

total number of authorizations issued out of Auction 83 to over 4500. At the same time, the national and per-market caps will require each affected applicant to prioritize its filings and to focus on proposals at locations where it has a *bona fide* interest in providing service. We believe that these restrictions are necessary to impose on these applicants a level of discipline similar to that which competitive bidding procedures provide in full service station licensing.

61. We will require parties with more than 50 pending applications nationally and/or more than one pending application in the markets identified in Appendix A to identify and affirm their continuing interest in those pending applications for which they seek further Commission processing, consistent with these limits. Both pending long form and short form applications will be subject to these applicant-based caps. In the event that an applicant does not timely comply with these dismissal procedures, we direct the staff to first apply the national cap, retaining on file the first 50 filed applications and dismissing those that were subsequently filed. The staff will then dismiss all but the first filed application in each of the markets identified in Appendix A.

D. Restrictions on the Use of FM Translators to Rebroadcast the Signals of AM Stations

1. Background

62. In 2009, the Commission authorized the use of FM translators with licenses or permits in effect as of May 1, 2009, to rebroadcast the signal of a local AM station.¹⁷⁵ The limitation of cross-service translator usage to already-authorized FM translators was adopted with the intention of preserving opportunities for future LPFM licensing.¹⁷⁶ Two parties filed petitions for partial reconsideration of this aspect of the *2009 Translator Order*. Both petitions argue that the limitation of cross-service translators does not serve the public interest and is unfair to both AM stations and FM translator applicants.¹⁷⁷

63. The practical effect of the date limit imposed in the *2009 Translator Order* was to exclude pending Auction No. 83 FM translator applications as well as future FM translator applications from the pool of potential cross-service translators. In the *Third Further Notice*, we asked whether it would be appropriate to remove this limit on cross-service translators with respect to those pending applications.¹⁷⁸ Specifically, we asked whether the limit should be removed for those applications which were on file as of May 1, 2009. We stated that resolving this issue before processing of the pending translator applications would align FM translator processing outcomes more closely with demand by enabling applicants to take the rebroadcasting option into account in the translator settlement and licensing processes, thereby advancing the goals of Section 5(2) of the LCRA.¹⁷⁹ We also noted that allowing cross-service translators had been a very successful deregulatory policy.¹⁸⁰

¹⁷⁵ See *Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Report and Order, 24 FCC Rcd 9642 (2009) ("*2009 Translator Order*"). Specifically, no portion of the 60 dBu contour of the FM translator station may extend beyond the smaller of: (a) a 25-mile radius from the AM transmitter site; or (b) the 2 mV/m daytime contour of the AM station. See 47 C.F.R. § 74.1201(g).

¹⁷⁶ See *2009 Translator Order*, 24 FCC Rcd at 9650. This restriction is codified at 47 C.F.R. § 74.1232(d).

¹⁷⁷ Petition for Reconsideration by Robert A. Lynch, filed July 28, 2009; Petition for Reconsideration by Edward A. Schober, filed July 28, 2009. Both petitions remain pending.

¹⁷⁸ *Third Further Notice*, 26 FCC Rcd at 10000.

¹⁷⁹ *Third Further Notice*, 26 FCC Rcd at 10000.

¹⁸⁰ *Id.*

2. Comments

64. Most commenters support removing the date restriction for pending FM translator applications. These commenters point to the public service benefits that FM translators have provided to AM stations.¹⁸¹ Some argue that the need for the date restriction is going away now that the Commission will be opening an LPFM window.¹⁸²

65. To the extent that commenters take a contrary position, most argue for some type of restriction or limitation on cross-service translators in general. Some LPFM proponents argue for qualifying criteria for cross-service translators, such as local ownership, lack of in-market FM ownership by the AM licensee, diversity of ownership, amount of local programming, and quality of AM signal.¹⁸³ REC Networks and Prometheus argue that the 250-watt power level allowed for “fill-in” AM translators should be reduced before cross-service translators are expanded.¹⁸⁴ NPR argues that the date restriction should be kept in place unless the Commission adopts strong anti-trafficking rules so that traffickers in the current pool of Auction 83 applicants will not benefit from the change.¹⁸⁵

3. Analysis

66. We will modify the date restriction to allow pending FM translator applications that are granted to be used as cross-service translators. As we explained in the *Third Further Notice*, the limitation of cross-service translator usage to already-authorized translators was adopted with the intention of preserving opportunities for future LPFM licensing.¹⁸⁶ In the *Third Further Notice*, we decided to revisit this pre-LCRA policy. We proposed changes in the FM translator application processing rules designed to accomplish more effectively the goal of preserving spectrum for future LPFM licensing.¹⁸⁷ Given those proposed changes, as stated above, we indicated that removing the date limit, at least for the pending translator applications, could align FM translator licensing outcomes more closely with demand, thereby advancing the goals of Section 5(2) of the LCRA.¹⁸⁸

67. With our adoption of the revised translator application processing policies described above, we believe we have effectively addressed the LPFM spectrum issue that prompted the pre-LCRA date limitation on cross-service translators. Having done so, we believe the translators that are put into service from the pool of pending applications should be put to their best use, consistent with the directive of Section 5(2) to carry out FM translator licensing “based on the needs of the local community.”¹⁸⁹ Our

¹⁸¹ See, e.g., Comments of NAB at 2-5; Comments of Robert A. Lynch at 2-3; Comments of Charles Keiler at 11; Comments of Alan W. Jurison at 5; Comments of Mark D. Humphrey; Comments of Radio Power Inc. at 6-7; Comments of Glades Media Co. LLC; Comments of CRA at 8; Comments of Kevin M. Fitzgerald at 2-3.

¹⁸² See, e.g., Comments of Alan W. Jurison at 5 (the date limitation “served its purpose . . . but its usefulness will have expired when this rulemaking is completed”); Reply Comments of NAB at 2-4.

¹⁸³ See, e.g., Comments of Prometheus at 32-34; Comments of REC Networks at 15-16; Comments of Jeff Sibert at 5-6; Comments of Common Frequency at 16; Comments of John Giberson at 2.

¹⁸⁴ See Comments of REC Networks at 15; Reply Comments of Prometheus at 20-21.

¹⁸⁵ See Comments of NPR at 14.

¹⁸⁶ *Third Further Notice*, 26 FCC Rcd at 10,000.

¹⁸⁷ *Id.* at 9996-99.

¹⁸⁸ *Id.* at 10,000.

¹⁸⁹ LCRA, Section 5(2). We reject NPR’s argument that this will allow pending FM translator applicants to benefit by trafficking their Auction No. 83 permits or licenses. See Comments of NPR at 14. The date restriction was put (continued....)

view is that, with the FM translator processing policies described above in effect, the public interest benefits from expanding cross-service translator service are considerably more significant than any downside from allowing any forthcoming Auction No. 83 authorizations to be used for such service.

