

broadcaster's statutory obligations should apply to all DAB streams (*i.e.*, free, subscription, and multicast streams).¹⁵² PIC also recommends that the Commission develop a flexible "menu" of additional public interest obligations and impose such obligations when a broadcaster chooses to implement subscription or other non-advertising based services.¹⁵³ WRAL-FM suggests that all radio and television stations should be required to meet certain minimum standards of public interest performance. It states that a voluntary code of conduct should be adopted to encourage higher than minimum standards for the broadcast industry and all stations should be required to report quarterly on their public interest activities.¹⁵⁴

64. NAB states that existing public interest obligations generally should apply to hybrid radio stations. NAB asserts, however, that it is premature for the Commission to impose more specific or additional public interest obligations on new multicast audio services or on datacasting services.¹⁵⁵ NAB argues that the proposals made by PIC lack justification, are impracticable and overly burdensome, and present a number of policy, statutory and constitutional problems.¹⁵⁶ With regard to subscription services specifically, NAB notes that the Commission has in the past declined to impose traditional "broadcast type" public interest obligations on subscription services (including video and audio program services), especially when those services are in their nascent stage of development.¹⁵⁷ In any event, NAB states that this proceeding, which is focused on radio stations' implementation of IBOC, is not the proper vehicle for rewriting the Commission's broadcast public interest regulations that apply to both television and radio stations.¹⁵⁸

65. We conclude that applying statutory and regulatory public interest requirements currently imposed on analog radio to digital radio is both necessary and the proper course of action. Specifically, the following requirements apply: (1) political broadcasting; (2) payment disclosure; (3) prohibited contest practices; (4) sponsorship identification; (5) cigarette advertising; and (6) broadcast of taped or recorded material. Further, we will impose these requirements on all free over-the-air digital audio programming streams. The application of these requirements to subscription services is addressed in the *Second Further Notice of Proposed Rulemaking*, below.

¹⁵² *Id.*

¹⁵³ PIC advocates that this menu should place the highest priority on offering capacity for audio programming to non-affiliated noncommercial programmers, "small disadvantaged businesses," and commercial programmers serving underserved audiences. The menu should also include options to offer additional news and public affairs programming, and to offer public interest data services. *Id.* at iv.

¹⁵⁴ Capitol Broadcasting Comments at 3-4.

¹⁵⁵ NAB Comments at 18; *see also* NPR Comments at 21.

¹⁵⁶ NAB Reply Comments at 16-17.

¹⁵⁷ The NAB, citing *Subscription Video*, asserts that the Commission has declined to impose traditional broadcast regulations on subscription services carried on FM subcarrier frequencies, such as background music programs. NAB argues that the Commission should refrain from applying the various "broadcast type" public interest requirements to IBOC radio subscription services, at least until those services, if any, have matured. NAB Comments at 22 citing *Subscription Video*, 2 FCC Rcd 1001 (1987).

¹⁵⁸ NAB states that the proposals made by PIC and other commenters are being specifically, thoroughly, and more properly addressed in one or more pending proceedings focusing on broadcasters' public interest obligations. NAB Reply Comments at 19.

66. Additionally, radio stations operating in a digital format must comply with all other public interest obligations applicable to radio broadcasters while operating in that mode. That is, a radio station providing digital audio programming service analogous to the analog audio service subject to regulation by the Commission must comply with such regulations that apply to that service, unless otherwise specified or clarified in this *Second Report and Order*. The Commission's station log and public file requirements, under Section 73.1820 and Sections 73.3526 and 73.3527, respectively, are some of the rules that apply in this context. Other statutory requirements and Commission regulations that apply to DAB, but need further explanation, are discussed below. We again remind broadcasters of the importance of meeting their existing public interest obligations and encourage them to increase public disclosure of the ways in which they serve the public interest.

67. While we move forward and apply existing public interest obligations to all free digital broadcast streams, we will not adopt new "public interest" requirements in this *Second Report and Order*. The commenters have raised important and complex issues concerning how broadcasters' public interest obligations should be tailored to the new radio services made possible through digital technology. Given the substance and scope of the proposed requirements, we conclude that it is best to defer consideration of any new public interest obligations (of the type envisioned by PIC, for example) so that we can, instead, promptly establish basic operational requirements in this proceeding.¹⁵⁹ Radio stations using IBOC DAB technology, at this stage in the conversion process, are generally offering basic hybrid service where the digital signal replicates the programming of the analog signal. Thus, for the immediate future, we do not expect novel public interest problems to arise in this context.

68. The Commission will issue an annual report as to how the new digital radio services are being rolled out, whether multicast streams are being offered, and the extent to which programming on digital radio and on the multicast streams are fostering the services described in paragraph 37. We will obtain data for the report by periodically surveying digital audio broadcasters as to the status of their new services.

b. Station Identification

69. Under Section 73.1201 of the Commission's rules, broadcast station identification announcements must be made at the beginning and end of each time of operation, and as close to the hour as feasible, at a natural break in programming. Official station identification consists of the station's call letters immediately followed by the community or communities specified in its license as the station's location. The name of the licensee or the station's frequency or channel number, or both, as stated on the station's license may be inserted between the call letters and station location.¹⁶⁰ In the *DAB FNPRM*, we sought comment on whether the station identification rules should apply to all digital audio content of a radio station.¹⁶¹ Specifically, we sought comment on how a station should identify audio channels other

¹⁵⁹ See generally Further Notice of Proposed Rulemaking *supra*, ¶¶ 113-117. We note that there are outstanding dockets addressing the public interest obligations of television stations where many of these issues may be fully explored. See *Public Interest Obligations of DTV Broadcast Licensees*, 14 FCC Rcd 21633 (1999) ("*DTV Public Interest NOP*"); see also *Broadcast Localism*, 19 FCC Rcd 12425 (2004).

¹⁶⁰ See 47 C.F.R. § 73.1201.

¹⁶¹ 19 FCC Rcd at 7520.

than the main channel.¹⁶² We asked whether there should be separate call letters for separate streams. We also sought comment on how any proposed rule should differ, if at all, for AM radio stations.¹⁶³

70. PIC states that clearly understandable station identification rules, differentiating between multiple channels offered by the same licensee, and identifying the owner and location of the owner of the station, are necessary to allow the public to identify the source of the programming. It further states that the Commission should expand the call letters that a station uses to identify itself to allow listeners to easily remember which station and channel they are tuned.¹⁶⁴ PIC adds that call letters are an important mechanism the public and the Commission use to identify particular broadcast streams, especially in the indecency context.¹⁶⁵

71. iBiquity argues against any proposal to create a separate station identification requirement associated with digital broadcasts. iBiquity argues that because hybrid radio stations (that do not multicast) broadcast identical programming throughout the day, there is no need for additional identification requirements. iBiquity asserts that broadcasting a separate digital call sign would require significant system and equipment modifications that will deter conversions to digital broadcasts.¹⁶⁶

72. The SBAs state that multicast programming streams should not be subject to station identification requirements. They argue that such requirements are unnecessary for listener recognition and Commission enforcement efforts. A radio station will voluntarily identify its channel position to listeners to develop market recognition. According to the SBAs, stations now identify themselves, their call sign, identifier slogan, community of license and dial position (*e.g.*, “Z105.3”) far more often than the Commission’s rules require. They assert that further station identification requirements, which reduce broadcast flexibility, are not needed to ensure listener recognition of particular broadcast channels. Additionally, with new digital technologies, the call letters of the licensee can be embedded into the bit-stream of a channel. Thus, the Commission will have a means to easily identify a station and monitor its compliance with broadcast rules. The SBAs posit that DAB technology permits a visual identification on all receivers (through an identification included in the transmitted bitstream), eliminating the need for an hourly aural identification.¹⁶⁷

73. We find that station identification requirements for DAB stations are necessary to facilitate public participation in the regulatory process, a key element in the Commission’s supervision of broadcast licensees. Accordingly, we will implement the following regulations. First, both AM and FM

¹⁶² For example, WOR in New York City identifies its digital signal on digital radio receivers as “710 WOR-HD: New York’s FIRST Digital AM Radio Station.” See Thomas R. Ray III, *HD Radio Receivers Reach Stations*, RADIO WORLD, January 2, 2004.

¹⁶³ There are rules for simultaneous AM (535-1605 kHz) and expanded band AM (1605-1705 kHz) broadcasts. If the same licensee operates an AM broadcast station in the 535-1605 kHz band and an AM broadcast station in the 1605-1705 kHz band with both stations licensed to the same community and simultaneously broadcasts the same programs over the facilities of both such stations, station identification announcements may be made jointly for both stations for periods of such simultaneous operations. See 47 C.F.R. § 73.1201(c)(2).

¹⁶⁴ PIC Comments at 36-37.

¹⁶⁵ PIC Reply Comments at 16.

¹⁶⁶ iBiquity Comments at 26.

