

May 16, 2024

FCC FACT SHEET*

Political Programming and Online Public File Requirements for Low Power Television Stations and Amendment of the Commission’s Rules to Advance the Low Power Television, TV Translator and Class A Television Service

Notice of Proposed Rulemaking (*NPRM*) – MB Docket Nos. 24-147 and 24-148

Background: The *NPRM* seeks comment on revisions to the Commission’s rules relating to the Low Power Television service (LPTV Service) including Class A television, LPTV, and TV translator stations. The Commission created the LPTV Service in 1982 to bring local television service to viewers “otherwise unserved or underserved” by existing full power stations. Today, the LPTV Service is an established component of the nation’s television system, delivering free over-the-air TV service, including locally produced programming, to millions of viewers. The *NPRM* proposes changes to our rules and policies to ensure it continues to flourish and serve the public interest.

What the NPRM Would Do:

- Seek comment on whether to require top-four network affiliated LPTV stations to comply with the same online public file (OPIF) requirements applicable to full power and Class A television stations, or alternatively whether OPIF requirements should be applied to LPTV stations that are among the top-four TV stations in each market based on the Nielsen ratings.
- Propose to adopt procedures for LPTV stations to establish an OPIF, and propose to make public inspection and political broadcasting rules applicable to all LPTV stations.
- Propose technical and operational amendments to our rules, including whether to:
 - Amend the method for calculating the maximum distance that a displaced or channel sharing station may move under our displacement rule.
 - Clarify the maximum distance that Class A and LPTV/TV translator stations may move under our minor modification rule.
 - Require that Class A and LPTV/TV translator stations specify a community of license within their station’s contour.
 - Adopt minimum operating and defined minimum video program requirements for LPTV stations.
 - Require stations in the LPTV Service seek authority to change designation and maintain a call sign consistent with their class of service.
 - Specify requirements pertaining to emissions masks.
 - Prohibit LPTV/TV translator station operations above TV channel 36.
 - Clarify the circumstances in which LPTV/TV translators stations are eligible for displacement.

* This document is being released as part of a “permit-but-disclose” proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in MB Docket Nos. 24-147 and 24-148, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs/>). Before filing, participants should familiarize themselves with the Commission’s *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR § 1.1200 *et seq.*

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

In the Matter of)
Political Programming and Online Public File) MB Docket No. 24-147
Requirements for Low Power Television Stations)
Amendment of the Commission’s Rules to) MB Docket No. 24-148
Advance the Low Power Television, TV Translator)
and Class A Television Service)

NOTICE OF PROPOSED RULEMAKING*

Adopted: []

Released: []

Comment Date: (30 days after date of publication in the Federal Register)
Reply Comment Date: (60 days after date of publication in the Federal Register)

By the Commission:

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* This document has been circulated for tentative consideration by the Commission at its June open meeting. The issues referenced in this document and the Commission’s ultimate resolution of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairwoman has determined that, in the interest of promoting the public’s ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The FCC’s ex parte rules apply and presentations are subject to “permit-but-disclose” ex parte rules. See, e.g., 47 CFR §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR §§ 1.1200(a), 1.1203.

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I. INTRODUCTION

1. In this *Notice of Proposed Rulemaking (NPRM)*, we seek comment on revisions to our rules relating to the Low Power Television service (LPTV Service).¹ The Commission created the LPTV Service in 1982 to bring local television service to viewers “otherwise unserved or underserved” by existing full power service providers.² Today, these stations are an established component of the nation’s television system, delivering free over-the-air TV service, including locally produced programming, to millions of viewers in rural and discrete urban communities. In light of changes to the LPTV Service over the last forty years, we invite comment on changes to our rules and policies to ensure that LPTV Service continues to flourish and serve the public interest.

¹ The LPTV Service includes low power television (LPTV) stations as well as television translator (TV translator) stations and Class A TV stations (Class A). In this item, we will at times specify LPTV stations only, and when we refer to LPTV and TV translator stations collectively we will use the term “LPTV/TV translator stations.” TV translator stations also include digital replacement translators (DRTs) or digital-to-digital replacement translators (DTDRTs). A DRT is a television translator station licensed to a full power television station that allows it to restore service to any loss areas that may have occurred as a result of its transition from analog to digital. *See* 47 CFR § 74.701(c). A DTDRT is a television translator station licensed to a full power television station that allows it to restore service to any loss areas that may have occurred as a result of the station being assigned a new channel pursuant to the Incentive Auction and repacking process. *See* 47 CFR § 74.701(d). Because certain part 74 rules also apply to Class A stations, some of the proposals contained in this NPRM may also affect Class A stations and we have noted this fact in those individual sections.

² *See Inquiry Into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System*, Notice of Proposed Rulemaking, 45 FR 69178, para. 1 (Oct. 17, 1980) (*LPTV NPRM*); *Low Power Television Service*, 51 RR 2d 476 (1982) (*LPTV Order*), *reconsideration granted in part*, 48 Fed. Reg. 21478 (1983) (*LPTV MO&O*); *Establishment of a Class A Television Service*, Report and Order, 15 FCC Rcd 6355 (2000), para. 1 (*Class A Order*), *reconsideration granted in part*, 16 FCC Rcd 8244 (2001). The LPTV Service is considered a “secondary” service. This means that LPTV/TV translators, may not cause interference to, and must accept interference from, full power television stations as well as certain land mobile radio operations and other primary services. *See LPTV Order*, 51 RR 2d at 479, para. 17. As a result of their secondary status, LPTV/TV translator stations can also be displaced by full power stations that seek to expand their service area, or by new full power stations seeking to serve the same area as existing LPTV/TV translator stations.

II. BACKGROUND

2. The LPTV Service was established over forty years ago as a secondary, niche service. At the time of its creation, the viability of the LPTV Service was not established and it was exempted from certain obligations applicable to other broadcasters, including certain recordkeeping and operating obligations.³ As the name suggests, stations in the LPTV Service have lower authorized power levels than full power TV stations.⁴ Because the LPTV Service operates at reduced power levels, the stations serve a much smaller geographic region than full power stations and can be fit into areas where a higher power station cannot be accommodated in the Table of TV Allotments or in accordance with section 307(b) of the Act.⁵ TV translator and Class A stations are technically equivalent to LPTV stations in most respects.⁶ While LPTV, TV translator, and Class A stations have many similarities under our rules, they are each a distinct class of broadcast television station, with differing rights and responsibilities.⁷

3. Currently, there are approximately 1,829 licensed LPTV stations.⁸ These stations operate in all states and territories. LPTV stations are permitted to both originate programming or retransmit, with permission, the signal of another TV station.⁹ LPTV stations are not limited in the amount of

³ See *LPTV Order*, 51 RR 2d at 478 and 487, paras. 14 and 77.

⁴ LPTV/TV translator stations may radiate up to 3 kilowatts of power for stations operating on the VHF band (channels 2 through 13), and 15 kilowatts of power for stations operating on the UHF band (channels 14 through 36). By comparison, digital full power stations radiate up to 45 kilowatts of power on VHF channels 2 through 6, 160 kilowatts of power on VHF channels 7 through 13, and up to 1,000 kilowatts of power on UHF channels. See 47 CFR §§ 74.735(b), 73.614(b). LPTV/TV translator signals typically extend approximately 20 to 40 miles from a station's transmission site, while the signals of full power stations can reach as far as 60 to 80 miles. See *Class A Order*, 15 FCC Rcd at 6357, n.4.

⁵ 47 U.S.C. § 307(b); see *LPTV Order*, 51 RR 2d at 478, para. 14; *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, Report and Order, 19 FCC Rcd 19331, 19334-5 (2004) (*LPTV DTV First R&O*).

⁶ Operations of Class A TV stations, LPTV stations, and TV translator stations are generally governed by the same technical standards. See *LPTV DTV First R&O*, 19 FCC Rcd at 19334-35, paras. 4-5. Class A stations are licensed under part 73 of our rules but operate at the same power level as LPTV and TV translator stations. See *Class A Order*, 15 FCC Rcd at 6367, para. 29; 47 CFR § 74.735. Unlike LPTV and TV translator stations, Class A stations must comply with part 73 regulations applicable to full power TV broadcast stations, except for those that cannot apply for technical or other reasons. Class A stations also are afforded certain interference protection rights not available to LPTV or TV translator stations. *LPTV DTV First R&O*, 19 FCC Rcd at 19334-35, para. 5. Currently, licensees can switch between LPTV and TV translator designation by simple letter notification to the Commission. 47 CFR § 74.732(e). *But see* Section III. (proposing a procedure and limits on designation switches).

⁷ For example, Class A stations are required to broadcast a minimum of 18 hours per day and an average of at least three hours per week of locally produced programming each quarter. 47 CFR § 73.6001(b). In addition, Class A stations must comply with certain part 73 regulations applicable to full power television stations, including our rules governing informational and educational children's programming and the commercial limits in children's programming. See *Class A Order*, 15 FCC Rcd at 6366, para. 24; 47 CFR §§ 73.670, 671. LPTV and TV translator stations are not subject to these requirements. As noted above, see *supra* note 2, LPTV and TV translator stations are secondary stations that may not cause interference to, and must accept interference from, full power television stations as well as certain land mobile radio operations and other primary services, and may be displaced by full power stations. TV translator stations are also limited in the amount of programming they may originate. See *infra* para. 4, note 13, and note 72.

⁸ *Broadcast Station Totals as of March 31, 2024*, Public Notice, DA 24-323 (rel. Apr. 3, 2024) (*Station Totals PN*). This includes both UHF and VHF stations.

⁹ See 47 CFR §§ 74.784, 74.790.

programming they may originate or rebroadcast, and have fewer operating obligations than full power television stations.¹⁰ LPTV stations completed the transition from analog to digital operations in 2021.¹¹

4. There are approximately 3,118 licensed TV translators,¹² most operating in the western regions of the United States. With limited exception, TV translators are not permitted to originate programming and may only simultaneously retransmit the signal of another TV station, with permission.¹³ TV translator stations are intended to provide service to areas where direct reception of full-service broadcast stations is either not possible or unsatisfactory because of distance or intervening terrain obstructions. Although TV translators are not limited to operation within the contour of the station or stations they rebroadcast, they may be used to provide service to terrain-obstructed areas within a full-service station's service area. TV translators are often used to deliver the only over-the-air television service available to rural communities.¹⁴

5. In addition, there are approximately 379 licensed Class A stations.¹⁵ In 2000, as instructed by Congress in the Community Broadcasters Protection Act of 1999 (CBPA),¹⁶ the Commission established the Class A television service.¹⁷ Class A stations are stations that operate at low power, like LPTV/TV translator stations, but are afforded primary interference protection status. The CBPA allowed certain qualifying LPTV stations to apply for Class A status.¹⁸ Class A stations completed a transition from analog to digital operations in 2015.¹⁹ Although they are not a secondary service, Class A stations are

¹⁰ For example, LPTV stations are not currently subject to a minimum operating schedule (*see* 47 CFR § 74.790(h)). We note, however, that in this proceeding, we are proposing to adopt a minimum operating requirement for LPTV stations for the first time. *See* Section III. F. – Establishing Minimum Operating Requirements for LPTV Stations.

¹¹ *See Media Bureau Reminds Low Power Television and Television Translator Stations of July 13, 2021, Digital Transition Date*, Public Notice, 36 FCC Rcd 4771 (MB 2021) (*Digital Transition PN*).

¹² *Station Totals PN*, *supra* note 8.

¹³ *See* 47 CFR §§ 74.784, 74.790. A TV translator station may receive the signal of the station it is rebroadcasting through multiple means, including over-the-air, satellite, microwave, and cable.

¹⁴ *LPTV DTV First R&O*, 19 FCC Rcd at 19334, para. 5.

¹⁵ *Station Totals PN*, *supra* note 8. In January 2023, Congress enacted the Low Power Protection Act (LPPA) “to provide low power TV stations with a limited window of opportunity” to apply for primary status as a Class A television licensee. Low Power Protection Act, Pub. L. 117-344, 136 Stat. 6193 (2023) (LPPA). The LPPA gives qualifying LPTV stations one year to apply for a Class A license, from the date that the Commission's rules become effective and sets forth certain eligibility requirements. LPPA Sec.2(b). In December 2023, the Commission completed a proceeding to implement the LPPA. *Implementation of the Low Power Protection Act*, Report and Order, FCC 23-112 (Dec. 12, 2023) (*LPPA R&O*), appeal pending sub nom Radio Communications Corp. v FCC, No. 24-1004 (D.C. Cir.). A window for eligible LPTV stations under the LPPA to convert to Class A Status will be announced at a later date, pending necessary PRA approval. *See* Federal Communication Commission, Information Collections Being Submitted for Review and Approval to Office of Management and Budget, 89 Fed. Reg. 21519 (Mar. 28, 2024). We note that stations that may qualify for Class A status continue to be subject to the part 74 LPTV licensing and technical rules until they convert to Class A status.

¹⁶ Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. App. I at pp. 1501A-594 - 1501A-598 (1999), codified at 47 U.S.C. § 336(f).

¹⁷ *See Class A Order*, 15 FCC Rcd at 6357-58, para. 2.

¹⁸ 47 U.S.C. § 336(f)(2)(A)(i); 47 U.S.C. § 336(f)(2)(A)(ii); 47 CFR § 73.6001(c).

¹⁹ *See Media Bureau Reminds Class A Television Stations of September 1, 2015 Digital Transition Date*, Public Notice, 30 FCC Rcd 8500 (MB 2015).

still subject to the various LPTV/TV translator licensing and technical requirements found in part 74 of our rules.²⁰

6. The LPTV Service has thrived since its creation in providing service to millions in local communities of all kinds across the nation. All such stations are currently required to operate in digital format.²¹ While some LPTV stations air “niche” programming, sometimes locally produced, to residents of specific ethnic, racial, or special interest communities, sometimes in foreign languages, others are affiliated with a television network, including the top four networks (ABC, CBS, Fox, and NBC).²² In addition, while some LPTV stations remain small, independently owned stations, others are part of large station groups.²³ In some areas unserved by any other television station, an LPTV station may be the only television station providing local news, weather, and public affairs programming.²⁴ Even in some well-served markets, LPTV stations may provide the only service targeted to the specific interests of residents of discrete geographical communities within those markets.²⁵ In many instances, these stations are significant enough voices in their communities to attract requests to carry political advertising and may also carry sponsored programming pursuant to time brokerage, local marketing agreements, or other agreements.²⁶

III. DISCUSSION

7. Given the maturation of the LPTV Service since its initiation, we seek comment in this proceeding about comprehensive updates to the regulations of the service. In sections A through C below we invite comment on whether we should require certain LPTV stations to maintain an OPIF. In sections D through L we propose updates and amendments to our rules to address advances in the LPTV Service, update our existing rules to provide clarifications and resolve inconsistencies in our rules, prevent abuse of our licensing processes, create an equal playing field, and ensure that LPTV/TV translator stations are able to fully utilize the country’s limited spectral resources to provide television services. Specifically, we propose and/or seek comment on whether to:

- Require certain LPTV stations to maintain an online public inspection file.
- Adopt procedures for certain LPTV stations to establish an online public inspection file.
- Specify in our rules that public inspection and political broadcasting requirements are applicable to all LPTV stations.

²⁰ See *LPTV DTV First R&O*, 19 FCC Rcd at 19333-34, para. 4; *Class A Order*, 15 FCC Rcd at 6365-69, paras. 23-31.

²¹ See 47 CFR § 74.790(m), previously § 74.731(m).

²² See *Class A Order*, 15 FCC Rcd at 6357, para. 2.

²³ For instance, Gray Television has purchased a number of LPTV stations. See *A New, Bigger LPTV Grab for Gray Television*, Radio and Television Business Report, Jan. 3, 2022, available at <https://www.rbr.com/a-new-bigger-lptv-grab-for-gray-television/>.

²⁴ See *Class A Order*, 15 FCC Rcd at 6357, para. 2; *Review of the Commission’s Rules Governing the Low Power Television Service*, First Report and Order, 9 FCC Rcd 2555, para. 2 (1994) (*LPTV First Report and Order*).

²⁵ *Id.*

²⁶ Roughly 2% of LPTV stations are affiliated with one of the Big Four networks (ABC, CBS, NBC, and Fox) and approximately 15% of LPTV stations are affiliated with any network, according to publicly available information. See S&P Global Market Intelligence, available at <https://www.spglobal.com/marketintelligence/en/>. Network affiliated stations likely receive requests to carry political advertising and may carry sponsored programming pursuant to time brokerage, local marketing agreements, or other agreements. See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535, 4558-59, para. 48 (2012) (*Second Report and Order*).

- Make other changes to Section 73.3526 of our rules to correct cross references and other inaccuracies relating to stations in the LPTV Service and commercial radio and TV stations and establish new reporting requirements for Class A and LPTV stations.
- Amend the method for calculating the maximum distance that a displaced or channel sharing station may move under the LPTV/TV translator displacement rule.
- Revise the LPTV/TV translator minor change rule to clarify the maximum distance that Class A and LPTV/TV translator stations may move.
- Require that Class A and LPTV/TV translator stations specify a community of license (COL) within their station's contour.
- Adopt minimum operating and defined minimum video program requirements for LPTV stations.
- Require that LPTV/TV translator stations seek authority to change designation between LPTV and TV translator status and require Class A and LPTV/TV translator stations to maintain a call sign consistent with their class of service.
- Require use of a "stringent" or "full-service" emission mask for channel 14 Class A and LPTV/TV translator stations to prevent interference to Land Mobile Radio (LMR) stations.
- Prohibit LPTV/TV translator station operations above TV channel 36.
- Remove the 30 day public notice comment period for displacement applications and clarify when an LPTV/TV translator station displaced by a full power station's channel substitution may apply for displacement.
- Clarify the existing displacement rule and interference thresholds for actual and predicted interference, and amend the definition of displacement to include displacement by LMR stations; by protected television facilities in Canada and Mexico; and due to interference to TV translator input channels.
- Codify other rule clarifications consistent with precedent, including the use of emission masks at Distributed Transmission System (DTS) transmitter sites; the maximum grid resolution permitted with interference analyses; and application of the part 73 "program test authority" rule to LPTV/TV translator stations.
- Remove duplicate definitions and re-letter the definitions remaining in the part 74 rules, and make other editorial, non-substantive corrections to the part 11, 73, and 74 rules.

A. Requiring Certain LPTV Stations to Maintain an Online Public Inspection File

1. Existing Public File Requirements

8. To provide the public with access to information about station operations, the Commission's rules long required broadcast television and radio stations to maintain a physical public inspection file, including a political file, at their respective stations or headquarters and to place in the file records that provide information about station operations. The purpose of the public inspection file requirement is to "make information to which the public already has a right more readily available, so that the public will be encouraged to play a more active part in dialogue with broadcast licensees."²⁷

²⁷ *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Report and Order, 31 FCC Rcd 526 (2016) (*Expanded Online File Order*), citing *Commission's Rules Relating to Inspection of Records*, Report and Order, 4 R.R.2d 1664 (1965), *recon. granted in part and denied in part*, Memorandum Opinion and Order, 6 R.R.2d 1527 (1965).

9. The Commission promulgated its first political file rule in 1938.²⁸ That initial rule was essentially identical to our current political file regulation in its requirement that the file be available for public inspection and include both candidate requests for time and the disposition of those requests, including the “charges made” for the broadcast time.²⁹ In 1965, following action by Congress to allow greater public participation in the broadcast licensing process, the Commission adopted a broader public inspection file rule to enable inspection of broadcast applications, reports, and related documents at a station’s main studio.³⁰ The Commission noted that Congress’ actions “zealously guarded the rights of the general public to be informed”³¹ and that the Commission’s goal was to make “practically accessible to the public information to which it is entitled.”³²

10. In 2012, the Commission replaced the decades-old requirement that commercial and noncommercial television stations maintain public files at their main studios with a requirement to post most of the documents in those files to a central, online public file hosted by the Commission.³³ In 2016, the Commission expanded the online public inspection file (OPIF) to include cable operators, Direct Broadcast Satellite (DBS) providers, broadcast radio licensees, and satellite radio (also referred to as “Satellite Digital Audio Radio Service” or “SDARS”) licensees.³⁴ The Commission’s goals were to modernize the procedures television broadcasters and other media entities use to inform the public about how they are serving their communities, make information concerning service more accessible to the public, and reduce the cost of compliance.³⁵

11. Section 73.3526, the online public inspection file rule for commercial television and radio stations, requires “[e]very permittee or licensee of an AM, FM, TV, or Class A TV station in the commercial broadcast services” to maintain a public inspection file with material identified in the rule.³⁶ LPTV stations are not currently subject to section 73.3526. Among other required content, section

²⁸ See 3 Fed. Reg. 1691 (1938).

²⁹ *Id.*

³⁰ *Commission’s Rules Relating to Inspection of Records*, 4 R.R.2d at para. 2. These new requirements were adopted following Congress’ 1960 amendment of sections 309 and 311 of the Communications Act of 1934, as amended (the Act). 47 U.S.C. §§ 309 (Application for License) and 311 (Requirements as to Certain Applications in Broadcasting Service).

³¹ *Commission’s Rules Relating to Inspection of Records*, 4 R.R.2d at para. 9.

³² *Id.* at para. 12. In determining that stations must maintain a local file in addition to the information made available to the public at the Commission’s offices in Washington, D.C., the Commission also noted that “the existence hundreds, and in some cases thousands, of miles away of a voluminous public file is of little practical value in providing interested persons with the kind of information needed for them to participate ... as Congress intended.” *Id.* at para. 10.

³³ See *Second Report and Order*, 27 FCC Rcd 4535. This order applied to full power commercial and noncommercial television broadcast stations and Class A TV stations.

³⁴ See *Expanded Online File Order*.

³⁵ *Id.* at 4536, para. 1. In transitioning entities to the online file, the Commission took a number of steps to minimize the burden on stations and other media entities. Broadcasters and other media entities must upload only those items required to be in the public file but not otherwise filed with the Commission or available on the Commission’s website. Any document or information required to be kept in the public file and that is required to be filed with the Commission electronically is imported to the online public file and updated by the Commission. See *Second Report and Order*, 27 FCC Rcd at 4540-41, para. 11; *Expanded Online File Order*, 31 FCC Rcd at 534, para. 17. In addition, entities were not required to upload their existing political files to the online file; rather, they were required only to upload new political file content on a going-forward basis. *Id.* Existing political files were required to be maintained at the station, however, until the end of the two-year retention period. See 47 CFR §§ 73.3526(e)(6) and 73.1943(c).

³⁶ 47 CFR § 73.3526(a)(2).

73.3526(e)³⁷ specifies that the public inspection file must include a copy of the station's current authorization,³⁸ any application tendered for filing with the Commission together with related material,³⁹ citizen agreements,⁴⁰ contour maps,⁴¹ ownership reports and related materials,⁴² the political file,⁴³ the Equal Employment Opportunity file,⁴⁴ radio and television time brokerage agreements,⁴⁵ must-carry or retransmission consent elections,⁴⁶ radio and television joint sales agreements,⁴⁷ shared service agreements,⁴⁸ and foreign sponsorship disclosures.⁴⁹ Section 73.3526(b) requires that television and radio station licensees or applicants subject to the rule place the contents of their public inspection file "in the online public file hosted by the Commission."⁵⁰

12. When the Commission created the LPTV category of service in the *LPTV Order*, the Commission concluded that because the service was of undetermined viability and the stations are secondary, have small coverage areas, and are not required to serve a particular community or a specified coverage area, "minimal regulation of low power television is in the public interest notwithstanding the fact that it is a broadcast service."⁵¹ Nevertheless, the Commission concluded that sections 312(a)(7) and

³⁷ 47 CFR § 73.3526(e).

³⁸ 47 CFR § 73.3526(e)(1).

³⁹ 47 CFR § 73.3526(e)(2).

⁴⁰ 47 CFR § 73.3526(e)(3).

⁴¹ 47 CFR § 73.3526(e)(4).

⁴² 47 CFR § 73.3526(e)(5).

⁴³ 47 CFR § 73.3526(e)(6).

⁴⁴ 47 CFR § 73.3526(e)(7).

⁴⁵ 47 CFR § 73.3526(e)(14).

⁴⁶ 47 CFR § 73.3526(e)(15).

⁴⁷ 47 CFR § 73.3526(e)(16).

⁴⁸ 47 CFR § 73.3526(e)(18).

⁴⁹ 47 CFR § 73.3526(e)(19). Some required public inspection file content identified in section 73.3526(e) does not apply to LPTV stations, including TV issues/programs lists (47 CFR § 73.3526(e)(11)(i)), records concerning commercial limits in children's programming (47 CFR § 73.3526(e)(11)(ii)), and children's television programming reports (47 CFR § 73.3526(e)(11)(iii)). These public file obligations relate to requirements that do not apply to LPTV stations. LPTV stations are not required to prepare children's television programming reports or to comply with the commercial limits in children's programming. See 47 CFR § 74.780 (which does not cross reference the children's programming requirements in 47 CFR § 73.670-673). Nor are LPTV stations required to prepare issues/program lists. We do not propose to revisit these LPTV public file exceptions or the LPTV exclusion from the underlying requirements in this proceeding.

⁵⁰ 47 CFR § 73.3526(b)(2)(i). As noted above, see *supra* note 35, broadcasters must upload only those items required to be in the public file but not otherwise filed with the Commission or available on the Commission's website. Any document or information required to be kept in the public file and that is available to the Commission or required to be filed with the Commission electronically, including station authorizations and applications filed with the Commission, is imported to the online public file and updated by the Commission. In the event that the online public file does not reflect such required information, the licensee is responsible for posting such material. See 47 CFR § 73.3526(b)(3).

⁵¹ *LPTV Order*, 51 R.R.2d at paras. 14, 77. The Commission also determined that it would not impose requirements that differentiate between commercial versus noncommercial operation of LPTV stations. *Id.* at para. 77. The Commission determined that LPTV stations are required to comply with certain rules applicable to full power stations, however, including station identification requirements. *Id.* at para. 102. The Commission also required that LPTV stations limit operations to programming consistent with the definition of "broadcast" in the Act and the

(continued....)

(f) and 315 of the Act apply to LPTV stations.⁵² Section 312(a)(7) grants candidates for federal office reasonable access to broadcasting stations.⁵³ Section 315(a) states that, if a licensee permits one candidate for a public office to use its station, it must afford “equal opportunities” to all other candidates for that office to use the station.⁵⁴ Section 315(b) provides that, during certain periods before an election, political candidates are entitled to “the lowest unit charge of the station for the same class and amount of time for the same period.”⁵⁵ In addition, section 315(e) requires broadcast licensees to maintain and make available for public inspection certain records of requests to purchase broadcast time on the station.⁵⁶ While LPTV stations must comply with the statutory requirements of sections 312(a)(7) and 315, the Commission did not amend the political programming and political file rules that apply to LPTV when it last amended the political programming and political file rules that apply to full power and Class A stations.⁵⁷

13. LPTV stations do have certain recordkeeping obligations aside from the political programming requirements described above.⁵⁸ Section 74.781 requires LPTV stations to “maintain adequate station records”⁵⁹ and make them available to the Commission upon request.⁶⁰ Section 74.781(c) also requires that records “shall be maintained for inspection,”⁶¹ although that sentence

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rules, comply with the prohibitions on the broadcast of obscene material, plugola, payola, and lottery information, and comply with the rule requiring fairness in licensee-conducted contests. *Id.* at paras. 104-105.

⁵² *Id.* at para. 105.

⁵³ See 47 U.S.C. § 312(a)(7). That section permits revocation of a station license or construction permit “for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station ... by a legally qualified candidate for Federal elective office on behalf of his candidacy.” *Id.* Section 312(f) defines the terms “willful” and “repeated.”

⁵⁴ 47 U.S.C. § 315(a).

