

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)
Creation of a Low Power Radio Service) MM Docket No. 99-25

FIFTH REPORT AND ORDER, FOURTH FURTHER NOTICE OF PROPOSED
RULEMAKING AND FOURTH ORDER ON RECONSIDERATION

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By the Commission:

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I. INTRODUCTION

1. In this *Fifth Report and Order*, we modify our rules to implement certain provisions of the Local Community Radio Act of 2010 (“LCRA”),¹ which unambiguously require the Commission to eliminate its third-adjacent channel spacing requirements and to maintain the spacing requirements currently in place to protect radio reading services. In the *Fourth Further Notice of Proposed Rule Making* (“*Fourth Further Notice*”), we seek comment on proposals to amend our rules to implement the remaining provisions of LCRA and to promote a more sustainable community radio service.² These changes are intended to advance the LCRA’s core goals of localism and diversity while preserving the technical integrity of all of the FM services. In addition, we seek comment on proposals to reduce the potential for licensing abuses. Lastly, in the *Fourth Order on Reconsideration*, we dismiss in part and deny in part a petition for reconsideration of the *Third Report and Order* in this docket, which the Commission released in 2007, and terminate the *Second Further Notice of Proposed Rulemaking* that accompanied that order.³

¹ Pub. L. No. 111-371, 124 Stat. 4072 (2011). We also dismiss the Petition for Rulemaking (“Petition”) filed by REC Networks on July 16, 2004, which proposes changes to the Commission’s LPFM rules, and terminate Proceeding No. PRM-04-MB, which the Media Bureau opened in response to the Petition. The Petition is moot in light of the LCRA’s enactment and our adoption of this item to implement its provisions.

² The Commission already has taken steps to implement Section 5 of the LCRA, which establishes a framework for future FM translator and LPFM licensing activities. See LCRA, § 5; *Creation of a Low Power Radio Service*, Third Further Notice of Proposed Rulemaking, 26 FCC Rcd 9986 (2011); *Creation of a Low Power Radio Service*, Fourth Report and Order and Third Order on Reconsideration, MM Docket No. 99-25, FCC 12-29 (rel. Mar. 19, 2012) (“*Fourth Report and Order*”). Likewise, the Media Bureau (“Bureau”) has taken steps to implement Section 8 of the LCRA, which requires the Commission “to conduct an economic study on the impact that low-power FM stations will have on full-service commercial FM stations” and to provide a report to Congress on that study within one year of the LCRA’s enactment. See LCRA, § 8; *Media Bureau Seeks Comment on the Economic Impact of Low Power FM Stations on Full-Service Commercial FM Stations*, Public Notice, 26 FCC Rcd 6565 (MB 2011); *Economic Impact of Low-Power FM Stations on Commercial FM Radio: Report to Congress Pursuant to Section 8 of the Local Community Radio Act of 2010*, Report, MB Docket No. 11-83, DA 12-2 (MB rel. Jan. 5, 2012).

³ *Creation of a Low Power Radio Service*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 21912 (2007) (“*Third Report and Order*” or “*Second Further Notice*”).

II. BACKGROUND

2. In January 2000, the Commission adopted a *Report and Order* establishing the LPFM service.⁴ In doing so, the Commission sought “to create a class of radio stations designed to serve very localized communities or underrepresented groups within communities.”⁵ The Commission created two classes of LPFM facilities. The LP100 class consists of stations with a maximum power of 100 watts effective radiated power (“ERP”) at 30 meters antenna height above average terrain (“HAAT”), providing an FM service radius (1 mV/m or 60 dBu) of approximately 3.5 miles.⁶ The LP10 class consists of stations with a maximum of 10 watts ERP at 30 meters HAAT, providing an FM service radius of approximately one to two miles. “[T]o preserve the integrity and technical excellence of existing FM radio service,” the Commission adopted separation requirements for LPFM stations operating on co-, first- and second-adjacent channels to full-service FM, FM translator and FM booster stations.⁷ The Commission, however, declined to impose third adjacent channel distance separation requirements,⁸ and declined to adopt special protections for radio reading services.⁹ The Commission specified that LPFM stations operate on a “secondary” basis.¹⁰ In other words, LPFM stations generally cannot cause interference to existing and future full-service FM and other “primary” stations and are not protected against interference from these stations.

3. To ensure that any new LPFM service included the voices of community-based schools, churches and civic organizations, the Commission established ownership and eligibility rules for the LPFM service. Specifically, the Commission restricted LPFM service to noncommercial educational (“NCE”) operations,¹¹ and restricted licensee eligibility to applicants with no attributable interests in any other broadcast station or other media subject to the Commission’s ownership rules.¹² The Commission also limited eligibility to local entities during the first two years LPFM licenses were available.¹³ To choose among entities filing mutually exclusive applications for LPFM licenses, the Commission adopted a point system that favors local ownership and locally-originated programming, with ties between competing applicants resolved by either voluntary time-sharing agreements between such applicants or, in the event that the applicants cannot agree, the imposition of “involuntary time-sharing,” with each tied and grantable applicant awarded an equal, successive and non-renewable license term of no less than one year, for a combined total eight-year term.¹⁴

⁴ *Creation of Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205 (2000) (“*Report and Order*”).

⁵ *Report and Order*, 15 FCC Rcd at 2206, ¶ 1.

⁶ *Id.* at 2206, ¶ 2, 2211, ¶ 13, 2212, ¶ 14.

⁷ *Id.* at 2233-34, ¶¶ 70-71; 47 C.F.R. § 73.807.

⁸ *Report and Order*, 15 FCC Rcd at 2206, ¶ 2.

⁹ *Id.* at 2250, ¶ 115.

¹⁰ *Id.* at 2229-32, ¶¶ 60-67.

¹¹ *Id.* at 2206, ¶ 1, 2208-09, ¶ 5, 2213-15, ¶¶ 17-20, 2215, ¶¶ 21-23.

¹² *Id.* at 2206, ¶ 1, 2217-18, ¶¶ 29-30.

¹³ *Id.* at 2207, ¶ 1, 2215-16, ¶ 24.

¹⁴ *Id.* at 2258-60, ¶¶ 134-149.

4. In September 2000, the Commission adopted a *Memorandum Opinion and Order on Reconsideration*.¹⁵ In the *Reconsideration Order*, the Commission revised and clarified some of its LPFM rules, including the local program origination criterion adopted for the point system.¹⁶ The Commission again declined to impose third-adjacent channel separation requirements.¹⁷ Instead, it adopted complaint and license modification procedures to address any unexpected, significant third-adjacent channel interference problems caused by LPFM stations.¹⁸ It also modified the spacing standards to protect radio reading services and adopted procedures for addressing any interference caused by an LPFM station to the input signal of an FM translator or FM booster station.¹⁹

5. Shortly thereafter, in December 2000, Congress enacted the Making Appropriations for the Government of the District of Columbia for FY 2001 Act (“2001 D.C. Appropriations Act”).²⁰ Therein, Congress directed the Commission to prescribe third-adjacent channel spacing requirements for LPFM stations, which the Commission did in April 2001.²¹ Congress also directed the Commission to conduct an experimental program to evaluate the likelihood of interference to existing full-service FM stations and FM translator stations if LPFM stations were not subject to third-adjacent channel spacing requirements, and to submit a report that included the Commission’s recommendations regarding reduction or elimination of the spacing requirements for third-adjacent channels. The Commission selected an independent third party, the Mitre Corporation (“Mitre”), to conduct field tests. Mitre submitted a report to the Commission, which, in turn, sought comment on the report.²² In February 2004, the Commission submitted a report to Congress on this issue. Based on the Mitre study, the Commission recommended that Congress “modify the statute to eliminate the third-adjacent channel distan[ce] separation requirements for LPFM stations.”²³

6. In March 2005, the Commission adopted a *Second Order on Reconsideration and Further Notice of Proposed Rulemaking*.²⁴ In the *Second Order*, the Commission modified some of the rules governing the LPFM service, noting that the rules needed adjustment in light of the experiences of LPFM applicants and licensees.²⁵ In the accompanying *Further Notice*, the Commission sought comment on a number of issues with respect to LPFM ownership restrictions and eligibility.²⁶ The Commission also

¹⁵ *Creation of a Low Power Radio Service*, Memorandum Opinion and Order on Reconsideration, 15 FCC Rcd 19208 (2000) (“*Reconsideration Order*”).

¹⁶ *Id.* at 19246-47, ¶¶ 97-100.

¹⁷ *Id.* at 19212-19, ¶¶ 7-24.

¹⁸ *Id.* at 19232-35, ¶¶ 58-68.

¹⁹ *Id.* at 19218-19, ¶¶ 23-24, 19224, ¶ 41.

²⁰ Pub. L. No. 106-553, 114 Stat. 2762 (2000).

²¹ *Creation of a Low Power Radio Service*, Second Report and Order, 16 FCC Rcd 8026 (2001) (“*Second Report and Order*”).

²² See *Comment Sought on the Mitre Corporation’s Technical Report, “Experimental Measurements of the Third-Adjacent-Channel Impacts of Low-Power FM Stations,”* Public Notice, 18 FCC Rcd 14445 (2003).

²³ *Report to the Congress on the Low Power FM Interference Testing Program*, Pub. L. No. 106-553, 2004 FCC LEXIS 842 (2004).

²⁴ *Creation of a Low Power Radio Service*, Second Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 6763 (2005) (“*Second Order*” or “*Further Notice*”).

²⁵ *Id.* at 6763, ¶ 1.