¹⁶⁷ SBAs Comments at 16.

stations with DAB operations will be required to make station identification announcements at the beginning and end of each time of operation, as well as hourly, for each programming stream. Second, proper identification consists of the station's call letters followed by the particular program stream being broadcast and the community or communities specified in the station's license as the station's location. Stations may insert between the call letters and the station's community of license the station's frequency, channel number, name of the licensee, and/or the name of the network, at their discretion. Third, a radio station operating in DAB hybrid mode must identify its digital signal, including any free multicast audio programming streams, in a manner that appropriately alerts its audience to the fact that it is listening to a digital audio broadcast. This requirement can be met through auditory means (*i.e.*, voiceovers), textual means (*i.e.*, datacast text appearing on the receiver's readout), or any other reasonable means of communication. As stations convert to a digital format and elect to provide multicast programming, thereby increasing the number of program streams potentially available to the public, clear identification of the station providing the programming, as well as the particular program stream being broadcast, becomes increasingly important, both for listeners and for stations themselves. These policies and rules are similar to those adopted by the Commission for DTV stations¹⁶⁸ and support our goal of applying similar rules to similarly situated broadcasters.

c. Emergency Alert System

74. The current emergency alert system ("EAS") requirements are codified in part 11 of the Commission's rules and, *inter alia*, mandates the delivery of a "Presidential message" in the case of a national emergency.¹⁶⁹ Along with its primary role as a national public warning system, EAS and other emergency notification mechanisms, are part of an overall public alert and warning system, over which the Federal Emergency Management Agency ("FEMA") exercises jurisdiction. EAS use as part of such a public warning system at the state and local levels, while encouraged, is merely voluntary.¹⁷⁰

75. Section 73.1250 of the Commission's rules further specifies the substance and scope of the emergency information being broadcast. Under our rules, and if requested by government officials, a station may, at its discretion, and without further Commission authorization, transmit emergency point-to-point messages for the purpose of requesting or dispatching aid and assisting in rescue operations. If EAS is activated for a national emergency while a local area or state emergency operation is in progress, the national level EAS operation must take precedence.¹⁷¹ AM stations may, without further Commission authorization, use their full daytime facilities during nighttime hours to broadcast emergency information when necessary for the safety of life and property, in dangerous conditions of a general nature, and when adequate advance warning cannot be given with the facilities authorized.¹⁷² All activities must be conducted on a noncommercial basis, but recorded music may be used to the extent necessary to provide

¹⁶⁸ See *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 19 FCC Rcd 18279, 18354 (2004).

¹⁶⁹ 47 C.F.R. §§ 11.44, 11.54.

¹⁷⁰ 47 C.F.R. §§ 11.1, 11.55.

¹⁷¹ See 47 C.F.R. § 73.1250. Emergency situations in which the broadcasting of information is considered as furthering the safety of life and property include, but are not limited to the following: tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gasses, widespread power failures, industrial explosions, civil disorders and school closing and changes in school bus schedules resulting from such conditions. *Id.* § 73.1250(a).

¹⁷² *Id.* § 73.1250(f).

program continuity. In the *DAB FNPRM*, we tentatively concluded that Section 73.1250 should apply to all audio streams broadcast by a radio station because the emergency information mandate can only be fulfilled if it is broadly applied.¹⁷³

76. The SBAs state that it is in the public interest to extend the emergency alert system to all audio streams broadcast by a radio station.¹⁷⁴ NPR states that each free over-the-air audio program service should participate in the EAS system. Using relatively inexpensive distribution amplifiers and switching devices, NPR states that radio stations should be able to carry EAS or other emergency information virtually instantaneously via each free over-the-air program channel. However, NPR does not believe stations should be compelled to offer additional, unspecified "emergency" or other services as a condition to offering any data services.¹⁷⁵ NAB argues that any questions regarding EAS equipment requirements for DAB should be set aside until a later date.¹⁷⁶

77. Subsequent to the release of the *DAB FNPRM*, the Commission adopted a *Notice of Proposed Rulemaking* seeking comment on rule changes for the emergency alert system.¹⁷⁷ In that proceeding, the Commission asked how the EAS system can be improved to be a more effective mechanism for warning the American public of an emergency.¹⁷⁸ The Commission specifically sought comment on IBOC DAB and how the EAS system should apply to additional digital multicast programming streams.¹⁷⁹ In November 2005, we revised our Part 11 EAS rules to apply to all radio stations operating in a digital mode and required such stations to air all national EAS messages on all audio streams, including subscription services. We found that all listeners should be informed of critical emergency information regardless of which audio stream they are listening to. We also clarified that if DAB stations choose to participate in state and local EAS activations, they must comply with Part 11. The Commission stated that such rules will become effective on December 31, 2006.¹⁸⁰

78. With regard to Section 73.1250, we note that a digital simulcast of an analog radio signal will, by virtue of the IBOC system design, be transmitting EAS information. Thus, listeners of the free digital simulcast will be able to access important emergency information per the existing requirements. As for multicast digital audio programming streams, we will apply the mandates of Section 73.1250 to all DAB audio streams in accordance with the revisions made to our Part 11 requirements. The public

¹⁷³ 19 FCC Rcd at 7519.

¹⁷⁴ SBAs Comments at 16.

¹⁷⁵ NPR Comments at 20. NAB states that EAS signals should be carried on the main audio channel portion of the digital audio stream; otherwise, listeners using IBOC receivers would receive EAS alerts only if they were in a weak signal (or otherwise reception impaired) area where the receiver had "blended to analog." NAB further states that it is appropriate in certain circumstances to require EAS functionality on certain types of secondary audio services. NAB Comments at 24.

¹⁷⁶ *Id.*

¹⁷⁷ See *Review of the Emergency Alert System*, 19 FCC Rcd 15775 (2004).

¹⁷⁸ The action originated, in part, from recommendations of the Media Security and Reliability Council (an FCC Advisory Committee) and the Partnership for Public Warning.

¹⁷⁹ See 19 FCC Rcd at 15786-87.

¹⁸⁰ See *Review of the Emergency Alert System*, 20 FCC Rcd 18625, 18638-18639, ¶¶ 36-39 (2005).

benefit of the Commission's emergency information requirements can only be realized if the rule is applied in this manner.

d. Radio Reading Services

79. Radio reading services for the blind ("RRS") have been one of the critical public interest services provided by radio stations and others across the country. Radio reading services are conducted by nonprofit organizations that read printed materials over electronic media for persons who are visually impaired. Radio reading services operate on FM radio subcarrier channels, usually under a leasing arrangement. Alternatively, RRS use cable television systems, a television station's second audio program ("SAP"), or the main channel of an AM or FM radio station.¹⁸¹ RRS represents the most frequent use of subcarrier channels on noncommercial stations.¹⁸² In 1983, the Commission held that public radio stations, subject to Section 399B of the Act, using subcarriers for remunerative activities must ensure that neither existing nor potential RRS are diminished in quality or quantity by the pursuit of commercial subcarrier undertakings.¹⁸³ The Commission held that a station using one of its subcarriers for commercial purposes would be obliged to accommodate RRS on its other subchannel to ensure the availability of alternative subchannel capacity for such services.¹⁸⁴ In the *DAB R&O*, we raised concerns about the level of interference to analog SCA services and its potential impact on RRS.¹⁸⁵ In the *DAB FNPRM*, we sought further comment on measures to protect established SCA services from interference.¹⁸⁶

80. Protecting Analog Radio Reading Services From Interference. According to iBiquity, previous field tests presented to the Commission and the NRSC demonstrate that, except in limited circumstances, DAB stations operating on second-adjacent channels will not cause harmful interference to analog radio reading services and other SCA services.¹⁸⁷ iBiquity asserts that since the scaling of the HDC codec to obtain additional capacity for multicasting or datacasting only impacts the audio of the main channel signal, and not the bandwidth occupancy, it cannot change the interference potential from the digital signal. Although using the extended hybrid mode increases the bandwidth occupancy, it extends inward toward the host signal rather than outward toward adjacent channel stations. Thus, iBiquity argues the use of the extended hybrid mode cannot increase interference to adjacent channel

¹⁸¹ *Amendment of Part 2 of the Rules and Regulations to Establish An Allocation in the 220-225 MHz Band for the Radio Reading Services*, 2 FCC Rcd 1146 (1987); see also 47 C.F.R. §§ 73.295 and 73.593.

¹⁸² *Radio Broadcast Services* 48 FR 26608, 26609 (1983). The Association of Radio Reading Services (now IAASIS) sought regulatory safeguards for existing radio reading services during the SCA market expansion in the late 1970s. See *Radio Reading Services and FM Subcarriers History and Technical Details*, at <http://reader.ku.edu/scatech.htm>.

¹⁸³ This public interest duty arises from Section 309 of the Act. See *Radio Broadcast Services*, 48 FR at 26614 (This requirement "derives from Section 309 of the Communications Act, as instructed by the specific goals for public broadcasting stations set forth in Section 399B.").

¹⁸⁴ See *id.*

¹⁸⁵ See 17 FCC Rcd at 19996.

¹⁸⁶ 19 FCC Rcd at 7516.

¹⁸⁷ See Letter from Michael Starling and David Andrews, NPR, to Marlene H. Dortch, Secretary, FCC, in MM Docket No. 99-325, (May 24, 2002), attaching *Further Report on Analog SCA Compatibility with iBiquity Digital's FM-IBOC System* (Mar. 2002); see also ¶ 44, *supra*, for an explanation of SCA services.