⁵⁵ 47 U.S.C. § 315(b). At all other times, a station may charge candidates as much as it charges others for “comparable use” of the station. 47 U.S.C. § 315(b)(1)(B).

⁵⁶ See 47 U.S.C. § 315(e).

⁵⁷ Section 74.780 of the rules contains a list of broadcast regulations in part 73 applicable to LPTV stations. See 47 CFR § 74.780 (Broadcast regulations applicable to translators and low power stations). That section includes a cross reference to section 73.1940 entitled “Legally qualified candidates for public office.” Section 74.780 does not cross reference the other political programming and political file rules in part 73. Section 73.1940 of the rules used to contain all of the political programming and political file rules but, in 1991, those rules were separated into the current five rule sections 73.1940 through 73.1944. See *Codification of the Commission’s Political Programming Policies*, Notice of Proposed Rulemaking, 6 FCC Rcd 5707, 5708, para. 4 (1991). See also *Codification of the Commission’s Political Programming Policies*, Report and Order, 7 FCC Rcd 678 (1991) (*Political Programming Order*). The rules adopted in the *Political Programming Order* can be found at 57 Fed. Reg. 189 (Jan. 3, 1992). The Commission provided no explanation for not amending the cross-reference to the political programming and political file rules that apply to LPTV stations in part 74.

⁵⁸ The Commission’s rules governing LPTV stations are contained in part 74 of the rules. See 47 CFR Part 74 (Experimental Radio, Auxiliary, Special Broadcast and Other Program Distributional Services). More specific rules governing the LPTV Service are found in Part 74, Subpart G of the rules. See 47 CFR Part 74, Subpart G (Low Power TV and TV Translator Stations).

⁵⁹ 47 CFR § 74.781(a) (requiring LPTV stations to “maintain adequate station records, including the current instrument of authorization, official correspondence with the FCC, contracts, permission for rebroadcasts, and other pertinent documents”).

⁶⁰ 47 CFR § 781(c) (requiring records to be “made available upon request to any authorized representative of the Commission”).

⁶¹ 47 CFR § 74.781(c) (requiring records to be “maintained for inspection at a residence, office, or public building, place of business, or other suitable place, in one of the communities of license of the translator, except that the

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mentions only translator stations.⁶² The records required to be maintained include the station authorization, official correspondence with the Commission, contracts, and “other pertinent documents.”⁶³ In addition, section 74.780 of the rules⁶⁴ also contains some recordkeeping obligations. For example, LPTV stations must retain records of programming that is a “political matter or matter involving the discussion of a controversial issue of public importance” pursuant to Commission’s sponsorship identification rules.⁶⁵ In addition, LPTV stations must provide to the Commission upon request a copy of any network affiliation contract between the station and a national network.⁶⁶

14. The implementation of the online file was a significant achievement in the Commission’s ongoing efforts to improve public access to important station information. Since it was launched in 2012, more than 19,875,413 documents have been successfully uploaded into the online file, and the site receives 108,583 unique visitors every two weeks.⁶⁷ Today, all full power and Class A television broadcast stations, cable operators, full-service radio broadcasters, DBS providers, and SDARS licensees have fully transitioned to OPIF. Despite initial concerns, NAB characterized the initial implementation of the online file as “uneventful.”⁶⁸ The benefits of the online public file, versus maintaining files in main

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station records of a translator licensed to the licensee of the primary station may be kept at the same place where the primary station records are kept”). That sentence was adopted in 1975, as part of the original version of subsection (c), and before the establishment of the low power television service. *In the Matter of Amendment of Sections 74.765, 74.1265, 74.781, and 74.1281 of the Rules Pertaining to Station Records of TV Translators, FM Translators and FM Boosters*, Supplemental Order, 54 FCC 2d 98 (1975)(*Station Records Supplemental Order*).

⁶² The prior version of subsection (c) contained an additional requirement that stated that “the name of the person keeping station records, together with the address of the place where the records are kept, shall be posted in accordance with § 74.765(c) of the rules.” 47 CFR § 74.781(c) (2017). Section 74.765(c), in turn, required, among other things, that LPTV, translator, and booster stations post at the transmitter site “the name and address of the person and place where the station records are maintained..., so as to be visible to a person standing on the ground,” but the Commission has since eliminated that rule. *Amendment of Parts 0, 1, 5, 73, and 74 of the Commission’s Rules Regarding Posting of Station Licenses and Related Information; Modernization of Media Regulation Initiative*, Report and Order, 33 FCC Rcd 11876 (2018) (eliminating section 74.765 of the Commission’s rules because the required information is now available through electronic means). At the same time, the Commission made conforming edits to other rules, including eliminating the sentence in section 74.781(c) that cross-referenced section 74.765. *Id.*, 33 FCC Rcd at 11886, App. A, para. 20; *see also id.* at 11876, 11881 notes 1 & 30 (explaining that the Commission is “also eliminat[ing] provisions in our rules which reference or cross-reference broadcast license posting rules,” including 74.765).

⁶³ 47 CFR § 74.781(a). Although the Commission did not explain which “other pertinent documents” a licensee must maintain, other rules in part 74 require licensees, including LPTV stations, to maintain documents that are not listed in section 74.781(a) of our rules. *See* 47 CFR §§ 74.750(g) (requiring licensees to maintain records related to new or replacement modulating equipment), 74.751(d) (requiring licensees to maintain records related to new or replacement transmitting equipment).

⁶⁴ 47 CFR § 74.780.

⁶⁵ *See* 47 CFR § 74.780, which requires LPTV stations to comply with 47 CFR § 73.1212 (Sponsorship identification; list retention; related requirements).

⁶⁶ *See* 47 CFR § 74.780, which requires LPTV stations to comply with certain requirements in 47 CFR § 73.3613 (Availability to FCC of station contracts). Section 73.3613(a)(1) requires LPTV stations to provide to the Commission upon request network affiliation contracts between an LPTV station and a national network. 47 CFR § 73.3613(a)(1). That provision defines the term “network” as “any person, entity, or corporation which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more states; and/or any person, entity, or corporation controlling, controlled by, or under common control with such person, entity or corporation.” *Id.*

⁶⁷ These figures were derived by Commission staff analysis of the OPIF database.

⁶⁸ NAB Comments at 3, *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, MM Docket No. 00-168, filed Aug. 26, 2013.

studios or other station offices, are clear. The evolution of the Internet and the spread of broadband infrastructure have transformed the way society accesses information today. Prior to OPIF, reviewing a local public inspection file typically involved the substantial expense and inconvenience of traveling to the station.⁶⁹ Maintaining station records instead in a centralized, online file permits review with a quick and essentially costless Internet search and increases transparency to the public. OPIF also is consistent with the online document retention procedures used by most businesses today to increase efficiency, reduce storage costs, and improve access.

2. Application of Public File to Certain LPTV Stations

15. As noted above, to “zealously guard[] the rights of the general public to be informed” and to make “practically accessible to the public information to which it is entitled,”⁷⁰ full power and Class A television stations must comply with the public file rule. Yet LPTV stations, including stations that are leaders in their local markets and provide services comparable to those of full power and Class A stations, are currently required to make only certain records, including political file materials, available to the public and to provide certain records to the Commission upon request.⁷¹ We believe that the benefits of OPIF described above also would support requiring certain LPTV stations to comply with the same OPIF obligations as full power and Class A stations, and we seek comment on this issue. Given the fact that LPTV is now an established service, the increased relevance of the LPTV Service generally, and the category of LPTV stations with top-four network affiliations specifically, we seek comment on whether to require certain LPTV stations to comply with the online public inspection file requirements of section 73.3526 of our rules.⁷² We invite comment on whether, for the reasons described below, we should modify our rules to extend the same OPIF requirements applicable to full power and Class A television stations to top-four network affiliated LPTV stations. We also invite comment on whether we should include LPTV stations affiliated with other national TV networks in the requirement to maintain an OPIF or, rather than tying any OPIF requirement for LPTV stations to network affiliation, if we should instead apply the OPIF requirement to LPTV stations that are among the top-four TV stations in each market based on the Nielsen ratings. Are there any other ways of differentiating among LPTV stations for purposes of imposing OPIF requirements?

16. It has been over 40 years since the implementation of the LPTV Service. Today, there are almost 1,900 LPTV stations currently operating and providing important programming to the communities they serve. Many LPTV stations now serve as a significant source of programming in their communities, especially those that are network affiliates.⁷³ Given these developments, has the LPTV Service become sufficiently well-established at this point in time to require that certain LPTV stations comply with the same or similar public file requirements that apply to full power and Class A TV stations? As LPTV stations have evolved to become, in some cases, a significant presence in their local markets, should such stations have a similar public inspection file obligation to ensure that this

⁶⁹ See *Second Report and Order*, 27 FCC Rcd at 4540, para. 10.

⁷⁰ *Commission’s Rules Relating to Inspection of Records*, 4 R.R.2d at paras. 2, 9, 12.

⁷¹ See *supra* paras. 12-13.

⁷² We do not seek comment in this proceeding on online public file requirements for TV translator stations. TV translators are permitted to originate only a very limited amount of programming. They may originate only emergency warnings of imminent danger and, in addition, not more than thirty-seconds per hour of public service announcements and material seeking and acknowledging financial support necessary to the continued operation of the station. See 47 CFR §74.790(f). Because they may originate only a very limited amount of programming, the underlying purpose of this proposal — i.e., to make information about the programming these stations air more available to the public — is less compelling with respect to translators. The relevant records that are pertinent to this proceeding are maintained by the primary station that originates the translator station programming. See 47 CFR §§73.3526 and 3527.

⁷³ See *supra* para. 6.

information is readily available to the public and the Commission? Is the Commission's prior justification for imposing minimal obligations on all LPTV stations⁷⁴ now less compelling for certain categories of stations? Is there any reason not to extend OPIF obligations to at least some LPTV stations? Would the burden of requiring any category of LPTV station to comply with the same OPIF obligations as full power and Class A stations outweigh the benefits to the public? What are the costs associated with differentiating among LPTV stations for these purposes?

17. Should stations with a top-four television network affiliation be subject to the OPIF requirements for the same reasons as full power and Class A stations – to zealously guard the rights of the general public to be informed and to make practically accessible to the public information to which it is entitled?⁷⁵ Would expansion of the online public file to this category of LPTV stations improve public access to the files of affiliated stations by clearly identifying the records LPTV stations are required to make available to the public in the centralized, online file?⁷⁶ In proposing to focus only on LPTV stations that are affiliated with a top-four television network, our goal is to limit the OPIF obligation to those LPTV stations that carry programming that is more likely to be widely viewed. Such stations have greater resources and thus can more easily address any implementation issues that may arise.⁷⁷ Top-four network affiliates are generally the top-rated stations in their local markets.⁷⁸ In addition, LPTV stations affiliated with a top-four network are more likely to be carried by multichannel video programming distributors (MVPDs) despite their status as low power stations, thereby extending their reach.⁷⁹ We seek

⁷⁴ See *supra* para. 12.

⁷⁵ See *supra* para. 9 (citing *Commission's Rules Relating to Inspection of Records*, 4 R.R.2d at para. 9, 12).

⁷⁶ As explained above, currently LPTV stations are required to “maintain adequate station records” and make them available upon request to the Commission. See 47 CFR § 74.781; *supra* para. 13. .

⁷⁷ See *Second Report and Order*, 27 FCC Rcd at 4535, para 46.

⁷⁸ See *2014 Quadrennial Regulatory Review*, Order on Reconsideration and Notice of Proposed Rulemaking, 32 FCC Rcd 9802, 9834, para. 74.

⁷⁹ The Commission has found that LPTV stations have retransmission consent rights. See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Broadcast Signal Carriage Issues*, Report and Order, 8 FCC Rcd 2965, 2998, para. 140 (1993). In addition, both the Act and section 76.55 of the rules require the carriage of “qualified” LPTV stations in certain limited circumstances. See 47 U.S.C. § 534(h)(2); 47 CFR § 76.55(d). An LPTV station that conforms to the rules established for LPTV stations in part 74 of the Commission's rules will be considered “qualified” if: (1) it broadcasts at least the minimum number of hours required under 47 CFR Part 73; (2) it adheres to Commission requirements regarding the broadcast of nonentertainment programming, political programming, programming for children, and equal employment opportunity, and the Commission determines that the programming by the LPTV station would address local news and informational needs which are not being adequately served by full power television broadcast stations because of geographic distance of such full power stations from the low power station's community of license; (3) it complies with interference regulations consistent with its secondary status; (4) it is located no more than 35 miles from the cable system's headend and delivers to the principal headend an over-the-air signal of good quality; (5) the community of license of the station and the franchise area of the cable system are both located outside the largest 160 Metropolitan Statistical Areas on June 30, 1990, and the population of such community of license on that date did not exceed 35,000; and (6) there is no full power television broadcast station licensed to any community within the county or other political subdivision (of a State) served by the cable system. See 47 U.S.C. § 534(h)(2). The Commission has previously estimated that about 20 LPTV stations qualify for mandatory carriage. See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context*, Report and Order, 32 FCC Rcd 2637, 2644, para. 12, note 47 (2017) (“Based on a review of the 2015 FCC Forms 325 filed by cable systems, only approximately 20 out of 1,975 LPTV stations and 15 of 417 Class A stations are carried on cable systems pursuant to mandatory carriage. The number of LPTV and Class A stations with mandatory cable carriage is approximate, as FCC Form 325 is filed annually only by systems with 20,000 or more subscribers. See 47 CFR § 76.403. In addition, the Commission requires Form 325 to be filed by a sampling of cable operators with less than

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comment on the current extent of such MVPD carriage of non-class A LPTV stations. We note that the Commission has previously imposed different requirements on top-four network affiliates in light of the greater resources at their disposal and in recognition of the important role these stations play in providing local news and public affairs programming to their communities.⁸⁰ We also believe that top-four network affiliated LPTV stations are more likely to have the kinds of materials required to be retained in OPIF, such as political file material, than LPTV stations that are not network affiliates. Thus, we believe that requiring these stations to comply with OPIF would make important information about the stations more easily accessible and provide the public the opportunity to ensure that these stations are properly discharging their duty to operate in the public interest. We seek comment on these issues.

18. We also seek comment on what burdens the obligation to maintain an online public file would impose on LPTV stations with a top-four television network affiliation. Since LPTV stations currently must maintain certain records and provide these records to the Commission upon request,⁸¹ would there be a significant additional burden for LPTV stations with a top-four affiliation to maintain these same records in an OPIF file? We believe our proposal to use the online public file rather than paper files may result in modest costs upfront but will ultimately allow these stations to realize savings by no longer having to keep a local file on a going-forward basis.⁸² We note, as described above, that the OPIF for full power and Class A stations has been a significant achievement that improves transparency and defied initial concerns. We also believe that LPTV stations affiliated with a top-four television network can more easily address any implementation issues that may arise than other LPTV stations. We invite comment on these views.

19. Should we extend OPIF requirements to LPTV stations that are affiliated with TV networks other than the top-four? If so, what other LPTV network affiliates should be included in the OPIF requirement? Is there any reason to exclude any LPTV network affiliate from OPIF obligations and, if so, what are those? As noted above, approximately 15% of LPTV stations are affiliated with any network.⁸³ How would inclusion of LPTV stations with other network affiliations alter the benefits and burdens of requiring certain LPTV stations to maintain an OPIF?

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20,000 subscribers, *id.*, and the 2015 325 data includes information from these systems.”). The Commission has since eliminated the annual FCC Form 325 filing requirement for cable television systems. *See FCC Form 325 Collection; Modernization of Media Regulation Initiative*, Report and Order, 33 FCC Rcd 9252 (2018).

⁸⁰ *See, e.g., Implementation of the DTV Delay Act, Consumer Education Initiative*, Third Report and Order and Order on Reconsideration, 24 FCC Rcd 3399, 3410, para. 22 (“The presence of ABC, CBS, FOX, and NBC network stations and affiliates in a market is critical to ensuring that over-the-air viewers have access to local news and public affairs, because these ‘major network affiliates’ are the primary source of local broadcast news and public affairs programming in most communities.”). In the *Second Report and Order*, the Commission phased in its requirement that television stations post their political files online, starting first with top-four network affiliates in the top 50 DMAs, determining “it is appropriate to require stations with a greater market reach to undertake this time-sensitive transition first, as they will be more likely to have dedicated resources to address any implementation issues that arise, if necessary.” 27 FCC Rcd at 4558, para. 45. The Commission has also used an affiliation-based standard in other contexts. *See Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 26 FCC Rcd 11847, para. 11 (2011); *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, Fifth Report and Order, 12 FCC Rcd 12809, para. 76 (1997).

⁸¹ *See* 47 CFR § 74.781.

⁸² *See Second Report and Order*, 27 FCC Rcd at 4549, para. 29.

⁸³ *See supra* note 26.

20. Should we instead extend OPIF requirements to LPTV stations that are among the top-four television stations in each television market (Designated Market Area⁸⁴) based on ratings regardless of the station's network affiliation?⁸⁵ If we were to adopt this approach, we propose to calculate whether a station is rated among the Top 4 by cross-reference to the Commission's media ownership rules defining the Top 4 criteria in section 73.3555(b)(1) of our rules.⁸⁶ We invite comment on this proposal and on any alternative methods of calculating whether a station is among the Top 4 rated stations in the market.

21. Should we adopt some other measure for identifying those LPTV stations to which we should extend OPIF requirements? If we were to use an approach based on ratings rather than network affiliation, should we account for instances in which the LPTV station makes use of multicast streams, satellite stations,⁸⁷ or translators? Should the ratings of these stations or streams be combined with the ratings of the primary station or stream to determine the station's ratings in the DMA?⁸⁸ The Commission has previously expressed concern about using rankings or ratings, noting that those thresholds are subject to change and "would be difficult to measure and administer, and would provide uncertainty to broadcasters, as they are not as able to predict or control ratings."⁸⁹ Do those same concerns apply if we were to use rankings for purposes of determining which LPTV stations are subject to OPIF?

22. If we focused on ratings, how would we account for stations that over time moved in or out of the top-four rating category? For instance, should we require any station that was rated within the top-four in the market within a specific period of time, such as a two year period, to maintain an online public file? If a station is in the top-four for one month during a two-year period, should the station be required to maintain an OPIF for the entire two-year period? Should a different period of time apply and why? Should we recalculate the ratings/rankings at an established time each year for purposes of determining which LPTV stations are covered? Once a station achieves top-four status, should it be

⁸⁴ The Nielsen Company assigns each broadcast television station to a designated market area (DMA). The DMA boundaries and DMA data are owned solely and exclusively by Nielsen. Nielsen, *Nielsen DMA Maps*, <http://www.nielsen.com/intl-campaigns/us/dma-maps.html>. Each DMA is a group of counties that form an exclusive geographic area in which the home market television stations hold a dominance of total hours viewed. There are 210 DMAs, covering the entire continental United States, Hawaii, and parts of Alaska. See *2018 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 33 FCC Rcd 12111, note 137 (2018) (*2018 Quadrennial Review NPRM*).

⁸⁵ See, e.g., 47 CFR § 73.3555(b)(1) (referring to stations rated among the top-four in a market). This provision sets forth the Local Television Multiple Ownership Rule which provides that an entity may own up to two television stations in the same Nielsen Designated Market Area (DMA) if: (1) the digital noise limited service contours (NLSCs) of the stations (as determined by section 73.619 of the Commission's rules) do not overlap; or (2) at the time the application to acquire or construct the station(s) is filed, at least one of the stations is not ranked among the top-four stations in the DMA, based on the Sunday to Saturday, 7AM to 1AM daypart audience share from ratings averaged over a 12-month period immediately preceding the date of application, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service.

⁸⁶ *Id.*

⁸⁷ Television satellite stations are full power terrestrial broadcast stations authorized under part 73 of the Commission's rules that generally retransmit some or all of the programming of another television station, known as the parent station, which typically is commonly owned or operated with the satellite station. See *2018 Quadrennial Review NPRM* 33 FCC Rcd at 12137-38, para 68.

⁸⁸ See *In the Matter of 2018 Quadrennial Regulatory Review- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order, MB Docket No. 18-349, FCC No. 23-117 (rel. Dec. 26, 2023) at para. 67, appeal pending, No. 24-1380 et al (8th Cir.).

⁸⁹ See *Second Report and Order*, 27 FCC Rcd at 4558, para. 47.

required to maintain an OPIF in perpetuity? That is, should we have a no backsliding requirement, such that once a station is covered under our OPIF requirements, it would remain covered? Would the fact that an LPTV station already incurred the modest cost of establishing an OPIF file, and the likely savings that would result from no longer having to maintain a local file, justify such a requirement? How would focusing on the top-four television stations in each television market alter the benefits and burdens of requiring a certain specified category of LPTV stations to maintain an OPIF?

23. If we require certain LPTV stations to comply with the OPIF obligations in section 73.3526 of our rules, we intend to implement efficiencies used in prior transition phases to OPIF in order to reduce the burden on these stations.⁹⁰ Specifically, we propose to require that LPTV stations upload only those OPIF documents not otherwise filed with the Commission or available on the Commission's website. Any document or information required to be kept in the public file and that is required to be filed with the Commission electronically would be imported to the online public file and updated by the Commission.⁹¹ Given these measures to minimize the burdens, would the benefits of imposing an OPIF requirement on top-four network affiliated LPTV stations or any other category of LPTV stations, including improving public access to information about LPTV station operations, outweigh any costs?

24. In addition, if we were to require certain LPTV stations to post political file information in OPIF, we propose to do so consistent with prior transitions.⁹² Specifically, we propose that LPTV licensees required to comply with OPIF must upload documents to the online political file only on a going-forward basis, and will not be required to upload their existing political files.⁹³ Under this proposal, LPTV licensees could continue to maintain at the station those documents already in place in their political file at the time any new rules in this proceeding become effective, and in that way decrease the burden on LPTV licensees.⁹⁴ We seek comment on this proposal. Should we permit LPTV stations that are not required to maintain an OPIF to voluntarily maintain an OPIF? Should we permit LPTV stations that will be obligated to maintain an OPIF to elect voluntarily to upload to OPIF existing political file material (i.e., material that they would otherwise not be required to upload under the proposed rules)?⁹⁵

⁹⁰ As noted above, *see supra* note 35, when the Commission transitioned entities to OPIF, it minimized the burden on stations and other media entities by requiring that broadcasters and other media entities upload only those items required to be in the public file but not otherwise filed with the Commission or available on the Commission's website. Any document or information required to be kept in the public file and that is required to be filed with the Commission electronically is imported to the online public file and updated by the Commission. In addition, entities were not required to upload their existing political files to the online file; rather, they were required only to upload new political file content on a going-forward basis. Existing political files were required to be maintained at the station, however, until the end of the two-year retention period.

⁹¹ *See* 47 CFR § 73.3526(b)(3). In the event that the online public file does not reflect such required information, the licensee will be responsible for posting such material. *Id.*

⁹² *See Second Report and Order*, 27 FCC Rcd at 4557-58, para. 44; *Expanded Online File Order*, 31 FCC Rcd at 537-538, para. 26.

⁹³ We note that section 315(e) states that a request to purchase broadcast time that is made by or on behalf of a legally qualified candidate for public office or communicates a message relating to a political matter of national importance shall be "placed in a political file as soon as possible and shall be retained by the licensee for a period of not less than 2 years." 47 U.S.C. § 315(e)(3). We propose that the requirement to place political advertising requests in the OPIF would apply only to political file records that are created after the effective date of any rules adopted in this proceeding.

⁹⁴ Under this proposal, existing political file material must be retained in the local political file at the station for the remainder of the two-year retention period.

⁹⁵ *See Expanded Online File Order*, 31 FCC Rcd at 538-39, para. 28.

25. If we require certain LPTV stations to comply with the online public inspection file requirements of section 73.3526 of our rules, those LPTV stations would be required to maintain in their OPIF, and thus make available for public inspection, the material identified in that rule, including a copy of the station's current authorization, any application tendered for filing with the Commission together with related material, citizen agreements, contour maps, ownership reports and related materials, the political file,⁹⁶ the Equal Employment Opportunity file,⁹⁷ must-carry or retransmission consent elections and foreign sponsorship disclosures.⁹⁸ Pursuant to section 73.3526(b), LPTV station licensees and applicants subject to the rule would be required to place the contents of their public inspection file "in the online public file hosted by the Commission."⁹⁹ Under our current rules, as discussed above, LPTV stations currently must maintain certain materials, including the current instrument of authorization, official correspondence with the FCC, contracts, permission for rebroadcasts, and "other pertinent documents," and make them available to the Commission upon request.¹⁰⁰ If certain LPTV stations are covered by OPIF, we also propose that those stations include in their online file the list required to be "available for public inspection" pursuant to 73.1212(e).¹⁰¹ Stations not required to maintain an OPIF would maintain the list as specified in section 74.781(c).¹⁰² Is there any reason LPTV stations should be exempt from making the documents identified in 73.3526 available for public inspection in OPIF?¹⁰³

3. Public File Statutory Authority

26. We note that we have broad authority under Title III of the Act to regulate radio communications, including classification of stations, prescription of the nature of services to be rendered, and the authority to establish the licensing procedures for broadcast stations when the public interest is

⁹⁶ LPTV stations subject to an OPIF requirement would also be required to maintain back-up files for the political file and make those files available to the public in the event the Commission's online public file database is unavailable. *Id.* at 539, paras. 29-31.

⁹⁷ We propose to require those LPTV stations that are required to maintain an OPIF and are also required to prepare an EEO public file report to upload this report to OPIF. Currently, only LPTV stations that are part of a station employment unit with full power stations, where the unit employs at least five or more full-time employees, are included in a EEO public file report uploaded to the public files belonging to the full power stations. *See Promoting Diversification of Ownership in the Broadcasting Services*, 76 FR 7719, 7720 (2011); *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, Second Report and Order and Third Notice of Proposed Rulemaking, 17 FCC Rcd 24018, 24066, para.152 (2002).

⁹⁸ *See supra* para. 11. As discussed below, we also propose to require LPTV stations to retain in the public file copies of any time brokerage or joint sales agreement relating to the station. *See infra* para. 36.

⁹⁹ 47 CFR § 73.3526(b)(2)(i). As noted above, *see supra* note 35, broadcasters must upload only those items required to be in the public file but not otherwise filed with the Commission or available on the Commission's website. Any document or information required to be kept in the public file and that is available to the Commission or required to be filed with the Commission electronically, including station authorizations and applications filed with the Commission, is imported to the online public file and updated by the Commission. In the event that the online public file does not reflect such required information, the licensee is responsible for posting such material. *See* 47 CFR § 73.3526(b)(3).

¹⁰⁰ *See supra* para. 13.

¹⁰¹ *Id.* LPTV stations subject to OPIF would also be required to provide public notice via their OPIF as required by 47 CFR § 73.3580 (requiring broadcasters with an OPIF to reference that database in required online notices and on-air announcements).

¹⁰² 47 CFR § 74.781(c).

¹⁰³ As noted above, some required public inspection file content identified in section 73.3526(e) does not apply to LPTV stations, including TV issues/programs lists, records concerning commercial limits in children's programming, and children's television programming reports, and we do not propose to revisit these LPTV public file exceptions or the LPTV exclusion from the underlying requirements in this proceeding. *See supra* note 49.

found to be served.¹⁰⁴ Section 303(b) provides that we have authority to “prescribe the nature of the service” offered by licensed stations.¹⁰⁵ And section 303(r) of the Act provides that we have authority to “[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of th[e] Act.”¹⁰⁶ We tentatively conclude that the OPIF obligations for LPTV stations on which we seek comment herein fall within this broad grant of authority because they would promote public understanding of various issues concerning the operation of the station and better inform the public about how the station is serving the community. Improving public access to information about certain LPTV stations also is consistent with the goal of sections 309 and 311 of the Act to permit public participation in broadcast licensing.¹⁰⁷ In addition, section 315(e) of the Act requires licensees to make their political files available for public inspection.¹⁰⁸ We believe that requiring LPTV licensees to make certain records available for public inspection in OPIF would further the Act’s goal of ensuring that the public can access important information about the station and, with respect to political files, assist candidates and others seeking information about political advertisements being carried on the station. We invite comment on these views.

