

61. We propose to revise the language of Section 73.872(b)(1) to clarify that an applicant must have had an established local presence for a specified period of time prior to filing its application and must maintain that local presence at all times thereafter. We note that, while Section 73.872(b)(1) currently does not include the requirement that an applicant maintain its local presence, we believe that is the only reasonable interpretation of the rule. We seek comment on this proposed change to Section 73.872(b)(1).

62. In addition, we seek comment on three additional changes to the rule. First, we request comment on whether to revise our definition of “established community presence” to require that an applicant have maintained such a presence for a longer period of time, such as four years. While this change in the rules would result in a smaller pool of organizations that could earn this comparative point, we believe it would better ensure that LPFM licensees are attuned to the local interests of the communities they seek to serve. Alternatively, should we maintain the two-year threshold but also award an additional point to applicants that have a substantially longer established community presence (e.g., four years)? Second, we solicit comment on whether we should modify Section 73.872(b)(1) to extend the “established community presence” standard to 20 miles in rural areas. We note that such a change would bring Section 73.872(b)(1) in line with Section 73.853(b).<sup>148</sup> Finally, we seek comment on whether to allow local organizations filing as consortia to receive one point under the established community presence criterion for each organization that qualifies for such a point. If we were to revise Section 73.872(b)(1) in this fashion, should we cap the number of points awarded to consortia at three? We note that, currently, applicants tied with the highest number of points may enter into time-share agreements. In such a situation, their points are aggregated. This proposal would operate in a similar fashion, except that it would precede and potentially preclude post-filing point aggregation settlements. We believe this proposed change could significantly promote diversity, speed the licensing process and provide further incentive for applicants to enter into voluntary time-sharing arrangements in spectrum-limited areas. However, we seek comment on whether there is any potential for abuse of such a change in the rules and, if so, how we can prevent it. For instance, could this proposed rule change lead local organizations interested in constructing and operating an LPFM station to recruit other local organizations that have no interest in doing so to participate in a consortium in order to inflate the consortium’s point total?

#### (ii) Local Program Origination

63. The Commission currently encourages LPFM stations to locally originate programming. It does so by incorporating local program origination as one of the three one-point criteria used to select among mutually exclusive applicants.<sup>149</sup> In adopting the local program origination criterion, the

<sup>148</sup> Section 73.853(b), 47 C.F.R. §73.853(b), specifies that only “local applicants” may submit applications for LPFM licenses. It also defines “local” for these purposes. An applicant is “deemed local if it can certify that: (1) The applicant, its local chapter or branch is physically headquartered or has a campus within 16.1 km (10 miles) of the proposed site for the transmitting antenna for applicants in the top 50 urban markets, and 32.1 km (20 miles) for applicants outside the top 50 urban markets; or (2) It has 75% of its board members residing within 16.1 km (10 miles) of the proposed site for the transmitting antenna for applicants in the top 50 urban markets and 32.1 km (20 miles) for applicants outside the top 50 urban markets ...”. Prior to 2007, Section 73.853(b) did not contain a different “local” standard for rural areas. *Third Report and Order*, 22 FCC Rcd at 21923, ¶ 25. At the urging of Prometheus Radio Project, the Commission extended the “local” standard for these areas. *Id.* In doing so, the Commission noted that “stations located in rural communities find it particularly challenging to meet the current ten-mile standard” and concluded that the concept of “local” should be “more expansive in rural areas.” *Id.*

<sup>149</sup> *Report and Order*, 15 FCC Rcd at 2261-62, ¶ 144 (as part of the point analysis, the Commission awards one point to each mutually exclusive applicant that pledges to provide at least eight hours of locally originated programming). “Local origination” is “the production of programming, by the licensee, within ten miles of the coordinates of the proposed transmitting antenna.” 47 C.F.R. § 73.872(b)(3).

(continued...)

Commission reasoned that “local program origination can advance the Commission’s policy goal of addressing unmet needs for community-oriented radio broadcasting” and concluded that “an applicant’s intent to provide locally-originated programming is a reasonable gauge of whether the LPFM station will function as an outlet for community self-expression.”<sup>150</sup> We seek comment on whether to place greater emphasis on this selection factor by awarding two points – instead of the one point currently awarded – to an applicant that pledges to originate at least eight hours of programming each day. Do the limited licensing opportunities for LPFM stations in major markets support giving greater weight to this criterion? Does the potential for awarding up to three points to a consortium under the established community presence criterion<sup>151</sup> justify an increase in the points awarded under this criterion? Should we modify the definition of local program origination for LPFM stations that serve rural areas? We request that commenters specifically address whether increasing the weight of this criterion is warranted in light of our previous finding that local programming is not the only programming of interest or value to listeners in a particular locale.<sup>152</sup> Alternately, should we impose a specific requirement that all new LPFM licensees provide locally-originated programming? Parties supporting this proposal are requested to show that the Commission’s prior finding is no longer valid and identify problems or short-comings in the current LPFM licensing and service rules that this change would remedy. Parties supporting this proposal also are requested to address any constitutional issues that it raises.

### (iii) Additional Selection Criteria

64. We seek comment on whether to develop additional selection criteria for the LPFM point system in order to limit the number of involuntary time-share licensing outcomes. Specifically, we seek comment on whether we should modify our point system to award a point to Native Nations and entities owned or controlled by Native Nations, when they propose to provide LPFM service to Native Nation communities. We note that this criterion would be similar to the “Tribal Priority”<sup>153</sup> that we incorporated into the threshold fair distribution analysis that we perform pursuant to Section 307(b) of the Act,<sup>154</sup> when we are faced with mutually exclusive applications for permits to construct new or modified full-service FM, AM or NCE FM stations that propose service to different communities. That priority applies to Native Nations and entities owned or controlled by Native Nations, when they propose new radio services that primarily would serve Native Nation lands.<sup>155</sup> We also note that we believe adoption of a Native Nation selection criterion would further our efforts to increase ownership of radio stations by Native Nations and entities owned or controlled by Native Nations and to enable Native Nations and such entities to serve the unique needs and interests of their communities. Finally, in addition to seeking comment on this “Native Nation” criterion, we invite the submission of additional proposals for new selection criteria, provided they are (a) specifically linked to Commission policy, and (b) structured to withstand scrutiny under applicable legal standards.

(Continued from previous page)

<sup>149</sup> *Report and Order*, 15 FCC Rcd at 2262, ¶ 144.

<sup>150</sup> *Id.*

<sup>151</sup> *See supra* ¶ 62.

<sup>152</sup> *Report and Order*, 15 FCC Rcd at 2272, ¶ 171.

<sup>153</sup> *Rural Radio First Report and Order*, 25 FCC Rcd at 1585-97, ¶¶ 4-27. *See also Rural Radio Second Report and Order*, 26 FCC Rcd at 2584-87, ¶¶ 54-59 (modifying priority).