SCA signals. iBiquity states that although the extended hybrid mode could possibly increase the potential for interference to the host station's existing analog SCA services, the host station has the ability to address this situation.¹⁸⁸

81. In 2002, NPR commissioned a study to estimate the number of listeners potentially affected by additional interference from IBOC in the top 16 radio markets. The results show that, on average, additional interference from IBOC could affect 2.6 percent of eligible radio reading service receivers within an FM station's service area.¹⁸⁹ Harris points out that the NPR study used mathematically averaged receiver performance data to estimate interference potential in the top 16 radio markets.¹⁹⁰ Harris emphasizes that actual interference is not widespread, and that any possible degradation to radio reading services may be ameliorated, at least in part, through antenna alignment, substitution of a higher quality analog receiver, or carrying the programming on a digital SCA channel. Harris states that it will be testing the use of the extended hybrid digital system to provide for a digital transition of RRS. Harris recommends that the Commission adopt and enforce the revised FM RF mask proposed by iBiquity to further mitigate interference to SCA services, other digital services, and second adjacent channel analog FM services.¹⁹¹

82. These RR Services provide tremendous value and we wish to encourage their development in a digital environment. Based on the record, it does not appear that interference generated by IBOC is likely to cause significant harm to analog SCA reading services. Nevertheless, the Commission staff will act on complaints in the rare cases in which interference is shown to cause a problem. In the meantime, we encourage NPR and other parties to continue independent testing that will provide us with data on possible interference in particular circumstances in specific areas. We will defer considering Harris' recommendation on the RF mask until such test results are made available.

83. Digital Radio Reading Services. IAAIS urges the Commission to adopt rules requiring digital radio stations to carry digital RRS.¹⁹² IAAIS essentially argues that before any radio station offers income generating secondary audio streams, it should be required to first provide digital bandwidth for RRS.¹⁹³ IAAIS suggests that digital RRS will be best accommodated on the extended hybrid mode where the IBOC codec can easily process human speech.¹⁹⁴ iBiquity opposes IAAIS's request that the

¹⁸⁸ iBiquity Comments at 24-25. iBiquity states that if the host station is broadcasting important analog SCA-based services and cannot tolerate interference, it may elect not to transmit in DAB. The radio station also has the option to use scalability rather than the extended hybrid mode to support advanced services. iBiquity states that these decisions, however, should be left to the radio station. *Id.*

¹⁸⁹ See *Further Report on Analog SCA Compatibility with iBiquity Digital's FM-IBOC System*, attached to Comments of NPR and IAAIS," (filed May 24, 2002).

¹⁹⁰ Harris Comments at 8.

¹⁹¹ *Id.* The parameters of the FM emissions mask are found in Section 73.317 of the Commission's rules. 47 C.F.R. § 73.317.

¹⁹² IAAIS Comments at 2.

¹⁹³ *Id.* at 5.

¹⁹⁴ *Id.* at 4. IAAIS additionally states that the digital information sent to radios can be accessed only after authorization, thus protecting the reading service copyright exemption for use of the thousands of print materials read aloud.

Commission require digital radio stations to offer capacity for RRS.¹⁹⁵ NPR asserts that it is inappropriate to consider IAAIS's proposals at this stage of the DAB conversion process because more testing of digital RRS needs to be undertaken before regulations are considered.¹⁹⁶ We decline to impose a digital RRS requirement, or place conditions of the type suggested by IAAIS, on radio stations at this time. The Commission does not require radio stations to offer analog RRS and there is no substantial evidence in the record supporting enhanced RRS requirements for DAB. Moreover, we find that any type of RRS requirement would run counter to our flexible bandwidth policy. However, we reiterate our recognition of the value of such services and encourage their deployment in the digital environment. We also decline to adopt new policies addressing the interplay between remunerative services offered by NCEs and the availability of RRS, similar to the requirements in Section 73.593 of the Commission's rules, because the business and programming decisions of noncommercial stations are not yet known. This will be an issue addressed in a DAB periodic review in the future.

84. Receiver Requirements. IAAIS urges the Commission to require all digital receivers to include RRS capabilities. In addition, IAAIS asks the Commission to require tactile controls and other accessibility features to be built into every digital receiver.¹⁹⁷ iBiquity opposes new requirements for radio equipment manufacturers, arguing that it would impair the development of DAB.¹⁹⁸ It further asserts that the imposition of new and potentially expensive regulations on the design and features of digital receivers will create a strong disincentive for manufacturers to introduce digital devices, particularly if these accessibility features would require significant development work or redesign of radio receivers. According to iBiquity, these regulations would not only increase the costs of digital radio for consumers, but it also would slow the introduction of digital receivers and the IBOC transition.

85. Our goal is to see RRS services deployed. As noted below, voluntary industry efforts in this regard are continuing and show substantial promise. In addition, reception devices for analog RRS are available as stand-alone equipment for those with visual impairments. Such consumers may subscribe to RRS services and be able to obtain an RRS receiver if they so desire. Consumer electronics manufacturers, however, are under no obligation to build analog audio receivers with RRS capabilities nor should they be required to manufacture IBOC receivers with RRS functionalities. IAAIS's proposed mandates would make it more costly to produce DAB receivers, which in turn, would make it more expensive for consumers to purchase equipment. We note that there is no express statutory provision requiring such capabilities. IAAIS relies on Section 255 of the Telecommunications Act of 1996 as the basis for some of its requests.¹⁹⁹ This section codifies the responsibilities of telecommunications manufacturers and service providers to meet the needs of the disabled. This section, however, applies to entities regulated under Title II of the Act. It does not impose any requirements on broadcasters

¹⁹⁵ iBiquity Reply Comments at 5. iBiquity asserts that the radio reading services do not need a dedicated 20 or 24 kbps channel to match their current service. iBiquity indicates that high quality "voice" channels can be attained using 8 or 10 kbps codecs designed for those low bit rates. In some cases, those codecs can support voiceover programming with background music. Although this class of codec is not designed for higher quality music, iBiquity asserts that high quality music programming would be beyond the mission of the reading service stations. iBiquity states that it will identify a suitable solution that can function at 12 kbps. *Id.*

¹⁹⁶ NPR Reply Comments at 10.

¹⁹⁷ *Id.* at 3-4.

¹⁹⁸ iBiquity Reply Comments at 7-9.

¹⁹⁹ *See* 47 U.S.C. § 255.

regulated under Title III of the Act or on manufacturers of broadcast -related equipment.²⁰⁰ Moreover, we recognize that any regulation of broadcast reception equipment is subject to the limitations identified in recent court precedent.²⁰¹ Although we will not require RRS capability at this time, we do not rule out the possibility of revisiting the issue in the future should the need arise.

86. Voluntary Industry Efforts. iBiquity states that it has been working with the IAAIS to ensure that radio reading services are accommodated as radio stations convert to digital.²⁰² NPR states that it is exploring the use of the extended hybrid spectrum for the digital transmission of radio reading services.²⁰³ Pursuant to a Corporation for Public Broadcasting grant, NPR conducted full perceptual testing of the latest low- and very low-bit rate digital audio coders that may be used for radio reading services audio.²⁰⁴ NPR plans additional tests to measure the coverage capabilities of extended hybrid operation. With predictions that the prevalence of visual disabilities will increase markedly during the next 20 years as the US population ages, NPR expects NCE stations to continue leading the way in offering assisted living services, including radio reading services for the “print-impaired.”²⁰⁵ We are encouraged by the voluntary steps taken by iBiquity and NPR, so far. We urge these parties to work with IAAIS to forge a resolution that would benefit all parties involved.

2. Operating Hours

87. In the *DAB FNPRM*, we asked how the conversion to DAB would affect the “minimum hours of operation” requirement in Sections 73.1740 and 73.561²⁰⁶ Under the relevant rules, AM and FM commercial stations are required to operate two-thirds of the total hours they are authorized to operate between 6 a.m. and 6 p.m. local time and two-thirds of the total hours they are authorized to operate between 6 p.m. and midnight, local time, each day of the week except Sunday. NCE FM stations are required to operate at least 36 hours per week, consisting of 5 hours of operation per day on at least 6 days per week.²⁰⁷ The SBAs state that multicasting changes the way radio stations operate. It states, for

²⁰⁰ See *Report and Order and Further Notice of Inquiry*, 16 FCC Rcd 6417 (1999).

²⁰¹ See *American Library Ass'n v. FCC*, 406 F.3d 689 (D.C. Cir. 2005) (holding that the Commission lacked authority to impose broadcast content redistribution rules on equipment manufacturers using ancillary jurisdiction because the equipment at issue was not subject to the Commission's subject matter jurisdiction over wire and radio communications).

²⁰² iBiquity notes that it is developing a conditional access solution for the IBOC system to ensure that reading services are able to maintain their copyright exemption. iBiquity is supplying software, hardware and laboratory facilities to facilitate additional testing to determine the appropriate low bit rate codec that can be used for reading services. iBiquity states that even though it has engineered the HDC codec to function at bit rates low enough to accommodate reading services, it has consistently assured the reading services that the IBOC system will operate compatibly with any low bit rate codec the reading services select for inclusion in reading service devices. iBiquity Reply Comments at 6-9.

²⁰³ NPR Comments at 20-21.

²⁰⁴ See Letter from Michael Riksen, NPR, to Marlene Dortch, Secretary, FCC, in MM Docket No. 99-325, (October 20, 2004), attaching *Report on Perceptual Testing of Coders at Low- and Very Low-Bit Rates*.

²⁰⁵ NPR Comments at 6-7.