B. Procedures for LPTV Stations to Establish an OPIF

27. If we were to require that certain LPTV stations comply with the OPIF requirements in section 73.3526, such as those affiliated with a top-four TV network or those rated in the top four in a DMA or otherwise, we propose that the Media Bureau issue a Public Notice with an initial/draft list of those LPTV stations that fall within the affected group, based on generally accepted industry data. Licensees and other interested parties would be given a period of time to file comments on the initial/draft list in order to ensure it correctly identifies those LPTV stations subject to the OPIF requirement. The Media Bureau would subsequently issue a Public Notice including a final list of LPTV stations subject to the OPIF requirement in accordance with our rules and set a deadline by which each such LPTV station must begin to maintain the OPIF on the Commission’s OPIF platform. Upon release of the Public Notice, the Commission would also send a copy of the public notice to the authorized representative of each station as reflected in the Commission’s Licensing and Management System (LMS). We invite comment on this approach. We also seek comment on whether these proposals appropriately accommodate small entities.¹⁰⁹

28. If, after the Media Bureau issues a final list of LPTV stations that are subject to the OPIF requirement, an LPTV station’s network affiliation or ratings ranking changes such that it would either become or no longer be covered by the OPIF rule, we propose that the LPTV station must notify the Commission within 10 days of the change in their affiliation or ranking. If we tie the OPIF requirement to LPTV stations ranked in the top-four in the market, such a change would be calculated based on rankings averaged over a 12-month period.¹¹⁰ Specifically, we propose that LPTV stations be required to send written notice to the Commission at an email address to be provided by the Media Bureau in the Public Notice that includes the final list of LPTV stations. The email would request either that an OPIF be created for the station or that the station be deleted from the list of LPTV stations with an OPIF requirement. The LPTV station would also be required to include the date the station’s affiliation or ranking changed, and details of the station’s change in circumstance (i.e., its new affiliation or ranking

¹⁰⁴ See *National Association for Better Broadcasting v. FCC*, 849 F.2d 665, 666 (D.C. Cir. 1988).

¹⁰⁵ 47 U.S.C. § 303(b).

¹⁰⁶ 47 U.S.C. § 303(r).

¹⁰⁷ 47 U.S.C. §§ 309, 311. See *supra* para. 9.

¹⁰⁸ 47 U.S.C. § 315(e).

¹⁰⁹ See also *infra* App. B – Initial Regulatory Flexibility Analysis.

¹¹⁰ See *supra* para. 20.

information). For LPTV stations with a new OPIF requirement, this filing would initiate the process of the Commission creating an OPIF for that LPTV station. The Media Bureau would by letter inform the station of the deadline by which the LPTV station must upload documents to its OPIF. We propose that stations with a new OPIF requirement be required to begin uploading all required OPIF documents within 60 days of the date of the letter.¹¹¹ For LPTV stations that notify the Commission that they are no longer subject to the OPIF rule, the Media Bureau would provide written confirmation to the licensee by letter verifying they are no longer subject to the rule. The station would be required to upload a copy of the letter to its OPIF to ensure members of the public are aware it is no longer subject to the OPIF rule.¹¹² The OPIF would remain publicly accessible for historical and investigatory purposes.¹¹³ We seek comment on these proposed procedures. How should the procedures change if we were to require stations to maintain an OPIF in perpetuity once they are required to do so?¹¹⁴ For example, in such a situation, would the LPTV station still have to notify the Commission about its change in rank/affiliation? Would there be other requirements that would no longer be needed (e.g., no need to upload a letter discussing the station's change in rank/affiliation)?

29. If we were to base an OPIF requirement on a station's market ranking should we adopt a waiting period before we impose an OPIF requirement on a station that becomes a top-four ranked station or drops out of the top-four to ensure that the change in market ranking is not short-lived? If so, how long should the waiting period be? As noted above, if we use an approach based on station ratings, that calculation is averaged over a 12-month period. If we adopt a waiting period, what should the waiting period be if we used an approach based on ratings? Should other procedures apply if we adopt a requirement based on a top-four market rating? If so why? We seek comment on these issues.

C. Recordkeeping and Political Broadcasting Obligations Applicable to All LPTV Stations

30. As discussed above, LPTV stations are currently required by section 74.781(a) of the rules to "maintain adequate station records, including the current instrument of authorization, official correspondence with the FCC, contracts, permission for rebroadcasts, and other pertinent documents."¹¹⁵ Section 74.781(b) also requires LPTV stations to retain certain information about tower lighting.¹¹⁶ Section 74.781(c) specifies a location where records must be "maintained," but that sentence appears to refer only to translators, not LPTV stations. If we were to require a subset of LPTV stations to comply with section 73.3526, we propose to revise section 74.781(c) to reference the requirement that certain LPTV stations maintain an OPIF and to specify where LPTV stations must retain

¹¹¹ Under our proposal, stations would be required to upload any documents from the time the station became covered by the OPIF rule. In other words, if a document is due in the period after the station becomes covered by the rule but before the 60 day period it takes for the OPIF to become active, the station must upload copies of any document required to be placed in OPIF during that time period, once the OPIF becomes active. We seek comment on this proposal.

¹¹² A station may notify the Media Bureau that is no longer eligible in the middle of a reporting period. If so, we propose that stations would still be required to file information or documents covering the period of time that the station was covered by the LPTV OPIF rule.

¹¹³ A station's OPIF will remain active in the Commission's database in the event that the station later becomes subject to the OPIF rule and to enable Commission staff and the public to review the file, for instance as may be necessary as part of an investigation or at license renewal time. A licensee, whether it is still subject to the OPIF requirement or is not, would be permitted to delete documents from its OPIF consistent with the document retention policies set forth in section 73.3526 of the rules.

¹¹⁴ See *supra* para. 22.

¹¹⁵ 47 CFR § 74.781(a).

¹¹⁶ 47 CFR § 74.781(b).

records not included in OPIF.¹¹⁷ Our proposed revisions to section 74.781 would specify where records for LPTV stations, including the political file, can be accessed by the Commission the public.

31. In addition, we believe it is appropriate to require that all LPTV stations maintain records for public inspection, including those that do not have an OPIF requirement as a result of this proceeding. We interpret the requirement in section 74.781(c) that station records be “maintained for inspection” as mandating that such records be maintained for public inspection, as that paragraph separately mandates that station records also be made available to the Commission. While the inspection requirement in section 74.781(c) could be read to apply only to translators, we note that requirement was adopted in 1975,¹¹⁸ prior to the establishment of the LPTV Service. As both sections 74.781(a) and (b) clearly apply to both translators and LPTV stations, we believe section 74.781(c) is best read as not intended to limit the application of the inspection requirement solely to translators. Nothing in the Commission’s order adding LPTV stations to section 74.781 suggests that the Commission intended to carve out LPTV stations from the inspection requirement.¹¹⁹ Moreover, we tentatively conclude that it would serve the public interest to require LPTV stations maintain records for public inspection. Accordingly we propose to revise the inspection requirement in section 74.781(c) to clarify that the rule applies to both translators and LPTV stations. We seek comment on these proposed changes to section 74.781(c). Is there any reason to exempt LPTV stations not subject to an OPIF requirement from a public inspection requirement? Is there any reason translators should be subject to a public inspection requirement and not LPTV stations?

32. We also propose to update the list of political programming rules applicable to LPTV stations to align that list with existing and longstanding statutory requirements pursuant to sections 312 and 315 of the Act.¹²⁰ Should we specify that LPTV stations are subject to sections 73.1941 through 73.1944 of the Commission’s rules, in addition to 73.1940?¹²¹ These rules codify the statutory requirements of sections 312(a)(7) and 315 of the Act, which apply to LPTV stations.¹²² The Commission originally adopted the rules in their current format in 1991,¹²³ and said that the rules were intended to “accurately and closely reflect the language, intent, and requirements of the broadcasting portions” of the Act and to provide “detailed and practical advice” to broadcasters, candidates, and the public regarding broadcasters’ requirements and the rights afforded to candidates by the Act.¹²⁴ The rules were also adopted “to promote achievement of the Act’s objectives while being responsive to the

¹¹⁷ As discussed above, we propose that LPTV licensees required to comply with OPIF to upload documents to the online political file only on a going-forward basis. *See supra* para. 24. Under this proposal, LPTV licensees could continue to maintain locally those documents already in place in their political file at the time any new rules in this proceeding become effective. In addition, LPTV stations not required to maintain an OPIF must retain any political files and other documents required to be retained by the station pursuant 47 CFR § 74.781(a) and (b). These documents must be retained as provided in 47 CFR § 74.781(c).

¹¹⁸ *Station Records Supplemental Order*, 54 FCC 2d 98. *See also supra* note 61.

¹¹⁹ *See, e.g., In the Matter of Operating and Maintenance Logs for Broadcast and Broadcast Auxiliary Stations*, BC Docket No. 82-537, 48 FR 38473, 48 FR 44805 (Erratum) (1983).

¹²⁰ 47 U.S.C. §§ 312, 315. As discussed above, the Commission has concluded that these provisions apply to LPTV stations. *See supra* para. 12. The list of “Broadcast regulations applicable to translators, and low power stations” in section 74.780 of our rules does not list sections 73.1941 through 73.1944, so we propose to add those to the list for the reasons stated above. We seek comment on this proposal.

¹²¹ *See* 47 CFR §§ 73.1940 (Legally qualified candidates for public office), 73.1941 (Equal opportunities), 73.1942 (Candidate rates), 73.1943 (Political file), and 73.1944 (Reasonable access).

¹²² 47 U.S.C. §§ 312(a)(7), 315. *See supra* para. 12.

¹²³ *See supra* note 57.

¹²⁴ *Political Programming Order*, 7 FCC Rcd at 679, para. 3.

evolving sales practices of broadcast stations.”¹²⁵ We tentatively conclude that revising our rules to specify that the current versions of sections 73.1940 through 73.1944 are applicable to LPTV stations would more accurately reflect the statutory obligations of LPTV stations¹²⁶ and conform our requirements regarding LPTV stations to the requirements contained in sections 312(a)(7) and 315 of the Act. We seek comment on this tentative conclusion.

D. Other Proposed Changes to Sections 73.3526

33. Finally, we propose to make other changes to section 73.3526 of our rules¹²⁷ to correct cross references and other inaccuracies, clarify existing requirements, establish a filing frequency for Class A stations to certify they have met their ongoing eligibility requirements, and require Class A and LPTV stations to disclose time brokerage agreements (TBAs) and joint service agreements (JSAs).

34. First, we propose to add to section 73.3526(e)(11)(iii),¹²⁸ which addresses the requirement to file an annual Children’s Television Programming Report, a reference to Class A television stations. Class A stations have been required to prepare and file such reports since the Class A service was first established, but a reference to Class A was inadvertently omitted from this provision of the rules.¹²⁹ Further, section 73.3526(a)(2) specifically requires Class A stations to comply with section 73.3526(e)(11).¹³⁰ Second, we propose to correct section 73.3526(a)(2) to indicate that all commercial radio and television stations must comply with section 73.3526(e)(19),¹³¹ which requires stations to retain in OPIF documentation sufficient to demonstrate that the station is in compliance with the requirements set forth in section 73.1212(j)(7) of the Commission’s rules.¹³² Third, we propose to correct section 73.3526(a)(2) to indicate that commercial radio and television stations must comply with sections 73.3526(e)(14) and (16).¹³³ These provisions expressly apply to commercial radio and TV stations,¹³⁴ but section 73.3526(a)(2) does not include a cross reference to both those provisions with respect to these stations. We seek comment on these rule clarifications.

35. Third, we propose to correct section 73.3526(a)(2) to indicate that Class A stations (including those established pursuant to the LPPA) must comply with section 73.3526(e)(17),¹³⁵ which

¹²⁵ *Id.* The rules were also intended to require licensees to provide more timely, accurate, and complete information on rates and sales practices to candidates.

¹²⁶ When it created the LPTV service, the Commission required LPTV stations to comply with former section 73.1940 of the rules, which contained all the political programming and political file rules applicable to broadcast stations prior to the division of section 73.1940 into five rule sections in 1991. *See LPTV Order* at App. A (rules appendix), 47 FR 21468 at 21494. *See also supra* note 57.

¹²⁷ 47 CFR § 73.3526.

¹²⁸ 47 CFR § 73.3526(e)(11)(iii).

¹²⁹ *See Class A Order*, 15 FCC Rcd 6355 at App. A (Final Rules).

¹³⁰ 47 CFR § 73.3526(a)(2). Both sections 73.3526(e)(11)(i) and (ii) correctly make reference to both commercial TV and Class A TV stations. 47 CFR § 73.3526(e)(11)(i), (ii). We also note that Class A stations are required to comply with section 73.671 of our rules, 47 CFR § 73.671 (Educational and informational programming for children), which refers to the requirement to file a Children’s Television Programming Report in section 73.3526(e)(11)(iii). *See* 47 CFR §§ 73.6026 (Broadcast regulations applicable to Class A television stations); 73.671(c)(6).

¹³¹ 47 CFR § 73.3526(e)(19)(Foreign sponsorship disclosures).

¹³² 47 CFR § 73.1212(j)(7).

¹³³ 47 CFR §§ 73.3526(e)(14) (Radio and television time brokerage agreements) and 73.3526(e)(16) (Radio and television joint sales agreements).

¹³⁴ *See infra* para 36 and note 140.

¹³⁵ 47 CFR § 73.3526(e)(17).

requires that Class A stations include in OPIF documentation sufficient to demonstrate that the station is continuing to meet the ongoing Class A eligibility and service requirements set forth in section 73.6001.¹³⁶ In addition, we propose to establish how often Class A stations must provide such documentation and what type of documentation is required. As part of a Class A station's continuing eligibility obligation, it must broadcast a minimum of 18 hours per day and air an average of at least three hours per week of locally produced programming each quarter.¹³⁷ Based on these ongoing eligibility requirements, we tentatively conclude that a quarterly filing is appropriate. All documentation would be required to be filed in a station's OPIF by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October—December; April 10 for the quarter January—March, etc.) and must be retained in the OPIF until final action has been taken on the station's next license renewal application. As to the type of documentation Class A stations may provide, the Media Bureau has generally accepted a certification of compliance as sufficient documentation. We propose to codify this requirement. However, given Congress' clear focus on locally produced programming,¹³⁸ we seek comment on whether to require that Class A stations also include a list of locally produced programming sufficient to demonstrate that the station aired an average of three hours per week of locally produced programming each quarter. How burdensome would providing such a list be and what would that burden consist of? If we were to adopt such a requirement, what information should be included (e.g., time, date, duration, and title of each program aired)? We also propose that, like issue/programs lists, Class A stations be able to choose the format of the information. We seek comment on these clarifications and proposals.

36. Finally, we propose to amend section 73.3526(a)(2) to indicate that Class A and LPTV stations must retain in their OPIF any TBA¹³⁹ or JSA¹⁴⁰ relating to the station. Full power commercial TV stations and commercial radio stations are currently subject to this requirement,¹⁴¹ but our rules do not clearly apply this requirement to Class A stations. We propose to amend our rules to apply this requirement to both Class A and LPTV stations. The obligation to retain TBAs in particular was adopted to “make it easier for the Commission and others to properly monitor time brokerage to ensure that licensees retain control of their stations and adhere to the Communications Act, Commission Rules and policies and the antitrust laws.”¹⁴² The Commission has noted that this requirement would impose “only a minimal burden on licensees.”¹⁴³ For similar reasons, the Commission also requires radio and television

¹³⁶ 47 CFR §73.6001.

¹³⁷ *Id.*

¹³⁸ See 47 U.S.C. § 336(f)(2)(A)(i) requiring that to be eligible for Class A status a station must “broadcast an average of at least 3 hours per week of programming produced within the market area served by the station, or the market area served by a group of commonly controlled low-power stations that carry common local programming produced within the market area served by such group.”

¹³⁹ “Time brokerage” (also known as “local marketing”) is the sale by a licensee of discrete blocks of time to a “broker” that supplies the programming to fill that time and sells the commercial spot announcements in it. 47 CFR § 73.3555, Note 2(j).

¹⁴⁰ “Joint Sales Agreement” is an agreement with a licensee of a “brokered station” that authorizes a “broker” to sell advertising time for the “brokered station.” 47 CFR § 73.3555, Note 2(k).

¹⁴¹ See 47 CFR § 73.3526(e)(14) and (e)(16). See also *Revision of Radio Rules and Policies*, Report and Order, 7 FCC Rcd 2755, 2789, para. 67 (1992) (*Revision of Radio Rules and Policies Report and Order*), Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd 6387, 6401-02, para.65, note 100 and 6402, para. 67; *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, *Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry*, *Reexamination of the Commission's Cross-Interest Policy*, Report and Order, 14 FCC Rcd 12559, 12601-02, para. 94, 12613, para. 123 (1999) (*1999 Attribution Order*).

¹⁴² *Revision of Radio Rules and Policies Report and Order*, 7 FCC Rcd at 2789, para. 67; *1999 Attribution Order*, 14 FCC Rcd at 12601, para. 92. Licensees may redact confidential or proprietary information. *Id.* at 12601, para. 94.

¹⁴³ *Id.*

licensees to place copies of any JSAs in the public inspection file.¹⁴⁴ The obligation to disclose these agreements in a station's public inspection file applies even if the agreement would not result in the arrangement being counted in determining the brokering licensee's compliance with local and national multiple ownership rules.¹⁴⁵ We tentatively conclude that Class A and LPTV stations, like commercial television and radio stations, should also disclose such agreements for the same reasons disclosure is required for the commercial television and radio stations, and seek comment on this view. Is there any reason to exempt Class A and LPTV stations from this requirement?¹⁴⁶ We seek comment on these proposals.

E. Revision to Rules Concerning Relocation of Facilities

1. Calculating Distance for Displaced and Channel Sharing Stations

37. We next propose to modify our rules to resolve an inconsistency in calculating the distance a displaced or channel sharing station may relocate its facilities. The LPTV/TV translator rules contain limits on how far a station may relocate its transmission facilities.¹⁴⁷ These limits were established to ensure that LPTV/TV translator modification applications for "minor change" remained just that. This was intended to ensure that stations continue to provide coverage to viewers that rely on their service, so that their viewers were not left behind when a station is displaced or chooses to relocate.¹⁴⁸ Currently, a displaced LPTV/TV translator station may propose a change in transmitter site of not more than "30 miles from the reference coordinates of the existing station's community of license."¹⁴⁹ Further, the Commission's channel sharing rules apply this rule to Class A and LPTV/TV translator

¹⁴⁴ See *1999 Attribution Order*, 14 FCC Rcd at 12613, para. 123.

¹⁴⁵ *Revision of Radio Rules and Policies Report and Order*, 7 FCC Rcd at 2789, para. 67; *1999 Attribution Order*, 14 FCC Rcd at 12601, para. 92, 12613, para. 123. Class A and LPTV stations are not subject to the Commission's multiple ownership rules.

¹⁴⁶ We note that full power commercial TV stations must also retain in OPIF any shared service agreements (SSAs) relating to the station. *2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1993*, Second Report and Order, 31 FCC Rcd 9864, 10008-10022, paras. 337-375 (2016) (*2014 Quadrennial Regulatory Review Second Report and Order*). See also 47 CFR § 73.3526(e)(18) (defining shared services agreements, by which a station provides or collaborates to provide station-related services to stations with which it is not under common de jure control). In the *2014 Quadrennial Regulatory Review Second Report and Order*, the Commission declined to expand the SSA disclosure requirement beyond commercial television stations on the ground that commenters in that proceeding did not provide sufficient justification for such an expansion. *Id.* We also decline, at this time, to propose to extend the SSA disclosure requirement to Class A and LPTV stations. Consistent with the *2014 Quadrennial Review Second Report and Order* (*Id.* at 10020, para. 368), we may revisit this decision in the future if evidence suggests that disclosure of SSAs by Class A and LPTV stations may be appropriate.

¹⁴⁷ See 47 CFR §§ 74.787(a)(4), 74.787(b)(1)(iii) (limiting station moves to 30 miles).

¹⁴⁸ See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, Second Report and Order, 26 FCC Rcd 10732, 10767, para. 58 (2011) (*LPTV DTV Second R&O*). Displacement only applies to LPTV/TV translator stations, which are secondary. Displacement occurs when a TV broadcast station's operation or construction permit causes or receives interference with respect to the LPTV/TV translator station, requiring that LPTV/TV translator station to modify its facilities to resolve that interference. Because of their primary protected status, Class A stations cannot be displaced. Any reference to displacement solely applies to LPTV/TV translator stations.

¹⁴⁹ See 47 CFR § 74.787(a)(4) (displacement applications) (emphasis added); 47 CFR §76.53 (reference points list). In addition to the distance limitation, the service contours of the station's existing and proposed facility must overlap. See 47 CFR § 74.787(a)(4). We note that we propose in this proceeding to revise the distance limitation rule to state that facilities may not be relocated greater than 48.3 kilometers and to make clear that the distance calculation may not be "rounded down." See *infra* Section III.E.2 – The 30-Mile Distance Limit.

station relocations resulting from a proposed channel sharing arrangement.¹⁵⁰ In contrast, a Class A or LPTV/TV translator station that is seeking to relocate its facility through a minor modification is limited to moving not greater than “30 miles (48 kilometers) from the reference coordinates of the existing station’s antenna location.”¹⁵¹

38. Thus, there is an inconsistency between the manner in which these rules calculate the distance of a proposed relocation. Furthermore, because Class A and LPTV/TV translator stations are not included in the Table of TV Allotments and not assigned a COL when licensed, using a station’s COL as a reference point can be subject to abuse. As outlined later in this *NPRM*, although licensees may input a COL for their station in LMS, our rules do not currently have a procedure governing how Class A and LPTV/TV translator station may select a COL.¹⁵² As a result, a licensee can change the COL for their station in LMS at any time, and theoretically could specify a COL that has no association with the actual location of the station’s facilities. This could undermine the purpose of the existing rule, to limit displacement and channel sharing relocations to 30 miles, if a station was to first modify its COL to designate a location that is within 30 miles of the location where a station wants to relocate the facility or channel share, and then files a channel sharing or displacement application thereafter.

39. To resolve the inconsistency, close a possible loophole in our rules, and harmonize our rules with respect to all Class A and LPTV/TV translator facility relocations, we propose to amend our displacement and channel sharing rules to eliminate the reference to a station’s COL and incorporate the language of the minor change rule that measures distance from the reference coordinates of the “existing station’s antenna location.”¹⁵³ Even though later in this item we propose a process for Class A and LPTV/TV translator stations to designate a COL,¹⁵⁴ we believe that use of the COL as a reference point for displacement could continue to undermine the purpose of our displacement rule. Given the contour size and the hyper local nature of the LPTV Service, precision is necessary in order to stand by the original intent of the rule, which is to ensure minimized disruption to the existing audience when station facilities are relocated. Therefore, changing our rules to measure a station’s proposed relocation based on the reference coordinates of its antenna location provides a better reference point for the station’s service area. Conversely, measuring relocations based on the reference coordinates of a station’s entire COL could continue to allow stations to potentially thwart the intent of the 30-mile relocation distance limit.¹⁵⁵ We seek comment on this proposal.

¹⁵⁰ See *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, Third Report and Order and Fourth Notice of Proposed Rulemaking, 25 FCC Rcd 14927, 14943 (2015) (*LPTV DTV Third R&O*); 47 CFR §§ 73.6028 (Class A television channel sharing outside the incentive auction); 47 CFR § 74.799 (Low power television and TV translator channel sharing).

¹⁵¹ See 47 CFR § 74.787(b)(1)(iii) (emphasis added). Such moves are deemed “minor changes” and are permitted at any time. Transmitter site moves of greater than 30 miles (48 kilometers) are considered “major changes.” See 47 CFR § 74.787(b)(1)(iii). Currently, major changes for LPTV/TV translator stations are frozen. See *Freeze on the Filing of Applications for New Digital Low Power Television and TV Translator Stations*, Public Notice, 25 FCC Rcd 15120 (MB 2010); *Initiation of Nationwide First-Come, First-Served Digital Licensing for Low Power Television and TV Translators Postponed Until Further Notice*, Public Notice, 25 FCC Rcd 8179 (MB 2010) (collectively “Freeze PNs”).

¹⁵² See *infra* Section III.E.3 – Establishing Community of License Designations and Coverage Requirements.

¹⁵³ 47 CFR § 74.787(b)(1)(iii) (emphasis added). We also propose to conform the Class A minor modification language found in 47 CFR § 73.3572(a)(2) by replacing the text currently found in (a)(2) with a cross-reference to the proposed 47 CFR § 74.787(b). We seek comment on this proposal.

¹⁵⁴ *Id.*

¹⁵⁵ For example, under our proposed COL rule, a station theoretically could still modify its COL to first designate a location that is within 30 miles of the location where it wants to relocate the facility or channel share, and then file the channel sharing or displacement application. In addition, because we propose to permit stations to select their COL based on overlap between a station’s protected contour and the defined limits of the community, the reference

(continued....)

2. The 30-Mile Distance Limit

40. We also seek comment on clarifying the distance that Class A and LPTV/TV translator stations are allowed to move in a single minor modification application or a displacement application.¹⁵⁶ As noted above, moves in either situation are currently limited to “30 miles (48 kilometers)” in order to ensure continuity of service.¹⁵⁷ For purposes of consistency and clarity, we propose to revise the rules that currently reference the 30-mile limit to state that a facility may not be relocated greater than 48.3 kilometers and to make clear that the distance calculation may not be “rounded down.”¹⁵⁸ We understand that Media Bureau staff permitted stations proposing a relocation of up to 30.49 miles to “round-down” the distance calculation to 30 miles to comply with the distance limitation. We propose to prohibit rounding of the distance calculation. Additionally, we propose to revise our rules to remove the imprecise miles-to-kilometers conversion and instead solely state that facility relocations may be not greater than 48.3 kilometers.¹⁵⁹ Any value over 48.3 kilometers, even by less than a tenth of a kilometer, will not be considered rule compliant.¹⁶⁰ We seek comment on these proposals. While there exists the possibility of a waiver of our rules, should we establish exceptions in certain circumstances to allow stations to relocate their facility to a location more than 48.3 kilometers from their reference coordinate.¹⁶¹ We seek comment on what exceptions, if any, should be set forth in our rules.

3. Establishing Community of License Designations and Coverage Requirements

41. We next propose to require that Class A and LPTV/TV translator stations specify a COL that is associated with their station’s actual service area. As noted above, Class A and LPTV/TV

(Continued from previous page) _____

coordinates for a station’s COL may not be the best indicator for calculating displacement and if used undermine the intent of the displacement rule.

¹⁵⁶ See e.g., 47 CFR §§ 74.787(a)(4), (b)(1)(iii). We note that the technical facilities of Class A television stations are subject to the part 74 technical and application rules. See *Class A Order*, 15 FCC Rcd at 6367, para. 28. To provide clarity to our rules, we propose modifying the Class A rules to make clear that Class A television stations are also subject to the 30-mile distance limit set forth in section 74.787. See *infra* App. A – Proposed Rules.

¹⁵⁷ See *LPTV DTV Second R&O*, 26 FCC Rcd at 10767, para. 58 (adopting the “30-mile rule” in order to prevent stations from frustrating the intent of the minor change rule and ultimately leaving existing viewers of the station, who have come to rely on its service, behind).