68. With respect to the proposed restrictions or limitations on cross-service translators sought by LPFM proponents, most are essentially untimely petitions for reconsideration of the *2009 Translator Order*. Accordingly, and because we intend to consider modifications to our FM translator rules and procedures more generally in a separate proceeding, as discussed below, we decline to consider these arguments here. In any event, we believe the LPFM proponents who argue for such restrictions fail to recognize the significant public interest benefits that will accrue from expanding the pool of potential cross-service translators. In the *2009 Translator Order*, we described the substantial benefits to local listeners that cross-service translators were providing, for example, providing pre-sunrise and post-sunset coverage of traffic, weather, news and sports programming and improving localism, competition and diversity in a number of radio markets.¹⁹⁰ The record here confirms those benefits and supports a change in the date limitation to allow permits or licenses arising from pending FM translator applications to be used as cross-service translators.¹⁹¹

69. Again, we intend to revise our FM translator rules before the next FM translator auction window, so parties will have an opportunity to present their views at that time with respect to any appropriate modifications in our translator rules and procedures. If parties wish to argue that priority should be given in future translator auction windows to Class D AM stations or AM stations that lack a co-owned FM outlet, then they may do so in that proceeding.

70. Accordingly, we grant reconsideration of the *2009 Translator Order* to the extent of allowing authorizations arising from pending FM translator applications to be used as cross-service translators. With respect to future FM translator applications, we will address their potential use as cross-service translators in a future rulemaking to revise our FM translator rules.

III. THIRD ORDER ON RECONSIDERATION

71. In the *Third Report and Order* discussed above, the Commission established a going-forward limit of ten pending short-form applications per applicant from FM translator Auction No. 83, and directed the Bureau to resume processing the applications of those applicants in compliance with this numerical cap.¹⁹²

(Continued from previous page) _____
in place to preserve LPFM spectrum, not to inhibit trafficking. With the processing policies described above in place, we have preserved as much LPFM spectrum as feasible, thereby opening a path to initiate new FM translator service through grants of applications that remain pending after use of the new processing policies. We believe the public will benefit if we enable those new translator stations to rebroadcast either an AM or FM signal. As for the trafficking issue, as we have explained above, we have adopted both a national cap and a per-market cap (for the markets identified in Appendix A) in order to balance the competing goals of preserving the integrity of our licensing process while enabling new service to the public.

¹⁹⁰ See 24 FCC Rcd at 9646-50.

¹⁹¹ See, e.g., Comments of NAB at 3-4; Comments of Charles Keiler at 11; Comments of Alan W. Jurison at 5; Comments of Mark D. Humphrey; Comments of Radio Power Inc. at 2-4; Comments of Glades Media Co. LLC; Comments of Kevin M. Fitzgerald at 2-3.

¹⁹² On March 4, 2008, the Bureau released a Public Notice inviting Auction No. 83 applicants to identify pending short-form applications for voluntary dismissal to effectuate the ten-application limit. See *Media Bureau Invites Applicants to Select FM Translator Applications for Voluntary Dismissal to Comply With Processing Cap*, Public Notice, DA 08-496 (rel. Mar. 4, 2008). On April 7, 2008, the Bureau released a Public Notice announcing that it would cease dismissal of any short-form applications pursuant to the processing cap, in order to provide an (continued....)

72. Petitions for reconsideration opposing the cap were filed by CSN International, National Religious Broadcasters, Positive Alternative Radio, Inc., and Educational Media Foundation *et. al.*¹⁹³ In light of our adoption of the market-specific translator application dismissal process described in this *Fourth Report and Order*, we dismiss them as moot.

IV. PROCEDURAL MATTERS

73. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act, 5 U.S.C. § 603, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the proposals suggested in this document. The FRFA is set forth in Appendix C.

74. *Paperwork Reduction Act.* This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13 (U.S.C. 3501-3520). The requirements will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. The Commission will publish a separate notice in the Federal Register inviting comments on the new information collection requirements adopted in this document. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. We describe impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the FRFA in Appendix C, *infra*.

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

V. ORDERING CLAUSES

76. Accordingly, IT IS ORDERED that the Petitions for Reconsideration filed by Robert A. Lynch on July 28, 2009, and Edward A. Schober on July 28, 2009, ARE GRANTED IN PART to extent set forth above.

77. IT IS FURTHER ORDERED that the Petitions for Reconsideration filed by CSN International on February 4, 2008; National Religious Broadcasters on February 15, 2008; and Positive Alternative Radio, Inc. and Educational Media Foundation on February 19, 2008, ARE DISMISSED AS MOOT.

78. IT IS FURTHER ORDERED that pursuant to the authority contained in Sections

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opportunity for the Commission to fully consider arguments raised in the petitions for reconsideration listed herein. *See Media Bureau Suspends Dismissal of FM Translator Applications Related to Processing Cap (MM Docket No. 99-25)*, Public Notice, DA 08-801 (rel. Apr. 7, 2008). The Public Notice also reinstated any translator applications dismissed pursuant to the March 4th Public Notice.

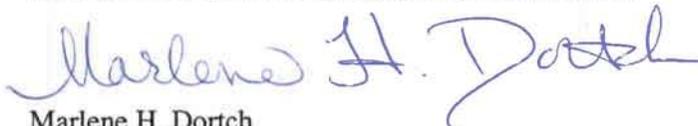
¹⁹³ *See* Petition for Reconsideration of CSN International, filed Feb. 4, 2008; Petition of National Religious Broadcasters for Reconsideration Regarding Order Imposing Cap on Translator Applications, filed Feb. 15, 2008; Petition for Reconsideration of Positive Alternative Radio, Inc., filed Feb. 19, 2008; Petition for Reconsideration of Educational Media Foundation *et al.*, filed Feb. 19, 2008. Pursuant to Section 1.429 of the Rules, any interested person may petition for reconsideration of a final Commission rulemaking action. 47 C.F.R. § 1.429. A petition shall state with particularity the respects in which the petitioner believes the action should be changed. *See id.* at § 1.429(c).

4(i), 301, 302, 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f) and 303(r), and the Local Community Radio Act of 2010, Pub. L. No. 111-371, 124 Stat. 4072 (2011), this *Fourth Report and Order* is hereby ADOPTED and Part 74 of the Commission's Rules ARE AMENDED as set forth in Appendix D, effective 30 days after publication in the Federal Register.

79. IT IS FURTHER ORDERED that the rules adopted herein will become effective thirty (30) days after publication in the Federal Register, except for any rules or requirements involving Paperwork Reduction Act burdens, which shall become effective upon announcement in the Federal Register of OMB approval and an effective date of the rule(s).

80. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Fourth Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

APPENDIX A

LPFM Spectrum Availability Studies (Thirty-minute Grid)

In order to assess LPFM spectrum availability, the Bureau centered a thirty-minute latitude by thirty-minute longitude grid over the center-city coordinates of each listed market. Each grid consists of 961 points – 31 points running east/west by 31 points running north/south. Grid points are located at one-minute intervals of latitude and longitude. The Bureau analyzed each of the 100 FM channels (88.1 MHz – 107.9 MHz) at each grid point to determine whether any channels remain available for future LPFM stations at that location. Only channels that fully satisfy co-, first- and second adjacent channel LPFM spacing requirements to all authorizations and applications, including pending translator applications, are treated as available. The area encompassed by the grid is approximately 35 miles (north/south) by 26 miles (east/west). The grid is not intended to approximate radio market boundaries. Rather, this methodology is designed to identify presumptive “core” market locations that could serve significant populations. Coordinates located over major bodies of water and beyond U.S. borders were excluded. No attempt was made to otherwise ascertain site viability. For each market that is not deemed a “Spectrum Limited” market, the Bureau undertook additional LPFM spectrum availability analyses. See Appendix B for a description of the methodology and market results.