²⁰⁶ 19 FCC Rcd at 7520.

²⁰⁷ See 47 C.F.R. §§ 73.1740 (commercial stations) and 73.561 (NCE FM stations).

example, that the Commission may want to support multicast streams, which do not operate two-thirds of the total hours they are authorized to operate between 6 a.m. and 6 p.m. and two-thirds of the total hours they are authorized to operate between 6 p.m. and midnight, in order to promote more digital multicasting on the air.²⁰⁸ We find merit in the SBAs arguments and will permit radio stations to set their own schedule for DAB hybrid mode broadcasts as well as additional multicast streams at this stage of the DAB conversion process. We note that multicasting is at the discretion of the licensee stations; therefore they should be allowed to schedule separate streams as they wish. This flexible policy will encourage more radio stations to experiment with new programming services that interest the public. We will revisit this issue, if necessary, in future periodic reviews.

3. Territorial Exclusivity

88. In the *DAB FNPRM*, we sought comment on the application of Sections 73.132 and 73.232, the territorial exclusivity rules for AM and FM stations.²⁰⁹ The SBAs states that changes will not be necessary to these requirements due to the advent of DAB.²¹⁰ With regard to these requirements, we note that the rules apply to the licensees themselves and not the content being broadcast. Due to the expansive language contained in the current requirements, and the pro-competition policies reflected therein, the territorial exclusivity rules apply to all free digital audio programming streams. Any novel issues that may arise from our decision here will be addressed on a case-by-case basis.

E. Technical Rules

1. AM Nighttime Operation

89. In the *DAB R&O*, we declined to authorize nighttime IBOC operation by AM stations because there were insufficient test results in the record to support that action. In 2004, NAB submitted its analysis of AM nighttime IBOC tests conducted by iBiquity and recommended that the Commission “extend the current interim authorization for IBOC service to permit nighttime AM broadcasts.”²¹¹ On April 14, 2004, the Commission issued a Public Notice seeking comments on the NAB recommendations.²¹² Most of the comments received from broadcasters, such as the SBAs, support NAB’s recommendation that the Commission extend current interim authorizations of IBOC service to

²⁰⁸ SBAs Comments at 17.

²⁰⁹ See 47 C.F.R. §§ 73.132, 73.232. Under these rules, no licensee of an AM or FM broadcast station shall have any arrangement with a network organization that prevents or hinders another station serving substantially the same area from broadcasting the network’s programs not taken by the former station, or which prevents or hinders another station serving a substantially different area from broadcasting any program of the network organization. This section does not prohibit arrangements under which the station is granted first call within its primary service area upon the network’s programs.

²¹⁰ See SBAs Comments at 17.

²¹¹ See NAB *Ex Parte* (filed March 5, 2004).

²¹² See Public Notice, *Comment Sought on Use of Digital AM Transmissions During Nighttime Hours*, 19 FCC Rcd 6869 (MB 2004). Questions concerning AM nighttime operations were also raised in the *DAB FNPRM*. See 19 FCC Rcd at 7522-23.

nighttime AM broadcasts.²¹³ Several other commenters, however, object to nighttime AM IBOC operations citing the potential for increased interference due to nighttime AM skywave propagation.²¹⁴

90. On balance, we find that the benefits of full-time IBOC operation by AM stations outweigh the slightly increased risk of interference. The studies performed by iBiquity and analyzed by NAB indicate that the greatest potential for interference occurs at the extremities of the nighttime coverage area of the desired station, primarily at locations where substantial interference from existing analog operations is already present. We do not anticipate increased interference within AM stations' core service areas. Furthermore, the interference management procedures established in the *DAB R&O* provide a mechanism whereby particular instances of interference can be readily resolved. Therefore, we will extend the permissible hours of IBOC interim operation for AM stations to include all hours during which a given station is currently authorized for analog operation, subject to the notification procedures established in the *DAB R&O*. In order to avoid unnecessary and repetitious notifications, we will not require those AM stations which have already notified the Commission of the commencement of daytime IBOC operation to file any further notification; authority for nighttime IBOC operation is automatically conferred upon those stations by the action taken herein. AM stations which file IBOC notifications with the Commission after the effective date of this *Second Report and Order* will be presumed to have commenced IBOC operation for all hours of currently authorized analog operation, unless the notification states otherwise. We note that many Class D AM stations are authorized for nighttime secondary operation²¹⁵ with extremely low operating power, in some cases as low as one watt. In some cases, nighttime IBOC power may be so low as to render IBOC operation technically infeasible. We remind licensees that nighttime secondary analog operation by Class D AM stations does not carry any minimum operating schedule requirement, and that interim IBOC operation is entirely voluntary for all stations at the present time.

2. Dual Antennas

91. In the *DAB R&O*, we limited interim IBOC implementation to the systems that the NRSC had tested. With respect to FM antennas, the NRSC had tested a configuration in which the FM analog and digital signals were combined and fed into the same antenna. Consequently, FM stations implementing IBOC were initially required to use the single-antenna approach. Subsequent testing by NAB, however, showed that separate antennas could be used for the analog and digital FM signals within specified limits. NAB stated that the dual antenna approach is less costly for many FM stations, and may therefore encourage IBOC development. By *Public Notice*, we authorized FM stations to use dual antennas for IBOC pursuant to routine special temporary authorization (STA) procedures.²¹⁶ We raised the issue of dual antennas for further comment in the *DAB FNPRM*.²¹⁷ Commenters were unanimous in supporting the expansion of IBOC notification procedures to include dual antenna use, without the

²¹³ SBA Comments [in response to the AM Nighttime Public Notice] at 17-18.

²¹⁴ See, e.g., REC Networks Comments, Amherst Alliance Comments, Gerry Bishop Comments, David L. Hershberger Comments, Donald E. Mussell, Jr. Comments, Paul Dean Ford, P.E. Comments.

²¹⁵ Nighttime secondary operation for an AM station is operation with power less than 250 watts and antenna efficiency less than 241 millivolts per meter at one kilometer for one kilowatt input. See 47 C.F.R. §§ 73.21(a)(3) and 73.182(a)(4).

²¹⁶ See Public Notice, *Use of Separate Antennas to Initiate Digital FM Transmissions Approved*, 19 FCC Rcd 4722 (MB 2004).

²¹⁷ 19 FCC Rcd at 7525-26.

necessity of an STA request. We agree and accordingly authorize FM stations to implement IBOC without prior authority using separate antennas conforming to the criteria set forth in the *Dual Antennas Public Notice*. Stations must notify the Commission within ten days of the commencement of IBOC operations, consistent with the digital notification procedures already in place. In addition to the information required of all licensees initiating digital operations,²¹⁸ FM licensees using dual antennas shall provide the following information: (1) geographic coordinates, elevation data, and license file number for the auxiliary antenna to be employed for digital transmissions; and (2) for systems employing interleaved antenna bays, a certification that adequate filtering and/or isolation equipment has been installed to prevent spurious emissions in excess of the limits specified in 47 C.F.R. § 73.317.

3. FM Translator and Booster Stations

92. An FM translator station is a station operated for the purpose of retransmitting the signals of an FM station or another FM translator station without significantly altering any characteristics of the incoming signal other than its frequency and amplitude.²¹⁹ An FM booster station is a station operated for the purpose of retransmitting the signals of an FM station by amplifying and reradiating such signals without significantly altering any characteristics of the incoming signal other than its amplitude. In the *DAB FNPRM*, we solicited comment on digital issues concerning FM translators and boosters.²²⁰ Commenters discussed the following seven issues: (1) conversion of FM translator and booster stations to digital operation; (2) permissible uses of digital translator and booster stations; (3) use of FM translators and boosters to rebroadcast multiplexed audio streams; (4) use of dual output digital translators; (5) indefinite continuation of analog FM translator and booster station operation; (6) modifications of the currently permitted signal delivery methods for FM translators and boosters; and (7) requirements related to the simultaneous digital conversion of licensed main and FM translators and boosters. The latter issue garnered the most attention from interested parties, where most agreed that the Commission should not require simultaneous digital conversion of the primary station and its FM translators and boosters.²²¹

93. We will permit the use of digital translator and booster stations during interim DAB operations. However, we believe that a stronger record is necessary to address the complicated issues involved in the authorization of these facilities before adopting permanent rules for digital translator and booster stations.²²² We will not require the simultaneous conversion of the primary station and its FM

²¹⁸ A sample digital notification letter for FM stations using dual antennas is available at <http://www.fcc.gov/mb/audio/digital/index.html>.

²¹⁹ See generally 47 C.F.R. § 74.1231.

²²⁰ 19 FCC Rcd at 7526.

²²¹ Harris Corporation Comments at 5; Western Inspirational Broadcasters, Inc. Comments at 2; Pataphysical Broadcasting Foundation, Inc. Comments at 4; NPR Comments at 28; and NAB Reply Comments at 35.

²²² Pursuant to experimental authorization issued by the Commission, KCSN-FM and NPR conducted field tests in the Los Angeles metropolitan area in December 2004 to evaluate KCSN-FM's signal coverage via mobile reception. NPR and the station attempted to evaluate IBOC DAB system coverage in terms of received signal level. The field tests evaluated reception availability and compared actual data to predictions using a computerized propagation model. NPR chose KCSN-FM to conduct these tests because the station operates the nation's first IBOC DAB booster which presents unique challenges for technical performance. The testing indicated that the booster generally increased the availability of KCSN-FM's digital signal, but that there still coverage issues in certain service areas. See Kean & Evans, *Tomorrow Radio Signal Coverage Report for Hybrid IBOC DAB Booster of KCSN-FM* (California State University Northridge), July 2005.

translators and boosters. We do not want to overburden radio stations with more technical requirements than necessary as they commence digital operations.

4. TV Channel 6

94. Beginning approximately 20 years ago, NCE FM stations operating on channels 201 through 220 were required to protect channel 6 TV stations from adjacent channel interference based on the performance characteristics of analog TV receivers. In the *DAB FNPRM*, we sought comment on what, if any, rule changes are necessary to protect channel 6 TV stations from interference from digital radio operations, and if new rules are needed to protect channel 6 DTV stations.²²³ There are currently 58 licensed analog channel 6 full-service TV stations and 6 licensed analog channel 6 Class A TV stations. There are currently no licensed or authorized channel 6 digital TV or digital Class A TV stations.

95. NPR and Paul Delaney assert that due to the low signal strength of the IBOC digital signal, there is minimal potential for increased NCE FM interference to analog channel 6 TV stations.²²⁴ Additionally, both question the continued applicability of the existing TV channel 6 protection requirements in light of the transition to DTV where there will be few, if any, channel 6 TV stations, and where the use of digital receivers will provide increased immunity to adjacent channel FM interference. REC Networks concurs with NPR concerning the re-examination of the current NCE FM channel 6 protection requirements, but, it suggests that perhaps some protection of both analog and digital channel 6 TV stations may be appropriate for NCE FM IBOC hybrid operations.²²⁵

96. We agree that the very low increase in power resulting from the addition of the IBOC digital signal likely will not result in any increased interference to analog channel 6 TV stations from NCE FM stations operating on FM channels 201-220, and that the DTV transition may render this issue moot. Therefore, no changes in Section 73.525 governing TV channel 6 protection are necessary at this time.²²⁶ The Commission will, however, initiate a separate proceeding to evaluate the existing NCE FM channel 6 TV protection requirements, and seek public input on their continued viability, following the completion of the DTV transition, a review of the immunity characteristics of DTV receivers, and the widespread deployment of DAB transmitting facilities.

5. Super-powered and Short-spaced Stations

97. Although this issue was not raised in the *DAB FNPRM*, Livingston Radio Company and Taxi Productions Inc. (“Livingston”) urge the Commission to restrict the digital power levels for super-powered FM stations.²²⁷ Livingston asserts that super-powered stations cause more interference than stations that comply with class limits. Therefore, according to Livingston, IBOC operations by super-powered stations must be limited in order to avoid excessive interference to nearby stations on adjacent

²²³ 19 FCC Rcd at 7525.

²²⁴ NPR Comments at 24; Paul Delaney Comments at 5.

²²⁵ REC Networks Reply Comments at 4.

²²⁶ See 47 C.F.R. § 73.525.

²²⁷ A super-powered FM station is a station for which the power/antenna height combination exceeds the class limit set forth in 47 C.F.R. §73.211. Such stations were authorized before the current class limits were adopted, and have “grandfathered” status.

channels. Livingston urges the Commission “not to extend superpower privileges into the IBOC digital environment,” and suggests determining digital signal power based on class maximum facilities.²²⁸ Similarly, Press Communications, LLC (“Press”) suggests that the Commission adopt limits on IBOC operation by short-spaced FM stations.²²⁹

98. Several commenters disagree with Livingston’s proposal. WPNT, Inc., for example, states that ending the grandfathered status of super-powered stations would simply benefit some broadcasters at the expense of others.²³⁰ Cox Radio, Inc. and Bonneville International Corporation assert that termination of super-power status is outside the scope of this proceeding, and that the Commission would violate the Administrative Procedures Act if it were to adopt rules without first seeking comment from the public. We agree that the consideration of super-powered status is beyond the scope of this proceeding, and, therefore, decline to adopt special restrictions on digital operations by super-powered stations here. In any event, we do not see a compelling reason to restrict digital operations by short-spaced FM stations, as Press suggests. We will continue to evaluate any complaints of possible IBOC interference on a case-by-case basis as we stated in the *DAB R & O*.

6. Expansion of IBOC Notification Procedures

99. We are hereby changing the procedures for approving IBOC operations to allow broadcasters to take advantage of technical improvements as they develop, rather than waiting for Commission action and rules to do so. In the *DAB R&O*, we permitted radio stations to implement IBOC operations without prior authority, provided that the IBOC configurations were substantially the same as those tested by the NRSC.²³¹ The IBOC DAB service is developing rapidly, with new modes of operation such as multicasting, datacasting, and dual antenna operation all commencing after the *DAB R&O* was adopted. As test results have been added to the record in this proceeding, the staff has sought comment and subsequently issued Public Notices authorizing IBOC operations that differ from the configurations originally tested by the NRSC. Stations wishing to implement multicasting or dual antenna operations have, however, been required to request prior authority to operate from the Commission. We believe that DAB will continue to evolve rapidly in tandem with modifications by iBiquity to the IBOC system. In the interests of efficiency, we delegate to the Media Bureau the authority to issue Public Notices, seek public input, and review the range of permissible IBOC operations as circumstances warrant. After appropriate notice and comment, the staff is authorized to act on delegated authority on implementing new IBOC notification procedures to cover new IBOC configurations. Expansion of the notification procedures will allow stations to implement digital operations without unnecessary delay.

7. Receivers

100. According to iBiquity, its systems provide extensibility in that the first-generation receivers are designed to operate both in the interim hybrid and in all-digital modes.²³² In the *DAB R&O*,

²²⁸ Livingston Comments at 1.

²²⁹ Press Communications Comments at 4.

²³⁰ WPNT Comments at 5.

²³¹ See *DAB R&O*, 17 FCC Rcd at 20004; see also Public Notice, *IBOC Notification Procedures Effective Immediately*, 18 FCC Rcd 5029 (MB 2003).

²³² See iBiquity Comments at 11.

we stated that this is an area in which definitive evaluations can only be undertaken after we resolve a number of all-digital issues, such as issues relating to signal architecture.²³³ Recognizing the flexibility of the IBOC model, and the possibility of new services, we stated that we will address receiver issues in more detail at a later date. We sought comment on whether the issues raised, and the policies proposed, in the *DAB FNPRM* require us to address receiver issues at this stage of DAB development. We asked, for example, how the adoption of a high quality audio requirement would affect receiver manufacturers.²³⁴ As noted above, we do not establish a high quality audio requirement. The commenters did not address the issue of receiver performance standards. The Commission will address DAB receiver issues, if necessary, in the future.

8. Patents

101. The iBiquity IBOC DAB system uses patented technologies. This requires IBOC licensees to pay licensing fees to the patent holders. The Commission stated in the *DAB R&O* that during the interim DAB operation period, we will monitor the behavior of the patent holders to determine if the required licensing agreements are reasonable and non-discriminatory and that we will seek additional public comment on this matter as required.²³⁵ In the *DAB FNPRM*, we sought further comment on iBiquity's conduct regarding licensing agreements in the interim DAB operating period.²³⁶ Although iBiquity has pledged to adhere to the Commission's patent policy,²³⁷ certain parties commented that iBiquity might resort to unreasonable and discriminatory licensing fees once DAB receivers have become widely available.²³⁸ We find that iBiquity has abided by the Commission's patent policy up to this point in the DAB conversion process. Therefore, we do not believe that it is appropriate at this time for us to adopt regulations governing IBOC licensing and usage fees. If we receive information that suggests we need to explore this issue further, especially in connection with the adoption of the NRSC-5 standard, we will take appropriate action at that time.

9. Other Technical Issues

102. In the *DAB FNPRM*, we raised for comment other technical issues relevant to the discussion of DAB operations, including (1) AM and FM definitional issues; (2) interference; (3) AM stereo; (4) operating power; and (5) predicted coverage for digital signals.²³⁹ We find that these issues have been sufficiently addressed in the *DAB R&O* to permit station authorization on an interim basis. Further evaluation of these issues is best undertaken in conjunction with the NRSC-5 standards review.

²³³ See 17 FCC Rcd at 20003.

²³⁴ 19 FCC Rcd at 7517.

²³⁵ 17 FCC Rcd at 20002.

²³⁶ 19 FCC Rcd at 7527.

²³⁷ iBiquity Comments at 25; see also *Revised Patent Procedures of the Federal Communications Commission*, 3 FCC 2d 26 (1966).

²³⁸ Douglas E. Smith Comments at 5; Radio Kings Bay, Incorporated Comments at 5; and Mohnkern Electronics, Inc. Reply Comments at 1.

²³⁹ See 19 FCC Rcd at 7521-26.

