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

In the Matter of	)	
	)	
Creation of a Low Power Radio Service	)	MM Docket No. 99-25
	)	
Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations	)	MB Docket No. 07-172, RM 11338
	)	

FIFTH ORDER ON RECONSIDERATION AND SIXTH REPORT AND ORDER

Adopted: November 30, 2012 **Released: December 4, 2012**

By the Commission: Chairman Genachowski and Commissioners McDowell, Clyburn, Rosenworcel and Pai issuing separate statements.

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I. INTRODUCTION

1. In this *Fifth Order on Reconsideration and Sixth Report and Order*, we take various actions to implement the Local Community Radio Act of 2010 ("LCRA"),[1] safeguard the integrity of our FM translator licensing procedures and modify licensing and service rules for the low power FM ("LPFM") service. In the *Fifth Order on Reconsideration* we affirm with slight modifications and clarifications the comprehensive plan for licensing FM translators and LPFM stations adopted in the *Fourth Report and Order*.[2] In response to petitions for reconsideration, we modify the national cap to allow each applicant to pursue up to 70 applications, so long as no more than 50 of them are in the Appendix A markets. We also increase the per-market cap for radio markets identified in Appendix A of the *Fourth Report and Order* to allow up to three applications for each market, subject to certain conditions. We also clarify the application of the per-market cap in those Appendix A markets with "embedded" markets. In the *Sixth Report and Order* we complete the implementation of the LCRA and make a number of additional changes to promote the localism and diversity goals of the LPFM service and a more sustainable community radio service. When effective, these orders will permit the Commission to move forward with the long-delayed processing of over 6,000 FM translator applications and establish a timeline for the opening of an LPFM window.

II. FIFTH ORDER ON RECONSIDERATION

A. Background

2. On July 12, 2011, the Commission released a *Third Further Notice of Proposed Rule Making*[3] in this proceeding, seeking comment on the impact of the LCRA on the procedures previously adopted to process the approximately 6,000 applications that remain pending from the 2003 FM non-reserved band translator window. There, the Commission tentatively concluded that those licensing procedures, which would limit each applicant to ten pending applications, would be inconsistent with the

[1] Pub. L. No. 111-371, 124 Stat. 4072 (2011).

[2] *Creation of a Low Power Radio Service and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Fourth Report and Order and Third Order on Reconsideration, 27 FCC Rcd 3364 (2012) ("*Fourth Report and Order*").

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

LCRA's goals.[4] We proposed to modify those procedures and instead adopt a market-specific translator application dismissal process, dismissing pending translator applications in identified spectrum-limited markets in order to preserve adequate LPFM licensing opportunities.[5] At the same time, we tentatively concluded that these new procedures would not be sufficient to address the potential for licensing abuses with respect to the thousands of pending translator applications.[6] Accordingly, we asked for comments on appropriate processing policies for those applications, including a potential national cap of 50-75 applications and a potential cap of one or a few applications in any particular market.[7]

3. The Commission released the *Fourth Report and Order* on March 19, 2012. The Commission affirmed its decision to reject the prior national cap of 10 translator applications per applicant.[8] It adopted a modified market-specific translator licensing scheme which incorporated a number of commenter proposals. To minimize the potential for speculative licensing conduct, the Commission established a national cap of 50 applications and a local cap of one application per applicant per market for the 156 Arbitron Metro markets identified in Appendix A of the *Fourth Report and Order*.[9]

1. Rationale for the Translator Application Caps

4. When the Commission opened the March 2003 filing window for Auction 83 FM translator applications, there were 3,818 licensed FM translators.[10] 13,377 translator applications were filed in that window – approximately three times as many applications as the number of FM translators licensed since 1970. From that group, 3,476 new authorizations were issued before the Commission's freeze on further processing of applications from that window took effect. Of those 3,476 authorizations, 926 (more than 25 percent) were never constructed and 1,358 (almost 40 percent) were assigned to a party other than the applicant. Although 97 percent of all filers filed fewer than 50 applications, the remaining three percent accounted for a total of 8,163 applications, representing 61 percent of the total. The two largest filers, commonly-owned Radio Assist Ministries, Inc. and Edgewater Broadcasting, Inc. (collectively, "RAM"), filed 4,219 applications and received 1,046 grants before the processing freeze took effect.[11] When we adopted the cap of ten applications in 2007, we noted that RAM had sought to assign more than 50 percent of the construction permits it had received and consummated more than 400 assignments of such permits.[12] We based the cap of ten applications on the need to preserve spectrum for future LPFM availability and the need to protect the integrity of our translator licensing process.[13]

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[4] The ten-application cap was adopted in *Creation of a Low Power Radio Service,* Third Report and Order and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 21912 (2007) ("*Third Report and Order*").

[5] *Third Further Notice*, 26 FCC Rcd at 9996-98 ¶ 25-30.

[6] *Id.* at 9999 ¶ 33.

[7] *Id.* at 9999 ¶ 34.

[8] *Fourth Report and Order*, 27 FCC Rcd at 3374 ¶ 12.

[9] *Id.* at 3390-92 ¶¶ 54-61.

[10] *Third Report and Order*, 22 FCC Rcd at 21933 ¶ 51. We first authorized FM translators in 1970. In the *Third Report and Order*, we noted that the historically modest demand for FM translators showed more growth in the 1990's. In September 1990, there were 1,847 licensed translators, but that number grew to 2,881 by December 1997. *Id.*

[11] *Third Report and Order*, 22 FCC Rcd at 21934 ¶ 54.

[12] *Id.* at 21934 ¶ 55.

[13] *Id.* at 21934-35 ¶ 55-56.

5. In the *Third Further Notice*, when we proposed to replace the cap of ten translator applications with a market-specific processing system, we tentatively concluded that such a processing system would not be sufficient to address the potential abuses in translator licensing and trafficking. We noted that the vast majority of applicants hold only a few applications, but the top 20 applicants collectively account for more than half of the pending applications. Similar imbalances exist in particular markets and regions. For instance, one applicant holds 24 of the 24 translator applications proposing operation within 20 kilometers of Houston's reference coordinates and 73 applications in Texas. Two applicants hold 66 of the 74 applications proposing service to the New York City radio market.[14]

6. We also described a number of factors that create an environment which promotes the acquisition of translator authorizations solely for the purpose of selling them. First, we expect that a substantial portion of the remaining translator grants will be made pursuant to our settlement (*i.e.*, non-auction) procedures. Second, translator construction permits may be sold without any limitation on price. Third, permittees are not required to construct or operate newly authorized facilities before they can sell their authorizations. Collectively, these factors created an incentive for speculative filings and trafficking in translator authorizations.[15] Such behavior damages the integrity of our licensing process, which assigns valuable spectrum rights to parties based on a system that gives priority to applications filed in one filing window over subsequent applications based on the assumption that the applications filed in the earlier window are filed in good faith by applicants that intend to construct and operate their proposed stations to serve the public.[16] The history of the Auction 83 translator applications strongly supports our view that speculative applications delay the processing of *bona fide* applications, thereby impeding efforts to bring new service to the public.[17] These speculative translator applications have also delayed the introduction of new LPFM service pursuant to our mandate under the LCRA to provide licensing opportunities for both LPFM and translator stations.[18]

7. The extraordinarily high number of applications filed in the Auction 83 window, particularly by certain applicants (both nationally and in certain markets), and the significant number of authorized stations that were either assigned to another party or never constructed are strong indicia of applications filed for speculative purposes (either for potential sale or to game the auction system) rather than a good faith intent to construct and operate the proposed stations.[19] Based on these concerns, we sought comment on whether a national cap of 50 or 75 applications would force filers with a large number of applications to concentrate on those proposals and markets where they have *bona fide* service plans. We also asked whether applicants should be limited to one or a few applications in a particular market,

[14] *Third Further Notice*, 26 FCC Rcd at 9999 ¶ 33 (the numbers above are updated from those that appear in the *Third Further Notice*).

[15] *Id.* at 9999 ¶ 34.

[16] *See Fourth Report and Order*, 27 FCC Rcd at 3391 n. 168; *Dutchess Communications Corp.*, Decision, 101 FCC 2d 243, 254 ¶ 16 (Rev. Bd. 1985) ("The Commission has carefully laid out an application process intended to assure fairness to all interested prospectants and expedition on behalf of all applicants and the public. *See* 47 CFR §73.3511 *et seq.* The first principle of that process is that those filing an application for a broadcast construction permit be *ready*, *willing* and *able*.").

[17] S*ee FM Application Processing*, Report and Order, 58 RR 2d 776, 779 ¶ 10 (1985) (blocking applications and speculative applications encumber and delay the processing of *bona fide* applications).

[18] *See Fourth Report and Order*, 27 FCC Rcd at 3367.

[19] Under the auction system, auctions only apply where there are mutually exclusive ("MX") applications. Filing multiple applications in a market, either by varying the proposed frequency or varying the proposed transmitter site, increases the odds of having a singleton application that will be granted without going to auction.

noting that such a restriction "could limit substantially the opportunity to warehouse and traffic in translator authorizations while promoting diversity goals."[20]

8. The *Fourth Report and Order* concluded that both a national cap and a per-market cap for the 156 Appendix A markets were appropriate to limit speculative licensing conduct and necessary to bolster the integrity of the remaining Auction 83 licensing. We stated that non-feeable application procedures, flexible auction rules, and flexible translator settlement and transfer/assignment rules "clearly have facilitated and encouraged the filing of speculative proposals. . . . While we recognize that high-volume filers did not violate our rules ("Rules"), these types of speculative filings are fundamentally at odds with the core Commission broadcast licensing policies and contrary to the public interest."[21]

9. The *Fourth Report and Order* rejected other potential anti-trafficking proposals offered by commenters, stating that application caps were the most administratively feasible solution for processing this large group of long-pending applications. We stated that we considered caps to be the only approach that would not only limit trafficking in translator authorizations but also fulfill our mandate under the LCRA to provide the fastest path to additional translator and LPFM licensing in areas where the need for additional service is greatest.[22]

10. We adopted a national cap of 50 additional translators per applicant.[23] We found that this cap, of itself, would affect no more than 20 of the approximately 646 total applicants in this group, and that this was a reasonable number of stations to construct and operate as proposed and would place restraints on trafficking of permits on the open market.[24] We also noted that there was some agreement on such a limit even among translator advocates.[25]

11. We also adopted a per-market cap of one application per market in the radio markets listed in Appendix A to the *Fourth Report and Order*, consisting of the top 150 Arbitron Metro markets (per the BIA Fall 2011 database, as defined in Appendix A) plus six additional markets where more than four translator applications are pending.[26] We noted that some applicants had filed dozens of applications for a particular market, when it was inconceivable that a single entity would construct and operate so many stations there. We concluded that such applications were clearly filed for speculative reasons or to skew our auction procedures. Given the volume of pending applications, we found that it was administratively infeasible to conduct a case-by-case assessment of these applications to determine whether they could satisfy our rule limiting the grant of additional translator authorizations to a party that can make a "showing of technical need for such additional stations" (the "Technical Need Rule").[27] Accordingly, we adopted a cap of one translator application per market in the Arbitron Metro markets listed in Appendix A to the *Fourth Report and Order*. For applications outside those markets, where only

[20] *Third Further Notice*, 26 FCC Rcd at 9999 ¶ 34.

[21] *Fourth Report and Order*, 27 FCC Rcd at 3390-91 ¶ 56 (footnote omitted).

[22] *Id.* at 3391 ¶ 57.

[23] As described above, many applicants received translator grants before we adopted a processing freeze. Thus, if an applicant had received 500 grants already, the cap would result in a potential total of 550 grants.

[24] *See Fourth Report and Order*, 27 FCC Rcd at 3391 ¶ 58. As indicated in the *Third Further Notice*, the cap of 50 forces high-volume filers to concentrate on the markets where they have the strongest aspirations to provide new service. *Third Further Notice*, 26 FCC Rcd at 9999 ¶ 34.

[25] *Fourth Report and Order*, 27 FCC Rcd at 3391 ¶ 58.

[26] *Id*. at 3385 ¶ 45, 3392 ¶ 59. In referring to the names and ranks of the Arbitron markets, we will refer to them as identified in Appendix A, which is based on the Fall 2011 Arbitron Metro markets.

[27] 47 C.F.R. § 74.1232(b); *see Fourth Report and Order*, 27 FCC Rcd at 3392 ¶ 59.

a small number of applications will require analysis, we decided to apply the Technical Need Rule on a case-by-case basis.[28]

12. Appendix A to the *Fourth Report and Order* lists several "embedded" radio markets that are part of a larger market also listed in Appendix A: (1) Nassau-Suffolk (Long Island), NY (Arbitron Metro market #18, embedded in the New York Arbitron Metro market); (2) Hudson Valley, NY (Arbitron Metro market #39, partially embedded in the New York Arbitron Metro market); (3) Middlesex-Somerset-Union, NJ (Arbitron Metro market #41, embedded in the New York Arbitron Metro market); (4) Monmouth-Ocean, NJ (Arbitron Metro market #53, partially embedded in the New York Arbitron Metro market); (5) Morristown, NJ (Arbitron Metro market # 117, embedded in the New York Arbitron Metro market); (6) Stamford-Norwalk, CT (Arbitron Metro market #148, embedded in the New York Arbitron Metro market); (7) San Jose, CA (Arbitron Metro market #37, embedded in the San Francisco Arbitron Metro market); (8) Santa Rosa, CA (Arbitron Metro market # 121, embedded in the San Francisco Arbitron Metro market); and (9) Fredericksburg, VA (Arbitron Metro market #147, partially embedded in the Washington, DC Arbitron Metro market). The *Fourth Report and Order* stated that the one-per-market cap would apply to all markets listed in Appendix A but did not explain how this cap would apply to the listed embedded markets.

13. In addition to those embedded markets, there are three more embedded markets that are not listed in Appendix A due to their smaller size: (1) New Bedford-Fall River, MA (Arbitron Metro market #180, embedded in the Providence-Warwick-Pawtucket, RI Arbitron Metro market); (2) Frederick, MD (Arbitron Metro market #195, embedded in the Washington, DC Arbitron Metro market); and (3) Manchester, NH (Arbitron Metro market #196, partially embedded in the Portsmouth-Dover-Rochester, NH Arbitron Metro market). The *Fourth Report and Order* did not explain whether applications filed in those embedded markets would be subject to the per-market cap imposed on the larger markets within which they are embedded.

2. Petitions for Reconsideration

14. Five petitions for reconsideration were filed following Federal Register publication of the *Fourth Report and Order*.[29] Educational Media Foundation ("EMF") filed a Petition for Reconsideration ("EMF Petition") seeking reconsideration as to both the national cap of 50 applications and the per-market cap of one application. The remaining petitions only addressed the latter cap.

15. EMF currently has 292 pending translator applications from the Auction 83 window. EMF received 259 translator grants from that window before we froze the processing of such applications.

16. EMF first contends that the Commission must clarify the definition of the term "radio market" as used in the *Fourth Report and Order*. EMF argues that the term could mean census-designated urban areas, metropolitan statistical areas, Arbitron Metro markets, or some definition connected to the "grids" used in determining whether markets are "spectrum limited" or not.[30] Additionally, EMF argues that both the national cap and the per-market cap are arbitrary and capricious. EMF argues that the Commission did not adequately explain the "abusive" licensing activity relating to Auction 83 filings and did not adequately explain why other "more direct" measures to combat speculation are not being used.[31] EMF also argues that the Commission did not adequately explain how the caps square with the Commission's own conclusion that the LCRA requires it to make available

[28] *Fourth Report and Order*, 27 FCC Rcd at 3392 ¶ 59.

[29] 77 Fed. Reg. 21002 (April 9, 2012).

[30] EMF Petition at 6.

[31] *Id.* at 8.

licensing opportunities for both translators and LPFM stations "in as many local communities as possible."[32]

17. Hope Christian Church of Marlton, Inc. ("Hope"), Bridgelight, LLC ("Bridgelight") and Calvary Chapel of the Finger Lakes, Inc. ("CCFL") (collectively, the "Joint Petitioners") filed a joint Petition for Partial Reconsideration ("Joint Petition") seeking reconsideration to revise the one-per-market cap to include a waiver process. Hope is the licensee of WVBV(FM), Medford Lakes, NJ (Philadelphia, PA Arbitron Metro market); WWFP(FM), Brigantine, NJ (Atlantic City-Cape May, NJ Arbitron Metro market); and WZBL(FM), Barnegat Light, NJ (Monmouth-Ocean, NJ embedded market). Hope has 46 pending translator applications from the Auction 83 window, of which 45 are in Appendix A markets and one is outside the Appendix A markets.[33] Hope received 21 translator grants before the processing freeze, primarily in the Philadelphia and Baltimore Arbitron Metro markets. Hope constructed all of those proposed stations. Bridgelight is the licensee of WRDR(FM), Freehold Township, NJ (Monmouth-Ocean, NJ embedded market); and WJUX(FM), Monticello, NY (outside the Appendix A markets). Bridgelight has 16 pending applications from the Auction 83 window.[34] Bridgelight received five translator grants before the processing freeze (primarily in the New York Arbitron Metro market), but assigned all of them to other parties. CCFL is the licensee of WZXV(FM), Palmyra, NY (Rochester, NY Arbitron Metro market). CCFL has 16 pending translator applications from the Auction 83 window, of which eight are in Appendix A markets (five in the Buffalo, NY Arbitron Metro market and three in the Rochester, NY Arbitron Metro market). CCFL received 14 translator grants before the processing freeze (primarily in the Buffalo and Rochester Arbitron Metro markets), but assigned five of those to other parties and cancelled another one.

18. The Joint Petition maintains that the one-per-market cap unfairly harms local and regional applicants that have filed applications in a limited number of markets for the purpose of reaching distant communities in geographically large markets. The Joint Petition argues that the one-per-market cap should be supplemented with a waiver process that allows for waivers (with no limit on the number of authorizations in a market) under three conditions: (1) the 60 dBu contour of the translator application cannot overlap the 60 dBu contour of any commonly-controlled application; (2) the application would not preclude a future LPFM application in the grid for the Appendix A market or at the proposed transmitter site; and (3) the applicant agrees to accept a condition on the construction permit that disallows sale of the authorization for a period of four years after the station commences operation.[35]

19. Conner Media, Inc. (together with the commonly-controlled Conner Media Corporation, "Conner") filed a Petition for Partial Reconsideration ("Conner Petition") of the *Fourth Report and Order*. Conner is the licensee of WAVQ(AM), Jacksonville, NC (Greenville-New Bern-Jacksonville, NC Arbitron Metro market). Conner states that it filed translator applications in five different locations to serve the Greenville-New Bern-Jacksonville, NC Arbitron Metro market, which comprises ten diverse counties. Conner expresses interest in assigning additional permits from its pending applications to other

[32] *Id.* at 7.

[33] Hope has the following applications affected by the one-per-market cap: (a) 24 applications in the Philadelphia Arbitron Metro market; (b) two applications in the Monmouth-Ocean, NJ embedded market; (c) five applications in the Wilmington, DE Arbitron Metro market; (d) three applications in the Harrisburg-Lebanon-Carlisle, PA Arbitron Metro market; (e) three applications in the York, PA Arbitron Metro market; and (f) four applications in the Atlantic City-Cape May, NJ Arbitron Metro market.

[34] Bridgelight has the following applications affected by the one-per-market cap: (a) six applications in the New York urban core market; (b) six applications in the Nassau-Suffolk, NY embedded market; and (c) four applications in the Middlesex-Somerset-Union, NJ embedded market.

[35] Joint Petition at 5-8.

AM broadcasters who would benefit from the nighttime service available on a translator.[36] Conner argues that any local translator cap should be per-community, not per-market.[37]

20. Western North Carolina Public Radio, Inc. ("WNC") is the licensee of noncommercial educational ("NCE") stations WCQS(FM), Asheville, NC; WFSQ(FM), Franklin, NC; and WYQS(FM), Mars Hill, NC (all in the Asheville, NC Arbitron Metro market). WNC filed a Petition for Reconsideration ("WNC Petition") arguing that its Arbitron Metro market, Asheville, NC, should not be included in Appendix A or, alternatively, that the community of Black Mountain, NC, should not be considered part of that market because it is separated by a mountain range from Asheville and therefore requires its own translator service. WNC notes that Asheville is the 159th Arbitron Metro market, but was included in Appendix A because more than four translator applications are pending in that market.[38]

21. Kyle Magrill ("Magrill") filed a Petition for Reconsideration ("Magrill Petition"). Magrill is a translator applicant under the corporate name of CircuitWerkes, Inc. and the d/b/a name of CircuitWerkes. Magrill has seven pending translator applications from the Auction 83 window in four Appendix A markets in Florida. Magrill received three translator grants before the processing freeze took effect. Magrill argues that the Commission did not propose per-market caps in the *Third Further Notice*, but instead called for processing all translator applications in non-spectrum limited markets.[39] Magrill argues that the number of translator sales has not been so high as to present a problem.[40] Magrill notes that many markets are geographically and ethnically diverse and also notes that HD channels have increased the need for multiple translators in certain locations.[41] Magrill argues that the per-market cap particularly hurts local service providers who did not exceed the national cap. Magrill argues that the cap should be revisited and at least eased in markets that are not spectrum limited.[42]

3. Responsive Pleadings

22. Prometheus Radio Project ("Prometheus") filed an Opposition ("Prometheus Opposition") to the petitions for reconsideration. Prometheus argues that the Commission properly defined the "market" for the one-per-market translator caps as the Arbitron Metro market.[43] Prometheus rejects Magrill's claim about lack of notice, noting that the Commission specifically asked for comments on whether translator applicants should be limited to one or a few applications in any particular market and that this material was published in the Federal Register.[44] Prometheus then argues that the caps will prevent speculation and preserve radio market diversity. Prometheus opposes any waiver process that would delay the LPFM application window.[45]

23. REC Networks ("REC") partially opposes the petitions for reconsideration.[46] REC supports the national cap of 50 applications, but believes the per-market cap may be overly restrictive.

[36] Conner Petition at 2-3.

[37] *Id.* at 4.

[38] WNC Petition at 2-3.

[39] Magrill Petition at 1.

[40] *Id.* at 2.

[41] *Id.*

[42] *Id.* at 3.

[43] Prometheus Opposition at 1-3.

[44] *Id.* at 3-5.

[45] *Id.* at 5-11. Prometheus argues that the Joint Petition's proposed waiver standard is overly broad.

[46] *See* REC's "Partial Opposition to Petitions for Reconsideration" ("REC Partial Opposition").

REC argues for adoption of a waiver standard that is more stringent than the one proposed in the Joint Petition. REC suggests the following additional criteria: (1) the applicant must accept a condition on its construction permit that for a four-year period after commencing operations, the translator must be commonly owned with the primary station and must rebroadcast the primary analog output of that station; (2) the 60 dBu contour of the translator application must not overlap (i) a 30 kilometer radius around the center of markets 1-20, (ii) a 20 kilometer radius around the center of spectrum limited markets 21-50, or (iii) a 10 kilometer radius around the center of spectrum limited markets 51-100; and (3) applications grantable under this waiver must also comply with the national cap of 50 applications.[47]

24. In reply comments, Conner, the Joint Petitioners and Magrill reiterate their prior positions.[48] Four Rivers Community Broadcasting Corporation filed a reply arguing for a waiver standard similar to the standard suggested by the Joint Petition.[49] One Ministries, Inc. and Life On The Way Communications, Inc. filed reply comments arguing for separation of embedded markets from the core market, particularly in the case of San Francisco, San Jose and Santa Rosa.[50]

B. Discussion

25. For the reasons explained below, we will grant the petitions for reconsideration in part and clarify the treatment of translator applications in embedded markets. We will modify the national cap to allow each applicant to pursue up to 70 applications, provided that no more than 50 of them are in the Appendix A markets. We will also modify the per-market cap from one translator application per market to three, subject to two conditions: (1) to avoid dismissal under the cap procedures, the 60 dBu contour of a translator application may not overlap the 60 dBu contour of another translator application filed by that party or translator authorization held by that party as of the release date of this decision; and (2) the translator application may not preclude grant of a future LPFM application in the grid for that market or at the proposed out of grid transmitter site, in accordance with the processing policy delineated in the *Fourth Report and Order*. In all other respects, we deny the petitions.

1. Market Definitions

26. The *Fourth Report and Order* adopted "both a national cap and a market-based cap for the markets identified in Appendix A."[51] Appendix A contained a spreadsheet with eight top-level columns.[52] Appendix A also contained a paragraph entitled "Detailed Column Information" for which the following information appeared in bold for the spreadsheet's first three top-level columns:

Arb#/Rank – Arbitron market ranking
CF#/Rank – Common Frequency Arbitron market ranking[53]

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[47] *Id.* at 2-9.

[48] *See* Joint Petitioners Reply; Conner Reply; Magrill Reply; Magrill Partial Support for Petitions for Reconsideration ("Magrill Partial Support"). In the latter pleading, Magrill submits an analysis of changes in FRN numbers to argue that there are more sales of AM and commercial FM stations than translators.

[49] *See* Four Rivers Community Broadcasting Corp. ("Four Rivers") Reply. This pleading argues that the suggested REC waiver standard, with its exclusion of translator applications near the core of the top 100 markets, would unfairly constrain translators with no countervailing benefit. As noted below, we will treat Four Rivers' pleading as a late-filed petition for reconsideration and dismiss it, except to the extent it addresses matters raised in oppositions to the petitions for reconsideration. *See* note 102 *infra*.

[50] *See* One Ministries, Inc. Reply; Life On The Way Communications, Inc. Reply.

[51] *Fourth Report and Order*, 27 FCC Rcd at 3390 ¶ 54.

[52] *Id.* at 3400-02.

[53] We provided a separate column for the Arbitron Metro market ranking identified in the study prepared by Common Frequency, Inc., because that study was compiled in 2010, whereas the prior column showed Arbitron (continued….)

Fall 2011 Arbitron Rankings – Arbitron market name[54]

27. Appendix A made it clear that we were referring to Arbitron Metro markets rather than non-Arbitron data such as census data. Although we did not describe the markets as Arbitron Metro markets, the only alternative type of Arbitron radio market is an Arbitron Total Survey Area. Appendix A could not be interpreted to mean Arbitron Total Survey Area, however, because there is no Arbitron Total Survey Area for many of the markets listed in Appendix A, particularly the largest radio markets. Accordingly, contrary to EMF's claim, we do not believe there could reasonably have been any confusion over the fact that Appendix A refers to Arbitron Metro markets. In any event, we clarify here that the markets listed in Appendix A are Arbitron Metro markets.

28. EMF also argues that the *Fourth Report and Order* did not spell out how an application would be deemed to be within an Appendix A market.[55] We disagree. Both the *Third Further Notice* and the *Fourth Report and Order* consistently referred to the proposed transmitter site as the determining factor for whether an application would be considered to be within a particular market. In fact, the *Third Further Notice* adopted a processing freeze on "any translator modification application that proposes a transmitter site for the first time within any [spectrum-limited] market," while allowing any translator modification application "which proposes to move its transmitter site from one location to another within the same spectrum-limited market."[56] Our detailed market-specific translator processing policy adopted in the *Fourth Report and Order* specifically refers to the proposed transmitter site as the determining factor,[57] and the translator cap discussion in the *Fourth Report and Order* likewise refers to proposed transmitter locations.[58] In any event, we clarify here that a translator application is considered within an Arbitron Metro market for purposes of the per-market translator caps if it specifies a transmitter site within that Arbitron Metro market.

29. On the other hand, we agree that we should clarify the treatment of "embedded" markets. An embedded market is a unique marketing area for the buying and selling of radio air time. It is contained, either in whole or in part, within the boundaries of a larger "parent" market. Most, but not all, embedded markets are among the 156 radio markets listed in Appendix A.[59]

30. Our intent was, and is, to treat each embedded market listed in Appendix A as a separate radio market for purposes of the per-market cap. For example, the San Francisco market (Arbitron Metro market #4) includes the San Jose (Arbitron Metro market #37) and Santa Rosa (Arbitron Metro market #122) embedded markets. Accordingly, the per-market cap would apply to each of three markets: (1) the core San Francisco market (consisting of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo and Solano Counties); (2) the San Jose market (consisting of Santa Clara County); and (3) the Santa Rosa market (consisting of Sonoma County). Thus, an application for a translator in San Jose would not count against the per-market cap for that applicant in either the core San Francisco market or the Santa Rosa market. Accordingly, subject to the processing rules described below, an applicant could prosecute three applications in each of those three markets. In contrast, the Washington, D.C. market

(Continued from previous page)
Metro market rankings as of the Fall 2011 ratings period. *See Fourth Report and Order*, 27 FCC Rcd at 3398 ("Detailed Column Information") (emphasis in original).

[54] *Id*. (emphasis in original).

[55] EMF Petition at 6.

[56] *Third Further Notice*, 26 FCC Rcd at 9998-99 ¶ 31.

[57] *See, e.g., Fourth Report and Order*, 27 FCC Rcd at 3387 ¶ 48 (preclusion studies to be based on the translator's "proposed transmitter site").

[58] *Id.* at 3392 n. 173.

[59] *See* ¶¶ 12-13 *supra*.

(Arbitron Metro market #8) includes one county from the Fredericksburg, VA market (Arbitron Metro market #147, with Stafford County being the embedded portion of that market) and all of the Frederick, MD market (Arbitron Metro market #197). In that situation, an application proposing a site in Stafford County would be treated as an application in the Fredericksburg, VA Arbitron Metro market rather than an application in the Washington, D.C. Arbitron Metro Market. The per-market cap (as revised below) will apply to all applications proposing a site in the Fredericksburg, VA Arbitron Metro market, because that market is listed in Appendix A. On the other hand, an application proposing a site in Frederick County, MD would be treated as an application in the Frederick, MD Arbitron Metro market rather than the Washington, D.C. Arbitron Metro market. Because the Frederick, MD Arbitron Metro market is not listed in Appendix A, the per-market cap does not apply to any application proposing a site there. With the exclusion of Stafford County, VA and Frederick County, MD from the Washington, D.C. market for the purposes of the per-market cap, the cap for the Washington, D.C. market would apply only to applications proposing operation from a site in the core of that market, which is any part of the market other than those two counties.[60]

2. Notice of Appendix A Per-Market Cap Proposal

31. We next address Magrill's claim that we violated the Administrative Procedure Act's notice and comment requirements by failing to give notice that the per-cap limit would apply to all Appendix A markets rather than just "spectrum limited" Appendix A markets.[61] Magrill's comments focus on the Commission's market-specific translator dismissal process, with its distinction between "spectrum limited" markets and "spectrum available" markets, as delineated in Section III.B of the *Third Further Notice*.[62] However, in Section III.C of the *Third Further Notice*, we then stated our tentative conclusion that this translator dismissal process would not be sufficient to address the problem of speculation among Auction 83 filers.[63] We tentatively concluded that nothing in the LCRA limits the Commission from addressing such speculation through processing policies separate from the dismissal process discussed in Section III.B of the *Third Further Notice*.[64] Based on those tentative conclusions, we asked for comments on processing policies to address the potential for speculative abuses among the remaining translator applications:

> For example, we seek comment on *whether to establish an application*

[60] Those core jurisdictions for the Washington, D.C. market are: the District of Columbia; Calvert County, MD; Charles County, MD; Montgomery County, MD; Prince Georges County, MD; Alexandria (city), VA; Arlington County, VA; Fairfax County, VA; Fairfax City, VA; Falls Church (city), VA; Manassas (city), VA; Manassas Park (city), VA; and Prince William County, VA. For New York, the core market consists of Bronx, Kings, New York, Queens and Richmond Counties, NY, and Bergen, Essex, Hudson and Passaic Counties, NJ. The remaining counties in the New York market are embedded in the Nassau-Suffolk (Long Island), NY market (Arbitron Metro market #18), the Hudson Valley, NY market (Arbitron Metro market #39), the Middlesex-Somerset-Union, NJ market (Arbitron Metro market #41), the Monmouth-Ocean, NY partially embedded market (Arbitron Metro market #53), the Morristown, NJ market (Arbitron Metro market #117), or the Stamford-Norwalk, CT market (Arbitron Metro market #148). For Providence-Warwick-Pawtucket, RI, the core market consists of Bristol, Kent, Newport, Providence and Washington Counties, RI; the embedded market of New-Bedford-Fall River, MA (Arbitron Metro market #177, consisting of Bristol County, MA) is not an Appendix A market. For Portsmouth-Dover-Rochester, NH (Arbitron Metro market #121), the core market consists of Strafford County, NH and York County, ME; the embedded jurisdiction of Rockingham County, NH is part of the Manchester, NH market (Arbitron Metro market # 196), which is not an Appendix A market.

[61] *See* Magrill Petition at 1 and Magrill Reply at 1.

[62] *Third Further Notice*, 26 FCC Rcd at 9995-99 ¶¶ 21-31.

[63] *Id.* at 9999 ¶ 33.

[64] *Id.*at 9999 ¶ 34.

> *cap for the applications that would remain pending in non-spectrum limited markets and unrated markets***.** Would a cap of 50 or 75 applications in a window force high filers to concentrate on those proposals and markets where they have bona fide service aspirations? In addition or alternatively, *should applicants be limited to one or a few applications in any particular market*?[65]

32. Clearly, the point of Section III.C. of the *Third Further Notice* was to seek comments on potential national caps and per-market caps as a processing policy *separate from the market-based translator dismissal policy discussed in Section III.B*. We specifically noted that this processing policy could apply to applications in "non-spectrum-limited" markets and unrated markets. We received substantial comments on the proposals for a national cap and per-market caps.[66] In fact, Magrill himself commented on the issue by proposing an alternative system that would limit applications in both "spectrum available" markets and "spectrum limited" markets based on the total number of applications filed nationally by a particular applicant.[67] Accordingly, we reject Magrill's claim that we failed to give adequate notice that per-market caps might apply in "spectrum available" markets.

33. Similarly, the Joint Petition claims that a one-per-market cap on translator applications "had never previously been proposed prior to the *Fourth Report and Order*."[68] The language quoted above from the *Third Further Notice* shows that this claim is unfounded. Accordingly, we reject this claim by the Joint Petitioners.

3. The National Cap of 50 Applications

34. EMF is the only party to challenge the national cap of 50 applications. As we noted above, EMF received 259 translator grants from its Auction 83 applications before our processing freeze took effect. Approximately 20 percent of those grants were never constructed and therefore were cancelled. Altogether, 72 out of EMF's 259 grants (almost 30 percent of those authorizations) were sold, were not built and therefore were cancelled, or were otherwise terminated.

35. EMF focuses its challenge to the national cap of 50 translator applications on two claims. First, EMF claims that the cap is based on an erroneous assumption that translator applicants with higher

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[65] *Id.* (emphasis added).

[66] *Fourth Report and Order*, 27 FCC Rcd 3364 ¶¶ 51-53. *See, e.g.*, RAM Comments at 8 (opposing a national cap, but supporting a market cap of three applications); Prometheus, Future of Music Coalition, and the United Church of Christ, OC Inc. Comments at 30-31 (supporting a national and per-market cap); REC Comments at 17 (supporting national ownership cap of 30 translators); CSN International Comments at 3 (supporting national cap of 50 applications); National Public Radio ("NPR") Comments at 5-6 (supporting national cap); EMF Comments at 13 (opposing caps); Letter from David Oxenford, Counsel to EMF, to Marlene Dortch, Secretary, FCC, in MM Docket No. 99-25 and MB Docket No. 07-172 (filed Mar. 2, 2012) (opposing caps, particularly outside spectrum-limited markets).

[67] *See* Supplimental [sic] Reply Comments of Kyle Magrill in the Third Further Notice of Proposed Rule Making at 2. Magrill's proposal would place no per-market cap on any applicant that filed fewer than 25 applications nationally, then place progressive per-market caps on parties that filed 26-100 applications (4 per market), 101-500 applications (3 per market), 500-1000 applications (2 per market), and over 1000 applications (1 per market). Magrill proposed that these per-market caps be applied to the top 200 markets, but that a rural exclusion apply to a translator that would serve fewer than 10,000 people. *Id.* Thus, it appears that Magrill advocated a rural exclusion rather than a "spectrum available" exclusion from his suggested per-market caps. Moreover, Magrill proposed to apply the per-market caps to the top 200 markets rather than the Appendix A markets, even though few, if any, of the additional markets in Magrill's proposal would be "spectrum limited."

[68] Joint Petition at 1 n.1.

numbers of pending applications do not intend to construct all of those proposed stations.[69] Second, EMF points out that the Commission chose a cap of 50 as the most "administratively feasible solution for processing this large group of long-pending applications" instead of "more direct means" of curbing speculation, such as limits on sales of new translator construction permits or the prices at which they can be sold.[70]

36. EMF's first objection mischaracterizes our decision on the national cap by treating it as an unverified assumption about the number of stations that applicants could build or wish to build. We acknowledge that we cannot divine an applicant's intentions based on simple statistics, but that is not what we attempted to do. Rather, we developed a processing policy that would reasonably balance competing goals. The cap of 50 does not assume that an applicant could only intend to construct, or be able to construct, 50 new translator stations, but it will require applicants to prioritize their filings and focus on applications in those locations where they have a *bona fide* interest in providing service and on applications that are most likely to be grantable, while deferring their pursuit of other opportunities until a future filing window. In this regard, we reiterate that our conclusion here about speculative filings by high-volume applicants is supported by the data showing that an unusually large number of the translator grants from this filing window were not constructed or were assigned to a party other than the applicant.[71] We believe applicants subject to the cap are likely to choose applications that (1) they expect to be granted, (2) they plan to construct and operate, and (3) will fill an unmet need, thereby improving competition and diversity. EMF has not shown that this expectation is unreasonable.