Detailed Column Information

Arb#/Rank -- Arbitron market ranking. Data compiled from BIA/Kelsey – MEDIA Access Pro, Version 4.5, Fall 2011 database (“BIA Fall 2011”)

CF#/Rank -- Common Frequency Arbitron market ranking. See September 27, 2010 Letter from Jeff Shaw, President, Common Frequency, Inc., Appendix A (“Common Frequency 2010 Study”). Data compiled from Appendix A of Common Frequency 2010 Study. This study uses an earlier Arbitron rating period. Column lists market rankings as they appear in this study. This market ranking data is relevant only for data listed in “**Pending/FX apps**” column.

Fall 2011 Arbitron Rankings -- Arbitron market name. Data compiled from BIA Fall 2011.

20/30 min % -- Percentage of 2010 Census population within the thirty minute grid that is also within twenty minute grid.

Total Licensed Stations/FM trans. – Number of licensed FM translator stations in market. Data compiled from BIA Fall 2011.

Total Licensed Stations/LPFM -- Number of licensed LPFM stations in market. Data compiled from BIA Fall 2011.

Total Licensed Stations/NCE FMs -- Number of licensed NCE FM stations in market. Data compiled from BIA Fall 2011.

LPFM Avail. in 30 minute grid/Locations – Maximum number of LPFM licensing opportunities in a market on the identified available vacant channels. In some cases, several LPFM stations in the same market could use the same channel while satisfying the minimum co-channel LPFM-LPFM distance separation requirements. This “Locations” number assumes an advantageous geographic distribution of LPFM transmitter site locations within the market and includes all vacant channels identified as available in the market. See above for methodology.

LPFM Avail. in 30 minute grid/Channel – Total number of LPFM channels available for licensing opportunities in a market. This “Channel” total counts the number of unique channels that can be used for LPFM licensing within the grid. See above for methodology.

LPFM Avail. In 30 minute grid/Licensed – Total number of LPFM stations licensed in a market at locations within the grid. In-market LPFM stations with transmitter sites located outside the grid are excluded from this total.

Pending/FX apps – Total number of pending FM translator applications from the 2003 window.

Data compiled from Common Frequency 2010 Study. Common Frequency included pending translator application from seven embedded markets in the respective parent market totals. An embedded market is a unique marketing area for the buying and selling of radio air time. It is contained, either in whole or part, within the boundaries of the larger, "parent," market. These embedded (parent) markets are: Middlesex-Somerset-Union (New York); Monmouth-Ocean (New York); Morristown, NJ (New York), Nassau-Suffolk (New York), San Jose, CA (San Francisco); Santa Rosa, CA (San Francisco) and Stamford-Norwalk, CT (New York).

Result – "Spectrum Limited FX" denotes a market where the number of available LPFM channels and licensed LPFM stations within the grid is less than the proposed LPFM Channel Floor in the particular market. Translator applications specifying transmitter locations in these markets are subject to the "spectrum limited" processing procedures set forth in the *Report and Order*. "See Appendix B" denotes a market where the number of available LPFM channels and licensed LPFM stations within the grid is equal to or greater than the proposed LPFM Channel Floor in the particular market. "Spectrum Limited ***" denotes a market with zero pending translator applications.

Arb#	CF#	Fall 2011 Arbitron Rankings	20 / 30	Total Licensed Stations			LPFM Avail. in 30 minute grid			Pending	Result
Rank	Rank	Market	min %	FM trans.	LPFM	NCE FM	Locations	Channels	Licensed	FX apps	30x30
1	1	New York	72.3	2	0	18	0	0	0	183	Spectrum Limited
2	2	Los Angeles	62.5	16	4	15	0	0	0	115	Spectrum Limited
3	3	Chicago	72.7	18	6	51	0	0	0	50	Spectrum Limited
4	4	San Francisco	64.6	20	1	23	0	0	0	41	Spectrum Limited
5	5	Dallas-Ft. Worth	55.6	10	0	15	2	2	0	18	Spectrum Limited
6	6	Houston-Galveston	54.3	13	2	14	3	1	0	117	Spectrum Limited
7	8	Philadelphia	69.6	15	0	27	0	0	0	170	Spectrum Limited
8	9	Washington, DC	68.4	8	1	6	0	0	0	9	Spectrum Limited
9	7	Atlanta	53.0	21	3	12	7	4	0	31	Spectrum Limited
10	10	Boston	73.7	11	0	32	0	0	0	10	Spectrum Limited
11	11	Detroit	59.1	13	1	23	0	0	0	23	Spectrum Limited
12	12	Miami-Ft. Lauderdale-	56.5	13	0	11	0	0	0	27	Spectrum Limited
13	13	Seattle-Tacoma	60.2	28	3	19	0	0	0	45	Spectrum Limited
14	14	Puerto Rico	71.6	9	0	12	1	1	0	8	Spectrum Limited
15	15	Phoenix	58.0	16	1	6	7	3	1	74	Spectrum Limited
16	16	Minneapolis-St. Paul	60.3	18	1	11	14	6	0	11	Spectrum Limited
17	17	San Diego	72.9	7	1	4	1	1	0	20	Spectrum Limited
18	18	Nassau-Suffolk (Long	64.3	17	3	14	2	2	0	0	Spectrum Limited - see Mkt. 1
19	19	Tampa-St. Petersburg-	56.1	10	1	6	8	4	0	39	Spectrum Limited
20	20	Denver-Boulder	67.5	12	1	8	4	4	0	40	Spectrum Limited
21	22	Baltimore	71.6	8	0	5	0	0	0	10	Spectrum Limited
22	21	St. Louis	68.7	7	1	18	11	5	0	50	Spectrum Limited
23	23	Portland, OR	70.2	17	6	12	3	2	0	43	Spectrum Limited
24	24	Charlotte-Gastonia-Rock	66.3	19	4	9	17	12	1	10	See Appendix B
25	25	Pittsburgh, PA	73.8	12	0	14	3	3	0	16	Spectrum Limited
26	26	Riverside-San Bernardino	52.0	20	5	8	4	4	3	21	See Appendix B
27	27	Sacramento	76.9	17	5	9	15	12	0	50	See Appendix B
28	31	San Antonio	78.7	11	0	11	17	8	0	23	See Appendix B
29	28	Cincinnati	66.7	5	3	18	7	6	1	9	See Appendix B
30	29	Cleveland	67.8	4	0	11	1	1	0	11	Spectrum Limited
31	30	Salt Lake City-Ogden-	74.8	29	0	11	0	0	0	46	Spectrum Limited
32	33	Las Vegas	79.7	26	0	10	2	2	0	39	Spectrum Limited
33	32	Kansas City	61.3	9	0	8	8	3	0	24	Spectrum Limited
34	34	Orlando	68.3	6	2	5	12	9	2	19	See Appendix B
35	36	Columbus, OH	75.1	8	5	13	5	5	1	10	Spectrum Limited
36	38	Austin	69.7	16	3	11	10	6	0	27	Spectrum Limited
37	35	San Jose	76.3	8	0	7	3	3	0	0	Spectrum Limited - see Mkt. 4
38	37	Milwaukee-Racine	83.6	2	0	9	7	6	0	22	Spectrum Limited
39	139	Newburgh-Middletown,	49.2	15	1	10	2	2	0	16	Spectrum Limited
40	39	Indianapolis	66.6	8	2	21	4	3	0	110	Spectrum Limited
41	40	Middlesex-Somerset-	50.6	2	0	3	1	1	0	0	Spectrum Limited - see Mkt. 1
42	41	Providence-Warwick-	75.4	3	3	12	2	2	1	0	Spectrum Limited ****
43	42	Raleigh-Durham	63.7	18	2	9	10	10	1	16	See Appendix B
44	43	Norfolk-Virginia Beach-	68.9	11	1	11	5	2	0	13	Spectrum Limited
45	44	Nashville	65.9	15	2	12	11	7	1	55	See Appendix B
46	45	Greensboro-Winston-	66.7	19	4	11	18	12	1	26	See Appendix B
47	52	New Orleans	91.5	7	1	11	9	6	0	8	Spectrum Limited
48	48	Oklahoma City	71.4	19	0	13	19	9	0	31	See Appendix B
49	47	West Palm Beach-Boca	66.2	12	1	3	3	3	1	18	Spectrum Limited
50	46	Jacksonville	70.2	18	1	7	8	5	0	35	Spectrum Limited
51	49	Memphis		11	2	9	14	9	1	22	See Appendix B
52	50	Hartford-New Britain-		7	2	11	9	5	1	4	See Appendix B
53	51	Monmouth-Ocean		4	2	13	1	1	2	0	Spectrum Limited - see Mkt. 1
54	54	Louisville		13	5	6	11	10	2	23	See Appendix B
55	53	Buffalo-Niagara Falls		11	0	5	5	5	0	13	Spectrum Limited
56	55	Richmond		13	3	7	33	21	1	4	See Appendix B
57	56	Rochester, NY		17	1	16	12	7	0	11	See Appendix B
58	59	McAllen-Brownsville-		4	1	6	29	17	0	8	See Appendix B
59	57	Birmingham		13	0	11	12	9	0	34	See Appendix B
60	58	Greenville-Spartanburg		17	6	5	19	15	5	29	See Appendix B
61	60	Tucson		11	2	7	20	12	2	59	See Appendix B
62	62	Ft. Myers-Naples-Marco		14	3	8	7	6	0	10	See Appendix B
63	61	Dayton		14	2	15	4	3	2	7	Spectrum Limited
64	64	Honolulu		14	1	4	1	1	1	1	Spectrum Limited
65	63	Albany-Schenectady-Troy		14	0	15	19	15	0	8	See Appendix B
66	65	Tulsa		7	2	5	12	8	2	21	See Appendix B
67	66	Fresno		6	1	10	5	5	1	136	See Appendix B
68	68	Albuquerque		14	1	6	5	4	0	18	Spectrum Limited
69	67	Grand Rapids		7	0	9	9	7	0	18	See Appendix B
70	69	Allentown-Bethlehem		20	0	8	2	2	0	11	Spectrum Limited
71	70	Wilkes Barre-Scranton		46	5	15	6	6	2	10	See Appendix B
72	71	Knoxville		12	3	7	34	21	2	8	See Appendix B
73	90	Des Moines		14	5	14	25	16	3	31	See Appendix B
74	72	Omaha-Council Bluffs		4	0	7	17	10	0	20	See Appendix B

75	74	El Paso	6	0	3	38	18	0	18	See Appendix B
76	73	Sarasota-Bradenton	3	1	4	12	10	1	23	See Appendix B
77	75	Bakersfield	14	2	8	27	17	0	18	See Appendix B
78	76	Akron	3	0	5	0	0	0	4	Spectrum Limited
79	77	Wilmington, DE	6	1	5	1	1	0	15	Spectrum Limited
80	78	Harrisburg-Lebanon-	11	2	9	9	9	1	9	See Appendix B
81	79	Baton Rouge	6	2	5	29	13	2	6	See Appendix B
82	86	Greenville-New Bern-	23	1	15	56	30	0	17	See Appendix B
83	83	Charleston, SC	10	1	5	9	5	0	13	Spectrum Limited
84	85	Little Rock	5	0	7	5	5	0	19	Spectrum Limited
85	84	Syracuse	17	0	13	10	8	0	16	See Appendix B
86	81	Gainesville-Ocala	5	8	8	29	27	3	15	See Appendix B
87	82	Stockton	2	1	5	21	20	1	4	See Appendix B
88	80	Monterey-Salinas-Santa	29	1	11	7	6	0	14	See Appendix B
89	89	Columbia, SC	6	2	4	45	24	2	14	See Appendix B
90	x	Portland, ME	10	2	9	8	7	1	1	See Appendix B
91	88	Springfield, MA	2	4	11	10	8	4	2	See Appendix B
92	93	Colorado Springs	10	1	6	7	4	1	39	Spectrum Limited
93	91	Spokane	7	1	10	6	4	1	49	Spectrum Limited
94	87	Daytona Beach	10	2	5	13	12	1	9	See Appendix B
95	92	Toledo	8	0	14	10	8	0	7	See Appendix B
96	94	Lakeland-Winter Haven	6	0	4	12	9	0	13	See Appendix B
97	95	Mobile	13	0	3	13	7	0	10	See Appendix B
98	96	Ft. Pierce-Stuart-Vero	12	3	4	20	17	3	15	See Appendix B
99	98	Wichita	7	0	7	5	4	0	10	Spectrum Limited
100	99	Madison	6	2	6	49	24	2	7	See Appendix B
101	100	Boise	9	0	6	3	1	0	2	Spectrum Limited
102	97	Melbourne-Titusville-	12	5	6	16	16	3	7	See Appendix B
103	103	Lexington, KY-Fayette	5	1	6	17	11	1	14	See Appendix B
104	101	Visalia-Tulare-Hanford	2	3	4	9	9	2	41	See Appendix B
105	102	Johnson City-Kingsport-	16	2	6	37	27	0	22	See Appendix B
106	107	Huntsville	20	2	5	47	23	0	0	See Appendix B
107	104	York	6	0	2	3	3	0	9	Spectrum Limited
108	106	Chattanooga	15	5	5	27	19	3	4	See Appendix B
109	105	Lafayette, LA	6	2	7	17	10	1	2	See Appendix B
110	109	Augusta, GA	6	2	6	49	27	1	5	See Appendix B
111	137	Corpus Christi	10	1	10	12	9	1	16	See Appendix B
112	111	Lancaster	7	1	6	2	1	0	0	Spectrum Limited ****
113	108	Ft. Wayne	4	2	7	14	11	1	16	See Appendix B
114	113	Roanoke-Lynchburg	16	1	7	41	24	0	8	See Appendix B
115	115	Worcester, MA	1	1	8	5	4	1	2	See Appendix B
116	116	New Haven	5	0	4	3	3	0	6	Spectrum Limited
117	114	Morristown, NJ	0	0	3	1	1	0	0	Spectrum Limited - see Mkt. 1
118	112	Modesto	7	4	6	35	24	1	0	See Appendix B
119	118	Oxnard-Ventura	4	2	3	8	8	1	18	See Appendix B
120	120	Ft. Collins-Greeley, CO	17	2	7	10	10	0	24	See Appendix B
121	117	Portsmouth-Dover-	2	3	4	30	21	2	0	See Appendix B
122	119	Santa Rosa	10	2	2	3	3	0	0	Spectrum Limited ****
123	110	Victor Valley	17	0	3	18	16	0	46	See Appendix B
124	121	Reno	30	0	5	1	1	0	50	Spectrum Limited
125	123	Bridgeport	2	0	4	1	1	0	2	Spectrum Limited
126	122	Jackson, MS	5	4	5	19	9	3	0	See Appendix B
127	125	Lansing-East Lansing	6	0	7	21	15	0	3	See Appendix B
128	124	Pensacola	2	0	4	24	14	0	0	See Appendix B
129	126	Youngstown-Warren	2	0	4	3	3	0	4	Spectrum Limited
130	132	Fayetteville (North West	13	4	6	30	18	1	5	See Appendix B
131	127	Fayetteville, NC	6	0	5	34	17	0	11	See Appendix B
132	129	Palm Springs	11	0	4	30	25	0	17	See Appendix B
133	128	Flint	2	1	3	12	8	1	0	See Appendix B
134	131	Reading, PA	5	0	3	1	1	0	11	Spectrum Limited
135	130	Canton	0	0	3	6	6	0	2	See Appendix B
136	133	Shreveport	5	2	4	32	19	2	2	See Appendix B
137	135	Appleton-Oshkosh	7	1	3	24	16	1	21	See Appendix B
138	136	Springfield, MO	6	1	5	38	16	1	4	See Appendix B
139	134	Saginaw-Bay City-Midland	0	0	6	33	25	0	3	See Appendix B
140	142	Salisbury-Ocean City	16	3	6	18	13	1	6	See Appendix B
141	138	Beaumont-Port Arthur, TX	6	1	6	19	11	0	6	See Appendix B
142	140	Burlington-Plattsburgh	22	3	15	15	15	1	9	See Appendix B
143	151	Killeen-Temple, TX	7	4	4	53	34	3	2	See Appendix B
144	145	Tyler-Longview	4	0	5	38	27	0	22	See Appendix B
145	141	Atlantic City-Cape May	7	3	11	5	5	2	35	See Appendix B
146	143	Trenton	3	0	5	0	0	0	1	Spectrum Limited
147	149	Fredericksburg	6	2	2	36	23	1	7	See Appendix B
148	148	Stamford-Norwalk, CT	6	0	3	0	0	0	0	Spectrum Limited - see Mkt. 1
149	146	Eugene-Springfield	26	0	10	17	12	0	9	See Appendix B
150	x	Biloxi-Gulfport-Pascagoula, MS	3	1	4	41	27	0	2	See Appendix B