<sup>154</sup> 47 U.S.C. § 307(b).

<sup>155</sup> *Rural Radio First Report and Order*, 25 FCC Rcd at 1586, ¶ 5, 1597, ¶ 27.

**b. First Tiebreaker, Voluntary Time Sharing**

65. As noted above, in the event the point analysis results in a tie, the Commission employs voluntary time-sharing as the initial tie-breaker. In these circumstances, the Commission releases a public notice announcing the tie and gives the tied applicants the opportunity to propose voluntary time-sharing arrangements.<sup>156</sup> Currently, following the award of voluntary time-share construction permits, if one of the participants in a voluntary time-sharing arrangement does not construct or surrenders its station license after commencing operations, the remaining time-share participants are free to apportion the vacant air-time as they see fit. We seek comment on the procedures we should adopt to address the surrender or expiration of a construction permit – or the surrender of a license – issued to a participant in a voluntary time-sharing arrangement. We note that the current policy regarding air-time reapportionment presents the potential for abuse in the LPFM licensing process. For instance, out of a group of tied mutually exclusive applicants, some could enter into a time-share arrangement in order to aggregate their points and prevail over others with the knowledge that not all of the prevailing applicants intend to build and operate their LPFM stations. We solicit comment on ways to reduce the potential for abuse of the air-time reapportionment policy. Should we open a “mini-window” for the filing of applications for the abandoned air-time? Could we limit eligibility to unsuccessful applicants from the same mutually exclusive group in the initial window? Is such an approach consistent with *Ashbacker* requirements?<sup>157</sup> We believe limiting the applicant pool for a “mini-window” to unsuccessful applications from the same mutually exclusive group will provide organizations with an incentive to participate in the LPFM licensing process at the earliest opportunity (*i.e.*, during the initial filing window). It also will expedite the filling of dead air-time and promote the goal of reducing the potential for abuse of the air-time reapportionment policy while minimizing the administrative complexities involved. In this regard, we believe that the procedures we develop to select successor permittees and licensees must operate efficiently. The air-time being filled will cover only a limited portion of each broadcast day. We must balance our desire fill air-time with the need for administrative efficiency, particularly as we anticipate the considerable licensing burdens that are likely to result from the upcoming LPFM window. Under another approach, a non-prevailing applicant could express its interest in being selected as a successor time share permittee in the event that the tentatively selected applications are granted and either a permittee fails to construct or a licensee abandons its time. One option would be to require the filing of such expressions of interest by the deadline for filing of petitions to deny the applications of the tentative selectees. The staff then could identify the applicant with the highest point total among those filing an expression of interest and retain this application in pending status. If we modify our air-time reapportionment policy in voluntary time sharing situations to reduce the potential for abuse, we propose that the changes would apply only during the first four years of licensed station operations, as they do in the NCE FM licensing context.<sup>158</sup> If a time share licensee abandons its air-time after the first four years of licensed station operations, we propose to allow the remaining time-share participants to apportion the vacant air-time as they see fit just as they do under the current air-time reapportionment policy. We seek comment on these proposals. Finally, we seek comment on whether, if

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<sup>156</sup> These time-share proposals may function as tie-breakers in two different ways. 47 C.F.R. § 73.872(c); *Report and Order*, 15 FCC Rcd at 2263, ¶ 147. First, all of the tied applicants in a mutually exclusive group may propose a time-share proposal, in which case the staff reviews and processes all of the tied applications. *Id.* Second, some of the tied applicants may submit a time-share proposal, in which case the time-sharers’ points are aggregated. *Id.*

<sup>157</sup> *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945).

<sup>158</sup> *Cf.* 47 C.F.R. § 73.7005 (requiring permittees and licensees of new NCE stations to fulfill four-year “holding period” commitments for construction permits awarded pursuant to comparative criteria).

we modify the established community presence criterion to award additional points to consortia,<sup>159</sup> these new procedures also should apply to permits awarded under this modified criterion.

### 5. Operating Schedule, Time Sharing

66. Currently, the Commission requires LPFM stations to meet the same minimum operating hour requirements as full-service NCE FM stations.<sup>160</sup> Like NCE FM stations, LPFM stations must operate at least 36 hours per week, consisting of at least 5 hours of operation per day on at least 6 days of the week.<sup>161</sup> However, while the Commission has mandated time sharing for NCE FM stations that meet the Commission's minimum operating requirements but do not operate 12 hours per day each day of the year,<sup>162</sup> it has not done so for LPFM stations. We seek comment on whether we should extend this mandatory time-sharing to the LPFM service. We believe that doing so could increase the number of broadcast voices and promote additional diversity in radio voices and program services.

## V. FOURTH ORDER ON RECONSIDERATION

67. As noted above, in the *Third Report and Order*, the Commission adopted an interim waiver processing policy. The Commission also revised Section 73.809 and other provisions of the rules in order to protect and preserve the LPFM service. Ace Radio Corporation ("Ace Radio") filed a petition for reconsideration ("Ace Radio Petition") of the *Third Report and Order*, which opposed both the interim waiver processing policy and the revisions made to Section 73.809.<sup>163</sup> For the reasons discussed below, we deny in part the Petition and defer consideration of the remainder of the Ace Radio's arguments.

68. Ace Radio challenges the interim waiver processing policy. However, as discussed *supra* IV.A.1, we tentatively conclude that Section 3(b)(2) of the LCRA supersedes this policy. We believe it is appropriate to defer consideration of Ace Radio's arguments regarding the interim waiver processing policy until we have resolved this issue. To the extent Ace Radio's arguments remain relevant, we will consider them at that time.

69. We reject Ace Radio's arguments regarding our revisions to Section 73.809 of the rules to remove second-adjacent channels from the interference complaint procedures set forth therein. Ace Radio first argues that it did not have an opportunity to comment on the Commission's proposal to modify Section 73.809 of the rules to remove second-adjacent channels from the rule. It also asserts that the revisions to Section 73.809 are not justified by the record and, when coupled with the Commission's interim waiver processing policy, will allow LPFM stations to operate within a full-service station's 70 dBu contour, resulting in interference holes, otherwise known as the "swiss cheese" effect.

70. The Commission provided ample public notice that it was considering modification of Section 73.809 of the rules to remove second-adjacent channels. In the *Further Notice*, the Commission explicitly raised the issue of "encroachment" and whether a relaxation of the second-adjacent channel interference restrictions found in Section 73.809 of the rules was necessary to prevent LPFM stations from being displaced.<sup>164</sup> While Ace Radio argues that "the number of city of license applications filed

<sup>159</sup> See *supra* ¶ 62.

<sup>160</sup> *Id.* at 2276, ¶ 182. See also 47 C.F.R. §§ 73.561 & 73.850.

<sup>161</sup> 47 C.F.R. § 73.850(b).