¹⁵⁸ See *infra* App. A – Proposed Rules.

¹⁵⁹ The current rule in section 74.787(b)(1)(iii) states that the limit is “30 miles (48 kilometers),” 47 CFR § 74.787(b)(1)(iii), but these values are not equivalent. Thirty miles is approximately 48.3 kilometers, while 48 kilometers is approximately 29.8 miles. We also note that most of our broadcast forms and rules utilize the metric system and believe using kilometers here would provide consistency. See e.g., 47 CFR §§ 73.622(k), 74.709, 74.737 (using kilometers to measure distance); FCC Form 2100, Schedules A-F (using meters for height values).

¹⁶⁰ By permitting stations to “round down” it potentially allows stations to move a larger distance than was intended by the 30 mile limit and may result in a greater viewer loss. As stated in the *LPTV DTV Second R&O*, the 30 mile rule was adopted “[t]o ensure that low power television applications for ‘minor change’ remain just that, and to ensure that stations continue to provide coverage to viewers that rely on their service.” *LPTV DTV Second R&O*, 26 FCC Rcd at 10767, para. 58. Because 48.3 kilometers is equivalent to 30 miles, we believe this is consistent with the goals of the LPTV Service and will continue to help minimize negative impacts on existing viewers that have come to rely on LPTV/TV translator stations for service.

¹⁶¹ See e.g., Comments of the Advanced Television Broadcasting Alliance at 4-6, MB Docket Nos. 03-185 and 22-261 (filed Oct. 24, 2022) (requesting that the Commission “provide additional flexibility to allow stations to relocate”). We invite comment on additional flexibility that interested parties believe could be provided while ensuring the intent of the minor modification rule is not undermined and a station’s existing viewers maintain access to the services they have come to rely on.

translator stations are not allotted in the Table of TV Allotments.¹⁶² As a “fill-in” type service, their facilities can be authorized at any location so long as they do not cause interference to any other authorized television stations and as a secondary service their facilities can be easily displaced.¹⁶³ As a result, the Commission has not previously imposed a rule or methodology for Class A or LPTV/TV translator stations to be formally assigned a COL.¹⁶⁴ Because our existing rules do not provide a clear rule or methodology, the Media Bureau has been processing requests for changes in a Class A and LPTV/TV translator station’s COL only when at least a portion of the proposed community is located within the station’s protected contour.

42. Formalizing the COL designation process and providing set standards for how a Class A and LPTV/TV translator station can select a COL will ensure that COL’s listed in LMS and used by Stations actually reflects their service area. Although we believe that Class A and LPTV/TV translator stations should continue to possess the flexibility to determine where best to locate their stations’ facilities, we believe that stations should be required to designate a COL that has a connection with its station’s operations. Further, this will also ensure that Class A and LPTV/TV translator stations continue to utilize their COL to create a connection with the communities they in fact serve. We propose the following criteria be applied for all Class A and LPTV/TV translator stations when designating a COL. First, we tentatively conclude that all Class A and LPTV/TV translator stations should be required to designate a COL whose boundary at least partially overlaps with the station’s “protected service contour.” We propose defining “protected service contour” as the protected contour provided for in section 74.792 of our rules for LPTV/TV translator stations and section 73.6010 of our rules for Class A stations.¹⁶⁵ For purposes of determining whether a COL’s boundary “overlaps with a station’s protected service contour,” we propose to examine the legal boundary of the community that has been designated by any federal, state, local, or tribal governmental entity.¹⁶⁶ In designating a COL, a station would be required to provide a map demonstrating that the contour overlaps with the COL’s legal boundary. Second, we tentatively conclude that any amount of overlap between the Station’s protected service contour and legal boundary of its COL will be deemed sufficient for a station to designate a community as its COL. We tentatively find that this standard is appropriate given the relatively small size of the coverage area of many Class A

¹⁶² See *supra* para. 38.

¹⁶³ See *LPTV Order*, 51 R.R. 2d at 488, para. 27 (“adopting a table of low power television assignments would represent an unnecessarily rigid approach in a demand-driven service where we are fostering marketplace sovereignty ... the public interest best will be served by permitting LPTV applicants to locate their stations and configure their service areas as market conditions dictate”); see *Class A Order*, 15 FCC Rcd at 6367, para. 28 (2000) (concluding that a minimum community of license coverage requirement is not appropriate because of the lower power levels that Class A stations will operate and given that, in many cases, Class A stations are providing programming to areas where a higher power station could not be accommodated in the Table of Allotments). See also *Preservation of One Vacant Channel in the UHF Television Band For Use By White Space Devices and Wireless Microphones*, 25 FCC Rcd 6711, 6718 (2015) (noting that LPTV stations are not allotted channels but rather engineer facilities in the unused spectrum between full power stations).

¹⁶⁴ Section 73.1120 of our rules requires Class A stations be “licensed to the principal community or other political subdivision which it primarily serves.” The rule goes on to state that the “principal community (city, town or other political subdivision) will be considered to be the geographical station location.” 47 CFR § 73.1120. While our rules require that Class A stations be licensed to a “principal community” (i.e., COL) Class A stations are exempt from our part 73 principal city coverage requirement. See *Class A Order*, 15 FCC Rcd at 6367, paras. 27-28. In establishing the Class A service the Commission did not provide a clear process or parameters regarding how a Class A station could select or change its COL.

¹⁶⁵ 47 CFR § 74.792; 47 CFR § 73.6010. Although other primary licensees may cause interference to secondary LPTV/TV translator stations, the service contour of LPTV/TV translator stations is protected from interference from other LPTV/TV translator stations. This is what is meant by the LPTV/TV translator station’s “protected contour.”

¹⁶⁶ For example, if a station designates Washington, DC as its COL, then it must show that its protected service area overlaps with the legal boundaries of Washington, DC as recognized by the District of Columbia.

and LPTV/TV translator stations. For that reason, we tentatively conclude a more stringent coverage requirement, such as a percentage of population or land area, may be unworkable and limit a station's COL options.¹⁶⁷ We seek comment on our tentative conclusions and invite alternative proposals and standards by which Class A and LPTV/TV translator stations may select a COL.¹⁶⁸

43. We also seek comment on whether we should require that a station serve the COL it has selected for a minimum period of time prior to being permitted to voluntarily change it. We propose to require Class A and LPTV/TV translator to serve their designated COL for at least one year before allowing them to change it. This will help ensure that when a station is licensed, it is not only intending to provide service to its community, but it in fact does so. Further, because a public interest benefit of designating a COL is to foster a connection between the station and the community it serves, we believe that such a restriction on community of license changes is justified. While stations in the LPTV Service are not in the Table of TV Allotments and are not held to our analysis under section 307(b) of the Act,¹⁶⁹ we find that they still must operate in the public interest, convenience, and necessity. As result, by designating a COL stations are committing to provide service to that area, in many cases unserved and underserved areas, for at least a certain period of time.¹⁷⁰ We seek comment on this proposal and whether there should be any exceptions to the rule. For example, we tentatively find it would be appropriate to allow stations to modify their COL prior to the one year if the station is displaced or for circumstances beyond a station's control, such as natural disaster or other act of God, that cause the station to no longer be able to cover its COL. We propose not to consider independent business decisions or finances, as a basis for changing a COL within the one year period. What are other exceptions we should consider as a basis for a change in COL sooner than one year? Should exceptions be enumerated in our rules or, given the unique facts and circumstances that may be present in such cases, should we rely exclusively on our existing waiver standard?

44. Finally, we propose that within six months of the effective date of any new COL rule we adopt in this proceeding, all Class A and LPTV/TV translators must designate a COL that is rule compliant. We propose to require all Class A and LPTV/TV translator stations designate a COL by filing an application for modification of license and pay the appropriate filing fee.¹⁷¹ Stations whose current

¹⁶⁷ For example, an Class A or LPTV/TV translator station with a COL of Houston, Texas may find it difficult to serve a large percentage of the city's estimated population of greater than 2.3 million spread out over 665 square miles given that the station is low power and can only serve a small area. See <https://www.houstontx.gov/about/houston/houstonfacts.html> (last visited Mar. 4, 2024).

¹⁶⁸ During the pendency of this proceeding, we will maintain the status quo and permit the Bureau to continue to process COL change requests in the same manner it has to date. Any COL changes made during the pendency of this proceeding will be required to come into compliance with any rules we adopt.

¹⁶⁹ Section 307(b) of the Act requires that the Commission make the distribution of frequencies "as to provide a fair, efficient, and equitable distribution of radio service to each of the same." 47 U.S.C. § 307(b). This requirement applies to channels allotted via the Table of Allotments, for example, for full power television stations. Because Class A and LPTV/TV translator stations are not assigned channels via the Table of Allotments, the Commission does not undertake a section 307(b) analysis when determining whether to grant an application in these services.

¹⁷⁰ The Commission had a similar focus when it adopted standards for reviewing requests by Rural Radio Service AM and FM stations to change their COL. See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, MB Docket No. 09-52, Second Report and Order, First Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 26 FCC Rcd 2556, 2577, para. 36 (2011). The Commission explained that the intent of its policy change with respect to COL changes was to cause "applicants to give more consideration to the effects of proposed station moves on listeners, both those they would serve at a new community and those from whom they would remove existing service." *Id.* at 2579, para. 40. We find that a similar intent lays behind our proposal to require that Class A and LPTV/TV translator stations to serve their COL for one year prior to making any COL change.

¹⁷¹ FCC Form 2100, Schedule D for LPTV/TV translator stations and FCC Form 2100, Schedule F for Class A stations.

COL meets the requirement of the new rule, should it be adopted, do not need to take any action. To help ease the initial transition, we propose to waive any application filing fee during this six month period for requests that solely seeking to designate a COL that is rule compliant.¹⁷² We seek comment on these proposals.

F. Establishing Minimum Operating Hours for LPTV Stations

45. We propose adopting minimum operating hours for LPTV stations¹⁷³ and seek comment on whether LPTV/TV translator stations should be required to certify with regard to their minimum operating hours on certain applications. Currently, LPTV stations are not subject to minimum required hours of operation¹⁷⁴ and are not required to adhere to any regular schedule of operation. When the service was originally created, the Commission decided to not adopt such requirements given the undetermined viability of the service and because LPTV stations are low power, serve a small service area, have secondary interference protection status, and are not allotted in the Table of TV Allotments to serve a particular community or a specified coverage area.¹⁷⁵ As a result, the Commission, at that time, concluded that “minimal regulation of low power television is in the public interest, notwithstanding the fact that it is a broadcast service.”¹⁷⁶

46. While there are no set minimum operating hours for LPTV stations, they are subject to specific rules if they discontinue operations for certain periods of time and remain silent for extended periods. Like all broadcast stations, an LPTV station that fails to operate for more than 10 days must notify the Commission that it is silent.¹⁷⁷ If a station remains silent for more than 30 days, it must seek authority to remain silent.¹⁷⁸ Unlike full power stations, failure of an LPTV station to operate for a period of 30 days or more, except for causes beyond the control of the licensee, shall be deemed evidence of discontinuation of operation and the license of the station may be cancelled at the discretion of the Commission.¹⁷⁹ Finally, as with all broadcast stations, an LPTV station’s license will automatically expire, as a matter of law, if the station fails to transmit a broadcast signal for any consecutive twelve-

¹⁷² 47 CFR § 1.1116.

¹⁷³ We do not believe it is necessary to place additional minimum operating requirements on TV translators. TV translator stations are reliant on the programming and operation of the station they are rebroadcasting and under our rules are “expected to provide service to the extent that such is within its control and to avoid unwarranted interruptions in the service provided.” 47 CFR § 74.763(a). *See also infra* para. 55 (discussing EAS obligations of TV translators). We believe that the requirement of section 74.763(a) already amounts to a minimum operating requirement that is beyond that of LPTV stations. However, as part of our reorganization of the rule we also propose to revise the language to clarify TV translators current obligation by replacing the word “expected” in the current rule with the word “required.” We believe this word change will make it clear that the provision of service by TV translators is “required” and that they are subject to the same general rules regarding silence and operations that are applicable to all television stations. *See* 47 CFR §§ 73.763(b) and (c), 74.780, and 73.1635; *infra*. para. 46. We seek comment on this proposal and whether any additional operating requirements are necessary to ensure that TV translators are serving the public and providing service as intended by our rules. Are there situations in which a TV translator may not rebroadcast the programming of its primary station for the entire broadcast day? If so why and under what circumstances might that occur?

¹⁷⁴ *See* 47 CFR § 74.790(h).

¹⁷⁵ *LPTV Order*, 51 R.R. 2d at 478 and 487, paras. 14 and 77.

¹⁷⁶ *Id.*

¹⁷⁷ *See* 47 CFR § 74.763(b).

¹⁷⁸ *Id.*

¹⁷⁹ 47 CFR § 74.763(c).

month period, notwithstanding any provision, term, or condition of the license to the contrary.¹⁸⁰ Therefore, an LPTV station can operate briefly (for a few minutes or hours) every 30 days and avoid being deemed as having permanently discontinued operations under section 74.763(c) of our rules,¹⁸¹ or do the same once per year and avoid automatic expiration of its license under section 312(g) of the Act.¹⁸² In either instance, however, we tentatively find that the extremely minimal nature of those operations and the inherent lack of benefit to viewers from such minimal operations undermines the public interest benefit of the station and results in the underutilization of finite TV band spectrum. We tentatively find that these practices also threaten to undermine the value of the LPTV Service generally. We believe that adoption of a minimum operating hours for LPTV stations will ensure that stations have a clear awareness of their public interest obligations to the viewers they have been licensed to serve, and prevent warehousing and underutilization of spectrum. We seek comment on this analysis.

47. We propose that all LPTV stations be required to operate not less than 14 hours per calendar week. We tentatively conclude that requiring LPTV stations to operate a minimum of 14 hours per calendar week will not be a burdensome requirement. We seek comment on this proposal. While the Commission felt such a requirement was not necessary when the service was originally created, 40 years later we tentatively conclude that additional requirements are needed to ensure that all licensed stations are operating in the public interest by serving their viewers as intended. Other broadcast services have minimum operating requirements, including other low power, secondary services.¹⁸³ For example, when the Commission was considering rules for its new Low Power FM (LPFM) radio service it noted that while it was “sympathetic with the position of some commenters that the market, not the Commission, should determine the hours a station operates,”¹⁸⁴ it ultimately concluded that adoption of a minimum

¹⁸⁰ *Id.*; see also 47 U.S.C. § 312(g) (providing that “[i]f a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary, except that the Commission may extend or reinstate such station license...for any reason to promote equity and fairness”). Discretion under section 312(g) to extend or reinstate a station license is severely limited. See e.g. *A-O Broad. Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 617, para. 27 (“This limited, discretionary provision is phrased as an exception to the general rule that most affected licenses will be forfeited”). The Commission has exercised its authority to reinstate an expired license to “promote equity and fairness” only where the station failed to provide service for 12 consecutive months due to compelling reasons beyond the licensee’s control. See, e.g., *V.I. Stereo Communications Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006); *Community Bible Church*, Letter, 23 FCC Rcd 15012, 15014 (MB 2008); *Mark Chapman, Court-Appointed Agent*, Letter, 22 FCC Rcd 6578 (MB 2007). The Commission has declined to reinstate licenses where the failure to transmit a broadcast signal was due to the licensee’s own actions, finances, and/or business judgment. See, e.g., *Word of God Fellowship*, Memorandum Opinion and Order, 29 FCC Rcd 13280 (2014) (exercise of discretion to reinstate not warranted where licensee had not shown that a television station’s silence was due to a natural disaster or similar compelling circumstances beyond its control); *Christian Broadcasting of East Point, Inc.*, Memorandum Opinion and Order, 30 FCC Rcd 13975 (2015) (section 312(g) relief not warranted where station silence was due to being evicted from its tower site); *International Aerospace Solutions, Inc.*, Memorandum Opinion and Order, 38 FCC Rcd 1759 (2023) (relief not warranted where silence was due to loss of the authorized site for non-payment of rent and choice thereafter to operate from engineer’s home without requesting and obtaining STA to do so).

¹⁸¹ See 47 CFR § 74.763(c).

¹⁸² 47 U.S.C. § 312(g).

¹⁸³ Commercial AM and FM radio - § 73.1740(a)(1); noncommercial educational FM stations - § 73.561; Low Power FM - § 73.850; Class A television - § 73.6001(b); full power TV - § 73.1740(a)(2); and FM6 stations – 74.790(o)(11).

¹⁸⁴ *Creation of the Low Power Radio Service*, Notice of Proposed Rulemaking, 14 FCC Rcd 2471, 2503, para. 76 (1999).

operating requirement for LPFM stations would ensure effective utilization of channels.¹⁸⁵ Despite LPFM being a secondary service, the Commission went on to find that such a requirement was not excessive and should not impose an inordinate burden on LPFM licensees.¹⁸⁶ Similarly, we tentatively conclude that adopting a minimum operating requirement will achieve similar benefits to ensure the spectrum is being properly utilized without imposing significant costs or burdens on LPTV licensees. We seek comment on our tentative findings and conclusions.

48. Commercial full power television stations are required to operate not less than 2 hours in each day of the week and not less than a total of 28 hours per calendar week.¹⁸⁷ In addition, Class A stations are required to operate a minimum of 18 hours per day in order to maintain their Class A status.¹⁸⁸ Our proposed minimum operating requirement for LPTV reflects half of the hours that commercial full power television stations are required to operate and a fraction of what Class A stations are required to broadcast. Our proposal also does not subject LPTV stations to a daily operational requirement in order to allow LPTV stations with non-traditional business hours, such as schools and religious institutions, more flexibility to operate their stations and serve their viewers. As a result, we propose to permit LPTV stations to operate at any time over the course of a seven day calendar week in order to provide flexibility and tailor their broadcast schedule to their local community as long as they operate not less than 14 hours per calendar week.¹⁸⁹ We seek comment on this proposal.

49. We also seek comment on whether alternative minimum operating hours or requirements would accomplish the same goals of ensuring stations serve the public interest and prevent limited spectral resources to lie fallow for all but a few hours or days a year. For example, should we instead adopt a different weekly hourly requirement or instead a daily, monthly, or quarterly minimum operating requirement? If so, what is the appropriate amount of time we should require for any interval?

50. Finally, we propose to require that all LPTV/TV translator licensees certify in any application for minor or major modification of a licensed facility and its license renewal application whether the station has complied with its minimum operating requirement over the course of the current license term, and if not provide an explanation for its failure and why grant of the pending application is in the public interest. We believe such a requirement will help ensure, in a minimally burdensome manner, that stations are complying with their minimum operating requirements and utilizing their licensed spectrum in the public interest. We seek comment on this proposal. We also seek comment on what evidence (written or otherwise) should be deemed sufficient to support a licensee's operational certification if such certification is challenged. Should licensees be required to retain certain documents, such as written program logs to be made available at the request of the Commission or members of the public? And if so how long should licensees be required to retain such documentation?

¹⁸⁵ See *Creation of the Low Power Radio Service*, Report and Order, 15 FCC Rcd 178, 250, para. 182 (2000) (*LPFM R&O*).

¹⁸⁶ All LPFM stations are required to 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; however, stations licensed to educational institutions are not required to operate on Saturday or Sunday or to observe the minimum operating requirements during those days designated on the official school calendar as vacation or recess periods. See 47 CFR § 73.850(b). In cases where individual parties are interested in applying for an LPFM station but did not have sufficient programming to meet the minimum operating hour requirements, the Commission encouraged those parties to find other applicants with whom they could share the license. *LPFM R&O*, 15 FCC Rcd at 150, para. 182.

¹⁸⁷ 47 CFR § 73.1740(a)(2)(ii).

¹⁸⁸ 47 CFR § 73.6001(b)(1).

¹⁸⁹ For example, in any calendar week a station could operate a single day for 14 hours, or could operate two hours a day over the course of seven days.

G. Defining Minimum Programming Requirements

51. To ensure that LPTV/TV translator stations are fully utilizing their spectrum to provide free over-the-air television service for their viewers, as intended by our rules and the Act,¹⁹⁰ we propose to make LPTV/TV translator stations subject to the requirement currently in our part 73 rules that visual transmissions of test patterns, slides, or still pictures accompanied by unrelated aural transmissions may not be counted for purposes of complying with any minimum operating requirement.¹⁹¹ This part 73 requirement currently applies to both full power and Class A stations. We tentatively find that extending this requirement to LPTV/TV translator stations is consistent with the primary purpose of licensing broadcast television spectrum – the provision of video programming services to viewers.¹⁹² Adopting a requirement in our rules will provide clear guidance that LPTV/TV translator stations must provide video programming service to the public and utilize the spectrum for that purpose. We propose to apply this requirement only to programming aired on the station’s primary stream and not apply it to a station’s multicast stream.¹⁹³ We seek comment on this proposal.

¹⁹⁰ The Commission has long held that “the fundamental use of the 6 MHz DTV license will be for the provision of free over-the-air television service.” See *Promoting Broadcast Internet Innovation through ATSC 3.0*, MB Docket No. 20-145, Report and Order, 35 FCC Rcd 14492, 14509, para. 33 and n. 108 (2020); *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Fifth Report and Order, 12 FCC Rcd 12809, 12823 (1997); see also 47 CFR § 73.625(b) (DTV broadcast station permittees or licensees must transmit at least one over-the-air video program signal at no direct charge to viewers on the DTV channel); 47 CFR § 74.790(g)(3) (whenever operating, an LPTV station must transmit at least one over-the-air video program signal at no direct charge to viewers at a resolution of at least 480i (vertical resolution of 480 lines, interlaced)).

¹⁹¹ 47 CFR § 73.1740(a)(2)(iii). Whenever operating, an LPTV/TV translator station must “transmit at least one over-the-air video program signal at no direct charge to viewers at a resolution of at least 480i (vertical resolution of 480 lines, interlaced).” 47 CFR § 74.790(g)(3).

¹⁹² *Advanced Television Systems & Their Impact Upon the Existing Television Broadcast Service*, Report and Order, 12 FCC Rcd. 12809, para. 28 (1997) (“We expect that the fundamental use of the 6 MHz DTV license will be for the provision of free over-the-air television service.”). The Commission has long recognized that the airing of test patterns or static slides does not constitute “operations.” See *ETC Communications*, Letter Ruling, 25 FCC Rcd 10686, 10689 (MB 2010) (test patterns do not constitute “broadcast signals” for purposes of section 312(g) of the Communications Act); *A-O Broadcasting Corporation*, Memorandum Opinion and Order, 23 FCC Rcd 603 (2008) (equipment tests are not transmissions of broadcast signals as required by section 312(g)); *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Rcd 858, 862, para. 11, n.16 (IATF/MB 2017) (interpreting the term “begins operating” to mean “when the station begins providing a broadcast television service to the public on its post-auction channel, not simply testing equipment on that channel.”). The Commission addressed a similar issue regarding so-called “FM6” LPTV stations. There the Commission, in adopting rules for continued FM6 LPTV service, required that such stations broadcast at least one stream of programming with synchronized audio and video on their digital television operations. See *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, MB Docket No. 03-185, Fifth Report and Order, FCC 23-58, paras. 40-42 (rel. July 20, 2023) (*FM6 R&O*). See 47 CFR § 73.1740(a)(2)(iii).

¹⁹³ For purposes of this *NPRM*, “multicast” stream(s) refers to a TV broadcast station’s non-primary video programming stream(s); that is, stream(s) other than the station’s primary video programming stream. Our proposed rule would not prevent an LPTV/TV translator station from providing an audio only stream or still pictures accompanied by unrelated aural transmissions on a multicast stream because, as long as stations are transmitting “at least one over-the-air video program signal at no direct charge to viewers,” they may “offer services of any nature, consistent with the public interest, convenience, and necessity, on an ancillary or supplementary basis” on the remainder of their channel. See 47 CFR § 74.790(i) referencing § 74.790(g)(3).

H. Class A, LPTV and TV Translator Station Designations and Call Signs

1. Changes Between LPTV and TV Translator Station Designations

52. We propose to require that stations in the LPTV Service that seek to change their designation from LPTV to TV translator and vice versa, be required to seek Commission authority by way of a license modification application to make such a change.¹⁹⁴ We further propose that stations in the LPTV service be allowed to change their station designation not more than once every 12 months. By proposing these rules, we aim to provide clarity to viewers and broadcasters concerning the station's service classification and what Commission rules and service obligations apply.

53. Currently, if a station in the LPTV Service desires to change its designation between LPTV and TV translator (or vice versa), it requests this change by informally writing (by e-mail or letter) Media Bureau staff, who in turn makes the classification change in the Commission's database. Stations in the LPTV Service can change their designation without limit and without any justification. For many years after the creation of the LPTV Service, the distinction between LPTV and TV translator stations was minimal and, therefore, no formal change process or standards were necessary.¹⁹⁵ However, over the years the LPTV Service has changed and the Commission has adopted a number of regulations that have expanded the distinction between LPTV and TV translator stations. For example, beginning in 1994, the Commission created the Emergency Alert System (EAS), whereby broadcasters are required to transmit Presidential and other national alerts to the general public (and may transmit alerts originating at the state and local levels to the general public on a voluntary basis).¹⁹⁶ EAS participants are required to submit EAS Test Reporting System (ETRS) filings in response to nationwide tests of the EAS (sometimes referred to as National Periodic Tests).¹⁹⁷ LPTV stations are EAS participants and must submit the required ETRS filings; however, TV translator stations are not required to file.¹⁹⁸ In addition, in 2009, the Commission mandated that LPTV stations be subject to its rules requiring the filing of ownership reports.¹⁹⁹ Because they do not originate programming, TV translator stations are not required to submit ownership reports.

54. To enable the Commission and public to better track station classification changes and to provide rule compliance clarity for stations in the LPTV Service, we propose to formalize the redesignation process by requiring that LPTV Service designation changes be made through an

¹⁹⁴ Class A stations are required to notify the Commission "in writing" to be redesignated as LPTV. *See* 47 CFR § 73.6001(d). Given that the Commission receives a minimal number of requests for Class A to LPTV redesignation requests, and that such redesignation requests are not reversible, we do not find the need to require that Class A stations file an application in this regard. However, we propose to make clear in our rules that such a written request must be filed through the Office of the Secretary, Attention Chief, Video Division, Media Bureau. We seek comment on this proposal.

¹⁹⁵ *See* 47 CFR § 74.790(a) (TV translator stations provide a means whereby the signals of broadcast stations may be retransmitted to areas in which direct reception of such stations is unsatisfactory due to distance or intervening terrain barriers); *cf.* 47 CFR § 74.790(b) (An LPTV station may operate . . . for the retransmission of programming of a TV broadcast station . . . (or) for the origination of programming and commercial matter). *See* 47 CFR § 74.790(f) (TV translator station may transmit unlimited amounts of emergency warnings of imminent danger; and local public service announcements and requests seeking or acknowledging financial support limited to 30 seconds each, no more than once per hour).

¹⁹⁶ *See* 47 CFR § 11.1.

¹⁹⁷ *See Public Safety and Homeland Security Bureau Establishes February 28, 2023 Deadline for Annual Filing of Form One in the EAS Test Reporting System*, 37 FCC Rcd 14838 (PSHSB 2022); *see also* 47 CFR § 11.61(a)(3)(iv).

¹⁹⁸ *Id.*

¹⁹⁹ *See* 47 CFR § 74.797; *Promoting Diversification of Ownership In the Broadcasting Services*, MB Docket No. 09-294, Report and Order and Fourth Further Notice of Proposed Rulemaking, 24 FCC Rcd 5896, 5915 (2009).

application for license modification and that applicants be required to pay the requisite application filing fee. We also propose to limit LPTV Service designation changes to not more than once every 12 months. We tentatively conclude such a limit would help ensure that stations are not attempting to switch classification from an LPTV to a TV translator in order to avoid regulatory burdens (i.e., ETRS filings or ownership reports) and then quickly switching back to obtain the benefits of being classified as an LPTV station (i.e., greater program origination ability). Are there any circumstances that stations should be permitted to change their designation more than once every 12 months and what type of showing should be required? We seek comment on these proposals.