151	147	Quad Cities (Davenport-		6	4	6	53	26	3	38	See Appendix B
154	144	Flagstaff-Prescott, AZ		34	1	10	59	28	0	100	See Appendix B
161	159	Asheville, NC		9	3	4	22	14	3	18	See Appendix B
175	170	San Luis Obispo, CA		16	1	5	25	18	1	8	See Appendix B
203	201	Danbury, CT		1	0	3	0	0	0	5	Spectrum Limited
218	214	Santa Barbara, CA		8	1	3	5	5	1	13	See Appendix B
998											
999		Totals		1671	246	1340	2150	1422	107	3320	

APPENDIX B

LPFM Spectrum Availability Studies (Twenty-minute Grid)

For each market from Appendix A that is not deemed a "Spectrum Limited" market, the Bureau compared the population within a twenty-minute latitude by twenty-minute longitude grid centered over the center-city coordinates to the population within the thirty-minute grid. For purposes of measuring LPFM spectrum availability, the twenty-minute grid is used for any market in which at least 75 percent of the population within the thirty-minute grid population is also within the twenty-minute grid.

In order to assess LPFM spectrum availability in those markets which satisfy the 75 percent threshold, the Bureau centered a twenty-minute latitude by twenty-minute longitude grid over the center-city coordinates of each listed market. Each grid consists of 441 points – 21 points running east/west by 21 points running north/south. Grid points are located at one-minute intervals of latitude and longitude. The Bureau analyzed each of the 100 FM channels (88.1 MHz – 107.9 MHz) at each grid point to determine whether any channels remain available for future LPFM stations at that location. Only channels that fully satisfy co-, first- and second adjacent channel LPFM spacing requirements to all authorizations and applications, including pending translator applications, are treated as available. The area encompassed by the grid is approximately 24 miles (north/south) by 18 miles (east/west). The grid is not intended to approximate radio market boundaries. Rather, this methodology is designed to identify "core" market locations that could serve significant populations. Coordinates located over major bodies of water and beyond U.S. borders were excluded. No attempt was made to otherwise ascertain site viability.

Detailed Column Information

Arb#/Rank -- Arbitron market ranking. Data compiled from BIA/Kelsey – MEDIA Access Pro, Version 4.5, Fall 2011 database ("BIA Fall 2011")

CF#/Rank -- Common Frequency Arbitron market ranking. See September 27, 2010 Letter from Jeff Shaw, President, Common Frequency, Inc., Appendix A ("Common Frequency 2010 Study"). Data compiled from Appendix A of Common Frequency 2010 Study. This study uses an earlier Arbitron rating period. Column lists market rankings as they appear in this study. This market ranking data is relevant only for data listed in "Pending/FX apps" column.

Fall 2011 Arbitron Rankings -- Arbitron market name. Data compiled from BIA Fall 2011.

Percent within 20 Minute Grid – Percentage of the 2010 Census population within the thirty-minute grid that is also within the twenty-minute grid.

Total Licensed Stations/FM trans. – Number of licensed FM translator stations in market. Data compiled from BIA Fall 2011.

Total Licensed Stations/LPFM -- Number of licensed LPFM stations in market. Data compiled from BIA Fall 2011.

Total Licensed Stations/NCE FMs -- Number of licensed NCE FM stations in market. Data compiled from BIA Fall 2011.

LPFM Avail. In 20 minute grid/Locations – Maximum number of LPFM licensing opportunities in a market on the identified available vacant channels. In some cases, several LPFM stations in the same market could use the same channel while satisfying the minimum co-channel LPFM-LPFM distance separation requirements. This "Locations" number assumes an advantageous geographic distribution of LPFM transmitter site locations within the market and includes all vacant channels identified as available in the market. See above for methodology.

LPFM Avail. In 20 minute grid/Channel – Total number of LPFM channels available for licensing opportunities in a market. This “Channel” total counts the number of unique channels that can be used for LPFM licensing within the grid. See above for methodology. “N/A” denotes a market which does not satisfy the 75 percent threshold for 20 minute grid analysis.

LPFM Avail. In 20 minute grid/Licensed – Total number of LPFM stations licensed in a market at locations within the grid. In-market LPFM stations with transmitter sites located outside the grid are excluded from this total. “N/A” denotes a market which does not satisfy the 75 percent threshold for 20 minute grid analysis.