²⁶ *Id.* at 6769-73, ¶¶ 16-23.

proposed certain changes to the rules governing the formation and duration of voluntary and involuntary time-sharing arrangements among mutually exclusive LPFM applicants.²⁷ Finally, the Commission sought comment on a number of changes to the LPFM technical rules.²⁸

7. In December 2007, the Commission released the *Third Report and Order* and *Second Further Notice*. In the *Third Report and Order*, the Commission resolved the issues raised in the *Further Notice*. Among other things, the Commission set forth an interim processing policy that it would use to consider requests for waiver of the second-adjacent channel spacing requirements from certain LPFM stations,²⁹ reinstated the local ownership requirement,³⁰ and clarified its definition of local origination.³¹ The Commission also modified the rules governing the formation and duration of voluntary and involuntary time-sharing arrangements among mutually exclusive LPFM applicants.³² In the *Second Further Notice*, the Commission proposed certain rule changes designed to avoid the potential loss of LPFM stations. The Commission made these proposals “[i]n light of changed circumstances since [it] last considered the issue of protection rights for LPFM stations from subsequently authorized full-service stations.”³³ The Commission sought comment on whether to codify the procedures for LPFM stations seeking a waiver of the second-adjacent channel spacing requirements, whether rule changes were warranted to provide additional flexibility to propose LPFM station modifications, whether to require full-service new station and modification applicants to provide technical and/or financial assistance to potentially impacted LPFM stations, whether to adopt contour protection-based licensing standards for LPFM stations, and whether to modify the LPFM-FM translator protection priorities.

8. On January 4, 2011, President Obama signed the LCRA into law. Through the LCRA, Congress expanded LPFM licensing opportunities. Specifically, Congress repealed the requirement that LPFM stations operate a minimum distance from nearby stations operating on third-adjacent channels,³⁴ and required the Commission to eliminate its third-adjacent channel minimum distance separation requirements.³⁵ Congress also authorized the Commission to waive the second-adjacent channel spacing requirements if an LPFM station demonstrates that its proposed operations will not result in interference to any authorized radio service.³⁶ Further, it set forth criteria that the Commission must take into account

²⁷ *Id.* at 6774, ¶¶ 24-25.

²⁸ *Id.* at 6774- 81, ¶¶ 26-39.

²⁹ *Id.* at 21939-40, ¶¶ 64-67

³⁰ *Id.* at 21922, ¶ 24. *See also* 47 C.F.R. § 73.853(b). In so doing, the Commission noted that, “[a]lthough growing in both usage and recognition, LPFM service is still in its nascence and doing away with the locality restriction could threaten its predominantly local character, in particular the hallmark of a LPFM station’s local character, its local origination of programming.” *Id.*

³¹ *Id.* at 21922-23, ¶ 24.

³² *Id.* at 21923-27, ¶¶ 26-36.

³³ *Second Further Notice*, 22 FCC Rcd at 21913, ¶ 1.

³⁴ LCRA, § 2 (modifying Section 632 of the 2001 D.C. Appropriations Act to eliminate the requirement that the Commission prescribe third-adjacent channel spacing requirements).

³⁵ LCRA, § 3(a) (“The Federal Communications Commission shall modify its rules to eliminate third-adjacent minimum distance separation requirements between—(1) low-power FM stations; and (2) full-service FM stations, FM translator stations, and FM booster stations.”).

³⁶ LCRA, § 3(b)(2).

when licensing FM translator, FM booster and LPFM stations.³⁷

9. As Congress expanded LPFM licensing opportunities, it also took steps to provide enhanced interference protection to existing full-service FM, FM translator and FM booster stations. Specifically, while Congress eliminated the third-adjacent channel spacing requirements, it required the Commission to retain the spacing requirements that apply to LPFM stations operating on a third-adjacent channel to FM stations that broadcast radio reading services.³⁸ Congress also required the Commission to modify its rules to “address the potential for predicted interference to FM translator input signals on third-adjacent channels,”³⁹ and to modify the interference protection and remediation requirements applicable to LPFM stations operating on third-adjacent channels.⁴⁰

III. FIFTH REPORT AND ORDER

10. The LCRA unambiguously requires the Commission to eliminate its third-adjacent channel spacing requirements and to maintain the spacing requirements currently in place to protect radio reading services. We do so in this *Fifth Report and Order*. We take these steps without providing prior public notice and comment because they involve no discretion. We merely are revising our rules in the manner specified in the legislation. Notice and comment would serve no purpose and thus are unnecessary. Our actions fall within the “good cause” exception of the Administrative Procedure Act (“APA”).⁴¹

A. Third-Adjacent Channel Minimum Distance Separation Requirements

11. Section 2 of the LCRA amends Section 632 of the 2001 D.C. Appropriations Act to delete the requirements that the Commission establish and maintain minimum distance separations for third-

³⁷ LCRA, § 5 (“The Federal Communications Commission, when licensing new FM translator stations, FM booster stations, and low-power FM stations, shall ensure that—(1) licenses are available to FM translator stations, FM booster stations, and low-power FM stations; (2) such decisions are made based on the needs of the local community; and (3) FM translator stations, FM booster stations, and low-power FM stations remain equal in status and secondary to existing and modified full-service FM stations.”). Concurrent with the adoption of this decision, the Commission is adopting a *Fourth Report and Order* in this docket, which, among other things, seeks to interpret the Section 5 licensing standards. See *supra* note 2. Accordingly, we do not address Section 5 of the LCRA herein.

³⁸ LCRA, § 4.

³⁹ LCRA, § 6.

⁴⁰ LCRA, § 7.

⁴¹ 5 U.S.C. § 553(b)(B). See *Metzenbaum v. Federal Energy Regulatory Commission*, 675 F.2d 1282, 1291 (D.C. Cir. 1982) (agency order, issued pursuant to congressional waiver of certain provisions of federal law that would otherwise have governed construction and operation of Alaskan natural gas pipeline, was appropriately issued without notice and comment as a nondiscretionary ministerial action). See also *Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004; Procedural Rules*, Order, 20 FCC Rcd 7780, 7780, ¶ 1 (2005) (finding good cause to adopt statutorily-mandated rule changes without prior notice and comment under section 553(b)(B) of the APA where changes involved no agency discretion); *Implementation of Section 505 of the Telecommunications Act of 1996 (Scrambling of Sexually Explicit Adult Video Service Programming)*, Order and Notice of Proposed Rulemaking, 11 FCC Rcd 5386, 5387, ¶ 3 (1996) (same); *Implementation of Sections 204(A) and 204(C) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363, 6364, ¶ 6 (1996) (same); *Implementation of Sections 202(A) and 202(B)(1) of the Telecommunications Act of 1996 (Broadcast Radio Ownership)*, Order, 11 FCC Rcd 12368, 12371, ¶ 5 (1996) (same); *Implementation of Sections 202(c)(1) and 202(e) of the Telecommunications Act of 1996 (National Broadcast Television Ownership and Dual Network Operations)*, Order, 11 FCC Rcd 12374, 12377, ¶ 7 (1996) (same).

adjacent channels.⁴² It essentially lays the groundwork for Section 3(a) of the LCRA, which requires the Commission to “modify its rules to eliminate third-adjacent minimum distance separation requirements between—(1) low-power FM stations; and (2) full service FM stations, FM translator stations, and FM booster stations.” Section 73.807 of the Commission’s rules currently sets forth these spacing requirements.⁴³ We hereby delete the provisions requiring protection of third-adjacent channel stations set forth in that section, with the exception of Sections 73.807(a)(2), (b)(2) and (g).⁴⁴

B. Protection of Radio Reading Services

12. Radio reading services provide access to printed news and other information sources for blind or print-disabled persons.⁴⁵ They are transmitted on one of several standardized subcarrier frequencies within a 200 kHz FM channel.⁴⁶ These transmissions cannot be received on a standard radio.⁴⁷ Listeners must use special radios that tune subcarrier signals to receive these services.⁴⁸ When the Commission established the LPFM service in 2000, it initially did not adopt any additional interference protections for radio reading services.⁴⁹ The Commission reasoned that subcarrier programming is transmitted within a broadcast station’s assigned frequency and thus receives the same protection from interference as the main broadcast programming of the station.⁵⁰

⁴² While the LCRA amended Section 632, it did not alter that section’s requirement that the Commission “prescribe protection for co-channels and first- and second-adjacent channels.” 2001 D.C. Appropriations Act, § 632. Indeed, Section 3(b) of the LCRA bars the Commission from “amend[ing] its rules to reduce the minimum co-channel and first- and second-adjacent channel distance separation requirements” in effect on the date of its enactment. LCRA, § 3(b).

⁴³ 47 C.F.R. § 73.807.