37. EMF's second argument overlooks many relevant considerations. First, EMF fails to note that most of the applicants subject to the cap received many grants before the processing freeze took effect.[72] EMF itself received 259 grants, so for EMF the cap translates into 259 granted applications, plus as many additional applications that EMF selects that result in grants.

38. Second, as the Commission previously noted, future translator windows will provide additional new station licensing opportunities.[73] With our flexible translator licensing standards, we expressed confidence that "comparable licensing opportunities will remain available in a future translator filing window" with respect to applications dismissed pursuant to the application caps and our market-based processing policy.[74]

39. Third, EMF overlooks our explicit balancing of "the competing goals of deterring speculation and expanding translator service to new communities."[75] In doing so, we selected the number of 50 applications to affect no more than 20 applicants, representing only three percent of the pool of Auction 83 applicants but approximately half of the pending applications.[76] Thus, a national cap of 50 applications would allow 97 percent of applicants to prosecute all of their pending applications, and it will

[69] EMF Petition at 7-8.

[70] *Id.* at 8.

[71] *See* ¶ 4 *supra*.

[72] We noted that of the eight applicants with the greatest number of pending applications, seven had received between 32 and 586 permits. *Fourth Report and Order*, 27 FCC Rcd at 3391 n. 170. We also emphasized that because applicants will be able to choose which applications to prosecute, we expect them to choose applications that will maximize new service to the public. *Id.* at 3391 ¶ 57.

[73] *Id.*

[74] *Id.*

[75] *Id.* at 3391 ¶ 58.

[76] *Id.*

allow approximately 50 percent of all pending applications to be processed, while curbing the excessive number of applications filed by 3 percent of the filers.

40. With respect to the choice of an application cap over other options such as anti-trafficking rules, EMF claims erroneously that our objective was to limit the number of applications we had to process.[77] We chose an application cap "both [to] deter trafficking and provide the fastest path to additional translator and LPFM licensing in areas where the need for additional service is greatest."[78] This approach benefits both translator and LPFM applicants and the public they seek to serve. An application cap provides an immediate solution to the trafficking issue and also ameliorates the impact of translator applications on LPFM service while avoiding the lead time necessary to develop and adopt new anti-trafficking rules or the resources needed to enforce such rules.[79] This is why we described application caps as "the most administratively feasible solution for processing this large group of long-pending applications."[80] Advocates of anti-trafficking rules, such as EMF, have not shown that this conclusion is flawed.

41. We will, however, grant reconsideration with respect to the national cap of 50 applications in order to better ensure equitable distribution of radio service between urban and rural areas.[81] We recognize that parties restricted to 50 applications will tend to choose applications in urban areas, because those applications offer potential service to the greatest number of people. We believe a modest relaxation of this restriction can provide additional service to rural areas without sacrificing the integrity of our licensing process or opportunities for new LPFM service. Accordingly, we will allow applicants to prosecute up to 70 applications nationally, provided that no more than 50 of those are in Appendix A markets.[82] All selected applications outside the Appendix A markets must meet certain conditions.[83] Specifically, the applications outside the Appendix A markets must (1) comply with the

[77] EMF Petition at 8.

[78] *Fourth Report and Order*, 27 FCC Rcd at 3391 ¶ 57.

[79] Even if anti-trafficking rules were applied in the form of conditions on construction permits, ensuring compliance with such conditions would result in undue administrative burdens and could delay processing. We note that some of the Audio Division's most time-intensive cases in recent years involved investigations into when and whether parties with translator construction permits had constructed those stations as proposed. *See Great Lakes Community Broadcasting, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 8239 (MB 2009), *recon. dismissed*, 24 FCC Rcd 13487 (MB 2009); *Broadcast Towers, Inc.*, Order, 26 FCC Rcd 7681 (MB 2011). In addition, we believe the suggested anti-trafficking rules would be highly subject to circumvention through contracts such as time brokerage agreements. Finally, even if parties were to seek waivers, the process of evaluating waiver requests would unduly burden administrative resources and could delay processing.

[80] *Fourth Report and Order*, 27 FCC Rcd at 3391 ¶ 57.

[81] *See Policies to Promote Rural Radio Service*, Second Report and Order, 26 FCC Rcd 2556 (2011), and Second Order on Reconsideration, 27 FCC Rcd 12829 (2012).

[82] Before we froze the processing of translator applications in 2005, a substantial portion of our translator grants from the Auction 83 filing window involved rural, singleton applications. We think a continued effort to license translators in rural areas is consistent with the LCRA's mandate to ensure licensing opportunities for both LPFM and translator services across the country. *See Fourth Report and Order*, 27 FCC Rcd at 3366-67 ¶ 5. We previously stated that we expected approximately one thousand additional translator grants from this group of applications. *Id*. at 3376 ¶ 26. Even assuming that all affected parties will decide to pursue 50 applications in Appendix A markets, providing the opportunity to prosecute up to 20 additional rural translator applications would add more than 200 potential grants in underserved rural areas.

[83] Any party that prefers to prosecute only 50 applications nationally, without complying with these conditions for applications outside the Appendix A markets, may do so. If a party prosecutes more than 50 applications nationally, all of the non-Appendix A applications will be subject to these conditions even if fewer than 50 applications are in (continued….)

restriction against overlap with the applicant's other pending translator applications and authorizations set forth in paragraph 58 below with respect to the per-market cap, and (2) protect at least one channel for LPFM filing opportunities at the proposed transmitter site for each short form application specifying such site, as shown in the type of "out of grid" preclusion study described in paragraph 59 below with respect to the per-market cap.[84] In addition, to ensure that these authorizations will not be relocated to Appendix A markets, we will impose a condition restricting their relocation. Specifically, during the first four years of operation, none of these authorizations can be moved to a site from which (calculated in accordance with Section 74.1204(b) of our Rules) there is no 60 dBu contour overlap with the 60 dBu contour proposed in the application as of the release date of this *Fifth Order on Reconsideration*.[85] Our decision to establish a national cap is an exercise in line-drawing that is committed to agency discretion.[86] Our choice of a limit of 70 applications nationally, with no more than 50 applications in the Appendix A markets, reasonably balances competing goals based on a careful evaluation of the record.

4. The Need for a Per-Market Cap

42. EMF characterizes the per-market cap as arbitrary and capricious.[87] However, the record here clearly demonstrates that speculative translator filing activity was not only a national problem but also a local market problem. In the *Third Further Notice*, we described exactly this situation, noting that one applicant held 25 of the 27 translator applications proposing locations within 20 kilometers of Houston's center city coordinates and 75 applications in Texas. We also noted that two applicants held 66 of the 74 applications proposing service to the New York City Arbitron Metro market.[88] EMF has not shown that our analysis as to speculative filings activity within Appendix A markets is incorrect.

43. *Non-top 150 Markets in Appendix A*. Appendix A to the *Fourth Report and Order* includes six non-top 150 markets, including Asheville, NC, because they have more than four translator applications pending.[89] Such a large number of applications for markets outside the top 150 markets suggests speculative filing activity. Although WNC claims that it filed multiple applications to serve "various clusters of communities"[90] in the Asheville market, it has not explained how its proposed service would achieve that result with respect to Black Mountain, NC, which is the focus of the WNC Petition. All of WNC's applications there specify Black Mountain as the community of license and, with only one

(Continued from previous page)
Appendix A markets. For example, if a party prosecutes 30 applications in Appendix A markets and 30 applications outside those markets, all of the 30 non-Appendix A applications will be subject to the conditions.

[84] To satisfy this condition, applicants must submit an LPFM preclusion study demonstrating that grant of the proposed translator station will not preclude approval of a future LPFM application at the specified transmitter site. The study must assume the continued prosecution of all other pending short form FM translator applications.

[85] This four-year condition is analogous to the four-year condition imposed on NCE permittees that receive a decisive preference for fair distribution of service. *See* 47 C.F.R. § 73.7005(b). In both cases, permittees that receive grants based on their service proposals are required to effectuate those proposals for at least four years.

[86] The D.C. Circuit has held that "the Commission has wide discretion to determine where to draw administrative lines." *WorldCom, Inc. v. FCC*, 238 F.3d 449, 462 (D.C. Cir. 2001) (quoting *AT&T Corp. v. FCC*, 220 F.3d 607, 627 (D.C. Cir. 2000)); *see also Covad Comm. Co. v. FCC*, 450 F.3d 528, 541 (D.C. Cir. 2006) (explaining that courts are "generally unwilling to review line-drawing performed by the Commission unless a petitioner can demonstrate that lines drawn... are patently unreasonable, having no relationship to the underlying regulatory problem") (internal quotation marks omitted).

[87] EMF Petition at 9-11.

[88] *Third Further Notice*, 26 FCC Rcd at 9999 ¶ 33.

[89] *See Fourth Report and Order*, 27 FCC Rcd at 3400.

[90] *See* WNC Petition at 2-3.

exception, propose the same transmitter site.[91] In addition, WNC fails to show any error in the Commission's analysis of the need to apply the market cap to those markets listed in Appendix A that are outside of the top 150 markets, or any valid justification for departing from Arbitron Metro market definitions. Arbitron Metro market definitions are based on multiple demographic/geographic factors, including terrain issues. Accordingly, we deny WNC's request to exclude Asheville, NC from Appendix A or in the alternative exclude the community of Black Mountain from the Asheville market.

44. *Proposed Alternative*. Conner argues that any local application cap on translators should be per-community, based on the number of service-restricted AM stations in any given community.[92] Magrill similarly points out that there is increased demand for FM translators, both to rebroadcast AM stations and to rebroadcast HD radio streams.[93] However, we have an obligation to address abusive application conduct, as described above, regardless of the supply/demand balance in the marketplace. In fact, trafficking in translator authorizations could only occur where there is demand, so the existence of such demand supports, rather than undercuts, our rationale for curbing speculation. With respect to Conner's suggested cap based on the proposed community of license rather than the Arbitron Metro market, this would be impractical from an administrative standpoint.[94]

45. The record in this proceeding strongly supports a limit on translator applications within each Arbitron Metro market identified in Appendix A to protect the integrity of our licensing process. We recognize that EMF proposes anti-trafficking restrictions as an alternative approach, but our rationale for rejecting those restrictions in favor of a national cap applies equally to the per-market cap.[95] Accordingly, we reject the claim that a per-market cap is arbitrary and capricious.

5. Revision of the Per-Market Cap

46. Based on the information presented in the reconsideration petitions and responsive pleadings, we conclude that an adjustment of the per-market cap will improve competition and diversity in the Appendix A markets without sacrificing LPFM filing opportunities or the policy objectives behind the per-market cap. As discussed below, we are increasing the per-market cap for radio markets identified in Appendix A of the *Fourth Report and Order* to allow up to three applications for each market, subject to certain conditions.

47. Although the petitioners do not challenge our conclusion that it is infeasible to apply the Technical Need Rule to the thousands of pending translator applications,[96] they argue that one translator can only serve a small portion of most markets in Appendix A. The Joint Petition focuses on the Joint Petitioners' attempts to build regional networks of translators to rebroadcast the signals of their NCE

[91] *See* FCC File Nos. BNPFT-20030317GNH, BNPFT-20030317GOI, BNPFT-20030317GRI, BNPFT-20030317GRN, BNPFT-20030317GRO, BNPTF-20030317GUS (same site as WNC's existing translator, W298AY), and BNPFT-20030317GRU (different site).

[92] Conner Petition at 3.

[93] Magrill Petition at 2.

[94] There are only 156 Arbitron Metro markets identified in Appendix A, versus the thousands of communities across the country. The Arbitron Metro market is an established standard commonly used in the radio industry and it is a simple matter for us to identify and process applications based on that standard. It would be much more difficult for us to do so under a community-by-community standard. From a policy standpoint, the political boundaries of communities and distances between communities are variables that would lead to unpredictable outcomes. In fact, Conner's proposal is likely to reward applicants that filed multiple applications at varying locations within a market for speculative reasons or to skew auction results. Use of Arbitron Metro markets as the determinative factor is far more likely to lead to consistent results that will restrain applicants engaged in such speculative efforts.

[95] *See* ¶ 40 *supra*.

[96] *Fourth Report and Order*, 27 FCC Rcd at 3392 ¶ 59.

stations.[97] REC independently analyzed the applications of the Joint Petitioners and agrees that many of these applications propose operations very distant from the center of the Arbitron Metro market. REC agrees that, with appropriate limits, allowing such applications to be processed would improve diversity and competition in underserved areas, without impinging on LPFM filing opportunities.[98]

48. We believe the Joint Petition and the REC Partial Opposition raise a valid point as to whether the one-per-market cap is overly restrictive. The Joint Petition states that the Joint Petitioners are prosecuting their pending translator applications not to speculate in translator permits or to manipulate the auction process, but in hopes of increasing the reach of their NCE stations.[99] Based on its analysis of Joint Petitioners' applications, REC agrees that the Joint Petition demonstrates that the one-per-market cap is overly restrictive.[100]

49. Prometheus urges that the one-per-market cap be retained as "a crucial way to address the existing disparity" between the number of authorized translators and the number of authorized LPFM stations.[101] This argument appears to assume that any expansion in FM translator licensing will reduce opportunities for LPFM licensing. Clearly, that is not the case. With our market-based translator processing policy, as well as our national and per-market caps on translator applications, we have put strong limits in place to preserve LPFM filing opportunities. The expansion of the per-market cap will not reduce opportunities for LPFM licensing because, as we explain below, all translator applicants taking advantage of that change will need to protect LPFM filing opportunities when they do so. Our adjustment of the per-market cap in this order will not negatively affect LPFM licensing opportunities.

50. The Joint Petition proposes a waiver process under which the one-per-market cap would remain in place, but waivers would be available for applications meeting certain criteria: (1) the 60 dBu contour of the translator station would not overlap the 60 dBu contour of any commonly controlled application; (2) the application will not preclude the approval of a future LPFM application in the grid or at the proposed facility's transmitter site; and (3) the applicant agrees to accept a condition on its construction permit that disallows the for-profit sale of the authorization for four years after the station begins operation. REC agrees with these conditions, but proposes additional requirements: (1) the translator station, for four years after beginning operation, must be co-owned with the primary station and rebroadcast that station's primary analog signal; (2) the 60 dBu contour of the translator must not overlap the central core of the market; and (3) additional applications being prosecuted under this waiver would remain subject to the national cap.[102]

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[97] Joint Petition at 2-6.

[98] REC Partial Opposition at 4-5.

[99] Joint Petition at 2.

[100] *See* REC Partial Opposition at 3-5.

[101] Prometheus Opposition at 8-9.

[102] One translator licensee filed reply comments advocating that translator applicants should be able to prosecute one translator application per market, plus any additional applications that do not preclude LPFM filing opportunities or overlap with any other translator application filed by that party in the 2003 window, other than fill-in translator applications. *See* Four Rivers Reply at 2-3. This pleading will be treated as a late-filed petition for reconsideration of the *Fourth Report and Order*, and we will dismiss it except to the extent it addresses matters argued in the opposition pleadings, Four Rivers Reply at 1-2 and 3-4 (addressing matters raised in oppositions). *See* 47 U.S.C. § 405(a) (petitions for reconsideration must be filed no later than 30 days after public notice of Commission decision); 47 C.F.R. § 1.429(d) (same). Four Rivers does not seek waiver of the deadline for seeking reconsideration or give any reason why it was unable to submit its proposal by the deadline. *See Reuters Ltd. v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986) (Commission may not waive the deadline absent extraordinary circumstances).

51. We agree with certain elements of the Joint Petition and the REC Partial Opposition, but our revised per-market cap will vary in certain respects. First, we will not rely on an anti-trafficking condition. As we explained above, we believe such conditions are subject to circumvention, and monitoring compliance with an anti-trafficking condition would be unduly resource-intensive and could delay processing.[103]

52. Second, we believe it is unnecessary to allow parties to prosecute a large number of translator applications within an Appendix A market, as would be possible under the waiver procedures advocated in the Joint Petition. As we have shown above,[104] the Joint Petitioners and other applicants already have received a significant number of translator grants from the Auction 83 application process. Further, our clarification of embedded markets will help these parties prosecute more applications within embedded markets. As we have previously stated, we also expect that translator applicants will not be foreclosed from comparable application opportunities in the next translator filing window.

53. Based on our analysis of pending applications, we believe that a limit of three applications per applicant in the Appendix A markets is appropriate, subject to the conditions described below. With those conditions, we believe this relaxation in the per-market cap will improve diversity and competition in under-served areas of the Appendix A markets without precluding LPFM filing opportunities or increasing significantly the potential for licensing abuses.

54. The relaxed limit of three applications per market will only apply to an applicant that shows that its applications meet the conditions described in paragraphs 58-59. As we indicate below,[105] we instruct the Media Bureau to issue a public notice asking any applicant that is subject to the national cap or the per-market cap to identify the applications they wish to prosecute consistent with the caps and to show that those applications comply with the caps. If a party has more than one application in an Appendix A market but fails to submit a showing pursuant to the public notice, or submits a deficient showing, we will not analyze their applications independently to assess whether they comply with the conditions that there be no 60 dBu overlap with that party's other applications or authorizations and that there be no preclusion of LPFM filing opportunities.[106] Accordingly, in those situations we will process only the first filed application for that party in that market.

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[103] *See* note 79 *supra*.

[104] *See* ¶ 17 *supra*.

[105] *See* ¶ 66 *infra*.

[106] Examples of deficient showings for the purpose of implementing the national and per-market caps include, but are not limited to: (1) an applicant with two or more applications in an Appendix A market that fails to submit anything during the cap compliance period; (2) an applicant with two or more applications in an Appendix A market that fails to submit evidence that the applications do not have overlapping 60 dBu contours or that none of the applications' 60 dBu contours overlap with the 60 dBu contour of an FM translator authorization held by that party as of the release date of this *Fifth Order on Reconsideration*; (3) for an applicant with more than one application in an Appendix A market, any application in such market which is not amended to include an LPFM preclusion study, as delineated in paragraph 59 *infra*; (4) an applicant with four or more applications in an Appendix A market that fails to specify which applications to prosecute in that market; (5) an applicant that selects applications within a market that have overlapping 60 dBu contours; (6) an applicant that selects two or more applications within a market, one or more of which have an overlapping 60 dBu contour with the 60 dBu contour of an FM translator authorization held by that party as of the release date of this *Fifth Order on Reconsideration*; (7) an applicant that submits an alternative contour prediction method study to establish lack of 60 dBu contour overlap between two selected applications or between any selected application and an FM translator authorization held by that party as of the release date of this *Fifth Order on Reconsideration*; (8) an applicant that selects more than 50 applications in Appendix A markets; (9) an applicant that selects 50 applications in Appendix A markets but more than 20 additional applications in non-Appendix A markets; or (10) an applicant that selects 50 applications in Appendix A markets and no more than 20 additional applications in non-Appendix A markets, but fails to provide the showings (continued….)

55. In deciding on an adjustment to the per-market cap, we are balancing the competing interests of adding new service to underserved areas by translators versus preserving the integrity of our licensing process by dismissing applications filed for speculative reasons or to skew our auction procedures. The factors cited by the petitioners and REC, particularly the limited service area of a translator compared to the size of the Appendix A markets, weigh in favor of allowing more than one translator application in an Appendix A market, provided that each translator would serve a different part of the market than any of an applicant's existing translators or other pending translator applications.[107] On the other hand, the abusive filing conduct described above, combined with the considerations set forth in paragraph 52, suggest that any relaxation be limited to a small number of applications per Appendix A market. In addition, the need to protect LPFM filing opportunities, for the reasons delineated in the *Fourth Report and Order*,[108] supports a condition that none of the Appendix A translator applications would preclude an LPFM filing opportunity. We conclude that a limited relaxation of the per-market cap, combined with conditions that will protect LPFM filing opportunities and prevent duplicative translator service areas, would promote competition and diversity in Appendix A markets by expanding translator service to underserved areas without threatening the integrity of our licensing process or precluding LPFM filing opportunities. Thus, we believe that the benefits of our action will outweigh any potential costs.

56. In considering the change in the per-market cap, we analyzed applicants with 1-5 pending applications per market in all Arbitron-rated markets.[109] In doing so, we have not taken certain variables into account because it was not feasible to do so. Those variables are the impact of the national cap on the number of pending applications and the impact of the two conditions proposed in connection with an adjustment of the one-per-market cap.[110] The cap of one would affect two-thirds of those applicants, whereas a cap of three would affect less than one-third of those applicants, meaning that a substantial majority of applicants could prosecute all of their pending applications. Thus, relaxation of the cap from one to three applications per market could benefit a significant number of translator applicants who do not have an excessive number of applications pending in any market (*i.e.*, more than five). However, as indicated above and in the Joint Petition and the REC Partial Opposition, any such relaxation should be subject to certain conditions to preserve LPFM filing opportunities and the integrity of our licensing process.

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described in ¶ 41 *supra* for those additional applications. (With respect to example (7), we specifically note that this processing policy differs from our practice under the Technical Need Rule, where we have accepted alternative contour prediction method studies. We also note that this processing policy, which is being applied to short-form Auction 83 applications, does not supplant the Technical Need Rule for any subsequent long-form (FCC Form 349) application. For example, if an applicant made an appropriate showing of no contour overlap between applications under this processing policy, but subsequently amended one or more of such applications to create substantial contour overlap, the applicant would need to address the Technical Need Rule when it submits its Form 349 applications. *See* 47 C.F.R. § 74.1232(b); FCC Form 349, Section III-A, Question 14.) For additional details about the preclusion showings to be required of translator applicants, *see Fourth Report and Order*, 27 FCC Rcd at 3376-88 ¶¶ 28-49.

[107] This limitation is consistent with the Technical Need Rule. *See* 47 C.F.R. § 74.1232(b). This limitation will also protect against situations where an applicant filed multiple applications at one site to skew our auction procedures.

[108] *See* ¶ 59 *infra*.

[109] For the reasons described in paragraph 52 *supra*, we believe it is unnecessary to allow parties to prosecute large numbers of applications within Appendix A markets. Accordingly, we studied situations involving 1-5 applications per market.

[110] It is not feasible to take these variables into account in the analysis because we cannot know in advance how many applications parties will choose to prosecute in each market after taking the national cap and new conditions into account.

57. With respect to the Joint Petitioners' proposal to prohibit 60 dBu overlap between commonly-controlled applications, we generally agree that this is an appropriate condition. For the reasons shown above, we believe that multiple translator applications in a single area suggest an attempt to game the auction system or to obtain permits for the purpose of selling them.[111] Such a restriction also would advance the goal of the Technical Need Rule to limit the licensing of multiple translators serving the same area to a single licensee. As we have explained, attempting a case-by-case analysis of the thousands of pending translator applications for compliance with that rule is not feasible.

58. For these reasons, we adopt the following processing policies: The protected (60 dBu) contour (calculated in accordance with Section 74.1204(b) of our Rules) of the proposed translator station may not overlap the protected (60 dBu) contour (also calculated in accordance with Section 74.1204(b) of our Rules) of any other translator application filed by that applicant or translator authorization held by that applicant, as of the date of the release of this *Fifth Order on Reconsideration*.[112] Because our goal is to expedite the processing of applications, we will not accept an alternative contour prediction method study to establish lack of 60 dBu contour overlap. The concern we have about service duplication applies even more strongly when a party already has an existing translator station providing service to the same area proposed by that party in an application. Accordingly, we are expanding the proposed condition to include outstanding authorizations as well as applications. However, we will not extend this condition to limit applications based on parties' attributable interests or common control of applicant and licensee entities. The pending Auction 83 applications lack any information about parties to the applications, and so we lack sufficient information to make determinations about attributable interests in other applications or common control of applicant entities. Asking applicants to amend their applications to provide this information would delay our efforts to ensure expeditious processing of translator and LPFM applications, and resolving disputes over whether an application is commonly controlled with another application or authorization would further delay this effort. Accordingly, consistent with the approach taken in the *Fourth Report and Order*, we are limiting this condition to applications filed by and authorizations issued to the named applicant entity.[113]

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[111] *See* ¶ 7 *supra*.

[112] The contour overlap analysis will not apply across markets. For instance, if an applicant has an application proposing a site in Milpitas, CA (Santa Clara County, in the San Jose, CA Arbitron Metro market) that overlaps with an application proposing a site in Fremont, CA (Alameda County, in the core San Francisco, CA Arbitron Metro market), it would be able to prosecute each application as long as each application complied with the processing policies for each market. We note that such an applicant could have prosecuted both applications under the original one-per-market cap, and it is not our intention to impose a more stringent policy now. We also note that such an applicant still will be subject to the Technical Need Rule when it files its Form 349 applications for those proposed stations, assuming the overlap is substantial.

[113] When the Commission earlier adopted a cap of 10 applications per market, it likewise did not attempt to determine whether individual applicants were commonly owned with other applicants. *See Third Report and Order*, 22 FCC Rcd at 21934-35 ¶ 56. We also note that, apart from the unique situation of RAM, we have little reason to expect overlapping ownership interests among applicants. Because there were no application limits in Auction 83 and ownership restrictions do not apply to translators, there is no reason to think that applicants would use multiple identities in this context.

The only exception to this practice will be when there is a minor variation in a name but it is clear that the applicant is the same. For instance, Bridgelight has filed applications both as "Bridgelight, LLC" and "Bridgelight, L.L.C." and Magrill has filed applications as "CircuitWerkes" and "CircuitWerkes, Inc." However, all the applications provide the same contact information, so we think it is reasonable to conclude that the slight name variation does not refer to a different party. Accordingly, we will treat those as a single applicant. This is consistent with current licensing practice, where a licensee may identify itself with slight name variations. For instance, the Oregon State Board of Higher Education of the University of Oregon, the licensee of several radio stations, has identified itself in our licensing database with five variations of its name that use different abbreviations.

59. We agree with the condition advocated by the Joint Petitioners and REC that the proposed translator station cannot preclude approval of a future LPFM application in the grid for that market, under the processing policy delineated in Section II.B of the *Fourth Report and Order*,[114] or at the proposed out of grid transmitter site. To satisfy this condition, applicants must submit an LPFM preclusion study demonstrating that grant of the proposed translator station will not preclude approval of a future LPFM application. As we explained in the *Fourth Report and Order*, one of our broad principles for implementation of the LCRA is that our primary focus under Section 5(1) must be to ensure that translator licensing procedures do not foreclose or unduly limit future LPFM licensing, because the more flexible translator licensing standards will make it much easier to license new translator stations in the future.[115] This condition is consistent with that broad principle.

60. Under the procedure proposed in the Joint Petition and the REC Partial Opposition, compliance with the conditions described above would not be required for an applicant's first translator application in an Appendix A market, but instead would only be required as part of a showing for additional applications in that market. We believe, however, that it is appropriate to impose these conditions on all of the applications if a party chooses to prosecute more than one application in an Appendix A market so that translator applicants will have an incentive to provide more service to underserved areas of the Appendix A markets.

61. If a party instead elects to prosecute only one application in an Appendix A market, then it need not make a showing that the application complies with the conditions described in paragraphs 58 and 59 when the local cap compliance showings are submitted. (However, if a party prosecutes only one application and it proposes substantial overlap with an existing translator authorization held by that party, the Technical Need Rule and FCC Form 349 will require the party to show a technical need for the second translator when the Form 349 application is due in order to justify a grant of that application.) We are providing this flexibility so that the revised policy is not more restrictive than the original one-per-market cap for any translator applicant. We note that none of the petitions for reconsideration or responsive pleadings argue that the one-per-market policy should be tightened through the imposition of conditions on a single application.[116]

62. REC also proposes that applications grantable under the relaxed per-market standard be subject to the national cap of 50 applications adopted in the *Fourth Report and Order*.[117] We agree that the national cap should be uniform for all applicants. The relaxation of the per-market cap leaves undisturbed an applicant's obligation to comply with the national cap of 70 applications, with no more than 50 applications in Appendix A markets.

63. With the cap of three-per-market in place, we find it unnecessary to adopt the additional waiver conditions suggested by REC. The principal conditions suggested by REC would not preserve LPFM filing opportunities or, in our opinion, curb speculation by translator applicants. We also believe they would constrain competition in Appendix A markets without any countervailing public benefit.

64. REC's first additional waiver requirement would not allow more than one translator application to be prosecuted within certain geographic zones around the center of the Appendix A markets.[118] However, we have already adopted a rigorous processing standard for pending translator

[114] *Fourth Report and Order*, 27 FCC Rcd at 3376-88 ¶ 28-49.

[115] *Id.* at 3373-74 ¶ 19.

[116] Nothing in the *Fourth Report and Order* or this *Fifth Order on Reconsideration* alters the Technical Need Rule or its application to pending FM translator applications. Thus, applying that rule to Auction 83 applicants when they file a Form 349 application is not a new requirement or restriction.

[117] *Id.* at 7.

[118] REC Partial Opposition at 7.

applications in Appendix A markets, and REC has not shown that this additional constraint is needed. We believe this restriction would limit competition in the Appendix A markets without providing a countervailing benefit.[119] REC's proposal also could be circumvented by modifications to construction permits.

65. REC's second additional waiver requirement would impose a condition on the construction permit that, for four years after beginning operation, the translator must be commonly-owned with the primary station and must rebroadcast that station's primary analog signal.[120] REC claims that this condition is appropriate because translator permittees in some markets have entered into time brokerage deals with commercial broadcasters to air HD radio programming streams on NCE translator stations. We view REC's proposed condition as more of a programming preference than an effort to curb speculation. We also believe diversity and competition would be better served by giving translator applicants the flexibility to prosecute applications that meet the revised per-market application cap described above. We expect those parties to prosecute the applications that are most likely to be granted and most likely to provide a needed service without precluding a future LPFM filing opportunity. Moreover, as indicated above with respect to the Joint Petition's proposed anti-trafficking condition, enforcement of REC's proposed condition and processing waiver requests would be unduly resource-intensive and could delay the processing of applications.

66. As we indicated in the *Fourth Report and Order*, the burden will be on each applicant to demonstrate compliance with the national and per-market application caps.[121] Any party with (1) more than 70 applications pending nationally, (2) more than 50 applications pending in Appendix A markets, and/or (3) more than one pending application in any of the markets identified in Appendix A (subject to the clarification above as to embedded markets) will be required by a forthcoming public notice to identify and affirm their continuing interest in those pending applications for which they seek further Commission processing, consistent first with the national cap, as revised in paragraph 41 above, and then with the revised per-market cap of three applications. They will also be required to demonstrate that the selected applications meet the conditions described in (1) paragraph 41 above with respect to applications outside the Appendix A markets for purposes of the national cap of 70 applications, and (2) paragraphs 58 and 59 above if they elect to prosecute more than one application in an Appendix A market.

67. The *Fourth Report and Order* described certain translator amendment opportunities in connection with the market-based processing policy.[122] However, the application caps we describe here will be applied before any such amendment opportunity is available. This approach is consistent with our prior approach in the *Third Report and Order*.[123] This approach also will expedite our processing of the large volume of translator applications, which needs to be done before we can open an LPFM filing window.

68. Both pending long form and short form applications will be subject to these applicant-based caps. In the event that an applicant does not timely comply with these dismissal procedures or submits a deficient showing, we direct the staff to (1) first apply the national cap, retaining on file the first 70 filed applications and dismissing (a) those Appendix A applications within that group of 70 applications that were filed after the first 50 Appendix A applications, and (b) those applications outside

[119] *See Fourth Report and Order*, 27 FCC Rcd at 3391 ¶ 57 ("We emphasize that the cap procedures we adopt will give applicants the opportunity to elect which applications will be processed toward a grant. We expect that applicants will choose applications that maximize new service to the public.").

[120] REC Partial Opposition at 6-7.

[121] *Fourth Report and Order*, 27 FCC Rcd at 3392 ¶ 61.

[122] *Id.* at 3385-87 ¶ 47-48.

[123] *See Third Report and Order*, 22 FCC Rcd at 21934-35 ¶ 56.

the Appendix A markets for which an adequate showing pursuant to paragraph 41 has not been submitted, and (2) then dismiss all but the first filed application by that applicant in each of the markets identified in Appendix A. We believe that this process will give applicants an incentive to file timely and complete showings so that they can maximize their future service to the public.[124]

III. SIXTH REPORT AND ORDER

69. On March 19, 2012, we released a *Fourth Further Notice of Proposed Rule Making* ("*Fourth Further Notice*")[125] in this proceeding, seeking comment on proposals to amend the Rules to implement provisions of the LCRA and to promote a more sustainable community radio service. These proposed changes were intended to advance the LCRA's core goals of localism and diversity while preserving the technical integrity of all of the FM services. We also sought comment on proposals to reduce the potential for licensing abuses.

70. In this *Sixth Report and Order*, we adopt an LPFM service standard for second-adjacent channel spacing waivers ("second-adjacent waivers"), in accordance with Section 3(b)(2)(A) of the LCRA. We also specify the manner in which a waiver applicant can satisfy this standard and the manner in which we will handle complaints of interference caused by LPFM stations operating pursuant to second-adjacent waivers. As specified in Section 7 of the LCRA, we establish separate third-adjacent channel interference remediation regimes for short-spaced and fully-spaced LPFM stations. Finally, as mandated by Section 6 of the LCRA, we modify our Rules to address the potential for predicted interference to FM translator input signals from LPFM stations operating on third-adjacent channels.

71. We also make a number of other changes to our Rules to better promote the core localism and diversity goals of LPFM service. Specifically, we modify our Rules to clarify that the localism requirement set forth in Section 73.853(b) applies not just to LPFM applicants but also to LPFM permittees and licensees. We revise our Rules to permit cross-ownership of an LPFM station and up to two FM translator stations, but we adopt a number of restrictions on such cross-ownership in order to ensure that the LPFM service retains its extremely local focus. In the interests of advancing the Commission's efforts to increase ownership of radio stations by federally recognized American Indian Tribes and Alaska Native Villages ("Tribal Nations") or entities owned or controlled by Tribal Nations, we revise our Rules to explicitly provide for the licensing of LPFM stations to Tribal Nations or entities owned and controlled by Tribal Nations (collectively, "Tribal Nation Applicants"), and to permit Tribal Nation Applicants to own or hold attributable interests in up to two LPFM stations. In addition, we modify the point system that we use to select from among MX LPFM applications. Specifically, we revise the established community presence criterion; retain the local program origination criterion; and add new criteria to promote the establishment and staffing of a main studio, radio service proposals by Tribal Nation Applicants to serve Tribal lands, and new entry into radio broadcasting. Given these changes, we revise the existing exception to the cross-ownership rule for student-run stations. We also modify the way in which involuntary time sharing works, shifting from sequential to concurrent license terms and limiting involuntary time sharing arrangements to three applicants. We adopt mandatory time sharing, which previously applied to full-service NCE stations but not LPFM stations, for the LPFM service. We also revise our Rules to eliminate the LP10 class of LPFM facilities and eliminate the

[124] Although a defective per-market showing will result in dismissal of all but the first-filed application in the relevant market, in applying the national cap, we will dismiss only those applications for which a required showing is defective. We believe that dismissing all rural applications across the nation because of one defective filing would be unduly harsh, whereas dismissal of all but the first-filed application, where a showing under the per-market cap is defective, is appropriate because the applicant can still prosecute the first-filed application in that market.

[125] *Creation of a Low Power Radio Service*, Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking and Third Order on Reconsideration, 27 FCC Rcd 3315 (2012) ("*Fourth Further Notice"* or "*Fifth Report and Order*").

intermediate frequency ("I.F.") protection requirements applicable to LPFM stations. Finally, we briefly discuss administrative aspects of the upcoming filing window for LPFM stations**.**

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

72. Section 3(b)(2)(A) of the LCRA explicitly grants the Commission the authority to waive the second-adjacent channel spacing requirements set forth in Section 73.807 of the Rules.[126] It permits second-adjacent waivers where an LPFM station establishes, "using methods of predicting interference taking into account all relevant factors, including terrain-sensitive propagation models," that its proposed operations "will not result in interference to any authorized radio service."[127] In the *Fourth Further Notice,* we tentatively concluded that this waiver standard supersedes the interim waiver processing policy adopted by the Commission in 2007.[128] We sought comment on this tentative conclusion. The three commenters that addressed this tentative conclusion agreed with it.[129] As we noted in the *Fourth Further Notice*, the interim waiver processing policy requires the Commission to "balance the potential for new interference to the full-service station at issue against the potential loss of an LPFM station."[130] This balancing is inconsistent with the language of Section 3(b)(2)(A) of the LCRA described above, which does not contemplate such a balancing.[131] Accordingly, we affirm our tentative conclusion that the waiver standard set forth in the LCRA and discussed herein supersedes the interim waiver processing policy previously adopted by the Commission.[132]

73. In the *Fourth Further Notice,* we sought comment on the factors relevant to and showings appropriate for second-adjacent waiver requests.[133] Some commenters express support for a requirement that waiver applicants demonstrate there are no fully-spaced channels available, [134] a

[126] 47 C.F.R. § 73.807.