55. Furthermore, we propose to amend our rules to require that all stations with the LPTV designation, regardless of how the station is operated, must comply our EAS rules. We also propose to clarify that a station formally designated in the Commission’s database as a TV translator is not required to comply with our Part 11 requirements, such as installing EAS equipment or meeting related obligations like filing in ETRS, if it entirely rebroadcasts the programming – including all EAS – of a Primary Station.²⁰⁰ The EAS rules currently provide that “LPTV stations that operate as television broadcast translator stations, as defined in § 74.701(b) of this chapter, are not required to comply with the requirements of this part.”²⁰¹ In light of our proposal to formalize the designation process and given the distinctions between LPTV and TV translator stations that have developed over the years, we believe it is appropriate to require any station that has chosen to be designated as an “LPTV” to comply with our existing EAS rules for LPTV stations.²⁰² We believe that this change will also help ensure that all LPTV stations, when constructed, install the necessary EAS equipment as required and further the public interest by ensuring alerts are properly disseminated.²⁰³ Further, this change should not create any additional burdens given that under our proposed rule change any LPTV station that entirely rebroadcasts the programming of a Primary Station may change its designation from LPTV to TV translator status to remain exempt from our EAS rules as they may be today.²⁰⁴ We seek comment on whether there is any practical reason to maintain the existing exception to the EAS rule for LPTV stations that operate as translator stations.

2. Call Sign Assignments

56. *TV Translator Stations.* We propose to clarify in our rules that all TV translator stations must have an alphanumeric call sign comprised of a prefix consisting of the initial letter “K” or “W

²⁰⁰ See 47 CFR 74.701(b) (defining “Primary Station” as “the television station which provides the programs and signals being retransmitted by a television broadcast translator station.”). This definition would be retained in our proposed rule changes, but redesignated as section 74.701(e). See *infra* App. A – Proposed Rules. Rebroadcasts that fail to pass through or otherwise transmit EAS alerts may result in enforcement action against the TV translator station. TV translator stations are limited to transmitting locally originated messages that include emergency warnings of imminent danger, local public service announcements (PSAs) and seeking or acknowledging financial support deemed necessary to the continued operation of the station. 47 CFR § 74.790(f). Locally originated content related to PSAs and fundraising is limited to 30 seconds each and no more than once per hour. *Id.* Emergency transmissions are limited to no longer than necessary to protect life and property. *Id.* If a TV translator airs locally originated content it may need to install EAS equipment or monitor their Primary Station during periods of local origination to ensure that all EAS alerts provided by the Primary Station are being transmitted.

²⁰¹ 47 CFR § 11.11(b).

²⁰² We note that section 11.11(b) of our rules exempts LPTV stations from section 11.32’s requirements to operate or maintain EAS Encoders. 47 CFR §§ 11.11(b); 11.32.

²⁰³ See 47 CFR §§ 11.11(a).

²⁰⁴ See *supra* note 201. See also 47 CFR § 11.11(b) (“Analog and digital broadcast stations that operate as satellites or repeaters of a hub station (or common studio or control point if there is no hub station) and rebroadcast 100 percent of the programming of the hub station (or common studio or control point) may satisfy the requirements of this part through the use of a single set of EAS equipment at the hub station (or common studio or control point) which complies with §§ 11.32 and 11.33.”).

“(based on the station’s geographic location in relation to the Mississippi River), followed by the channel number assigned to the station and two additional letters, and a suffix consisting of the letter “-D.”²⁰⁵ Further, we propose that a station that converts from LPTV to TV translator status would have its four-letter LPTV call sign automatically modified by the Commission to an alphanumeric one that is consistent with our TV translator call sign rule.²⁰⁶ We tentatively conclude that this proposal is consistent with our existing rule which requires that TV translator stations maintain a uniform call sign methodology and will help viewers distinguish between TV translator stations and other classes of the TV service.²⁰⁷ We propose to automatically modify any call signs that do not comply with the proposed rule 30 days after the effective date of any Report and Order adopted in this proceeding. The 30-day period will allow licensees to inform their viewers of the impending call sign change. Given that TV translator stations are, with limited exception, restricted to rebroadcasting other station’s programming we tentatively find TV translators do not have their own unique identity and “grandfathering” existing call signs has no cognizable public interest benefit. We seek comment on this proposal and our tentative findings and conclusion.²⁰⁸

57. *Class A and LPTV Stations.* Further, we propose to require that all Class A and LPTV stations must have a four-letter call sign, with the suffix “-LD” for LPTV stations and “-CD” for Class A stations. Our current rule is permissive and states that “[l]ow power television and Class A television stations *may* be assigned a four-letter prefix.”²⁰⁹ It also permits LPTV stations to be assigned alphanumeric call signs just like TV translators.²¹⁰ We tentatively conclude that in light of the regulatory and service distinctions between TV translator, LPTV, and Class A stations that it is appropriate to require that each service conform to its own call sign prefix and suffix.²¹¹ As an initial matter, we propose that any station that modifies its status from an TV translator to LPTV after the effective date of our proposed rule must submit a request for a new four-letter call sign prefix with the “-LD” suffix in the Commission’s call sign reservation system and pay the applicable fee.²¹² Further, we propose that the

²⁰⁵ 47 CFR § 74.791(b) and (d).

²⁰⁶ See 47 CFR § 74.791 (outlining how call signs are assigned for Class A, LPTV, and TV translator stations).

²⁰⁷ As of May 15, 2024, the Media Bureau estimates that 70 TV translator stations have call signs that either do not have the proper TV translator prefix and/or the “-D” suffix.

²⁰⁸ There is no fee associated with assignment of TV translator call signs.

²⁰⁹ 47 CFR § 74.791(c).

²¹⁰ 47 CFR § 74.791(a). As of May 15, 2024, the Media Bureau estimates that 788 LPTV stations and 45 Class A stations have call signs that either do not have a four-letter prefix and/or the “-LD” or “-CD” suffix.

²¹¹ See *supra* para. 6 (discussing the regulatory and service distinctions between TV Translator and LPTV stations). Similarly, Class A stations have even more pronounced regulatory and service distinctions compared to both TV translator and LPTV stations. For example, all Class A stations not only have primary interference protection, but must broadcast at least 18 hours per day, air an average of 3 hours of locally produced programming per week, maintain an OPIF, and air minimum amount of children’s television programming, among other unique requirements. See 47 CFR §§ 73.3526 (OPIF requirement); 73.6001(b) (minimum operating hour and locally produced programming requirement); 73.671 (children’s television programming requirement).

²¹² The Commission’s fee payment schedule for media service applications is set forth in 47 CFR § 1.1104. Because stations are not able to freely switch from LPTV to Class A status (see 47 CFR § 73.6001(a) setting forth the qualifications requirements for LPTV stations to be designated Class A status), when an opportunity for a status change exists we propose that a station’s call sign will be modified to designate the “-CD” suffix as part of the Class A eligibility and licensing process. We also propose that the station will retain its current four-letter call sign prefix unless it conflicts with that of an existing Class A station. In such a circumstance, we propose that the former LPTV station will be required to modify its four-letter call sign prefix in the Commission’s call sign reservation system and pay the applicable fee unless otherwise waived by the Commission. Under the LPPA a limited number of LPTV stations were deemed eligible to convert from LPTV to Class A status. See *supra* note 15. Under our proposal,

(continued....)

Commission will modify a Class A station's call sign that reverts from Class A status to LPTV to reflect its LPTV status by automatically changing its call sign suffix from "-CD" to "-LD." The station will retain its current four-letter call sign prefix unless it conflicts with that of an existing LPTV station. In such a circumstance, the former Class A station will be required to modify its four-letter call sign prefix in the Commission's call sign reservation system. We also propose to provide all Class A and LPTV stations a period of 90 days from the effective date of our proposed rule to designate a four-letter call sign with the correct suffix. During this 90-day period, we propose to waive the fee associated with an initial call sign request by a station to modify its call sign in order to come into compliance with the proposed rule.²¹³ We seek comment on this proposal.

58. Alternatively, we seek comment on whether the Commission should "grandfather" existing LPTV and Class A call signs that are not in compliance with our proposed new rule. As stations that originate programming, some LPTV and Class A stations may have developed an identity with viewers that involves their call sign. What are the specific public interest benefits we should consider when determining if existing Class A or LPTV stations should be permitted to retain their existing "non-compliant" call signs? Should stations be permitted to keep both their existing prefix and suffix? Should grandfathered call signs be transferrable and assignable? If we grandfather existing LPTV and Class A call signs, we tentatively conclude that only call signs of licensed stations on the release date of any Report and Order adopted in this proceeding will be eligible to be grandfathered. Further, we propose that any station with a grandfathered call sign will be required to bring its call sign into compliance with our proposed rule in the event it subsequently changes its classification (i.e., LPTV to TV translator or vice versa). We seek comment on these proposals and tentative conclusions.

I. Channel 14 Emission Masks

59. In an effort to further reduce the potential for interference to LMR facilities in the 460-470 MHz band²¹⁴ from Class A and LPTV/TV translator facilities operating on channel 14, we propose that new and modified channel 14 Class A and LPTV/TV translator stations (Channel 14 LPTV Stations) must use a "full service" or "stringent" emission mask – a "simple" emission mask would be prohibited. We propose that a currently licensed Channel 14 LPTV Station would not be required to make a change to its existing licensed facility, and would only be required to implement filtering with a superior emission mask when proposing modifications to its facility that would change the station's current service contour or to address interference caused to an LMR facility.²¹⁵

60. Interference to LMR facilities from adjacent channel 14 television facilities (full power and low power) has long been a concern of the Commission, including most recently when Class A and

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these stations will be required to modify their call signs in a manner that is consistent with our current rules and any new rules we adopt. We seek comment on this proposal.

²¹³ 47 CFR § 1.1116. New LPTV and TV translator stations are initially assigned a prefix consisting of the initial letter 'K' or 'W' – based on whether the station is east or west of the Mississippi River, 47 CFR § 74.791(d) – followed by the channel number assigned to the station and two additional letters. Under our proposal, prior to filing an application for license to cover, LPTV stations will be required to modify their call sign to a four-letter call sign as proposed. For this initial call sign assignment we propose that a fee will not apply. We seek comment on this proposal.

²¹⁴ LMR services are used by companies, local governments, and other organizations to meet a wide range of communication requirements, including coordination of people and materials, important safety and security needs, and quick response in times of emergency. See 47 CFR Part 90.

²¹⁵ LPTV/TV translator stations are secondary to LMR operations. See 47 CFR 74.703(e). As of May 14, 2023, the Media Bureau has determined there are currently 7 Class A, 63 LPTV, and 80 TV translator stations operating on channel 14.

LPTV/TV translator television stations converted to digital operations.²¹⁶ The Commission's rules currently require that all Class A and LPTV/TV translator stations seeking new or modified facilities specify in their application for construction permit that the station will be constructed to confine out-of-channel emissions using one of the following emission masks: simple, stringent, or full-service.²¹⁷ As the Commission pointed out in its *Land Mobile Interference Order*, instances of interference to LMR facilities from channel 14 television facilities "have been readily resolved by the installation of appropriate filters."²¹⁸ So-called "mask filters" decrease out-of-band emissions to operations on adjacent channels, and in 2011, the Commission amended its rules to permit Class A and LPTV/translator stations to specify the use of masks previously implemented by full power television stations to prevent interference ("full-service masks").²¹⁹ Because of the potential for interference to LMR facilities, construction permits for Channel 14 LPTV Stations also contain a condition requiring permittees, to take measures during equipment tests to identify and substantially eliminate interference which may be caused to existing LMR facilities in the 460 to 470 MHz band.²²⁰ Further, Channel 14 LPTV Stations must provide documentation before operation that interference will not be caused to existing LMR facilities.²²¹ A similar requirement applies to full power television stations and restrictions on a channel 14 station's ability to commence program test authority.²²²

61. Although the three standard mask filters found in our rules do not always resolve LMR interference issues, we believe they remain the most effective means to prevent out-of-band emissions and interference to LMR facilities on 460-470 MHz.²²³ Because the stringent and full-service masks are more restrictive than the simple mask and better decrease out-of-band emissions, their use for channel 14 stations would be expected to minimize potential interference to land mobile operations. Therefore, we propose to require all new or modified Channel 14 LPTV Stations to include the use of either stringent or full-service mask filtering unless the station is decreasing power or making a modification to its facilities

²¹⁶ See, e.g., LMS File No. 0000214256, a request for special temporary authority filed by a channel 14 LPTV station. The station was forced to reduce its proposed power to resolve an interference complaint by a local LMR operator. The station ultimately filed a displacement application to move off channel 14 due to ongoing LMR interference complaints. See LMS File No. 0000219314.

²¹⁷ 47 CFR § 74.794(a)(1) (defining simple, stringent and full service emissions masks). As of May 14, 2024, the Media Bureau has determined that of the seven Class A stations currently operating on channel 14, one is using the full-service mask and the other six are using the stringent mask. As for LPTV/TV translator stations operating on channel 14, three TV translators and 36 LPTVs are using the full-service mask; and 18 TV translators and 16 LPTVs are using the stringent mask; and 58 TV translators and 11 LPTVs are using the simple mask;.

²¹⁸ *Resolution of Interference Between UHF Channels 14 and 69 and Adjacent-Channel Land Mobile Operations*, ET Docket 87-465, Report and Order, 6 FCC Rcd 5148, 5150, para. 11 (1991) (*Land Mobile Interference Order*).

²¹⁹ See *LPTV DTV Second R&O*, 26 FCC Rcd at 10762-63, paras. 68-69 (2011). LPTV/translators had argued that "in areas where frequencies are not available, use of the full power DTV emission mask will enable them to secure a channel . . .", *id.* at 10763, para. 68, and the Commission agreed that "allowing low power television applicants to specify the use of the full power DTV emission mask [will] accommodate additional LPTV stations and enable more efficient use of the available spectrum." *Id.* at 10763, para. 69.

²²⁰ See 47 CFR § 73.1620(a)(1) citing 47 CFR § 73.617(b)(2)(ii).

²²¹ *Id.*

²²² *Id.*

²²³ *LPTV DTV Second R&O*, 26 FCC Rcd at 10763, para. 69. In some cases, even more filtering is required, such as an 8- or 12-pole filter or multiple cascaded filters to ensure minimal interference with neighboring analog and digital broadcasts. See "Very-Sharp Filter Enhanced Compensation in ATSC 1.0 & ATSC 3.0," a 2017 study by TeamCast, Hitachi Kokusai Electric Comark, LLC and Dielectric, a copy of which is available at: https://comarktv.com/wp-content/uploads/2019/10/FINAL-2017_BEITC_Very_Sharp_Filter_Enhanced_Compensation_TeamCast_Comark_Dielectric-1.pdf.

that does not change its service contour.²²⁴ Based on our prior review, the cost difference between simple, stringent, and full-service mask filters is not substantial and because the filters are generally of similar physical size they should have similar installation costs. Specifically, we estimated in 2018 that the cost of any given mask filter would be similar, with any cost difference being more heavily dependent on the power of the proposed facilities than on the specific type of emission mask.²²⁵ Therefore, we tentatively conclude that any increased cost of requiring Channel 14 LPTV stations to include stringent or full-service mask filters would not be unduly burdensome. Further, we tentatively conclude that the burden caused by any potential slight increase in cost to Channel 14 LPTV Stations would be outweighed by the benefits of reducing complaints from LMR stations, better protecting LMR stations from interference, and preventing wasted investments by Channel 14 LPTV Stations that, for example, install one type of mask filter and then determine that stricter mask filter is needed. We seek comment on this proposal and the burdens and benefits, including our cost assumptions,²²⁶ of requiring stringent or full-service mask filtering by Channel 14 LPTV Stations.

J. Prohibition on Operations Above Channel 36

62. We propose to prohibit any LPTV/TV translator stations from operating above channel 36 (out-of-core channels). As part of the Incentive Auction and repacking process, the Commission reallocated TV spectrum above channel 37 (614-698 MHz, the so-called “600 MHz Band”) for use by wireless broadband providers and provided LPTV/TV translator stations that were displaced with an opportunity to file a displacement application to move their facilities to a new in-core channel.²²⁷ Further, the Commission prohibited new operations on out-of-core channels (i.e., above channel 36).²²⁸ However, in order to provide flexibility for out-of-core stations to construct in-core channel displacement facilities, the Commission allowed out-of-core LPTV/TV translator stations to continue operating on their pre-auction channels until they were notified of likely interference by a new 600 MHz Band licensee.²²⁹

²²⁴ We propose that stations currently operating without causing interference to LMR operations would not need to implement stringent or full-service masks because the purpose of the rule would already be met—to prevent interference to LMR operations. We expect that a station currently operating without causing interference which decreases power on otherwise-existing facilities would not be expected to cause interference, while the likelihood of a station proposing a modification without a significant change to its service contour would be small. We seek comment on this proposal and our analysis.

²²⁵ See *Catalog of Potentially Reimbursable Costs Incurred by Low Power Television, Television Translator and FM Broadcast Stations*, Public Notice, 33 FCC Rcd 10081, 10085 (IATF and MB 2018).

²²⁶ If our cost estimates are no longer accurate, commenters should provide specific cost information.

²²⁷ See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6617-80, paras. 109-257 (2014) (*Incentive Auction R&O*) (subsequent history omitted); *Incentive Auction R&O*, 29 FCC Rcd at 6835-36, para. 659; see also *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, MB Docket No. 03-185, Third Report and Order and Fourth Notice of Proposed Rulemaking, 30 FCC Rcd 14927, 14946 (2015) (*LPTV DTV Third R&O*). TV operations are not permitted on channel 37, which is allocated for the Radio Astronomy Service and Wireless Medical Telemetry Service. See 47 CFR § 73.603(c). 614-698 MHz is comprised of former TV channels 38-51.

²²⁸ See *Incentive Auction Task Force and Media Bureau Announce Post Incentive Auction Special Displacement Window April 10, 2018 Through May 15, 2018, And Make Location and Channel Data Available*, Public Notice, 33 FCC Rcd 1234, 1238 (IATF and MB 2018) (applicants in the post-Incentive Auction special displacement window may apply only for a channel that continues to be allocated to broadcast television service (channels 2-36) and not for channels above 36); 47 CFR § 74.702 (applicants for new LPTV/TV translator stations or for changes in the facilities of an authorized station may select one channel between 2 and 36).

²²⁹ See *Incentive Auction R&O*, 29 FCC Rcd at 6840, para. 670. LPTV/TV translator stations on channels 38 and 44-46 (guard band and duplex gap channels) were required to cease operations no later than the end of the post-Incentive Auction transition period – July 13, 2020. See *Incentive Auction R&O*, 29 FCC Rcd at 6841, para. 672. In

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63. The Incentive Auction closed in 2017 and according to the Commission's records there are currently no LPTV/TV translator stations operating on out-of-core channel.²³⁰ Because all out-of-core stations appear to have received notice from a 600 MHz licensee, they are no longer able to operate on their licensed channels and are currently silent. Accordingly, we find that the flexibility previously afforded out-of-core stations is no longer necessary and we propose to amend our rules to prohibit television operation on all out-of-core channels. We propose that this prohibition would be effective upon publication in the Federal Register of a Report and Order adopting this proposed rule. Any license authorizing operation above channel 36 will be automatically canceled, without affirmative action by the Commission upon the effective date of our proposed rule. We seek comment on these proposals and tentative findings.

K. Additional Class A, LPTV, and TV Translator Rule Clarifications

64. To further clarify certain Class A and LPTV/TV translator technical rules and policies, we propose changes to our rules as further described below. We propose these changes to promote clarity and ensure that all applicants are treated equally.

1. DTS Emission Masks

65. We propose to require that all transmitters in a Class A or LPTV/TV translator station DTS facility must utilize the same emission mask and we tentatively conclude that all three emission masks found in our rules are permissible.²³¹ A DTS network employs two or more transmission sites located within a station's service area, each using the same RF channel and synchronized to manage self-interference.²³² To prevent interference to other facilities, all stations must specify an emission mask to be implemented with their DTS facilities.²³³ However, unlike full power television stations that may only use "full service" emission masks at each DTS site,²³⁴ the DTS rules adopted for Class A and LPTV/TV translator stations rules do not address whether a different type of emission mask could be employed or

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2019, the Media Bureau announced a window filing opportunity for pending applications for new LPTV/TV translator stations on 600 MHz band channels to file an application for a new in-core channel. *See Filing Window for New Rural Digital Low Power Television and TV Translator Applicants Displaced by Incentive Auction and Station Repack December 2, 2019 to January 31, 2020*, Public Notice, 34 FCC Rcd 11064 (IATF and MB 2019). The Media Bureau set a deadline of January 31, 2020 for such applications to be filed after which applications that were not amended to specify an in-core channel would be dismissed. *Id.* at 11065.

²³⁰ As of May 15, 2024, there are 17 licensed out-of-core stations that are currently silent with construction permits for in-core channels (channels 2-36) and 9 licensed out-of-core stations that are silent without an in-core construction permit. We take this opportunity to remind these stations that silence for any consecutive 12-month period will result in automatic license expiration at the end of that period pursuant to section 312(g) of the Act. 47 U.S.C. § 312(g). We encourage these stations to promptly apply for (as necessary) and complete construction of their in-core facilities so that the stations may once again serve the public.

²³¹ *See* proposed 47 CFR §§ 73.6023(f)(6), 74.720(e)(6). As proposed above, DTS operations on channel 14 would not be permitted to use the simple mask. *See supra* Section III. I – Channel 14 Emissions Masks.

²³² *See* 47 CFR §§ 73.6026 and 74.720; *Rules Governing the Use of Distributed Transmission System Technologies*, MB Docket No. 20-74, Report and Order, 36 FCC Rcd 1227, 1246, para. 29 (2021) (*LPTV DTS R&O*). Through synchronization of the transmitted signal, DTV receivers treat the multiple signals as reflections or "ghosts" and use "adaptive equalizer" circuitry to cancel and combine them to produce a single signal. *See Digital Television Distributed Transmission System Technologies*, MB Docket No. 05-312, Report and Order, 23 FCC Rcd 16731, 16734, para. 4 (2008).

²³³ *See* 47 CFR § 73.611.

²³⁴ *Id.*

whether the same emission mask must be used at each DTS site.²³⁵ We tentatively conclude that allowing Class A and LPTV/TV translator stations to specify different emission masks at each site prevents determination of the proper interference threshold.²³⁶ In order to ensure accurate interference calculations and reduce the potential for interference from Class A and LPTV/TV translator DTS facilities, we tentatively conclude that we should amend our rules to require that all Class A and LPTV DTS sites must utilize the same emission mask. We also tentatively conclude that we should clarify our rules to require that Class A and LPTV/TV translator DTS stations may use any of the emission masks permitted by our rules, so long as the same emission mask is used at all of their DTS transmitter sites.²³⁷ We seek comment on these proposals.

2. Interference Allowance

66. We next propose to amend our rules to apply the same requirements to LPTV/TV translator stations as full-power and Class A TV stations when entering into an interference agreement.²³⁸ We also propose to allow stations operating pursuant to interference agreements or that are unilaterally accepting interference from another station, to maintain those agreed upon interference amounts when modifying a facility so long as applications involving stations with agreements remain compliant with those agreements. Currently, Class A and LPTV/TV translator stations are permitted to enter into interference agreements that supersede compliance with our interference protection standards, or to unilaterally accept incoming interference in excess of our 2% interference threshold.²³⁹ However, as our part 74 rules are currently written, when a Class A or LPTV/TV translator station agrees to accept interference above the 2% threshold (accepting station) from another Class A or LPTV/TV translator station (interfering station) and the interfering station subsequently modifies its facilities, the interfering station must reduce the level of interference to the accepting station to less than 2%.²⁴⁰ We tentatively

²³⁵ The rulemaking for Class A and LPTV DTS facilities did not seek comment on this issue. *See Rules Governing the Use of Distributed Transmission System Technologies*, MB Docket No. 20-74, Notice of Proposed Rulemaking, 35 FCC Rcd 3330, 3331 (2020) and *LPTV DTS R&O*, 36 FCC Rcd at 1227.

²³⁶ Pursuant to the procedures set forth in OET Bulletin No. 69, an interference calculation is done for each DTS transmitter site. *See* OET Bulletin No. 69 - Longley-Rice Methodology For Evaluating TV Coverage and Interference (Feb. 6, 2004) a copy of which is available at: <https://transition.fcc.gov/oet/info/documents/bulletins/oet69/oet69.pdf>. The root-sum-square of all the DTS transmitters is taken at each cell to produce a single interfering signal level, and then that is compared to a given threshold dependent on the emission mask in use. *Id.* Therefore, if each DTS transmitter has employed a different emission mask, then it is not possible to know which interference threshold to use. If different mask filters are specified for different sites in a DTS, the *TVStudy* software applies the threshold belonging to the least restrictive filter to all DTS sites. However, this does not properly reflect the potential interference because some sites would be creating less interference than a prediction using the least restrictive mask filter would suggest..

²³⁷ *See* proposed 47 CFR §§ 73.6023(f)(6), 74.720(e)(6), *infra* App. A – Proposed Rules. As proposed, DTS operations on channel 14 would not be permitted to use the simple mask.

²³⁸ *See* 47 CFR §§ 73.620(e), 73.6022.

²³⁹ *See* 47 CFR §§ 74.703(a), 73.6022; *LPTV DTV First R&O*, 19 FCC Rcd at 19369, paras 106-107.

²⁴⁰ *See* 47 CFR §§ 74.703(a), 73.6022. For example, Station A (interfering station) and Station B (accepting station) agree that Station A is permitted to cause up to 4% interference to Station B. Station A subsequently proposes to modify its facility where by it will now cause 3% interference to station B. Under our current rules the application would not be grantable because the modified facility exceeds the 2% interference threshold, even though Station B has previously agreed to receive up to 4% interference. Or instead, Station C (accepting station) is displaced and in order to receive grant of its application, it unilaterally agrees to accept 4% interference from Station D (interfering station). Following grant, Station D proposes to modify its facility that would continue to cause 4% interference to Station C. Again, under our current rules the application would not be grantable because the modified facility exceeds the 2% interference threshold, even though Station C had previously unilaterally agreed to receive 4% interference.

conclude that this result is not justified when stations have either mutually agreed to, or a station has unilaterally agreed to accept, a certain level of interference.²⁴¹

67. We tentatively conclude that LPTV/TV translator stations seeking to enter into an agreement to resolve interference concerns should be subject to the same rules as Class A and full power stations. This includes entering into a signed written agreement that is submitted with the application and making clear that agreements may include the exchange of money or other consideration between entities.²⁴² We believe codifying these parameters in our rules for LPTV/TV translators is appropriate to provide clarity to licensees and transparency to all. We seek comment on our tentative conclusion.

68. We propose that a Class A and LPTV/TV translator station that has unilaterally agreed to accept interference from another station above the 2% interference threshold in our rules, will have the higher interference percentage taken into account when an application to modify a facility is considered.²⁴³ We also propose that stations subject to written interference agreements may also have the higher interference percentage taken into account, so long as doing so is consistent with the agreement.²⁴⁴ We propose that a station seeking to modify its facility would be required to demonstrate that no additional interference beyond what was previously caused or accepted will occur as a result of the proposed modification.²⁴⁵ We tentatively find that this revision will help maintain the status quo and preserve existing service based on agreed upon or unilaterally accepted interference levels. We seek comment on this proposal and our tentative conclusions.