⁴⁴ We retain the international third-adjacent channel protection requirements applicable to LPFM stations in border areas. See 47 C.F.R. § 73.807(g). The bilateral broadcast treaties between the United States and Mexico and the United States and Canada require their retention and nothing in the LCRA indicates that Congress intended to amend these international agreements. See Agreement between the Government of Canada and the Government of the United States of America Relating to the FM Broadcasting Service (available at <http://transition.fcc.gov/ib/sand/agree/files/can-bc/can-fm.pdf>) and <http://transition.fcc.gov/ib/sand/agree/files/can-bc/can-fm-r.pdf>); Agreement between the Government of the United States of America and the Government of the United Mexican States Relating to the FM Broadcasting Service in the Band 88-108 MHz (available at <http://transition.fcc.gov/ib/sand/agree/files/mex-bc/fm-bc.pdf>). As discussed *infra* Part III.B, per Section 4 of the LCRA, we also retain the requirements set forth in Section 73.807(a)(2) and (b)(2), 47 C.F.R. §§ 73.807(a)(2) & (b)(2), which require LPFM stations to comply with the second-adjacent channel spacing requirements with respect to any third-adjacent channel FM station that broadcasts a radio reading service on its subcarrier frequency. In addition, we seek comment below on whether to retain the third-adjacent channel distance separations specified in Section 73.807(a)(1), (b)(1), (c), (d) and (g), 47 C.F.R. §§ 73.807(a)(1), (b)(1), (c), (d) & (g), in some form in order to implement Section 7 of the LCRA. See discussion *infra* Part IV.A.2. Section 7 sets forth interference obligations for LPFM stations that vary depending on whether an LPFM station would be considered short-spaced or fully-spaced under the current third-adjacent channel spacing requirements. LCRA, §§ 7(1) & (3).

⁴⁵ See *Allowable Costs for Noncommercial FM Licensees to Charge Radio Reading Services*, Policy Statement, 3 FCC Rcd 6323, 6323, ¶ 3 (1988) (“*Radio Reading Services Policy Statement*”).

⁴⁶ *Id.*

⁴⁷ *Report and Order*, 15 FCC Rcd at 2250, ¶ 115.

⁴⁸ *Radio Reading Services Policy Statement*, 3 FCC Rcd at 6323, ¶ 3.

⁴⁹ *Report and Order*, 15 FCC Rcd at 2250, ¶ 115.

⁵⁰ *Id.*

13. The Commission reconsidered this decision shortly thereafter due to concerns about the greater vulnerability of radio reading service receivers to third-adjacent channel interference. It noted that, because of their designs, the subcarrier receivers used for radio reading services are more susceptible to interference than mass marketed receivers.⁵¹ The Commission therefore modified the spacing standards set forth in Section 73.807 of the rules to require LPFM stations to satisfy the second-adjacent channel spacing requirements with respect to any third-adjacent channel FM station that broadcasts a radio reading service via a subcarrier frequency.⁵²

14. The Commission took this step because, at the time, it had declined to adopt generally applicable third-adjacent channel spacing requirements. It later adopted such requirements at the direction of Congress. These spacing requirements were identical to the second-adjacent channel spacing requirements. Accordingly, while the Commission did not delete the protections specific to FM stations providing radio reading services from the rules, the protections became redundant. Now, however, with the elimination of the third-adjacent spacing requirements, these provisions again have relevance. In this regard, Section 4 of the LCRA directs the Commission to “comply with existing minimum distance separation requirements” for stations that broadcast radio reading services.⁵³ Accordingly, we conclude that we must retain without modification Sections 73.807(a)(2) and (b)(2) of our rules to implement Section 4.

IV. FOURTH FURTHER NOTICE OF PROPOSED RULEMAKING

A. Changes to Technical Rules Required by the LCRA

15. A number of other provisions of the LCRA require Commission action. We seek comment below on how to amend our rules to most faithfully implement these remaining provisions of the LCRA

1. Waiver of Second-Adjacent Channel Minimum Distance Separation Requirements

16. In 2007, the Commission established an interim waiver processing policy that permits an LPFM station that will receive increased interference or be displaced by a new or modified full-service FM station to seek waiver of the second-adjacent channel spacing requirements in connection with an application to move the LPFM station to a new channel.⁵⁴ The Commission found that circumstances had changed considerably since it last considered the issue of protection rights for LPFM stations from subsequently authorized full-service stations.⁵⁵ Specifically, in late 2006, the Commission had streamlined its licensing procedures, and announced the lifting of its freeze on the filing of community of license modification applications.⁵⁶ These actions resulted in “increased filings” that the Media Bureau (“Bureau”) estimated could force approximately 40 LPFM stations to cease operations.⁵⁷ For many of the LPFM stations at risk of displacement, the Bureau had identified alternate channels that would require

⁵¹ *Reconsideration Order*, 15 FCC Rcd at 19219, ¶ 23.

⁵² *Id.* at 19219, ¶ 24. 47 C.F.R. §§ 73.807(a)(2) (LP100 stations), (b)(2) (LP10 stations).

⁵³ *See* LCRA, § 4.

⁵⁴ *Third Report and Order*, 22 FCC Rcd at 21939-40, ¶¶ 64-67.

⁵⁵ *Id.* at 21938, ¶ 63.

⁵⁶ *Revision of Procedures Governing Amendments To FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212 (2006).

⁵⁷ *Third Report and Order*, 22 FCC Rcd at 21938, ¶ 63.

waivers of the second-adjacent channel spacing requirements.⁵⁸ To avoid “potential harm to this small but not insignificant number of LPFM stations,” the Commission adopted the waiver processing policy.⁵⁹ In adopting this policy, the Commission relied on the general waiver provisions set forth in Section 1.3 of the rules.⁶⁰

17. Section 3(b)(2)(A) of the LCRA explicitly grants the Commission the authority to waive the second-adjacent channel spacing requirements. Section 3(b)(2)(A) permits waivers where an LPFM station establishes, “using methods of predicting interference taking into account all relevant factors, including terrain-sensitive propagation models,” that its proposed operations “will not result in interference to any authorized radio service.”⁶¹

18. We tentatively conclude that the waiver standard set forth in Section 3(b)(2)(A) of the LCRA supersedes the interim waiver processing policy adopted by the Commission in 2007. We note that, under the interim waiver processing policy, when the Commission considers a waiver request, it “balance[s] the potential for new interference to the full-service station at issue against the potential loss of an LPFM station.”⁶² Section 3(b)(2)(A) of the LCRA, on the other hand, clearly requires an LPFM station to establish that its proposed operations “will not result in interference to any authorized radio service.” It leaves no room for balancing of the potential for interference with the potential for loss of service. We seek comment on our tentative conclusion and our reasoning. We also seek comment on whether we should permit LPFM applicants to make the sort of showings we routinely accept from FM translator applicants to establish that “no actual interference will occur.”⁶³ Section 74.1204(d) of the rules permits a translator applicant to demonstrate that “no actual interference will occur” due to “lack of population”⁶⁴ and we have permitted translator applicants to use an undesired/desired signal strength ratio methodology to narrowly define areas of potential interference when proposing to operate near another station operating on a second- or third-adjacent channel.⁶⁵ Are such showings consistent with the statutory mandate to accept showings that a proposed LPFM service “will not result in interference to any authorized radio service”? Should we permit the use of directional antennas in conjunction with proposals attempting to protect second-adjacent stations?

19. We request comment on the factors that we should take into account and the showings we should require when considering requests for waiver of the second-adjacent channel spacing requirements. Should we require a showing that there are no fully-spaced channels available to the LPFM applicant? Should we take into account that the proposal would eliminate or reduce the interference received by the LPFM applicant? Should we consider whether the proposal would avoid a short-spacing between the proposed LPFM facilities and a full-service FM station, FM translator or FM booster station on a third-adjacent channel? Should we also take into account the interference protection and remediation

⁵⁸ *Id.* at 21939, ¶ 64

⁵⁹ *Id.*

⁶⁰ The U.S. Court of Appeals for the D. C. Circuit upheld the Commission’s authority to adopt this policy under the former statutory scheme. *See FCC v. National Ass’n of Broadcasters*, 569 F.3d 416 (D.C. Cir. 2009).

⁶¹ LCRA, § 3(b)(2)(A).

⁶² *Third Report and Order*, 22 FCC Rcd at 21939, ¶ 65.

⁶³ 47 C.F.R. § 74.1204(d).

⁶⁴ *Id.*

⁶⁵ *Living Way Ministries, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 17054, 17056, ¶ 5 (2002), *recon. denied* 23 FCC Rcd 15070 (2008).

obligations such short-spacing would trigger? Should we consider whether the proposal would result in superior spacing to full-service FM, FM translator or FM booster stations operating on co- and first-adjacent channels? Are there other factors or showings that we should consider?

20. Section 3(b)(2)(B) of the LCRA also sets out a framework for handling complaints when an LPFM station operating pursuant to a second-adjacent channel waiver has caused interference to the reception of any existing or modified full-service FM station “without regard to the location of the station receiving interference.” Upon receipt of a complaint of interference caused by an LPFM station operating pursuant to a second-adjacent channel waiver, the Commission must notify the LPFM station “by telephone or other electronic communication within 1 business day.”⁶⁶ The LPFM station must “suspend operation immediately upon notification” by the Commission that it is “causing interference to the reception of any existing or modified full-service FM station.”⁶⁷ It may not resume operations “until such interference has been eliminated or it can demonstrate . . . that the interference was not due to [its] emissions.”⁶⁸ The LPFM station, however, may “make short test transmissions during the period of suspended operation to check the efficacy of remedial measures.”⁶⁹ We propose to incorporate this framework for handling complaints into the rules. We seek comment on this proposal. We also request comment on whether and how we should define what constitutes a *bona fide* complaint that would trigger the Commission’s obligation to notify the LPFM station at issue and that station’s obligation to suspend operations. Finally, we solicit comment on whether and how to specify the showing an LPFM station operating pursuant to a second-adjacent channel waiver must make to demonstrate that it was not the source of the interference at issue.

