current bilateral agreements to recognize when possible Class A assignments. In the interim we will attempt to obtain temporary approval of Class A stations in the border area or on a case by case basis. However, any Class A stations authorized on this basis would be subject to any conditions resulting from the coordination process or any final bilateral agreement reached with Canada and Mexico.

5. Broadcast Auxiliary Frequencies

122. LPTV stations may be authorized to operate remote pickup stations and various TV broadcast auxiliary stations (BAS).²¹⁴ Some LPTV stations use studio-to-transmitter links and other fixed microwave links. LPTV stations may also conduct electronic newsgathering operations on BAS frequencies. Licenses for television pickup, studio-transmitter link and point-to-point TV relay stations are issued to LPTV stations on a secondary basis, such that full-service stations may displace LPTV station use of broadcast auxiliary channels. We agree with SBE that once an LPTV station is authorized as a Class A station, all of that station's BAS licenses should automatically be upgraded to primary status,²¹⁵ that is, upon receiving its initial Class A authorization, the station licensee will not be required separately to seek upgraded BAS licenses. Class A stations may also file applications under existing procedures, requesting authority to operate BAS stations on a primary basis. As SBE also points out, we remind Class A licensees of their responsibility to avoid interference with other users of a BAS channel, including the requirement to consult with a local frequency coordinating committee, if one exists.

IV. CONCLUSION

123. In this *Report and Order*, we adopt regulations establishing a Class A television license for qualifying low power television stations in accordance with the Community Broadcasters Protection Act of 1999. The measure of primary Class A status afforded to qualifying low power television stations will provide stability and a brighter future to these stations that provide valuable local programming services in their communities, while protecting the transition to digital television.

ADMINISTRATIVE MATTERS

124. Paperwork Reduction Act Analysis. This *Report and Order* has been analyzed with respect to the Paperwork Reduction Act of 1995, and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act.

125. Regulatory Flexibility Analysis. Pursuant to the Regulatory Flexibility Act of 1980, as amended, see 5 U.S.C. § 604, the Commission's Final Regulatory Flexibility Analysis for this *Report and Order* is attached as Appendix C.

²¹³ *Id.* at 7.

²¹⁴ 47 C.F.R. §§ 74.432 and 74.632.

²¹⁵ See Comments of SBE at 7.

126. Additional Information. For additional information on this proceeding, please contact Kim Matthews, Policy and Rules Division, Mass Media Bureau, (202) 418-2130, or Keith Larson, Office of the Bureau Chief, Mass Media Bureau, (202) 418-2600.

ORDERING CLAUSES

127. Accordingly, IT IS ORDERED that, pursuant to authority contained in sections 1, 4(i), 303, and 336(f) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303, and 336(f), Part 73 of the Commission's rules, 47 C.F.R. Part 73, and Part 74 of the Commission's rules, 47 C.F.R. Part 74, ARE AMENDED as set forth in Appendix A below.

128. IT IS FURTHER ORDERED that the amendments set forth in Appendix A shall be effective 30 days after publication in the Federal Register. Class A applications may be filed beginning on the date the rules are effective.

129. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Act Analysis, to the Chief Counsel for the Small Business Administration.

130. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary