

APPENDIX B

**Grandfathered Superpowered Stations Operating Within the Reserved Band as of
December 31, 1999**

Call Sign	Facility ID	Community of License	Class	Class for LPFM Protection Determination ¹
WARY	71709	Valhalla, NY	D	A
WCEB	13942	Corning, NY	D	A
WSIA	65557	Staten Island, NY	D	A
WGEV	23619	Beaver Falls, PA	D	A
WFWM	22791	Frostburg, MD	B1	B
KCEP	50390	Las Vegas, NV	C2	C1
KFLQ	20637	Albuquerque, NM	C	C
WAMC	70849	Albany, NY	B	C1
WBNI-FM	53745	Fort Wayne, IN	B	C1
WDTR-FM	6056	Detroit	B	C1
WERN	63030	Madison, WI	B	C1
WETA	65669	Washington, DC	B	C1
WGBH	70510	Boston, MA	B	C1
WHAD	63901	Delafield, WI	B	C1
WILL-FM	68940	Urbana, IL	B	C1
WKAR-FM	41683	East Lansing, MI	B	C1
WMBI-FM	66063	Chicago, IL	B	C1
WRTI	65190	Philadelphia, PA	B	C1
WUOM	66319	Ann Arbor, MI	B	C1
KPFK	51252	Los Angeles, CA	B	C
KQED-FM	35501	San Francisco, CA	B	C
KUSC	69318	Los Angeles, CA	B	C
WIPR-FM	53860	San Juan, PR	B	C

¹ See ¶ 70.

APPENDIX C

FINAL REGULATORY FLEXIBILITY ACT ANALYSIS

As required by the Regulatory Flexibility Act (RFA),² an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking (Notice)*.³ The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. No comments were received in response to the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.⁴

Need for and Objectives of the *Report and Order*

The Commission received petitions for rulemaking asking for the creation of a low power radio service. Because they raised similar or identical issues, the Commission coordinated its responses to them. The Commission released public notices of its receipt of three of the proposals and invited public comment on them. In response to significant public support, the Commission released the *Notice* to propose a new, low power FM service.

In the *Report and Order*, the Commission is adopting a 100-watt class (LP100) and a 10-watt class (LP10). Because of the predicted lower construction and operational costs of LPFM stations as opposed to full power facilities, we expect that small entities would be expected to have few economic obstacles to becoming LPFM licensees. Therefore, this new service may serve as a vehicle for small entities and under-represented groups (including women and minorities) to gain valuable broadcast experience and to add their voices to their local communities.

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

No comments were received in response to the IRFA.

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

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

² See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

³ Creation of a Low Power Radio Service, MM Docket No. 99-25, *Notice of Proposed Rulemaking*, 14 FCC Rcd 2471, 2530-2534 (1999) (*Notice*).

⁴ See 5 U.S.C. § 604.

⁵ 5 U.S.C. § 603(b)(3).

⁶ 5 U.S.C. § 601(6).

concern" under the Small Business Act.⁷ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁸ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."⁹ Nationwide, as of 1992, there were approximately 275,801 small organizations.¹⁰ "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."¹¹ The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 per cent) are small entities.

The Small Business Administration defines a radio broadcasting station that has \$5 million or less in annual receipts as a small business.¹² A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.¹³ Included in this industry are commercial, religious, educational, and other radio stations.¹⁴ The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than \$5 million in revenue in 1992. Official Commission records indicate that 11,334 individual radio stations were operating in 1992.¹⁵ As of December 31, 1998, Commission records indicate that 12,615 radio stations were operating, of which 7,832 were FM stations.¹⁶

The rules will apply to a new category of FM radio broadcasting service. It is not known how many entities may seek to obtain a low power radio license. Nor do we know how many of these entities will be small entities. We note, however, that in the year since we issued the *Notice*, the Commission's LPFM website has received approximately 100,000 hits, demonstrating the interest of individuals and groups in

⁷ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, 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).

⁸ Small Business Act, 15 U.S.C. § 632 (1996).

⁹ 5 U.S.C. § 601(4).

¹⁰ 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

¹¹ 5 U.S.C. § 601(4).