Pending/FX apps – Total number of pending FM translator applications from the 2003 window.

Data compiled from Common Frequency 2010 Study. Common Frequency included pending translator application from seven embedded markets in the respective parent market totals. An embedded market is a unique marketing area for the buying and selling of radio air time. It is contained, either in whole or part, within the boundaries of the larger, “parent,” market. These embedded (parent) markets are: Middlesex-Somerset-Union (New York); Monmouth-Ocean (New York); Morristown, NJ (New York), Nassau-Suffolk (New York), San Jose, CA (San Francisco); Santa Rosa, CA (San Francisco) and Stamford-Norwalk, CT (New York).

Grid used for Analysis – Denotes the size Grid used to determine the result

Result – “Spectrum Limited FX” denotes a market where the number of available LPFM channels and licensed LPFM stations within the relevant grid is less than the proposed LPFM Channel Floor in the particular market. Translator applications specifying transmitter locations in these markets are subject to the “spectrum limited” processing procedures set forth in the *Report and Order*. “Spectrum available FX” denotes a market where the number of available LPFM channels and licensed LPFM stations within the relevant grid is equal to or greater than the proposed LPFM Channel Floor in the particular market using the grid results specified. Translator applications specifying transmitter locations in these markets are subject to the “spectrum available” processing procedures set forth in the *Report and Order*. Any result with “****” in the Result column denotes a market with zero pending translator applications.

Arb#	CF#	Fall 2011 Arbitron Rankings	20 / 30	Total Licensed Stations			LPFM Avail. in 20 Minute grid			Pending	Result
Rank	Rank	Market	min %	FM trans.	LPFM	NCE FM	Locations	Channels	Licensed	FX apps	20x20
24	24	Charlotte-Gastonia-Rock Hill	66.3	19	4	9	N/A	N/A	0	10	Spectrum Available (30 min.)
26	26	Riverside-San Bernardino	52.0	20	5	8	N/A	N/A	2	21	Spectrum Available (30 min.)
27	27	Sacramento	76.9	17	5	9	3	3	0	50	Spectrum Limited (20 min.)
28	31	San Antonio	78.7	11	0	11	8	6	0	23	Spectrum Limited (20 min.)
29	28	Cincinnati	66.7	5	3	18	N/A	N/A	1	9	Spectrum Available (30 min.)
34	34	Orlando	68.3	6	2	5	N/A	N/A	0	19	Spectrum Available (30 min.)
43	42	Raleigh-Durham	63.7	18	2	9	N/A	N/A	1	16	Spectrum Available (30 min.)
45	44	Nashville	65.9	15	2	12	N/A	N/A	0	55	Spectrum Available (30 min.)
46	45	Greensboro-Winston-Salem-	66.7	19	4	11	N/A	N/A	0	26	Spectrum Available (30 min.)
48	48	Oklahoma City	71.4	19	0	13	N/A	N/A	0	31	Spectrum Available (30 min.)
51	49	Memphis	60.3	11	2	9	N/A	N/A	0	22	Spectrum Available (30 min.)
52	50	Hartford-New Britain-	60.3	7	2	11	N/A	N/A	0	4	Spectrum Available (30 min.)
54	54	Louisville	75.1	13	5	6	3	3	0	23	Spectrum Limited (20 min.)
56	55	Richmond	76.6	13	3	7	13	12	1	4	Spectrum Available (20 min.)
57	56	Rochester, NY	82.1	17	1	16	7	5	0	11	Spectrum Limited (20 min.)
58	59	McAllen-Brownsville-	81.6	4	1	6	25	14	0	8	Spectrum Available (20 min.)
59	57	Birmingham	74.9	13	0	11	N/A	N/A	0	34	Spectrum Available (30 min.)
60	58	Greenville-Spartanburg	73.4	17	6	5	N/A	N/A	3	29	Spectrum Available (30 min.)
61	60	Tucson	85.4	11	2	7	6	6	2	59	Spectrum Available (20 min.)
62	62	Ft. Myers-Naples-Marco	77.5	14	3	8	1	1	0	10	Spectrum Limited (20 min.)
65	63	Albany-Schenectady-Troy	68.9	14	0	15	N/A	N/A	0	8	Spectrum Available (30 min.)
66	65	Tulsa	72.4	7	2	5	N/A	N/A	2	21	Spectrum Available (30 min.)
67	66	Fresno	86.1	6	1	10	1	1	1	136	Spectrum Limited (20 min.)
69	67	Grand Rapids	79.3	7	0	9	2	2	0	18	Spectrum Limited (20 min.)
71	70	Wilkes Barre-Scranton	62.2	46	5	15	N/A	N/A	2	10	Spectrum Available (30 min.)
72	71	Knoxville	66.7	12	3	7	N/A	N/A	1	8	Spectrum Available (30 min.)
73	90	Des Moines	82.8	14	5	14	7	5	3	31	Spectrum Available (20 min.)
74	72	Omaha-Council Bluffs	74.4	4	0	7	N/A	N/A	0	20	Spectrum Available (30 min.)
75	74	El Paso	64.0	6	0	3	N/A	N/A	0	18	Spectrum Available (30 min.)
76	73	Sarasota-Bradenton	77.6	3	1	4	7	6	1	23	Spectrum Available (20 min.)
77	75	Bakersfield	94.8	14	2	8	12	9	0	18	Spectrum Available (20 min.)
80	78	Harrisburg-Lebanon-Carlisle	76.5	11	2	9	3	3	0	9	Spectrum Limited (20 min.)
81	79	Baton Rouge	72.1	6	2	5	N/A	N/A	2	6	Spectrum Available (30 min.)
82	86	Greenville-New Bern-	77.3	23	1	15	26	22	0	17	Spectrum Available (20 min.)
85	84	Syracuse	84.1	17	0	13	3	3	0	16	Spectrum Limited (20 min.)
86	81	Gainesville-Ocala	84.6	5	8	8	16	16	2	15	Spectrum Available (20 min.)
87	82	Stockton	71.9	2	1	5	N/A	N/A	1	4	Spectrum Available (30 min.)
88	80	Monterey-Salinas-Santa	56.2	29	1	11	N/A	N/A	0	14	Spectrum Available (30 min.)
89	89	Columbia, SC	74.5	6	2	4	N/A	N/A	1	14	Spectrum Available (30 min.)
90	x	Portland, ME	68.3	10	2	9	N/A	N/A	1	1	Spectrum Available (30 min.)
91	88	Springfield, MA	71.6	2	4	11	N/A	N/A	3	2	Spectrum Available (30 min.)
94	87	Daytona Beach	77.5	10	2	5	10	9	1	9	Spectrum Available (20 min.)
95	92	Toledo	83.5	8	0	14	5	5	0	7	Spectrum Limited (20 min.)
96	94	Lakeland-Winter Haven	63.5	6	0	4	N/A	N/A	0	13	Spectrum Available (30 min.)
97	95	Mobile	68.0	13	0	3	N/A	N/A	0	10	Spectrum Available (30 min.)
98	96	Ft. Pierce-Stuart-Vero Beach	58.2	12	3	4	N/A	N/A	0	15	Spectrum Available (30 min.)
100	99	Madison	83.4	6	2	6	26	17	2	7	Spectrum Available (20 min.)
102	97	Melbourne-Titusville-Cocoa	82.1	12	5	6	5	5	2	7	Spectrum Available (20 min.)
103	103	Lexington, KY-Fayette	79.8	5	1	6	5	5	1	14	Spectrum Available (20 min.)
104	101	Visalia-Tulare-Hanford	70.2	2	3	4	N/A	N/A	2	41	Spectrum Available (30 min.)
105	102	Johnson City-Kingsport-	59.6	16	2	6	N/A	N/A	0	22	Spectrum Available (30 min.)
106	107	Huntsville	73.4	20	2	5	N/A	N/A	0	0	Spectrum Available*** (30 min.)
108	106	Chattanooga	71.1	15	5	5	N/A	N/A	2	4	Spectrum Available (30 min.)
109	105	Lafayette, LA	67.6	6	2	7	N/A	N/A	1	2	Spectrum Available (30 min.)
110	109	Augusta, GA	82.0	6	2	6	19	16	1	5	Spectrum Available (20 min.)
111	137	Corpus Christi	79.9	10	1	10	4	4	0	16	Spectrum Limited (20 min.)
113	108	Fl. Wayne	82.8	4	2	7	4	4	1	16	Spectrum Available (20 min.)
114	113	Roanoke-Lynchburg	82.7	16	1	7	17	13	0	8	Spectrum Available (20 min.)
115	115	Worcester, MA	66.5	1	1	8	N/A	N/A	0	2	Spectrum Available (30 min.)
118	112	Modesto	77.7	7	4	6	11	10	1	0	Spectrum Available*** (20 min.)
119	118	Oxnard-Ventura	84.7	4	2	3	2	2	1	18	Spectrum Limited (20 min.)
120	120	Ft. Collins-Greeley, CO	74.2	17	2	7	N/A	N/A	0	24	Spectrum Available (30 min.)
121	117	Portsmouth-Dover-	50.7	2	3	4	N/A	N/A	2	0	Spectrum Available*** (30 min.)
123	110	Victor Valley	94.7	17	0	3	6	6	0	46	Spectrum Available (20 min.)
126	122	Jackson, MS	78.4	5	4	5	10	8	2	0	Spectrum Available*** (20 min.)
127	125	Lansing-East Lansing	83.4	6	0	7	11	10	0	3	Spectrum Available (20 min.)