IV. INTERNATIONAL ISSUES

103. In the *DAB R&O*, the Commission stated that during the period of interim IBOC operation, all relevant international agreements will be reviewed and any necessary modifications will be addressed at a later date.²⁴⁰ In the *DAB NOI*, we noted that these matters are being informally addressed by the Commission's International Bureau ("IB") and asked what IB should focus on to expedite the rollout of DAB in the United States.²⁴¹

104. According to iBiquity, the International Bureau has appropriately analyzed the ability of the United States to implement IBOC consistent with the United States' treaty obligations to Canada and Mexico. The International Bureau also has held informal discussions with both the Canadian and Mexican governments concerning implementation of IBOC in the United States. iBiquity states that it supports these efforts and submits that the current process is adequately addressing the international requirements for implementing IBOC.²⁴²

105. One commenter, Barry McLarnon, states that the current broadcast co-channel allocation rules are no longer adequate to prevent objectionable interference from operating hybrid AM IBOC radio stations.²⁴³ He argues that AM IBOC is not permissible under the terms of the US-Canada bilateral agreement on AM broadcasting. Specifically, he asserts that AM IBOC interference is in contravention of the article in that agreement which states: "Classes of emission other than A3E, for instance to accommodate stereophonic systems, could also be used on condition that the energy level outside the necessary bandwidth does not exceed that normally expected in A3E..."²⁴⁴ McLarnon asserts that the "necessary bandwidth" in this case is defined as 10 kHz and the hybrid AM IBOC system increases the occupied bandwidth of an AM station to approximately 28 kHz. He further asserts that the increased power is outside the necessary bandwidth of the AM signal and exceeds that normally expected in A3E.²⁴⁵ He also states that identical wording is used in the agreement between the US and Mexico, and therefore, that agreement is also violated by any usage of the hybrid AM IBOC system.²⁴⁶

²⁴⁰ See *DAB R&O*, 17 FCC Rcd at 20006, n.73.

²⁴¹ 19 FCC Rcd at 7532. The Commission has rules pertaining to FM broadcasting and international agreements relevant to the service. Specifically, Section 73.207 states that under the Canada-United States FM Broadcasting Agreement, domestic U.S. allotments and assignments within 320 kilometers (199 miles) of the common border must be separated from Canadian allotments and assignments by not less than the distances provided in the Commission's rules. It also states that under the 1992 Mexico-United States FM Broadcasting Agreement, domestic U.S. assignments or allotments within 320 kilometers (199 miles) of the common border must be separated from Mexican assignments or allotments by not less than the distances stated in the rule. See 47 C.F.R. § 73.207.

²⁴² iBiquity Comments at 39.

²⁴³ See Barry McLarnon Reply Comments at 3-4.

²⁴⁴ See Section 4.2 of the *Agreement Between the Government of the United States of America and the Government of Canada Relating to the AM Broadcasting Service in the Medium Frequency Band*, 1984.

²⁴⁵ See Barry McLarnon Comments at 3. According to McLarnon, the hybrid IBOC AM system creates two new "stations" in the first adjacent channels, each with a total power of -16 dBc. He states that for a 50 kW station, each would therefore be 1250 watts and current allocation rules provide protection of +6 dB D/U for first adjacent channels. According to McLarnon, if a station currently at +6 dB D/U adds IBOC, it creates a new source of co-channel interference to first adjacent channels at +22dB D/U. He believes that this is significant since it is 4 dB more interference power than is permitted by the Commission's allocation rules for co-channel stations. McLarnon

106. All matters pertaining to the relevant international agreements, including the above contentions, are being addressed in the appropriate bilateral and multilateral fora. While we are optimistic that we will be able to resolve any outstanding issues with Canada and Mexico or other countries, these issues remain subject to ongoing negotiations. Therefore, until the negotiations are completed, we advise the radio industry that the following condition will be applied to stations operating with IBOC DAB:

Operation with facilities specified herein is subject to modification, suspension or termination without right to hearing, as may be necessary to carry out the applicable provisions of the ITU Radio Regulations, the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2 (Rio de Janeiro, 1981), or any bilateral or multilateral agreement(s) of the United States.

V. ORDER ON RECONSIDERATION

107. The Commission has before it three Petitions for Reconsideration of the *DAB R&O*²⁴⁷ in which the Commission selected IBOC as the sole digital technology for the terrestrial radio broadcasting service.²⁴⁸ For the reasons discussed below, we deny the petitions of the Amherst Alliance and other parties (collectively "Amherst") and of John Pavlica, Jr. We dismiss the petition of Glen Clark and Associates "Clark" as moot.²⁴⁹

108. The Amherst Alliance has filed the following pleadings with the Commission: (1) a Petition for Reconsideration of the *DAB R&O* (filed October 25, 2002); (2) a Petition for Rulemaking (filed April 17, 2002); and (3) a request for Environmental Impact Statement (filed July 18, 2002). Specifically, Amherst claims that the Commission failed to act on a request filed by it and other parties for an environmental impact statement concerning the possible effects of IBOC, and on a petition by it and other parties for a new rulemaking on digital radio.²⁵⁰ Amherst also claims that the Commission

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further states that the majority of existing allocations were created when first adjacent protection was only 0 dB D/U, and this figure still applies to the Canada-US bilateral agreement on AM broadcasting.

²⁴⁶ See Barry McLarnon Reply Comments at 3-4.

²⁴⁷ 17 FCC Rcd 19990.

²⁴⁸ More than three years ago, the Commission sought comment on an NRSC report documenting extensive laboratory and field tests of the FM IBOC system. iBiquity was the only developer to submit digital systems to the NRSC for evaluation. The NRSC FM report recommended that the Commission adopt iBiquity's FM system for DAB. On April 15, 2002, the NRSC filed its evaluation of iBiquity's AM hybrid system, recommending that the Commission adopt the system for daytime use pending further study under nighttime propagation conditions. Broadcast industry commenters, including small and large radio station owners, equipment manufacturers, and receiver manufacturers expressed strong support for iBiquity's AM and FM systems, and both systems were subsequently adopted for interim use on a voluntary basis in the *DAB R&O*.

²⁴⁹ The Clark petition challenges the *DAB R&O*'s limitation of IBOC operation by AM stations to daytime hours pending further study of nighttime operation. Clark offers a set of criteria to identify AM stations that could implement IBOC immediately with minimal risk of interference. Given our approval of AM nighttime DAB operations in this *Second Report and Order, supra*, we find Clark's arguments moot and will dismiss his Petition.

²⁵⁰ Amherst requests that the Commission establish a testing program for the Eureka-147 digital radio system used in Canada and Europe and also proposes that the Commission conduct additional IBOC testing. Several

should not have adopted IBOC until proceedings on blanketing interference and human exposure to electromagnetic radiation were resolved. NAB opposes Amherst stating that it “presents no basis for reconsideration of the *DAB R&O* and virtually no substance or support for its complaints.”²⁵¹ iBiquity states that Amherst offers no new information justifying any changes in the policies adopted by the Commission in the *DAB R&O* and is merely an attempt to delay IBOC.²⁵² We agree with NAB and iBiquity that Amherst has not presented any arguments that were not already addressed and disposed of by the Commission in the *DAB R&O*. Moreover, we find that Amherst has not provided new evidence of the type necessary for the Commission to delay the introduction of IBOC and the offering of DAB to the public. Therefore, its Petitions for Reconsideration and Rulemaking are denied.

109. We also affirm our conclusion in the *DAB R&O* that the initiation of interim IBOC operations is categorically excluded from environmental processing and that the procedure requiring licensees to certify compliance with existing RF exposure standards satisfies any environmental requirements. Accordingly, preparation of an environmental impact statement is unnecessary in the context of IBOC operations.²⁵³

110. John Pavlica, Jr. petition. Pavlica states that the iBiquity IBOC systems cause “substantial and nearly continuous interference” to existing AM and FM stations. According to Pavlica, the Commission should consider options such as better receiver technology before adopting any digital radio system. Pavlica suggests a one-year period for evaluating alternatives to IBOC. Pavlica also expresses concern about iBiquity’s status as the sole source of proprietary IBOC technology. All of Pavlica’s contentions were thoroughly addressed in the *DAB R&O*. Beyond the simple assertion that IBOC causes extensive interference, the petition offers no technical support for this characterization of IBOC operation. In sharp contrast, the NRSC spent several years crafting IBOC tests, the results of which are documented in detailed comments. The comparison of alternatives for introducing digital technology to the AM and FM bands that Pavlica calls for began with the *DAB NPRM* in 1999, and concluded with the selection of IBOC in 2002 based on a substantial record. It is well established that the Commission does not grant reconsideration for the purpose of debating matters on which it has already deliberated.²⁵⁴

111. Other Pleadings. In two letters, Amherst suggests that IBOC operations may cause interference to the AMBER²⁵⁵ alert system.²⁵⁶ In participating states, AMBER alerts are broadcast as part

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individuals filed comments supporting Amherst’s petition. See, e.g., John Anderson Comments at 1; Frederick R. Vobbe Comments at 1; and Kyle Drake Comments at 1.

²⁵¹ Opposition of the NAB of the Petition for Reconsideration of the Amherst Alliance and 33 Others at 1.

²⁵² Opposition and Comments of iBiquity Digital Corporation at 3 and 5.

²⁵³ We reject the argument that the denial of Amherst’s Request for Environmental Impact Statement was not “officially” denied because the denial was not listed in the ordering clause of the *DAB R&O*. Where the text of an order is clear, the omission of the action from the ordering clause is not determinative.

²⁵⁴ See *WWIZ, Inc.*, 37 FCC 685 (1965), *aff’d sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965).