[127] LCRA § 3(b)(2)(A).

[128] *Fourth Further Notice*, 27 FCC Rcd at 3323 ¶ 18. Under the interim waiver processing policy, an LPFM station that received increased interference from or was displaced by a new or modified full-service FM station could seek waiver of the second-adjacent channel spacing requirements in connection with an application to move to a new channel. *Third Report and Order,* 22 FCC Rcd at 21939-40 ¶¶ 64-67.

[129] NPR Comments at 5; EMF Comments at 2; Grant County Broadcasters, Inc. ("Grant County") Comments at 1.

[130] *Fourth Further Notice*, 27 FCC Rcd at 3323 ¶ 18, *citing Third Report and Order*, 22 FCC Rcd at 21939 ¶ 65.

[131] LCRA § 3(b)(2)(A).

[132] There are a small number of LPFM stations operating pursuant to special temporary authority ("STA") granted under the interim waiver processing standard. REC urges us to grandfather the operations of these stations. *See* REC Comments at 16-17; REC Reply Comments at 14. We believe that the following alternative approach is more consistent with the requirements of the LCRA. Should one of these stations wish to continue to operate at a variance from the second-adjacent channel spacing requirements, within 30 days following the effective date of the rule implementing the second-adjacent waiver policy set forth in the LCRA and herein, the station may amend its pending application for a construction permit to operate with the facilities specified in its STA and attach an exhibit that demonstrates that its operations will not result in any interference to any authorized radio service. We note that such a station's history of operating at a variance from the second-adjacent channel spacing requirements without any complaints of interference would be a relevant factor in determining whether that station's operations will result in any interference to any authorized radio service. We are revising the Application for Construction Permit for a Low Power FM Broadcast Station (FCC Form 318) to specifically provide for exhibits associated with second-adjacent waiver requests.

[133] *Fourth Further Notice,* 27 FCC Rcd at 3323-24 ¶ 19.

[134] NPR Comments at 5; National Association of Broadcasters ("NAB") Reply Comments at 5; Entercom Communications Corp. ("Entercom") Reply Comments at 3.

potential waiver standard about which we specifically sought comment.[135] One commenter – the National Association of Broadcasters ("NAB") – proposes additional requirements for second-adjacent waivers.[136] These commenters argue that the plain language of the LCRA and its legislative history require that the Commission grant second-adjacent waivers "only in strictly defined circumstances."[137] In contrast, Prometheus and others argue that "[b]eyond a showing of non-interference as required by the statute, no other showing should be required for LPFM applicants seeking waivers."[138] Prometheus states that "[t]he Commission is bound by the LCRA's terms" and cannot "infer a wide range of additional limitations or prescriptions that appear nowhere in the statute."[139]

74. We have reviewed both the text of the LCRA and the legislative history. The plain language of Section 3(b)(2)(A) of the LCRA permits the Commission to grant second-adjacent waivers where a waiver applicant demonstrates that its proposed operations "will not result in interference to any authorized radio service."[140] Nothing in the LCRA or its legislative history suggests that Congress intended to require that waiver applicants make any additional showings.[141] The statute does not mandate any further conditions on the grant of such waivers, and it does not prescribe the burden of proof. We conclude that Congress intended to ensure that LPFM stations operating pursuant to second-adjacent waivers do not cause interference to full-service FM and other authorized radio stations. We find that additional limitations are not needed to achieve this goal.[142] Indeed, to require additional showings of waiver applicants would impose requirements that go beyond those established in the LCRA that we do not believe are either necessary to the implementation of its interference protection goals or consistent with the localism and diversity goals underlying the LPFM service. Accordingly, we will not further restrict the availability of second-adjacent waivers. Likewise, we will not consider any of the other

[135] *Fourth Further Notice*, 27 FCC Rcd at 3323 ¶ 19.

[136] *See* NAB Reply Comments at 7-8 (proposing a presumption of interference where an applicant does not comply with the second-adjacent spacing requirements, which an applicant must rebut with "clear and convincing evidence" that no interference will occur; and proposing a requirement that an LPFM applicant seeking a second-adjacent waiver certify that no other LPFM stations are located within 15 miles of the proposed transmitter site). *See also* Entercom Reply Comments at 2-3 (offering support for NAB proposals).

[137] NAB Comments at 4-8 (asserting that the plain language of the LCRA and its structure support adoption of a restrictive approach to waivers); NAB Reply Comments at 3-5 (arguing that the legislative history demonstrates Congress intended second-adjacent waivers to be granted "only in extremely limited circumstances"); NPR Comments at 2; Entercom Reply Comments at 1-2.

[138] Prometheus Comments at 19. *See also* REC Comments at 12; Common Frequency, Inc. ("Common Frequency") Comments at 3; Common Frequency Reply Comments at 4-5.

[139] Prometheus Reply Comments at 3. *See also* Joint Reply Comments of Prometheus, Amherst Alliance ("Amherst"), Center for Media Justice, Christian Community Broadcasters, Color of Change, Common Frequency, Free Press, Future of Media Coalition, Media Alliance, National Hispanic Media Coalition, National Lawyers Guild Committee on Democratic Communications ("NLG"), REC, United Church of Christ, Office of Communications, Inc. (collectively, "LPFM Advocates") at 1, *citing* LCRA § 3(b)(2)(a). The LPFM Advocates and Common Frequency also maintain that adoption of a restrictive waiver standard would violate the requirement set forth in Section 5(3) of the LCRA that FM translator stations and LPFM stations be "equal in status." LPFM Advocates Joint Reply Comments at 2; Common Frequency Reply Comments at 4-5. We disagree. We find nothing in the LCRA or its legislative history to suggest that Congress intended the provision that FM translators and LPFM stations remain "equal in status" to require the Commission to adopt identical rules for the two services.

[140] LCRA § 3(b)(2)(A).

[141] Unlike NAB, we are not concerned that second-adjacent waivers will become the exception that swallows the second-adjacent channel spacing rule. *See* NAB Comments at 6 n.23.

[142] NAB Reply Comments at 6-7; Entercom Reply Comments at 3.

factors proposed in the *Fourth Further Notice* in determining whether to grant a waiver request, none of which received any support in the comments.[143]

75. We find unconvincing the policy arguments made by supporters of requiring additional showings of waiver applicants. For instance, we are not persuaded that any additional limits are needed to preserve the technical integrity of the FM service.[144] Neither NAB nor any other commenter has offered evidence to support the claim that granting second-adjacent waivers that satisfy the LCRA requirements will harm audio quality or disrupt the expectations of listeners. Indeed, we are not sure how any commenter could since waivers will only be granted where an applicant makes a showing that its proposed operations will not cause interference. Moreover, we note that many FM translators successfully operate on second-adjacent channels, often at higher effective radiated powers ("ERPs") and heights above average terrain ("HAAT") than LPFM stations, under a protection scheme that permits second-adjacent channel operations at less than LPFM distance separation requirements. We believe LPFM stations can operate just as successfully. Should interference occur, the interference remediation obligations set forth in Section 3(b)(2)(B) of the LCRA[145] will serve as a backstop to ensure that the technical integrity of the FM band is maintained.

76. We find equally unpersuasive the argument that imposing additional limits on second-adjacent waivers is in the best interest of LPFM applicants.[146] LPFM applicants may lack broadcast experience and technical expertise, and therefore, may have difficulty predicting interference issues.[147] However, Commission staff will review each waiver request and will deny any request that they determine would cause interference. In addition, while the interference remediation obligations may prove burdensome to LPFM licensees and may require some LPFM stations to cease operations,[148] we do not see this as a reason to limit waivers. We agree with Prometheus that the potential benefit of promoting a locally-based non-commercial radio service in potentially thousands of communities nationwide vastly outweighs the risks that individual LPFM licensees may face.[149] In this regard, we note that, in spectrum-congested markets, few LPFM opportunities would exist without the use of second-adjacent waivers.[150] For instance, applicants will be able to select from 19 unique LPFM channels in the Denver Arbitron Metro market and 18 in the New Haven Arbitron Metro market if second-adjacent

[143] *Fourth Further Notice*, 27 FCC Rcd at 3323-24 ¶ 19 (2012) (requesting comment on whether to take into account that a proposal would eliminate or reduce the interference received by the LPFM applicant, avoid a short-spacing between the proposed LPFM facilities and a full-service FM station, FM translator or FM booster station on a third-adjacent channel, or result in superior spacing to full-service FM, FM translator or FM booster stations operating on co- and first-adjacent channels).

[144] NAB Comments at 8-9; Entercom Reply Comments at 1-2.

[145] *See* LCRA § 3(b)(2)(B).

[146] NPR Comments at 5; Entercom Reply Comments at 2.

[147] NAB Comments at 10-11 ("[G]iven the lack of resources and limited experience of many LPFM operators, it will be challenging for LPFM stations to resume operations by making the technical modifications necessary to eliminate the harmful interference."); NAB Reply Comments at 6-7; Entercom Reply Comments at 2; NPR Comments at 5; EMF Comments at 2-3, 4-5 ("In essence, this requirement poses a death sentence on any LPFM that locates its transmitter at the wrong location, too close to a full-power station.").

[148] NAB Comments at 8-11; NPR Comments at 5; EMF Comments at 3-5.

[149] Prometheus Reply Comments at 6-7.

[150] Prometheus Comments at 17 (estimating that, within the Top 150 Arbitron Metro markets, the number of frequencies available for LPFM applicants could increase by more than 100 percent if a less restrictive waiver policy is adopted); REC Comments at 13 (stating that, in urban areas, approximately 87 percent of all new construction permit applications will require a second-adjacent waiver).

waivers are available. If these waivers are not available, an applicant will have a much more limited selection – four unique LPFM channels in the Denver Arbitron Metro market and three in the New Haven Arbitron Metro market.

77. We turn to the manner in which waiver applicants can "establish, using methods of predicting interference taking into account relevant factors, including terrain-sensitive propagation models, that their proposed operations will not result in interference to any authorized radio service."[151] In the *Fourth Further Notice,* we asked whether we should permit LPFM applicants to make the sort of showings we routinely accept from FM translator applicants to establish that "no actual interference will occur."[152] A number of commenters offer general support for this proposal.[153] Prometheus grounds its support in the fact that, read together, Sections 3(b)(2)(A) and (B) of the LCRA "set out a second adjacent waiver standard substantially identical to the rules allocating translators on the second adjacent frequency."[154] NAB opposes the use of these showings by waiver applicants, arguing that it could lead to "over-packing of the FM band, unwanted interference, and the degradation of listeners' experience."[155] NAB, however, does not offer any evidence to support its claims. Nor does NAB explain why the operations of the very large number of FM translators that have relied on these showings do not cause the same interference and signal degradation problems they predict as a result of LPFM second-adjacent waivers. NPR also opposes allowing LPFM applicants to make the same showings as FM translators. NPR argues that there are "significant differences" between the LPFM and FM translator services.[156]

[151] LCRA § 3(b)(2)(A).

[152] *Fourth Further Notice,* 27 FCC Rcd at 3323 ¶ 18, *citing* 47 C.F.R. § 74.1204(d).

[153] Prometheus Comments at 17-19; NLG and Media Alliance Comments at 5; Common Frequency Comments at 2; Magrill Comments at 3. REC urges us to treat waiver applicants like NCE FM stations instead, waiving protection requirements where an applicant demonstrates that interference from its proposed operations will affect only a *de minimis* population. REC Comments at 13-15; REC Reply Comments at 14. REC argues that the Commission has the discretion to define the term "interference" in the LCRA. Comments of REC Networks at 13. We do not believe it would be appropriate to exercise any such discretion to adopt the broader kind of waiver analysis that might be appropriate in other contexts. In Section 3(b)(2)(A) of the LCRA, Congress authorized the Commission to grant second-adjacent waivers only if LPFM stations operating pursuant to such waivers would not cause "interference." The essential purpose of the Act was to implement a set of protections designed to avoid interference. Congress could have incorporated instead a more flexible standard, but it did not do so. In this particular context – as discussed below, the LCRA provides greater flexibility to LPFM stations, but counterbalances that flexibility with strict limits on actual interference to other stations, *see infra* ¶ 89 – we believe that Congress's use of the term "interference" reasonably may be interpreted to require that no interference, *de minimis* or otherwise, would be caused by the operations of an LPFM station operating pursuant to a second-adjacent waiver. For this same reason, we reject the proposal that we "borrow" from the NCE FM/TV-6 rules, 47 C.F.R. §§ 73.525(b) & (c)**,** and "allow[ ] for a population minimum (with promise to ameliorate) to exist in the 'problem' area." Mike Friend ("Friend") Comments at 1. Finally, we note that *Educational Information Corp.,* Memorandum Opinion and Order, 6 FCC Rcd 2207 (1991) ("*EIC*"), which REC cites, is inapposite. *EIC* addresses the Commission's policy to waive the prohibition on contour overlap to allow an applicant to *receive* – as opposed to cause – *de minimis* levels of interference. In *EIC*, the Commission did state that, in certain very limited circumstances, it would waive the prohibition on contour overlap to allow an applicant to cause interference within the protected contour of another station operating pursuant to a waiver allowing it to receive a *de minimis* level of interference. The balancing of "the benefit of increased noncommercial educational service" against "the potential for interference" in *EIC,* 6 FCC Rcd at 2208 ¶ 10, however, is the kind of balancing that, as noted above, the LRCA does not permit.

[154] Prometheus Comments at 17-19, *citing* 47 C.F.R. §§ 74.1203 & 74.1204(d).

[155] NAB Comments at 7 n.26.

[156] NPR Reply Comments at 8-9. Grant County does not support allowing any applicant – FM translator or LPFM – to demonstrate "no interference" by showing that there is no population within the contour overlap area. Grant (continued….)

However, it does not explain how these differences – the ability to originate programming or lack thereof, the highly local nature of the LPFM service, the relative inexperience of LPFM licensees when compared to FM translator licensees – would justify different waiver standards for FM translators and LPFM stations. We are not persuaded that the differences that NPR cites have any impact on whether a station will cause interference. Rather, the potential for interference is principally dependent on the propagation characteristics of the "protected" and "interfering" FM signals and the quality of the utilized FM receiver.

78. We will permit waiver applicants to demonstrate that "no actual interference will occur" in the same manner as FM translator applicants. Put another way, we will permit waiver applicants to show that "no actual interference will occur" due to "lack of population"[157] and will allow waiver applicants to use an undesired/desired signal strength ratio methodology to define areas of potential interference when proposing to operate near another station operating on a second-adjacent channel.[158] Although the LCRA does not require the Commission to incorporate for second-adjacent channels the FM translator regime that Congress incorporated for third-adjacent channel interference protection, as Prometheus notes the second-adjacent waiver provisions of the LCRA establish a regime similar to that governing FM translators. Given the discretion afforded by Congress to the Commission for determining appropriate "methods of predicting interference," our experience in connection with methods for doing so in the analogous context of FM translators, and the similarities between the regime established in Sections 3(b)(2)(A) and (B) and the regime applicable to FM translator stations, we believe it is appropriate to grant waiver applicants the same flexibility as FM translator applicants to demonstrate that, despite predicted contour overlap, interference will not in fact occur due to an absence of population in the overlap area. We note that, like FM translator stations, LPFM stations operating pursuant to second-adjacent waivers may not cause any actual interference.[159]

79. We also will permit waiver applicants to propose use of directional antennas in making these showings. This is consistent with our treatment of FM translator applicants and supported by the vast majority of commenters.[160] We clarify that, like FM translator applicants, waiver applicants may use "off the shelf" antenna patterns and will not be required to submit information regarding the characteristics of the pattern with the construction permit application.[161] In addition, as requested by

(Continued from previous page)

County Comments at 1. Grant County opposes this because it prevents full-service stations from serving an area where there might be significant growth in the future. *Id.* NPR made a similar argument when we first considered and adopted the "lack of population" exception to the prohibited contour overlap rule. *See Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212, 7229 ¶ 120 (1990) (noting NPR's argument that the absence of population in a given interference zone today may not be accurate in the near future). We decline to revisit the issue here.

[157] *See* 47 C.F.R. § 74.1204(d).

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

[159] *See* LCRA § 3(b)(2)(B).

[160] Only du Treil, Lundin, & Rackley, Inc. ("du Treil") opposes it. du Treil Comments at 4. We find unpersuasive du Treil's argument that, because the LPFM allocation methodology itself is based upon minimum distance separations which do not take into account the effects of directional antennas, directional antennas offer no real allocation benefit. We intend to allow waiver applicants to demonstrate that there will be no interference through the use of interference contours. Use of a directional antenna may offer some benefit in making such a showing. Because the second-adjacent channel interfering contour for LPFM stations will generally encompass only the area in the immediate vicinity of an LPFM station's transmitter site, directional antennas may be of limited assistance to waiver applicants. We are not persuaded, however, that as a result we should refuse to consider any showings based on proposed use of a directional antenna.

[161] *See* Community Media and Assistance Project Comments ("CMAP") at 6; Common Frequency Comments at 20.

Prometheus and Common Frequency,[162] we will permit waiver applicants to propose lower ERPs and differing polarizations in order to demonstrate that their operations will not result in interference to any authorized radio service. We expect that this flexibility will facilitate the expansion of the LPFM service while still protecting the technical integrity of the FM band. In terms of proposals specifying lower ERPs, we will not accept proposals to operate at less than current LPFM minimum permissible facilities (*i.e.,* power levels of less than 50 watts ERP at 30 meters HAAT, or its equivalent).[163] Since the proposed operating parameters of a waiver applicant will be available in our Consolidated Database System ("CDBS") and since we do not require other applicants seeking waivers of our technical rules to serve their waiver requests on potentially affected stations, we will not require an LPFM applicant seeking a second-adjacent waiver to serve its waiver request on any potentially affected station.[164] We will, however, instruct the Media Bureau to identify specifically all potentially affected second-adjacent channel stations in the public notice that accepts for filing an application for an LPFM station that includes a request for a second-adjacent waiver.

80. We remind potential LPFM applicants that the LCRA permits the Commission to grant waivers only of second-adjacent, and not co- and first-adjacent, spacing requirements.[165] The flexibility discussed above regarding lower power, polarization and directional patterns extends only to waiver applicants seeking to demonstrate that their proposed operations will not result in any second-adjacent channel interference. We also caution LPFM applicants against using this technical flexibility to limit the already small service areas of LPFM stations to such an extent that, while their LPFM applications are grantable, the LPFM stations will not be viable. As the Media Bureau noted recently "the limitations on the maximum power of LPFM stations substantially reduce the number of potential listeners they can serve."[166] The Media Bureau went on to note that "[t]he low power of an LPFM station affects not only its geographic reach and coverage area, but also the quality of its signal and the ability of listeners to receive its signal consistently inside the station's coverage area."[167] Finally, we take this opportunity to make clear the protection obligations of FM translators toward LPFM stations operating with lower powers, differing polarizations and/or directional antennas. To simplify matters and provide clear guidance to FM translator applicants, we will require FM translator modification applications and applications for new FM translators to treat such LPFM stations as operating with non-directional antennas at their authorized power.[168]

81. We turn now to what happens if an LPFM station operating pursuant to a second-adjacent channel waiver causes interference. Section 3(b)(2)(B) provides a framework for handling an interference complaint resulting from an LPFM station operating pursuant to a second-adjacent waiver "without regard to the location of the station receiving interference."[169] Upon receipt of a complaint of interference

[162] Prometheus Comments at 20-21; Prometheus Reply Comments at 4; Common Frequency Comments at 3.

[163] *See* 47 C.F.R. § 73.811(a)(2). As discussed *infra* Part III.D.4, we eliminate the LP10 class of LPFM facilities, which could operate at ERPs as low as one watt.

[164] *See* EMF Comments at 5; NAB Reply Comments at 8.

[165] LCRA §3(b).

[166] *See Economic Impact of Low-Power FM Stations on Commercial FM Radio: Report to Congress Pursuant to Section 8 of the Local Community Radio Act of 2010*, Report, 27 FCC Rcd 3 at 64 ¶ 5 (MB 2012) ("*LPFM Report*").

[167] *Id.* at 64 ¶ 6.

[168] In this context, we believe it is appropriate to protect the possibility of an LPFM station operating with non-directional facilities. This can provide flexibility for future LPFM station service improvements similar to that which the LPFM technical rules provide for many translator stations while also minimizing the potential for signal degradation from subsequently licensed translator stations.

[169] LCRA § 3(b)(2)(B).

caused by an LPFM station operating pursuant to a second-adjacent waiver, the Commission must notify the LPFM station "by telephone or other electronic communication within 1 business day."[170] The LPFM station must "suspend operation immediately upon notification" by the Commission that it is "causing interference to the reception of any existing or modified full-service FM station."[171] It may not resume operations "until such interference has been eliminated or it can demonstrate . . . that the interference was not due to [its] emissions."[172] The LPFM station, however, may "make short test transmissions during the period of suspended operation to check the efficacy of remedial measures."[173]

82. In the *Fourth Further Notice,* we proposed to incorporate these provisions into our Rules.[174] We will do so. We believe including these provisions in the Rules will provide a clear framework for the efficient resolution of interference complaints.

83. We also requested comment on whether to define a "*bona fide* complaint" for the purpose of triggering these interference remediation procedures.[175] Prometheus urges us to do so and to handle interference complaints against LPFM stations operating pursuant to second-adjacent waivers in a manner similar to complaints against FM translators and similar to the former third adjacent channel remediation requirements.[176] As we described in the *Fourth Further Notice*,[177] for FM translators, Section 74.1203(a) prohibits "actual interference to … [t]he direct reception by the public of the off-the-air signals of any authorized broadcast station . . . ."[178] It specifies that "[i]nterference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by" the interfering FM translator station.[179] An interfering FM translator station must remedy the interference or cease operation.[180] The Commission has interpreted this rule broadly. It places no geographic or temporal limitation on complaints.[181] It covers all types of interference. The reception affected can be that of a fixed or mobile receiver. The Commission also has interpreted "direct reception by the public" to limit actionable complaints to those that are made by *bona fide* listeners.[182] Thus, it has declined to credit claims of interference[183] or lack of interference[184] from station personnel involved in an interference dispute. More generally, the Commission requires that a complainant "be 'disinterested,' *e.g.*, a person or

[170] LCRA § 3(b)(2)(B)(iii).

[171] LCRA § 3(b)(2)(B)(i).

[172] LCRA § 3(b)(2)(B)(ii).

[173] *Id*.

[174] *Fourth Further Notice*, 27 FCC Rcd at 3324 ¶ 20.

[175] *Id.*

[176] Prometheus Comments at 22.

[177] *Id.* at 3328-29 ¶ 31.

[178] 47 C.F.R. § 74.1203(a).

[179] 47 C.F.R. § 74.1203(a)(3).

[180] 47 C.F.R. § 74.1203(b).

[181] *See Association for Community Education, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12688 ¶ 15 (2004) ("*Association for Community Education*").

[182] *See Association for Community Education,* 19 FCC Rcd at 12688 ¶ 16.

[183] *See id.*

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

entity without a legal stake in the outcome of the translator station licensing proceeding."[185] The staff has routinely required a complainant to provide his name, address, location(s) at which FM translator interference occurs, and a statement that the complainant is, in fact, a listener of the affected station. Moreover, as is the case with other types of interference complaints,[186] the staff has considered only those complaints of FM translator interference where the complainant cooperates in efforts to identify the source of interference and accepts reasonable corrective measures.[187] Accordingly, when the Commission concludes that a *bona fide* listener has made an actionable complaint of uncorrected interference from an FM translator, it will notify the station that "interference is being caused" and direct the station to discontinue operations.[188]

84. We conclude that it is appropriate to handle complaints in a manner similar to that used to handle complaints of interference caused by FM translators. As we noted above, we believe that the LCRA affords the Commission the discretion to rely on our successful FM translator experience in implementing the interference protection regime for second-adjacent LPFM stations. Accordingly, we will adopt the same requirements for complaints that we apply in the FM translator context. As described above, that means that a complaint must come from a disinterested listener[189] and must include the listener's name and address, and the location at which the interference occurs. We are unconvinced by NPR's argument that a listener complaint is unnecessary. While NPR is correct that Section 3(b)(2)(B)(iii) refers simply to "a complaint of interference" and does not specify the source of such complaint,[190] we find this statutory term to be ambiguous. We conclude that it may reasonably be interpreted to refer to listener complaints. We note that we have interpreted Section 74.1203 of the Rules to require that complaints of interference in the FM translator context be filed by listeners.[191] We also note that the scope of the rule prohibiting translator stations from causing "actual interference to … direct reception," and that of Section 3(b)(2)(B) which prohibits LPFM stations from causing "interference to the reception of an existing or modified full-service station,"[192] are essentially equivalent. The Commission previously has interpreted the "direct reception" language included in Section 73.1203(a) as limiting actionable complaints to those that are made by *bona fide* listeners.[193] We believe it is appropriate to interpret the "reception" language in Section 3(b)(2)(B) of the LCRA as imposing this same limit.

85. Once the Commission receives a *bona fide* complaint of interference from an LPFM station operating pursuant to a second-adjacent waiver and notifies the LPFM station of the complaint, the

[185] *Association for Community Education*, 19 FCC Rcd at 12688 n.37.

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

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

[188] *See* 47 C.F.R. § 74.1203(e); *see also Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212, 7230 ¶ 131 (1990), *modified*, 6 FCC Rcd 2334 (1991), *recon. denied,* 8 FCC Rcd 5093 (1993); *Association for Community Education,* 19 FCC Rcd at 12688 ¶ 15.

[189] *Association for Community Education*, 19 FCC Rcd at 12688 n.37.

[190] NPR Reply Comments at 4-5.

[191] 47 C.F.R. § 74.1203.

[192] LCRA § 3(b)(2)(B).

[193] *See Association for Community Education,* 19 FCC Rcd at 12688 ¶ 16.

LPFM station must "suspend operation immediately" and stay off the air until it eliminates the interference or demonstrates that the interference was not due to its emissions.[194] We conclude that an LPFM station may demonstrate that it is not the source of the interference at issue by conducting an "on-off" test. "On-off" tests have been used by the FM translator and other services to determine whether identified transmissions are "the source of interference."[195] In addition, the Commission specifically authorized LPFM stations to use "on-off" tests for determining "whether [third-adjacent interference] is traceable to [an] LPFM station."[196] As the Commission did in that context, we require the full-service station(s) involved to cooperate in these tests.[197]

B. Third-Adjacent Channel Interference Complaints and Remediation

86. As instructed by Section 3 of the LCRA, in the *Fifth Report and Order*, we eliminated the third-adjacent channel spacing requirements. We then sought comment on the associated interference remediation obligations, set forth in Section 7 of the LCRA, that Congress paired with this change.[198] We conclude that Section 7 of the LCRA creates two different LPFM interference protection and remediation regimes, one for LPFM stations that would be considered short-spaced under the third-adjacent channel spacing requirements in place when the LCRA was enacted, and one for LPFM stations that would be considered fully spaced under those requirements. We discuss this conclusion and each of the regimes below.

1. LPFM Interference Protection and Remediation Requirements

87. *Two Distinct Regimes.* Sections 7(1) and 7(3) of the LCRA both address the interference protection and remediation obligations of LPFM stations on third-adjacent channels. Only Section 7(1) specifies requirements for "low-power FM stations licensed at locations that do not satisfy third-adjacent channel spacing requirements . . . ."[199] With regard to such stations ("Section 7(1) Stations"), Section 7(1) instructs the Commission to adopt "the same interference protections that FM translator stations and FM booster stations are required to provide as set forth in Section 74.1203 of [the] rules."[200] Section 7(3), in contrast, directs the Commission to require "[LPFM] stations on third-adjacent channels … to address interference complaints within the protected contour of an affected station" and encourages such LPFM

[194] LCRA §§ 3(b)(2)(B)(i) & (ii). We note that Section 7(4) of the LCRA expressly requires the Commission, to the extent possible, to permit LPFM FM stations on *third*-adjacent channels to remediate interference through colocation. We believe we should also offer such flexibility to stations operating pursuant to second-adjacent waivers. Nothing in Section 3(b)(2)(B) of the LCRA deprives the Commission of discretion to adopt such a remediation policy with regard to second-adjacent waivers. Accordingly, we will entertain requests to waive Section 73.871 of our Rules, 47 C.F.R. § 73.871, to permit stations operating pursuant to second-adjacent waivers to file applications outside of LPFM filing windows that are designed to remediate interference and that propose colocation with or moves closer to short-spaced stations operating on second-adjacent channels.

[195] *See, e.g., Educational Communications of Colorado Springs, Inc.*, Notice of Violation, 2007 FCC LEXIS 1635, *2 ¶ 2 (EB 2007). *See also Amendment of Parts 1, 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*, Report and Order on Reconsideration, 14 FCC Rcd 12764, 12772 ¶ 17 (noting that "in most cases a simple on-off test will demonstrate whether a facility is causing harmful interference" and explaining that "such a test can be performed very quickly").

[196] 47 C.F.R. § 73.810(d).

[197] *Id*.

[198] *See Fourth Further Notice*, 27 FCC Rcd at 3327-32 ¶¶ 26-41. *See also* LCRA § 7.

[199] LCRA § 7(1).

[200] *Id.*

stations to address "all other interference complaints."[201] In the *Fourth Further Notice*, we tentatively concluded that, through these two provisions, Congress intended to create two different interference protection and remediation regimes – one that applies to Section 7(1) Stations and one that applies to all other LPFM stations ("Section 7(3) Stations").[202] We explained that the intended regimes differed both with respect to the locations at which an affected station's signal is protected from third-adjacent interference from an LPFM station and the extent of the remediation obligations applicable when interference occurs at these locations.[203] We sought comment on our tentative conclusion.

88. Commenters addressing this question support our tentative conclusion.[204] Accordingly, we find that Section 7 of the LCRA creates two different interference protection and remediation regimes – one that applies to Section 7(1) Stations and one that applies to Section 7(3) Stations. As we noted in the *Fourth Further Notice*, were we to conclude otherwise, Section 7(1) Stations would be subject to different and conflicting interference protection and remediation obligations. Specifically, under Section 7(1), which incorporates the requirements for FM translators and boosters, Section 7(1) Stations must "eliminate" any actual interference they cause to the signal of any authorized station in areas where that station's signal is "regularly used."[205] Section 7(3), on the other hand, would obligate such stations only to "address" complaints of interference occurring within an affected station's protected contour.[206] We conclude that this statutory interpretation is necessary to read Section 7 as a harmonious whole.[207]

89. As we noted in the *Fourth Further Notice,* we can also reasonably conclude that Congress intended to impose more stringent interference protection and remediation obligations on LPFM stations that are located nearest to full-service FM stations and, therefore, have a greater potential to cause interference.[208] The LCRA provides greater flexibility by eliminating third-adjacent channel spacing

[201] LCRA § 7(3).

[202] *Fourth Further Notice*, 27 FCC Rcd at 3326 ¶ 26. Until amended by the LCRA, Section 632 of the 2001 D.C. Appropriations Act barred the Commission from granting waivers of the third-adjacent channel spacing requirements. Thus, there currently are no LPFM stations that would be considered short-spaced to any full-service FM, FM translator or FM booster stations under the third-adjacent channel spacing requirements that we eliminated in the *Fifth Report and Order*.

[203] *Fourth Further Notice*, 27 FCC Rcd at 3326-27 ¶¶ 26-27.

[204] *See* REC Comments at 5; Prometheus Comments at 7, 23; Athens Community Radio Foundation ("ACRF") Comments at 2; NAB Comments at 8 (supporting the Commission's view that the LCRA creates two different interference protection and remediation schemes, and finding that the Commission "has proposed a reasonable, practical approach to resolving these third-adjacent channel interference complaints."); NPR Comments at 5-6. *See also* Southwestern Ohio Public Radio ("SOPR") Comments at 2 (expressing a belief "that sections 7(1) and 7(3) of the LCRA contain conflicting direction, and a preference that a single standard apply to all stations" but noting that "the proposed Commission solution may make the best of this bad situation by applying [separate standards]").

[205] *See* 47 C.F.R. § 74.1203(a)(3).

[206] LCRA § 7(3).

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

[208] Common Frequency questions this reasoning and asserts that our statement that "Section 7(1) stations are located nearest to full-service FM stations and have the greatest potential to cause interference" runs contrary to broadcast engineering theory. *See* Common Frequency Comments at 6-7. Common Frequency asserts that "U/D methodology predicts LPFM stations proposed closer to full power stations have less interference to the full power station than ones proposed further away." *See* Common Frequency Comments at 6-7. It is true that an LPFM station that would be considered short-spaced to another station operating on a third-adjacent channel may reduce (or eliminate) its (continued….)

requirements for LPFM stations, but counterbalances that flexibility with a prohibition on LPFM stations that would be short-spaced under such requirements causing any actual interference to other stations. Accordingly, our reading is consistent with the general licensing rule of counterbalancing flexible technical standards with more stringent interference remediation requirements.[209]

90. *Retention of Third-Adjacent Channel Spacing Requirements for Reference.* We tentatively concluded that, although Section 3(a) of the LCRA mandates the elimination of the third-adjacent channel spacing requirements, we should retain them solely for reference purposes in order to implement Section 7(1) of the LCRA.[210] We sought comment on this tentative conclusion and also on whether, if the spacing tables are retained in the Rules, to include them in Section 73.807 or a different rule section.

91. Commenters addressing this issue agree that the rules should reference the former third-adjacent channel distance separation requirements, but are divided on the best approach.[211] REC expresses concern that references to third-adjacent spacing in Section 73.807 could confuse new applicants.[212] Common Frequency asserts that it would be confusing to eliminate the third-adjacent spacing provisions, rename them, and then insert them in a table elsewhere in the Rules.[213]

92. We will retain the third-adjacent channel spacing provisions in Section 73.807 for reference purposes only. It is necessary to reference the former third-adjacent channel spacing requirements in order to clarify which stations must adhere to the Section 7(1) regime.[214] We are sympathetic to commenters' concerns of confusion. However, we believe that licensees will find it easier and more convenient to have all the spacing standards (reference or otherwise) in one section of the Rules. We make clear in the new version of Section 73.807 that LPFM stations need not satisfy these standards, and that they are included solely to determine which third-adjacent interference regime applies.

93. *Applicability of Sections 7(4) and (5) of the LCRA.* Sections 7(4) and (5) of the LCRA establish a number of protection and interference remediation requirements. These provisions mandate that the Commission allow LPFM stations on third-adjacent channels to collocate[215] and establish certain

(Continued from previous page)
area of predicted interference, as defined by the ratio of the two stations' signal strengths, by moving closer to the other station. However, in *all instances*, the proposed operations of an LPFM station that would be considered fully-spaced under the now non-binding third-adjacent spacing requirements would *never* generate an area of predicted interference as defined by the ratio methodology. Thus, Section 7(1) Stations have a greater potential to cause interference, and it is reasonable to assume that Congress intended to recognize that distinction.

[209] *Fourth Further Notice*, 27 FCC Rcd at 3327 ¶ 27, *citing Further Notice*, 20 FCC Rcd at 6779 ¶ 36.

[210] *Fourth Further Notice*, 27 FCC Rcd at 3327 ¶ 28.

[211] *See* REC Comments at 4; Common Frequency Comments at 11; SOPR Comments at 2.

[212] REC Comments at 4.

[213] Common Frequency Comments at 11.

[214] REC suggests that, because third-adjacent channel spacing is the same as second-adjacent channel spacing for full-service domestic FM stations, we could eliminate the column for third-adjacent channel spacings in Section 73.807, and instead, refer to the second-adjacent channel values. REC Comments at 4. We decline to adopt this approach because we believe such a cross-reference to unrelated rules is more likely to create confusion than the retention of the third-adjacent spacing requirements in Section 73.807 with the clarification of their limited purpose.

[215] LCRA § 7(4).

complaint procedures and standards.[216] In the *Fourth Further Notice*, we tentatively concluded these sections apply only to Section 7(3) Stations.[217]

94. We affirm our tentative conclusion, which was supported by Prometheus, the sole commenter on this issue.[218] We believe this is the most reasonable reading of these provisions. Sections 7(4) and (5) use the same "low-power FM stations on third-adjacent channels" language as Section 7(3), not the more specific "low-power FM stations licensed at locations that do not satisfy third-adjacent channel spacing requirements" language set forth in Section 7(1). In addition, as discussed above, Section 7(1) Stations are subject to the well-established and comprehensive interference protection and remediation regime set forth in Section 74.1203 of the Rules. We therefore will not apply Sections 7(4) and 7(5), which establish discrete requirements inconsistent with the Section 74.1203 regime, to Section 7(1) stations.

95. *Third-Adjacent Channel Interference Only.* We tentatively concluded that Sections 7(1), (2), (3), (4) and (5) of the LCRA apply only to third-adjacent channel interference. We affirm our conclusion, which commenters support.[219] Although Congress did not specify the type of interference to which these provisions apply, we believe this is the most reasonable reading. In each of these provisions, Congress refers specifically to LPFM stations on third-adjacent channels or LPFM stations that do not satisfy the third-adjacent channel spacing requirements. These references reflect a focus on LPFM stations causing interference to stations located on third-adjacent channels. Our conclusion is further supported by the fact that Congress separately addressed the possibility of second-adjacent channel interference in Section 3 of the LCRA.

2. Regime Applicable to Section 7(1) Stations

96. *General Requirements.* Section 7(1) Stations are subject to the same interference protection and remediation regime applicable to FM translator and booster stations. These requirements, set forth in Section 74.1203 of the Rules,[220] are more stringent than those currently applicable to LPFM stations. Section 74.1203(a) prohibits "actual interference to … [t]he direct reception by the public of the off-the-air signals of any authorized broadcast station . . . ."[221] It specifies that "[i]nterference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by" the interfering FM translator station.[222] An interfering FM translator station must remedy the interference or cease operation.[223] As previously noted, the rule has been interpreted broadly.[224]

97. Southwestern Ohio Public Radio ("SOPR"), the only commenter to address this issue, comments that "it appears that the requirements in Section 7(1) give the Commission very little leeway in its interpretation."[225] Section 7(1) is explicit in its direction to "provide the same interference protections

[216] LCRA § 7(5).

[217] *Fourth Further Notice*, 27 FCC Rcd at 3328 ¶ 30.

[218] *See* Prometheus Comments at 23.

[219] Two commenters support this conclusion; no commenter objects. *See* REC Comments at 5; Prometheus Comments at 23.

[220] 47 C.F.R. § 74.1203.

[221] 47 C.F.R. § 74.1203(a).

[222] 47 C.F.R. § 74.1203(a)(3).

[223] 47 C.F.R. § 74.1203(b).

[224] *See supra* ¶ 83.

[225] SOPR Comments at 2.

that FM translator stations and FM booster stations are required to provide as set forth in Section 74.1203."[226] There is no evidence in the statute or legislative history that Congress intended the Section 74.1203 requirements to be merely a list of minimum criteria that could be supplemented or modified; indeed, the statute expressly says that the interference protections must be "the same." Further, the LCRA refers to the particular version of Section 74.1203 "in effect on the date of enactment of this Act" (*i.e.*, January 4, 2011). Accordingly, we will apply the relevant sections of Section 74.1203, without modification, to Section 7(1) Stations.[227] We will interpret these provisions in the same manner as we have in the FM translator context. In addition, we will consider directional antennas, lower ERPs and/or differing polarizations to be suitable techniques for eliminating third-adjacent channel interference. FM translators have the flexibility to employ all of these options in their operations.[228] Thus, permitting LPFM stations to use these same remedial techniques is consistent with Congress' decision to require the wholesale adoption of the well-established and comprehensive regime in Section 74.1203 of the Rules.[229]

98. *Periodic Announcements.* We also requested comment on requiring newly constructed Section 7(1) Stations to make the same periodic announcements required of Section 7(3) Stations under Section 7(2) of the LCRA. We questioned whether we could reasonably distinguish between listeners of stations that may experience interference as a result of the operations of Section 7(1) Stations and those that may experience interference as a result of the operations of Section 7(3) Stations for such purposes. We noted, however, that Section 7(1) explicitly requires the Commission to "provide the same [LPFM] interference protections that FM translator stations … are required to provide as set forth in section 74.1203 of its rules," and that Section 74.1203 does not require an FM translator station to broadcast periodic announcements that alert listeners to the potential for interference.[230] Thus, we asked commenters to address whether we could and, if so, whether we should impose the periodic announcement requirement on Section 7(1) Stations.

99. Commenters addressing this issue were divided. SOPR states that the Commission must strictly adhere to the requirements of Section 74.1203, in accordance with the Section 7(1) mandate, and therefore, periodic announcements should not be required of Section 7(1) Stations.[231] Similarly, Common Frequency highlights the inconsistency of the Commission finding distinctions between Section 7(1) and 7(3) Stations, but then conversely stating that there is no reason to distinguish between Section 7(1) Stations and Section 7(3) Stations for purposes of periodic announcements.[232] REC, on the other hand, argues that the Section 7(2) periodic announcement requirement applies to Section 7(1) Stations.[233] It

[226] LCRA § 7(1).

[227] The regime set forth in Section 74.1203(a), (b), and (e) will apply to Section 7(1) Stations. *See* 47 C.F.R. § 74.1203(a), (b), and (e). We note that Sections 74.1203(c) and (d) of the rules, 47 C.F.R. §§ 74.1203(c) and (d), contain exemptions from the remediation requirements set forth in Sections 74.1203(a) and (b) for FM booster and fill-in FM translator stations causing interference to their primary stations' signals. These provisions are irrelevant to LPFM stations, which originate their own programming and, therefore, do not have primary stations.

[228] *See* 47 C.F.R. §§ 74.1235(b) & (i) (discussing use of both non-directional and directional antennas), (g) (specifically permitting use of horizontal, vertical, circular or elliptical polarizations). Unlike Section 73.811, 47 C.F.R. § 73.811, Section 74.1235 does not specify the minimum facilities with which an FM translator may operate.

[229] Although LCRA Section 7(1) refers only to Section 74.1203, and not Section 73.1235, the former section's reference to "suitable techniques" for eliminating interference is intended to include these established techniques set forth in the latter section.

[230] *See* LCRA § 7(1); 47 C.F.R. § 74.1203.

[231] SOPR Comments at 2.

[232] Common Frequency Comments at 10.

[233] REC Comments at 5-6.

believes "that the differences in references to how a LPFM station operating on a third adjacent channel in respect to a full-service FM station may be due to how the 2010 version of the LCRA was marked-up by Congress,"[234] and that Congress intended the periodic announcement requirement to apply to all LPFM stations constructed on third-adjacent channels.

100. We believe that Congress, in framing Section 7, did not intend to apply the periodic announcement requirement to Section 7(1) Stations. If it had wished to apply this requirement to Section 7(1) Stations, it could have done so explicitly in the LCRA. Instead, Congress required our wholesale adoption of the well-established and comprehensive Section 74.1203 regime for Section 7(1) Stations. That regime does not include any form of periodic announcements. We agree with Common Frequency that it is incongruous to find clear distinctions between the Section 7(1) and 7(3) Station interference protection and remediation regimes, as we have done, but then to ignore these distinctions in this context. Accordingly, for the reasons discussed above, we will not impose a periodic announcement requirement on Section 7(1) Stations.

3. Regime Applicable to Other LPFM Stations

101. Section 7(3) of the LCRA requires the Commission to modify Section 73.810 of the Rules to require Section 7(3) Stations "to address interference complaints within the protected contour of an affected station" and encourage them to address all other interference complaints, including complaints "based on interference to a full-service FM station, an FM translator station or an FM booster station by the transmitter site of a low-power FM station on a third-adjacent channel at any distance from the full-service FM station, FM translator station or FM booster station."[235] As noted above, we conclude that Sections 7(2), (4) and (5) apply only to Section 7(3) Stations. We discuss the general interference remediation requirements set forth in Section 7(3) and these other provisions below.

102. *"Addressing" Complaints of Third-Adjacent Channel Interference.* Unlike Section 7(1), Section 7(3) does not specifically refer to Section 74.1203 of the Rules. While Section 7(1) instructs the Commission to require Section 7(1) Stations "to provide" interference protections, Section 7(3) merely instructs the Commission to require Section 7(3) Stations "to address" complaints of interference. Section 7(2) of the LCRA – which we conclude applies only to Section 7(3) Stations – further mandates that we require newly constructed Section 7(3) Stations on third-adjacent channels to cooperate in "addressing" any such interference complaints.[236] Therefore, in the *Fourth Further Notice*, we sought comment on (1) what a Section 7(3) Station must do to "address" a complaint of third-adjacent channel interference; (2) whether to specify the scope of efforts which a Section 7(3) Station must undertake; (3) whether to relieve a Section 7(3) Station of its obligations in instances where the complainant does not reasonably cooperate with the Section 7(3) Station's remedial efforts;[237] and (4) whether the more lenient interference protection obligations currently set forth in Section 73.810 should continue to apply to Section 7(3) Stations.

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[234] *Id.* at 5, *citing* 111 Cong. 1 HR 1147 at § 8. REC notes that the proposed Local Community Radio Act of 2009 only had references to "low-power FM stations [constructed] on third-adjacent channels" and did not contain the language in the 2010 LCRA that referred to "low power FM stations that do not satisfy third-adjacent channel spacing requirements under Section 73.807 of the Commission's Rules."

[235] LCRA § 7(3).

[236] Section 7(2) also directs the Commission to require newly constructed Section 7(3) Stations to notify the Commission and all affected stations on third-adjacent channels of an interference complaint by electronic communication within 48 hours of the receipt of such complaint.

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

103. Commenters offer varied interpretations of the actions a Section 7(3) Station must take to "address" a complaint of third-adjacent channel interference. SOPR argues that "to address" means "to respond to the complaint with reasonable effort to remediate the interference based on accepted engineering practices and with the cooperation of the complainant."[238] It urges the Commission to clearly specify the scope of required efforts. Common Frequency proposes that "addressing" interference complaints "could mean visiting the impacted area, turning on the receiver in question, and shutting down temporarily."[239] NPR, in contrast, contends that this phrase imposes the full scope of Section 7(1) remediation requirements on Section 7(3) stations when interference occurs within the protected contour of the affected station.[240] Notwithstanding these divergent interpretations, we find unanimous support for relieving Section 7(3) Stations of their obligations in instances where a complainant does not reasonably cooperate with an LPFM station's remedial efforts.[241] Finally, in lieu of applying the interference protection obligations currently set forth in Section 73.810 to Section 7(3) Stations, one commenter suggests that we instead employ the current FM translator rules, which, it asserts, "have worked for decades and [are] seen as 'tried and tested.'"[242]

104. We find that it is most reasonable to conclude that the substantial differences between the language of Sections 7(1) and 7(3) reflect Congress's intention to establish differing remediation regimes for these two classes of stations. Moreover we find a clear difference in meaning between the Section 74.1203 obligation to "eliminate" interference and the lesser Section 7(3) obligation to "address . . . interference complaints." Accordingly, we will define "address" in accordance with the current version of Section 73.810 of the Rules, meaning "an LPFM station will be given a reasonable opportunity to resolve all interference complaints." We will not require Section 7(3) Stations to cease operations while resolving interference complaints, and we decline to specify the scope of remedial efforts Section 7(3) Stations must undertake. Section 7(3) Stations fully comply with the Commission's former third-adjacent spacing requirements, a stringent licensing standard, which is based on a proven methodology for ensuring interference-free operations between nearby stations. Accordingly, similarly stringent interference remediation obligations are unnecessary. We expect Section 7(3) Stations, however, to make good faith and diligent efforts to resolve any complaints received. For example, a Section 7(3) Station may agree to provide new receivers to impacted listeners or to install filters at the receiver site. Section 7(3) Stations also may wish to consider colocation, a power reduction and/or other facility modifications (*e.g.*, use of directional antennas or differing polarizations) to alleviate the interference. Finally, we will continue to consider a complaint resolved if the complainant does not reasonably cooperate with a Section 7(3) Station's investigatory and remedial efforts.

105. *Complaints.* Section 7(3) requires the Commission to provide notice to the licensee of a Section 7(3) Station of the existence of interference within 7 calendar days of the receipt of a complaint

[238] SOPR Comments at 2.

[239] Common Frequency Comments at 11.

[240] *See* NPR Comments at 7-8. Specifically, NPR argues that the only distinction between the regimes applicable to Section 7(1) and 7(3) Stations relates to the location of the interference that must be remediated, not the extent of interference remediation required. NPR asserts that there is no significance to the phrasing used in Section 7(1) ("to provide the same interference protections … as set forth in Section 74.1203") compared to the phrasing employed in Section 7(3) ("to address complaints of interference"). According to NPR, in both cases, the LPFM station is obligated to "effectively remediate the interference" and, accordingly, "there is no effective difference between the methods required to remediate interference."

[241] SOPR Comments at 2; Prometheus Comments at 23; ACRF Comments at 2.

[242] MonsterFM.com, LPFMRadio.com, Broadcast Technical Services Comments (collectively "MonsterFM.com") at 4.

from a listener or another station. Further, Section 7(5) of the LCRA expands the universe of interference complaints which Section 7(3) Stations must remediate. Section 7(5) states:

> The Federal Communications Commission shall —(A) permit the submission of informal evidence of interference, including any engineering analysis that an affected station may commission; (B) accept complaints based on interference to a full-service FM station, FM translator station, or FM booster station by the transmitter site of a low-power FM station on a third-adjacent channel at any distance from the full-service FM station, FM translator station, or FM booster station; and (C) accept complaints of interference to mobile reception.[243]

106. We requested comment on whether any of the four criteria for *bona fide* complaints set forth in Section 73.810(b) of the Rules remain relevant.[244] We tentatively concluded that Section 7(5) of the LCRA requires us to delete Sections 73.810(b)(1) (*bona fide* complaint must allege interference caused by LPFM station that has its transmitter site located within the predicted 60 dBu contour of the affected station), (2) (*bona fide* complaint must be in form of affidavit and state the nature and location of the alleged interference) and (3) (*bona fide* complaint must involve a fixed receiver located within the 60 dBu contour of the affected station and not more than 1 kilometer from the LPFM transmitter site). We asked commenters to address whether we should retain the remaining criterion set forth in Section 73.810(b)(4), which requires a *bona fide* complaint to be received within one year of the date an LPFM station commenced broadcasts.[245] We also sought comment on whether to establish certain basic requirements for complaints.

107. No commenter opposes our conclusion that Section 7(5) of the LCRA mandates that we delete Sections 73.810(b)(1) and (b)(3) from our Rules. One commenter, however, proposes that we add a provision limiting complaints to those involving interference within the 100 dBu contour of the affected station.[246] With respect to Section 73.810(b)(2) (*bona fide* complaint must be in form of affidavit and state the nature and location of the alleged interference), several commenters recommend that we retain some semblance of the former rule and also establish additional basic requirements for complaints. For instance, Athens Community Radio Foundation asserts that *bona fide* complaints should state the nature and location of the alleged interference, the call letters of the stations involved, and accurate contact information.[247] Similarly, Common Frequency argues that an actionable complaint must specify the location and date of interference, the type of receiver, channel, time/day of interference, whether ongoing or intermittent, and contact information for the complainant.[248] Several commenters also assert that the Commission should require complainants to file copies of their complaints with the Audio Division,[249]

[243] LCRA § 7(5).

[244] *Fourth Further Notice*, 27 FCC Rcd at 3331 ¶ 38.

[245] *See* 47 C.F.R. § 73.810(b)(4).

[246] Jeff Sibert ("Sibert") Comments at 2. Sibert suggests that, outside the 100 dBu contour, we require the complainant to prove the LPFM station is not operating within its technical requirements.

[247] ACRF Comments at 2; *see also* Prometheus Comments at 23 (complaints should list the call signs of the LPFM and affected station, the complainant's contact information, the receiver type, and the location and date of interference); SOPR Comments at 3 (complaints should contain specific information including the affected station call sign and proper contact information for the complainant); Sibert Comments at 2 (complaint should list the specific areas of interference, type of receiver experiencing interference, audio samples of interference received, and name/address of the listener).

[248] Common Frequency Comments at 11.

[249] Prometheus Comments at 23; SOPR Comments at 3; REC Comments at 18.

and that the Commission should consider only complaints from *bona fide* listeners who are "disinterested."[250] Finally, those discussing it unanimously agree that we should retain the criterion set forth in Section 73.810(b)(4), which requires a *bona fide* complaint to be received within one year of the date an LPFM station commenced broadcasts.[251]

108. We will, as proposed, eliminate Sections 73.810(b)(1) and (b)(3) from our Rules. These distance restrictions conflict with the explicit mandate of Section 7(5) of the LCRA to "accept complaints based on interference … *at any distance* from the full-service FM station, FM translator station, or FM booster station."[252] In addition, the Section 73.810(b)(3) fixed receiver limitation is inconsistent with Section 7(5)(C) of the LCRA, which requires us to accept complaints of interference at fixed locations and to mobile reception.[253]

109. In this same vein, we decline to adopt the proposal to limit complaints to those occurring within the 100 dBu contour of the affected station. We agree, however, with commenters' suggestions that we impose explicit, basic requirements for complaints. A list of minimum criteria likely will help LPFM stations quickly address issues while also curbing the risk of frivolous filings.[254] Accordingly, while we will delete the Section 73.810(b)(2) criterion that the complaint be in the form of an affidavit, we retain the requirement that the complaint state the nature and location of the alleged interference. We will also require complainants to specify: (1) the call signs of the LPFM station and the affected full-service FM, FM translator or FM booster station; (2) the type of receiver; and (3) current contact information. We strongly encourage listeners to file copies of the complaints with the Media Bureau's Audio Division to ensure proper oversight. LPFM stations also must promptly forward copies of complaints to the Audio Division for resolution. However, an affected station may forward copies of complaints that it receives to the Audio Division as a courtesy to the complainant listeners. When complainants fail to include all the necessary information listed above, Audio Division staff will take efforts to correct any deficiencies. We also limit actionable listener complaints to those that are made by *bona fide* "disinterested" listeners[255] (*e.g.*, persons or entities without legal, economic or familial stakes in the outcome of the LPFM station licensing proceeding). Finally, we will preserve the Section 73.810(b)(4) criterion, which requires a *bona fide* complaint to be received within one year of the date an LPFM station commenced broadcasts with its currently authorized facilities. Any interference caused by a Section 7(3) Station should be detectable within one year after it commences such operations. This time restriction will reasonably limit uncertainty regarding the potential modification or cancellation of an LPFM station's license and such station's financial obligation to resolve interference complaints. We believe that the efficient, limited complaint procedure that we are adopting is fully consistent with the LCRA and fairly balances the interests of full-service broadcasters against the benefits of fostering the LPFM radio service.

110. *Periodic Broadcast Announcements.* Section 7(2) of the LCRA directs the Commission to amend Section 73.810 of the Rules to require a newly constructed Section 7(3) Station to broadcast

[250] REC Comments at 18; Sibert Comments 2; SOPR Comments at 2.

[251] Sibert Comments at 2; SOPR Comments at 2; ACRF Comments at 2 (noting that "a station must have the confidence that their license is relatively secure, otherwise additional investments may never take place").

[252] LCRA § 7(5)(B) (emphasis added).

[253] LCRA § 7(5)(C).

[254] *See, e.g.*, Sibert Comments at 2 (stating that "a single interference complaint could require a LPFM station to cease broadcasting … too low of a bar for complaints will deprive the local listening audience of programming and drain the lpfm station's financial resources").

[255] *See Association for Community Education,* 19 FCC Rcd at 12688 ¶ 16; *see also Richard J. Bodorff, Esq. et al.,* Letter, 27 FCC Rcd 4870, 4873 (MB 2012)

periodic announcements that alert listeners to the potential for interference and instruct them to contact the station to report any interference.[256] These announcements must be broadcast for a period of one year after construction. We sought comment on whether we should adopt specific announcement language and whether we should mandate the timing and frequency of these announcements.[257]

111. Commenters agree that the Commission should provide some guidance regarding the text of the announcements. One commenter recommends that the Commission specify explicit uniform language.[258] Other commenters state that the Commission should merely suggest language and allow operators of Section 7(3) Stations the flexibility to modify the wording.[259] REC emphasizes that broadcasters need to have "latitude to word the message in a way to get the points across without overwhelming listeners with technical jargon."[260]

112. With respect to the timing and frequency of the mandatory announcements, REC argues that we should aim to achieve "a balance between educating radio listeners of changes in the 'dialscape' as a result of the new [LPFM] station while … not confus[ing] the listener or excessively burden[ing] the [LPFM] broadcaster."[261] Jeff Sibert ("Sibert") and Prometheus each urge us to address the announcements in a manner that is simple, flexible and imposes a minimum burden on new Section 7(3) Stations.[262] One commenter suggests that we allow the affected full-power station to waive the Section 7(3) Station's periodic announcement requirement.[263]

113. Several commenters recommend that we use the pre-filing and post-filing license renewal announcement schedule as a template.[264] REC, in particular, suggests a very detailed schedule based on a modified version of the renewal announcement schedule.[265] It argues that any *bona fide* interference will be discovered in the first month of the Section 7(3) Station's operation, and accordingly, it is necessary to air the highest frequency of announcements during the first month.[266] Sibert asserts that the requirement

[256] LCRA § 7(2).

[257] *Fourth Further Notice*, 27 FCC Rcd at 3330 ¶ 35.

[258] SOPR Comments at 3.

[259] REC Comments at 7-8; Sibert Comments at 3; Prometheus Reply Comments at 10.

[260] REC Comments at 7-8. REC suggests the following text: "WXXX-LP is broadcasting under a special arrangement with the Federal Communications Commission. If you are normally a listener of WZZZ-FM [or WAAA-FM] and are currently having difficulty receiving WZZZ-FM [or WAAA-FM], please contact our offices at 555-1212 or visit our website at wxxx.org."

[261] *Id.* at 6-7.

[262] Sibert Comments at 3; Prometheus Reply Comments at 10.

[263] Friend Comments at 3.

[264] Common Frequency Comments at 11; SOPR Comments at 3; REC Comments at 6-7.

[265] REC Comments at 6-7. Specifically, REC proposes that, in the first 15 days of operation on a third-adjacent channel, the LPFM station broadcast one announcement between the following hours: 7 and 9 a.m.; 9 a.m. and noon; noon and 4 p.m.; and 7 p.m. and midnight. In days 16 to 30 of operation, REC proposes that the LPFM station broadcast one announcement between the hours of 7 a.m. and 9 a.m. and the hours of 4 p.m. and 6 p.m. Between days 31 and 365 of operation, REC proposes that the LPFM station broadcast the announcement once per day between 7 a.m. and midnight.

[266] *Id.*

to broadcast the announcement should be no greater than once per day between the hours of 6 a.m. and midnight for the first three months, and once per week during the same hours for the last nine months.[267]

114. We agree that we should provide licensees of newly constructed Section 7(3) Stations explicit guidance on the language to be used in the periodic announcements. Therefore, we will amend our Rules to specify sample language that may be used in the announcements. Specific language will make it easier for licensees of new Section 7(3) Stations to comply with this Section 7(2) requirement. We will not, however, mandate that licensees of Section 7(3) Stations follow the sample text verbatim, but rather, allow licensees the discretion to modify the exact wording, as the vast majority proposed. To ensure consistency, the announcement must, however, at a minimum: (1) alert listeners of a potentially affected third-adjacent channel station of the potential for interference; (2) instruct listeners to contact the Section 7(3) Station to report any interference; and (3) provide contact information for the Section 7(3) Station. Further, the message must be broadcast in the primary language of both the newly constructed Section 7(3) Station and any third-adjacent station that could be potentially affected.

115. We will, as the commenters suggest, dictate the timing and frequency of the required announcements. We believe that an explicit schedule will promote compliance with this requirement. We also believe that the schedule specified below achieves the benefits of effectively notifying listeners of the potential for interference while minimizing the costs of doing so for the new Section 7(3) Station.

116. We agree with REC that any interference is likely to be detected within the first month of the new Section 7(3) Station's operation. Accordingly, during the first thirty-days after a new Section 7(3) Station is constructed, we direct such station to broadcast the announcements at least twice daily. One of these daily announcements shall be made between the hours of 7 a.m. and 9 a.m. or 4 p.m. and 6 p.m.[268] The second daily announcement shall be made outside of these time slots.[269] Between days 31 and 365 of operation, the station must broadcast the announcements a minimum of twice per week. The required announcements shall be made between the hours of 7 a.m. and midnight.

117. Finally, we decline to allow an affected full-power station to waive the newly constructed Section 7(3) Station's periodic announcement obligation, as one commenter suggests. Section 7(2) of the LCRA explicitly mandates that newly constructed Section 7(3) Stations broadcast periodic announcements. The announcement is intended to benefit listeners, by alerting them of the potential for interference. Allowing potentially affected stations to waive the announcements would be inconsistent with Section 7(2) of the LCRA and deprive listeners of its intended benefits.

118. *Technical Flexibility.* Section 7(4) of the LCRA requires the Commission, to the extent possible, to "grant low-power FM stations on third-adjacent channels the technical flexibility to remediate interference through the colocation of the transmission facilities of the low-power FM station and any stations on third-adjacent channels." In the *Fourth Further Notice*, we tentatively concluded that, other

[267] Sibert Comments at 3. To ensure announcements air during the times of greatest listenership, Sibert recommends that we require: (1) one-third of the announcements to air between 7 a.m. and 9 a.m.; (2) one-third to air between 4 p.m. and 6 p.m.; and (2) the remaining one-third of announcements to air at the LPFM station's discretion.

[268] New Section 7(3) Stations must vary the time slot in which they air this daily announcement, airing it between 7 a.m. and 9 a.m. some days and between 4 p.m. and 6 p.m. other days. We note that, for stations which neither operate between 7 a.m. and 9 a.m. nor between 4 p.m. and 6 p.m., this daily announcement shall be made during the first two hours of broadcast operation.

[269] New Section 7(3) Stations must vary the times of day at which they broadcast this second daily announcement in order to ensure that the announcements reach all listeners potentially affected by the new Section 7(3) station's operation.

than eliminating the third-adjacent channel spacing requirements as mandated by Section 3(a) of the LCRA, we need not modify or eliminate any other provisions of our Rules to implement Section 7(4).[270]

119. Two commenters propose additional modifications to our Rules in order to implement Section 7(4). REC argues that LPFM stations should have the flexibility to co-locate with or operate from a site "very close to the third-adjacent full-service station as long as no new short spacing is created, even if this means moving the transmitter site to a location that may be outside the current service contour of the LPFM station."[271] REC points out that, under existing rules, such a change would constitute a "major change" and an applicant seeking authority to make such a change would have to do so during a filing window.[272] We infer that REC would like us to modify our Rules to clarify that we will treat as a "minor change" a proposal to move a Section 7(3) Station's transmitter site, including a move outside its current service contour, in order to co-locate or operate from a site close to a third-adjacent channel station and remediate interference to that station. We will adopt REC's proposed modification. We note that Section 7(4) of the LCRA explicitly requires the Commission to grant "low-power FM stations on third-adjacent channels the technical flexibility to remediate interference through the colocation of the transmission facilities of the low-power FM station and any stations on third-adjacent channels." We believe that REC's suggested expansion of the definition of "minor change" will provide Section 7(3) Stations the sort of "technical flexibility" that Congress intended. We also will treat as a "minor change" an LPFM proposal to locate "very close" to a third-adjacent channel station. Although the LCRA does not explicitly direct the Commission to employ "flexible" licensing standards in this context, colocation and "very close" locations can eliminate the potential for interference for exactly the same reason (*i.e.*, they result in acceptable signal strength ratios between the two stations at all locations). Generally, this will limit LPFM site selections and relocations pursuant to this policy to transmitter within 500 meters of stations operating on third-adjacent channels. The approach we adopt will advance the overarching goal of Section 7 to prevent third-adjacent channel interference by LPFM stations. Accordingly, we will modify Section 73.870(a) of our Rules to treat these moves as "minor changes," and we will routinely grant applications for authority to make these moves, upon a showing of potential interference from the authorized site, and provided that the licensee would continue to satisfy all eligibility requirements and maintain any comparative attributes on which the grant of the station's initial construction permit was predicated.[273]

120. If interference is remediated through colocation, Common Frequency recommends that we consider allowing "flexible operating proposals," such as upgrades to LP250 if the colocation takes the LPFM transmitter far from the existing transmitter site, the use of different or directional antennas, and the use of close-by towers instead of colocation.[274] We decline to permit Section 7(3) Stations seeking to remediate interference by co-locating their transmission facilities with those of an affected full-service FM station to operate at powers exceeding 100 watts ERP at 30 meters HAAT. We will, however, permit Section 7(3) Stations to propose lower powers, use of directional antennas and use of differing polarizations to remediate interference. This is consistent with our decision to afford applicants seeking second-adjacent waivers the flexibility to employ these methods.[275]

[270] *Fourth Further Notice*, 27 FCC Rcd at 3331 ¶ 39.

[271] REC Comments at 8.

[272] *See* 47 C.F.R. § 73.870(b).

[273] We do not, however, adopt the proposal, *see* William Spry Comments ("Spry") at 2, to otherwise expand the definition of "minor change."

[274] Common Frequency Comments at 11-12.

[275] *See supra* ¶ 79.

4. Additional Interference Protection and Remediation Obligations

121. One additional provision of Section 7 – Section 7(6) – requires the Commission to impose additional interference protection and remediation obligations on one class of LPFM stations. It directs the Commission to create special interference protections for "full-service FM stations that are licensed in significantly populated States with more than 3,000,000 population and a population density greater than 1,000 people per square mile land area."[276] The obligations apply only to LPFM stations licensed after the enactment of the LCRA. Such stations must remediate actual interference to full-service FM stations licensed to the significantly populated states specified in Section 7(6) and "located on third-adjacent, second-adjacent, first-adjacent or co-channels" to the LPFM station and must do so under the interference and complaint procedures set forth in Section 74.1203 of the Rules. In the *Fourth Further Notice*, we found that the Section 7(6) interference requirements are, with one exception, unambiguous.[277] We sought comment on whether to interpret the term "States" to include the territories and possessions of the United States. We noted that only New Jersey and Puerto Rico satisfy the population and population density thresholds set forth in Section 7(6).

122. Commenters are divided how we should construe the term "States." REC and SOPR argue that Congress did not intend to include Puerto Rico as a "State" for purposes of Section 7(6).[278] REC contends that, following lobbying from the New Jersey Broadcasters Association ("NJBA"), Congress amended the Act to include the current Section 7(6),[279] and that Congress intended this section to apply solely to the state of New Jersey.[280] Arso Radio Corporation ("Arso"), in contrast, asserts that "States" should include the territories and possessions of the United States, and therefore, the more restrictive Section 7(6) interference protections should apply to both New Jersey and Puerto Rico.[281] Although Arso acknowledges that an examination of the legislative history "does not yield any clues as to congressional intent regarding use of the word 'States,'" it insists that Congress intended to define the words "States" in the same way as it defined "States" in Section 153(47) of the Communications Act of 1934, as amended ("Act"), which provides that the term "State" includes the District of Columbia and the Territories and possessions.[282]

123. We recognize that the term "States" is susceptible to different interpretations. It is unclear from the statutory text whether Congress intended the term "States" to mean the definition of "States" as it appears in the Act, which includes all territories and possessions, or whether Congress intended to use the word "State" in its literal sense.[283] We believe, however, that the best construction of

[276] LCRA § 7(6).

[277] *Fourth Further Notice*, 27 FCC Rcd at 3332 ¶ 41.

[278] REC Comments at 9; SOPR Comments at 3.

[279] *Id.* Senator Lautenburg of New Jersey proposed the amendment to Section 7 to include the current Section 7(6) provision, which retains third-adjacent channel protection for full-power FM stations licensed in significantly populated states with more than 3,000,000 housing units and a population density greater than 1,000 people per square mile land area. *See* S. 1675, S. Rep. No. 110-271 (March 4, 2008).

[280] REC Comments at 9.

[281] Arso Radio Corp. ("Arso") Comments at 3.

[282] Arso Comments at 2-3, *citing* 47 U.S.C. § 153(47). Arso argues that "inasmuch as the LCRA directed the FCC to take certain actions to modify its rules relating to 'Wire or Radio Communication' under Title 47, Chapter 5, it would be consistent with the definition of 'States' in the context of regulatory authority for Congress to intend to encompass … the territories or possessions in which the Commission regulates 'wire or radio communications.'"

[283] *See, e.g., Puerto Rico v. Shell Co.,* 302 U.S. 253, 258 (1937) (determining a statute's applicability to Puerto Rico is a question of congressional intent).

this term, based on context and the current record before us, is that "State" means one of the 50 states. Congress knows how to implement its directives as amendments to the Communications Act, and chose not to do so in the LCRA. Thus, there is no basis for expanding on the common meaning of the term "states" here to include territories. We also agree with REC that New Jersey is "in a unique situation where there are two significant out-of-state metro markets (New York and Philadelphia) on each side of the state."[284] With the New York and Philadelphia Arbitron Metro markets dominating much of the state, full power radio stations in New Jersey generally operate with lower powers and smaller protected contours than other full power radio stations.[285] This could make them uniquely susceptible to interference from LPFM and FM translator stations. Moreover, we note that this provision of the LCRA was introduced by Senator Lautenburg, the senior Senator from New Jersey.[286] This legislative history provides additional support for our conclusion that the term "States" in Section 7(6) was not intended to include territories.

C. Protection of Translator Input Signals

124. Section 6 of the LCRA requires the Commission to "modify its rules to address the potential for predicted interference to FM translator input signals on third-adjacent channels set forth in Section 2.7 of the technical report entitled 'Experimental Measurements of the Third-Adjacent Channel Impacts of Low Power FM Stations, Volume One—Final Report (May 2003).'"[287] Section 2.7 of this report finds that "significant interference to translator input signals does not occur for [desired/undesired ratio] values of -34 dB or higher at the translator input."[288] Section 2.7 sets out a formula ("Mitre Formula") that allows calculation of the minimum LPFM-to-translator separation that will ensure a desired/undesired ratio equal to or greater than -34 dB.[289]

125. In the *Fourth Further Notice*, we noted that the Commission requires LPFM stations to remediate actual interference to the input signal of an FM translator station but has not established any minimum distance separation requirements or other protection standards.[290] Based on the language of Section 6, which requires the Commission to "address the potential for predicted interference," we tentatively concluded that our existing requirements regarding remediation of actual interference must be recast as licensing rules designed to prevent any predicted interference.[291] No commenter suggested another interpretation of Section 6 of the LCRA. Thus, we affirm our tentative conclusion that Section 6 of the LCRA requires us to adopt rules designed to prevent predicted interference to FM translator input signals on third-adjacent channels.

126. In the *Fourth Further Notice*, we sought comment on whether we should require LPFM applicants to protect the input signals of only those translators receiving third-adjacent channel full-

[284] REC Comments at 9.

[285] NJBA Comments, CG Docket No. 12-39, at 3 (filed April 5, 2012).

[286] *Id.* at 4 (referencing a reasonable legislative compromise on the siting of LPFM stations in New Jersey).

[287] LCRA § 6.

[288] *See Mitre Corporation's Technical Report, "Experimental Measurements of the Third-Adjacent-Channel Impacts of Low-Power FM Stations*," Section 2.7 or pp. 2-16, 2-17, 2-18 ("*Mitre Report*").

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

[290] *Fourth Further Notice*, 27 FCC Rcd at 3332 ¶ 43.

[291] *Id.*

service FM station signals, or whether we also should require them to protect the input signals of translators that receive third-adjacent channel translator signals directly off-air.[292] Commenters' opinions vary on this issue. Prometheus argues that the protections should be limited to translators receiving input signals from FM stations.[293] Prometheus believes that any protections beyond those to translators receiving off-air signals from FM stations would violate Section 5 of the LCRA, which requires the Commission to ensure that LPFM stations and FM translators remain "equal in status."[294] NPR and Western Inspirational, on the other hand, assert that the protections should extend to translators receiving input signals from other FM translators.[295] NPR claims that, by its plain terms, Section 6 of the LCRA requires protection of all signal inputs to translators.[296] NPR notes that this interpretation is consistent with the Commission's current rule protecting translator input signals.[297] Western Inspirational asserts that, with increased spectrum congestion, it has found it necessary for many of its translators to use an off-air input from another translator, not the originating FM station, in order to obtain a reliable input signal.[298]

127. After considering the comments and reviewing the text of the LCRA, we conclude that LPFM applicants must protect the reception directly, off-air of third-adjacent channel input signals from any station, including full-service FM stations and FM translator stations. Section 6 of the LCRA asks the Commission to address predicted interference to "FM translator input signals on third adjacent channels."[299] This unqualified mandate is consistent with our rules, which require LPFM stations to operate without causing actual interference to the input signal of an FM translator or FM booster station.[300]

128. We turn next to the issue of a predicted interference standard for processing LPFM applications. We adopt the basic threshold test proposed in the *Fourth Further Notice*,[301] which received

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

[293] Prometheus Comments at 25. REC raises a slightly different issue related to digital audio streams broadcast by the FM station that a translator is rebroadcasting. *See* REC Comments at 12. REC asserts that LPFM applicants should not be required to protect the reception of a primary FM station's digital main or secondary channels by an FM translator. It notes that these digital sidebands are broadcasting at reduced power and are more vulnerable to interference. We disagree with this proposal. The signal, though digital, is from a full power station, to which LPFM service remains secondary. *See Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service,* Order, 25 FCC Rcd 1182, 1191 ¶ 22 (MB 2010) (stating, in response to a similar proposal, "Analog LPFM and FM translator stations are secondary services, and, as such, are not currently entitled to protection from existing full-service analog FM stations. Moreover, this digital audio broadcasting proceeding has not created any additional rights for these secondary services *vis a vis* digital hybrid operations by full-service stations."). Thus, an LPFM applicant must protect a full power station digital signal.

[294] Prometheus Comments at 25; Prometheus Reply Comments at 11, *citing* LCRA § 5.

[295] Western Inspirational Broadcasters, Inc. ("Western Inspirational") Comments at 1.

[296] NPR Reply Comments at 5.

[297] *Id*. *See* 47 C.F.R. § 73.827.

[298] Western Inspirational Comments at 1. Western Inspirational asks the Commission to permit non-off-air delivery means to feed non-reserved band FM translators. Western Inspirational Comments at 2. We will not consider such a proposal here because it is outside the scope of this proceeding.

[299] LCRA § 6.

[300] Section 73.827 mandates that LPFM stations must operate without actual interference to the input signal of FM translator or FM booster stations. 47 C.F.R. § 73.827.

[301] *Fourth Further Notice*, 27 FCC Rcd. at 3332-33 ¶ 44.

overwhelming support from commenters.[302] This threshold test closely tracks the interference standard developed by Mitre but for the reasons stated below does not require an LPFM applicant to obtain the receive antenna technical characteristics that are incorporated into the Mitre Formula.[303] It provides that an applicant for a new or modified LPFM construction permit may not propose a transmitter site within the "potential interference area" of any FM translator station that receives its input signal directly off-air from a full-service FM or FM translator station on a third-adjacent channel. For these purposes, we define the "potential interference area" as both the area within 2 kilometers of the translator site and also the area within 10 kilometers of the translator site within the azimuths from -30 degrees to +30 degrees of the azimuth from the translator site to the site of the FM station being rebroadcast by the translator.

129. As proposed in the *Fourth Further Notice*[304] and supported by commenters,[305] we will permit an LPFM applicant proposing to locate its transmitter within the "potential interference area" to use either of two methods to demonstrate that LPFM station transmissions will not cause interference to an FM translator input signal. First, as indicated in Section 2.7 of the Mitre Report, an LPFM applicant may show that the ratio of the signal strength of the LPFM (undesired) proposal to the signal strength of the FM (desired) station is below 34 dB at all locations. Second, an LPFM applicant may use the equation provided in Section 2.7 of the Mitre Report.[306] As requested by Prometheus, we also will permit an LPFM applicant to reach an agreement with the licensee of the potentially affected FM translator regarding an alternative technical solution.[307]

130. We do not authorize FM translator receive antenna locations. However, we believe that most receive and transmit antennas are co-located on the same tower. Accordingly, we proposed to assume that the translator receive antenna is co-located with its associated translator transmit antenna.[308] We received no comment on this proposal. We continue to believe that assuming colocation of translator receive and transmit antennas will facilitate the use of the methods described above. We noted that the Mitre Formula would require the horizontal plane pattern of the FM translator's receive antenna – information that is not typically available publicly or in CDBS. Therefore, we also proposed to allow the

[302] *See* Common Frequency Comments at 12; Western Inspirational Comments at 1; REC Comments at 11.

[303] *See Mitre Report,* Section 2.7 or pp. 2-16, 2-17, 2-18.

[304] *Fourth Further Notice*, 27 FCC Rcd at 3333 ¶ 45.

[305] REC Comments at 11; Common Frequency Comments at 12.

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

[307] Prometheus Comments at 25 (discussing the use of filters or, where permitted by the Commission's rules, alternative signal delivery mechanisms); Prometheus Reply Comments at 10. We do not adopt any of the other alternative showings proposed by commenters. We will not allow an LPFM applicant to obtain a release from the licensee of the FM translator station. *See* Western Inspirational Comments at 2. This would violate our long-standing prohibition against negotiated or otherwise consensual interference in the FM broadcast band. *See 1998 Biennial Regulatory Review - Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, Second Report and Order, 15 FCC Rcd 21649, 21651 ¶5 (2000). In addition, we will not adopt REC's proposal that we permit an LPFM applicant to submit an engineering study that demonstrates a lack of interference in the "potential interference area." *See* REC Comments at 11. REC does not offer sufficient detail for us to evaluate its proposal. Finally, we will not, as Sibert proposes, allow LPFM operators to pledge that they will mitigate any interference to the input signals of potentially affected translators within the first full year of operations. Sibert Comments at 3. As discussed *supra* ¶ 125, the LCRA requires the Commission to address the potential for interference. LCRA § 6. Sibert's proposal, however, focuses on remediating actual interference.

[308] *Fourth Further Notice*, 27 FCC Rcd at 3333 ¶ 45.

use of a "typical" pattern in situations where an LPFM applicant is not able to obtain this information from the FM translator licensee, despite reasonable efforts to do so. Both Prometheus and Common Frequency support this proposal.[309] No commenter opposes it. Accordingly, we adopt our proposal to allow use of a "typical" pattern when an LPFM station makes reasonable efforts but is unable to obtain the horizontal plane pattern of an FM translator station from that station.

131. Prometheus proposes that we relieve an LPFM applicant of its obligation to protect an FM translator's input signal if, despite reasonable efforts to do so, the applicant is unable to determine the delivery method or input channel for that translator.[310] We will not adopt this proposal because the LCRA requires us to "address the potential for predicted interference" in this context.[311] We lack authority to adopt a processing rule that abdicates this responsibility. For this same reason, we also reject Prometheus' proposal to relieve an LPFM station applicant from this protection obligation if a translator licensee fails to maintain accurate and current Commission records regarding its primary station and input signal.[312] In any event, we note that we specify the primary station call sign, frequency and community of license in FM translator authorizations. In addition, we require each FM translator licensee to identify its primary station when filing its renewal application. We strongly recommend that FM translator licensees update the Commission if they have changed their primary stations since they last filed renewal applications.[313]

132. We proposed to dismiss as defective an LPFM application that specifies a transmitter site within the third-adjacent channel "potential interference area" but fails to include an exhibit demonstrating lack of interference to the off-air reception by that translator of its input signal.[314] We proposed to permit an LPFM applicant to seek reconsideration of the dismissal of its application and to request reinstatement *nunc pro tunc.* We also proposed that an LPFM applicant seeking reconsideration and reinstatement *nunc pro tunc* demonstrate that its proposal would not cause any predicted interference using either the undesired/desired ratio or the Mitre Formula discussed above. Commenters support these proposals.[315] We continue to believe it is appropriate to treat an application dismissed on these grounds the same as an application dismissed for violation of other interference protection requirements. Accordingly, we adopt our proposal to allow an applicant to seek reconsideration and reinstatement *nunc pro tunc* by making one of the showings discussed herein. In addition, consistent with our decision to permit applicants to do so at the application filing stage, we will permit applicants to reach an agreement with the licensee of the potentially affected FM translator regarding alternative technical solutions.[316]

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[309] Prometheus Comments at 24; Common Frequency Comments at 12.

[310] Prometheus Comments at 24-25.

[311] LCRA §6.

[312] Prometheus Comments at 25. Common Frequency makes a similar proposal. Common Frequency Comments at 12-13.

[313] *See* Application for Renewal of Broadcast Station License, FCC Form 303-S, Section V, Question 2.b. We recognize that there are situations in which an LPFM station, despite best efforts, could interfere with a translator input signal on a third-adjacent channel. If a translator licensee seeks protection from such interference, we will require the FM translator licensee to show proof that it provided notice to the Commission of the change in its primary station prior to the LPFM station application filing. *See* 47 C.F.R. 74.1251(c) (changes in the primary FM station being retransmitted must be submitted to the FCC in writing). We believe this approach is consistent with Section 5 of the LCRA, which requires that FM translator stations and LPFM stations "remain equal in status." LCRA § 5.

[314] *Fourth Further Notice*, 27 FCC Rcd at 3333 ¶ 46.

[315] Common Frequency Comments at 12; Western Inspirational Comments at 1.

[316] *See supra* ¶ 129.

D. Other Rule Changes

133. The *Fourth Further Notice* proposed changes to our Rules intended to promote the LPFM service's localism and diversity goals, reduce the potential for licensing abuses, and clarify certain rules. We sought comment on whether the proposed changes were consistent with the LCRA and whether they would promote the public interest. We discuss each proposed change in turn below.

1. Eligibility and Ownership

a. Requirement That Applicants Remain Local

134. The LPFM service is reserved solely for non-profit, local organizations.[317] In the *Fourth Further Notice*, we expressed concern that, because our Rules define "local" in terms of "applicants" and their eligibility to "submit applications," applicants and licensees might not understand that the localism requirement extends beyond the application stage. We proposed to clarify this by revising Section 73.853(b) to read: "Only local applicants will be permitted to submit applications. For the purposes of this paragraph, an applicant will be deemed local if it can certify, at the time of application, that it meets the criteria listed below and if such applicant continues to satisfy the criteria at all times thereafter …."

135. Prometheus and SOPR support our proposal.[318] Prometheus notes that to require otherwise (*i.e.*, to require that an organization be local only at the time it submits its application) "would controvert the LCRA and the policies of the Commission."[319] SOPR asserts that this clarification may prevent abuse.[320] Catholic Radio Association ("CRA") suggests language it believes will better achieve our policy objective.[321]

136. Given the limited reach of LPFM stations, we continue to believe that LPFM entities must be local at all times and we will clarify that requirement by amending Section 73.853(b). At CRA's suggestion, we will adopt language slightly different from that originally proposed. Our revised rule (with the new language in italics) will read: "Only local *organizations* will be permitted to submit applications and *to hold authorizations in the LPFM service.* For the purposes of this paragraph, an *organization* will be deemed local if it can certify, *at the time of application*, that it meets the criteria listed below *and if it continues to satisfy the criteria at all times thereafter* …." We address changes we proposed to the criteria used to define "local," later in this decision.[322]

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[317] *See* 47 C.F.R. § 73.853(b). *Creation of Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2220 ¶ 34 (2000) ("*Report and Order*") ("local entities with their roots in the community will be more attuned and responsive to the needs of that community, which have heretofore been underserved by commercial broadcasters").

[318] LPFMhelp.com, on the other hand, argues that we should not require an LPFM applicant to be local at the time it files its application. LPFMhelp.com Comments at 2. LPFMhelp.com would allow a non-local organization to apply if it pledged to form a new local organization prior to licensure. *Id.* LPFMhelp.com also appears to advocate elimination of Section 73.853(b)(1) of our rules, which provides that an applicant will be deemed "local" if it, its local chapter or branch is physically headquartered within 10 miles of the proposed site for the transmitting antenna for applicants in the top 50 urban markets, and 20 miles for applicants outside the top 50 urban markets. *Id.* Both of these proposals are outside of the scope of this proceeding. Accordingly, we do not consider them further.

[319] Prometheus Comments at 47.

[320] SOPR Comments at 4.

[321] Catholic Radio Association ("CRA") Comments at 7-8. CRA also expresses its opposition to the localism requirement but acknowledges that, "with respect to this particular policy question, the 'ship may have sailed.'" *Id.* at 6-7.

[322] *See infra* Part III.D.2.b.

b. Cross-Ownership of LPFM and FM Translator Stations

137. From the outset, the Commission has prohibited common ownership of an LPFM station and any other media subject to the Commission's ownership rules.[323] This prohibition fosters one of the most important purposes of establishing the LPFM service – "to afford small, community-based organizations an opportunity to communicate over the airwaves and thus expand diversity of ownership."[324] In the *Fourth Further Notice,* we sought comment on whether to allow LPFM station licensees to own or hold attributable interests in one or more FM translator stations.[325] We noted that this could enable LPFM stations to expand their listenership and provide another way for FM translators to serve the needs of communities. We asked whether it was possible to achieve such benefits without changing the extremely local nature of the LPFM service. We further asked whether we should limit cross-ownership of FM translators and LPFM stations by, for example, requiring that (1) any cross-owned FM translator rebroadcast the programming of its co-owned LPFM station; (2) the 60 dBu contours of the co-owned LPFM and FM translator stations overlap; and/or (3) the co-owned LPFM and FM translator stations be located within a set distance or geographic limit of each other. Finally, we asked whether to permit an LPFM station to use alternative methods to deliver its signal to a commonly owned FM translator.[326]

138. A few commenters oppose cross-ownership. These commenters express concerns about the impact of LPFM/FM translator cross-ownership on the local character of the LPFM service and the availability of spectrum for new LPFM stations.[327] NPR points out that the Commission, in creating the LPFM service, considered but ultimately rejected the option of allowing cross-ownership of LPFM and other broadcast stations, finding that its interest in providing for new voices to speak to the community and providing a medium for new speakers to gain broadcasting experience would be best served by barring cross-ownership.[328]

139. In contrast, many commenters support LPFM/FM translator cross-ownership.[329] REC and Nexus/Conexus assert that cross-ownership would enable LPFM stations to better reach their intended communities.[330] REC observes that FM translator stations owned by unrelated entities have been rebroadcasting LPFM signals for over a decade.[331] REC does not believe that limited common ownership of FM translator and LPFM stations would change the nature of the LPFM service.[332] National Lawyers Guild and Media Alliance state that translators might be useful if a terrain obstruction blocks an

[323] 47 C.F.R. § 73.860.

[324] *Report and Order*, 15 FCC Rcd at 2217-18 ¶ 29.

[325] *Fourth Further Notice*, 27 FCC Rcd at 3335 ¶ 56.

[326] *Id*.

[327] *See* NPR Comments at 11 (asserting cross-ownership "is inconsistent with the 'highly local' nature of the LPFM service"); Grant County Comments at 2-3 (predicting that the LPFM service will become more regionalized as licensees form "daisy chained" "mini-networks" consisting of multiple translators and a single LPFM originator, in an attempt to "leapfrog" toward more populated areas); Sibert Comments at 5 (arguing that the use of multiple frequencies by a single LPFM licensee is an inefficient use of spectrum that could limit opportunities for other LPFM applicants).

[328] NPR Comments at 11, *citing Report and Order*, 15 FCC Rcd at 2217-18 ¶ 29.

[329] Nexus/Conexus Comments at 2; Magrill Comments at 3; Amherst Comments at 15; CRA Comments at 8-9; Braulick Comments at 4 (each supporting LPFM/FM translator cross-ownership).

[330] REC Comments at 34-35; Nexus/Conexus Comments at 2.

[331] REC Comments at 34.

[332] *Id.*

LPFM signal within the LPFM station's primary contour.[333] Several commenters contend that cross-ownership could enhance localism because many communities are larger than the typical reach of an LPFM station's signal. They contend that FM translators could allow stations to serve their entire intended service area, such as a single county.[334]

140. Most commenters qualify their support for cross-ownership, suggesting various limits or restrictions to ensure that any co-owned FM translator enhances an LPFM station's local mission.[335] Commenters support (1) establishing a distance or geographic limit on FM translator cross-ownership,[336] (2) requiring the service contours of co-owned LPFM and FM translator stations to overlap;[337] (3) limiting the number of FM translators an LPFM licensee may own to a "modest" number, such as one or two;[338] and/or (4) requiring co-owned translators to rebroadcast only the LPFM station.[339] Commenters also support requiring an LPFM station to feed the FM translator with an off-air signal, the same delivery restriction that applies to non-reserved band FM translators.[340]

[333] NLG and Media Alliance Comments at 9. Matt Tuter ("Tuter") would allow LPFM stations to use booster stations to address such difficulties as well. Tuter Comments at 1. We believe that the purported need for booster stations to overcome terrain obstructions within an LPFM station's 60 dBu service area is overstated. A booster station cannot expand service beyond a station's 60 dBu contour, which for an LFPM station covers a maximum of 5.5 kilometers. There would be extremely limited situations in which a booster station could operate within such a small area without causing interference to the LPFM station's own signal. Moreover, terrain obstructions are rarely the primary cause of signal degradation within an LPFM station's 60 dBu contour. A much more frequent cause is receipt of signals from distant higher-powered stations on first-adjacent channels. Accordingly, while we appreciate Tuter's desire to re-use spectrum efficiently, we will not modify our rules to allow LPFM stations to use boosters.

[334] REC Comments at 34; LPFMhelp.com Comments at 1; Nexus/Conexus Comments at 2; MonsterFM.com Comments at 3; Braulick Comments at 4; Magrill Comments at 3.

[335] *See, e.g.,* Prometheus Comments at 48.

[336] Their specific suggestions include limiting cross-ownership to: (1) coverage of the defined boundaries of the market, community, or county, particularly if that region has unusual geography; (2) locations within ten miles of either the LPFM station's transmitter site or the reference coordinates of the LPFM station's community of license, except to serve areas with no other local service; and (3) transmitter locations within the Standard Metropolitan Statistical Area as defined by the U.S. Census Bureau or, in areas not so defined, to within 50 km of the main station. *See* Tuter Comments at 1; Friend Comments at 2.

[337] SOPR Comments at 4; REC Comments at 35; Prometheus Comments at 48.

[338] NLG and Media Alliance Comments at 9; SOPR Comments at 4; Friend Comments at 2; Amherst Comments at 16.

[339] NLG and Media Alliance Comments at 9; Amherst Comments at 16; REC Comments at 35; Prometheus Comments at 48. Other commenters suggest proposals that are either contrary to our Rules or outside the scope of this proceeding. *See, e.g.*, SOPR Comments at 4; Amherst Comments at 15 (suggesting that the Commission allow a cross-owned FM translator to originate its own programming); Otha Lee Melton Comments at 1; Tuter Comments at 1 (each arguing that applicants should be able to acquire FM translators to convert into LPFM stations and vice-versa). The LPFM and FM translator services, while sharing some characteristics, were designed for different purposes and, thus, have different engineering, programming, and ownership requirements. *See also* REC Comments at 35 (urging the Commission to adopt a new class of FM translators with technical characteristics designed to be especially compatible with LPFM stations); Tuter Comments at 1; Monsterfm.com Comments at 2 (stating that FM translators affiliated with LPFM stations should be secondary to the operations of new LPFM stations rather than coequal). We will not consider them further.

[340] Common Frequency, for example, argues that FM translators should only be allowed to rebroadcast an LPFM signal that can be received terrestrially via an FM tuner, without alternative means such as internet or satellite. *See* Common Frequency Comments at 20. REC, on the other hand, would allow some alternate forms of transmission, but only if an FM translator was unable to receive the primary LPFM station. *See* REC Comments at 36.

141. We believe that commenters on both sides of this issue raise valid points. As many observe, use of FM translators to rebroadcast LPFM stations could be beneficial, improving local service to oddly-shaped communities and to rural communities that could receive, at best, only partial LPFM coverage. However, as others aptly note, cross-ownership without adequate safeguards poses a potential danger to the local character of the LPFM service. On balance, we believe that the benefits of FM translator ownership by LPFM licensees will outweigh any disadvantages, provided that we take steps to limit potential risks.

142. Accordingly, we will amend Section 73.860 of our Rules to allow LPFM/FM translator cross-ownership. We will limit cross-ownership, however, in order to prevent large-scale chains and "leapfrogging" into unconnected, distant communities. We adopt the following five limits on cross-ownership, which are intended to ensure that the LPFM service retains its extremely local focus. First, we will permit entities – other than Tribal Nation Applicants – to own or hold attributable interests in one LPFM station and a maximum of two FM translator stations.[341] Second, we will require that the 60 dBu contours of a commonly-owned LPFM station and FM translator station(s) overlap. Third, we will require that an FM translator receive the signal of its co-owned LPFM station off-air and directly from the LPFM station, not another FM translator station. Fourth, we will limit the distance between an LPFM station and the transmitting antenna of any co-owned translator to 10 miles for applicants in the top 50 urban markets and 20 miles for applicants outside the top 50 urban markets. An LPFM station may use either its transmitter site or the reference coordinates of its community of license to satisfy these distance restrictions. Fifth, we will require the FM translator station to synchronously rebroadcast the primary analog signal of the commonly-owned LPFM station (or for "hybrid" stations, the digital HD-1 program-stream) at all times.

143. We believe that allowing cross-ownership of an LPFM station and up to two FM translator stations will provide maximum flexibility, while the requirement that these translators link directly to their commonly-owned LPFM station rather than to each other will prevent the type of chained-networks of concern to commenters. To keep the service provided by the LPFM/FM translator combinations locally focused, we will limit the placement of co-owned FM translators to conform to the same ten- and twenty-mile distances which define "local" applicants in the top 50 and all other markets, respectively.[342] We believe that such a requirement is more easily understood and achieved than alternatives phrased in terms of a signal's ability to stay within political boundaries of a county or city. Our requirement that an FM translator rebroadcast the primary signal of its co-owned LPFM station addresses Grant County's concern that LPFM stations may begin to broadcast multiple digital streams and that stations operating in such a hybrid mode might use translators to network secondary, less locally-oriented programming rather than the station's primary program stream.[343] We are aware of only one LPFM station currently operating in hybrid mode, so this issue is currently of limited applicability. Nevertheless, we adopt Grant County's suggestion that co-owned translators simultaneously rebroadcast the LPFM station's analog programming, as a forward-looking protection to preserve the service's local nature as more LPFM stations avail themselves of technological advances. We further agree with commenters that alternative signal delivery of LPFM signals to FM translators could regionalize LPFM service. Accordingly, we will require that an FM translator receive the signal of its co-owned LPFM station off-air and directly from the LPFM station itself in order to maintain the service's local character.

[341] *See infra* Part III.D.1.c. (considering separate proposal that Tribal Nation Applicants be permitted to own additional stations to cover Tribal lands).

[342] *See infra* ¶ 171.

[343] *See* Grant County Comments at 2-3.

c. Ownership Issues Affecting Tribal Nations

144. We posed additional ownership-related questions in the *Fourth Further Notice*, including whether Tribal Nations are eligible and, if not, whether they should be eligible to own LPFM stations. We also sought comment on whether they should be permitted to own more than one LPFM station and/or to own or hold an attributable interest in an LPFM station in addition to a full-power station. We address each of these proposals below.

145. *Basic Eligibility***.** Section 73.853 of the Rules currently provides for the licensing of an LPFM station to a state or local government, but does not explicitly establish the eligibility of a Tribal Nation Applicant. Notwithstanding this omission, it is well established that Tribal Nations are inherently sovereign Nations, with the obligation to "maintain peace and good order, improve their condition, establish school systems, and aid their people in their efforts to acquire the arts of civilized life," within their jurisdictions.[344] The Commission, as an independent agency of the United States Government, has an historic federal trust relationship with Tribal Nations, and a longstanding policy of promoting Tribal self-sufficiency and economic development.[345] To this end, the Commission has taken steps to aid in their efforts to provide educational and other programming to their members residing on Tribal Lands, as well as to assist them in acquiring stations for purposes of business and commercial development.

146. In view of our commitment to assist Tribal Nations in establishing radio service on Tribal lands and our consideration of whether to include a Tribal Nation selection criterion in the LPFM comparative analysis, in the *Fourth Further Notice* we proposed to recognize explicitly the eligibility of Tribal Nation Applicants to hold LPFM licenses.[346] We proposed to rely on the definitions of the terms "Tribal applicant"[347] and "Tribal lands"[348] as they are currently defined in our rules governing full-power NCE FM licensing.[349] By specifically cross-referencing the definition of "Tribal applicant" set forth in Section 73.7000 of the rules, which includes a reference to the term "Tribal coverage," we implicitly proposed to incorporate the definition of "Tribal coverage" set forth therein.[350]

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[344] *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 140 (1981), *quoting* S.Rep. No. 698, 45th Cong., 3d Sess. 1-2 (1879).

[345] *See Statement of Policy on Establishing A Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078, 4080-01 (2000) ("*Tribal Policy Statement*").

[346] *Fourth Further Notice*, 27 FCC Rcd at 3336 ¶¶ 54-55.

[347] "Tribal applicant" is defined as "(1) A Tribe or consortium of Tribes, or (2) An entity that is 51 percent or more owned or controlled by a Tribe or Tribes that occupy Tribal Lands that receive Tribal coverage." 47 C.F.R. § 73.7000.

[348] "Tribal lands" are defined as "[b]oth reservations and Near reservation lands." *Id*. The term "Near reservation lands" also is defined in Section 73.7000.

[349] *Fourth Further Notice*, 27 FCC Rcd at 3359 ¶ 55. In discussing these proposals, we highlighted that the Commission had recently begun to use the term "Native Nations" to describe groups the Commission had previously called "Tribes." We, however, proposed that the LPFM rules cross-reference terms of art from existing NCE FM rules in order to maintain consistency. *Id.*. Native Public Media ("NPM") and National Congress of American Indians ("NCAI"), which submitted joint comments, were the only commenters to address use of "Native Nation" versus "Tribal" nomenclature. They generally prefer the term "Native Nation" because it better conveys the concept of sovereignty, but they also believe that a change in terminology in Commission rules could be confusing and create uncertainty as to whether one term is more comprehensive than another. NPM and NCAI Comments at 4. As proposed, we will use "Tribal" terminology in the LPFM context. We agree with NPM and NCAI that this will prevent confusion and uncertainty.

[350] Section 73.7000 defines "Tribal coverage" as "(1) Coverage of a Tribal Applicant's or Tribal Applicants' Tribal Lands by at least 50 percent of a facility's 60 dBu (1 mV/m) contour, or (2) The facility's 60 dBu (1 mV/m) contour—(i) Covers 50 percent or more of a Tribal Applicant's or Tribal Applicants' Tribal Lands, (ii) Serves at (continued….)

147. Commenters, including NPM and NCAI, supported without significant discussion the proposal to expand the LPFM eligibility rule to include Tribal Nation Applicants.[351] No commenter opposed this proposal. Accordingly, we will amend Section 73.853(a) to clarify that Tribal Nation Applicants are eligible to hold LPFM licenses. This rule amendment further underscores the Commission's commitment to recognize the sovereignty of Tribal Nations and to ensure their equal treatment under our Rules.[352] However, we will not, as originally proposed, rely on the definition of "Tribal applicant" or "Tribal coverage" currently used in the NCE FM context. The definition of "Tribal coverage" set forth in the NCE FM rules includes a coverage requirement and a requirement that the proposed station serve at least 2,000 people living on Tribal Lands. As NPM and NCAI note, the limited scope of LPFM coverage and the scattered populations on lands occupied by Tribal Nations warrant a departure from the definition of "Tribal coverage" set forth in Section 73.7000. Unlike NPM and NCAI, however, we believe that not only the 2,000 person threshold but also the coverage requirements are unsuitable for the LPFM context. Instead, for LPFM licensing purposes, we will define a "Tribal applicant" by retaining the requirement that the applicant be a Tribe or entity that is 51 percent or more owned or controlled by a Tribe. Such action is consistent with the localism and diversity goals of the LPFM service and will better achieve our goal of assisting Tribal Nations in establishing radio service to their members on Tribal Lands. Tribal stations currently account for less than one-third of one percent of the more than 14,000 radio stations in the United States. Thus, it is self-evident that expanding Tribal radio ownership opportunities will help bring needed new service to chronically underserved communities. Moreover, restricting ownership to Tribes and Tribally controlled entities, which are obligated to preserve their histories, languages, cultures and traditions, will promote the licensing of stations to entities that are uniquely capable of providing radio programming tailored to local community needs and interests.[353]

148. Finally, as NPM and NCAI propose,[354] we will consider a Tribal Nation Applicant local throughout its Tribal lands, so long as such lands are within the LPFM's station's service area. We are persuaded that this better recognizes the sovereign status of Tribal Nations than our original proposal to consider a Tribal Nation Applicant local only if it proposed to locate the transmitting antenna of the proposed LPFM station on its Tribal lands. Moreover, this is consistent with the rules applicable to Tribal Nations and state and local governments operating full-service NCE-FM and Public Safety land mobile services.

149. *Ownership of Multiple LPFM stations*. The Commission currently prohibits entities from owning more than one LPFM station unless they are "[n]ot-for-profit organizations with a public safety purpose."[355] This prohibition is intended to further diversity of ownership and foster a local, community-

(Continued from previous page)
least 2,000 people living on Tribal Lands, and (iii) The total population on Tribal Lands residing within the station's service contour constitutes at least 50 percent of the total covered population."

[351] *See, e.g.,* NPM and NCAI Comments at 5; Prometheus Comments at 47; Common Frequency Comments at 20; REC Comments at 9-10.

[352] *See Tribal Policy Statement,* 16 FCC Rcd at 4080.

[353] *See Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, First Report and Order, 25 FCC Rcd 1583, 1587-88 ¶ 8 (2010) ("*Rural Radio First Report and Order*") (quoting a National Congress of American Indians Resolution stating that "[n]ative radio stations play an important role in supporting the Native American communities by providing programming and information that is critically important to the residents of various reservations . . . the important role of Native radio in relaying critical messages cannot be overstated.").

[354] NPM and NCAI Comments at 3-4.

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

based LPFM service.[356] In the *Fourth Further Notice*, we sought comment on whether to permit Tribal Nation Applicants to seek more than one LPFM construction permit to ensure adequate coverage of Tribal lands.[357] For instance, we noted that ownership of multiple LPFM stations might be appropriate if Tribal Nation Applicants seek to serve large, irregularly shaped or rural areas that could not be covered adequately with one LPFM station. We explained that we believed that permitting Tribal Nations to hold more than one LPFM license could advance the Commission's efforts to enhance the ability of Tribal Nations to produce programming tailored to their specific needs and cultures, and expand Tribal Nation LPFM station ownership opportunities.[358] We questioned, however, whether we should limit ownership of multiple LPFM stations by a Tribal Nation Applicant to situations where channels also are available for other applicants, thereby eliminating the risk that a new entrant would be precluded from offering service. Finally, we sought comment on whether to implement this policy through amendment of Section 73.855(a) of the Rules or by rule waivers.

150. A number of commenters support Tribal Nation ownership of multiple LPFM stations on Tribal lands to permit more complete coverage than would be achieved with a single LPFM station.[359] NPM and NCAI note that Tribal Nations already are eligible to own multiple LPFM stations as governmental entities under the public safety exception to our ban on multiple ownership of LPFM stations.[360] They and REC believe Tribal Nations should also be able to own multiple LPFM stations for other noncommercial purposes.[361]

151. Common Frequency, NLG and Media Alliance believe that multiple ownership by Tribal Nations is appropriate on Tribal lands, and in rural areas and small towns where there would be few other organizations interested in applying for LPFM stations. REC, however, would allow Tribal Nation Applicants to own or hold attributable interests in multiple LPFM stations only if Tribal lands constitute at least 50 percent of the land area covered by each additional LPFM station licensed to a Tribal Nation Applicant.[362]

152. CRA, Matt Tuter ("Tuter") and William Spry ("Spry") urge us to eliminate the ban on multiple ownership of LPFM stations altogether. CRA and Tuter contend that maintaining multiple ownership restrictions for all applicants except for Tribal Nation Applicants is mistaken "because it proceeds from a false notion that only Tribal governments can serve the interests of Tribal Americans."[363] Spry, on the other hand, argues that allowing multiple ownership of LPFM stations is no different than

[356] *Report and Order*, 15 FCC Rcd at 2216 ¶ 24.

[357] *Fourth Further Notice*, 27 FCC Rcd at 3337-38 ¶ 58.

[358] *See, e.g., Rural Radio First Report and Order*, 25 FCC Rcd at 1584-85 ¶¶ 4-5. *See also Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Report and Order, 26 FCC Rcd 2556, 2557-58 ¶ 1, 2559-63 ¶¶ 6-11, 2584-87 ¶¶ 54-59 (2011) (modifying priority).

[359] NPM and NCAI Comments at 7; Common Frequency Comments at 20; Amherst Comments at 16 (noting that the Fort Berthold Indian Reservation in North Dakota, governed by the Mandan, Haradatsa, and Arikara Nation, could benefit from multiple ownership because the reservation is larger than the state of Rhode Island but has fewer than 6,000 residents and a population density of only four people per square mile); NLG and Media Alliance Comments at 9; REC Comments at 33-34.

[360] NPM and NCAI Comments at 8. *See also* REC Comments at 33-34, *citing* 47 C.F.R. §§ 73.855(b) & 90.20(a).

[361] NPM and NCAI Comments at 8; REC Comments at 34.

[362] REC Comments at 34.

[363] CRA Comments at 9; Tuter Comments at 1 (asserting that, if multiple LPFM stations are necessary to serve Tribal lands, different Tribal Nation Applicants can apply for the stations needed).

permitting cross-ownership of an LPFM station and FM translator stations. According to Spry, "Multiple licenses are multiple licenses. The service should not matter."[364]

153. We will allow Tribal Nation Applicants to seek up to two LPFM construction permits to ensure adequate coverage of Tribal lands. Our Rules already permit governments, including Tribal Nations, to own multiple LPFM stations for public safety purposes, provided that they designate one application as a priority and provided that non-priority applications do not face MX applications.[365] Consistent with our decision above, we will permit each such co-owned LPFM station to retransmit its signal over two FM translator stations, creating the potential for a Tribal Nation Applicant to have attributable interests in a total of two LPFM stations and four FM translator stations. We believe that this action will significantly further opportunities for LPFM service by Tribal Nations to their members. We will not eliminate our prohibition on multiple ownership altogether as CRA, Tuter and Spry urge. In the *Fourth Report and Order* in this proceeding we found that limited licensing opportunities remain for future LPFM stations in many larger markets while abundant spectrum is available in the more sparsely populated areas where Tribal Nation stations would operate predominantly.[366] Moreover, the voluminous record of this proceeding testifies to the unmet demand for community radio stations. Given the imbalance between spectrum supply and applicant demand in larger markets, eliminating the current prohibition entirely could undermine the LPFM service goal to promote diversity of ownership. Nor will we restrict Tribal Nation ownership of multiple LPFM stations as proposed by REC. Tribal Nation Applicants will need to satisfy our localism requirement in order to be eligible to hold LPFM licenses. We believe this will provide adequate assurance that Tribal Nation ownership of multiple LPFM stations furthers our goal of promoting service to Tribal lands and members.

154. Finally, we note that, in the past, the Commission has prohibited an LPFM applicant from filing more than one application in a filing window.[367] In doing so, it relied upon the fact that "no one may hold an attributable interest in more than one LPFM station"[368] and noted that "a second application filed by an applicant in [a] window would be treated as a 'conflicting' application subject to dismissal under Section 73.3518."[369] As discussed above, we are creating a limited exception to the ban on multiple ownership of LPFM stations for Tribal Nation Applicants. Accordingly**,** we will permit Tribal Nation Applicants to file up to two applications in a filing window.

155. *Cross-Ownership of LPFM and Full Power Stations.* We also sought comment on whether to permit a full-service radio station permittee or licensee that is a Tribal Nation Applicant to file for an LPFM station and hold an attributable interest in such station.[370] As discussed previously, our Rules prohibit cross-ownership in order "to afford small, community-based organizations an opportunity to communicate over the airwaves and thus expand diversity of ownership."[371] We stated that we believed that adding an exception for Tribal Nations would enhance their ability to provide

[364] Spry Comments at 2.

[365] 47 C.F.R. § 73.855.

[366] *See Fourth Report and Order,* 27 FCC Rcd at 3382-85 ¶¶ 39-44.

[367] *Low Power FM Filing Window Instructions*, Public Notice, 15 FCC Rcd 9201 (MMB 2000).

[368] *Id.*, *citing* 47 C.F.R. § 73.855(b)(1).

[369] *Id.*, *citing* 47 C.F.R. § 73.3518. *See also* 47 C.F.R. § 73.801 (making Section 73.3518 applicable to LPFM stations); *Wisconsin Academy*, Letter, 22 FCC Rcd 7724 (MB 2007) (finding staff properly dismissed the LPFM application of an applicant on the grounds that a party to that application was also listed as a party to another LPFM application).

[370] *Fourth Further Notice*, 27 FCC Rcd at 3337 ¶ 57.

[371] *Report and Order*, 15 FCC Rcd at 2217 ¶ 29. *See also* 47 C.F.R. § 73.860.

communications services to their members on Tribal lands without significantly undermining diversity of ownership. We asked commenters to discuss whether such an exception should be limited to situations where the Tribal Nation Applicant demonstrates that it would serve currently unserved Tribal lands or populations.[372]

156. Few commenters discussed this proposal. NPM, NCAI and Common Frequency express general support.[373] CRA supports cross-ownership of LPFM and full-power stations but believes this option should be available to all applicants.[374] REC supports the proposal but would impose certain cross-ownership restrictions.[375]

157. After considering the comments, we do not believe that there is a sufficient record on which to modify our Rules to provide for Tribal Nation cross-ownership of LPFM and full-service stations. The record at this time does not demonstrate that this is necessary or would provide significant public interest benefit. A Tribal Nation with an LPFM authorization may file at any time a rulemaking petition for a Tribal allotment, provided that it pledges to divest the LPFM station.[376] Although we recognize that cross-ownership could permit a Tribal Nation to program separately for different audiences, we remain concerned that this type of cross-ownership might undermine the diversity goals of the LPFM service. It is also not clear, on the record before us, how it would advance our goal of expanding service to Tribal lands and members. Finally, the record did not identify a demonstrated need unique to Tribal Nations that this change would address. Accordingly, we decline at this time to adopt a cross-ownership exception that would allow a Tribal Nation Applicant to hold both LPFM and full-power radio station authorizations. A Tribal Nation Applicant that can demonstrate that a waiver would advance our LPFM goals, and advance our goal of expanding service to Tribal lands and members or is otherwise in the public interest, may seek a waiver of this ownership restriction. Moreover, in light of the trust relationship we share with federally recognized Tribal Nations, the Commission will endeavor, through efforts coordinated by the Office of Native Affairs and Policy and the Audio Division, to engage in further consultation with Tribal Nations and coordination with inter-Tribal government organizations on this cross-ownership issue.

d. Ownership of Student-Run Stations

158. Two commenters ask us to make changes to the exception to the cross-ownership prohibition for student-run stations, which is set forth in Section 73.860(b) of the Rules.[377] Currently, we permit an accredited school that has a non-student-run full power broadcast station also to apply for an LPFM station that will be managed and operated by students of that institution, provided that the LPFM application is not subject to competing applications. The Commission dismisses the student-run LPFM application if competing applications are filed.

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[372] *Fourth Further Notice*, 27 FCC Rcd at 3337 ¶ 57.

[373] NPM and NCAI Comments at 7; Common Frequency Comments at 20.

[374] CRA Comments at 8.

[375] REC Comments at 32-33.

[376] *See Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures,* Third Report and Order, 26 FCC Rcd 17642, 17645 ¶¶ 7-9 (2011); *Comparative Consideration of 59 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations filed in the October 2007 Filing Window*, Memorandum Opinion and Order, 25 FCC Rcd 1681, 1686 ¶ 14 (2010).

[377] 47 C.F.R. § 73.860(b). While we did not explicitly seek comment on this aspect of our ban on cross-ownership of LPFM stations and other broadcast stations, we believe it constitutes a "logical outgrowth" of the *Fourth Further Notice*, which sought comment on a wide range of topics related to cross-ownership and the process we use to select among MX LPFM applications.

159. REC and Common Frequency propose that we consider applications for student-run stations even if there are competing applications, so that all applicants can participate in settlements and time sharing negotiations.[378] We agree that it would serve the public interest to eliminate this automatic dismissal requirement. When the Commission first adopted this exception to the general prohibition on cross-ownership, it was seeking to strike a balance between an LPFM service comprised entirely of new entrants and one which would enable new speakers including students to gain experience in the broadcast field, even if their universities held other broadcast interests.[379] The Commission believed that the exception properly balanced the interests of local groups in acquiring a first broadcast facility and of university licensees in providing a distinct media outlet for students.[380] Our decision today, however, alters the LPFM comparative process by adding a selection criterion for applicants with no other broadcast interests. Given this change, we believe it is appropriate to eliminate our limitation on eligibility for student-run LPFM applications by schools with non-student run full power broadcast stations.

160. Common Frequency also proposes that we allow university systems with multiple campuses serving distinct regions, such as those in New York, Georgia, and California, to apply for student-run LPFM stations at any campus without another station, provided that the 60 dBu service contours do not overlap.[381] For example, Common Frequency argues that the newest campus of the University of California at Merced could benefit from a student-run LPFM station but cannot apply because the university owns full-power stations at other campuses.[382] We do not believe that a rule change is needed, however, concerning multiple campuses. Under our Rules, a local chapter of a national or other large organization is not attributed with the interests of the larger organization, provided that the local chapter is separately incorporated and has a distinct local presence and mission.[383] In 2000, the Commission clarified that this LPFM attribution exception for "local chapters" applies to schools that are part of the same school system, including university systems with multiple campuses, provided that the "local chapter" seeks its own licenses.[384] Thus, in Common Frequency's example, the University of California's ownership of full power broadcast stations licensed to separate campus institutions would not prevent the University of California at Merced from applying for an LPFM new station construction permit for a student-run station. We note, however, that "local chapters" of larger organizations that hold broadcast interests will not qualify for a "new entrant" point, as discussed below. Any broadcast interests held by the "parent" organization will be considered attributable for the purposes of this criterion only.

2. Selection Among Mutually Exclusive Applicants

161. The Commission accepts applications for new LPFM stations or major changes to authorized LPFM stations only during filing windows.[385] After the close of an LPFM filing window, the Commission makes mutual exclusivity determinations with regard to all timely and complete filings.[386] The staff then processes any applications not in conflict with any other application filed during the

[378] REC Comments at 36-37; Common Frequency Comments at 25.

[379] *See Creation of Low Power Radio Service*, Memorandum Opinion and Order on Reconsideration, 15 FCC Rcd 19208, 19241¶ 84 (2000) (*"LPFM Memorandum Opinion and Order*").

[380] *Id.*

[381] Common Frequency Comments at 24-25.

[382] *Id.*

[383] 47 C.F.R. § 73.858(b).

[384] *LPFM Memorandum Opinion and Order*, 15 FCC Rcd at 19240 ¶ 81.

[385] 47 C.F.R. § 73.870(b).

[386] 47 C.F.R. § 73.870(d).

window, and offers applicants identified as MX with other applicants the opportunity to settle their conflicts.[387] If conflicts remain, the Commission applies the LPFM point system.[388] Specifically, under our current Rules, the Commission awards one point to each applicant that has an established community presence, one point to each applicant that pledges to operate at least twelve hours per day, and one point to each applicant that pledges to originate locally at least eight hours of programming per day. The Commission takes the pledges made by applicants seriously. We will consider complaints that a licensee is not making good on a pledge it made during the application process and take appropriate enforcement action if we find a licensee has not followed through on its pledge. Moreover, as we noted in establishing the point system, "As with other broadcast applications, the Commission will rely on certifications but will use random audits to verify the accuracy of the certifications."[389] In the event of a tie, the Commission employs voluntary time sharing as the initial tie-breaker.[390] As a last resort, the Commission awards each tied and grantable applicant an equal, successive and non-renewable license term of no less than one year, for a combined total eight-year term.[391]

162. In the *Fourth Further Notice,* we proposed certain changes to our existing criteria, suggested that we award a point to Tribal Nation Applicants, and requested suggestions for new selection criteria that would improve the efficiency of the selection process. As discussed in more detail below, we adopt a revised point system. We will award one point to applicants for each of the following: (1) established community presence; (2) local program origination; (3) main studio/staff presence (with an extra point going to those applicants making both the local program origination and main studio pledges); (4) service to Tribal lands by a Tribal Nation Applicant; and (5) new entry into radio broadcasting. We will continue to accept voluntary timeshare arrangements, and will continue to accept partial settlements not involving timeshare arrangements, as an additional means to eliminate ties, discourage gamesmanship in timesharing arrangements, and reduce involuntary timeshare outcomes. We eliminate successive timeshare arrangements as the last resort, and will instead allow remaining qualified applicants to share time designated in the manner described below. Finally, we revise our Rules to extend mandatory time sharing to LPFM stations that meet the Commission's minimum operating requirements but do not operate 12 hours per day each day of the year.

a. Point System Structure, and Elimination of Proposed Operating Hours Criterion

163. REC and Prometheus each offer modifications to the current point system, but also submit alternative or enhanced methods by which to resolve MX groups. Each party maintains that the purpose of its proposed structure is to decrease the number of potential timeshares and successive licensees.[392] Prometheus proposes a multistage "waterfall evaluation process" in which there are multiple opportunities for a single winner to emerge. It notes that, under this system, the Commission would be able to emphasize its "top priority" criteria by placing them in the first tier, and explains the process as follows:[393]

[387] 47 C.F.R. § 73.872(e). This rule requires all competing applicants in an MX group to reach a universal settlement.

[388] 47 C.F.R. § 73.872. *See also Report and Order*, 15 FCC Rcd at 2258-2264 ¶¶ 136-149.

[389] *LPFM Memorandum Opinion and Order*, 15 FCC Rcd at 2261 ¶ 142.

[390] 47 C.F.R. § 73.872(c).

[391] *Report and Order*, 15 FCC Rcd at 2263-64 ¶ 149.

[392] Prometheus Comments at 61; REC Comments at 40.

[393] Prometheus Comments at 61.

In this system, each criterion would be worth a single point and would be placed – according to priority—into one of several tiers. The Commission would first compare applications using only the criteria in "Tier 1." If, after relying only on the criteria in Tier 1, a single applicant receives more points than any of its competitors, that winning applicant becomes the tentative selectee. However, in the event of a tie between two or more applicants with the most points, those tied applicants would then advance to Tier 2. Applicants with fewer points would be dismissed. These procedures would then be repeated to evaluate the remaining applicants using Tier 2 and, if necessary, Tier 3 criteria.[394]

164. REC, on the other hand, suggests that we retain the established community presence and local programming criteria, and award additional points as follows:

- one point to any applicant that is a municipal or state agency eligible under Part 90[395] of the Rules and provides emergency service; [396]
- one point to any applicant that is an accredited school and will use the proposed LPFM station for a "hands on" educational experience in broadcasting;[397]
- one point to any applicant proposing to broadcast children's programming for at least 3 hours per week;[398]
- one point to any applicant that will maintain a main studio staff presence for at least 40 hours per week;[399]
- one point to any applicant volunteering to maintain an online public file;[400]
- one point to any applicant that is owned or controlled by a recognized Tribal Nation that currently has no attributable interests in any other broadcast facility, proposes a transmitter site located within the boundaries of a Tribal Nation, and has not received a point under this criterion in connection with another LPFM station for which the applicant holds a construction permit or license;[401]
- one point to any applicant that pledges to create a public access broadcasting regime that solicits and presents programming created by and directly submitted by members of the public within the proposed LPFM station's service contour;[402] and

[394] *Id*.

[395] Part 90 of the Commission's rules pertains to the licensing of private land mobile radio communications to governmental entities and individuals providing various public safety services, such as medical or rescue services, disaster relief, etc. *See* 47 C.F.R. § 90.20(a).

[396] REC Comments at 42-44. REC proposes that organizations that are not eligible under Part 90 of the rules also may claim this point by submitting an affidavit from a state, county or municipal agency that attests to their participation in public safety activities. *Id.* at 43-44.

[397] *Id.* at 44.

[398] *Id.* at 45-46.

[399] *Id.* at 46-47. REC proposes to require this of LPFM stations operating 24 hours per day, seven days per week. REC also proposes to award one point under this criterion to stations operating less than 24 hours per day if these stations maintain a main studio staff presence at least 25 percent of the hours that they are authorized to broadcast each week. *Id.* at 47.

[400] *Id.* at 47-49.

[401] *Id.* at 49-50.

[402] *Id.* at 50-51.

– one point to any applicant willing to accept a time share agreement in lieu of being allowed to broadcast full time.[403]

165. We continue to believe that our basic points structure remains the most effective and efficient method of resolving mutual exclusivities. This conclusion is based in part on our recent experience with NCE applications filed during the 2007 and 2010 windows, where we have successfully resolved hundreds of groups of MX applications based on a very similar point system process. We decline to adopt Prometheus' proposed "waterfall" system. While doing so may reduce the likelihood of involuntary timesharing outcomes, we do not believe, as Prometheus suggests, that it would "reduce the administrative complexity" of the comparative process generally.[404] Indeed, we believe that it would have the opposite effect, as it would also create the potential for "waterfall" levels of comparative analysis and re-analysis. For example, for every successful challenge to the tentative selection of an applicant in a tiered category, the Commission would be forced to re-evaluate the group as a whole to determine which applicant, if any, should proceed to the next tier. If the new applicant in the next tier was successfully challenged, the Commission would have to repeat the evaluation process. This outcome is much less efficient than the current points system, which allows the Commission to weigh all points claimed by all applicants simultaneously. Even if we were to conclude that this approach was administratively feasible, we believe that we would need a far more comprehensive record, developed through a supplemental rulemaking, before we could attempt to "rank" the LPFM selection criteria into "tiers."

166. As discussed below, however, we adopt some of the new criteria suggested by REC, which we believe will enhance the localism and diversity policies underlying the LPFM service and anticipate will reduce the number of involuntary timesharing outcomes. We reject the remaining criteria suggested by REC and others, as they fail to demonstrate any unmet need that warrants preferences for particular types of programming,[405] would be difficult and time-consuming to administer[406] or enforce,[407] or would not substantially further the Commission's localism goals.[408]

167. Finally, REC, Prometheus and others suggest that we eliminate the proposed operating hours criterion, noting that, because of automation software, "even one-person LPFM stations easily meet this standard."[409] We agree with the commenters that this criterion does not meaningfully distinguish among applicants. Thus, we eliminate it.

b. Established Community Presence

168. Currently, under the LPFM selection procedures for MX LPFM applications set forth in Section 73.872 of the Rules, the Commission awards one point to an applicant that has an established community presence. The Commission deems an applicant to have such a presence if, for at least two

[403] This point would only be reviewed in the event of a tie in an MX group involving the other nine points. At that point, any applicants claiming this point would proceed to a time share process and the other applicants would be dismissed. *Id.* at 51-52.

[404] Prometheus Comments at 61,

[405] *Id.* at 56-58 (suggesting a point for local news); REC Comments at 45-46 (suggesting a point for children's programming).

[406] REC Comments at 51-53 (suggesting a point for applicants that consent to an involuntary time sharing arrangement). We discuss timesharing arrangements in more detail in Section III.D.2.g., *infra*.

[407] *Id.* at 47 (suggesting a point for voluntarily maintaining a public file and a point for maintaining a public access regime).

[408] *Id.* at 42-44 (suggesting a public safety point and a point to provide "hands-on" student learning).

[409] Prometheus Comments at 55.

years prior to application filing, the applicant has been headquartered, has maintained a campus or has had three-quarters of its board members residing within ten miles of the proposed station's transmitter site.[410] In the *Fourth Further Notice*, we proposed to revise the language of Section 73.872(b)(1) to clarify that an applicant must have had an established local presence for a specified period of time prior to filing its application and must maintain that local presence at all times thereafter. We noted that while Section 73.872(b)(1) currently does not include the requirement that an applicant maintain a local presence, we believed that was the only reasonable interpretation of the rule. Commenters that addressed this proposal agreed that this was a reasonable interpretation.[411] Accordingly, we adopt this proposed revision.

169. In addition, we sought comment on other changes to the rule. First, we requested comment on whether to revise our definition of established community presence to require that an applicant have maintained such a presence for a longer period of time, such as four years. Commenters largely disagreed with this proposal, asserting that the duration of a nonprofit organization's existence is not indicative of its level of responsiveness to local concerns.[412] Others noted that the proposal could "shut out" suitable applicants[413] or have "unintended discriminatory consequences."[414] A few commenters, however, generally embraced our proposal to maintain the two-year threshold but supported an award of an additional point to applicants that have a substantially longer established community presence (*e.g.*, four years).[415]

170. We continue to believe that established local organizations are more likely to be aware of community needs and better able to "hit the ground running" upon commencement of broadcast operations. However, we are persuaded by commenters that organizations that have been established in the community for four years will not necessarily be more responsive to community needs or likely to establish a viable community radio station than those who have been present for two. We likewise agree that extending the length to four years may unnecessarily limit the pool of qualified organizations. Finally, parties supporting a "bonus" point for applicants with more established ties to the community failed to offer any demonstration of greater responsiveness supporting its adoption. Accordingly, we will retain the current two-year standard.

171. We also solicited comment on whether we should modify Section 73.872(b)(1) to extend the established community presence standard to 20 miles in rural areas. We will adopt this modification as proposed. We note that the Commission extended the "local" standard in Section 73.853(b) to 20 miles only for rural areas, based on a record indicating special challenges for rural stations.[416] While many commenters support an extension of the established community presence standard to 20 miles in *all* areas, not just rural areas,[417] we are unconvinced that limiting our extension of the standard to rural areas only is unduly harsh or will create disadvantages to applicants with geographically dispersed board

[410] 47 C.F.R. § 73.872(b)(1).

[411] See, *e.g.*, Common Frequency Comments at 21; SOPR Comments at 5.

[412] See REC Comments at 40-41; Prometheus Comments at 52-53; Common Frequency Comments at 21.

[413] See Joint Center for Political and Economic Studies ("JCPES") Comments at 4-5.

[414] Common Frequency Comments at 22; CRA Comments at 10, 11.

[415] *See* JCPES Comments at 4-5; SOPR Comments at 5.

[416] Prior to 2007, Section 73.853(b) did not contain a different local standard for rural areas. *Third Report and Order*, 22 FCC Rcd at 21923 ¶ 25. At the urging of Prometheus, the Commission extended the local standard for these areas. *Id.* In doing so, the Commission noted that "stations located in rural communities find it particularly challenging to meet the current ten-mile standard" and concluded that the concept of local should be "more expansive in rural areas." *Id.*

[417] REC Comments at 40-41; Prometheus Comments at 52; Common Frequency Comments at 22.

member residences, as some commenters suggest.[418]

172. Finally, we sought comment on whether to allow local organizations filing as consortia to receive one point under the established community presence criterion for each organization that qualifies for such a point. Most commenters rejected this proposal, noting that it would encourage gamesmanship and unethical behavior.[419] Amherst Alliance and others state that they are "deeply concerned that unethical LPFM applicants could manufacture 'paper partners' in order to gain a dramatic advantage over their rivals," predicting that the paper partners would eventually either leave the scene or simply "rubber stamp" the station operator's actions.[420] Prometheus notes that the proposal could lead to discrimination, and potentially lead to a contest "favoring the best connected, best resourced groups" in a given community.[421] It further notes that non-consortium applicants competing with consortium applicants would almost always lose, even if the non-consortium applicants have received points that are arguably more "directly related" to a licensee's potential to serve its community.[422] Finally, Common Frequency notes that the proposal would "discourage diversity," effectively rewarding consortia organizations that hold similar viewpoints over single minority groups, such as foreign-language speakers and LGBT organizations.[423]

173. The few commenters supporting the proposal note that the consortia proposal could speed up the licensing process by lessening the Commission's burden of sorting out MX applications, and would help avoid involuntary time sharing by applicants whose proposed programming formats are incompatible and likely to confuse potential audiences.[424] To help deter potential abuse, Cynthia Conti ("Conti") suggests that the Commission require consortia applicants to submit with their applications proof of their intention to coexist at their future station, such as a "joint plan of action" that would include descriptions of the participating organizations, their individual and collective intentions for the station, and a proposed programming schedule.[425]

174. We are persuaded by commenters that the risk of licensing abuses and the potential for excluding unrepresented or underrepresented niche communities far outweigh potential service benefits or mere administrative efficiencies. Even if we were to require supporting documentation at the application stage, we would still have no reliable mechanism, given our limited administrative resources, to ultimately ensure that such consortia relationships are being meaningfully maintained throughout the license period. Thus, we do not adopt the consortia proposal.

c. Local Program Origination

175. The Commission currently encourages LPFM stations to originate programming locally by awarding one point to each MX applicant that pledges to provide at least eight hours per day of locally

[418] Prometheus Comments at 52; Common Frequency Comments at 22.

[419] *See* REC Comments at 38-41; Prometheus Comments at 53-55; Amherst Comments at 13-14; Sibert Comments at 6.

[420] Amherst, Nexus LPFM Advocacy and Nexus Broadcast Joint Reply Comments at 2.

[421] *See* Prometheus Comments at 54.

[422] *Id.* at 55.

[423] Common Frequency Comments at 23.

[424] *See* CRA Comments at 11; Conti Comments at 2; NLG and Media Alliance Comments at 8. *But see* Prometheus Comments at 53-54 (noting that if multiple consortia are also MX applicants for a given channel, the current proposal may actually result in more ties and could result in complex timeshares that are unsustainable); Common Frequency Comments at 22 (noting that the proposal could spawn "mega-MX's").

[425] Conti Comments at 2.

originated programming.[426] The Rules define "local origination" as "the production of programming, by the licensee, within ten miles of the coordinates of the proposed transmitting antenna."[427] In adopting the local program origination criterion, the Commission reasoned that "local program origination can advance the Commission's policy goal of addressing unmet needs for community-oriented radio broadcasting" and concluded that "an applicant's intent to provide locally-originated programming is a reasonable gauge of whether the LPFM station will function as an outlet for community self-expression."[428]

176. In the *Fourth Further Notice,* we sought comment on whether to place greater emphasis on this selection factor by awarding two points for this criterion instead of the current one point.[429] Alternatively, we sought comment on whether to impose a specific requirement that all new LPFM licensees provide locally-originated programming.[430] We asked parties supporting such a requirement to explain why our prior finding that it was not necessary to impose specific requirements for locally originated programming no longer is valid and to identify problems or short-comings in the current LPFM licensing and service rules that such a change would remedy. We also asked parties supporting a locally-originated programming requirement to address potential constitutional issues.

177. Many commenters generally support the adoption of a locally originated programming obligation, but provide little or no analysis.[431] Prometheus, which devotes the most significant discussion to this issue, would require every LPFM station to air at least 20 hours per week of locally originated programming,[432] maintaining that such a requirement would more effectively ensure that a station would serve community needs, would be consistent with the Commission's policy goal of promoting localism,[433] and would help remediate the "drastic decline" of local programming in the media.[434] Prometheus asserts that today, approximately 20 percent of all licensed LPFM stations produce no local programming whatsoever,[435] and states that, without such a requirement, a "significant number" of LPFM stations will

[426] 47 C.F.R. § 73.872(b)(3).

[427] *Id.*

[428] *See Report and Order*, 15 FCC Rcd at 2262 ¶ 144.

[429] We received few or no comments on the following issues: whether the limited licensing opportunities for LPFM stations in major markets or the potential for applicants to receive up to three points as consortia justified an increase in the points awarded for local program origination, whether such action was not warranted in view of our previous finding that local programming is not the only programming of interest or value to listeners in a particular locale, and whether we should modify the definition of local program origination for LPFM stations that serve rural areas. In the absence of any definitive record on any of these issues, we will not consider them further.

[430] *Fourth Further Notice*, 27 FCC Rcd at 3340 ¶ 63.

[431] Approximately 150 individuals submitted short form letters to express support for requiring "a minimum amount of locally-originated programming each week." *See also* Amherst Alliance Comments at 14; NLG and Media Alliance Comments at 8;Leadership Conference on Civil and Human Rights Comments at 5.

[432] Prometheus Comments at 44.

[433] Prometheus notes that, in establishing the LPFM service, the Commission stated that "local program origination can advance the Commission's policy goal of addressing unmet needs for community oriented radio broadcasting." *Id.* at 37, *citing Report and Order*, 15 FCC Rcd at 2261-62 ¶ 144.

[434] *See* Prometheus Comments at 38, *citing Information Needs of Communities,* Report, 2011 WL 2286864 (2011) ("*INC Report*"). *See also* JCPES Comments at 6 (asserting that greater emphasis on locally originated programming will encourage discourse on local issues affecting communities of color); Braulick Comments at 5 (stating that it is appropriate to place a greater emphasis on local program origination criterion because local programming arguably can better serve local needs).

[435] Prometheus Comments at 41-42 (citing a telephone survey study conducted by researchers at Penn State University, which found that approximately 20 percent of LPFM stations provide little or no local programming). (continued….)

not offer any local programming.[436] It further maintains that a local program origination requirement is constitutionally sound, pointing to the fact that "federal legislation, Commission decisions and Supreme Court precedent support the importance of local programming … and support Commission actions to adopt content-neutral broadcaster obligations that embrace substantial broadcaster discretion."[437] In particular, Prometheus cites proceedings in which the Commission has regulated children's television and network programming.

178. Several commenters do not agree with Prometheus' position, instead arguing that local program origination should remain a comparative criterion. REC fears that "during tough times," stations may not have the financial resources to generate 20 hours weekly of local programming.[438] Other commenters observe that local program origination is "an easily manipulated requirement,"[439] is of "limited value"[440] with no enforcement mechanism in place, and is not necessarily more responsive to community needs than non-local content.[441] Conti states that, "given the concern over the constitutionality of requiring programming, the addition of a locally-originated programming requirement could make LPFM rules vulnerable to complaints" and does not "think it is worth the risk considering that the criterion does not necessarily result in its stated goal."[442]

179. After careful consideration of the record, we decline to impose a local program origination requirement. When we first created the LPFM service, we sought comment on whether to impose a local program origination requirement.[443] We noted that listeners benefit from locally originated programming because it often reflects needs, interests, circumstances or perspectives that may be unique to a community. However, we also found that programming need not be locally originated to be responsive to local needs. Ultimately, we concluded that the nature of the LPFM service, combined with eligibility criteria and preferences, would ensure that LPFM licensees would provide locally originated programming or programming that would otherwise respond to local needs.

180. Nothing in the record persuades us that these findings are no longer valid. The Commission has consistently maintained that non-local programming can serve community needs.[444]

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Connolly-Ahern, C., Schejter, A., Obar, J., & Martinez-Carrillo, N.I. *A slice of the pie: Examining the state of the Low Power FM Radio Service in 2009*, Presented to the Research Conference on Communication, Information and Internet Policy (TPRC), Arlington, VA (Sept 27, 2009).

[436] Prometheus Comments at 35. Prometheus notes that most LPFM stations could afford to offer locally originated programming. Prometheus Reply Comments at 19.

[437] Prometheus Comments at 46-47, *citing Turner Broadcasting Co. v. FCC*, 512 U.S. 622 (1994); *National Broadcasting Co., Inc., v. United States*, 319 U.S. 190 (1943) ("*NBC*"), and *Policies and Rules Concerning Children's Television Programming*, Report and Order, 11 FCC Rcd 10660, 10732 (1996) ("*Children's Television Order*").

[438] REC Comments at 42.

[439] Grant County Comments at 3.

[440] SOPR Comments at 5.

[441] CRA Comments at 12.

[442] Conti Comments at 3.

[443] *See Creation of a Low Power Radio Service,* Notice of Proposed Rulemaking, 14 FCC Rcd 2471 (1999) ("*LPFM Notice*").

[444] *See Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425, 12431 n.43 (2004) ("[P]rogramming that addresses local concerns need not be produced or originated locally to qualify as 'issue-responsive' in connection with a licensee's program service obligations"), *citing The Revision of Programming and Commercialization Policies*, Report and Order, 98 FCC 2d 1076, n.28 (1984) ("[T]he coverage of local issues does not necessarily have to come from locally produced programming); *Amendment of Sections 73.1125 and 73.1130 of the Commission's* (continued….)

While Prometheus points to a decline in the production of local programming as support for a local program origination requirement, it has failed to counter the argument that non-locally produced programming *can* serve community needs.[445] Indeed, as commenters have noted, non-local programming can serve the unique needs of a community. For instance, a foreign language station may carry programming "from home,"[446] other LPFM stations may broadcast public affairs programming from a neighboring county,[447] and still other LPFM stations may broadcast religious programming.[448]

181. We also continue to believe that the nature of the service inherently ensures that LPFM stations will be responsive to community needs. The record supports this conclusion. Last year, in the *INC Report*, we noted several LPFM "success" stories in which LPFM stations were serving their communities.[449] Moreover, while Prometheus points to the fact that 20 percent of all LPFM licensees currently produce no locally originated programming as evidence of a local media crisis, we believe this is a "glass half empty" perspective, and are instead encouraged by the fact that 80 percent of all LPFM licensees *are* producing some local programming.

182. Moreover, given the current economic climate, we believe a local program origination requirement could unnecessarily restrict LPFM licensees and jeopardize their financial health. Many, if not all, of these stations are run by volunteers and operate on a shoestring budget. LPFM licensees often have difficulty finding underwriters to support their stations.[450] Prometheus argues that LPFM stations could arguably afford to produce locally originated programming.[451] However, our own records show that, as a whole, the LPFM service remains financially vulnerable. This is evidenced by the fact that, of

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Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations, Report and Order, 2 FCC Rcd 3215, 3218-19 ¶ 39(1987) (finding that the Commission "can no longer presume that location alone is relevant to the provision of programming which is responsive to the interests and needs of the community" and noting that a local program origination requirement "may actually preclude the presentation of responsive programming"); *WPIX, Inc*., Decision, 68 F.C.C.2d 381, 402-3 ¶ 11 (1978) ("premise that local needs can be met only through programming produced by a local station has not only been rejected by the Commission …, but it also lacks presumptive validity") (citations omitted).

[445] Prometheus cites to the *INC Report's* finding that there has been a decline in local news reporting. *See* Prometheus Comments at 38-39. However, we note that a local program origination requirement would not necessarily remedy this shortfall of local news because an LPFM station would still remain free to choose its own format.

[446] REC Comments at 41.

[447] Grant County Comments at 3 (arguing that a public affairs show produced two counties away could be valuable to the community).

[448] CRA Comments at 12 (noting that locally originated programming is not necessarily more responsive than programming originated elsewhere).

[449] See *INC Report*, 2011 WL at *197 (noting that anecdotal evidence suggests that LPFMs play an important role in reaching underserved communities, providing, for example, news and information to non-English speaking communities, and public affairs programming for senior citizens).

[450] *See LPFM Report*, 27 FCC Rcd at 64 ¶ 7. These challenges are compounded by the fact that the LPFM service, by its very nature, has an extremely limited reach. *See id*. at 15 (noting that LPFM stations are listened to by less than 0.2 percent of the radio-listening population and that LPFM listening represents less than 0.1 percent of total radio listening).

[451] *See* Prometheus Reply Comments at 18-19 (citing LPFM survey demonstrating that stations producing more than 20 hours of locally originated programming per week had an average budget of $20,000, while those who produced less than 20 hours of locally originated programming per week had an average budget of $10,000). We find this limited data to be inconclusive. It may be that the stations with larger budgets produce locally originated programming *because* they have more funding available to them.

the 1,286 LPFM construction permits granted out of the last LPFM application filing window, only 903 LPFM stations ultimately became fully licensed. Moreover, 84 of these station licenses now have either expired or been cancelled, with nearly half of these expirations/cancellations occurring in the last two years.[452] Of the remaining 819 licensed stations, 26 are currently silent. Given these alarming statistics, we believe it is essential to provide LPFM licensees with maximum flexibility to choose their own programming as a measure to ensure their continued viability.

183. Finally, we recognize that Prometheus' support of a local program origination requirement is based on its belief that this option will most effectively further the Commission's goal of ensuring that the LPFM service will "enhance locally focused community-oriented radio broadcasting."[453] We agree that this goal is one of the bedrocks of the LPFM service. However, we find that there are better, alternative ways of furthering this goal without imposing further regulatory restrictions. Specifically, as discussed in more detail below, we believe we can better effectuate our localism goals by retaining a one-point preference for local program origination and supplementing that preference with two additional selection criteria that award points to those applicants best positioned to locally originate programming.[454] Accordingly, given the lack of a clear record basis to support its adoption, we decline to adopt a program origination requirement for LPFM stations. In short, while our selection criteria seek to promote local origination, we believe the benefits of imposing it as a requirement are far outweighed by the costs to a financially vulnerable fledgling sector of the industry.

184. That said, we note that the comments filed in this proceeding reflect some misunderstanding of what constitutes "locally originated programming" under our previous orders, and we take this opportunity to provide additional guidance to current and prospective LPFM licensees. In the *Second Order on Reconsideration* in this docket, the Commission held that time-shifted, non-local, satellite-fed programming does not qualify toward the local origination pledge.[455] Commenters indicate

[452] Notably, this uptick in license cancellations has coincided with the current license renewal cycle, which commenced in 2011. As part of the renewal process, each LPFM licensee must file an application for license renewal four months prior to the expiration date of the station's license. If a renewal application is not filed prior to the expiration of the station's license, the license automatically expires as a matter of law. *See* 47 C.F.R. §§ 73.1020, 73.3539(a). In such cases, the Bureau will notify the licensee by letter that its license has expired and its call sign has been deleted from the Commission's database. As a courtesy, the Bureau staff routinely attempts to contact licensees that have not filed renewal applications by their respective filing deadlines. Some LPFM licensees have surrendered their licenses or informed the staff that they would allow their licenses to expire. In many cases, licensees cannot be reached with the contact information they have previously provided to the Commission, or through public record searches. Many of these licensees have simply failed to file their renewal applications. The Bureau believes that, in such cases, the licensee has shut down its station and abandoned its license.

[453] Prometheus Comments at 37. Prometheus also maintains that a local program origination requirement will deter the filing of applications by national networks seeking to create *de facto* programming networks. *See* Letter from Angela Campbell, Counsel to Prometheus Radio Project, to Marlene Dortch, Secretary, FCC, in MB Docket 99-25 (filed Oct. 11, 2012). Prometheus, in effect, appears to be taking aim at a small handful of national religious organizations that provide religious content to local LPFM stations. *Id*. Again, this argument presupposes that non-local programming does not serve community needs. In any event, we find that the additional selection criteria we adopt today adequately ensure that, in MX situations, those applicants pledging to originate programming will prevail. We fail to see how, as Prometheus suggests, a singleton LPFM applicant that plans to provide non-local programming would "squelch" local voices. *Id*. at Appendix C-27.

[454] We reject Prometheus's suggestion to require LPFM licensees to put their programming schedules online for the purpose of disclosing which programs are intended to count toward the local programming requirement. We believe that this approach would impose significant burdens on LPFM licensees without providing any clear public interest benefits to listeners.

[455] *Creation of a Low Power Radio Service,* Second Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 6763, 6766 ¶ 10 (2005) ("*Second Order*").

that some licensees believe that such programming is local provided that it is delivered in a way other than satellite.[456] This inference is incorrect. Any non-local programming, whether delivered by satellite, over the Internet or other means, does not qualify as locally originated programming. Similarly, in the *Third Report and Order,* we clarified that repetitious automated programming does not meet the definition of local origination, and specifically stated that once a station has broadcast a program twice it can no longer count it as locally originated.[457] According to commenters, some LPFM licensees believe that this is a daily restriction (*i.e*., cannot repeat programming more than twice in one *day*),[458] while others believe that a program becomes "new" for local purposes if musical selections within a program are re-shuffled.[459] Again, these inferences are incorrect. Once a station has broadcast a program twice it can *never* again be counted toward the local program origination pledge. Likewise, programs that have been "tweaked" or reorganized do not count toward the requirement if the underlying program has already been played twice. Generally speaking, locally originated programming – whether locally created content (*e.g*., live call-in shows or news programs), or locally curated content (*e.g*., a music program reflecting non-random song choices) – must involve a certain level of local *production* (*i.e.*, creation of new content, in order for the programming to be considered locally originated).[460] Each of the examples discussed above lacks this critical element. Our deliberations in this proceeding, including the clarification we provide today, have been consistent with this underlying principle. Accordingly, we will revise Section 73.872 of our Rules, as well as the FCC Form 318, to incorporate these clarifications.

d. Main Studio

185. REC, Common Frequency and Prometheus each suggest that we modify our Rules to award one point to applicants that pledge to maintain a main studio with a staff presence.[461] They assert that an organization that maintains a staffed main studio within the community served by its LPFM station will be better resourced to serve its community's needs.[462] We agree. The local program origination selection criterion was created in part "to encourage licensees to maintain production facilities and a meaningful staff presence within the community served by the station."[463] The Commission has long held that the maintenance of a main studio is integral to a station's ability to serve community needs and produce programming that is responsive to those needs.[464] As indicated by commenters, however,

[456] CMAP Comments at 4.

[457] *Third Report and Order*, 22 FCC Rcd at 21922-23 ¶ 24.

[458] Prometheus Comments at 45.

[459] *Id*.

[460] For example, CMAP would count local live call-in shows; rebroadcasts of lectures from local schools; local radio theater whether live or recorded; and music performed in the local studio or as part of a locally produced remote performance, such as at a local festival. CMAP Comments at 4-5. We believe that these examples are consistent with the letter and the spirit of our regulations. Conversely, broadcasting an iPod set to "shuffle" for 8 hours daily would not count as locally originated programming because there is little or no level of production involved. *See* Sibert Comments at 6 (arguing that "local origination" is so poorly defined that an applicant can currently meet the threshold simply by using an mp3 player as a program source for eight hours a day).

[461] REC Comments at 46-47; Prometheus Comments at 59-60; Common Frequency Comments at 26. *See also* LPFMhelp.com Comments at 2.

[462] REC Comments at 47; Prometheus Comments at 59.

[463] *Creation of a Low Power Radio Service,* Memorandum Opinion and Order on Reconsideration*,* 15 FCC Rcd 19208, 19247 ¶ 98 (2000) ("*LPFM Memorandum Opinion and Order*").

[464] *See Promulgation of Rules and Regulations Concerning the Origination Point of Programs*, Report and Order, 43 FCC 570, 571 (1950) ("*1950 Main Studio Order*") (stating that "a station cannot serve as a medium for local self expression unless it provides a reasonably accessible studio for the origination of local programs"). *See also Main* (continued….)

some licensees have chosen not to maintain a main studio and have instead originated programming using automated software, iPods, or CD players.[465] While applicants claiming the local program origination point will retain the discretion to determine the origination point of their programming, we believe that a separate main studio criterion will better effectuate the intent underlying the creation of the local program origination pledge. Accordingly, we will award one point to any organization that pledges to maintain a meaningful staff presence (*i.e.*, staffed by persons whose duties relate primarily to the station and not to non-broadcast related activities of licensee) in a publicly accessible main studio location that has local program origination capability[466] for at least 20 hours per week between 7 a.m. and 10 p.m.[467] Staff may be paid or unpaid, and staffing may alternate among individuals.[468] We will not require stations to have "management" staff present during main studio hours. The main studio should be located within 10 miles of the proposed site for the transmitting antenna for applicants in the top 50 urban markets, and 20 miles for applicants outside the top 50 urban markets. We will require applicants to list the proposed main studio address in their applications, as well as the local telephone number to be maintained by the main studio at all times. Applicants failing to include this information will not receive credit for this point.