128	124	Pensacola	75.4	2	0	4	15	10	0	0	Spectrum Available***(20 min.)
130	132	Fayetteville (North West AR)	71.9	13	4	6	N/A	N/A	0	5	Spectrum Available (30 min.)
131	127	Fayetteville, NC	75.1	6	0	5	18	13	0	11	Spectrum Available (20 min.)
132	129	Palm Springs	73.2	11	0	4	N/A	N/A	0	17	Spectrum Available (30 min.)
133	128	Flint	71.9	2	1	3	N/A	N/A	1	0	Spectrum Available***(30 min.)
135	130	Canton	60.8	0	0	3	N/A	N/A	0	2	Spectrum Available (30 min.)
136	133	Shreveport	87.5	5	2	4	12	9	2	2	Spectrum Available (20 min.)
137	135	Appleton-Oshkosh	72.8	7	1	3	N/A	N/A	0	21	Spectrum Available (30 min.)
138	136	Springfield, MO	78.7	6	1	5	19	11	1	4	Spectrum Available (20 min.)
139	134	Saginaw-Bay City-Midland	64.4	0	0	6	N/A	N/A	0	3	Spectrum Available (30 min.)
140	142	Salisbury-Ocean City	73.8	16	3	6	N/A	N/A	1	6	Spectrum Available (30 min.)
141	138	Beaumont-Port Arthur, TX	68.3	6	1	6	N/A	N/A	0	6	Spectrum Available (30 min.)
142	140	Burlington-Plattsburgh	74.1	22	3	15	N/A	N/A	1	9	Spectrum Available (30 min.)
143	151	Killeen-Temple, TX	78.9	7	4	4	25	20	3	2	Spectrum Available (20 min.)
144	145	Tyler-Longview	79.1	4	0	5	14	12	0	22	Spectrum Available (20 min.)
145	141	Atlantic City-Cape May	64.0	7	3	11	N/A	N/A	2	35	Spectrum Available (30 min.)
147	149	Fredericksburg	76.1	6	2	2	16	16	1	7	Spectrum Available (20 min.)
149	146	Eugene-Springfield	88.3	26	0	10	4	3	0	9	Spectrum Limited (20 min.)
150	x	Biloxi-Gulfport-Pascagoula, M	71.7	3	1	4	N/A	N/A	0	2	Spectrum Available (30 min.)
151	147	Quad Cities (Davenport-	87.0	6	4	6	24	18	3	38	Spectrum Available (20 min.)
154	144	Flagstaff-Prescott, AZ	97.7	34	1	10	17	15	0	100	Spectrum Available (20 min.)
161	159	Asheville, NC	72.3	9	3	4	N/A	N/A	3	18	Spectrum Available (30 min.)
175	170	San Luis Obispo, CA	54.5	16	1	5	N/A	N/A	1	8	Spectrum Available (30 min.)
218	214	Santa Barbara, CA	84.9	8	1	3	2	2	0	13	Spectrum Limited (20 min.)
998											
999		Totals		961	179	660	444	360	68	1502	

APPENDIX C

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),¹⁹⁴ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Third Further Notice of Proposed Rulemaking (Third Further Notice)* in MM Docket No. 99-25, and MB Docket No. 07-172, RM-11338.¹⁹⁵ The Commission sought written public comment on the proposals in the *Third Further Notice*, including comment on the IRFA.¹⁹⁶ We received no comments specifically directed toward the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Fourth Report and Order

2. This rulemaking proceeding was initiated to seek comment on how the enactment of Section 5 of the Local Community Radio Act of 2010 ("LCRA")¹⁹⁷ would impact the procedures previously adopted to process the approximately 6,500 applications which remain from the 2003 FM translator window. The Commission previously established a processing cap of ten pending short-form applications per applicant from FM translator Auction No. 83. The *Fourth Report and Order* concludes that that this cap was inconsistent with the LCRA licensing criteria. It further concludes that a market-specific, spectrum availability-based translator application dismissal policy most faithfully implements Section 5 of the LCRA. Specifically, it sets forth a dismissal policy in which the Commission will impose a national application cap and/or a one application per applicant per market in the markets identified in Appendix A of the *Fourth Report and Order*. It directs the Media Bureau to issue a Public Notice asking applicants to identify applications for continued processing, consistent with these limits. Upon completion of this selection/dismissal process, the Bureau will process the remaining applications in "spectrum available" markets, as defined in the *Fourth Report and Order*. Applicants will be able to file amendments demonstrating that their applications will not preclude any LPFM channel/point combination identified in the grid studies. Those applications that fail to do so will be dismissed.

3. Applicants with proposals remaining in "spectrum limited" markets, as defined in the *Fourth Report and Order*, will also be given one opportunity to modify their proposals to eliminate all preclusive impacts on protected LPFM channel/point combinations. Applications that conflict with protected channel/point combinations and that are not amended to eliminate all such conflicts will be dismissed.