2. Third-Adjacent Channel Interference Complaints and Remediation

21. When the Commission created the LPFM service in 2000, it declined to impose third-adjacent channel distance separation requirements, stating “our own technical studies and our review of the record persuade us that 100-watt LPFM stations operating without [third]-adjacent channel separation requirements will not result in unacceptable new interference to the service of existing FM stations.”⁷⁰ The Commission also noted that “imposing [third]-adjacent channel separation requirements on LPFM stations would unnecessarily impede the opportunities for stations in this new service, particularly in highly populated areas where there is a great demand for alternative forms of radio service.”⁷¹

22. Subsequently, on reconsideration, the Commission again declined to impose third-adjacent channel separation requirements.⁷² However, it did establish complaint and license modification procedures for third-adjacent channel interference. In doing so, the Commission stated:

Although we expect it to be the rare case where an LPFM station operating on a [third]-adjacent channel causes more than a *de minimis* level of interference within the service area of a full power station protected by the distance separation requirements for other channel

⁶⁶ LCRA, § 3(b)(2)(B)(iii).

⁶⁷ LCRA, § 3(b)(2)(B)(i).

⁶⁸ LCRA, § 3(b)(2)(B)(ii).

⁶⁹ *Id.*

⁷⁰ *Report and Order*, 15 FCC Rcd at 2206-07, ¶ 2.

⁷¹ *Id.* at 2207, ¶ 2.

⁷² *Reconsideration Order*, 15 FCC Rcd at 19212-19, ¶¶ 7-24.

relationships, such a result would be unacceptable if it were to occur. Accordingly, we conclude on reconsideration that it would be prudent to establish procedures that would encourage cooperation between the parties and permit the Commission to take prompt remedial action where a significant level of interference can be traced to the commencement of broadcasts by a new LPFM station.⁷³

The procedures are set forth in Section 73.810 of the rules.⁷⁴

23. As noted, in 2001, we adopted third-adjacent channel spacing requirements at the direction of Congress. While we did not delete the third-adjacent channel complaint and license modification procedures from our rules, with the adoption of the spacing requirements, the procedures became irrelevant.⁷⁵ Now, however, with the elimination of the third-adjacent spacing requirements under Section 3 of the LCRA, a process for handling complaints of third-adjacent channel interference again has relevance. Congress has recognized this.

24. Rather than simply utilize the procedures set forth in Section 73.810 of the rules, though, Congress has opted to impose broader remediation obligations, which are set forth in Section 7 of the LCRA. Specifically, Section 7 sets forth the following requirements:

- Section 7(1) of the LCRA requires the Commission to adopt “the same interference protections that FM translator stations and FM booster stations are required to provide as set forth in Section 74.1203 of [the] rules.”⁷⁶ These obligations apply to LPFM stations that would be considered short-spaced under the existing third-adjacent channel spacing requirements (“Section 7(1) Stations”).⁷⁷

⁷³ *Id.* at 19232, ¶ 61.

⁷⁴ 47 C.F.R. § 73.810. Under Section 73.810, an LPFM station must address *bona fide* complaints of interference to reception of the signal of a full-service FM station operating on a third-adjacent channel. The first stage of the complaint process is designed to facilitate cooperative efforts between LPFM and full-service FM licensees to identify and resolve *bona fide* interference complaints. The full-service FM station is required to provide copies of *bona fide* complaints to the LPFM station believed to be the source of the interference. 47 C.F.R. §§ 73.810(a) & (b). At that point, the LPFM station has the opportunity to resolve the individual interference complaints. 47 C.F.R. § 73.810(c). If the LPFM station concludes it is not the source of the interference at issue but the number of unresolved complaints exceeds the lesser of one percent of the households within one kilometer of the LPFM transmitter site or thirty households, the LPFM station and the full-service FM station must cooperate in “on-off” testing to determine whether the LPFM station is the cause of the interference. 47 C.F.R. § 73.810(d). If the LPFM and full-service stations fail to reach agreement and the number of unresolved complaints still exceeds the lesser of one percent of the households within one kilometer of the LPFM transmitter site or thirty households, the full-service FM station may request that the Commission initiate a proceeding to consider modifying or cancelling the LPFM station’s license. 47 C.F.R. § 73.810(e).

⁷⁵ If an LPFM station complied with the third-adjacent channel spacing requirements, it had no obligation to remediate interference caused by its lawful operations. *Report and Order*, 15 FCC Rcd at 2231, ¶ 64.

⁷⁶ LCRA, § 7(1). We note that Sections 74.1203(c) and (d) of the rules, 47 C.F.R. §§ 74.1203(c) & (d), contain exemptions from the remediation requirements set forth in Sections 74.1203(a) and (b), 47 C.F.R. §§ 74.1203(a) & (b), for FM booster and fill-in FM translator stations causing interference to their primary stations’ signals. These provisions are irrelevant to LPFM stations, which originate their own programming and, therefore, do not have primary stations. We do not discuss these provisions of Section 74.1203 further herein.

⁷⁷ 47 C.F.R. § 74.1203. Section 74.1203 of the rules provides that an FM translator station or FM booster station “will not be permitted to continue to operate if it causes any actual interference” to an authorized broadcast station.

- Section 7(2) requires that a new LPFM station “constructed on a third-adjacent channel” must “broadcast periodic announcements” that alert listeners that any interference they are experiencing could be the result of the station’s operations and that instruct affected listeners to contact the station to report any interference.⁷⁸
- Section 7(3) directs the Commission to modify Section 73.810 of the rules to require “[LPFM] stations on third-adjacent channels ... to address interference complaints within the protected contour of an affected station” and encourage them to address “all other interference complaints.”⁷⁹
- Section 7(4) requires the Commission, to the extent possible, to “grant low-power FM stations on third-adjacent channels the technical flexibility to remediate interference through the collocation of the transmission facilities of the low-power FM station and any stations on third-adjacent channels.”⁸⁰
- Section 7(5) requires the Commission to “permit the submission of informal evidence of interference, including any engineering analysis that an affected station may commission,” “accept complaints based on interference to a full-service FM station, FM translator station, or FM booster station by the transmitter site of a low-power FM station on a third-adjacent channel at any distance from the full-service FM station, FM translator station, or FM booster station,” and “accept complaints of interference to mobile reception.”⁸¹
- Section 7(6) requires the Commission to impose additional interference protection and remediation obligations on one class of LPFM stations.⁸²

25. Below, we discuss certain preliminary issues and tentatively conclude that Section 7 of the LCRA creates two different LPFM interference protection and remediation regimes, one for LPFM stations that would be considered short-spaced under third-adjacent channel spacing requirements, and one for LPFM stations that would not be considered short-spaced under those requirements. Then, we proceed to discuss each of those regimes. Given the comprehensive nature of the regimes created by Section 7, we propose to eliminate the existing interference complaint and remediation procedures set forth in Section 73.810 of the rules and replace them with those set forth below.

a. LPFM Interference Protection and Remediation Requirements

26. Section 7(1) and 7(3) of the LCRA both address the interference protection and remediation obligations of LPFM stations on third-adjacent channels. *Only* Section 7(1) specifies requirements for “low-power FM stations licensed at locations that do not satisfy third-adjacent channel spacing requirements”⁸³ With regard to such stations, Section 7(1) instructs the Commission to adopt “the same interference protections that FM translator stations and FM booster stations are required to provide as set forth in Section 74.1203 of [the] rules.”⁸⁴ Section 7(3), in contrast, directs the Commission to

⁷⁸ LCRA, § 7(2).

⁷⁹ LCRA, § 7(3).

⁸⁰ LCRA, § 7(4).

⁸¹ LCRA, § 7(5).

⁸² LCRA, § 7(6).

⁸³ LCRA, § 7(1).

⁸⁴ LCRA, § 7(1).

modify Section 73.810 of the rules to require “[LPFM] stations on third-adjacent channels ... to address interference complaints within the protected contour of an affected station” and encourage them to address “all other interference complaints.”⁸⁵ We tentatively conclude that, through these two provisions, Congress has created two different interference protection and remediation regimes – one that applies to Section 7(1) Stations and one that applies to all other LPFM stations (“Section 7(3) Stations”).⁸⁶ We seek comment on this tentative conclusion.

27. We note that, were we to conclude otherwise, Section 7(1) Stations would be subject to different and conflicting interference protection and remediation obligations. Specifically, under Section 7(1), LPFM stations that would be considered short-spaced under third-adjacent channel spacing requirements must “eliminate” any actual interference they cause to the signal of any authorized station in areas where that station’s signal is “regularly used.”⁸⁷ This requirement encompasses locations beyond the authorized station’s protected contour. In contrast, Section 7(3) merely requires LPFM stations to “address” complaints of interference occurring within a full-service FM station’s protected contour.⁸⁸ To conclude that Sections 7(1) and (3) both apply to Section 7(1) Stations would run afoul of one of the cardinal rules of statutory construction – a statute should be read as a harmonious whole.⁸⁹ We believe our conclusion that Congress has created two different interference protection and remediation regimes is the most reasonable reading of Section 7 of the LCRA as a whole. It makes sense that Congress would impose more stringent interference protection and remediation obligations on stations that are located nearest to full-service FM stations and have the greatest potential to cause interference. Moreover, our reading is consistent with the general rule that, where a protection approach offers greater flexibility, that flexibility is counter-balanced by more stringent interference remediation and protection requirements.⁹⁰ The LCRA provides greater flexibility by eliminating third-adjacent channel spacing requirements for LPFM stations, but counter-balances that flexibility with a prohibition on LPFM stations that would be short-spaced under such requirements causing any actual interference to other stations.

28. Based on the text of Section 7(1) of the LCRA, we tentatively conclude that, although Section 3(a) of the LCRA mandates the elimination of the third-adjacent channel spacing requirements, we should retain them solely for purposes of reference in order to implement that section. We seek comment on this tentative conclusion and also on whether ultimately to retain the third-adjacent channel spacing requirements in Section 73.807 for purposes of reference or transfer them to another section of the rules.

29. Sections 7(4) and (5) of the LCRA establish a number of requirements related to interference protection and remediation. These range from a requirement that the Commission allow LPFM stations

⁸⁵ LCRA, § 7(3).

⁸⁶ Until amended by the LCRA, Section 632 of the 2001 D.C. Appropriations Act barred the Commission from granting waivers of the third-adjacent channel spacing requirements. Thus, there currently are no LPFM stations that are short-spaced to any full-service FM, FM translator or FM booster stations under the third-adjacent channel spacing requirements that we eliminate in the *Fifth Report and Order*.

⁸⁷ See 47 C.F.R. § 74.1203(a)(3) (emphasis added).

⁸⁸ LCRA, § 7(3) (emphasis added).

⁸⁹ See, e.g., *United Savings Ass’n v. Timbers of Inwood Forest Associates*, 484 U.S. 365, 371 (1988) (“Statutory construction is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme—because the same terminology is used elsewhere in a context that makes its meaning clear, or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.”).

⁹⁰ *Further Notice*, 20 FCC Rcd at 6779, ¶ 36.

on third-adjacent channels to remediate interference through collocation⁹¹ to requirements related to what constitutes a *bona fide* complaint of interference.⁹² We tentatively conclude these sections apply only to Section 7(3) Stations. We seek comment on our tentative conclusion. We believe this is the most reasonable reading of these provisions. We note that these provisions use the same “low-power FM stations on third-adjacent channels” language as Section 7(3), not the more specific “low-power FM stations licensed at locations that do not satisfy third-adjacent channel spacing requirements” language set forth in Section 7(1). In addition, as discussed above, Section 7(1) subjects LPFM stations licensed at locations that would be considered short-spaced under third-adjacent channel spacing requirements to the interference protection and remediation regime set forth in Section 74.1203 of the rules. Thus, Section 7(1) Stations must remediate any actual interference caused by their operations or go off the air; must respond to all complaints meeting the specifications set forth in Section 74.1203; and, must do so in the manner described in that section. That Congress required our wholesale adoption of the well-established and comprehensive regime in Section 74.1203 of the rules bolsters our tentative conclusion that Sections 7(4) and 7(5), which establish discrete requirements inconsistent with the Section 74.1203 regime, do not apply to Section 7(1) stations.

30. Finally, we tentatively conclude that Sections 7(1), (2), (3), (4) and (5) of the LCRA apply only to third-adjacent channel interference. While Congress did not specify the type of interference to which these provisions apply, we believe this is the most reasonable reading of them. We note that, in each of these provisions, Congress refers specifically to LPFM stations on third-adjacent channels or LPFM stations that do not satisfy the third-adjacent channel spacing requirements. These references reflect a focus on those stations located on third-adjacent channels to LPFM stations and any interference caused to them, which necessarily would be third-adjacent channel interference. We believe that our conclusion is further supported by the fact that Congress separately addressed the possibility of second-adjacent channel interference in Section 3 of the LCRA. We seek comment on our tentative conclusion.

b. Regime Applicable to Section 7(1) Stations

31. Section 7(1) Stations are subject to the same interference protection regime applicable to FM translator and booster stations, which is set forth in Section 74.1203 of the rules.⁹³ As indicated above, this regime is more stringent than that currently set forth in Section 73.810. Section 74.1203(a) prohibits “actual interference to . . . [t]he direct reception by the public of the off-the-air signals of any authorized broadcast station”⁹⁴ It specifies that “[i]nterference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by” the interfering FM translator station.⁹⁵ An interfering FM translator station must remedy the interference or cease operation.⁹⁶ The rule has been interpreted broadly. It places no geographic or temporal limitation on complaints.⁹⁷ It covers all types of

⁹¹ LCRA, § 7(4).

⁹² LCRA, § 7(5).

⁹³ 47 C.F.R. § 74.1203.

⁹⁴ 47 C.F.R. § 74.1203(a).

⁹⁵ 47 C.F.R. § 74.1203(a)(3). Today, an LPFM station must remedy only interference that occurs within the predicted contour of an affected full-service FM station and within one kilometer of the LPFM station’s transmitter site. See 47 C.F.R. §§ 73.810(b)(1) & (3).

⁹⁶ 47 C.F.R. § 74.1203(b).

⁹⁷ See *Association for Community Education, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12688, ¶ 15 (2004) (“*Association for Community Education*”).

interference. The reception affected can be that of a fixed or mobile receiver.⁹⁸ The Commission also has interpreted “direct reception by the public” to limit actionable complaints to those that are made by *bona fide* listeners.⁹⁹ Thus, it has declined to credit claims of interference¹⁰⁰ or lack of interference¹⁰¹ from station personnel involved in an interference dispute. More generally, the Commission requires that a complainant “be ‘disinterested,’ e.g., a person or entity without a legal stake in the outcome of the translator station licensing proceeding.”¹⁰² The staff has routinely required a complainant to provide his/her name, address, location(s) at which interference occurs, and a statement that the listener is, in fact, a listener of the affected station. Moreover, as is the case with other types of interference complaints,¹⁰³ the staff has considered only those complaints where the complainant cooperates in efforts to identify the source of interference and accepts reasonable corrective measures.¹⁰⁴ Accordingly, when the Commission concludes that a *bona fide* listener has made an actionable complaint of uncorrected interference, it will notify the station that “interference is being caused” and direct the station to discontinue operations.¹⁰⁵ We seek comment on whether it would be appropriate to modify the regime set forth in Section 74.1203 in any way in order to apply it to Section 7(1) Stations and, if so, whether we have authority to make any such changes in light of the statutory mandate to adopt “the same interference protections that FM translator stations and FM booster stations are required to provide as set forth in Section 74.1203 of [the] rules.”

32. We also request comment on requiring newly constructed LPFM stations that would be considered short-spaced under third-adjacent channel spacing requirements to make the same periodic announcements required of third-adjacent channel LPFM stations that would not be considered short-spaced under Section 7(2) of the LCRA. We see no reason to distinguish between listeners of stations that may experience interference as a result of the operations of Section 7(1) Stations and those that may experience interference as a result of the operations of Section 7(3) Stations for such purposes. Indeed, there will be less distance separating Section 7(1) Stations and full-service FM stations on third-adjacent channels and thus a greater potential for these stations to cause such interference, so that we believe requiring announcements would serve the public interest. We note, however, that Section 7(1) explicitly requires the Commission to “provide the same [LPFM] interference protections that FM translator stations ... are required to provide as set forth in section 74.1203 of its rules.” Section 74.1203 does not require an FM translator station to notify either the Commission or an affected station of an interference complaint within 48 hours of the receipt of such a complaint.¹⁰⁶ Accordingly, we seek comment on

⁹⁸ Today, an LPFM station must remedy interference only to fixed receivers. See 47 C.F.R. § 73.810(b)(3).

⁹⁹ See *Association for Community Education*, 19 FCC Rcd at 12688, ¶ 16.

¹⁰⁰ See *id.*

¹⁰¹ See *Living Way Ministries, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 15070, 15077 n.46 (2008).

¹⁰² *Association for Community Education*, 19 FCC Rcd at 12688 n.37.

¹⁰³ See, e.g., *Jay Ayer and Dan J. Alpert*, Letter, 23 FCC Rcd 1879, 1883 (MB 2008) (requiring complainants to cooperate fully with the station’s efforts to resolve interference and cautioning that the failure to do so could lead to a finding that the station has fulfilled its interference remediation obligations).

¹⁰⁴ See *Radio Power, Inc.*, 26 FCC Rcd 14385, 14385-86 (MB 2011) (listing grounds that translator licensee claimed are sufficient to conclude that complainant has failed to reasonably cooperate and finding that a listener may reasonably reject a non-broadcast technology to resolve interference claim).

¹⁰⁵ See 47 C.F.R. § 74.1203(e); see also *Amendment of Part 74 of the Commission’s Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212, 7230 (1990), modified 6 FCC Rcd 2334 (1991), recon. denied, 8 FCC Rcd 5093 (1993); *Association for Community Education*, 19 FCC Rcd at 12688, ¶ 15.

¹⁰⁶ See LCRA, § 7(2)(A).

whether we may impose this requirement on Section 7(1) Stations and, if so, whether we should.

c. Regime Applicable to Section 7(3) Stations

33. Section 7(3) of the LCRA requires the Commission to modify Section 73.810 of the rules to require Section 7(3) Stations “to address interference complaints within the protected contour of an affected station” and encourage them to address all other interference complaints, including complaints “based on interference to a full-service FM station, an FM translator station or an FM booster station by the transmitter site of a low-power FM station on a third-adjacent channel at any distance from the full-service FM station, FM translator station or FM booster station.”¹⁰⁷ As noted above, we tentatively conclude that Sections 7(2), (4) and (5) apply only to Section 7(3) Stations. We discuss the general interference remediation requirements set forth in Section 7(3) and the additional provisions below.