<sup>162</sup> 47 C.F.R. § 73.561(b).

<sup>163</sup> See Petition for Reconsideration of Ace Radio Corp. *et al.*, filed Feb. 19, 2008. 47 C.F.R. § 73.809; *Third Report and Order*, 22 FCC Rcd at 21938, ¶ 63

<sup>164</sup> *Further Notice*, 20 FCC Rcd at 6780-81, ¶ 38 (noting that "the public interest may favor continued LPFM second- and third-adjacent channel operations over a subsequently authorized upgrade or new full-service station" and (continued....))

does not justify [the Commission's] action,"<sup>165</sup> it fails to raise any facts or questions of law showing that the Commission's decision was incorrect. Contrary to Ace Radio's suggestion that the number of LPFM stations at risk of displacement is insignificant, the Bureau identified 44 LPFM stations that could be forced to cease operations as a result of the filing activity resulting from the January 2007 lifting of the freeze on the filing of FM community of license modification proposals combined with the implementation of new streamlined licensing procedures.<sup>166</sup>

71. We also note that Ace Radio has mischaracterized the effects this rule modification will have on signal reception within a full-service station's 70 dBu contour. The diagram provided by Ace Radio portrays the full 60 dBu contour of 118 hypothetical LPFM stations within the 70 dBu contour of a full-service station.<sup>167</sup> The fact that an LPFM station has a 60 dBu contour on a second- or third-adjacent channel inside the 70 dBu contour of a full-service station does not establish that the LPFM station would cause interference. Any potential interference received by the full-service station would be only in the immediate vicinity of the low-power transmitter site, and can be substantially reduced or eliminated through various technical measures.<sup>168</sup> Finally, contrary to Ace Radio's assertion, the Commission did not, in its modification of Section 73.809, remove the second-adjacent restriction for the general allocation processes for LPFMs. Rather, this rule change is limited to situations involving a full-service station that is authorized subsequent to an LPFM station. As such, Ace Radio's concerns are without merit.

## VI. TERMINATION OF *SECOND FURTHER NOTICE*

72. As noted above, the Commission issued a *Second Further Notice* in 2007. We find that all of the proposals made in the *Second Further Notice* are either inconsistent with or otherwise mooted by the LCRA. Specifically, the Commission proposed to codify the interim processing policy for second-adjacent channel waiver requests that it adopted in the *Third Report and Order*.<sup>169</sup> However, *supra* Section IV.A.1, we conclude that the second-adjacent channel waiver provisions of the LCRA supersede this interim policy. Accordingly, we find the Commission's proposal to codify the interim policy to be moot and will not pursue it further. Similarly, we find the Commission's proposal to adopt a contour

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stating "[w]e believe ... that it would be useful to consider whether to limit the Section 73.809 interference procedures to situations involving co- and first-adjacent channel predicted interference, where the predicted interference areas are substantially greater than for second- and third-adjacent channel interference. Although the effective service area of an LPFM station could be diminished as a result of a second- or third-adjacent channel full service station 'move-in,' the predicted interference area to the full service station would be limited to a small area in the immediate vicinity of the LPFM station transmitter site. In these circumstances, the public interest may favor continued LPFM second- and third-adjacent channel operations over a subsequently authorized upgrade or new full service station. We seek comment on whether to amend Section 73.809.").

<sup>165</sup> See Ace Radio Petition at 7. Ace Radio also questions our alleged reliance on a study prepared by REC Networks. *Id.* at 4. In 2005, REC prepared a study that claimed that 134 LPFM stations were at risk of being cancelled due to pending full-power station modification applications for vacant allotments. *Third Report and Order*, 22 FCC Rcd at 21936-37, ¶ 60. While we cited to this study and its subsequent updates, we did not rely on this claim to make our determination. To the contrary, we disagreed with REC as to the number of stations at risk of displacement and we explicitly rejected REC's argument that we should consider "signal degradation" as a basis for modifying our rules. *Id.* at 21941-42, ¶ 72. Based on application filings, the Media Bureau estimated (and we continue to believe) that about 40 stations are at risk of displacement. *Id.* at 21938, ¶ 63.

<sup>166</sup> *Third Report and Order*, 22 FCC Rcd at 21938, ¶ 63.

<sup>167</sup> Ace Radio Petition, Exhibit A.

<sup>168</sup> *Third Report and Order*, 22 FCC Rcd at 21938, ¶ 63.

<sup>169</sup> *Second Further Notice*, 22 FCC Rcd at 21942-43, ¶ 74.

overlap interference protection approach<sup>170</sup> to be statutorily barred by Section 3(b)(1) of the LCRA, which prohibits the Commission from modifying the current co-channel and first- and second-adjacent channel distance separation requirements.<sup>171</sup> We will not pursue this proposal either. Finally, the Commission proposed certain rule changes related to LPFM station displacement,<sup>172</sup> the obligations of full-service new station and modification applicants to potentially impacted LPFM stations,<sup>173</sup> and LPFM-FM translator protection priorities.<sup>174</sup> We believe that Congress's adoption of the LCRA renders pursuit of those earlier proposals unnecessary at this time. Thus, we will not move forward with any of them. Given our findings regarding each of the proposals set forth by the Commission in the *Second Further Notice*, we consider the *Second Further Notice* to have been concluded.

## VII. ADMINISTRATIVE MATTERS

### A. Filing Requirements

73. *Ex Parte Rules*. The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with Section 1.1206(b) of the rules.<sup>175</sup> In proceedings governed by Section 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules.

74. *Comments and Reply Comments*. Pursuant to Sections 1.415 and 1.419 of the rules,<sup>176</sup> 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 the Commission’s Electronic Comment Filing System (“ECFS”).<sup>177</sup>

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<sup>170</sup> *Id.* at 21945, ¶ 83

<sup>171</sup> LCRA, § 3(b)(1).

<sup>172</sup> *Second Further Notice*, 22 FCC Rcd at 21943, ¶ 75

<sup>173</sup> *Id.* at 21943-44, ¶¶ 76-77.

<sup>174</sup> *Id.* at 21946, ¶ 84

<sup>175</sup> 47 C.F.R. § 1.1206(b).

<sup>176</sup> 47 C.F.R. §§ 1.415, 1.419.

<sup>177</sup> *See Electronic Filing of Documents in Rulemaking Proceedings*, Memorandum Opinion and Order, 63 Fed. Reg. 24121 (1998).

75. *Electronic Filers.* Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.

76. *Paper Filers.* Parties who choose to file by paper must file an original and one copy 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.

77. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> Street, SW, Room TW-A325, Washington, D.C. 20554. 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, D.C. 20554.

78. *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](mailto:fcc504@fcc.gov), or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

## **B. Initial Regulatory Flexibility Analysis**

79. The Regulatory Flexibility Act of 1980, as amended ("RFA"), 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." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 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).