²⁵⁵ America’s Missing: Broadcast Emergency Response. AMBER alerts notify the public in cases of possible child abduction.

of the Emergency Alert System. EAS messages are transmitted via the main analog radio signal. Amherst offers no support for the allegation. Test results presented in the NRSC AM and FM reports demonstrate that analog radio signals will not be subject to interference that would impair EAS transmissions. Any interference from IBOC is likely to occur at the fringes of a station's normally protected coverage area, where the analog signal quality is poor. In such circumstances, analog listeners are likely to tune to another radio station with a stronger signal, particularly in the event of an emergency. Amherst provides no countervailing evidence that IBOC will interfere with AMBER alerts, and no reason to delay IBOC implementation.

112. In a petition for rulemaking filed January 24, 2003, Kahn Communications, Inc. requests that the Commission initiate a new proceeding to revise procedures for evaluating new technology. Kahn also requests that the Commission stay the *DAB R&O* and reevaluate its adoption of IBOC in light of any resulting policy revisions. To the extent that Kahn's filing is a petition for reconsideration of the *DAB R&O*, the petition is untimely. Kahn provides no justification for failing to file timely comments in this proceeding. Moreover, we do not find that the public interest would be served by further delay of the long-contemplated digital conversion of the terrestrial radio service. Therefore, we will not consider Kahn's untimely comments in this proceeding.

VI. SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

113. Preserving the existing system of free over-the-air terrestrial radio service as radio stations convert to digital broadcasting remains important. In order to accomplish this goal, we seek comment on how to ensure that the amount of subscription-based radio services is limited. For example, should we implement a requirement which states that no more than 20 to 25 percent of a station's digital capacity be devoted to subscription services?²⁵⁷ This estimate is based on current analog FM SCA usage and the scalability of the digital stream in 1 kbps or smaller increments. How should any limitation on digital subscription services be specified--in terms of occupied bandwidth, or in terms of total digital capacity?²⁵⁸ Would limiting digital subscription services to 20 to 25 percent be sufficient to ensure that the free over-the-air radio service is not compromised? Should there be different rules for NCE radio stations? What kinds of subscription services do radio stations, both NCE and commercial, plan to offer once they commence digital broadcasting?²⁵⁹ Would any subscription services be broadcast services? With regard to DTV, Congress explicitly authorized the Commission to permit digital television stations to offer ancillary and supplementary subscription-based services.²⁶⁰ Given that there is no similar

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²⁵⁶ See January 25, 2003 and May 12, 2003 letters from the Amherst Alliance. Although the letters raise a new issue not addressed in Amherst's timely filed Petition for Reconsideration, we believe it is important to address any issues which allegedly affect public safety.

²⁵⁷ In the digital television context, we have not imposed a specific cap on the amount of subscription services that could be offered. Rather, we have permitted television stations to use their digital capacity for any purpose as long as they transmit at least one over-the-air video program signal at no direct charge to viewers. See 47 C.F.R. § 73.624.

²⁵⁸ See iBiquity comments at 8.

²⁵⁹ For example, iBiquity states that it will continue to develop new applications for DAB including store and replay, on-demand services, and a "buy button." See HD Radio: What is HD Radio, <http://www.ibiquity.com/hdradio/whatishdradio.htm> iBiquity has not made it clear whether these services would be offered on a subscription basis.

²⁶⁰ See 47 U.S.C. § 336(a)(2) ("If the Commission determines to issue additional licenses for advanced television services, the Commission. . . shall adopt regulations that allow the holders of such licenses to offer such ancillary

statutory provision for DAB, we will proceed cautiously to ensure that free over-the-air service is preserved. We note that radio stations are permitted to offer subscription services during the pendency of this *Second Further Notice of Proposed Rulemaking*, but are put on notice that we will adopt new rules in this area that may affect such offerings.

114. In the *DAB FNPRM*, we sought comment on whether we can and should impose spectrum fees for that portion of digital bandwidth used by broadcasters to provide subscription services.²⁶¹ Given that we are further considering the issues surrounding the provision of subscription services, we now seek additional input from the public on the fee issue. With regard to DTV, Congress authorized the Commission to impose a fee on certain ancillary or supplementary services.²⁶² The Commission subsequently adopted a rule requiring DTV licensees to pay a fee of five percent of the gross revenues derived from all ancillary or supplemental services that are feeable, as defined by the rules.²⁶³ Given that no express statutory authority exists in the DAB context, do we have the authority to impose a five percent or other fee based on the Commission's jurisdiction ancillary to its regulation of broadcasting? Can we, therefore, impose a similar fee for subscription digital radio? What limits should we place on subscription services, particularly if we are unable to impose a fee? Should broadcasters have to provide a free digital stream at least equal in quality to the best subscription service if they decide to provide a subscription service?

115. In the *Second Report and Order*, we rule that several statutory requirements and Commission regulations would apply to all free over-the-air digital programming streams.²⁶⁴ Here, we seek comment on whether those same requirements, as outlined in Section D.1, above, should apply to subscription services. We note that the Commission has applied certain public interest obligations to other subscription services, including cable television and satellite radio,²⁶⁵ pursuant to our authority to regulate subscription services ancillary to the regulation of broadcasting.²⁶⁶ We tentatively conclude that we should apply the requirements outlined above to subscription services offered by terrestrial radio stations, and that we have the statutory authority to do so. We seek comment on this tentative conclusion.

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or supplementary services on designated frequencies as may be consistent with the public interest, convenience, and necessity.); *see also* 47 U.S.C. § 336(b)(2) (“In prescribing the regulations required by subsection(a), the Commission shall. . . limit the broadcasting of ancillary or supplementary services on designated frequencies so as to avoid derogation of any advanced television services, including high definition television broadcasts, that the Commission may require using such frequencies[.]”

²⁶¹ *See* 19 FCC Rcd at 7516.

²⁶² *See* 47 U.S.C. §336(e).

²⁶³ 47 C.F.R. §73.624(g).

²⁶⁴ *See* ¶ 65, *supra*.

²⁶⁵ *See e.g., SDARS R&O*, 12 FCC Rcd at 5791-92; *Regulations Relative to Community Antenna Television Systems*, 20 FCC 2d 201 (1969) (political cablecasting and sponsorship identification rules).

²⁶⁶ *See Midwest Video*, 406 U.S. 649 (1972). We have adopted certain public interest requirements for DBS pursuant to Section 335 of the Act. *See Direct Broadcast Satellite Public Interest Obligations*, 19 FCC Rcd 5647 (2004).

116. As stated above, the Commission must ensure that broadcast radio and television stations serve the "public interest, convenience and necessity."²⁶⁷ To ensure that broadcasters serve the public interest, convenience and necessity, the Commission requires licensees to comply with various program-related and operational duties. Broadcasters, for example, are required to air programming responsive to community needs and interests and have other service obligations.²⁶⁸ We will continue to enforce our statutory mandate to ensure that broadcasters serve the public interest, and remind broadcasters of the importance of meeting their existing public interest obligations. As stated above, IBOC provides broadcasters the potential for a more flexible and dynamic use of the radio spectrum and raises questions about the nature of program-related and operating obligations in digital broadcasting because the scope of those responsibilities has not been defined.²⁶⁹ Certain parties have proposed new public interest requirements for DAB,²⁷⁰ while others have argued that there is no reason to change our existing rules.²⁷¹ We seek comment on whether we should adopt any new public interest requirements for digital audio broadcasters.

117. In the context of examining possible changes to television station public interest obligations in the digital environment, the Commission is considering whether the current requirements pertaining to television stations' public inspection files are sufficient to ensure that the public has adequate access to information on how the stations are serving their communities.²⁷² As we undertake an examination of possible changes to radio station public interest obligations in the digital environment, we believe it is also appropriate to consider whether the current requirements for radio stations' public inspection files are sufficient to ensure that the public has adequate access to information on how these stations are serving their communities. In the Enhanced Disclosure NPRM, we proposed that television broadcast station licensees should use a standardized form to provide information on how the station serves the public interest in a variety of areas, and that the form should be provided on a quarterly basis and maintained in the station's public inspection file in place of the currently required issues/programs lists.²⁷³ We also proposed to enhance the public's ability to access public interest information by requiring licensees to make the contents of their public inspection files, including the form, available on the station's or a state broadcasters association's Internet website.²⁷⁴ We seek comment on whether we should consider applying such rules to radio stations, whether operating in analog or digital. Would the benefits or burdens of requiring the public inspection file to also be placed on the Internet be the same, lesser, or greater for radio stations than for television stations? In what specific ways, if any, should the rules differ for radio? Are there ways we can reduce the burden on small radio stations?

²⁶⁷ 47 U.S.C. § 303. See ¶ 61, *supra*.

²⁶⁸ See, e.g., 47 C.F.R. § 73.3526(e)(12) (commercial stations); 47 C.F.R. § 73.3527(e)(8) (noncommercial stations).

²⁶⁹ See ¶ 61, *supra*.

²⁷⁰ PIC Comments at 19-28, 47-69; PIC Comments at 19-29, 47-69; PIC *Ex Parte* (filed July 26, 2006); PIC *Ex Parte* (filed August 10, 2006).

²⁷¹ NAB Reply Comments at 16-17.

²⁷² See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, 15 FCC Rcd 19816 (2000) ("*Enhanced Disclosure NPRM*").

²⁷³ *Enhanced Disclosure NPRM*, 15 FCC Rcd at 19816.