34. *General Requirements.* Unlike Section 7(1), Section 7(3) does not specifically refer to Section 74.1203 of the rules. We request comment on whether the more lenient interference protection obligations currently set forth in Section 73.810 should continue to apply to fully-spaced LPFM stations. We note that, while Section 7(1) instructs the Commission to require Section 7(1) Stations “to provide” interference protections, Section 7(3) merely instructs the Commission to require Section 7(3) Stations “to address” complaints of interference. What must a Section 7(3) Station do to “address” a complaint of third-adjacent channel interference? Finally, we observe that Section 7(3) requires the Commission to provide notice to the licensee of a Section 7(3) Station of the existence of interference within 7 calendar days of the receipt of a complaint from a listener or another station. We seek comment on whether to establish certain basic requirements for such complaints. For instance, should we require copies of such complaints to be filed with the Bureau’s Audio Division? Should we require such complaints to specify the call sign of the LPFM and/or affected full-service FM, FM translator or FM booster station? Should we require the complainant to provide contact information?

35. *Periodic Broadcast Announcements.* Section 7(2) of the LCRA directs the Commission to amend Section 73.810 of the rules to include certain requirements related to periodic broadcast announcements. Section 7(2) instructs the Commission to require a newly constructed Section 7(3) Station to broadcast periodic announcements that alert listeners to the potential for interference and instruct them to contact the LPFM station to report any interference. These announcements must be broadcast for a period of one year after construction. We seek comment on whether we should specify the language to be used in these announcements and, if so, what to specify. We also seek comment on whether we should mandate when and how often the announcements must be aired. We note that we have done so with respect to other required announcements and that ensuring uniformity may reduce listener confusion and provide regulatory certainty by allowing LPFM stations to be confident that they have satisfied the requirements of Section 7(2).¹⁰⁸

36. Section 7(2) also directs the Commission to require newly constructed Section 7(3) Stations to notify the Commission and all affected stations on third-adjacent channels of an interference complaint by electronic communication within 48 hours of receipt of such complaint. Finally, Section 7(2) mandates that we require newly constructed Section 7(3) Stations on third-adjacent channels to cooperate in addressing any such interference complaints. We seek comment on whether to specify the scope of efforts which a Section 7(3) Station must undertake, and whether to relieve newly constructed Section 7(3) Stations on third-adjacent channels of their obligations to cooperate in instances where the

¹⁰⁷ LCRA, § 7(3).

¹⁰⁸ See 47 C.F.R. § 73.3580.

complainant does not reasonably cooperate with the LPFM stations' remedial efforts.¹⁰⁹

37. *Bona Fide Complaints.* Section 7(5) of the LCRA expands the universe of interference complaints which Section 7(3) Stations must remediate. Section 7(5) states:

The Federal Communications Commission shall —(A) permit the submission of informal evidence of interference, including any engineering analysis that an affected station may commission; (B) accept complaints based on interference to a full-service FM station, FM translator station, or FM booster station by the transmitter site of a low-power FM station on a third-adjacent channel at any distance from the full-service FM station, FM translator station, or FM booster station; and (C) accept complaints of interference to mobile reception.

38. We request comment on whether any of the four criteria set forth in Section 73.810(b)(1) of the rules remain relevant. We tentatively conclude that Section 7(5) requires us to delete Sections 73.810(b)(1) (*bona fide* complaint must allege interference caused by LPFM station that has its transmitter site located within the predicted 60 dBu contour of the affected station), (2) (*bona fide* complaint must be in form of affidavit and state the nature and location of the alleged interference) and (3) (*bona fide* complaint must involve a fixed receiver located within the 60 dBu contour of the affected station and not more than 1 kilometer from the LPFM transmitter site). We solicit comment on whether we should retain the remaining criterion, which requires a *bona fide* complaint to be received within one year of the date an LPFM station commenced broadcasts.¹¹⁰

39. *Technical Flexibility.* Section 7(4) of the LCRA requires the Commission, to the extent possible, to “grant low-power FM stations on third-adjacent channels the technical flexibility to remediate interference through the collocation of the transmission facilities of the low-power FM station and any stations on third-adjacent channels.” We note that, per Section 3 of the LCRA, we are eliminating the third-adjacent channel spacing requirements set forth in Section 73.807. We have identified no other provision of our rules that would hinder our ability to offer the flexibility specified in Section 7(4) of the LCRA. Accordingly, we tentatively conclude that we need not modify or eliminate any other provisions of our rules to implement Section 7(4). We seek comment on this tentative conclusion.

d. Additional Interference Protection and Remediation Obligations

40. One additional provision of Section 7 – Section 7(6) – requires the Commission to impose additional interference protection and remediation obligations on one class of LPFM stations. Specifically, Section 7(6) of the LCRA directs the Commission to create special interference protections for “full-service FM stations that are licensed in significantly populated States with more than 3,000,000 population and a population density greater than 1,000 people per square mile land area.” The obligations apply only to LPFM stations licensed after the enactment of the LCRA. Such stations must remediate actual interference to full-service FM stations licensed to the significantly populated states specified in Section 7(6) and “located on third-adjacent, second-adjacent, first-adjacent or co-channels” to the LPFM station and must do so under the interference and complaint procedures set forth in Section 74.1203 of the rules. However, Congress has created an outer limit to the interference protection obligations in Section

¹⁰⁹ Section 73.810(c) currently specifies that “[a] complaint will be considered resolved where the complainant does not reasonably cooperate with an LPFM station’s remedial efforts.” 47 C.F.R. § 73.810(c).

¹¹⁰ See 47 C.F.R. § 73.810(b)(4).

7(6). That outer limit is the co-channel spacing distance set forth in Section 73.807 of the rules for the affected full-service station's class.

41. This statutory requirement is different than current policy. Today, if an LPFM station meets the spacing requirements, it is “not required to eliminate interference caused to existing FM stations.”¹¹¹ With the enactment of LCRA, at least with respect to full-service FM stations licensed to the significantly populated states that meet the criteria set forth in Section 7(6), LPFM stations licensed after its effective date must remediate any actual interference that occurs. We note that the Section 7(6) interference requirements are, with one exception, unambiguous. We seek comment on how to interpret the term – “States.” Only New Jersey and Puerto Rico satisfy the population and population density thresholds set forth in Section 7(6). This raises the question of whether Congress intended the term “States” to include the territories and possessions of the United States.

3. Translator Input Signals Complaint Procedure

42. Section 6 of the LCRA requires the Commission to “modify its rules to address the potential for predicted interference to FM translator input signals on third-adjacent channels set forth in Section 2.7 of the technical report entitled ‘Experimental Measurements of the Third-Adjacent Channel Impacts of Low Power FM Stations, Volume One—Final Report (May 2003)’” (“Final Report”). Section 2.7 of the Final Report finds that significant interference to translator input signals does not occur for undesired/desired ratio values below 34 dB at the translator input. Section 2.7 sets out a formula (the “Mitre Formula”) that allows calculation of the minimum LPFM-to-translator separation that will ensure a undesired/desired ratio of 34 dB.¹¹²

43. The Commission currently requires LPFM stations to remediate actual interference to the input signal of an FM translator station¹¹³ but has not established any minimum distance separation requirements or other preventative measures.¹¹⁴ Based on the language of Section 6, which requires the Commission to “address the potential for *predicted* interference,” we tentatively conclude that our existing requirements regarding remediation of actual interference must be recast as licensing rules designed to prevent any predicted interference.

44. We propose to adopt a basic threshold test. This test is designed to closely track the interference standard developed by Mitre, without necessarily requiring LPFM applicants to obtain the receive antenna technical characteristics that are incorporated into the Mitre Formula.¹¹⁵ We propose that any application for a new or modified LPFM station construction permit may not use a transmitter site

¹¹¹ *Report and Order*, 15 FCC Rcd at 2231, ¶ 64.

¹¹² To calculate the minimum separation distance using this formula, an LPFM station must have the following information: (1) its ERP, (2) the gain of the translator’s receive antenna in the direction from which the LPFM signal would be received, (3) the gain of the translator’s receive antenna in the direction from which the primary FM station’s signal would be received, and (4) the predicted field strength of the primary FM station’s signal entering the translator receiver’s antenna.

¹¹³ See 47 C.F.R. § 73.827. This essentially is the same process used to resolve allegations of interference caused by one FM translator to the input signal of another FM translator. See *Reconsideration Order*, 15 FCC Rcd at 19224, ¶ 41. See also, 47 C.F.R. § 74.1203.

¹¹⁴ See *Reconsideration Order*, 15 FCC Rcd, at 19224, ¶ 41 (specifically declining to make interference to the input signal of an FM translator “a routine consideration prior to grant of an LPFM application” and instead providing that, should such interference occur, an LPFM station must immediately cease operation until appropriate remedial actions have been taken).

¹¹⁵ See *Mitre Corporation’s Technical Report, “Experimental Measurements of the Third-Adjacent-Channel Impacts of Low-Power FM Stations,”* Section 2.7 or pages 2-16, 2-17, 2-18.

within the “potential interference area” of any FM translator station that receives directly off-air, the signal of a third-adjacent channel FM station. For these purposes, we define the “potential interference area” to be any area within 2 km of the translator site or any area within 10 km of the translator site within the azimuths from -30 degrees to +30 degrees of the azimuth from the translator site to the site of the station being rebroadcast by the translator. For example, if the primary station is located at 280 degrees true (from the translator site), the LPFM station must not be within 10 km of the translator between the azimuths 250 to 310 degrees true (from the translator site), and must be at least 2 km from the translator tower site in all other directions. If an LPFM application proposes a transmitter site within the potential interference area and fails to include an exhibit demonstrating lack of interference to the off-air reception, we would dismiss the application as defective.¹¹⁶

45. We propose two ways for an LPFM applicant within the potential interference area to show lack of interference to the input signal of a potentially affected translator. First, we propose, as indicated in Section 2.7 of the Final Report, that LPFM applicants may show that the ratio of the signal strength of the LPFM (undesired) proposal to the signal strength of the FM (desired) station is below 34 dB at all locations. Second, we propose to allow use of the equation provided in Section 2.7 of the Final Report to demonstrate lack of interference to the reception of the FM station at the translator transmitter site.¹¹⁷ Because we do not authorize translator receive antenna locations, we propose to assume that the translator receive antenna is co-located with its associated translator transmit antenna. In addition, this equation would require the horizontal plane pattern of the translator’s receive antenna. This information is not typically available publicly or in the Consolidated Database System (“CDBS”). Therefore, we propose to allow the use of a “typical” pattern in situations where an LPFM applicant is not able to obtain information from the translator licensee, despite reasonable efforts to do so. We seek comment on this proposal.

46. As with similar situations involving dismissals for violation of interference protection requirements, we propose to permit LPFM applicants to seek reconsideration of a dismissal and reinstatement *nunc pro tunc* by demonstrating that their proposals will not cause any actual interference to the input signal of any FM translator station using either the ratio or the Mitre Formula. Furthermore, we seek comment on whether this process should be applicable to only translators receiving FM station signals, or also include those that receive third-adjacent channel translator signals directly off-air.¹¹⁸

B. Other Rule Changes

47. In this *Fourth Further Notice*, we also propose changes to our rules intended to promote the LPFM service’s localism and diversity goals, reduce the potential for licensing abuses, and clarify certain rules. We discuss these proposed changes below. We seek comment on whether these proposed changes are consistent with the LCRA and whether they will promote the public interest.

¹¹⁶ See 47 C.F.R. § 73.3566(a).

¹¹⁷ This equation is as follows: $d_u = 133.5 \text{ antilog} [(P_{eu} + G_{ru} - G_{rd} - E_d) / 20]$, where d_u = the minimum allowed separation in km, P_{eu} = LPFM ERP in dBW, G_{ru} = gain (dBd) of the translator receive antenna in the direction of the LPFM site, G_{rd} = gain (dBd) of the translator receive antenna in the direction of the FM site, and E_d = predicted field strength (dBu) of the FM station at the translator site.

¹¹⁸ FM translators may rebroadcast the signals of other FM translators that are received directly over the air. 47 C.F.R. § 74.1231(b).

1. Classes of Service

48. As noted above, there are two classes of LPFM facilities: LP100 and LP10.¹¹⁹ The Commission permits LP100 stations to operate with a maximum power of 100 watts ERP at 30 meters HAAT.¹²⁰ LP10 stations may operate with a maximum power of 10 watts ERP at 30 meters HAAT.¹²¹ To date, the Commission has issued construction permits and licenses only for LP100 class facilities. Accordingly, we seek comment on whether to eliminate the LP10 class of service.

49. In addition, we seek comment on whether to permit LPFM stations in smaller communities, rural areas or “non-core” locations (*i.e.*, areas outside population centers) in larger markets to increase power levels to a maximum ERP of 250 watts at 30 meters HAAT, as urged by both the Amherst Alliance (“Amherst”) and the Catholic Radio Association (“CRA”).¹²² Both Amherst and CRA support permitting LPFM stations to operate with up to 250 watts ERP. They focus on the particular challenges of maintaining economically viable LPFM stations in rural areas where population densities are low and larger coverage areas are possible.

50. We seek comment on whether increased power levels could offset limited potential audiences, promote LPFM station viability and expand radio service to areas where full service operations may not be economically feasible. Such an approach would be consistent with the Commission’s decision to adopt a more flexible definition of “local” applicant in non-urban areas.¹²³ We note that this potential revised maximum operating limit would put LPFM stations on similar footing to FM translator stations which may operate with a maximum power of 250 watts ERP.¹²⁴

51. We seek comment on whether establishing a higher power level for certain LPFM stations would allow these stations to better meet the needs of their local communities. Notwithstanding the potential service benefits, we also seek comment on whether an increase in the maximum LPFM power level can be implemented in a manner that would not undermine the detailed LCRA protection standards and interference remediation procedures, which are presumably grounded on the current LPFM maximum power level. Such an increase in power for certain LPFM stations may be possible as we will be maintaining or increasing the spacing requirements, not decreasing them.¹²⁵ We also seek comment on

¹¹⁹ *Report and Order*, 15 FCC Rcd at 2206, ¶ 2, 2211, ¶ 13, 2212, ¶ 14.

¹²⁰ *Id.* at 2211-12, ¶¶ 13-14 (2000); *see also* 47 C.F.R. § 73.811.

¹²¹ *Id.*

¹²² *See, e.g., Comments of Amherst Alliance* at 2 (Feb. 2, 2011); *Comments of Catholic Radio Association* at 8 (June 10, 2011).

¹²³ 47 C.F.R. § 73.853(b)(2).

¹²⁴ 47 C.F.R. § 74.1235.

¹²⁵ When the Commission adopted the spacing requirements that LPFM stations must satisfy with respect to full-service FM stations, it built a 20 kilometer “buffer” into the co- and first-adjacent spacing requirements. *Report and Order*, 15 FCC Rcd at 2234, ¶ 71. It did so in order to “allow[] full-service stations room to move while also reducing the potential impact on existing LPFM stations” and to afford LPFM stations “an increased likelihood that [their] operation would not cause interference within a full service station’s community of license.” *Id.* In all cases, the 20 kilometer buffer provides more protection than the increase from 100 watts to 250 watts ERP would offset. Indeed, according to our calculations, the worst case scenario involving an LPFM station operating at 250 watts instead of 100 watts ERP involves an LP250 station operating on the same channel as a Class B FM station. This scenario would result in an 8.8 kilometer increase in the potential interference contour, which is far less than the 20 kilometer buffer built into the current spacing requirements. We note, however, that the Commission did not build a buffer into the FM translator spacing requirements. Accordingly, we are proposing to require greater spacing (continued....)

appropriate geographical restrictions for the higher powered LPFM operations.¹²⁶ For example, should we permit increased power levels anywhere outside the top 100 markets and limit higher powered operations in the top 20 markets to transmitter locations more than thirty kilometers from the center city coordinates, in markets 21-50, to locations more than twenty kilometers from center city coordinates and in markets 51-100, to locations more than ten kilometers from center city coordinates. Alternatively, we seek comment on whether power limit increases should not be permitted anywhere in the top 50 markets where we believe that licensing opportunities to be limited because of spectrum constraints and where there may be population centers outside core market locations. We ask that commenters address whether we should limit eligibility to operate in excess of the current 100 watts/30 meters maximum to previously licensed LPFM facilities in order to provide those LPFM licensees that have demonstrated their ability to construct and operate a limited opportunity to expand their listenership. Finally, we ask that commenters address whether increasing the maximum LPFM power level could result in an increased potential for interference. Specifically, should eligibility to increase power to 250 watts be limited to only those stations that can fully satisfy co-, first-, and second-adjacent channel spacing requirements?

2. Removal of I.F. Channel Minimum Distance Separation Requirements

52. LPFM stations are currently required to protect full-service stations on their intermediate frequencies ("I.F."), while translator stations operating with less than 100 watts ERP are not.¹²⁷ We recognize this disparity and propose to remove I.F. protection requirements for LPFM stations operating with less than 100 watts. We believe the same reasoning that the Commission applied in exempting FM translator stations operating with less than 100 watts ERP from the I.F. protection requirements applies for LPFM stations operating at less than 100 watts ERP. These stations too are the equivalent of Class D FM stations, which are not subject to I.F. protection requirements.¹²⁸ We note that FM allotments would continue to be protected on the I.F. channels based on existing international agreements. We seek comment on this proposal.

3. Eligibility and Ownership

a. Requirement That Applicant Be Community-Based

53. The LPFM service is reserved solely to non-profit, community-based entities.¹²⁹ However, we believe that the wording of Section 73.853 of the rules is unclear and could be read to require that an applicant be "local" only at the time of application. Such a reading would contravene our intent in adopting – and reinstating – the local ownership requirement, which rested on our predictive judgment that "local entities with their roots in the community will be more attuned and responsive to the needs of

(Continued from previous page) _____
between LP250 stations and FM translator stations than we require between LP100 stations and FM translator stations.

¹²⁶ See *Commencement of Rural First-Come, First-Served Digital Licensing for Low Power Television and TV Translators Beginning August 25, 2009 and Commencement of Nationwide, First-Come, First-Served Digital Licensing for Low Power Television and TV Translator Services Beginning January 25, 2010*, Public Notice, 24 FCC Rcd 8911 (MB 2009) (restricting filing opportunity to applications specifying transmitter sites more than 121 kilometers from reference coordinates for top-100 television markets).

¹²⁷ See 47 C.F.R. §§ 73.807, 74.1204(g).

¹²⁸ See *Amendment of Part 74 of the Commission's Rules Regarding FM Booster Stations*, Order, 6 FCC Rcd 6060, 6060 n.7 (1991) ("A Class D station is one operating with no more than 10 watts TPO. However, most FM boosters and translators use a transmitting antenna with sufficient gain to produce an ERP that is between two and ten times their TPO. Therefore, 100 watts ERP is the equivalent of 10 watts TPO operating with a high gain antenna.").

¹²⁹ See 47 C.F.R. § 73.853.

that community, which have heretofore been underserved by commercial broadcasters.”¹³⁰ We therefore propose to clarify this requirement by revising Section 73.853(b) to read: “Only local applicants will be permitted to submit applications. For the purposes of this paragraph, an applicant will be deemed local if it can certify, at the time of application, that it meets the criteria listed below and if such applicant continues to satisfy the criteria at all times thereafter” We seek comment on this proposed requirement.

b. Eligibility of Native Nations

54. The current version of Section 73.853 of the rules does not include federally recognized American Indian Tribes and Alaska Native Villages (“Native Nations”), consortia of Native Nations, or entities majority owned by Native Nations or consortia, among the categories of eligible applicants for stations in the LPFM service.¹³¹ We have recently expressed our commitment to assisting Native Nations in establishing radio service to their members living on tribal lands,¹³² including a Tribal Priority that we incorporated into the threshold fair distribution analysis performed pursuant to Section 307(b) of the Communications Act of 1934, as amended (“Act”),¹³³ when comparing mutually exclusive applications for permits to construct new or modified full-service NCE FM stations that propose service to different communities.¹³⁴ In keeping with this commitment, we seek comment in this *Fourth Further Notice, inter alia*, on whether to modify the LPFM point system to award a point to a Native Nation proposing LPFM service to its community.¹³⁵ However, before we seek comment on Native Nation participation in LPFM application proceedings, we must first ensure that, under our rules, Native Nations are eligible to apply for stations in the LPFM service.

55. Accordingly, we propose to revise Section 73.853(a) of the rules by adding the following: “(3) Tribal Applicants, as defined in Section 73.7000 of this Part, that will provide non-commercial radio services.” We further propose to revise Section 73.853(b) of the rules by adding the following: “(4) In the case of a Tribal Applicant, as defined in Section 73.7000 of this Part, the proposed site for the transmitting antenna is located on that Tribal Applicant’s ‘Tribal Lands,’ as defined in Section 73.7000 of this Part.” We believe that allowing Native Nations to hold LPFM licenses will be consistent with the localism and diversity goals of the LPFM service and will further our goal of assisting Native Nations in establishing radio service to their members on tribal lands.

¹³⁰ *Report and Order*, 15 FCC Rcd at 2220, ¶ 34. See also, *Third Report and Order*, 22 FCC Rcd at 21923, ¶ 24 (“We view local origination as a central virtue of the LPFM service and therefore will reinstate the eligibility restriction ... to encourage local origination.”).

¹³¹ We use the term “Native Nations” herein. We note that in some previous decisions, the Commission has used the term “Tribes” to denote federally recognized American Indian Tribes and Alaska Native Villages. See, e.g., *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, First Report and Order, 25 FCC Rcd 1583, 1584, ¶ 1 (2010) (“*Rural Radio First Report and Order*”) (defining “Tribes” to mean “federally recognized American Indian Tribes and Alaska Native Villages”).

¹³² See *Rural Radio First Report and Order*, 25 FCC Rcd at 1584-85, ¶¶ 4-5, modified, 26 FCC Rcd 2556 (2011) (“*Rural Radio Second Report and Order*”), recon. pending.

¹³³ 47 U.S.C. § 307(b).

¹³⁴ See 47 C.F.R. § 73.7002(b).

¹³⁵ See *infra* paragraph 55. See also *infra*, paragraphs 57, 58 & 64.

c. Cross-Ownership

56. From the outset, the Commission has prohibited common ownership of an LPFM station and any other broadcast station, as well as other media subject to the Commission's ownership rules.¹³⁶ This prohibition furthers one of the most important purposes of establishing the LPFM service – “to afford small, community-based organizations an opportunity to communicate over the airwaves and thus expand diversity of ownership.”¹³⁷ We seek comment on whether to revise our rules to permit cross-ownership of an LPFM station and an FM translator or translators. We note that this revision could enable LPFM stations to expand their listenership and provide another way in which translators could serve the needs of a community. We do not believe allowing limited cross-ownership of LPFM stations and FM translators will have a negative effect on the diversity of ownership. However, we solicit comment on this issue. In addition, we request comment on how cross-ownership of an LPFM station and an FM translator station would impact the extremely localized service that LPFM stations provide. Finally, we solicit input on whether to authorize such cross-ownership only if the FM translator rebroadcasts the programming of its co-owned LPFM station; whether we should require some overlap of the 60 dBu contours of the cross-owned stations; whether to set some distance or geographic limits on the cross-ownership; and whether to permit an LPFM station to use an alternative signal delivery mechanism to deliver its signal to a commonly owned FM translator.¹³⁸

57. We also seek comment on whether to modify our cross-ownership rule to permit a full-service radio station permittee or licensee that is a Native Nation or an entity owned or controlled by a Native Nation to apply for an LPFM station and to hold an attributable interest in such station. We believe this modification would enhance the ability of Native Nations to provide communications services to their members on tribal lands without significantly undermining diversity of ownership. We seek comment on whether this exception to the general cross-ownership prohibition should be limited to situations where the Native Nation or Native Nation-controlled applicant demonstrates that it will serve currently unserved tribal lands or populations.

d. Multiple Ownership

58. To further its diversity goals and foster local, community-based service, the Commission prohibits entities from owning more than one LPFM station in the same community.¹³⁹ We seek comment on whether we should permit Native Nations and entities owned or controlled by Native Nations to seek more than one LPFM construction permit to ensure adequate coverage of tribal lands. For instance, we could permit this when Native Nations and entities owned or controlled by Native Nations seek to serve large, irregularly shaped or rural areas. Where this is the case, an applicant may be unable to ensure adequate coverage of tribal members and tribal lands with one LPFM station. We also could permit multiple ownership only when there are available channels for other applicants. In such instances, there would be no risk that a new entrant would be precluded from offering service. We believe permitting Native Nations to hold more than one LPFM license would advance the Commission's efforts to enhance the ability of Native Nations not only to receive radio service tailored to their specific needs and cultures, but to increase ownership of such radio stations by Native Nations and entities owned or

¹³⁶ 47 C.F.R. § 73.860.

¹³⁷ *Report and Order*, 15 FCC Rcd at 2217, ¶ 29.

¹³⁸ See 47 C.F.R. § 74.1231(b) (discussing permissible signal delivery mechanisms for FM translators).

¹³⁹ *Report and Order*, 15 FCC Rcd at 2216, ¶ 24. See also 47 C.F.R. § 73.855.

controlled by Native Nations.¹⁴⁰ We seek comment on whether to accomplish this through amendment of Section 73.855(a) of the rules or through waiver.

4. Selection Among Mutually Exclusive Applicants

59. The Commission accepts applications for new LPFM stations or major changes to authorized LPFM stations only during filing windows.¹⁴¹ After the close of an LPFM filing window, the Commission makes mutual exclusivity determinations with regard to all timely and complete filings.¹⁴² The staff then processes and ultimately grants, dismisses or denies any applications not in conflict with any other application filed during the window, and offers applicants identified as mutually exclusive with other applicants the opportunity to settle their conflicts.¹⁴³ If conflicts remain, the Commission applies the point system it adopted when it established the LPFM service.¹⁴⁴ Specifically, the Commission awards one point to each applicant that has an established community presence, one point to each applicant that pledges to operate at least twelve hours per day, and one point to each applicant that pledges to originate locally at least eight hours of programming per day. In the event of a tie, the Commission employs voluntary time-sharing as the initial tie-breaker. As a last resort, the Commission awards each tied and grantable applicant an equal, successive and non-renewable license term of no less than one year, for a combined total eight-year term.¹⁴⁵ Below, we propose certain changes to the manner in which we process mutually exclusive LPFM applications. These changes are intended to better ensure that we award LPFM licenses to those organizations most capable of serving the very localized communities and underrepresented groups the LPFM service was designed to serve, and to improve the efficiency of the selection process.

a. Point System

(i) Established Community Presence

60. Currently, under the LPFM selection procedures for mutually exclusive LPFM applications set forth in Section 73.872 of the rules, the Commission awards one point to an applicant that has an established community presence. The Commission deems an applicant to have such a presence if, for at least two years prior to application filing, the applicant has been headquartered, has maintained a campus or has had three-quarters of its board members residing within ten miles of the proposed station's transmitter site.¹⁴⁶ In adopting this criterion, the Commission intended to "favor organizations that have been operating in the communities where they propose to construct an LPFM station and thus have 'track records' of community-service and established constituencies in their communities."¹⁴⁷ The Commission believed that, because of their longstanding organizational ties to their communities, applicants with established community presences were likely to be "more attuned to, and have organizational experience addressing, the needs and interests of their communities."

¹⁴⁰ See, e.g., *Rural Radio First Report and Order*, 25 FCC Rcd at 1584-85, ¶¶ 4-5. See also *Rural Radio Second Report and Order*, 26 FCC Rcd at 2557-58, ¶ 1, 2559-63, ¶¶ 6-11, 2584-87, ¶¶ 54-59 (modifying priority).

¹⁴¹ 47 C.F.R. § 73.870(b).

¹⁴² 47 C.F.R. § 73.870(d).

¹⁴³ 47 C.F.R. § 73.872(e).

¹⁴⁴ 47 C.F.R. § 73.872. See also, *Report and Order*, 15 FCC Rcd 2258-2264, ¶¶ 136-149.

¹⁴⁵ *Report and Order*, 15 FCC Rcd at 2263-64, ¶ 149.

¹⁴⁶ 47 C.F.R. § 73.872(b)(1).

¹⁴⁷ *Report and Order*, 15 FCC Rcd at 2260, ¶ 140.