80. With respect to this *Fourth Further Notice*, an Initial Regulatory Flexibility Analysis ("IRFA") under the RFA<sup>178</sup> is contained in Appendix C. Written public comments are requested in the IRFA, and must be filed in accordance with the same filing deadlines as comments on the *Fourth Further Notice*, with a distinct heading designating them as responses to the IRFA. The Commission will send a copy of this *Fourth Further Notice*, including the IRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, a copy of this *Fourth Further Notice* and the IRFA will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the *Federal Register*.

## **C. Paperwork Reduction Act Analysis**

81. This *Fourth Further Notice* seeks comment on a potential new or revised information

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<sup>178</sup> See 5 U.S.C. § 603.

collection requirement. If the Commission adopts any new or revised information collection requirement the Commission will publish a notice in the Federal Register inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), the Commission will seek specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.

#### D. Congressional Review Act

82. The Commission will send a copy of this *Fifth Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

### VIII. ORDERING CLAUSES

83. Accordingly, IT IS ORDERED, pursuant to the authority contained in the Local Community Radio Act of 2010, Pub. L. No. 111-371, 124 Stat. 4072 (2011), and Sections 1, 2, 4(i), 303, 307, and 309(j) of the Communications Act of 1934, 47 U.S.C §§ 151, 152, 154(i), 303, 307, and 309(j), that this *Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking and Fourth Order on Reconsideration* IS ADOPTED.

84. IT IS FURTHER ORDERED that pursuant to the authority contained in the Local Community Radio Act of 2010, Pub. L. No. 111-371, 124 Stat. 4072 (2011), and Sections 1, 2, 4(i), 303, and 307 of the Communications Act of 1934, 47 U.S.C. §§ 151, 152, 154(i), 303, and 307, the Commission’s rules ARE HEREBY AMENDED as set forth in Appendix A. 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.

85. IT IS FURTHER ORDERED that the rules as revised in Appendix A SHALL BE EFFECTIVE 60 days after publication of the *Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking and Fourth Order on Reconsideration* in the *Federal Register*.

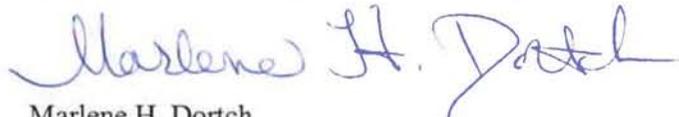
86. IT IS FURTHER ORDERED that the Petition for Rulemaking filed by REC Networks on July 16, 2004, IS HEREBY DISMISSED, and Proceeding No. PRM-04-MB IS TERMINATED.

87. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by Ace Radio Corp. on February 19, 2008, IS DENIED IN PART.

88. IT IS FURTHER ORDERED that the *Second Further Notice of Proposed Rulemaking* in MM Docket No. 99-25 IS TERMINATED.

89. IT IS FURTHER ORDERED that the Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking and Fourth Order on Reconsideration*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, and shall cause it to be published in the *Federal Register*.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch  
Secretary

**APPENDIX A****Final Rules**

**Part 73 of the Code of Federal Regulations is amended as follows:**

**PART 73 – RADIO BROADCAST SERVICES**

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

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

2. Section 73.807 is amended by revising the introductory text that precedes paragraph (a) to read as follows:

**§ 73.807 Minimum distance separation between stations.**

Minimum separation requirements for LP100 and LP10 stations, as defined in §§ 73.811 and 73.853, are listed in the following paragraphs. An LPFM station will not be authorized unless the co-channel, first- and second-adjacent and IF channel separations are met. An LPFM station need not satisfy the third-adjacent channel separations listed in paragraphs (a) through (d) in order to be authorized. Minimum distances for co-channel and first-adjacent channel are separated into two columns. The left-hand column lists the required minimum separation to protect other stations and the right-hand column lists (for informational purposes only) the minimum distance necessary for the LPFM station to receive no interference from other stations assumed to be operating at the maximum permitted facilities for the station class. For second-adjacent channel and I.F. channels, the required minimum distance separation is sufficient to avoid interference received from other stations.

\* \* \* \* \*

## APPENDIX B

## Proposed Rules

The Federal Communications Commission proposes to amend Part 73 of Title 47 of the Code of Federal Regulations as follows:

- Section 73.807 is amended to read as follows:

**§ 73.807 Minimum distance separation between stations.**

Minimum separation requirements for LP250 and LP100 stations, as defined in §§ 73.811 and 73.853, are listed in the following paragraphs. Except as noted below, an LPFM station will not be authorized unless the co-channel, first- and second-adjacent and I.F. channel separations are met. An LPFM station need not satisfy the third-adjacent channel separations listed in paragraphs (a) through (d) in order to be authorized. These third-adjacent channel separations are included for informational purposes only.

Minimum distances for co-channel and first-adjacent channel are separated into two columns. The left-hand column lists the required minimum separation to protect other stations and the right-hand column lists (for informational purposes only) the minimum distance necessary for the LPFM station to receive no interference from other stations assumed to be operating at the maximum permitted facilities for the station class. For second-adjacent channel and intermediate frequency (I.F.) channels, the required minimum distance separation is sufficient to avoid interference received from other stations.

(a)(1) An LP100 station will not be authorized initially unless the minimum distance separations in the following table are met with respect to authorized FM stations, applications for new and existing FM stations filed prior to the release of the public notice announcing an LPFM window period for LP100 stations, authorized LP250 and LP100 stations, LP250 and LP100 station applications that were timely-filed within a previous window, and vacant FM allotments. LPFM modification applications must either meet the distance separations in the following table or, if short-spaced, not lessen the spacing to subsequently authorized stations.

Station class protected by LP100	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second and third adjacent channel minimum separation (km)	I.F. channel minimum separations
	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility		
					Required	
LP100 .....	24	24	14	14	None	None
LP250 .....	26	29	15	16	None	None
D .....	24	24	13	13	6	3
A .....	67	92	56	56	29	6
B1 .....	87	119	74	74	46	9
B .....	112	143	97	97	67	12
C3 .....	78	119	67	67	40	9
C2 .....	91	143	80	84	53	12
C1 .....	111	178	100	111	73	20
C0 .....	122	193	111	130	84	22
C .....	130	203	120	142	93	28

(a)(2) LP100 stations must satisfy the second-adjacent channel minimum distance separation requirements of paragraph (a)(1) of this section with respect to any third-adjacent channel FM station that, as of September 20, 2000, broadcasts a radio reading service via a subcarrier frequency.

(a)(3) An LP250 station will not be authorized initially unless the minimum distance separations in the following table are met with respect to authorized FM stations, applications for new and existing FM stations filed prior to the release of the public notice announcing an LPFM window period for LP250 stations, authorized LP250 and LP100 stations, LP250 and LP100 station applications that were timely-filed within a previous window, and vacant FM allotments. LPFM modification applications must either meet the distance separations in the following table or, if short-spaced, not lessen the spacing to subsequently authorized stations.