4. The *Fourth Report and Order* also modifies certain recently adopted FM translator service rule changes as a result of the enactment of the LCRA. Specifically, it modifies the date restriction contained in Section 74.1232(d) of the Rules to allow pending FM translator applications that are granted to be used as cross-service translators.

¹⁹⁴ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

¹⁹⁵ *Creation of a Low Power Radio Service and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Third Further Notice of Proposed Rulemaking, 26 FCC Rcd 9986 (2011).

¹⁹⁶ *Id.* at 10009.

¹⁹⁷ Pub. L. No. 111-371, 124 Stat. 4072.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

5. None.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.

6. 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.¹⁹⁸ The RFA generally defines the term "small entity" as encompassing the terms "small business," "small organization," and "small governmental entity."¹⁹⁹ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.²⁰⁰ 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").²⁰¹

7. *Radio Broadcasting.* The policies adopted in the *Fourth Report and Order* 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.²⁰² Business concerns included in this industry are those primarily engaged in broadcasting aural programs by radio to the public.²⁰³ According to Commission staff review of the BIA Publications, Inc. Master Access Radio Analyzer Database as of January 31, 2011, about 10,820 (97 percent) of 11,100 commercial radio stations) have revenues of \$7 million or less and thus qualify as small entities under the SBA definition. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations²⁰⁴ 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.

8. 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.

¹⁹⁸ *Id.* § 603(b)(3).

¹⁹⁹ *Id.* § 601(6).

²⁰⁰ *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."

²⁰¹ 15 U.S.C. § 632.

²⁰² See 13 C.F.R. § 121.201, NAICS Code 515112.

²⁰³ *Id.*

²⁰⁴ "[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).

9. *FM translator stations and low power FM stations.* The policies adopted in the *Fourth Report and Order* 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.²⁰⁵ Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. Currently, there are approximately 6131 licensed FM translator stations and 860 licensed LPFM stations.²⁰⁶ 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.

D. Description of Projected Reporting, Record Keeping, and Other Compliance Requirements

10. In the *Fourth Report and Order*, we require Auction No. 83 applicants to identify which applications they wish to preserve to come into compliance with the national and market-based caps. This will enable the Commission to move quickly through a backlog of applications that have been pending since 2003 and open a new filing window for the LPFM service.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

11. 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.²⁰⁷

12. The *Fourth Report and Order* establishes a market-specific, spectrum availability-based approach to the processing of remaining translator applications. It also establishes national and market-specific application caps. In adopting these policies, several alternative approaches were considered:

13. Size of Grid. The Commission considered alternatives to the 31x31 market study grid proposed in the *Third Further Notice*. For example, it considered a smaller, 21x21 grid, as well as a larger grid based on Arbitron market boundaries. The *Fourth Report and Order* adopts a 31x31 grid, but adopts a 21x21 grid in markets where 75 percent or more of the population is located in that smaller grid.

14. Processing of Translator Application in Spectrum-Limited Markets. The *Third Further Notice* proposed to dismiss all applications in certain spectrum-limited markets. One alternative considered was to allow continued processing of certain translator applications in "spectrum limited" markets. The *Fourth Further Notice* adopts this policy.

15. We believe that the adopted policies offer significant benefits to small entities. The

²⁰⁵ See 13 C.F.R. § 121.201, NAICS Code 515112.

²⁰⁶ See *News Release*, "Broadcast Station Totals as of December 31, 2006" (rel. Jan. 26, 2007) (http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-269784A1.doc).

²⁰⁷ 5 U.S.C. § 603(b).

market-based approach ensures additional spectrum for LPFM stations in markets in which it is most limited while also ensuring the immediate licensing of translator stations in communities in which ample spectrum remains for both services, including many major markets. Use of the smaller grid and allowing the processing of additional translators benefit small entities because they will increase licensing opportunities for both LPFM stations and translators. Adoption of the application caps will benefit translator and LPFM proponents because it will allow the Commission to quickly act on applications that have been pending for more than eight years and to open an LPFM window in the near future.

16. We likewise believe that removing the date restriction contained in Section 74.1232(d) of the Rules to allow pending FM translator applications that are granted to be used as cross-service translators will benefit small entities because it will expand opportunities for translator licensees to rebroadcast AM service.

F. Report to Congress

17. The Commission will send a copy of the *Fourth Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the SBREFA.²⁰⁸ In addition, the Commission will send a copy of the *Fourth Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Fourth Report and Order* and the FRFA (or summaries thereof) will also be published in the Federal Register.²⁰⁹

²⁰⁸ See 5 U.S.C. § 801(a)(1)(A).

²⁰⁹ See 5 U.S.C. § 604(b).

APPENDIX D

Final Rules

Part 74 of the Code of Federal Regulations is amended as follows:

PART 74 – RADIO BROADCAST SERVICES

1. The authority for Part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 336(f), 336(h) and 554

2. Section 74.1232(d) is amended to read as follows:

§ 74.1232 Eligibility and licensing requirements.

* * * *

(d) An authorization for an FM translator whose coverage contour extends beyond the protected contour of the commercial primary station will not be granted to the licensee or permittee of a commercial FM radio broadcast station. Similarly, such authorization will not be granted to any person or entity having any interest whatsoever, or any connection with a primary FM station. Interested and connected parties extend to group owners, corporate parents, shareholders, officers, directors, employees, general and limited partners, family members and business associates. For the purposes of this paragraph, the protected contour of the primary station shall be defined as follows: the predicted 0.5mV/m contour for commercial Class B stations, the predicted 0.7 mV/m contour for commercial Class B1 stations and the predicted 1 mV/m field strength contour for all other FM radio broadcast stations. The contours shall be as predicted in accordance with § 73.313(a) through (d) of this chapter. In the case of an FM radio broadcast station authorized with facilities in excess of those specified by § 73.211 of this chapter, a co-owned commercial FM translator will only be authorized within the protected contour of the class of station being rebroadcast, as predicted on the basis of the maximum powers and heights set forth in that section for the applicable class of FM broadcast station concerned. An FM translator station in operation prior to March 1, 1991, which is owned by a commercial FM (primary) station and whose coverage contour extends beyond the protected contour of the primary station, may continue to be owned by such primary station until March 1, 1994. Thereafter, any such FM translator station must be owned by independent parties. An FM translator station in operation prior to June 1, 1991, which is owned by a commercial FM radio broadcast station and whose coverage contour extends beyond the protected contour of the primary station, may continue to be owned by a commercial FM radio broadcast station until June 1, 1994. Thereafter, any such FM translator station must be owned by independent parties. An FM translator providing service to an AM fill-in area will be authorized only to the permittee or licensee of the AM radio broadcast station being rebroadcast, or, in the case of an FM translator authorized to operate on an unreserved channel, to a party with a valid rebroadcast consent agreement with such a permittee or licensee to rebroadcast that station as the translator's primary station. In addition, any FM translator providing service to an AM fill-in area must have been authorized by a license or construction permit in effect as of May 1, 2009, or pursuant to an application that was pending as of May 1, 2009. A subsequent modification of any such FM translator will not affect its eligibility to rebroadcast an AM signal.