3. Maximum Grid Resolution

69. We propose to codify that a one square kilometer grid resolution should be the maximum permitted in evaluating the interference to Class A and LPTV/TV translator facilities.²⁴⁶ In the *LPTV DTV First R&O*, the Commission concluded that setting a one square kilometer maximum grid resolution was appropriate given that Class A and LPTV/TV translator facilities had smaller service areas and therefore required a finer grid resolution analysis.²⁴⁷ While the Commission announced this policy in the *LPTV DTV First R&O*, it was not codified.²⁴⁸ We note that many Class A and LPTV/TV translator applicants have been required to amend their showings after instead using a grid resolution of two square kilometers in their interference studies. For additional clarity, we propose to retain the one square kilometer maximum grid resolution adopted by the Commission in the *LPTV DTV First R&O*, and codify

²⁴¹ For example, under our proposal, if a station has unilaterally agreed to accept interference from another station, the interfering station would not need to come into compliance with the 2% interference threshold in our rules. Rather, where a station unilaterally agreed to accept interference above the 2% interference threshold, we propose to take into account the higher interference percentage when considering an application to modify a facility. We seek comment on this proposal.

²⁴² See 47 CFR § 73.620(e).

²⁴³ See 47 CFR § 74.793(h).

²⁴⁴ Our proposed rule is not intended to override any written interference agreement. Therefore, if the interference is not unilateral and has been agreed to pursuant to a written interference agreement, we propose that the modifying station would be required to provide a copy of the original interference acceptance agreement with its application. Under our proposal, depending on the terms of the original interference agreement, Media Bureau staff may request a new interference agreement be entered into or that the modification application be amended to resolve any interference above the 2% interference threshold. We seek comment on this proposal.

²⁴⁵ See proposed 47 CFR §§ 73.6017, 73.6019, 74.793(j), *infra* App. A – Proposed Rules.

²⁴⁶ See *LPTV DTV First R&O*, 19 FCC Rcd at 19367, para. 99.

²⁴⁷ *Id. citing* Comments of Association of Federal Communications Consulting Engineers and duTriel, Lundin & Rackley, Inc.

²⁴⁸ *Id.* at App. B – Final Rule Changes.

the requirement in our rules. We continue to believe that one square kilometer is the appropriate maximum grid resolution given Class A and LPTV/TV translator facilities' smaller service areas.²⁴⁹ We seek comment on this proposal and, if commenters believe that a different maximum grid resolution should be utilized, they should explain why it will provide a better basis for evaluating interference involving LPTV/TV translator stations.

4. Displacement Rule Revisions

70. *Displacement Public Notice Period.* We propose updates to our displacement rule in order to minimize service disruptions. The displacement rule states that displacement applications: "will be placed on public notice for a period of not less than 30 days to permit the filing of petitions to deny."²⁵⁰ This comment period was implemented because displacements require channel changes, which create a greater concern for interference.²⁵¹ Yet, displacements are considered applications for minor change, and minor change applications are not subject to the 30-day period for interested parties to file a petition to deny.²⁵² In practice, requiring a displaced LPTV/TV translator station to wait a full 30 days to receive action on its displacement application may result in loss of service to viewers or continued loss of service to viewers by delaying Commission action and thereby a station's ability to construct and commence operating from its displacement facility. To minimize service disruptions to the public, and expedite processing and construction, we propose eliminating the 30 day public notice period for displacement applications found in section 74.787(a)(4) of our rules.²⁵³ While stations could seek special temporary authority in order to resume operation during the pendency of their displacement application, we aim to streamline this process in order to prevent as much disruption in service to the public as possible and provide certainty to stations to plan and make the necessary investments in their new facilities. We do not anticipate that this change will negatively impact the Commission's evaluation of objections to an application. Affected parties that want to oppose grant of a displacement application may still file an objection prior to Commission action²⁵⁴ and seek reconsideration up to 30 days after the grant.²⁵⁵ In addition, affected parties may report interference concerns raised by the displacement application at any time. We seek comment on these assumptions and the elimination of the 30-day public notice comment period for displacement applications.

71. *Displacements Caused by Full Power Channel Substitutions.* We propose to define when an LPTV/TV translator station displaced by a full power station's channel substitution may apply for displacement. A full power television station seeking to change its operating channel must first submit a petition for rulemaking requesting that the Media Bureau change the Table of TV Allotments to reflect the new channel.²⁵⁶ If approved, the Media Bureau issues a Report and Order making the channel substitution and amending the Table of TV Allotments. It also orders the station to file an application for

²⁴⁹ Class A and LPTV/TV translator stations are also permitted to request the use of a *smaller* 0.5 kilometer grid resolution per side, however, if not specified in the application, the one kilometer cell size per side will be assumed. See 47 CFR § 74.793(b), citing to § 73.620(b), which itself cites to § 73.616(d)(1), permitting the use of the smaller 0.5 kilometer grid resolution.

²⁵⁰ See 47 CFR § 74.787(a)(4) (displacement rule).

²⁵¹ See *LPTV DTV Second R&O*, 26 FCC Rcd at 107663 (adopting new section 74.787(a)(4) to add procedures for the filing of digital LPTV/TV translator displacement applications).

²⁵² 47 CFR § 73.3584.

²⁵³ 47 CFR § 74.787(a)(4). We also propose to remove similar language from 47 CFR § 74.732(d).

²⁵⁴ 47 CFR § 73.3587.

²⁵⁵ 47 CFR § 1.106.

²⁵⁶ See 47 CFR §§ 1.420 and 73.622(j).

minor change in order to modify its facilities to the new channel.²⁵⁷ The Report and Order also includes a date upon which the channel change is effective, typically upon the date of publication of the Report and Order in the Federal Register.²⁵⁸

72. An LPTV/TV translator station that is displaced by a full power station's channel substitution must file a displacement application to move its channel. At the same time, the Commission's rules prohibit "contingent applications," meaning that we will not entertain applications that rely upon action on another pending application.²⁵⁹ Therefore, despite attempts by some LPTV/TV translator stations to file a displacement application prior to approval of the request to amend the Table of TV Allotments to reflect the channel substitution, Commission staff has declined to consider displacement applications that are based on a full power television station channel substitution until after the Report and Order granting the channel substitution and amending the Table of TV Allotments is effective.²⁶⁰ To provide clarity, we propose to amend our rules to specify that such displacement applications cannot be filed until the Report and Order granting the channel substitution and amending the Table of TV Allotments is effective. This will ensure that the station is in fact qualified for displacement and prevent stations from prematurely reserving spectrum on a contingent basis. We do not anticipate that this will unduly delay construction of the displacement facility or result in service interruptions as a station granted a channel substitution needs time to construct their new facility, thus providing a displaced station ample time to construct its own facility. Under our proposal, displacement applications that are filed before the Report and Order granting the channel substitution and amending the Table of TV Allotments is effective will be dismissed without prejudice. We seek comment on this proposal.

73. *Displacement Eligibility.* We propose to enumerate in the displacement rule the precise circumstances that qualify LPTV/TV translator stations to seek a displacement channel. We also propose to permit displacement based on interference caused to a TV translator's input channel. Our current displacement rule states in part, that an LPTV/TV translator station "which is *causing or receiving interference or is predicted to cause or receive interference* to or from an authorized TV broadcast station or allotment or *other protected station or service*, may at any time file a displacement relief application for change in channel"²⁶¹ We believe enumerating the circumstances where displacement applies will make it easier for licensees to determine if their station has in fact been displaced. Further, we propose revising the displacement rule to make clear that applicants must include an exhibit describing the specific cause of displacement in order to allow the Commission to more efficiently review displacement applications.²⁶²

74. First, we propose to clarify what is meant by "*causing or receiving interference*."²⁶³ Under our proposal, this basis for displacement refers to actual interference received by a TV broadcast

²⁵⁷ See 47 CFR § 73.3572(a)(1).

²⁵⁸ See, e.g., *Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Missoula, Montana)*, MB Docket No. 23-280, Report and Order at para. 7 (MB rel. Apr. 23, 2024).

²⁵⁹ See 47 CFR §§ 73.3517 and 74.780.

²⁶⁰ The Media Bureau has either dismissed or requested that the applicant withdraw their contingent displacement application.

²⁶¹ 47 CFR § 74.787(a)(4) (emphasis added). For purposes of this rule "TV broadcast station" or "allotment" refers to full power television stations and allotments found in the Table of TV Allotments. See 47 CFR §§ 73.601, 73.622(j), 73.681.

²⁶² We also propose to revise the displacement rule to clarify that DRTs and DTDRTs have processing priority over LPTV and TV translator stations. This is an existing rule, 47 CFR § 74.787(a)(5)(iii), and not a substantive change. Our proposed revision to the displacement rule merely provides the appropriate cross reference.

²⁶³ 47 CFR § 74.787(a)(4) (emphasis added).

station (i.e., a full power television station) from an LPTV or TV translator station.²⁶⁴ While LPTV/TV translator stations are permitted to cause up to .5% predicted interference to a full power station, as a primary service full power stations are protected from actual interference within their noise limited service contour, even if the predicted interference is within the .5% threshold.²⁶⁵ In order for an LPTV/TV translator station to qualify for displacement relief based on actual interference caused to a TV broadcast station, we propose that there must be at least (1) a single report of actual interference received by a TV broadcast station within its community of license, or (2) multiple reports of actual interference to a TV broadcast station within its protected contour.²⁶⁶ We seek comment on how many reports of actual interference should be required in each instance and what information should be provided to validate such claims. For example, the Commission has established a set of criteria that includes a requirement for a minimum number of listener complaints that must be provided to demonstrate actual interference caused by FM translators, ranging from at least 6 to a cap of 25 depending on the population served.²⁶⁷ To provide certainty and clarity should a similar standard be adopted here? If so, what would be the appropriate threshold of viewer complaints? Should population within an impacted station's protected contour inform the number of complaints required? Is it appropriate for the threshold to be different if the interference is occurring within a TV broadcast station's community of license as opposed to elsewhere within its protected contour? What documentation should stations that claim they are displaced as a result of actual interference be required to file with their displacement application?

75. Second, we propose to revise the displacement rule to clarify the levels of “*predicted*” interference that would qualify a station for a displacement channel. Under our revised rule, we propose that with respect to predicted interference “*caused*” to a TV broadcast station, the predicted interference would have to exceed the 0.5% de minimis interference threshold specified in section 74.793(e) of our rules to qualify the station to file a displacement application.²⁶⁸ With respect to predicted interference “*received*” from a TV broadcast station, we propose that the predicted interference would have to exceed the 2% interference threshold specified in section 74.793(h) of our rules to qualify the station to file a displacement application.²⁶⁹ We do not anticipate that this clarification of what is meant by “*predicted*” interference will materially alter the scope and application of the existing displacement rule. We seek comment on this assumption. This proposal is not intended to expand or restrict displacement eligibility for predicted interference beyond the scope of the current rule. It is also not intended to modify our current interference thresholds (i.e., 0.5% or 2%). Instead, this proposal is intended to clarify what is

²⁶⁴ TV broadcast station is defined in the rules as a full power television station. See 47 CFR § 73.601.

²⁶⁵ See 47 CFR § 74.703(b).

²⁶⁶ Actual interference caused by a TV broadcast station to an LPTV/TV translator has not historically been used for determining displacement of an LPTV/TV translator station, and as such we do not propose to include it in our updated displacement definition. Because LPTV/TV translator stations are secondary and may receive up to 2% predicted interference before being displaced, the presence of actual interference cannot reliably be utilized to demonstrate displacement. This is especially true in cases where an LPTV/TV translator station accepts interference, including amounts that may be in excess of 2% and/or within its community of license. We believe that LPTV/TV translator stations that would receive actual interference significant enough to warrant displacement will be able to demonstrate such interference via our predicted interference method for displacement. We seek comment on this conclusion and proposal.

²⁶⁷ See 47 CFR § 74.1203(a)(3) Table 1 (setting out the minimum listener complaints required for interference complaint); *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, Report and Order, 34 FCC Rcd 3457, 3464, para. 12 (2019). The Commission also adopted additional parameters and requirements to ensure the bona fides of such viewer complaints. See 47 CFR §§ 73.1201(k); 74.1203(a)(3); 74.1204(f).

²⁶⁸ See 47 CFR § 74.793(e).

²⁶⁹ See 47 CFR § 74.793(h).

meant by the word “*predicted*” in the context of our current interference thresholds. We seek comment on this proposal.

76. Third, we propose to revise the displacement rule to make clear what “other protected station or service” means by adding two specific situations beyond interference to/from an authorized TV broadcast station that would qualify an LPTV/TV translator station to seek a displacement channel: (1) interference to LMR facilities;²⁷⁰ (2) interference to/from protected television facilities in Canada and Mexico. We tentatively find that it would be helpful to memorialize in our rules that such circumstances involving “protected” services would qualify an LPTV/TV translator station for displacement.

77. Finally, we also propose to add interference caused to a TV translator input channel as a basis for displacement. TV translators serve areas that would otherwise be unable to receive television service and are often found in rural and mountainous areas. Translator input channels provide TV translators a means to receive the programming that they are translating and would otherwise likely not be available over-the-air to the viewers they serve. While translator inputs are not “protected services,” we tentatively conclude it is in the public interest to protect these channels from interference given their often critical role in enabling TV translators to serve their viewers.

78. Enumerating these circumstances within the displacement rule will make it clearer for licensees to know when displacement relief is warranted. We seek comment on these proposals and whether there are other situations involving interference being caused or received by LPTV/TV translator stations to “other protected services,” or that otherwise would serve the public interest, that we should consider permitting as a basis for displacement.

5. Program Test Authority Rule for LPTV/TV Translators

79. We propose to make the Commission’s part 73 “program test authority” (PTA) rule applicable to LPTV/TV translator stations.²⁷¹ Currently, full power and Class A stations, with certain exceptions, may begin operating under PTA after completion of a facility provided that an application for license to cover is filed within ten days of commencing operations.²⁷² A similar rule does not exist in the part 74 rules for LPTV/TV translator stations. The purpose of this change is to make clear that LPTV/TV translator stations, with limited exception, have the same flexibility to begin operating automatically pursuant to program authority, while also making clear that they are required to submit an application for license after completing construction and within ten days of commencing PTA.²⁷³ We seek comment on this proposed revision.

²⁷⁰ See 47 CFR 74.703(e) (“Low power TV and TV translator stations are being authorized on a secondary basis to existing land mobile uses and must correct whatever interference they cause to land mobile stations or cease operation”).

²⁷¹ A permittee, upon completion of their facility and following equipment tests, 47 CFR § 73.1610, may commence operations pursuant to “program test authority” provided that: (1) an application for license is filed within 10 days of the commencement of program tests, and (2) the construction permit does not contain any special operating conditions that prohibit automatic program test authority. 47 CFR § 73.1620(a).

²⁷² *Id.* See also *Reregulation and Oversight of the Rules for Radio and TV Broadcasting*, 76 F.C.C.2d 40 (1980) (allowing for the first time most broadcast permittees to begin program test authority operations automatically provided they submit an application for license within 10 days).

²⁷³ Channel 14 stations would continue to be required to seek approval prior to commencing operations pursuant to program test authority. See 47 CFR § 73.1620(a). The Commission or the Media Bureau under its delegated authority may also continue to place conditions as may be necessary on a station’s construction permit requiring grant of program test authority prior to commencing operations.

L. Part 73 and Part 74 Ministerial Rule Corrections

80. We propose a few minor editorial changes to our rules as a result of inadvertent oversights in the *2022 Part 74 Order* and *2023 Part 73 Order*.²⁷⁴ We also propose to reorganize section 74.780 to better reflect which part 73 rules are applicable to both LPTV and TV translator stations and which are applicable only to LPTV stations. We seek comment on these proposed minor revisions.

81. *Part 74 Rule Corrections.* In the Commission's *2022 Part 74 Order*, the Commission updated its part 74 rules for LPTV/TV translator stations to reflect the current operating environment, including the termination of analog operations.²⁷⁵ However, the *2022 Part 74 Order* inadvertently left in place a duplicate definition of low power TV station that exists in both sections 74.701(f) and (k) and a duplicate definition of television broadcast translator station that exists in both sections 74.701(a) and (j).²⁷⁶ We propose to remove the respective duplicate definitions in sections 74.701 and re-lettering the remaining paragraphs in section 74.701 as (a) through (g).²⁷⁷ Additionally, the Commission concluded that because LPTV/TV translators have completed their transition from analog to digital operations, there is no need to differentiate between digital and analog in the rules.²⁷⁸ Accordingly, for the aforementioned reasons, we propose to remove the remaining instances of the word "digital" from section 74.720, a rule which was added in a rulemaking that had not yet taken effect at the time the *2022 Part 74 Order* was adopted.²⁷⁹ Finally, we propose to eliminate the words "analog" and "digital" as they relate to LPTV operation from sections 11.11(a) and (b), 11.51(e), and 11.61 in accordance with actions taken in the *2022 Part 74 Order* removing such references.

82. *Reorganization of Section 74.780.* Throughout this item, we propose to add requirements applicable to LPTV stations.²⁸⁰ Section 74.780 contains a list of broadcast regulations applicable to both TV translators and LPTV stations. In order to make those requirements easier to locate, we propose to reorganize the requirements into subsections of the rule and group them based on the service(s) each subsection is applicable to, separating those rules that are applicable to TV translators and LPTVs from those rules that are applicable to LPTV stations only. In addition, we propose to remove the cross-

²⁷⁴ The changes outlined in this section are contained in App. A – Proposed Rules.

²⁷⁵ See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Update of Parts 74 of the Commission's Rules Related to Low Power Television and Television Translator Stations*, MB Docket Nos. 03-185 and 22-261, Order and Sixth Notice of Proposed Rulemaking, 37 FCC Rcd 8173 (2022) (*2022 Part 74 Order*); Erratum, FCC 22-58 (rel. Sept. 9, 2022).

²⁷⁶ 47 CFR §§ 74.701(a), (f), (j), and (k).

²⁷⁷ We also propose to update the cross-references in 47 CFR §§ 11.11(b), 11.11(e), 73.3580(a)(3), 74.783(a), 74.783(a)(1), and 74.790(g)(2) to reflect the new lettering and propose to update a defined term in 47 CFR § 74.784(e) to be consistent with the definitions in proposed § 74.701.

²⁷⁸ *2022 Part 74 Order* at para. 6.

²⁷⁹ 47 CFR § 74.720 (proposing to remove the word "digital" from the heading and paragraphs (a), (b), and (f)). See *LPTV DTS R&O*, 36 FCC Rcd at 1227 (adding section 74.720 to subpart G of part 74 of the Commission's rules); *Media Bureau Announces May 18, 2023 Effective Date of Revised DTS Rules for Class A and Low Power Television Broadcast Stations*, MB Docket No. 20-74 and GN Docket No. 16-142, Public Notice, 38 FCC Rcd 3419 (MB 2023).

²⁸⁰ We propose to add cross-references to 47 CFR §§ 73.1941, 73.1942, 73.1943, 73.1944, and 73.3526, and to modify the existing cross-reference to 47 CFR § 73.1940 to only be applicable to LPTV stations. *Supra* App. A – Proposed Rules.

reference to section 73.1692 found in the current section 74.780 since that section was previously removed from the rules.²⁸¹ We seek comment on these proposals.

83. *Part 73 Rule Corrections.* In the Commission’s 2023 *Part 73 Report and Order*, the Commission reorganized and streamlined its rules in recognition of the completion of the digital television transition and subsequent Incentive Auction and repack.²⁸² However, a cross-reference to section 73.685 in section 73.7003 was inadvertently overlooked and not updated to reflect the new location of the rule, which is section 73.618. We propose to update this cross-reference to point to the new location of the cross-referenced rule.²⁸³ We also propose to correct two other oversights in section 73.7003. The reference in paragraph (b)(4) to the “Grade B” contour should be replaced with a reference to the “NLSC” because Grade B refers to analog service, which no longer exists and NLSC is the correct contour.²⁸⁴ Also an internal cross-reference in paragraph (c)(5)(ii) incorrectly refers to a non-existent paragraph and should instead reference paragraph (c)(5)(i) and we propose that correction. We also propose to replace a reference to “DTV” in 73.619(b)(1) with “TV” consistent with other similar replacements in the 2023 *Part 73 Report and Order*.²⁸⁵ The Commission also updated the part 73 rules to provide accurate information about current Commission forms and filing procedures,²⁸⁶ but did not update the reference to Forms 301 and 340 in section 73.625(c)(4)(i) or Form 302-CA in section 73.6002(a)(2). We propose to update these references to indicate the correct forms – Form 2100 Schedule 301-AM and Form 2100 Schedule F, respectively. Finally, after Federal Register publication, a few minor typographical mistakes were found in the updated part 73 rules, as adopted. In section 73.2080(f)(3), there are four instances of a struck “s” at the end of the word “Form” which was inadvertent and should be removed, and in section 73.4060(a), the citation has a struck “4” in it which should be removed. We seek comment on these proposals.

M. Cost/Benefit Analysis

84. We seek comment on the benefits and costs associated with adopting the proposals set forth in this NPRM. We seek comment on any benefits to the public and to industry through adoption of our proposals. We also seek comment on any potential costs that would be imposed on licensees, regulatees, and the public if we adopt the proposals contained in this NPRM. Comments should be accompanied by specific data and analysis supporting claimed costs and benefits.

N. Digital Equity and Inclusion

85. The Commission, as part of its continuing effort to advance digital equity for all,²⁸⁷ including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty

²⁸¹ See *Inquiry Into the Commission’s Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification*, MB Docket No. 93-177, Third Report and Order and Second Order on Reconsideration, 28 FCC Rcd 12555 (2013).

²⁸² *Amendment of Part 73 of the Commission’s Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations*, MB Docket No. 22-227, Report and Order, FCC 23-72 (Sept. 19, 2023) (2023 *Part 73 Report and Order*).

²⁸³ *Id.* at para. 9, n.27.

²⁸⁴ *Id.* at para. 7, n.19.

²⁸⁵ *Id.* at para. 10, n.28.

²⁸⁶ *Id.* at para. 18.

²⁸⁷ Section 1 of the Communications Act of 1934 as amended provides that the FCC “regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.” 47 U.S.C. § 151.

or inequality, invites comment on any equity-related considerations²⁸⁸ and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

IV. PROCEDURAL MATTERS

86. *Ex Parte Rules - Permit-But-Disclose.* The proceeding this NPRM initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.²⁸⁹ 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 rule 1.1206(b). In proceedings governed by rule 1.49(f) 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.

87. *Filing Requirements—Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

²⁸⁸ The term "equity" is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. See Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021).

²⁸⁹ 47 CFR §§ 1.1200 *et seq.*

- Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.²⁹⁰
- During the time the Commission’s building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

88. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),²⁹¹ requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”²⁹² Accordingly, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible/potential impact of the rule and policy changes contained in this *NPRM*. The IRFA is set forth in Appendix B. The Commission invites the general public, in particular small businesses, to comment on the IRFA. Comments must be filed by the deadlines for comments on the *NPRM* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

89. *Paperwork Reduction Act.* This document proposes new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens and pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13, invites the general public and the Office of Management and Budget (OMB) to comment on these information collection requirements. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

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

91. *Providing Accountability Through Transparency Act.* Consistent with the Providing Accountability Through Transparency Act, Public Law 118-9, a summary of this document will be available on <https://www.fcc.gov/proposed-rulemakings>.²⁹³

92. *OPEN Government Data Act.* The OPEN Government Data Act,²⁹⁴ requires agencies to make “public data assets” available under an open license and as “open Government data assets,” *i.e.*, in machine-readable, open format, unencumbered by use restrictions other than intellectual property rights,

²⁹⁰ *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

²⁹¹ *See* 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

²⁹² *Id.* § 605(b).

²⁹³ 5 U.S.C. § 553(b)(4). The Providing Accountability Through Transparency Act, Pub. L. No. 118-9 (2023), amended section 553(b) of the Administrative Procedure Act.

²⁹⁴ Congress enacted the OPEN Government Data Act as Title II of the Foundations for Evidence-Based Policymaking Act of 2018, Pub. L. No. 115-435 (2019), §§ 201-202.

and based on an open standard that is maintained by a standards organization.²⁹⁵ This requirement is to be implemented “in accordance with guidance by the Director” of the OMB.²⁹⁶

93. We tentatively conclude that requiring certain LPTV licensees to maintain an OPIF would not create “data assets” as defined in 44 U.S.C. § 3502(17). A “data asset” is “a collection of data elements or data sets that may be grouped together,”²⁹⁷ and “data” as “recorded information, regardless of form or the media on which the data is recorded.”²⁹⁸ The documents required to be maintained in an OPIF reflect unstructured information that is generally not systematically arranged in a table or database, and as such cannot readily be meaningfully grouped together. We tentatively conclude, therefore, that, in the absence of a standardized collection form, our requirement to maintain an OPIF is not subject to the requirements of the OPEN Government Data Act. We seek comment on this tentative conclusion.

94. *Additional Information.* For additional information on this proceeding, contact Kim Matthews, Policy Division, Media Bureau, at Kim.Matthews@fcc.gov, (202) 418-2154; Shaun Maher, Video Division, Media Bureau at Shaun.Maher@fcc.gov or (202) 418-2324; or Mark Colombo, Video Division, Media Bureau at Mark.Colombo@fcc.gov or (202) 418-7611.

V. ORDERING CLAUSES

95. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 1, 2, 4(i), 4(j), 303, 307, 309, 311, 312, and 315 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 303, 307, 309, 311, 312, 315 this Notice of Proposed Rulemaking **IS ADOPTED**.

96. **IT IS FURTHER ORDERED** that the Commission’s Office of the Secretary, **SHALL SEND** a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²⁹⁵ 44 U.S.C. § 3502(20), (22) (definitions of “open Government data asset” and “public data asset”); *id.* § 3506(b)(6)(B) (public availability).

²⁹⁶ OMB has not yet issued final guidance.

²⁹⁷ *Id.* § 3502(17).

²⁹⁸ *Id.* § 3502(16).

**APPENDIX A
Proposed Rules**

The Federal Communications Commission proposes to amend 47 CFR parts 11, 73, and 74 to read as follows:

Part 11 of Title 47 of the U.S. Code of Federal Regulations is proposed to be amended to read as follows:

PART 11 – EMERGENCY ALERT SYSTEM (EAS)

1. The authority citation for part 11 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 154(i) and (o), 303(r), 544(g), 606, 1201, 1206.

2. Section 11.11 is amended by revising paragraphs (a) and (b) to read as follows:

§ 11.11 The Emergency Alert System (EAS).

(a) The EAS is composed of analog radio broadcast stations including AM, FM, and Low-power FM (LPFM) stations; digital audio broadcasting (DAB) stations, including digital AM, FM, and Low-power FM stations; ~~Class A television (CA) and Low-power TV (LPTV) stations;~~ digital television (DTV) broadcast stations, including ~~digital Class A~~ and ~~digital low-power TV (LPTV)~~ stations; analog cable systems; digital cable systems which are defined for purposes of this part only as the portion of a cable system that delivers channels in digital format to subscribers at the input of a Unidirectional Digital Cable Product or other navigation device; wireline video systems; wireless cable systems which may consist of Broadband Radio Service (BRS), or Educational Broadband Service (EBS) stations; DBS services, as defined in § 25.701(a) of this chapter (including certain Ku-band Fixed-Satellite Service Direct to Home providers); and SDARS, as defined in § 25.201 of this chapter. These entities are referred to collectively as EAS Participants in this part, and are subject to this part, except as otherwise provided herein. At a minimum EAS Participants must use a common EAS protocol, as defined in § 11.31, to send and receive emergency alerts, and comply with the requirements set forth in § 11.56, in accordance with the following tables:

Table 1—Analog and Digital Broadcast Station Equipment Deployment Requirements

EAS equipment requirement	AM & FM	Digital AM & FM	Analog & digital FM class D	Analog & digital LPFM	DTV	Analog & digital eClass A TV	Analog & digital LPTV
EAS decoder ¹	Y	Y	Y	Y	Y	Y	Y
EAS encoder	Y	Y	N	N	Y	Y	N
Audio message	Y	Y	Y	Y	Y	Y	Y
Video message	N/A	N/A	N/A	N/A	Y	Y	Y

¹ EAS Participants may comply with the obligations set forth in § 11.56 to decode and convert CAP-formatted messages into EAS Protocol-compliant messages by deploying an Intermediary Device, as specified in § 11.56(b).