Station class protected by LP250	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second and third adjacent channel minimum separation (km)	I.F. channel minimum separations
	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility		
					Required	
LP100 .....	29	26	16	15	None	None
LP250.....	31	31	17	17	None	None
D .....	29	26	16	15	7	3
A .....	67	92	56	56	30	6
B1 .....	87	119	74	74	47	9
B .....	112	143	97	97	68	12
C3 .....	78	119	67	67	41	9
C2 .....	91	143	80	84	54	12
C1 .....	111	178	100	111	74	20
C0 .....	122	193	111	130	85	22
C .....	130	203	120	142	94	28

(a)(4) LP250 stations must satisfy the second-adjacent channel minimum distance separation requirements of paragraph (a)(3) of this section with respect to any third-adjacent channel FM station that, as of September 20, 2000, broadcasts a radio reading service via a subcarrier frequency.

(a)(5) LP100 stations operating with less than 100 watts effective radiated power (ERP) need not satisfy the I.F. channel minimum separations requirements.

(b)(1) In addition to meeting or exceeding the minimum separations in paragraph (a), new LP100 stations will not be authorized in Puerto Rico or the Virgin Islands unless the minimum distance separations in the following tables are met with respect to authorized or proposed FM stations:

Station class protected by LP100	Co-channel minimum separation (km)	First-adjacent channel minimum separation (km)	Second and third adjacent	I.F. channel minimum separations—
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	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility	channel minimum separation (km)—required	10.6 or 10.8 MHz
A .....	80	111	70	70	42	9
B1 .....	95	128	82	82	53	11
B .....	138	179	123	123	92	19

(b)(2) In addition to meeting or exceeding the minimum separations in paragraph (a), new LP250 stations will not be authorized in Puerto Rico or the Virgin Islands unless the minimum distance separations in the following tables are met with respect to authorized or proposed FM stations:

Station class protected by LP250	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second and third adjacent channel minimum separation (km)—required	I.F. channel minimum separations—10.6 or 10.8 MHz
	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility		
A .....	80	111	70	70	43	9
B1 .....	95	128	82	82	54	11
B .....	138	179	123	123	93	19

(b)(3) LP 100 stations operating with less than 100 watts ERP need not satisfy the I.F. channel minimum separations requirements.

NOTE TO PARAGRAPHS (a) AND (b): Minimum distance separations towards “grandfathered” superpowered Reserved Band stations are as specified.

Full service FM stations operating within the reserved band (Channels 201-220) with facilities in excess of those permitted in § 73.211(b)(1) or § 73.211(b)(3) shall be protected by LPFM stations in accordance with the minimum distance separations for the nearest class as determined under § 73.211. For example, a Class B1 station operating with facilities that result in a 60 dBu contour that exceeds 39 kilometers but is less than 52 kilometers would be protected by the Class B minimum distance separations. Class D stations with 60 dBu contours that exceed 5 kilometers will be protected by the Class A minimum distance separations. Class B stations with 60 dBu contours that exceed 52 kilometers will be protected as Class C1 or Class C stations depending upon the distance to the 60 dBu contour. No stations will be protected beyond Class C separations.

(c)(1) In addition to meeting the separations specified in paragraphs (a) and (b), LP100 applications must meet the minimum separation requirements in the following table with respect to authorized FM translator stations, cutoff FM translator applications, and FM translator applications filed prior to the release of the Public Notice announcing the LPFM window period.

Distance to FM translator 60 dBu contour	Co-channel minimum separation (km)	First-adjacent channel minimum separation (km)	Second and third adjacent	I.F. channel minimum separations

	Required	For no interference received	Required	For no interference received	channel minimum separation (km)—required	(km) 10.6 or 10.8 MHz
13.3 km or greater.....	39	67	28	35	21	5
Greater than 7.3 km, but less than 13.3 km ....	32	51	21	26	14	5
7.3 km or less	26	30	15	16	8	5

(c)(2) In addition to meeting the separations specified in paragraphs (a) and (b), LP250 applications must meet the minimum separation requirements in the following table with respect to authorized FM translator stations, cutoff FM translator applications, and FM translator applications filed prior to the release of the Public Notice announcing the LPFM window period:

Distance to FM translator 60 dBu contour	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second and third adjacent channel minimum separation (km)—required	I.F. channel minimum separations (km) 10.6 or 10.8 MHz
	Required	For no interference received	Required	For no interference received		
13.3 km or greater.....	44	67	30	37	22	4
Greater than 7.3 km, but less than 13.3 km ....	37	51	23	27	15	4
7.3 km or less	31	30	17	18	9	3

(c)(3) LP100 stations operating with less than 100 watts ERP need not satisfy the I.F. channel minimum separations requirements.

(d) Existing LP250 and LP100 stations which do not meet the separations in paragraphs (a) through (c) of this section may be relocated provided that the separation to any short-spaced station is not reduced.

(e) Commercial and noncommercial educational stations authorized under subparts B and C of this part, as well as new or modified commercial FM allotments, are not required to adhere to the separations specified in this rule section, even where new or increased interference would be created.

(f) International considerations within the border zones.

(1) Within 320 km of the Canadian border, LP100 stations must meet the following minimum separations with respect to any Canadian stations:

Canadian station class	Co-channel (km)	First-adjacent	Second-adjacent	Third-adjacent	Intermediate frequency
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		channel (km)	channel (km)	channel (km)	(IF) channel (km)
A1 & Low Power .....	45	30	21	20	4
A .....	66	50	41	40	7
B1 .....	78	62	53	52	9
B .....	92	76	68	66	12
C1 .....	113	98	89	88	19
C .....	124	108	99	98	28

(2) Within 320 km of the Canadian border, LP250 stations must meet the following minimum separations with respect to any Canadian stations:

Canadian station class	Co-channel (km)	First- adjacent channel (km)	Second- adjacent channel (km)	Third- adjacent channel (km)	Intermediate frequency (IF) channel (km)
A1 & Low Power .....	54	33	22	20	4
A .....	74	53	42	40	6
B1 .....	86	65	54	52	9
B .....	101	79	68	67	12
C1 .....	122	101	90	88	19
C .....	132	111	100	98	26

(3) Within 320 km of the Mexican border, LP100 stations must meet the following separations with respect to any Mexican stations:

Mexican station class	Co-channel (km)	First- adjacent channel (km)	Second- and third- adjacent channel (km)	Intermediate frequency (IF) channel (km)
Low Power .....	27	17	9	3
A .....	43	32	25	5
AA .....	47	36	29	6
B1 .....	67	54	45	8
B .....	91	76	66	11
C1 .....	91	80	73	19
C .....	110	100	92	27

(4) Within 320 km of the Mexican border, LP250 stations must meet the following separations with respect to any Mexican stations:

Mexican station class	Co-channel	First-	Second- and	Intermediate
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	(km)	adjacent channel (km)	third- adjacent channel (km)	frequency (IF) channel (km)
Low Power .....	33	19	10	3
A .....	48	34	26	6
AA .....	52	38	30	6
B1 .....	73	57	46	9
B .....	101	79	68	12
C1 .....	96	83	74	19
C .....	116	102	93	26

(5) The Commission will notify the International Telecommunications Union (ITU) of any LPFM authorizations in the US Virgin Islands. Any authorization issued for a US Virgin Islands LPFM station will include a condition that permits the Commission to modify, suspend or terminate without right to a hearing if found by the Commission to be necessary to conform to any international regulations or agreements.