186. In addition, we will revise Section 73.872 of our Rules to provide that applicants that claim both the local program origination point and the main studio point will receive a total of three points. We find that the creation of this "bonus" point will more effectively foster the production of focused community-oriented radio programming than would a general local program origination requirement, as it will reward those applicants best situated to further this goal in a meaningful way.[469] We believe that an applicant that plans to originate programming from a main studio will be in a better position to provide programming reflecting community needs and interests than an applicant that will originate programming elsewhere. As the Commission has noted previously, the maintenance of a main studio in the station's community can help "promote the use of local talent and ideas,"[470] can "assure meaningful interaction between the station and the community,"[471] and can "increase the ability of the

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Studio and Program Origination Rules, Report and Order, 2 FCC Rcd 3215, 3217-18 ¶¶ 29-38 (1987) ("*1987 Main Studio Order*") (relaxing the main studio rule to adjust for advances in technology, but noting the studio's continued importance in helping stations to identify community needs and interests) and *Main Studio and Program Origination Rules*, Memorandum Opinion and Order, 3 FCC Rcd 5024, 5026 ¶ 24 (1988) ("*1988 Main Studio Order*") (noting that maintenance of production facilities with a meaningful staff presence would expose the station to community activities and enable stations to produce locally responsive programming at their option).

[465] Sibert Comments at 6; Prometheus Comments at 45; Grant County Comments at 3; Conti Comments at 3.

[466] This requirement is consistent with our current main studio rules for full-service stations. See *1988 Main Studio Order*, 3 FCC Rcd at 5026 ¶ 24 (finding that a main studio must have "production and transmission facilities that meet applicable standards" that would enable it to originate programming).

[467] REC advocates for a commitment of 40 hours per week. *See* REC Comments at 47. However, given that many LPFM stations are volunteer-run and operate on shoestring budgets, we feel that a 20 hour per week commitment is more reasonable and sustainable.

[468] Applicants that have claimed the main studio point and are in time share situations must maintain their main studios for at least 50 percent of their authorized broadcast time or 20 hours per week, whichever is less.

[469] This preference is consistent with Prometheus' suggestion that, "in lieu of a [local program origination] mandate," the Commission create "a dispositive point allotment" to ensure that " applicants willing to commit to locally-originated programming … be preferred over other applicants." *See* Letter from Brandy Doyle, Policy Director to Prometheus Radio Project, to Marlene Dortch, Secretary, FCC, in MB Docket 99-25 (filed July 24, 2012).

[470] *1987 Main Studio Order,* 2 FCC Rcd at 3219 ¶ 39.

[471] *Id.* at 3219 ¶ 46.

station to provide information of a local nature to the community of license."[472] Indeed, both our main studio rules and the LPFM service were created for the same purpose: to ensure that stations would serve as an outlet for community self-expression.[473] The Commission implicitly recognized this nexus when it created the local program origination criterion as a way to "advance the Commission's policy goal of addressing unmet needs for community oriented radio broadcasting"[474] and as a means to encourage licensees to maintain production facilities.[475] Moreover, these attributes, of themselves, reflect our core vision of and animating purpose for community radio: licensees that make their stations accessible to their local communities and that are committed to responding to unmet local programming needs.

187. Many LPFM stations fulfill their local program origination commitments without the benefit of equipment and facilities that could be reasonably characterized as "main studios." We also anticipate that some applicants in the upcoming LPFM window may conclude that maintaining and staffing a main studio is not feasible or necessary. On the other hand, the "bonus" point will provide a substantial incentive to applicants to assume these responsibilities notwithstanding the associated costs. It is also likely to permit resolution of mutual exclusivities based on Commission policy goals rather than complex tie-breaking procedures and also avoid voluntary and involuntary time sharing arrangements – outcomes that many commenters view negatively.[476] Given commenters' general support of local program origination, our longstanding policy goal of ensuring that the LPFM service provides an outlet for local community voices, and the benefits that would result from implementation of a more robust point system that promotes this goal, we conclude that the record supports our award of a total of three points to those applicants that make *both* the local program origination and main studio pledges.[477]

e. Tribal Nations

188. In the *Fourth Further Notice*, we sought comment on whether to give a point to Tribal Nation Applicants when they propose new radio services that primarily would serve Tribal lands.[478] We proposed to modify Section 73.872(b) of our Rules to include a Tribal Nations criterion. As with our proposed revisions to the LPFM eligibility requirements set forth at Section 73.853 of the Rules, we proposed to rely on the definitions of the terms "Tribal Applicant," "Tribal Coverage," and "Tribal Lands" as they are currently defined in our Rules for this comparative criterion.[479]

189. Commenters largely supported the creation of a Tribal Nation criterion.[480] As we stated in the *Fourth Further Notice*, we believe that adding this criterion will further our efforts to increase

[472] *Broadcast Localism*, Report on Broadcast Localism and Notice of Proposed Rulemaking, 23 FCC Rcd 1324, 1338 ¶ 29 (2008).

[473] *See 1950 Main Studio Order*, 43 FCC at 570 (noting the main studio's function as an outlet for local self-expression) and *LPFM Memorandum Opinion and Order*, 15 FCC Rcd at 19246 ¶ 98 (noting that LPFM stations providing locally originated programming could serve as an "outlet for community self-expression").

[474] *Report and Order*, 15 FCC Rcd at 2262 ¶ 144.

[475] *Second Order*, 20 FCC Rcd at 6767 ¶ 10.

[476] *See* Part III.D.2.g., *infra*.

[477] While we did not explicitly seek comment on this added criterion, we believe it constitutes a "logical outgrowth" of the *Fourth Further Notice*, which sought comment on whether to increase the allocation of points for the local program origination criterion from one to two, and generally solicited suggestions for new selection criteria.

[478] *Fourth Further Notice*, 27 FCC Rcd at 3340 ¶ 64.

[479] *Id*. *See also* 47 C.F.R. § 73.7000.

[480] *See* Prometheus Comments at 47; REC Comments at 49-50; MonsterFM Comments at 3; Common Frequency Comments at 20. Sibert and Tyson Wynn ("Wynn") express general opposition to the proposed Tribal Nations criterion, preferring a "level playing field." Sibert Comments at 5; Wynn Comments at 2.

ownership of radio stations by Tribal Nation Applicants and enable Tribal Nation Applicants to serve the unique needs and interests of their communities. We find unpersuasive the argument of NPM and NCAI that we should create a "Tribal Priority," *i.e.*, a dispositive preference, for LPFM Tribal Applicants as the Rules now provide for in the full power NCE and commercial radio services.[481] The expansion of Tribal stations unquestionably advances our Section 307(b) policies. However, as we have explained, Tribes, which hold sovereign responsibilities for the welfare and improvement of their Members, are well-positioned to advance the localism and diversity goals of the LPFM service. Thus, it is reasonable to treat this factor as we have the other comparative factors that also advance these same LPFM goals. Finally, we find no basis in the record for elevating this criterion to a dispositive factor. Accordingly, we adopt our proposal to create a Tribal Nation point criterion.

190. We will not, as originally proposed, rely on the definitions of "Tribal Applicant" or "Tribal Coverage." For the reasons discussed above, we instead will define a "Tribal Applicant" as a Tribe or entity that is 51 percent or more owned and controlled by a Tribe.[482] We will, however, require that any Tribal Nation Applicant claiming a point under the Tribal Nation criterion propose to locate the transmitting antenna for its proposed station on its Tribal lands.[483] While NPM and NCAI oppose the imposition of such a requirement, arguing "it is easy to imagine circumstances in which the site which delivers the best, most affordable service to Tribal Lands is a developed antenna site located near, but not on, Tribal Lands,"[484] we are not persuaded that this requirement will hinder the provision of LPFM service on Tribal lands. Many Tribal Nations occupy unserved or underserved areas. We believe it is highly unlikely that there will be developed antenna sites located near most Tribal lands. However, in the event that there is a developed antenna site near, but not on, the Tribal lands of a Tribal Nation Applicant and the Tribal Nation Applicant can demonstrate that the use of such site will better promote our goals of increasing ownership of radio stations by Tribal Nations and enabling Tribal Nations to serve the unique needs and interests of their communities, we will entertain requests to waive the requirement that the transmitting antenna for the proposed LPFM station be located on the Tribal lands of the Tribal Nation Applicant. Finally, we note that we will not, as REC proposes, [485] require a Tribal Nation Applicant to have no attributable interests in any other broadcast facility in order to qualify for a point under the Tribal Nation criterion. We believe our adoption of a new entrant criterion adequately addresses the concerns underlying REC's proposal.[486] At bottom, through its proposal, REC seeks to ensure that diversity of ownership remains an important goal underlying the LPFM service. By adopting a new entrant criterion, which awards a point to applicants with no attributable interests in other broadcast facilities, we retain an emphasis on diversity of ownership without deemphasizing the importance of promoting the provision of service by Tribal Nation Applicants to Tribal lands and citizens of Tribal Nations.

f. New Entrants

191. As discussed above, we are relaxing our ownership rules to allow LPFM licensees to own or apply for other broadcast interests. Among other things, we are allowing Tribal Nation Applicants to own up to two LPFM stations. In response to this revision, REC suggests that we only allow a Tribal

[481] NPM and NCAI Comments at 6.

[482] *See supra* ¶ 147.

[483] For a Tribal Nation Applicant that is a Tribal Nation, this means proposing to locate the transmitting antenna on its Tribal lands. For a Tribal Nation Applicant that is a Tribal organization, this means proposing to locate the transmitting antenna on the Tribal lands of the Tribal Nation that owns or controls more than 51 percent of the organization.

[484] NPM and NCAI Comments at 6.

[485] REC Comments at 50.

[486] *See infra* Part III.D.2.f.

Nation Applicant to claim a point under the Tribal Nations criterion if it is applying for its first LPFM station.[487] We agree with REC's proposal to the extent that it suggests that multiple ownership should be a relevant factor in our analysis. Indeed, we raised this issue in the *Fourth Further Notice*.[488] However, we believe that a Tribal Nation Applicant should be eligible to receive a point under the Tribal Nation criterion regardless of whether or not it owns or has applied for other LPFM stations, and that any restriction of a Tribal Nation Applicant's eligibility to claim this point would run contrary to our commitment to increase the ownership of radio stations by Tribal Nations and to increase service to Tribal lands and citizens of Tribal Nations. However, we also believe that our selection process should encourage new entrants to broadcasting and foster a diverse range of community voices. We find that allocating a point to new entrants strikes the appropriate balance between these two competing goals. Likewise, adding a new entrants criterion addresses concerns raised by REC and Common Frequency regarding student-run stations.[489] Accordingly, we will award one point to an applicant that can certify that it has no attributable interest in any other broadcast station.

g. Tiebreakers - Voluntary and Involuntary Time Sharing

192. As noted above, in the event the point analysis results in a tie, the Commission releases a public notice announcing the tie and gives the tied applicants the opportunity to propose voluntary time sharing arrangements.[490] Some or all parties in an MX group may enter into a timeshare agreement and aggregate their points. Where applicants cannot reach either a universal settlement or a voluntary time sharing arrangement, the Commission awards each tied and grantable applicant in the MX group an equal, successive and non-renewable license term of no less than one year, for a combined total eight-year term.[491]

193. Several commenters voiced dissatisfaction with both the voluntary and involuntary timesharing processes. REC asserts that we should eliminate point aggregation in voluntary time sharing because it "can lead to discriminatory behavior intended to silence [other] voices …."[492] As an alternative, it suggests that applicants move straight to an involuntary time sharing process in cases where parties cannot agree on a voluntary time share (without aggregating points) or other settlement arrangement. Under REC's proposed process, an applicant would have the option to select an "involuntary time share trigger point" as a points criterion. In the event of a tie in an MX group, the involuntary time share point would be reviewed. At this point, one of the following scenarios could take place: (1) if all or no applicants claim the point, then they would all proceed to the time share process; or (2) if one or some applicants claim the trigger point, then those claiming the point would proceed to the time share process and remaining applications would be dismissed.[493] Under REC's proposal, applicants reaching the time sharing process would either voluntarily agree on a time sharing arrangement, or be

[487] REC Comments at 50. *See also* CRA Comments at 9 (proposing to eliminate multiple ownership restrictions altogether and to instead consider multiple ownership as a comparative factor).

[488] *See Fourth Further Notice*, 27 FCC Rcd at 3337 ¶ 58 (asking whether we should permit multiple ownership only when there are available channels for other applicants, noting that under such circumstances, "there would be no risk that a new entrant would be precluded from offering service").

[489] *See* Part III.D.1.d., *supra*.

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

[491] *Report and Order*, 15 FCC Rcd at 2263-64 ¶ 149.

[492] REC Comments at 54.

[493] *Id.*

subject to a "last resort" method that would allocate time to the top three applicants based on the date of the organization's establishment in the community (*i.e.*, the applicant with the oldest community presence date would get the first opportunity to select its time share slot). REC notes that "an effective time share group should have no more than three members."[494]

194. Brown Student Radio also argues that allowing a "partial settlement" for the purposes of aggregating points invites the potential for abuse in the LPFM licensing process,[495] where dominant applicants can effectively "squeeze out" fellow timeshare applicants by forcing them to accept minimal and suboptimal air time. It cites two examples from the last LPFM filing window in which the dominant applicant in a timesharing arrangement claimed virtually all of the shared air time and left only the required minimum of 10 hours a week (during suboptimal air time) for the other applicants. As such, it urges the Commission to allow parties to partially settle, but without the benefit of aggregating points, or otherwise revise the share-time rules to increase the minimum number of hours that must be awarded to each party to a settlement.[496] Brown Broadcast Services notes that settlements involving less than all of the MX parties were explicitly allowed for in the full-power NCE filing window of 2007, when the action resulted in a grantable singleton application and no new mutual exclusivities were created.[497] Common Frequency likewise supports the use of partial settlements involving technical changes, and additionally suggests that the Commission set up an online settlement process that will allow competing applicants to monitor for potential gamesmanship.[498]

195. While we are cognizant of the potential for gamesmanship in the voluntary timesharing process, we continue to believe that it is one of the most efficient and effective means of resolving mutual exclusivity among tied LPFM applicants. We are not persuaded that REC's proposal, which essentially eliminates voluntary timesharing as a tie breaker and replaces it with an involuntary time sharing regime, will better serve the public interest. We are doubtful that a group of unaffiliated applicants with different formats, budgets and levels of broadcast experience would work together to operate a station under a forced time sharing arrangement as successfully as a group of applicants that have voluntarily agreed to share time. We further believe that we must allow as much flexibility as possible for LPFM stations, especially those subject to time sharing arrangements, to allow them to build and maintain audiences. It is possible that some LPFM applicants may not desire to operate for more than a few hours a week, and in such cases, pooling resources with a timeshare applicant wishing to use more time would result in more diversity and more efficient use of spectrum. Accordingly, we will not revise our time sharing rules, and will continue to allow existing time share participants to reach voluntary arrangements that allow them to apportion the time as they see fit, subject to our requirements under Section 73.872(c) of the Rules.[499] While we will not set up an online process designed specifically to monitor settlements, as Common Frequency suggests, we note that the Commission has recently upgraded CDBS to permit the electronic filing of pleadings.[500] This feature makes electronically filed pleadings promptly available to the general

[494] *Id.* at 55.

[495] Brown Student Radio Comments at 1-2.

[496] *Id.* at 5 (noting that if no participant were permitted to have more than 150% of the total number of hours divided by the number of participants, no permittee would have unreasonable expectations of controlling virtually all the air time).

[497] Brown Broadcast Services Comments at 4. *See also* CRA Comments at 13 (noting that the Commission should allow for post time-sharing settlement agreements whereby withdrawing applicants can be reimbursed for their reasonable and prudent expenses).

[498] Common Frequency Comments at 27-28.

[499] *See* 47 C.F.R. § 73.872(c).

[500] *See Media Bureau Expands Certain CDBS Features to Permit the Electronic Filing of Pleadings*, Public Notice, 27 FCC Rcd 7579 (MB 2012).

public, thereby increasing the transparency of the broadcast licensing processes. We will require a party submitting a timeshare agreement or other settlement agreement to file it through CDBS. As such, parties to an MX group should be able to sufficiently monitor competing applications for any developments within their respective group.

196. We turn next to the suggestion that we entertain partial settlements. During the last LPFM filing window, we accepted partial "technical" settlements (*i.e.*, technical amendments that eliminated all conflicts between at least one application and all other applications in the same MX group). Thus, through a technical settlement, the Commission can grant one or more applications immediately, with the remaining applicants in that MX group considered separately under the LPFM comparative criteria. These partial settlements worked well during the 2007 NCE FM filing window, where we granted dozens of settlements that resulted in the disposal of hundreds of applications.[501] We will continue to accept such settlements in the upcoming LPFM window, as they provide an additional means for applicants to resolve mutual exclusivities. To provide increased flexibility to this process, we will also, as suggested by Brown Broadcast Services, temporarily waive our Rules to allow MX applicants to move to any available channel during the prescribed settlement period. Amendments proposing new channels will be processed in accordance with established first-come, first-served licensing procedures.

197. We agree with commenters that the system of serial license terms as a tie breaker of last resort has proven unworkable.[502] Of the more than 1,200 construction permits granted in the LPFM service, not a single station currently holds an authorization for involuntary time sharing.[503] While we have little historical data on involuntary timesharing outcomes from the last LPFM window, we presume this is the case either because (1) involuntary time share permittees did not want to invest in building out facilities that would be used by them for as little as one year, or (2) involuntary time share situations proved to be unworkable.[504] To promote more efficient use of available LPFM frequencies, time shares under the final tie breaker will run concurrently and not serially. As suggested by CMAP and, to some extent REC, each party to the involuntary time share will be assigned an equal number of hours per week.[505] We agree with REC that time share situations involving more than three parties may prove cumbersome. As REC proposes, we will limit involuntary time sharing arrangements under this final tie breaker to the three applicants that have been "established" in their respective communities for the longest periods of time. Accordingly, each applicant will be required to provide, as part of its application, its date of establishment. If more than three applications are tied and grantable, we will dismiss the applications of all but the three longest "established" applicants. We will offer these applicants an opportunity to voluntarily reach a time sharing arrangement. If they are unable to do so, we will ask these applicants to

[501] *See, e.g., Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Memorandum Opinion and Order, 16 FCC Rcd 5074, 5107 ¶ 98 (2001) (noting that settlements could be beneficial both to applicants and to the Commission, finding that "applicants are able to achieve a solution that is most acceptable to the parties, and the Commission is able to conserve the resources we would spend to select among them").

[502] CRA Comments at 12 (mandatory time sharing is an inherently unstable outcome and should be avoided where possible); CMAP Comments at 6 (the present system of successive non-renewable licenses "just doesn't work").

[503] *Third Report and Order*, 22 FCC Rcd at 21926 ¶ 33.

[504] 47 C.F.R. § 73.872(d). Our experiences in the full-service NCE context likewise demonstrate that involuntary timesharing outcomes are suboptimal. Under our NCE rules, tied applicants have 90 days to submit voluntary time share arrangements. If applicants are unable to reach a voluntary time-sharing agreement, the staff must designate the applications for hearing on the sole issue of an appropriate time-sharing arrangement. Of the sixteen MX groups in the 2010 NCE reserved allotment application filing window that resulted in mandatory time sharing outcomes, thirteen of them have been unable to reach timesharing arrangements.

[505] CMAP Comments at 6; REC Comments at 55.

simultaneously and confidentially submit their preferred time slots to the Commission.[506] To ensure that there is no gamesmanship, we will require that these applicants certify that they have not colluded with any other applicants in the selection of time slots. We will use the information provided by the applicants to assign time slots to them. The staff will give preference to the applicant with the longest "established community presence." However, it will award time in units as small as four hours per day to accommodate competing demands for airtime to the maximum extent possible.[507] We believe these procedures are a more sustainable and practical solution to involuntary time share arrangements than our previous measures, and will revise our Rules and FCC Form 318 accordingly.

198. Turning to the final issues raised in the *Fourth Further Notice* on share time arrangements, we asked whether we should open a "mini-window" for the filing of applications for the abandoned air-time in such arrangements, rather than allowing remaining time share licensees to re-apportion the remaining air time. We did not receive any substantive comments voicing strong opinions on this proposal.[508] We believe that opening such mini-windows would pose a great administrative burden on Commission staff. Such a burden would significantly outweigh the modest benefits that would be realized by filling such limited portions of a broadcast day with additional programming provided by a new timeshare licensee. Moreover, we believe that our adoption of the mandatory timesharing procedures discussed below will provide adequate opportunities to applicants that wish to apply for abandoned airtime. Accordingly, we do not adopt this proposal.

3. Operating Schedule

199. Currently, the Commission requires LPFM stations to meet the same minimum operating hour requirements as full-service NCE FM stations.[509] Like NCE FM stations, LPFM stations must operate at least 36 hours per week, consisting of at least 5 hours of operation per day on at least 6 days of the week.[510] However, while the Commission has mandated time sharing for NCE FM stations that meet the Commission's minimum operating requirements but do not operate 12 hours per day each day of the year,[511] it has not done so for LPFM stations. We sought comment on whether we should extend such mandatory time sharing to the LPFM service. We noted that we believe that doing so could increase the number of broadcast voices and promote additional diversity in radio voices and program services.

200. Only CRA commented on this proposal. It urges the Commission to "reject this impulse," noting that LPFM applicants need as much flexibility as possible to ensure the viability of these

[506] If there are two applicants, each applicant must indicate their preference for the following 12-hour time slots: (1) 3:00 am – 2:59 pm, or (2) 3:00 pm – 2:59 am If there are three applicants, each applicant must rank their preference for the following 8-hour time slots: (1) 2:00 am – 9:59 am; (2) 10:00 am- 5:59 pm, and (3) 6:00 pm-1:59 am. If any applicant fails to submit its preferred time slots to the Commission, the Commission reserves the right to select a time slot for that applicant.

[507] We note that the applicants may reallocate the hours allotted to them, provided that all time share participants agree to the reallocation. *See* 47 C.F.R. § 73.872(c).

[508] SOPR voiced general support for this proposal, *see* SOPR Comments at 5, while Brown Student Radio separately suggested a similar proposal. *See* Brown Student Radio Comments at 6-7 (suggesting that the Commission require aggregating parties "to stand or fall on their own proposal," maintaining that if the proposal is not fully implemented in practice, with all participants remaining active, then the situation should revert to where it stood prior to the settlement, and that any applicants in the same MX group that were dismissed but still wish to prosecute their applications should be evaluated in the original group without point aggregation).

[509] *Report and Order*, 15 FCC Rcd at 2276 ¶ 182. *See also* 47 C.F.R. §§ 73.561 & 73.850.

[510] 47 C.F.R. § 73.850(b).

[511] 47 C.F.R. § 73.561(b).

small stations.[512] We continue to believe that this measure will increase the number of broadcast voices and promote additional diversity in radio voices and program services in the most administratively efficient manner. However, we find merit to CRA's concerns and will adopt this proposal with safeguards designed to ensure that LPFM licensees have as much opportunity and flexibility as needed to ensure their success. Specifically, in order to provide sufficient "ramp up" time, we will not accept applications to share time with any LPFM licensee that has been licensed and operating its station for less than three years. Accordingly, we adopt this proposal, with the modification just described.

4. Classes of Service

201. Currently, there are two classes of LPFM facilities: LP100 and LP10.[513] To date, we have licensed only LP100 stations. In the *Fourth Further Notice*, we proposed to eliminate the LP10 class.[514] We also sought comment on whether to create a new, higher power LP250 class.[515] We specifically sought comment on how the creation of an LP250 class of LPFM facilities could be harmonized with the LCRA, which was "presumably grounded on the current LPFM maximum power level."[516]

202. A number of LPFM proponents urge us to retain the LP10 class of service, arguing that it is needed to ensure that LPFM opportunities are available in urban areas.[517] Other commenters advocate eliminating the LP10 class.[518] They point out that, from an engineering standpoint, the LP10 class is spectrally inefficient.[519] We agree that the existing LP10 class is an inefficient utilization of spectrum. LP10 stations offer more limited service but are more susceptible to interference than LP100 stations. Given the increasingly crowded nature of the FM band, we find it appropriate to take this into account.[520] We also are concerned that the reach of LP10 stations would be too small for the stations to be economically viable. As the Media Bureau recently noted, even higher-powered LP100 stations have small service areas and are constrained in "their ability to gain listeners" and "appeal to potential underwriters."[521] Because we find that licensing LP10 stations would be an inefficient use of available

[512] CRA Comments at 13.

[513] *Report and Order*, 15 FCC Rcd at 2211-12 ¶¶ 13-14.

[514] *Fourth Further Notice*, 27 FCC Rcd at 3315 ¶ 48.

[515] *Id.* at 3315 ¶ 49.

[516] *Id.* at 3315 ¶ 51.

[517] *See* REC Comments at 18-20; JCPES Comments at 3; Don Schellhardt Reply Comments at 2.

[518] CRA Comments at 3; du Treil Comments at 4; Spry Comments at 1.

[519] *See* du Treil Comments at 4 (noting that LP10 stations generally would be proposed in heavily urbanized areas and that, due to the presence of many other radio stations in these areas, the service area of the LP10 stations would likely be adversely impacted by interference received from other stations"); New Jersey Broadcasters Association Comments at 1-2 (asserting that "an LP10 carves out an area of interference that is almost 2000% larger" than its service area). Even supporters of the LP10 class of service acknowledge this. *See* REC Comments at 18-19. They also recognize the issues with indoor reception of such a weak signal. *See* Common Frequency Comments at 15; Prometheus Reply Comments at 13; REC Comments at 21.

[520] Indeed, a similar concern led the Commission to cease accepting applications for Class D FM stations and require Class D FM stations to either upgrade to Class A facilities or migrate from the reserved to the non-reserved portion of the FM band or to Channel 200, where they would be considered secondary operations. *See Changes in the Rules Relating to Noncommercial Educational FM Broadcast Stations*, Second Report and Order, 69 FCC 2d 240, 244-51 ¶¶ 23-32 (1978).

[521] *See LPFM Report*, 27 FCC Rcd at 64 ¶¶ 5, 6.

spectrum and are concerned that LP10 stations would have an even higher failure rate than LP100 stations, we eliminate the LP10 station class.[522]

203. Faced with the loss of the LP10 class, some commenters propose that we create other classes that would transmit at less than 100 watts.[523] Many in the LPFM community support a proposal to replace the LP10 class with an LP50 class, which would allow licensees to transmit at any ERP from 1 to 50 watts.[524] In support, they argue that LP50 stations would offer higher quality service[525] than LP10 stations and may permit station locations closer to city centers.[526] In contrast, NAB opposes creation of an LP50 class, arguing that such action would exceed the intent of Congress.[527] NAB also asserts that the proposal is not a logical outgrowth of the *Fourth Further Notice* and, therefore, is untimely.[528] Finally, NAB asserts that, like the LP10 class of stations, an LP50 class would be "technically inefficient."[529]

204. We will not create an LP50 class. In the *Fourth Further Notice*, we proposed to eliminate the LP10 class, retain the LP100 class and introduce a new LP250 class.[530] We proposed these changes in order to address our concerns with the efficiency and viability of stations operating at powers at or below those authorized for LP100 stations. We agree with NAB that a decision to introduce a new LP50 class could not have been reasonably anticipated by all interested parties. Moreover, we believe that LP50 stations would suffer many of the same technical deficiencies as LP10 stations. Accordingly, we have decided not to adopt the proposed LP50 class.[531]

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[522] While the Commission has granted 1320 applications for new LPFM stations to date, only about 820 LPFM stations currently are licensed.

[523] *See, e.g.*, REC Comments at 21 (proposing an LP50 class of service); Prometheus Comments at 26 (same); Common Frequency Comments at 15 (same); NLG and Media Alliance Comments at 6 (proposing LP50 and LP75 classes of service in addition to the LP10 and LP100 classes); LPFM Advocates Joint Reply Comments at 2 (supporting LP50 proposal); Prometheus Reply Comments at 12-13 (same).

[524] *See, e.g.*, REC Comments at 21 (proposing an LP50 class of service); Prometheus Comments at 27 (same); Common Frequency Comments at 15 (same); LPFM Advocates Joint Reply Comments at 2 (supporting LP50 proposal).

[525] REC Comments at 21 (noting that an LP50 station would have "a more solid signal" and that "[t]his additional field strength will improve indoor listening when compared to an LP10 facility at the same distance"); Common Frequency Comments at 15 (noting that the main problem with LP10 stations is "inability to penetrate ground cover and walls").

[526] REC Comments at 23-24 (asserting that 87.2 percent of the population of the United States has access to the LP100 class of station while 93.4 percent would have access to an LP50 class of stations); Prometheus Comments at 26 (noting that, according to a REC study, "the number of LPFM opportunities in the top ten Arbitron markets would go from 90 to 193"); LPFM Advocates Joint Reply Comments at 2 ("An LP50 class would permit the licensing of LPFM stations in many urban communities where LP100 opportunities are limited or unavailable.").

[527] NAB Reply Comments at 15-16.

[528] *Id.* at 16-17.

[529] *Id.* at 18.

[530] *Fourth Further Notice*, 27 FCC Rcd at 3334 ¶¶ 48-49.

[531] NAB also had argued that creation of an LP50 class would be inconsistent with the LCRA. NAB Reply Comments at 15-16. As discussed *infra* at paragraph 206, the LCRA does not contain any language limiting the power levels at which LPFM stations may be licensed.

205. The LPFM community offers broad support for the creation of a new LP250 class.[532] These commenters cite benefits including improved LPFM station viability through better access to underwriting,[533] more consistent signal coverage throughout the community served by the LPFM station,[534] and the ability to serve areas of low population density[535] and/or more distant communities.[536] Several commenters, however, strenuously oppose the creation of an LP250 class. These commenters do not dispute the benefits cited by those supportive of an LP250 class. Instead, they argue that an LP250 class would pose a greater interference risk to full power stations, is unnecessary given the availability of 250 watt Class A licenses, would be a departure from the local character of the LPFM service, and goes beyond the intent of Congress in enacting the LCRA.[537]

206. At this time, we will not adopt our proposal to create an LP250 class. Given the disagreement among commenters about, among other things, LP250 station location restrictions[538] and technical parameters,[539] we believe the issue of increasing the maximum facilities for LPFM stations requires further study. We note, however, that the LCRA does not contain any language limiting the power levels at which LPFM stations may be licensed. We also find unpersuasive NAB's and NPR's reliance on certain statements in the legislative history.[540] These statements merely describe the rules governing LPFM service at the time Congress was considering the LCRA. Since we have decided not to adopt the proposal, we need not definitively resolve the question.

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

207. In the *Fourth Further Notice*, we noted that LPFM stations are currently required to protect full-service stations on I.F. channels while translator stations operating with less than 100 watts are not.[541] To address this disparity, we proposed to remove I.F. protection requirements for LPFM stations operating with less than 100 watts. We noted that we believe the same reasoning that the Commission applied in exempting FM translator stations operating with less than 100 watts ERP from I.F. protection requirements would apply for LPFM stations operating at less than 100 watts ERP. These stations too are the equivalent of Class D FM stations, which are not subject to I.F. protection requirements.[542] We further noted that FM allotments would continue to be protected on the I.F. channels based on existing international agreements. We sought comment on this proposal.

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[532] *See* Prometheus Comments at 30-31; CRA Comments at 5, 7; Amherst Comments at 12; Sibert Comments at 1; Brown Broadcast Services Comments at 2-3; Friend Comments at 1; JCPES Comments at 3.

[533] *See, e.g.,* Conti Comments at 1; Friend Comments at 1.

[534] *See, e.g.,* Conti Comments at 1; Wet Mountain Broadcasting Corporation Comments at 1-2.

[535] *See, e.g.,* Prometheus Comments at 30.

[536] Prometheus Comments at 31. The increased range of the LP250 class could thus increase service to urban communities where spacing requirements and potential waiver showings would limit potential transmitter locations.

[537] NPR Comments at 2-4, 8-11; NAB Reply Comments at 9-15. *See also* Grant County Comments at 2 (claiming LP250 proposal is a slippery slope and would regionalize LPFM).

[538] *See, e.g.,* NLG and Media Alliance Comments at 7 (LP250 should not be permitted in inner city areas); Prometheus Comments at 30-31 (LP250 would serve needs of inner cities).

[539] Some, for instance, advocate increasing the proposed HAAT limits imposed on LP250 stations. *See, e.g.,* Sibert Comments at 4 (proposing increased HAAT limits west of the Mississippi).

[540] See NPR Comments at 9-10; NAB Reply Comments at 10-11.

[541] *See* 47 C.F.R. §§ 73.807, 74.1204(g); *Fourth Further Notice*, 27 FCC Rcd at 3335 ¶ 52.

[542] *See Amendment of Part 74 of the Commission's Rules Regarding FM Booster Stations*, Order, 6 FCC Rcd 6060, 6060 n.7 (1991) ("A Class D station is one operating with no more than 10 watts TPO. However, most FM boosters (continued….)

208. Commenters generally support removal of the I.F. protection requirements applicable to LPFM stations. Some ground their support in the need to put LPFM stations and translators on an "equal footing"[543] while others assert that improvements in receiver technology render I.F. protection requirements unnecessary.[544] NPR is the lone commenter urging retention of I.F. protection requirements.[545] NPR infers an intent to retain the I.F. protections from the fact that Congress specifically addressed minimum distance separations but did not eliminate those related to I.F. We find NPR's argument unpersuasive.[546] In the absence of explicit direction in the LCRA regarding I.F. protection requirements, and in light of the fact that Congress explicitly required retention of the co-channel and first- and second-adjacent channel spacing requirements, we believe that it is reasonable to read the statute not to require the Commission to retain I.F. protection requirements. Had Congress wished to ensure that the I.F. protections remained in place, we believe that it would have done so in the text of the LCRA.[547]

209. NPR also requests that the Commission study the impact of its decision "roughly 20 years ago" to exempt from I.F. protection requirements FM translator stations operating with less than 100 watts ERP.[548] NPR urges us to complete this study prior to acting on our proposal.[549] Common Frequency asserts, however, that the Commission would have investigated I.F. interference by now if it had proved a problem.[550] Common Frequency is correct. We have not received any recent complaints regarding I.F. interference from FM translators exempted from the I.F. protection requirements. Indeed, it is telling that NPR has not cited a single instance of such interference. Therefore, and in light of the fact that a receiver does not distinguish between the signal of an LPFM station or an FM translator, we find that the proposed change will not result in significant I.F. interference.

210. Accordingly, we adopt this proposal.[551] We find this change necessary to ensure parity between LPFM stations and FM translator stations, which, for I.F. interference purposes, are indistinguishable. As requested by commenters, we will eliminate these requirements for LPFM stations operating at or below 100 watts ERP. We had originally proposed to exempt only LPFM stations

(Continued from previous page)

and translators use a transmitting antenna with sufficient gain to produce an ERP that is between two and ten times their TPO. Therefore, 100 watts ERP is the equivalent of 10 watts TPO operating with a high gain antenna.").

[543] *See* LPFM Advocates Joint Reply Comments at 3-4; CRA Comments at 10; Common Frequency Comments at 19; Sibert Comments at 5; Justin Braulick ("Braulick") Comments at 3.

[544] MonsterFM.com Comments at 2; Nexus/Conexus Comments at 2; duTreil Comments at 5. du Treil suggests that I.F. protection requirements may be unnecessary for stations operating with up to 250 watts ERP and recommends that the Commission study the susceptibility of modern receivers to I.F. interference. du Treil Comments at 5.

[545] NPR also points out an inconsistency between the language used in the text of the *Fourth Further Notice* – "less than 100 watts ERP" – and the language used in the proposed changes to Section 73.809(a) – "more than 100 watts ERP." NPR Comments at 4. We find that the inclusion of the "more than 100 watts ERP" in the proposed changes to Section 73.809(a) was error. However, below, we conclude that we should exempt LPFM stations operating at or below 100 watts ERP from the I.F. protection requirements. Accordingly, we retain the "more than 100 watts ERP" language in our final rule because it accurately implements the policy we adopt herein.

[546] NPR Comments at 4. *See also* LCRA § 3(b)(1).

[547] *See* Common Frequency Reply Comments at 4. *See also Iselin v. United* States, 270 U.S. 245, 250-51 (1926) (particular statutory language "preclude[s] an extension of any provision by implication to any other subject").

[548] NPR Comments at 4.

[549] *Id.*

[550] Common Frequency Reply Comments at 4.

[551] As proposed in the *Fourth Further Notice*, FM allotments will continue to be protected on I.F. channels to the extent required by existing international agreements. *Fourth Further Notice*, 27 FCC Rcd at 3335 ¶ 52.

operating at less than 100 watts ERP from the I.F. protection requirements.[552] However, commenters pointed out that, if we adopted the proposal set forth in the *Fourth Further Notice*, LP100 stations would remain subject to I.F. protection requirements.[553] These commenters argue that there is little difference between LPFM stations operating at 99 versus 100 watts ERP and urge us to eliminate the I.F. protection requirements for LPFM stations operating at 100 watts or less ERP. We agree. Moreover, since going forward we will license LPFM stations to operate at ERPs ranging from 50 watts to 100 watts,[554] we find that eliminating the I.F. protection requirements for stations operating at 100 watts or less ERP is the more sensible choice.