* * * * *

(b) Analog class D non-commercial educational FM stations as defined in § 73.506 of this chapter, digital class D non-commercial educational FM stations, analog LPFM stations as defined in §§ 73.811 and 73.853 of this chapter, digital LPFM stations, ~~analog LPTV stations as defined in § 74.701(f), and digital LPTV stations as defined in § 74.701(kb)~~ of this chapter are not required to comply with § 11.32. ~~Analog and digital LPTV stations that operate as television broadcast translator stations, as defined in § 74.701(b) of this chapter, are not required to comply with the requirements of this part.~~ **Television broadcast translator stations, as defined in § 74.701(a) of this chapter, which entirely rebroadcast the programming of other broadcast televisions stations are not required to comply with the requirements of this part.** FM broadcast booster stations as defined in § 74.1201(f) of this chapter and FM translator stations as defined in § 74.1201(a) of this chapter which entirely rebroadcast the programming of other local FM broadcast stations are not required to comply with the requirements of this part. International broadcast stations as defined in § 73.701 of this chapter are not required to comply with the requirements of this part. Analog and digital broadcast stations that operate as satellites or repeaters of a hub station (or common studio or control point if there is no hub station) and rebroadcast 100 percent of the programming of the hub station (or common studio or control point) may satisfy the requirements of this part through the use of a single set of EAS equipment at the hub station (or common studio or control point) which complies with §§ 11.32 and 11.33.

* * * * *

3. Section 11.51 is amended by revising paragraph (e) to read as follows:

§ 11.51 EAS code and Attention Signal Transmission requirements.

* * * * *

(e) Analog class D non-commercial educational FM stations as defined in § 73.506 of this chapter, digital class D non-commercial educational FM stations, analog Low Power FM (LPFM) stations as defined in §§ 73.811 and 73.853 of this chapter, digital LPFM stations, ~~analog low power TV (LPTV) stations as defined in § 74.701(f) of this chapter,~~ and digital LPTV stations as defined in § 74.701(bk) of this chapter are not required to have equipment capable of generating the EAS codes and Attention Signal specified in § 11.31.

* * * * *

4. Section 11.61 is amended by revising paragraphs (a)(1)(i), (a)(2)(i)(A), and (a)(2)(ii) to read as follows:

§ 11.61 Tests of EAS procedures.

(a) * * *

(1) * * *

(i) Tests in odd numbered months shall occur between 8:30 a.m. and local sunset. Tests in even numbered months shall occur between local sunset and 8:30 a.m. They will originate from Local or State Primary sources. The time and script content will be developed by State Emergency Communications Committees in cooperation with affected EAS Participants. Script content may be in the primary language of the EAS Participant. These monthly tests must be transmitted within 60 minutes of receipt by EAS Participants in an EAS Local Area or State. Analog and digital class D non-commercial educational FM, analog and digital LPFM stations, and ~~analog and digital~~ LPTV stations are required to transmit only the test script.

* * * * *

(2) * * *

(i) * * *

(A) Analog and digital AM, FM, and TV broadcast stations must conduct tests of the EAS header and EOM codes at least once a week at random days and times. ~~Effective December 31, 2006, DAB stations must conduct these tests on all audio streams. Effective December 31, 2006, DAB and~~ TV stations must conduct these tests on all program streams.

* * * * *

(ii) DBS providers, SDARS providers, analog and digital class D non-commercial educational FM stations, analog and digital LPFM stations, and ~~analog and digital~~ LPTV stations are not required to transmit this test but must log receipt, as specified in § 11.35(a) and 11.54(a)(3).

* * * * *

PART 73 – RADIO BROADCAST SERVICES

5. The authority citation for part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, and 339.

6. Section 73.619 is amended by revising paragraph (b)(1) to read as follows:

§ 73.619 Contours and service areas.

* * * * *

(b) * * *

(1) In predicting the distance to the field strength contours, the F (50,50) field strength charts (Figures 9, 10 and 10b of § 73.699) and the F (50,10) field strength charts (Figures 9a, 10a and 10c of § 73.699) shall be used. To use the charts to predict the distance to a given F (50,90) contour, the following procedure is used: Convert the effective radiated power in kilowatts for the appropriate azimuth into decibel value referenced to 1 kW (dBk). Subtract the power value in dBk from the contour value in dBu. Note that for power less than 1 kW, the difference value will be greater than the contour value because the power in dBk is negative. Locate the difference value obtained on the vertical scale at the left edge of the appropriate F (50,50) chart for the TV station's channel. Follow the horizontal line for that value into the chart to the point of intersection with the vertical line above the height of the antenna above average terrain for the appropriate azimuth located on the scale at the bottom of the chart. If the point of intersection does not fall exactly on a distance curve, interpolate between the distance curves below and above the intersection point. The distance values for the curves are located along the right edge of the chart. Using the appropriate F (50,10) chart for the ~~D~~TV station's channel, locate the point where the distance coincides with the vertical line above the height of the antenna above average terrain for the appropriate azimuth located on the scale at the bottom of the chart. Follow a horizontal line from that point to the left edge of the chart to determine the F (50,10) difference value. Add the power value in dBk to this difference value to determine the F (50,10) contour value in dBu. Subtract the F (50,50) contour value in dBu from this F (50,10) contour value in dBu. Subtract this difference from the F (50,50) contour

value in dBu to determine the F (50,90) contour value in dBu at the pertinent distance along the pertinent radial.

* * * * *

7. Section 73.625 is amended by revising paragraph (c)(4)(i) to read as follows:

§ 73.625 - TV antenna system.

* * * * *

(c)(4)(i) In cases where it is proposed to use a tower of an AM broadcast station as a supporting structure for a TV broadcast antenna, an appropriate application for changes in the radiating system of the AM broadcast station must be filed by the licensee thereof. A formal application (**FCC Form 2100 Schedule 301-AM**~~FCC Form 301, or FCC Form 340 for a noncommercial educational station~~) will be required if the proposal involves substantial change in the physical height or radiation characteristics of the AM broadcast antennas; otherwise an informal application will be acceptable. (In case of doubt, an informal application (letter) together with complete engineering data should be submitted.) An application may be required for other classes of stations when the tower is to be used in connection with a TV station.

* * * * *

8. Section 73.2080 is amended by revising paragraph (f)(3) to read as follows:

§ 73.2080 - Equal employment opportunities (EEO).

* * * * *

(f)(3) If a station is subject to a time brokerage agreement, the licensee shall file Forms 2100 Schedule 396 and EEO public file reports concerning only its own recruitment activity. If a licensee is a broker of another station or stations, the licensee-broker shall include its recruitment activity for the brokered station(s) in determining the bases of Forms 2100 Schedule 396 and the EEO public file reports for its own station. If a licensee-broker owns more than one station, it shall include its recruitment activity for the brokered station in the Forms 2100 Schedule 396 and EEO public file reports filed for its own station that is most closely affiliated with, and in the same market as, the brokered station. If a licensee-broker does not own a station in the same market as the brokered station, then it shall include its recruitment activity for the brokered station in the Forms 2100 Schedule 396 and EEO public file reports filed for its own station that is geographically closest to the brokered station.

* * * * *

9. Section 73.3526 is amended by revising paragraphs (a)(2), (e)(11)(iii), (e)(14), (e)(15), (e)(16), and (e)(17) to read as follows:

§ 73.3526 Online public inspection file of commercial stations.

* * * * *

(a)(2) Every permittee or licensee of an AM, FM, TV, or Class A TV station in the commercial broadcast services, **and every permittee or licensee of an LPTV station affiliated with a top-four TV network (ABC, CBS, NBC, or Fox)**, shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(10) and paragraphs (e)(13) **and (e)(19)** of this section.

In addition, every permittee or licensee of a commercial TV ~~or Class A~~ station shall maintain for public inspection a file containing material, relating to that station, described in paragraphs (e)(11) and (e)(14), (e)(15), (e)(16), and (e)(18) of this section, **every permittee or licensee of a Class A TV station shall maintain for public inspection a file containing material, relating to that station, described in paragraphs (e)(11), (e)(14), (e)(15), (e)(16) and (e)(17) of this section, every permittee or licensee of an LPTV station affiliated with a top-four TV network shall maintain for public inspection a file containing material, relating to that station, described in paragraphs (e)(14), (e)(15), and (e)(16) of this section,** and every permittee or licensee of a commercial AM or FM station shall maintain for public inspection a file containing the material, relating to that station, described in paragraphs (e)(12), ~~and (e)(14), and (e)(16)~~ of this section. A separate file shall be maintained for each station for which an authorization is outstanding, and the file shall be maintained so long as an authorization to operate the station is outstanding.

* * * * *

(e)(11)(iii) *Children's television programming reports.* For commercial TV **and Class A** broadcast stations on an annual basis, a completed Children's Television Programming Report ("Report"), on FCC Form 2100 Schedule H, reflecting efforts made by the licensee during the preceding year to serve the educational and informational needs of children. The Report is to be electronically filed with the Commission by the thirtieth (30) day of the succeeding calendar year. A copy of the Report will also be linked to the station's online public inspection file by the FCC. The Report shall identify the licensee's educational and informational programming efforts, including programs aired by the station that are specifically designed to serve the educational and informational needs of children. The Report shall include the name of the individual at the station responsible for collecting comments on the station's compliance with the Children's Television Act, and it shall be separated from other materials in the public inspection file. These Reports shall be retained in the public inspection file until final action has been taken on the station's next license renewal application.

* * * * *

(e)(14) *Radio and television time brokerage agreements.* For commercial radio and television stations, **and LPTV stations affiliated with a top-four TV network**, a copy of every agreement or contract involving time brokerage of the licensee's station or of another station by the licensee, whether the agreement involves stations in the same markets or in differing markets, with confidential or proprietary information redacted where appropriate. These agreements shall be placed in the public file within 30 days of execution and retained in the file as long as the contract or agreement is in force.

(15) *Must-carry or retransmission consent election.* Statements of a commercial television or Class A television station's election, **or the election of an LPTV station affiliated with a top-four TV network**, with respect to either must-carry or re-transmission consent, as defined in §§76.64 and 76.1608 of this chapter. These records shall be retained for the duration of the three year election period to which the statement applies. Commercial television stations shall, no later than July 31, 2020, provide an up-to-date email address and phone number for carriage-related questions and respond as soon as is reasonably possible to messages or calls from multichannel video programming distributors (MVPDs). Each commercial television station is responsible for the continuing accuracy and completeness of the information furnished.

(16) *Radio and television joint sales agreements.* For commercial radio and commercial television stations, **and for LPTV stations affiliated with a top-four TV network**, a copy of agreement for the joint sale of advertising time involving the station, whether the agreement involves stations in the same markets or in differing markets, with confidential or proprietary information redacted where appropriate. These agreements shall be placed in the public file within 30 days of execution and retained in the file as long as the contract or agreement is in force.

(17) *Class A TV continuing eligibility.* Documentation sufficient to demonstrate that the Class A television station is continuing to meet the eligibility requirements set forth at §73.6001. **Such documentation must be filed every calendar quarter by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October—December, April 10 for the quarter January—March, etc.). The documentation shall include a certification that the Class A television station is continuing to meet the eligibility requirements set forth at §73.6001 and shall include, but shall not be limited to, the time, date, duration, and title of each locally produced program that was aired during that calendar quarter. The documentation described in this paragraph shall be retained in the public inspection file until final action has been taken on the station's next license renewal application.**

* * * * *

10. Section 73.3572 is amended by revising paragraphs (a)(2) introductory text, (a)(2)(i) through (ii), and (a)(3) to read as follows:

§ 73.3572 - Processing of TV broadcast, Class A TV broadcast, low power TV, and TV translators applications.

* * * * *

(a)(2) In the case of Class A TV stations authorized under subpart J of this part and low power TV and TV translator stations authorized under part 74 of this chapter, **major or minor changes are defined in § 74.787(b).** ~~a major change is any change in:~~

~~(i) Frequency (output channel), except a change in offset carrier frequency; or~~

~~(ii) Transmitting antenna location where the protected contour resulting from the change is not predicted to overlap any portion of the protected contour based on the station's authorized facilities.~~

* * * * *

11. Section 73.3580 is amended by revising paragraph (a)(3) to read as follows:

§ 73.3580 - Local public notice of filing of broadcast applications.

* * * * *

(a)(3): *Locally originating programming.* Programming from a low power television (LPTV) or television translator station as defined in § 74.701(~~gh~~) of this chapter.

* * * * *

12. Section 73.4060 is amended by revising paragraph (a) to read as follows:

§ 73.4060 - Citizens agreements.

(a) See Report and Order, Docket 20495, FCC 75-1359, adopted December 10, 1975. 57 F.C.C. 2d 42; 40 FR 459730, December 30, 1975.

* * * * *

13. Section 73.6001 is amended by revising paragraph (d) to read as follows:

§ 73.6001 – Eligibility and service requirements.

* * * * *

(d) Licensees unable to continue to meet the minimum operating requirements for Class A television stations, or which elect to revert to low power television status, shall promptly notify the Commission, in writing, and request a change in status. **The station’s call sign will be modified to one consistent with the requirements of § 74.791(c) following reversion to low power television status.**

* * * * *

14. Amend § 73.6002 by:

- a. Revising paragraph (a)(2);
- b. Adding paragraphs (b) introductory text; (b)(1) through (3); and (c).

§ 73.6002 – Licensing requirements.

(a) * * *

* * * * *

(2) Files an acceptable application for a Class A Television license (FCC Form **2100 Schedule F302-CA**).

(b) Community coverage requirements.

(1) A Class A station’s protected contour (see §73.6010 of this subpart) is required to overlap with at least a portion of its community of license.

(2) To change a Class A station’s community of license, a modification of license must be filed specifying the new community and including an exhibit indicating that the protected contour of the facility specified in the license to cover overlaps with at least a portion of the proposed community of license. A station may change its community of license no more than once every 12 months.

(3) For purposes of determining whether a community of license’s boundary overlaps with a station’s protected service contour, an applicant shall use the legal boundary of the community as may be designated by any federal, state, local, or tribal governmental entity.

* * * * *

15. Section 73.6017 is revised to read as follows:

§ 73.6017 - Class A TV station protection of Class A TV stations.

An application to change the facilities of a Class A TV station will not be accepted if it fails to protect authorized Class A stations in accordance with the requirements of § 74.793 (b) through (d), ~~and 74.793(g)~~, **and (j)** of this chapter. This protection must be afforded to applications for changes in other

authorized Class A stations filed prior to the date the Class A application is filed.

16. Section 73.6019 is revised to read as follows:

§ 73.6019 - Class A TV station protection of low power TV and TV translator stations.

An application to change the facilities of a Class A TV station will not be accepted if it fails to protect authorized low power TV and TV translator stations in accordance with the requirements of § 74.793(b) through (d), ~~and (h)~~, and (j) of this chapter. This protection must be afforded to applications for changes filed prior to the date the Class A station is filed.

17. Section 73.6023 is amended by adding paragraph (f)(6) to read as follows:

§ 73.6023 - Distributed transmission systems.

* * * * *

(f)(6) All DTS transmitters must use the same emission mask. See § 73.6024(d) of this subpart regarding permissible emission masks.

* * * * *

18. Section 73.7003 is amended by revising paragraphs (b)(2), (b)(4), and (c)(5)(ii) to read as follows:

§ 73.7003 - Point system selection procedures.

* * * * *

(b) * * *

* * * * *

(2) **Local diversity of ownership.** Two points for applicants with no attributable interests, as defined in § 73.7000, in any other broadcast station or authorized construction permit (comparing radio to radio and television to television) whose principal community (city grade) contour overlaps that of the proposed station. The principal community (city grade) contour is the 5 mV/m for AM stations, the 3.16 mV/m for FM stations calculated in accordance with § 73.313(c), and the contour identified in § **73.618(a)** ~~73.685(a)~~ for TV. Radio applicants will count commercial and noncommercial AM, FM, and FM translator stations other than fill-in stations. Television applicants will count UHF, VHF, and Class A stations.

* * * * *

(4) **Technical parameters.** One point to the applicant covering the largest geographic area and population with its relevant contour (60 dBu for FM and ~~Grade B~~ NLSC for TV), provided that the applicant covers both a ten percent greater area and a ten percent greater population than the applicant with the next best technical proposal. The top applicant will receive two points instead of one point if its technical proposal covers both a 25 percent greater area and 25 percent greater population than the next best technical proposal.)

(c) * * *

* * * * *

(5) * * *

* * * * *

(ii) Groups of more than three tied, grantable applications will not be eligible for licensing under this section. Where such groups exist, the Commission will dismiss all but the applications of the three applicants that have been local, as defined in § 73.7000, for the longest uninterrupted periods of time. The Commission will then process the remaining applications as set forth in paragraph (c)(45)(i) of this section.

* * * * *

PART 74 - EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

19. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 325, 336 and 554.

20. Section 74.701 is amended by revising paragraphs (a), (b), and (e) through (g) and removing paragraphs (h) through (m) to read as follows:

§ 74.701 Definitions.

(a) **Television broadcast translator station (TV translator).** **A station operated for the purpose of retransmitting the programs and signals of a television broadcast station, without significantly altering any characteristic of the original signal other than its frequency, for the purpose of providing television reception to the general public.** ~~A station in the broadcast service operated for the purpose of retransmitting the programs and signals of a television broadcast station, without significantly altering any characteristic of the original signal other than its frequency and amplitude, for the purpose of providing television reception to the general public.~~

(b) **Low power TV station (LPTV).** **A station authorized under the provisions of this subpart that may retransmit the programs and signals of a television broadcast station, may originate programming in any amount greater than 30 seconds per hour for the purpose of providing television reception to the general public and, subject to a minimum video program service requirement, may offer services of an ancillary or supplementary nature, including subscription-based services. (See § 74.790.)** ~~Primary station. The television station which provides the programs and signals being retransmitted by a television broadcast translator station.~~

* * * * *

(e) **Primary station.** **The television station which provides the programs and signals being retransmitted by a television broadcast translator station.** ~~[Reserved]~~

(f) **Existing low power television or television translator station.** **When used in this subpart, the terms existing low power television and existing television translator station refer to a low power television station or television translator station that is either licensed or has a valid construction permit.** ~~Low power TV station. A station authorized under the provisions of this subpart that may~~

retransmit the programs and signals of a TV broadcast station and that may originate programming in any amount greater than 30 seconds per hour and/or operates a subscription service. (See § 73.641 of part 73 of this chapter.)

(g) **Local origination.** For purposes of this part, local origination shall be any transmissions other than the simultaneous retransmission of the programs and signals of a TV broadcast station or transmissions related to service offerings of an ancillary or supplementary nature. Origination shall include locally generated television program signals and program signals obtained via video recordings (tapes and discs), microwave, common carrier circuits, or other sources. ~~[Reserved]~~

~~(h) Local origination. Program origination if the parameters of the program source signal, as it reaches the transmitter site, are under the control of the low power TV station licensee. Transmission of TV program signals generated at the transmitter site constitutes local origination. Local origination also includes transmission of programs reaching the transmitter site via TV STL stations, but does not include transmission of signals obtained from either terrestrial or satellite microwave feeds or low power TV stations.~~

~~(i) [Reserved]~~

~~(j) Television broadcast translator station (“TV translator station”). A station operated for the purpose of retransmitting the programs and signals of a television broadcast station, without significantly altering any characteristic of the original signal other than its frequency, for the purpose of providing television reception to the general public.~~

~~(k) Low power TV station (“LPTV station”). A station authorized under the provisions of this subpart that may retransmit the programs and signals of a television broadcast station, may originate programming in any amount greater than 30 seconds per hour for the purpose of providing television reception to the general public and, subject to a minimum video program service requirement, may offer services of an ancillary or supplementary nature, including subscription-based services. (See § 74.790.)~~

~~(l) Digital program origination. For purposes of this part, digital program origination shall be any transmissions other than the simultaneous retransmission of the programs and signals of a TV or DTV broadcast station or transmissions related to service offerings of an ancillary or supplementary nature. Origination shall include locally generated television program signals and program signals obtained via video recordings (tapes and discs), microwave, common carrier circuits, or other sources.~~

~~(m) Existing low power television or television translator station. When used in this subpart, the terms existing low power television and existing television translator station refer to a low power television station or television translator station that is either licensed or has a valid construction permit.~~

21. Section 74.720 is amended by:

- a. Revising the section heading and paragraphs (a) through (b);
- b. Adding paragraph (e)(6); and
- c. Revising paragraph (f).

The revisions read as follows:

§ 74.720 – ~~Digital~~ Low power TV distributed transmission systems.

(a) A ~~digital~~ low power TV or TV translator (LPTV) station may be authorized to operate multiple synchronized transmitters on its assigned channel to provide service consistent with the requirements of

this section. Such operation is called a distributed transmission system (DTS). Except as expressly provided in this section, LPTV stations operating a DTS facility must comply with all rules in this part applicable to LPTV single-transmitter stations.

(b) For purposes of compliance with this section, a ~~digital~~ LPTV station's "authorized facility" is the facility authorized for the station in a license or construction permit for non-DTS, single-transmitter-location operation. An ~~digital~~ LPTV station's "authorized service area" is defined as the area within its protected contour (described by § 74.792) as determined using the authorized facility.

* * * * *

(e)(6) All DTS transmitters must use the same emission mask. See § 74.794 of this subpart regarding permissible emission masks.

(f) All transmitters operating under a single LPTV DTS license must follow the same ~~digital~~ broadcast television transmission standard.

22. Section 74.732 is amended by revising paragraphs (d) through (e) to read as follows:

§ 74.732 – Eligibility and licensing requirements.

* * * * *

(d) The FCC will not act on applications for new low power TV or TV translator stations, **or** for changes in facilities of existing stations, ~~or for changes in output channel tendered by displaced stations pursuant to § 73.3572(a)(1),~~ when such changes will result in a major change, until the applicable time for filing a petition to deny has passed pursuant to section 73.3584(c) of this subpart.

(e) A proposal to change the primary TV station(s) being retransmitted ~~or an application of a licensed translator station to include low power TV station operation, i.e., program origination~~ will be subject only to a notification requirement.

* * * * *

23. Section 74.763 is amended by revising paragraph (a) introductory text and adding paragraphs (a)(1) through (3) to read as follows:

§ 74.763 – Time of operation.

~~(a) A low power TV or TV translator station is not required to adhere to any regular schedule of operation. However, the licensee of a TV translator station is expected to provide service to the extent that such is within its control.~~ **Stations authorized subject to this subpart are required to operate with the following schedules:**

(1) The licensee of a low power TV station is required to air a minimum of 14 hours per calendar week of programming. Such operation must be consistent with § 73.1740(a)(2)(iii).

(2) The licensee of a TV translator, DRT, or DTDRT station is required to provide service to the extent that such is within its control and to avoid unwarranted interruptions in the service provided.

(3) All LPTV or TV translator station applicants for construction permits for minor or major modification of a licensed facility or applicants for renewal of a license must certify that the station has complied with the minimum operating requirement for its class of service set forth in this section. If an applicant cannot make such a certification, it must explain why and demonstrate that grant of such application is in the public interest.

* * * * *

24. Section 74.780 is revised to read as follows:

§ 74.780 - Broadcast regulations applicable to translators and low power stations.

(a) The following rules are applicable to TV translator and low power TV stations:

- (1) 47 CFR part 5—Experimental authorizations.**
- (2) 47 CFR 73.658—Affiliation agreements and network program practices; territorial exclusivity in non-network program arrangements.**
- (3) 47 CFR 73.1030—Notifications concerning interference to radio astronomy, research, and receiving installations.**
- (4) 47 CFR 73.1206—Broadcast of telephone conversations.**
- (5) 47 CFR 73.1207—Rebroadcasts.**
- (6) 47 CFR 73.1208—Broadcast of taped, filmed, or recorded material.**
- (7) 47 CFR 73.1211—Broadcast of lottery information.**
- (8) 47 CFR 73.1212—Sponsorship identifications; list retention; related requirements.**
- (9) 47 CFR 73.1216—Licensee-conducted contests.**
- (10) 47 CFR 73.1515—Special field test authorizations.**
- (11) 47 CFR 73.1615—Operation during modification of facilities.**
- (12) 47 CFR 73.1620—Program tests.**
- (13) 47 CFR 73.1635—Special temporary authorizations (STA).**
- (14) 47 CFR 73.1650—International agreements.**
- (15) 47 CFR 73.1680—Emergency antennas.**
- (16) 47 CFR 73.1740(a)(2)(iii)—Minimum operating schedule.**
- (17) 47 CFR 73.1940—Legally qualified candidates for public office.**
- (18) 47 CFR 73.3500—Application and report forms.**

- (19) 47 CFR 73.3511—Applications required.
- (20) 47 CFR 73.3512—Where to file; number of copies.
- (21) 47 CFR 73.3513—Signing of applications.
- (22) 47 CFR 73.3514—Content of applications.
- (23) 47 CFR 73.3516—Specification of facilities.
- (24) 47 CFR 73.3517—Contingent applications.
- (25) 47 CFR 73.3518—Inconsistent or conflicting applications.
- (26) 47 CFR 73.3519—Repetitious applications.
- (27) 47 CFR 73.3521—Mutually exclusive applications for low power TV and TV translator stations.
- (28) 47 CFR 73.3522—Amendment of applications.
- (29) 47 CFR 73.3525—Agreements for removing application conflicts.
- (30) 47 CFR 73.3533—Application for construction permit or modification of construction permit.
- (31) 47 CFR 73.3536—Application for license to cover construction permit.
- (32) 47 CFR 73.3538(a)(1), (3), and (4) and (b)—Application to make changes in an existing station.
- (33) 47 CFR 73.3539—Application for renewal of license.
- (34) 47 CFR 73.3540—Application for voluntary assignment or transfer of control.
- (35) 47 CFR 73.3541—Application for involuntary assignment of license or transfer of control.
- (36) 47 CFR 73.3542—Application for emergency authorization.
- (37) 47 CFR 73.3544—Application to obtain a modified station license.
- (38) 47 CFR 73.3545—Application for permit to deliver programs to foreign stations.
- (39) 47 CFR 73.3550—Requests for new or modified call sign assignments.
- (40) 47 CFR 73.3561—Staff consideration of applications requiring Commission action.
- (41) 47 CFR 73.3562—Staff consideration of applications not requiring action by the Commission.
- (42) 47 CFR 73.3564—Acceptance of applications.
- (43) 47 CFR 73.3566—Defective applications.
- (44) 47 CFR 73.3568—Dismissal of applications.

(45) 47 CFR 73.3572—Processing of TV broadcast, low power TV, and TV translator station applications.

(46) 47 CFR 73.3580—Local public notice of filing of broadcast applications.

(47) 47 CFR 73.3584—Petitions to deny.

(48) 47 CFR 73.3587—Informal objections.

(49) 47 CFR 73.3591—Grants without hearing.

(50) 47 CFR 73.3593—Designation for hearing.

(51) 47 CFR 73.3594—Local public notice of designation for hearing.

(52) 47 CFR 73.3597—Procedures on transfer and assignment applications.

(53) 47 CFR 73.3598—Period of construction.

(54) 47 CFR 73.3601—Simultaneous modification and renewal of license.