(6) The Commission will initiate international coordination of a LPFM proposal even where the above Canadian and Mexican spacing tables are met, if it appears that such coordination is necessary to maintain compliance with international agreements.

2. Section 73.809(a) is amended to read as follows:

**§ 73.809 Interference protection to full service FM stations.**

(a) If a full service commercial or NCE FM facility application is filed subsequent to the filing of an LPFM station facility application, such full service station is protected against any condition of interference to the direct reception of its signal that is caused by such LPFM station operating on the same channel or first-adjacent channel and is protected from any condition of interference to the direct reception of its signal caused by such LPFM station operating on an intermediate frequency (IF) channel with more than 100 watts ERP, provided that the interference is predicted to occur and actually occurs within: (i)

\* \* \* \* \*

3. Section 73.811 is amended by adding a new paragraph (a), shifting the text of existing paragraph (a) to paragraph (b), and deleting previous paragraph (b) as follows:

**§ 73.811 LPFM power and antenna height requirements.**

(a) LP250 stations: (1) *Maximum facilities.* LP250 stations will be authorized to operate with maximum facilities of 250 watts effective radiated power (ERP) at 30 meters antenna height above average terrain (HAAT). An LP250 station with a HAAT that exceeds 30 meters will not be permitted to operate with an ERP greater than that which would result in a 60 dBu contour of 7.1 kilometers. In no event will an ERP less than one watt be authorized.

(2) *Minimum facilities.* LP250 stations may not operate with facilities less than 101 watts

ERP at 30 meters HAAT or the equivalent necessary to produce a 60 dBu contour that extends at least 5.7 kilometers.

(b) LP100 stations: (1) *Maximum facilities.* LP100 stations will be authorized to operate with maximum facilities of 100 watts ERP at 30 meters HAAT. An LP100 station with a HAAT that exceeds 30 meters will not be permitted to operate with an ERP greater than that which would result in a 60 dBu contour of 5.6 kilometers. In no event will an ERP less than one watt be authorized. No facility will be authorized in excess of one watt ERP at 450 meters HAAT.

(2) *Minimum facilities.* LP100 stations may not operate with facilities less than 50 watts ERP at 30 meters HAAT or the equivalent necessary to produce a 60 dBu contour that extends at least 4.7 kilometers.

4. Section 73.816(c) is amended to read as follows:

**§ 73.816 Antennas.**

\* \* \* \* \*

(c)(1) Public safety and transportation permittees and licensees, eligible pursuant to §73.853(a)(ii), may utilize directional antennas in connection with the operation of a Travelers' Information Service (TIS) provided each LPFM TIS station utilizes only a single antenna with standard pattern characteristics that are predetermined by the manufacturer. In no event may composite antennas (*i.e.*, antennas that consist of multiple stacked and/or phased discrete transmitting antennas) and/or transmitters be employed.

(2) LPFM permittees and licensees may utilize directional antennas for the purpose of preventing interference to a second-adjacent channel station when requesting a waiver of the second-adjacent channel minimum distance separations set forth in Section 73.807.

\* \* \* \* \*

5. Section 73.825 is amended to read as follows:

**§ 73.825 Protection to reception of TV channel 6.**

(a) LPFM stations will be authorized on Channels 201 through 220 only if the pertinent minimum separation distances in the following table are met with respect to all full power TV Channel 6 stations.

FM channel number	Class LP100 to TV channel 6 (km)	Class LP250 to TV channel 6 (km)
201	140	143
202	138	141
203	137	139
204	136	138
205	135	136
206	133	135

207	133	133
208	133	133
209	133	133
210	133	133
211	133	133
212	132	133
213	132	133
214	132	132
215	131	132
216	131	132
217	131	132
218	131	131
219	130	131
220	130	130

(b) LPFM stations will be authorized on Channels 201 through 220 only if the pertinent minimum separation distances in the following table are met with respect to all low power TV, TV translator, and Class A TV stations authorized on TV Channel 6.

FM channel number	Class LP100 to TV channel 6 (km)	Class LP250 to TV channel 6 (km)
201	98	101
202	97	99
203	95	97
204	94	96
205	93	94
206	91	93
207	91	92
208	91	92
209	91	92
210	91	92
211	91	92
212	90	91
213	90	91
214	90	91
215	90	90
216	89	90
217	89	90
218	89	89
219	89	89
220	89	89

6. Section 73.827 is amended by adding new paragraph (a), revising the previous paragraph (a) to

(b), and revising the previous paragraph (b) to (c) as follows:

**§ 73.827 Interference to the input signals of FM translator or FM booster stations.**

(a) *Interference to the direct reception of FM signals at a translator input.* An LPFM station will not be authorized unless it remains at least 2 km from a translator receiving a third-adjacent channel FM station (as compared to the LPFM) directly off-air, and unless it remains at least 10 km from 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. The provisions of this subsection will not apply if it can be demonstrated that no actual interference will occur due to an undesired (LPFM) to desired (FM) ratio below 34 dB at all locations, or due to a location at a distance from the translator that satisfies the following:  $d_u = 133.5 \text{ antilog} [(P_{eu} + G_{ru} - G_{rd} - E_d) / 20]$ , 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,  $E_d$  = predicted field strength (dBu) of the FM station at the translator site.

(b) An authorized LPFM station will not be permitted to continue to operate if an FM translator or FM booster station demonstrates that the LPFM station is causing actual interference to the FM translator or FM booster station's input signal, provided that the same input signal was in use at the time the LPFM station was authorized.

(c) Complaints of actual interference by an LPFM station subject to paragraph (b) of this section must be served on the LPFM licensee and the Federal Communications Commission, Attention: Audio Division, Media Bureau. The LPFM station must suspend operations upon the receipt of such complaint unless the interference has been resolved to the satisfaction of the complainant on the basis of suitable techniques. Short test transmissions may be made during the period of suspended operations to check the efficacy of remedial measures. An LPFM station may only resume full operation at the direction of the Federal Communications Commission. If the Commission determines that the complainant has refused to permit the LPFM station to apply remedial techniques that demonstrably will eliminate the interference without impairment of the original reception, the licensee of the LPFM station is absolved of further responsibility for the complaint.