²⁷⁴ *Id.*

118. In 1987, the Commission eliminated the former rule requiring a broadcast station to originate a majority of its non-network programming from its main studio.²⁷⁵ This action was based, in part, on technical advances in the production and distribution of programming during the prior thirty-five years. In 1995, in response to continuing improvements in the stability of station monitoring and transmission equipment, the Commission authorized unattended technical operation of broadcast stations and expanded the ability of stations to control and monitor station technical operations from remote locations.²⁷⁶ Although concerns were expressed that these rule revisions would result in stations operating on “auto-pilot with no one in charge,” the Commission concluded that the new rules would provide important flexibility without adversely affecting the public interest.²⁷⁷ It noted that the Emergency Broadcast System (“EBS”), then in use, was designed for human intervention and left to broadcasters the responsibility to develop procedures for complying with EBS requirements when licensees chose to operate in an unattended mode.²⁷⁸ Finally, the Commission noted that the Emergency Alert System (“EAS”), then in the process of nation-wide implementation, was specifically designed for unattended operations.²⁷⁹ Licensees have broadly embraced this new technical flexibility. Many stations now operate for extended periods without station personnel at or near transmission facilities.

119. In connection with our review of public interest requirements for DAB, we seek comment on whether it is appropriate to review the rules that have facilitated the development of automated broadcast operations. Is there any reason that, in light of recent industry experience, the Commission should revisit its determination that stations may reliably and confidently use unattended and remotely controlled technical operations without jeopardizing the technical integrity of the radio service? Have changes in remote operation impacted the requirements that the Commission should adopt in this area?

120. We also seek comment on whether the widespread reliance on automated operations limits the ability of law enforcement and public safety officials to use radio broadcast stations effectively during emergencies. Although EAS equipment can be programmed to operate automatically in certain circumstances, when a state or local alert is initiated by designated local authorities, initial input of the alert and activation of the originating EAS ENDEC must be done manually. In some emergencies, this initial input does not occur, thus precluding the distribution of the alert over the EAS.²⁸⁰ We note that the Commission currently is considering issues related to the Emergency Alert System, including transmission of state EAS alerts, in its ongoing EAS proceeding.²⁸¹

²⁷⁵ *Amendment of Sections 73.1125 and 73.1130 of the Commission’s Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Report and Order, 2 FCC Rcd 3215 (1987).

²⁷⁶ *Amendment of Parts 73 and 74 of the Commission’s Rules to Permit Unattended Operations of Broadcast Stations and to Update Broadcast Station Transmitter Control and Monitoring Requirements*, Report and Order, 10 FCC Rcd 11479 (1995) (“*Unattended Operations R&O*”).

²⁷⁷ *Id.* at 11480.

²⁷⁸ *Id.* at 11481-82.

²⁷⁹ *Id.* at 11481.

²⁸⁰ For example, EAS was not activated in connection with the January 18, 2002, train derailment near Minot, North Dakota, or the train collision in Macdona, Texas, ten miles from San Antonio.

²⁸¹ See *Review of the Emergency Alert System*, EB Docket No. 04-296, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 18625 (2005). See also *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, EB Docket No. 06-119, Notice of Proposed Rulemaking, 21 FCC Rcd 7320 (2006).

VII. PROCEDURAL MATTERS

A. Filing Requirements

121. *Ex Parte Rules.* The *Second Further Notice of Proposed Rulemaking* in this proceeding will be treated as a “permit-but-disclose” subject to the “permit-but-disclose” requirements under Section 1.1206(b) of the Commission’s rules.²⁸² *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.²⁸³ Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b).

122. *Comments and Reply Comments.* Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies.²⁸⁴

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
 - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

²⁸² See 47 C.F.R. § 1.1206(b), as revised.

²⁸³ See *id.* § 1.1206(b)(2).

²⁸⁴ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

123. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C., 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418-0267 (voice), (202) 418-7365 (TTY), or bill.cline@fcc.gov. These documents also will be available from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C., 20554; they can also be reached by telephone, at (202) 488-5300 or (800) 378-3160; by e-mail at fcc@bcpiweb.com; or via their website at <http://www.bcpiweb.com>. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0531 (voice), (202) 418-7365 (TTY).

124. *Additional Information.* For additional information on this proceeding, contact Ann Gallagher, Ann.Gallagher@fcc.gov, of the Media Bureau, Audio Division, (202) 418-2716 or Brendan Murray, Brendan.Murray@fcc.gov, of the Media Bureau, Policy Division, (202)418-2120.

B. Initial and Final Regulatory Flexibility Analysis

125. The Regulatory Flexibility Act of 1980, as amended ("RFA"),²⁸⁵ requires that a regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."²⁸⁶ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."²⁸⁷ In addition, the term "small business" has the same meaning as the term "small business

²⁸⁵ The RFA, *see* 5 U.S.C. §§ 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

²⁸⁶ 5 U.S.C. § 605(b).

²⁸⁷ *Id.* § 601(6).

concern” under the Small Business Act.²⁸⁸ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).²⁸⁹ By the issuance of this *Second Further Notice of Proposed Rulemaking*, we seek comment on the impact our suggested proposals would have on small business entities. The complete initial regulatory flexibility analysis is attached as Appendix C.

126. Act. As required by the Regulatory Flexibility Act,²⁹⁰ the Commission has prepared a Final Regulatory Flexibility Analysis (“FRFA”) relating to this *Second Report and Order and First Order on Reconsideration*. The FRFA is set forth in Appendix D.

C. Paperwork Reduction Act Analysis

127. The *Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rulemaking* contains proposed modification of information collection requirements. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. The Commission is not requesting OMB approval under the emergency processing provisions of the 1995 Act (5 C.F.R. §1320.13) of the information collection requirements contained in this *Second Report and Order, First Order on Reconsideration and Second Further Notice of Proposed Rulemaking*. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995. Public and agency comments are due 60 days from date of publication of this *Second Further Notice of Proposed Rulemaking* in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,²⁹¹ we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

128. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW, Washington, D.C., 20554, or via the Internet to Cathy.Williams@fcc.gov and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, N.W., Washington, D.C., 20503, or via the Internet to Kristy.L.LaLonde@omb.eop.gov, or via fax at 202-395-5167. For additional information concerning

²⁸⁸ *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

²⁸⁹ 15 U.S.C. § 632.

²⁹⁰ See 5 U.S.C. § 604.

²⁹¹ Pub. L. 107-198, see 44 U.S.C. § 3506(c)(4).

the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams at 202-418-2918, or via the Internet at Cathy.Williams@fcc.gov

VIII. ORDERING CLAUSES

129. Accordingly, **IT IS ORDERED**, pursuant to the authority contained in Sections 1, 2, 4(i), 303, 307, 312, 315, 317, 507, and 508 of the Communications Act of 1934, 47 U.S.C §§ 151, 152, 154(i), 303, 307, 312, 315, 508, and 509, this *Second Report and Order First Order on Reconsideration and Second Further Notice of Proposed Rulemaking* **IS ADOPTED**.

130. **IT IS FURTHER ORDERED** that pursuant to the authority contained in Sections 1, 2, 4(i), 303, 307, 312, 315, 317, 507, and 508 of the Communications Act of 1934, 47 U.S.C §§ 151, 152, 154(i), 303, 307, 312, 315, 508, and 509, the Commission's rules **ARE HEREBY AMENDED** as set forth in Appendix B. It is our intention in adopting these rule changes that, if any provision of the rules is held invalid by any court of competent jurisdiction, the remaining provisions shall remain in effect to the fullest extent permitted by law.

131. **IT IS FURTHER ORDERED** that the rules contained herein **SHALL BE EFFECTIVE** 30 days after publication of the *Report and Order and Further Notice of Proposed Rulemaking* in the Federal Register, except for the rules that contain information collection requirements subject to the Paperwork Reduction Act, which shall become effective immediately upon announcement in the Federal Register of OMB approval.

132. **IT IS FURTHER ORDERED** that, pursuant to 47 U.S.C. § 155(c), the Chief, Media Bureau, is **GRANTED DELEGATED AUTHORITY** to issue Public Notices and consider and grant routine petitions and waivers of the Commission's DAB technical requirements, resolve interference disputes, amend licensing requirements and generate new forms, and update IBOC notification procedures.

133. **IT IS FURTHER ORDERED** that the Petition for Reconsideration filed October 25, 2002, by the Amherst Alliance **IS DENIED**.

134. **IT IS FURTHER ORDERED** that the Petition for Rulemaking filed April 17, 2002, by the Amherst Alliance **IS DENIED**.

135. **IT IS FURTHER ORDERED** that the Petition for Reconsideration filed December 10, 2002 by Glen Clark and Associates **IS DISMISSED**.

136. **IT IS FURTHER ORDERED** that the Petition for Reconsideration filed January 13, 2003, by John Pavlica Jr. **IS DENIED**.

137. **IT IS FURTHER ORDERED** that the Petition for Rulemaking filed January 24, 2003, by Kahn Communications, Inc. **IS DISMISSED**.

138. **IT IS FURTHER ORDERED** that the untimely Petition for Reconsideration filed by Kahn Communications, Inc. **IS DENIED**.

139. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Second Report and Order First Order on Reconsideration and Second Further Notice of Proposed Rulemaking* including the Initial and Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.