¹² 13 C.F.R. § 121.201, SIC code 4832.

¹³ 1992 Census, Series UC92-S-1, at Appendix A-9.

¹⁴ *Id.* The definition used by the SBA also includes radio broadcasting stations which also produce radio program materials. Separate establishments that are primarily engaged in producing radio program material are classified under another SIC number, however. *Id.*

¹⁵ FCC News Release, No. 31327 (Jan. 13, 1993).

¹⁶ FCC News Release, "Broadcast Station Totals as of September 30, 1999" (Nov. 22, 1999).

operating such a facility. In addition, we expect that, due to the small size of low power FM stations, small entities would generally have a greater interest than large ones in acquiring them.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Commission is creating a new broadcasting service that may allow hundreds or thousands of small entities to become broadcast licensees for the first time. This endeavor will require the collection of information for the purposes of processing applications for (among other things) initial construction permits, assignments and transfers, and renewals. We will also require lower power radio stations to comply with some of the reporting, recordkeeping, and other compliance requirements as full power radio broadcasters.

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

The RFA requires agencies to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹⁷

The LP100 and LP10 services are likely create significant opportunities for new small businesses. In addition, the Commission has taken steps to minimize the impact on existing small broadcasters.

Creating New Opportunities for Small Businesses. The *Report and Order* adopts a number of rules designed to help small businesses obtain and retain LP100 and LP10 licenses. These include ownership rules, and exemptions from mandatory electronic filing and main studio requirements.

The *Report and Order* adopts ownership rules to assist small entities to acquire or construct LPFM stations. Parties with attributable interests in any full power broadcast facilities are not eligible to have any ownership interest in any low power radio stations; this prevents large group owners (or even large single-station owners) from constructing and operating LPFM facilities that might otherwise be available to small entities.¹⁸ The local and national ownership restrictions of one station per community and, initially, one station, and ultimately, 10 stations, nationwide are intended to ensure that ample LPFM stations are available for small entities.¹⁹ However, the ownership rules also prohibit small entity full power broadcasters from acquiring LPFM licenses.

The *Report and Order* also modifies the application of some of our programming and service requirements for LPFM stations. LPFM stations are not required to maintain a public file, although they must maintain a political file.²⁰ They also need not create quarterly issues and programming lists or

¹⁷ 5 U.S.C. § 603(c)(1)-(4).

¹⁸ See *Report and Order* at Part II.D.1.

¹⁹ See *Report and Order* at Parts II.D.3, II.D.4.

²⁰ See *Report and Order* at Part II.G.3, II.G.6.

maintain a main studio.²¹ In addition, while full power and LPFM stations both must participate in the Emergency Alert System (EAS) and have decoding equipment, LPFM stations need not purchase encoding equipment.²² In addition, LPFM licensees need not comply with any EEO program requirements we adopt in our pending rulemaking proceeding. These exemptions from and modifications of the application of the Commission's programming and service requirements to LPFM stations will reduce administrative burdens and costs for small business licensees.

The *Report and Order* also adopts filing requirements that should help small businesses. Although the *Notice* proposed to mandate electronic filing for LPFM stations, the *Report and Order* declined to do so for the first round of LP100 applications.²³ The Commission made this decision because it recognized that there might be a disparity between applicants for LP100 licenses in terms of computer resources and skills. This result should help small businesses without more advanced technological resources to participate in the LP100 application process. The *Report and Order* adopts a window filing process, as opposed to a first-come, first-served process; some commenters claimed that the latter process would favor applicants with superior financial and technical resources.²⁴

Minimizing Impact on Existing Small Business Broadcast Stations. The *Report and Order* has also adopted an alternative that will minimize the impact on existing small business broadcast stations. LP100 and LP10 stations will be noncommercial, educational stations, and so will not compete with small business commercial broadcasters for advertising revenue.

Report to Congress

The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. § 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register. *See* 5 U.S.C. § 604(b).

²¹ *See id.*

²² *See Report and Order* at Part II.G.8.

²³ *See Report and Order* at Part II.F.1.

²⁴ *See Report and Order* at Part II.F.2.