7. Section 73.850 is amended by adding a new paragraph (c) that reads as follows:

**§73.850 Operating schedule.**

\* \* \* \* \*

(c) All LPFM stations, including those meeting the requirements of paragraph (b) of this section, but which do not operate 12 hours per day each day of the year, will be required to share use of the frequency upon the grant of an appropriate application proposing such share time arrangement. Such applications must set forth the intent to share time and must be filed in the same manner as are applications for new stations. They may be filed at any time, but in cases where the parties are unable to agree on time sharing, action on the application will be taken only in connection with a renewal application for the existing station filed on or after June 1, 2019. In order to be considered for this purpose, such an application to share time must be filed no later than the deadline for filing petitions to deny the renewal application of the existing licensee.

(1) The licensee and the prospective licensee(s) shall endeavor to reach an agreement for a

definite schedule of periods of time to be used by each. Such agreement must be in writing and must set forth which licensee is to operate on each of the hours of the day throughout the year. Such agreement must not include simultaneous operation of the stations. Each licensee must file the same in triplicate with each application to the Commission for initial construction permit or renewal of license. Such written agreements shall become part of the terms of each station's license.

(2) The Commission desires to facilitate the reaching of agreements on time sharing. However, if the licensees of stations authorized to share time are unable to agree on a division of time, the prospective licensee(s) must submit a statement with the Commission to that effect filed with the application(s) proposing time sharing.

(3) After receipt of the type of application(s) described in subsection (c)(2), the Commission will process such application(s) pursuant to Sections 73.3561-3568 of this Part. If any such application is not dismissed pursuant to those provisions, the Commission will issue a notice to the parties proposing a time-sharing arrangement and a grant of the time-sharing application(s). The licensee may protest the proposed action, the prospective licensee(s) may oppose the protest and/or the proposed action, and the licensee may reply within the time limits delineated in the notice. All such pleadings must satisfy the requirements of Section 309(d) of the Act. Based on those pleadings and the requirements of Section 309 of the Act, the Commission will then act on the time-sharing application(s) and the licensee's renewal application.

(4) A departure from the regular schedule set forth in a time-sharing agreement will be permitted only in cases where a written agreement to that effect is reduced to writing, is signed by the licensees of the stations affected thereby, and is filed in triplicate by each licensee with the Commission, Attention: Audio Division, Media Bureau, prior to the time of the proposed change. If time is of the essence, the actual departure in operating schedule may precede the actual filing of the written agreement, provided that appropriate notice is sent to the Commission in Washington, D.C., Attention: Audio Division, Media Bureau.

8. Section 73.853 is amended by revising paragraphs (a) and (b) and adding a new paragraph (c) as follows:

**§ 73.853 Licensing requirements and service.**

(a) An LPFM station may be licensed only to:

\* \* \* \* \*

(3) Tribal Applicants, as defined in Section 73.7000 of this Part, that will provide non-commercial radio services.

(b) 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.

\* \* \* \* \*

(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.

(c) An LP250 station will be licensed only to applicants that:

(1) propose transmitter sites located at least 30 kilometers from the reference coordinates for the top 100 radio markets; and

(2) currently operate an LP100 station serving the community of license proposed to be served by the LP250 station.

9. Section 73.870 is amended by revising paragraph (a) to read as follows:

**§ 73.870 Processing of LPFM broadcast station applications.**

\* \* \* \* \*

(a) A minor change for an LP250 station authorized under this subpart is limited to transmitter site relocations of 7.1 kilometers or less. A minor change for an LP100 station authorized under this subpart is limited to transmitter site relocations of 5.6 kilometers or less. These distance limitations do not apply to amendments or applications proposing transmitter site relocation to a common location filed by applicants that are parties to a voluntary time-sharing agreement with regard to their stations pursuant to § 73.872 paragraphs (c) and (e). Minor changes of LPFM stations may include:

(1) Changes in frequency to adjacent or I.F. frequencies or, upon a technical showing of reduced interference, to any frequency; and

(2) Amendments to time-sharing agreements, including universal agreements that supersede involuntary arrangements.

\* \* \* \* \*

10. Section 73.871 is amended by revising paragraph (c) to read as follows:

**§ 73.871 Amendment of LPFM broadcast station applications.**

\* \* \* \* \*

(c) Only minor amendments to new and major change applications will be accepted after the close of the pertinent filing window. Subject to the provisions of this section, such amendments may be filed as a matter of right by the date specified in the FCC's Public Notice announcing the acceptance of such applications. For the purposes of this section, minor amendments are limited to:

(1) Filings subject to paragraph (c)(5), site relocations of 5.6 kilometers or less for LP100 stations;

(2) Filings subject to paragraph (c)(5), site relocations of 7.1 kilometers or less for LP250 stations;

\* \*

11. Section 73.872 is amended by revising paragraph (b) to read as follows:

**§ 73.872 Selection procedure for mutually exclusive LPFM applications.**

\* \* \* \* \*

(b) Except as specified in subsection (b)(1) below, each mutually exclusive application will be awarded one point for each of the following criteria, based on application certification that the qualifying conditions are met:

(1) *Established community presence.* An applicant must, for a period of at least 4 years prior to application and at all times thereafter, have been physically headquartered, have had a campus or have had seventy-five percent of its board members residing within 16.1 km (10 miles) of the coordinates of the proposed transmitting antenna for applicants in the top 50 urban markets, and 32.1 km (20 miles) for applicants outside of the top 50 urban markets. If an applicant does not satisfy the requirements of the preceding sentence but was formed jointly by two or more organizations that do meet such requirements and maintains representation on its governing board by at least one member from each such organization, that applicant will be awarded one point for each such formative organization. Applicants claiming a point or more for this criterion must submit the documentation set forth in the application form at the time of filing their applications.

\* \* \* \* \*

(4) *Tribal applicants serving Tribal Lands.* The applicant must be a Tribal Applicant, as defined in Section 73.7000 of this Part, and the proposed site for the transmitting antenna must be located on that Tribal Applicant's "Tribal Lands," as defined in Section 73.7000 of this Part.