(55) 47 CFR 73.3603—Special waiver procedure relative to applications.

(b) The following rules are applicable to low power TV stations only:

(1) 47 CFR part 11—Emergency Alert System.

(2) 47 CFR 73.1941—Equal opportunities.

(3) 47 CFR 73.1942—Candidate rates.

(4) 47 CFR 73.1943—Political file.

(5) 47 CFR 73.1944—Reasonable access.

(6) 47 CFR 73.2080—Equal employment opportunities.

(7) 47 CFR 73.3526—Online public inspection file of commercial stations.

(8) 47 CFR 73.3612—Annual employment report.

(9) 47 CFR 73.3613—Availability to FCC of station contracts (network affiliation contracts only).

The following rules are applicable to TV translator and low power TV stations:

(a) 47 CFR part 5—Experimental authorizations.

(b) 47 CFR 73.658—Affiliation agreements and network program practices; territorial exclusivity in non-network program arrangements.

(c) 47 CFR part 11—Emergency Alert System (for low power TV stations locally originating

programming as defined by § 74.701(h)).

~~(d) 47 CFR 73.1030— Notifications concerning interference to radio astronomy, research, and receiving installations.~~

~~(e) 47 CFR 73.1206— Broadcast of telephone conversations.~~

~~(f) 47 CFR 73.1207— Rebroadcasts.~~

~~(g) 47 CFR 73.1208— Broadcast of taped, filmed, or recorded material.~~

~~(h) 47 CFR 73.1211— Broadcast of lottery information.~~

~~(i) 47 CFR 73.1212— Sponsorship identifications; list retention; related requirements.~~

~~(j) 47 CFR 73.1216— Licensee conducted contests.~~

~~(k) 47 CFR 73.1515— Special field test authorizations.~~

~~(l) 47 CFR 73.1615— Operation during modification of facilities.~~

~~(m) 47 CFR 73.1635— Special temporary authorizations (STA).~~

~~(n) 47 CFR 73.1650— International agreements.~~

~~(o) 47 CFR 73.1680— Emergency antennas.~~

~~(p) 47 CFR 73.1692— Reserved.~~

~~(q) 47 CFR 73.1940— Legally qualified candidates for public office.~~

~~(r) 47 CFR 73.2080— Equal employment opportunities (for low power TV stations only).~~

~~(s) 47 CFR 73.3500— Application and report forms.~~

~~(t) 47 CFR 73.3511— Applications required.~~

~~(u) 47 CFR 73.3512— Where to file; number of copies.~~

~~(v) 47 CFR 73.3513— Signing of applications.~~

~~(w) 47 CFR 73.3514— Content of applications.~~

~~(x) 47 CFR 73.3516— Specification of facilities.~~

~~(y) 47 CFR 73.3517— Contingent applications.~~

~~(z) 47 CFR 73.3518— Inconsistent or conflicting applications.~~

~~(aa) 47 CFR 73.3519— Repetitious applications.~~

~~(bb) 47 CFR 73.3521— Mutually exclusive applications for low power TV and TV translator stations.~~

- ~~(cc) 47 CFR 73.3522 — Amendment of applications.~~
- ~~(dd) 47 CFR 73.3525 — Agreements for removing application conflicts.~~
- ~~(ee) 47 CFR 73.3533 — Application for construction permit or modification of construction permit.~~
- ~~(ff) 47 CFR 73.3536 — Application for license to cover construction permit.~~
- ~~(gg) 47 CFR 73.3538(a)(1), (3), and (4) and (b) — Application to make changes in an existing station.~~
- ~~(hh) 47 CFR 73.3539 — Application for renewal of license.~~
- ~~(ii) 47 CFR 73.3540 — Application for voluntary assignment or transfer of control.~~
- ~~(jj) 47 CFR 73.3541 — Application for involuntary assignment of license or transfer of control.~~
- ~~(kk) 47 CFR 73.3542 — Application for emergency authorization.~~
- ~~(ll) 47 CFR 73.3544 — Application to obtain a modified station license.~~
- ~~(mm) 47 CFR 73.3545 — Application for permit to deliver programs to foreign stations.~~
- ~~(nn) 47 CFR 73.3550 — Requests for new or modified call sign assignments.~~
- ~~(oo) 47 CFR 73.3561 — Staff consideration of applications requiring Commission action.~~
- ~~(pp) 47 CFR 73.3562 — Staff consideration of applications not requiring action by the Commission.~~
- ~~(qq) 47 CFR 73.3564 — Acceptance of applications.~~
- ~~(rr) 47 CFR 73.3566 — Defective applications.~~
- ~~(ss) 47 CFR 73.3568 — Dismissal of applications.~~
- ~~(tt) 47 CFR 73.3572 — Processing of TV broadcast, low power TV, and TV translator station applications.~~
- ~~(uu) 47 CFR 73.3580 — Local public notice of filing of broadcast applications.~~
- ~~(vv) 47 CFR 73.3584 — Petitions to deny.~~
- ~~(ww) 47 CFR 73.3587 — Informal objections.~~
- ~~(xx) 47 CFR 73.3591 — Grants without hearing.~~
- ~~(yy) 47 CFR 73.3593 — Designation for hearing.~~
- ~~(zz) 47 CFR 73.3594 — Local public notice of designation for hearing.~~
- ~~(aaa) 47 CFR 73.3597 — Procedures on transfer and assignment applications.~~
- ~~(bbb) 47 CFR 73.3598 — Period of construction.~~

~~(ccc) 47 CFR 73.3601—Simultaneous modification and renewal of license.~~

~~(ddd) 47 CFR 73.3603—Special waiver procedure relative to applications.~~

~~(eee) 47 CFR 73.3612—Annual employment report (for low power TV stations only).~~

~~(fff) 47 CFR 73.3613—Availability to FCC of station contracts (network affiliation contracts for low power TV stations only).~~

25. Section 74.781 is amended by revising paragraph (c) to read as follows:

§ 74.781 – Station records.

* * * * *

(c) **LPTV stations affiliated with a top-four TV network (ABC, CBS, NBC, or Fox) must maintain an OPIF consistent with § 73.3526 of this Chapter. For LPTV records in this section not required to be included in OPIF and for translator stations,** ~~the~~ station records shall be maintained for **public** inspection at a residence, office, or public building, place of business, or other suitable place, in one of the communities of license of the **LPTV** or translator, except that the station records of a translator licensed to the licensee of the primary station may be kept at the same place where the primary station records are kept. The station records shall **also** be made available upon request to any authorized representative of the Commission.

* * * * *

26. Section 74.783 is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 74.783 – Station identification.

(a) Each low power TV station as defined by § 74.701(~~b~~**f**) must transmit its station identification using one of the following methods:

(a)(1) When originating programming, as defined by § 74.701(~~g~~**h**), a low power TV station may use the station identification procedures given in § 73.1201 of this chapter on its primary stream. Other streams may use the method in paragraph (a)(2) of this section. The identification procedures given in the remainder of this paragraph are to be used at any time the station is not originating programming; or

* * * * *

27. Section 74.784 is amended by revising paragraph (e) to read as follows:

§ 74.784 – Rebroadcasts.

* * * * *

(e) The provisions of § 73.1207 of part 73 of this chapter apply to low power TV stations in transmitting any material during periods of **local program** origination obtained from the transmissions of any other type of station.

* * * * *

28. Section 74.787 is amended by:
- a. Revising paragraph (a)(1);
 - b. Adding paragraphs (a)(1)(i) through (iii);
 - c. Revising paragraph (a)(2);
 - d. Adding paragraphs (a)(2)(i) through (ii);
 - e. Revising paragraph (a)(4);
 - f. Adding paragraphs (a)(4)(i) through (vi); and
 - g. Revising paragraph (b)(1)(iii)

The revisions read as follows:

§ 74.787 – Licensing.

(a)(1) ~~[Reserved]~~ **Community coverage requirements.**

(i) A low power TV or TV translator station’s protected contour (see § 74.792) is required to overlap with at least a portion of its community of license.

(ii) To change a low power TV or TV translator station’s community of license, a modification of license must be filed specifying the new community and including an exhibit indicating that the protected contour of the facility specified in the license to cover overlaps with at least a portion of the proposed community of license. A station may change its community of license no more than once every 12 months.

(iii) For purposes of determining whether a community of license’s boundary overlaps with a station’s protected service contour, an applicant shall use the legal boundary of the community as may be designated by any federal, state, local, or tribal governmental entity.

(2) ~~[Reserved]~~ **Conversion between low power TV and TV translator.**

(i) A TV translator station may convert to a low power TV station by filing a modification of license requesting the conversion. The station’s call sign must be modified to one consistent with § 74.791(c) after converting to a low power TV station.

(ii) A low power TV station may convert to a TV translator station by filing a modification of license requesting the conversion. It shall specify the facility ID and call sign of the station(s) to be translated in its filing. The station’s call sign will be modified to one consistent with § 74.791(b) after converting to a TV translator station.

* * * * *

(4) Displacement applications. ~~A low power television, television translator, or DRT or DTDRT station which is causing or receiving interference or is predicted to cause or receive interference to or from an authorized TV broadcast station or allotment or other protected station or service, may at any time file a displacement relief application for change in channel, together with technical modifications that are necessary to avoid interference or continue serving the station's protected service area, provided the proposed transmitter site is not located more than 30 miles from the reference coordinates of the existing station's community of license. See § 76.53 of this chapter.~~

(i) Stations eligible to file displacement applications must meet at least one of the following requirements:

(A) Cause actual interference at multiple locations within a TV broadcast station's noise-limited service contour (See § 73.619(c)). If the interference is within the community of license of the TV broadcast station, then a single report of interference is sufficient for displacement.

(B) Cause predicted interference beyond the amount specified in § 74.792(e) with respect to a TV broadcast station, allotment, or other protected station or service, except if such interference has been previously accepted.

(C) Receive predicted interference beyond the amount specified in § 74.792(h) with respect to a TV broadcast station, allotment, or other protected station or service, except if such interference has been previously accepted.

(D) Cause interference to the input channel of a TV translator, DRT, or DTDRT station either located at the same or a nearby location as the existing low power TV, TV translator, DRT, or DTDRT operation.

(E) Cause interference to land mobile operations such that it must otherwise cease operations consistent with § 74.703(e).

(F) Is predicted to cause or receive interference to or from an authorized TV broadcast station or allotment with respect to protected foreign stations.

(ii) In the event a channel substitution in the Table of TV Allotments is the cause of a station's displacement, the displacement permit may not be granted prior to the grant of the construction permit of the station which requested the channel substitution. Further, a displaced station may only file an application for displacement relief after the channel substitution is final.

(iii) Eligible stations may file a displacement relief application shall be filed on FCC Form 2100, Schedule C, and will be considered a minor change and will be placed on public notice for a period of not less than 30 days to permit the filing of petitions to deny. for change in channel at any time, together with technical modifications that are necessary to avoid interference or continue serving the station's protected service area. The application should indicate the specific cause of displacement from paragraph (i) of this section. Such applications are treated as minor modifications and must be consistent with paragraph (b) of this section.

(iv) Displacement relief These applications will not be subject to the filing of competing applications.

(v) Where a displacement relief application for a low power television or television translator station becomes mutually exclusive with the application(s) for new low power television or television translator stations, or with other non-displacement relief applications for facilities modifications of low power television or television translator stations, priority will be afforded to the displacement application for the low power television or television translator station to the exclusion of other applications, except as otherwise specified with respect to DRTs and DTDRTs in paragraph (a)(5)(iii).

(vi) Mutually exclusive displacement relief applications for low power television and television translator stations shall be resolved via the Commission's part 1 and broadcast competitive bidding rules, §§ 1.2100 through 1.2199, and 73.5000 through 73.5009 of this chapter. Such applicants shall be afforded an opportunity to submit settlements and engineering solutions to resolve mutual exclusivity pursuant to § 73.5002(d) of this chapter.

* * * * *

(b)(1)(iii): Any change in transmitting antenna location of greater than ~~30 miles (48.3 kilometers)~~ from the ~~reference~~ coordinates of the existing ~~station's~~ antenna location.

* * * * *

29. Section 74.790 is amended by revising paragraph (g)(2) and adding paragraph (p) to read as follows:

§ 74.790 - Permissible service of TV translator and LPTV stations.

* * * * *

(g)(2) For the origination of programming and commercial matter as defined in § 74.701(~~g~~).

* * * * *

(p) No broadcast television stations are permitted to operate on channels above 36.

* * * * *

30. Section 74.791 is amending by revising paragraphs (a) through (c) to read as follows:

§ 74.791 Call signs.

(a) ***New ~~Low power and television translator stations.~~*** Call signs for new low power television and television translator stations will be made up of a prefix consisting of the initial letter K or W followed by the channel number assigned to the station and two additional letters and a suffix consisting of the letters ~~–D~~, **consistent with paragraph (d) of this section. Prior to filing a license to cover, a new low power television station must modify its call sign to be consistent with the requirements of paragraph (c) of this section.**

(b) ***Television translator stations.*** Call signs for ~~digital~~ television translator stations will be made up of a prefix consisting of the initial letter K or W followed by the channel number assigned to the station and two additional letters and a suffix consisting of the letter ~~–D~~, **consistent with paragraph (d) of this section.**

(c) ***Low power television stations and Class A television stations.*** Low power television and Class A television stations **will be made up of** ~~may be assigned~~ a call sign with a four-letter prefix pursuant to § 73.3550 of this chapter **along with a two-letter suffix.** Low power stations ~~with four letter prefixes~~ will be assigned the suffix ~~–LD~~ and ~~digital~~ Class A stations ~~with four letter prefixes~~ will be assigned the suffix ~~–CD~~.

* * * * *

31. Section 74.793 is amended by revising paragraph (b) and adding paragraphs (i) through (j) to read as follows:

§ 74.793 – Low power TV and TV translator station protection of broadcast stations.

* * * * *

(b) Except as provided in this section, interference prediction analysis is based on the interference thresholds (D/U signal strength ratios) and other criteria and methods specified in § 73.620 of this chapter. **The 2 km cell size specified in § 73.620(b) is not permitted for Class A, LPTV, TV translator, DRT, and DTDRT stations, and if not specified in the application, the 1 km cell size will be assumed.**

* * * * *

(i) LPTV, TV translator, DRT, and DTDRT stations may negotiate interference consent agreements consistent with §§ 73.620(e) and 73.6022.

(j) **If an existing authorization exceeds the interference thresholds consistent with paragraphs (g) or (h) of this section, when filing a non-displacement minor modification it may create interference up to but not exceeding the level previously authorized. In determining this level, the proposal shall use the same cell size and path profile increment in showing both the existing and proposed interference. If the proposal is subject to a formal interference agreement, that agreement must be included as an exhibit to the application.**

32. Section 74.794 is amended by revising paragraph (a)(1) to read as follows:

§ 74.794 – Digital Emissions.

(a) * * *

(1) An applicant for an LPTV or TV translator station construction permit shall specify that the station will be constructed to confine out-of-channel emissions within one of the following emission masks: Simple, stringent, or full service. **Stations proposing new or modified operation on channel 14 shall specify either the stringent or full service emission mask.**

* * * * *

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities by the policies and rules proposed in the *Notice of Proposed Rulemaking (NPRM)*. 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 in the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. In the *NPRM*, the Commission seeks comment on a number of proposals concerning changes to its rules and policies for the Low Power Television Service (LPTV Service). The LPTV Service includes low power television (LPTV), television translator (TV translator) and Class A television stations. The Commission believes now is an appropriate time to evaluate changes to its rules and policies in order to ensure that stations in the LPTV Service continue to flourish and serve the public interest of providing local television service to unserved or underserved viewers.

3. The Commission seeks comment on whether it should update its recordkeeping requirements to require LPTV stations affiliated with a top-four national television network (ABC, CBS, NBC, or Fox) to comply with the same online public inspection file (OPIF) requirements that apply to full power and Class A television stations. The Commission seeks comment on whether to include other LPTV network affiliates in the requirement to maintain an OPIF or, rather than tying any OPIF requirement for LPTV stations to network affiliation, or whether we should instead apply the OPIF requirement to the top-four LPTV stations in each market based on the Nielsen ratings. The Commission propose to update certain broadcasting rules that are applicable to all LPTV stations to identify more clearly where records can be accessed.

4. The *NPRM* also proposes changes to the Commission's rules and policies to help stations in the LPTV Service to be better prepared for future operations and enhance the LPTV Service overall. Many of the proposals would also affect Class A television (Class A) stations, therefore, comment is also sought from these stations. To resolve certain rule uncertainties and ensure that Class A and LPTV/TV translator stations are operating to their fullest potential and that licensees are not warehousing spectrum, the Commission proposes and seeks comment on a number of proposals including whether to:

- Require certain LPTV stations to maintain an online public inspection file.
- Adopt procedures for certain LPTV stations to establish an online public inspection file.
- Specify in our rules that public inspection and political broadcasting requirements are applicable to all LPTV stations.
- Make other changes to Section 73.3526 of our rules to correct cross references and other inaccuracies relating to stations in the LPTV Service and commercial radio and TV stations

¹ 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). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (CWAAA).

² See 5 U.S.C. § 603(a).

³ See *id.*

and establish new reporting requirements for Class A and LPTV stations.

- Amend the method for calculating the maximum distance that a displaced or channel sharing station may move under the LPTV/TV translator displacement rule.
- Revise the LPTV/TV translator minor change rule to clarify the maximum distance that Class A and LPTV/TV translator stations may move.
- Require that Class A and LPTV/TV translator stations specify a community of license (COL) within their station's contour.
- Adopt minimum operating and defined minimum video program requirements for LPTV stations.
- Require that LPTV/TV translator stations seek authority to change designation between LPTV and TV translator status and require Class A and LPTV/TV translator stations to maintain a call sign consistent with their class of service.
- Require use of a "stringent" or "full-service" emission mask for channel 14 Class A and LPTV/TV translator stations to prevent interference to Land Mobile Radio (LMR) stations.
- Prohibit LPTV/TV translator station operations above TV channel 36.
- Remove the 30 day public notice comment period for displacement applications and clarify when an LPTV/TV translator station displaced by a full power station's channel substitution may apply for displacement.
- Clarify the existing displacement rule and interference thresholds for actual and predicted interference, and amend the definition of displacement to include displacement by LMR stations; by protected television facilities in Canada and Mexico; and due to interference to TV translator input channels.
- Codify other rule clarifications consistent with precedent, including the use of emission masks at Distributed Transmission System (DTS) transmitter sites; the maximum grid resolution permitted with interference analyses; and application of the part 73 "program test authority" rule to LPTV/TV translator stations.
- Remove duplicate definitions and re-letter the definitions remaining in the part 74 rules, and make other editorial, non-substantive corrections to the part 11, 73, and 74 rules.

B. Legal Basis

5. The proposed action is authorized pursuant to sections 1, 2, 4(i), 4(j), 303, 307, 309, 311, 312, and 315 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 303, 307, 309, 311, 312, 315.

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

6. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵ In addition, the term "small business" has the

⁴ 5 U.S.C. § 603(b)(3).

⁵ *Id.* § 601(6).

same meaning as the term “small business concern” under the Small Business Act.⁶ 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.⁷ Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

7. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.⁸ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.⁹ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.¹⁰

8. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹¹ The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹² Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.¹³

9. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special

⁶ *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in 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.” 5 U.S.C. § 601(3).

⁷ 15 U.S.C. § 632.

⁸ 5 U.S.C. § 601(3)-(6).

⁹ See SBA, Office of Advocacy, “What’s New With Small Business?,” <https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf> (Mar. 2023).

¹⁰ *Id.*

¹¹ 5 U.S.C. § 601(4).

¹² The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹³ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2022 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (71,897), Region 2-Mid-Atlantic and Great Lakes Areas (197,296), and Region 3-Gulf Coast and Pacific Coast Areas (260,447) that includes the continental U.S., Alaska, and Hawaii. This data includes information for Puerto Rico (469).

districts, with a population of less than fifty thousand.”¹⁴ U.S. Census Bureau data from the 2022 Census of Governments¹⁵ indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁶ Of this number, there were 36,845 general purpose governments (county,¹⁷ municipal, and town or township¹⁸) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts¹⁹) with enrollment populations of less than 50,000.²⁰ Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of “small governmental jurisdictions.”²¹

10. *Television Broadcasting.* This industry is comprised of “establishments primarily engaged in broadcasting images together with sound.”²² These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.²³ These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having \$41.5 million or less in annual receipts as small.²⁴ 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the

¹⁴ 5 U.S.C. § 601(5).

¹⁵ 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. *See also* Census of Governments, <https://www.census.gov/programs-surveys/economic-census/year/2022/about.html>.

¹⁶ *See* U.S. Census Bureau, 2022 Census of Governments – Organization Table 2. Local Governments by Type and State: 2022 [CG2200ORG02], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). *See also* tbl.2. CG2200ORG02 Table Notes Local Governments by Type and State 2022.

¹⁷ *See id.* at tbl.5. County Governments by Population-Size Group and State: 2022 [CG2200ORG05], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 2,097 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

¹⁸ *See id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2022 [CG2200ORG06], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 18,693 municipal and 16,055 town and township governments with populations less than 50,000.

¹⁹ *See id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2022 [CG2200ORG10], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 11,879 independent school districts with enrollment populations less than 50,000. *See also* tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2022 [CG2200ORG04], CG2200ORG04 Table Notes Special Purpose Local Governments by State Census Years 1942 to 2022.

²⁰ While the special purpose governments category also includes local special district governments, the 2022 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²¹ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,845) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (11,879), from the 2022 Census of Governments - Organizations tbls. 5, 6 & 10.

²² *See* U.S. Census Bureau, 2017 NAICS Definition, “515120 Television Broadcasting,” <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

²³ *Id.*

²⁴ *See* 13 CFR § 121.201, NAICS Code 515120 (as of 10/1/22 NAICS Code 516120).

entire year.²⁵ Of that number, 657 firms had revenue of less than \$25,000,000.²⁶ Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

11. As of March 31, 2024, there were 1,382 licensed commercial television stations.²⁷ Of this total, 1,263 stations (or 91.4%) had revenues of \$41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on April 4, 2024, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of March 31, 2024, there were 383 licensed noncommercial educational (NCE) television stations, 379 Class A TV stations, 1,829 LPTV stations and 3,118 TV translator stations.²⁸ The Commission, however, does not compile and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

12. The *NPRM* proposes new reporting, recordkeeping, and other compliance requirements for Class A, LPTV and TV translator stations, many of which include small entities. Although, the Commission cannot, at present, determine whether small entities will have to hire professionals to implement and comply with the *NPRM*'s proposed requirements, nor can it quantify the cost of compliance for small entities, we expect that the approaches we propose will have minimal cost implications for impacted entities because many of these requirements are part of existing reporting processes for these entities.

13. The proposed changes to our rules and policies are designed to ensure that LPTV service continues to serve the public interest. This includes updates to our recordkeeping requirements for LPTV stations that will centralize those records in an online public inspection file (OPIF) to make that information more easily accessible to the public while, at the same time, minimizing existing burdens associated with compliance. The *NPRM* seeks comment on whether to require that licensees of LPTV stations affiliated with a top-four TV network comply with section 73.3526 of the Commission's rules, which would require them to maintain certain records in the Commission's OPIF. We also invite comment on whether we should include other LPTV network affiliates in the requirement to maintain an OPIF. In addition, rather than tying any OPIF requirement for LPTV stations to network affiliation, we invite comment on whether we should instead apply the OPIF requirement to the top-four LPTV stations in each market based on the Nielsen ratings. Transitioning these LPTV stations to the online public file would improve public access to certain station records.

14. The *NPRM* also proposes to update the list of political programming rules applicable to LPTV stations to align with existing and longstanding statutory requirements, and to revise section

²⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515120, <https://data.census.gov/cedsci/table?y=2017&n=515120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

²⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

²⁷ *Broadcast Station Totals as of March 31, 2024*, Public Notice, DA 24-323 (rel. Apr. 4, 2024) (*April 2024 Broadcast Station Totals PN*), <https://docs.fcc.gov/public/attachments/DA-24-323A1.pdf>.

²⁸ *Id.*

74.781 of our rules to require that LPTV stations without an OPIF requirement maintain documents for public inspection. In addition, we propose to make other changes to section 73.3526 of our rules to correct cross references and other inaccuracies, clarify existing requirements, establish a filing frequency for Class A stations to certify they have met their ongoing eligibility requirements, and require Class A and LPTV stations to disclose time brokerage agreements (TBAs) and joint service agreements (JSAs).

15. We propose requiring that LPTV and TV translator stations file an application for modification of license in order to change their community of license. Existing FCC Forms 2100 Schedule D (LPTV/TV translator) and F (Class A) will be used for this proposed requirement and no changes to the Forms are anticipated except for the burden estimates for the existing collections for these Forms. We also propose that LPTV/TV translator stations certify in applications for minor change or license that they are in compliance with any minimum operating requirements adopted in this proceeding. Existing FCC Form 2100 Schedule C and D would be modified and used for this requirement.

16. The *NPRM* proposes to require that LPTV/TV translator stations that seek to change their designation from LPTV to TV translator and vice versa, be required to seek formal authority to make this change. Existing FCC Form 2100 Schedule D would be used for this proposed requirement and no changes to the Form are anticipated except for the burden estimates for the existing collection for this Form. Finally, the *NPRM* proposes minimum operating hours of no less than 14 hours per week for LPTV stations.

17. The *NPRM* also proposes minimum operating hours of no less than 14 hours per week for LPTV stations. We anticipate the information we receive in comments including where requested, cost and benefit analyses, will help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from the proposals and inquiries we make in the *NPRM*.

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

18. The RFA requires an agency to describe any significant, specifically small business, 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 and reporting requirements under the rule for such 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.”²⁹

19. The Commission proposes a number of alternatives that may have a significant impact on small entities. The *NPRM* seeks comment on whether to require LPTV stations affiliated with a top-four TV network to comply with section 73.3526 of the Commission’s rules, which requires stations to maintain certain records for public inspection in the Commission’s OPIF database. By limiting the proposal to LPTV stations affiliated with a top-four TV network, this approach would limit this obligation to a smaller number of LPTV stations that have widely-viewed programming and are therefore likely to have greater resources. Alternatively, the *NPRM* asks whether we should include other LPTV network affiliates in the requirement to maintain an OPIF or, rather than tying any OPIF requirement for LPTV stations to network affiliation, whether we should instead apply the OPIF requirement to the top-four LPTV stations in each market based on the Nielsen ratings.

20. If we were to require certain LPTV stations to comply with section 73.3526, the *NPRM* proposes to take similar measures to reduce the burden on these LPTV stations that the Commission took when it transitioned full power and Class A TV stations and other media entities to OPIF. Specifically, we propose to require LPTV stations to upload only those items required to be in the public file but not

²⁹ 5 U.S.C. § 603(c)(1)-(c)(4).

otherwise filed with the Commission or available on the Commission's website. Any document or information required to be kept in the public file and that is required to be filed with the Commission electronically would be imported to the online public file and updated by the Commission. In addition, if we require certain LPTV stations to maintain records in OPIF, instead of paper file, LPTV stations may have initial costs, but the effort by small stations and their related costs over time will be minimized by exempting existing political file material from the online file requirement and by requiring only that political file documents be uploaded on a going-forward basis, similar to our approach with respect to other entities that have already transitioned to OPIF. Additionally, the *NPRM* recommends that LPTV stations be required to operate not less than 14 hours per calendar week instead of requiring the daily operational requirements of commercial full power stations, thereby allowing the flexibility needed for LPTV stations without traditional hours to serve their viewers.

21. The remaining alternatives proposed by the Commission in the *NPRM* were considered to be the least costly and/or minimally burdensome for small and other entities impacted by the rules. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments filed in response to the *NPRM*.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule

22. None.