## APPENDIX C

## Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (“IRFA”) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Fourth Further Notice of Proposed Rulemaking* (“*Fourth Further Notice*”). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Fourth Further Notice* provided in paragraph 74. The Commission will send a copy of this entire *Fourth Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (“SBA”).<sup>2</sup> In addition, the *Fourth Further Notice* and the IRFA (or summaries thereof) will be published in the *Federal Register*.<sup>3</sup>

2. **Need For, and Objectives of, the Proposed Rules.** This rulemaking proceeding is initiated to seek comment on how to implement the provisions of the Local Community Radio Act of 2010 (“LCRA”) discussed below. The *Fourth Further Notice* tentatively concludes that the second-adjacent channel spacing waiver standard set forth in Section 3(b)(2) of the LCRA supersedes the interim waiver processing policy currently in place<sup>4</sup> and seeks comment on this tentative conclusion and on what factors the Commission should take into account in considering waiver requests. The *Fourth Further Notice* also proposes to implement Section 3(b)(2)(B), which provides a framework for handling complaints of interference from low-power FM (“LPFM”) stations operating pursuant to second-adjacent channel waivers.<sup>5</sup> Similarly the *Fourth Further Notice* also proposes to amend the Commission’s rules to implement Section 7 of the LCRA, which 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. Lastly, the *Fourth Further Notice* takes up implementation of Section 6 of the LCRA, which requires the Commission to modify its rules to address the potential for predicted interference to translator input signals on third-adjacent channels. The *Fourth Further Notice* proposes to adopt a basic threshold test to determine whether a proposed LPFM station will cause such predicted interference. Specifically, the *Fourth Further Notice* proposes to prohibit an applicant for a new or modified LPFM station construction permit from specifying a transmitter site within the “potential interference area” of any FM translator station that receives directly off-air, the signal of a third-adjacent channel FM station. The *Fourth Further Notice* would 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.

<sup>1</sup> See 5 U.S.C. § 603. 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).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> See *id.*

<sup>4</sup> The current interim waiver processing policy 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.

<sup>5</sup> Section 3(b)(2)(B) of the LCRA provides that, 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. The LPFM station must suspend operation immediately upon notification by the Commission that it is causing interference. It may not resume operations until such interference has been eliminated or it can demonstrate that the interference was not due to its operations. The LPFM station, however, may make short test transmissions to check the efficacy of remedial measures.

3. The *Fourth Further Notice* also proposes 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. First, the *Fourth Further Notice* seeks comment on whether to increase the maximum facilities for LPFM stations. Second, the *Fourth Further Notice* seeks comment on proposed rule changes that will clarify that an LPFM applicant must satisfy the local ownership requirement at all times. Third, it also requests comment on whether to allow cross-ownership of an LPFM station and FM translator stations and whether to allow federally recognized Native American Tribes and Alaska Native Villages ("Native Nations") to own multiple LPFM stations. Fourth, the *Fourth Further Notice* proposes to modify the criteria used in the point system, add an additional criterion to the point system, and revise the voluntary time-sharing tie-breaker used for selecting among mutually exclusive LPFM applications when the point analysis results in a tie. Fifth, the *Fourth Further Notice* seeks comment on whether to extend to the LPFM service the mandatory time-sharing requirements that currently apply to FM translators that meet the Commission's minimum operating requirements but do not operate 12 hours per day each day of the year. Finally, noting that 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, the *Fourth Further Notice* proposes to eliminate the spacing requirements related to Intermediate Frequency channels.

4. **Legal Basis.** The authority for this proposed rulemaking is contained in the Local Community Radio Act of 2010, Pub. L. No. 111-371, 124 Stat. 4072 (2011), and Sections 1, 2, 4(i), 303, 307, and 309(j) of the Communications Act of 1934, 47 U.S.C §§ 151, 152, 154(i), 303, 307, and 309(j).

5. **Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.** The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules.<sup>6</sup> The RFA generally defines the term "small entity" as encompassing the terms "small business," "small organization," and "small governmental entity."<sup>7</sup> In addition, the term "small Business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>8</sup> 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 SBA.<sup>9</sup>

6. *Radio Broadcasting.* The proposed policies could apply to radio broadcast licensees, and potential licensees of radio service. The SBA defines a radio broadcast station as a small business if such station has no more than \$7 million in annual receipts.<sup>10</sup> Business concerns included in this industry are those primarily engaged in broadcasting aural programs by radio to the public.<sup>11</sup> According to Commission staff review of the BIA Publications, Inc. Master Access Radio Analyzer Database as of September 15, 2011, about 10,960 (97 percent) of 11,300 commercial radio station have revenues of \$7 million or less and thus qualify as small entities under the SBA definition. We note, however, that, in

<sup>6</sup> *Id.* § 603(b)(3).

<sup>7</sup> *Id.* § 601(6).

<sup>8</sup> *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."

<sup>9</sup> 15 U.S.C. § 632.

<sup>10</sup> See 13 C.F.R. § 121.201, NAICS Code 515112.

<sup>11</sup> *Id.*

assessing whether a business concern qualifies as small under the above definition, business (control) affiliations<sup>12</sup> must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

7. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any radio station from the definition of a small business on this basis and therefore may be over-inclusive to that extent. Also as noted, an additional element of the definition of “small business” is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

8. *FM translator stations and low power FM stations.* The proposed policies could affect licensees of FM translator and booster stations and low power FM (LPFM) stations, as well as potential licensees in these radio services. The same SBA definition that applies to radio broadcast licensees would apply to these stations. The SBA defines a radio broadcast station as a small business if such station has no more than \$7 million in annual receipts.<sup>13</sup> Currently, there are approximately 6,131 licensed FM translator stations and 859 licensed LPFM stations.<sup>14</sup> In addition, there are approximately 646 applicants with pending applications filed in the 2003 translator filing window. Given the nature of these services, we will presume that all of these licensees and applicants qualify as small entities under the SBA definition.

**9. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.** None.

**10. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.** The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>15</sup>

11. The passage of the LCRA required the Commission to propose certain changes to its technical rules. The Commission considered maintaining the *status quo* regarding the proposed changes to its non-technical rules, but concluded that these proposed rule changes will benefit small businesses and existing LPFM licensees.

12. The LPFM service has created and will continue to create significant opportunities for new small businesses by allowing small businesses to develop LPFM service in their communities. In addition, the Commission generally has taken steps to minimize the impact on existing small

<sup>12</sup> “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.” 13 C.F.R. § 121.103(a)(1).

<sup>13</sup> See 13 C.F.R. § 121.201, NAICS Code 515112.

<sup>14</sup> See *News Release*, “Broadcast Station Totals as of December 31, 2010” (rel. Feb. 11, 2011) ([http://fjallfoss.fcc.gov/edocs\\_public/attachmatch/DOC-304594A1.pdf](http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-304594A1.pdf)).

<sup>15</sup> 5 U.S.C. § 603(b).

broadcasters. To the extent that rules proposed in the *Fourth Further Notice* would impose any burdens on small entities, we believe that the resulting impact on small entities would be favorable because the proposed rules, if adopted, would expand opportunities for LPFM applicants, permittees, and licensees to commence broadcasting and stay on the air. Among other things, the *Fourth Further Notice* proposes to allow FM translator licensees to own or hold attributable interests in LPFM stations. This is prohibited under the current rules. Likewise, the *Fourth Further Notice* proposes to 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. Today, multiple ownership of LPFM stations is prohibited.

**13. Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals.** None.