E. Window Filing Process

211. Several commenters voiced concern about the timing and mechanics of the upcoming LPFM application filing window. Several LPFM advocates ask that "adequate time" be given for applicants to prepare their applications after adoption of the revised rules.[555] Prometheus urges the Commission to give six to nine months lead time up to the filing window, maintaining that applicants need time to raise funds, hire a consulting engineer and assess spectrum availability.[556] REC, on the other hand, opposes any "artificial" delay, stating that any delay between the issuance of final rules and the window should occur naturally.[557] To some extent, this debate is moot as there is a substantial cushion of time organically built into the process for the final rules we adopt or modify today, as well as any related form changes. Moreover, to maximize LPFM filing opportunities it is critical for the Media Bureau to complete substantially all of its processing of the pending FM translator applications prior to the opening of the LPFM window. Thus, the window will open approximately nine months from the effective date of the *Fifth Order on Reconsideration.* To help potential LPFM applicants prepare for the upcoming window, we announce a target date of October 15, 2013. However, we delegate authority to the Media Bureau to adjust this date in the event that future developments affect window timing. In sum, there will be ample time for all LPFM applicants to familiarize themselves with the Rules and plan accordingly before the filing window opens.

212. Commenters also suggest multiple windows in order to ease the demand for affordable engineering assistance immediately before the opening of the window.[558] Prometheus further suggests

[552] Adoption of this proposal would have created a parallel exemption to that set forth in the rules governing FM translators. 47 C.F.R. § 74.1204(g). We note that REC suggests that we revise the I.F. protection requirements applicable to FM translators to exempt FM translators operating at or below 100 watts ERP. REC argues that this would preserve parity between LPFM stations and FM translators. REC Comments at 30-31. Revisions to the FM translator rules are beyond the scope of this *Sixth Report and Order*. However, we intend to consider such a change in the future in the appropriate context.

[553] Prometheus Comments at 33-34; REC Comments at 30-31; NLG and Media Alliance Comments at 9; Sibert Comments at 5. *See also* LPFM Advocates Joint Reply Comments at 3-4.

[554] *See* 47 C.F.R. § 73.811.

[555] LPFM Advocates Joint Reply Comments at 4. *But see* Talk Radio of Pahrump, Inc., Nexus Broadcast, Conexus LPFM Advocacy, The LPFM Store, Andy Alberti, Donna Cox, Frank J. Maurizio, Dave Richards, Creag Rowland, Lamoyne Westerbeck, Jason Levalley, Jack Haynes, Rhonda Haynes, Margery Hanson and Robert Hanson, Reply Comments at 3 (noting that some likely applicants are ready to file their applications within a month of adoption of final rules); Amherst Reply Comments at 2 (target date for opening the window 2 months after issuance of final rule, without considering OMB approval).

[556] *See* Prometheus Comments at 13-15.

[557] *See* REC Reply Comments at 11-12. Prometheus also opposes undue delay so long as the "natural" delay gives applicants adequate time to prepare. *See* Prometheus Reply Comments at 11-12.

[558] *See, e.g.,* Prometheus Comments at 15-16; CMAP Comments at 2-4 (supporting 2011 REC proposal to split the country into two geographic blocks for separate windows). Others suggest doing frequent, smaller windows. *See* (continued….)

that we bifurcate the application into short and long forms, with second-adjacent waiver showings submitted in the long form.[559] Prometheus argues that multiple filing windows and a short form/long form application process would help address the scarcity issue of qualified, affordable consulting engineers and allow more interested parties to file.[560] Common Frequency echoes these concerns, reporting that in the 2007 NCE window "[s]ome applicants could not file because they could not find engineers, and others were priced-out from applying because an engineer and lawyer could run as much as $5000."[561] We recognize these concerns. Thus, in order to ease upfront technical burdens and engineering costs, we will accept a threshold second-adjacent waiver technical showing when an applicant seeks to make a "no interference" showing based on lack of population in areas where interference is predicted to occur. Under this procedure an applicant would use "worst-case" assumptions about the area of potential interference in combination with a USGS map or a Google map to demonstrate "lack of population" within this area.[562] Applicants should be able to complete this simple showing without the use of a consulting engineer. In light of our adoption of this threshold showing, we see no need to bifurcate our application process into short and long forms or to open multiple filing windows. We believe that this alternative showing will ease some of the technical and financial burdens of application filing and will help ensure that new entrants in underserved communities are not "priced out" of the opportunity to file an LPFM application in the upcoming window. We further believe that these measures will help alleviate any obstacles applicants face due to an "engineering shortage," as those applicants that choose to make the threshold showing will no longer need to hire a consulting engineer.[563]

IV. PROCEDURAL MATTERS

A. Fifth Order on Reconsideration

213. *Supplemental Final Regulatory Flexibility Analysis.* Appendix A contains a supplemental final regulatory flexibility analysis pursuant to the Regulatory Flexibility Act of 1980, as amended ("RFA").[564]

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

B. Sixth Report and Order

215. *Final Regulatory Flexibility Analysis.* As required by the RFA, the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") of the possible significant economic impact on small entities of the proposals suggested in this document. The FRFA is set forth in Appendix B.

(Continued from previous page)
Tuter Comments at 1; Wynn Comments at 2.

[559] Prometheus Comments at 11.

[560] *Id.* at 11, 16.

[561] CMAP Comments at 4.

[562] In most cases, the "worst case" area would be the circular region within a 700 meter radius of the antenna (the distance to the 100 dBu interfering contour for a station transmitting at 100 watts ERP at 30 meters HAAT). However, when protecting nearby Class B or Class B1 stations in the non-reserved band, an LPFM must show no population within the 94 dBu or 97 dBu contour, which would extend the "worst case" radius to 1.6 km or 1.0 km, respectively. *See* 47 C.F.R. § 74.1204.

[563] We implement these application procedures pursuant to our authority under 5 U.S.C. § 553(b)(A). *See JEM Broadcasting Co. v. FCC,* 22 F.3d 320 (D.C. Cir. 1994).

[564] The RFA, *see* 5 U.S.C. §§ 601-12, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-21, Title II, 110 Stat. 857 (1996).

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

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

V. ORDERING CLAUSES

A. Fifth Order on Reconsideration

218. Accordingly, IT IS ORDERED that the Petition for Partial Reconsideration filed by Hope Christian Church of Marlton, Inc., Bridgelight, LLC and Calvary Chapel of the Finger Lakes, Inc. on May 8, 2012, the Petition for Reconsideration of Educational Media Foundation on Fourth Report and Order and Third Order on Reconsideration on May 8, 2012, the Petition for Partial Reconsideration of Fourth Report and Order and Third Order on Reconsideration filed by Conner Media, Inc. on May 9, 2012, the Comments of Kyle Magrill and Petition for Reconsideration filed by Kyle Magrill on May 7, 2012, and the Petition for Reconsideration filed by Western North Carolina Public Radio, Inc. on May 8, 2012, ARE GRANTED IN PART to extent set forth above and otherwise denied.

219. IT IS FURTHER ORDERED that the Reply of Four Rivers Community Broadcasting Corporation to Oppositions to Petitions for Reconsideration IS DISMISSED to the extent set forth above.

220. IT IS FURTHER ORDERED that pursuant to the authority contained in Sections 4(i), 301, 302, 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f) and 303(r), and the Local Community Radio Act of 2010, Pub. L. No. 111-371, 124 Stat. 4072 (2011), this *Fifth Order on Reconsideration* is hereby ADOPTED, effective 30 days after publication in the Federal Register.

221. IT IS FURTHER ORDERED that the rules adopted herein will become effective thirty (30) days after publication in the Federal Register, except for any rules or requirements involving Paperwork Reduction Act burdens, which shall become effective on the effective date announced in the Federal Register following Office of Management and Budget approval.

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

B. Sixth Report and Order

223. IT IS FURTHER ORDERED that pursuant to the authority contained in Sections 1, 4(i), 4(j), 303, 307, 309(j), and 316 of the Communications Act of 1934, as amended, 47 U.S.C, 151, 154(i), 154(j), 303, 307, 309(j), and 316, and the Local Community Radio Act of 2010, Pub. L. No. 111-371, 124 Stat. 4072 (2011), this *Sixth Report and Order* is hereby ADOPTED and Part 73 of the Commission's Rules IS AMENDED as set forth in Appendix C, effective 30 days after publication in the Federal Register, except pursuant to paragraph 224 of this *Sixth Report and Order*.

224. IT IS FURTHER ORDERED that the rules adopted herein that contain new or modified information collection requirements that require approval by the Office of Budget and Management under the Paperwork Reduction Act WILL BECOME EFFECTIVE after the Commission publishes a notice in the *Federal Register* announcing such approval and the relevant effective date.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Supplemental Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act ("RFA"),[1] an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Third Further Notice of Proposed Rulemaking* ("*Third Further Notice*") in MM Docket No. 99-25, and MB Docket No. 07-172, RM-11338.[2] The Commission sought written public comment on the proposals in the *Third Further Notice*, including comment on the IRFA.[3] We received no comments specifically directed toward the IRFA. We incorporated a Final Regulatory Flexibility Analysis ("FRFA") in the *Fourth Report and Order and Third Order on Reconsideration* ("*Fourth Report and Order*").[4] In this *Fifth Order on Reconsideration*, we address five petitions for reconsideration of the *Fourth Report and Order*. The Commission's Supplemental Final Regulatory Flexibility Analysis ("SFRFA") in this *Fifth Order on Reconsideration* conforms to the RFA, as amended.

A. Need for, and Objectives of, the *Fifth Order on Reconsideration*

2. This rulemaking proceeding was initiated to seek comment on how the enactment of Section 5 of the Local Community Radio Act of 2010 ("LCRA")[5] would impact the procedures previously adopted to process the approximately 6,500 applications which remain from the 2003 FM translator window. The Commission previously established a processing cap of ten pending short-form applications per applicant from FM translator Auction No. 83. To implement the LCRA, the *Fourth Report and Order* replaced that limit with a national translator application cap of 50, and market-based application cap of one application per market for the markets listed in Appendix A to the *Fourth Report and Order* (the top 150 markets plus six additional markets with more than four pending translator applications)[6] On reconsideration, we are clarifying certain aspects of the *Fourth Report and Order* and modifying the national application cap and the market-based application cap. The clarifications to the *Fourth Report and Order* (a) confirm that the Appendix A markets are Arbitron Metro markets, (b) confirm that a translator application is within such a market if it specifies a proposed transmitter site within that market, and (c) confirm that "embedded" markets will be treated as separate Arbitron Metro markets for purposes of the market-based application cap.[7] The modification to the national application cap allows applicants to prosecute up to 70 applications nationally, provided that no more than 50 of those applications are in the Appendix A markets. Those applications that are outside the Appendix A markets

[1] *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).

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

[3] *Id*. at 10009.

[4] *Creation of a Low Power Radio Service and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Fourth Report and Order and Third Order on Reconsideration, 27 FCC Rcd 3364 (2012).

[5] Pub. L. No. 111-371, 124 Stat. 4072.

[6] *See Fourth Report and Order*, Appendix A, 27 FCC Rcd at 3398-3402.

[7] An "embedded" market is an Arbitron Metro radio market that is contained, in whole or in part, within a larger Arbitron Metro radio market (*e.g.*, the San Jose, CA market – Arbitron Metro market #37 -- is embedded within the San Francisco, CA Arbitron Metro market). This *Fifth Order on Reconsideration* confirms that these "embedded" markets will be treated as separate radio markets for purposes of the market-based application cap, enabling FM translator applicants to prosecute up to three applications in any "embedded" market listed in Appendix A as well as in the core portion of the larger market. *See* ¶¶ 26-30 *supra*.

must comply with the Conditions, as defined below, and will be subject to a four-year limit on site changes. The modification to the market-based application cap allows (but does not require) each applicant to prosecute up to three applications in a market, rather than one application, provided certain conditions are met. Specifically, the applicant must comply with the national cap on applications, each additional application must not preclude low power FM ("LPFM") filing opportunities, and each additional application must not propose service contour overlap with the service contour of any other application or authorization for an FM translator by that applicant as of the release date of the *Fifth Order on Reconsideration* (collectively, the "Conditions"). If an applicant prosecutes more than 50 applications nationally, all applications outside the Appendix A markets are subject to the four-year limit on site changes, the same LPFM-preclusion showing as that required under the per-market cap, and the restriction against contour overlaps that applies to the per-market cap.

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

3. None.

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

4. In the FRFA, we stated that there are approximately 646 applicants with pending applications filed in the 2003 translator filing window. We presumed that all of these applicants qualify as small entities under the SBA definition.[8] We estimate that approximately 195 of these applicants have two applications pending in at least one market and approximately 116 of these applicants have three applications pending in at least one market.

5. *Radio Broadcasting.* The proposed policies could apply to radio broadcast licensees, and potential licensees of radio service. The SBA defines a radio broadcast station as a small business if such station has no more than $7 million in annual receipts.[9] Business concerns included in this industry are those primarily engaged in broadcasting aural programs by radio to the public.[10] According to Commission staff review of the BIA Publications, Inc. Master Access Radio Analyzer Database as of September 15, 2011, about 10,960 (97 percent) of 11,300 commercial radio station have revenues of $7 million or less and thus qualify as small entities under the SBA definition We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations[11] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

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

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[8] *See Fourth Report and Order*, Appendix C, 27 FCC Rcd at 3408-09 ¶¶ 6-8.

[9] *See* 13 C.F.R. § 121.201, NAICS Code 515112.

[10] *Id*.

[11] "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 C.F.R. § 121.103(a)(1).

7. *FM translator stations and low power FM stations.* The proposed policies could affect licensees of FM translator and booster stations and LPFM stations, as well as potential licensees in these radio services. The same SBA definition that applies to radio broadcast licensees would apply to these stations. The SBA defines a radio broadcast station as a small business if such station has no more than $7 million in annual receipts.[12] Currently, there are approximately 6,105 licensed FM translator stations and 824 licensed LPFM stations.[13] In addition, there are approximately 646 applicants with pending applications filed in the 2003 translator filing window. Given the nature of these services, we will presume that all of these licensees and applicants qualify as small entities under the SBA definition.

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

8. In the *Fourth Report and Order*, we required Auction No. 83 applicants to identify which applications they wish to preserve to come into compliance with the national and market-based caps. In the *Fifth Order on Reconsideration*, we are providing applicants affected by the one-per-market cap the opportunity to prosecute up to three applications in a market, provided they submit a showing that the applications satisfy the Conditions, as described above, in a timely letter or email.

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

9. In the FRFA, we described the projected reporting, recordkeeping, and other compliance requirements and significant alternatives and steps taken to minimize significant economic impact on a substantial number of small entities consistent with stated objectives associated with the *Fourth Report and Order*.[14] We believe the changes in the *Fifth Order on Reconsideration* will benefit small entities by enabling them to prosecute more FM translator applications, while preserving future LPFM filing opportunities for small entities and protecting the integrity of the broadcast application licensing system. The *Fifth Order on Reconsideration* requires any applicant seeking to prosecute more than one FM translator application in a market to show that the applications satisfy the Conditions, but the Conditions are intended to preserve LPFM filing opportunities and improve diversity and competition in local radio markets. The order rejects additional suggested conditions that would not have offered such benefits.[15] Specifically, we rejected those suggested conditions because they would have limited competition in the Appendix A markets without providing a countervailing benefit, either to translator applicants or LPFM applicants. In addition, the suggested conditions would have been unduly resource-intensive and could delay the processing of translator applications. Adoption of the application caps, as modified in the *Fifth Order on Reconsideration*, will benefit small entities because it will allow the Commission to quickly act on applications by small entities that have been pending for more than eight years and to open an LPFM application window for small entities in the near future.

F. Report to Congress

10. The Commission will send a copy of the *Fifth Order on Reconsideration*, including this SFRFA, in a report to be sent to Congress pursuant to the SBREFA.[16] In addition, the Commission will send a copy of the *Fifth Order on Reconsideration*, including the SFRFA, to the Chief Counsel for

[12] *See* 13 C.F.R. § 121.201, NAICS Code 515112.

[13] *See News Release*, "Broadcast Station Totals as of December 31, 2010June 30, 2012" (rel. Feb. 11, 2011Jul. 19, 2012) (http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-304594A1315231A1.pdf).

[14] *See Fourth Report and Order*, Appendix C, 27 FCC Rcd at 3409 ¶ 10.

[15] *See* ¶¶ 63-65 *supra*.

[16] *See* 5 U.S.C. § 801(a)(1)(A).

Advocacy of the SBA. A copy of the *Fifth Order on Reconsideration* and the SFRFA (or summaries thereof) will also be published in the Federal Register.[17]

[17] *See* 5 U.S.C. § 604(b).

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act ("RFA"),[1] an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Fourth Further Notice of Proposed Rulemaking* ("*Fourth Further Notice"*) in MM Docket No. 99-25.[2] The Commission sought written public comment on the proposals in the *Fourth Further Notice*, including comment on the IRFA.[3] We received no comments specifically directed toward the IRFA. This Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.

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

2. This rulemaking proceeding was initiated to seek comment on how to implement certain provisions of the Local Community Radio Act of 2010 ("LCRA"). The *Sixth Report and Order* amends certain technical rules to implement the LCRA. The *Sixth Report and Order* adopts the waiver standard for second-adjacent channel spacing waivers set forth in Section 3(b)(2)(A) of the LCRA. It specifies the manner in which a waiver applicant can satisfy this standard[4] and the manner in which the Commission will handle complaints of interference caused by low power FM ("LPFM") stations operating pursuant to second-adjacent channel waivers.[5] As required by Section 7 of the LCRA, the *Sixth Report and Order* modifies the regimes applicable if an LPFM station causes third-adjacent channel interference. As specified by the LCRA, the *Sixth Report and Order* applies the protection and interference remediation requirements applicable to FM translator stations to those LPFM stations that would have been short-spaced under the third-adjacent channel spacing requirements eliminated in the *Fifth Report and Order* in MM Docket No. 99-25. The *Sixth Report and Order* states that the Commission will consider directional antennas, lower effective radiated powers ("ERPs") and/or differing polarizations to be suitable techniques for eliminating third-adjacent channel interference. The *Sixth Report and Order* applies the more lenient interference protection obligations currently applicable to LPFM stations that would have been fully-spaced under the third-adjacent channel spacing requirements eliminated in the *Fifth Report and Order* ("fully-spaced LPFM stations"). The *Sixth Report and Order* addresses the timing, frequency and content of the periodic broadcast announcements that newly constructed fully-spaced LPFM stations must make pursuant to Section 7(2) of the LCRA. It revises the Commission's rules ("Rules") to treat as a "minor change" a proposal to move a fully-spaced LPFM station's transmitter outside its current service contour in order to co-locate or operate from a site close to a third-adjacent channel station and remediate interference to that station. Finally, the *Sixth Report and Order* implements Section 6 of the LCRA, modifying the Commission's rules to address the potential for predicted interference to FM translator input signals from LPFM stations operating on third-adjacent channels. It adopts a basic threshold test

[1] *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).

[2] *Creation of a Low Power Radio Service and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Fifth Report and Order, Fourth Further Notice of Rulemaking and Fourth Order on Reconsideration, 27 FCC Rcd 3315 (2012).

[3] *Id*. at 3345 ¶ 80.

[4] The *Sixth Report and Order* permits LPFM applicants to make the sort of showings that the Commission routinely accepts from FM translator applicants. LPFM applicants may show that no actual interference will occur due to "lack of population" and may use an undesired/desired signal strength ratio methodology to define areas of potential interference.

designed to identify applications that are predicted to cause interference to FM translator input signals on third-adjacent channels and states that the Commission will dismiss any application that does not satisfy this threshold test as unacceptable for filing.

3. The *Sixth Report and Order* also makes a number of other changes to the Commission's rules to better promote localism and diversity, which are at the very heart of the LPFM service. It clarifies that the localism requirement set forth in Section 73.853(b) of the Rules applies not just to LPFM applicants but also to LPFM permittees and licensees. The *Sixth Report and Order* revises the rules to permit cross-ownership of an LPFM station and up to two FM translator stations but, at the same time, establishes a number of restrictions on such cross-ownership in order to ensure that the LPFM service retains its extremely local focus.[6]

4. In the interests of advancing the Commission's efforts to increase ownership of radio stations by federally recognized American Indian Tribes and Alaska Native Villages ("Tribal Nations") or entities owned or controlled by Tribal Nations, the *Sixth Report and Order* amends the Commission's rules to explicitly provide for the licensing of LPFM stations to Tribal Nations or entities owned or controlled by Tribal Nations (collectively, "Tribal Nation Applicants"), and to permit Tribal Nation Applicants to own or hold attributable interests in up to two LPFM stations.

5. In addition, the Order modifies the point system that the Commission uses to select among mutually exclusive ("MX") LPFM applications. Specifically, the *Sixth Report and Order* eliminates the proposed operating hours criterion, revises the established community presence criterion,[7] affirms the local program origination criterion, and adds new criteria related to maintenance and staffing of a main studio, offering by Tribal Nation Applicants of new radio services that primarily serve Tribal lands, and new entry into radio broadcasting. Given these changes, the *Sixth Report and Order* also revises the existing exception to the cross-ownership rule for student-run stations. The *Sixth Report and Order* announces the Commission will continue to entertain partial "technical" settlements in the LPFM context and modifies the way in which involuntary time sharing works, shifting from sequential to concurrent license terms and limiting involuntary time sharing arrangements to three applicants. It adopts mandatory time sharing, which currently applies to full-service noncommercial educational translator stations but not LPFM stations.

6. Finally, the *Sixth Report and Order* eliminates the LP10 class of LPFM facilities and removes all of the intermediate frequency ("I.F.") protection requirements applicable to LPFM stations except those established by international agreements.

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

7. None.

[6] Specifically, the *Sixth Report and Order* imposes five limits on cross-ownership. First, entities – other than Tribal Nation Applicants – may own or hold attributable interests in one LPFM station and a maximum of two FM translator stations. Second, the 60 dBu contours of a commonly-owned LPFM station and FM translator station(s) must overlap. Third, an FM translator must receive the signal of its co-owned LPFM station off-air and directly from the LPFM station not another FM translator station. Fourth, the distance between an LPFM station and the transmitting antenna of any co-owned translator must not exceed 10 miles for applicants in the top 50 urban markets and 20 miles for applicants outside the top 50 urban markets. Fifth, the FM translator station must synchronously rebroadcast the primary analog signal of the commonly owned LPFM station (or for "hybrid" stations, the digital HD-1 program-stream) at all times.

[7] The *Sixth Report and Order* clarifies that an LPFM applicant must have had an established local presence for two years prior to filing its application and must maintain that local presence at all times thereafter. It also extends the established community presence standard to 20 miles in rural areas.

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

8. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules.[8] The RFA generally defines the term "small entity" as encompassing the terms "small business," "small organization," and "small governmental entity."[9] In addition, the term "small Business" has the same meaning as the term "small business concern" under the Small Business Act.[10] 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.[11]

9. *Radio Broadcasting.* The policies apply to radio broadcast licensees, and potential licensees of radio service. The SBA defines a radio broadcast station as a small business if such station has no more than $7 million in annual receipts.[12] Business concerns included in this industry are those primarily engaged in broadcasting aural programs by radio to the public.[13] According to Commission staff review of the BIA Publications, Inc. Master Access Radio Analyzer Database as of September 15, 2011, about 10,960 (97 percent) of 11,300 commercial radio stations have revenues of $7 million or less and thus qualify as small entities under the SBA definition We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations[14] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

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

11. *FM translator stations and low power FM stations*. The policies adopted in the *Sixth Report and Order* affect licensees of FM translator and booster stations and low power FM (LPFM) stations, as well as potential licensees in these radio services. The same SBA definition that applies to radio broadcast licensees would apply to these stations. The SBA defines a radio broadcast station as a

[8] *Id*. § 603(b)(3).

[9] *Id*. § 601(6).

[10] *Id*. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[11] 15 U.S.C. § 632.

[12] *See* 13 C.F.R. § 121.201, NAICS Code 515112.

[13] *Id*.

[14] "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 C.F.R. § 121.103(a)(1).

small business if such station has no more than $7 million in annual receipts.[15] Currently, there are approximately 6,105 licensed FM translator stations and 824 licensed LPFM stations.[16] In addition, there are approximately 646 applicants with pending applications filed in the 2003 translator filing window. Given the nature of these services, we will presume that all of these licensees and applicants qualify as small entities under the SBA definition.

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

12. The *Sixth Report and Order* modifies existing requirements and imposes additional paperwork burdens. The *Sixth Report and Order* modifies the Commission's policy regarding waivers ("second-adjacent waivers") of the second-adjacent channel minimum distance separations set forth in Section 73.807 of the rules. As required by the LCRA, the *Sixth Report and Order* requires an applicant seeking a second-adjacent waiver to submit a showing that demonstrates that its proposed operations will not result in interference to any authorized radio service. The *Sixth Report and Order* specifies that a waiver applicant can make this showing in the same manner as an FM translator applicant (*i.e.*, by showing that no interference will occur due to lack of population and using undesired/desired signal strength ratio methodology to narrowly define areas of potential interference). The *Sixth Report and Order* also permits certain applicants to propose to use directional antennas and/or differing antenna polarizations to make the required showing. The *Sixth Report and Order* mandates that complaints about interference from stations operating pursuant to second-adjacent waivers include certain information. For instance, a complaint must include the listener's name and address and the location at which the interference occurs. The *Sixth Report and Order* specifies that the Commission will treat as a "minor change" a proposal to move the transmitter site of an LPFM station operating pursuant to a second-adjacent waiver outside its current service contour in order to co-locate or operate from a site close to a second-adjacent channel station and remediate interference to that station.

13. The *Sixth Report and Order* modifies the regime governing complaints about and remediation of third-adjacent channel interference caused by LPFM stations. As required by the LCRA, the *Sixth Report and Order* modifies the requirements applicable to complaints about third-adjacent channel interference caused by stations that do not satisfy the third-adjacent minimum distance separations set forth in Section 73.807 of the rules. It also permits such stations to propose to use directional antennas and/or differing antenna polarizations in order to eliminate third-adjacent channel interference caused by their operations. The *Sixth Report and Order* modifies the requirements applicable to complaints about third-adjacent interference caused by LPFM stations that satisfy the third-adjacent minimum distance separations set forth in Section 73.807 of the rules and strongly encourages that such complaints be filed with the Media Bureau's Audio Division. As in the second-adjacent channel context, the *Sixth Report and Order* explains that the Commission will treat proposals from LPFM stations seeking to remediate third-adjacent channel by co-locating or operating from a site close to a third-adjacent channel station as "minor changes." As required by the LCRA, the *Sixth Report and Order* requires newly constructed LPFM stations that satisfy the third-adjacent minimum distance separations set forth in Section 73.807 of the rules to make periodic announcements. It also adopts requirements related to the timing and content of these announcements.

14. The *Sixth Report and Order* adopts certain New Jersey-specific provisions regarding complaints of interference. The *Sixth Report and Order* also adopts a threshold test to determine whether an LPFM applicant adequately protects translator input signals. In order to ensure that an LPFM applicant protects the correct input signal for an FM translator, the *Sixth Report and Order* recommends

[15] *See* 13 C.F.R. § 121.201, NAICS Code 515112.

[16] *See News Release*, "Broadcast Station Totals as of December 31, 2010June 30, 2012" (rel. Feb. 11, 2011July. 19, 2012) (http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-304594A1 315231A1.pdf).

that FM translator licensees update the Commission if they have changed their primary station since they last filed a renewal application. If an applicant proposes to locate its transmitter within the "potential interference area" for another station, the applicant must demonstrate that it will not cause interference by making one of three showings. The *Sixth Report and Order* provides that an applicant can make these same showings in the context of a petition for reconsideration and reinstatement *nunc pro tunc*.

15. The *Sixth Report and Order* modifies the rules governing eligibility to hold licenses for LPFM stations. Specifically, it alters the eligibility rule to authorize issuance of an LPFM license to a Tribal Nation Applicant. The *Sixth Report and Order* also revises the localism requirement to clarify that an LPFM applicant must certify that, at the time of application, it is local and must pledge to remain local at all times thereafter. In addition, the *Sixth Report and Order* revises the definition of "local" to specify that a Tribal Nation Applicant is considered "local" throughout its Tribal lands.

16. The *Sixth Report and Order* revises the rules to permit multiple ownership of LPFM stations by Tribal Nation Applicants and cross-ownership of LPFM and FM translator stations. As a result, the Commission is revising the ownership certifications set forth in FCC Form 318.

17. The *Sixth Report and Order* makes a number of changes to the point system used to select among MX applications for LPFM stations. It extends the established community presence standard from 10 to 20 miles in rural areas. The Commission is revising FCC Form 318 to reflect this change. The *Sixth Report and Order* also adopts four new points criteria. Specifically, it adopts a new main studio criterion and requires an applicant seeking to qualify for a point under this criterion to submit certain information (*i.e.*, an address and telephone number for its proposed main studio) on FCC Form 318. In addition, the *Sixth Report and Order* specifies that the Commission will award a point to an LPFM applicant that makes both the local program origination and main studio pledges and adopts Tribal Nations and new entrant criteria. The Commission is revising FCC Form 318 to reflect these new criteria.

18. The *Sixth Report and Order* makes a number of changes related to time sharing. It adopts a requirement that parties submit voluntary time sharing agreements via the Commission's Consolidated Database System. It also revises the Commission's involuntary time sharing policy, shifting from sequential to concurrent license terms and limiting involuntary time sharing arrangements to three applicants. As a result of these changes, an LPFM applicant must submit, on FCC Form 318, the date on which it qualified as having an "established community presence" and may be required to submit information to the Commission regarding the time slots it prefers. Finally, the *Sixth Report and Order* adopts a mandatory time sharing policy similar to that applicable to full-service NCE FM stations. Applicants seeking to time-share pursuant to this policy must submit applications on FCC Form 318 and include an exhibit related to mandatory time sharing.

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

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

20. Consideration of alternative methods to reduce the impact on small entities is unnecessary because the passage of the LCRA required the Commission to make changes to a number of its technical rules. Moreover, the changes made to the Commission's non-technical rules benefit small

[17] 5 U.S.C. § 603(b).

businesses and existing LPFM licensees, offering them greater flexibility and additional licensing opportunities.

21. The LPFM service has created and will continue to create significant opportunities for small businesses, allowing them to develop LPFM service in their communities. To the extent that any modified or new requirements set forth in the *Sixth Report and Order* impose any burdens on small entities, we believe that the resulting impact on small entities would be favorable because the rules would expand opportunities for LPFM applicants, permittees, and licensees to commence broadcasting and stay on the air. Among other things, the *Sixth Report and Order* allows limited cross-ownership of LPFM and FM translator stations. This is prohibited under the current rules. Likewise, the *Sixth Report and Order* permits Tribal Nation Applicants to own or hold attributable interests in up to two LPFM stations to ensure adequate coverage of Tribal lands. Today, multiple ownership of LPFM stations is prohibited. The *Sixth Report and Order* also modifies the point system that the Commission uses to select among MX LPFM applications to award a point to an applicant that can certify that it has no attributable interest in any other broadcast station. Finally, the *Sixth Report and Order* extends mandatory time sharing to the LPFM service. If the licensee of an LPFM station does not operate the station 12 hours per day each day of the year, another organization may file an application to share-time with that licensee.

F. Report to Congress

22. The Commission will send a copy of the *Sixth Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the SBREFA.[18] In addition, the Commission will send a copy of the *Sixth Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Sixth Report and Order* and the FRFA (or summaries thereof) will also be published in the Federal Register.[19]

[18] *See* 5 U.S.C. § 801(a)(1)(A).

[19] *See* 5 U.S.C. § 604(b).

APPENDIX C

Final Rules

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

PART 73 – RADIO BROADCAST SERVICES

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

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

2. Section 73.807 is amended to read as follows:

§ 73.807 Minimum distance separation between stations.

Minimum separation requirements for LPFM stations are listed in the following paragraphs. Except as noted below, an LPFM station will not be authorized unless the co-channel, and first- and second-adjacent channel separations are met. An LPFM station need not satisfy the third-adjacent channel separations listed in paragraphs (a) through (c) in order to be authorized. The third-adjacent channel separations are included for use in determining for purposes of Section 73.810 which third-adjacent channel interference regime applies to an LPFM station.

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

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

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

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

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

Station class protected by LPFM	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second and third adjacent channel minimum separation (km)—required
	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility	
A	80	111	70	70	42
B1	95	128	82	82	53
B	138	179	123	123	92

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

Full service FM stations operating within the reserved band (Channels 201-220) with facilities in excess of those permitted in § 73.211(b)(1) or § 73.211(b)(3) shall be protected by LPFM stations in accordance with the minimum distance separations for the nearest class as determined under § 73.211. For example, a Class B1 station operating with facilities that result in a 60 dBu contour that exceeds 39 kilometers but is less than 52 kilometers would be protected by the Class B minimum distance

separations. Class D stations with 60 dBu contours that exceed 5 kilometers will be protected by the Class A minimum distance separations. Class B stations with 60 dBu contours that exceed 52 kilometers will be protected as Class C1 or Class C stations depending upon the distance to the 60 dBu contour. No stations will be protected beyond Class C separations.

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

Distance to FM translator 60 dBu contour	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second and third adjacent channel minimum separation (km)— required
	Required	For no interference received	Required	For no interference received	
13.3 km or greater.....	39	67	28	35	21
Greater than 7.3 km, but less than 13.3 km ….	32	51	21	26	14
7.3 km or less	26	30	15	16	8

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

(e)(1) *Waiver of the second-adjacent channel separations*. The Commission will entertain requests to waive the second-adjacent channel separations in paragraphs (a) through (c) of this section on a case-by-case basis. In each case, the LPFM station must establish, using methods of predicting interference taking into account all relevant factors, including terrain-sensitive propagation models, that its proposed operations will not result in interference to any authorized radio service. The LPFM station may do so by demonstrating that no actual interference will occur due to intervening terrain or lack of population. The LPFM station may use an undesired/desired signal strength ratio methodology to define areas of potential interference.

(2) *Interference*.

(A) Upon receipt of a complaint of interference from an LPFM station operating pursuant to a waiver granted under paragraph (e)(1) of this section, the Commission shall notify the identified LPFM station by telephone or other electronic communication within one business day.

(B) An LPFM station that receives a waiver under paragraph (e)(1) of this section shall suspend operation immediately upon notification by the Commission that it is causing interference to the reception of an existing or modified full-service FM station without regard to the location of the station receiving interference. The LPFM station shall not resume operation until such interference has been eliminated or it can demonstrate to the Commission that the interference was not due to emissions from the LPFM station. Short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures.

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

(g) International considerations within the border zones.

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

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

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

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

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

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

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

§ 73.809 Interference protection to full service FM stations.

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

* * * * *

4. Section 73.810 is amended to read as follows:

§ 73.810 Third adjacent channel interference.

(a) *LPFM Stations Licensed at Locations That Do Not Satisfy Third-Adjacent Channel Minimum Distance Separations.* An LPFM station licensed at a location that does not satisfy the third-adjacent channel minimum distance separations set forth in Section 73.807 is subject to the following provisions:

(1) Such an LPFM station will not be permitted to continue to operate if it causes any actual third-adjacent channel interference to:

(a) The transmission of any authorized broadcast station; or

(b) The reception of the input signal of any TV translator, TV booster, FM translator or FM booster station; or

(c) The direct reception by the public of the off-the-air signals of any authorized broadcast station including TV Channel 6 stations, Class D (secondary) noncommercial educational FM stations, and previously authorized and operating LPFM stations, FM translators and FM booster stations. Interference will be considered to occur whenever reception of a regularly used signal on a third-adjacent channel is impaired by the signals radiated by the LPFM station, regardless of the quality of such reception, the strength of the signal so used, or the channel on which the protected signal is transmitted.

(2) If third-adjacent channel interference cannot be properly eliminated by the application of suitable techniques, operation of the offending LPFM station shall be suspended and shall not be resumed until the interference has been eliminated. Short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures. If a complainant refuses to permit the licensee of the offending LPFM station to apply remedial techniques which demonstrably will eliminate the third-adjacent channel interference without impairment to the original reception, the licensee is absolved of further responsibility for that complaint.

(3) Upon notice by the Commission to the licensee that such third-adjacent channel interference is being caused, the operation of the LPFM station shall be suspended within three minutes and shall not be resumed until the interference has been eliminated or it can be demonstrated that the interference is not due to spurious emissions by the LPFM station; *provided, however,* that short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures.

(b) *LPFM Stations Licensed at Locations That Satisfy Third-Adjacent Channel Minimum Distance Separations.* An LPFM station licensed at a location that satisfies the third-adjacent channel minimum distance separations set forth in Section 73.807 is subject to the following provisions:

(1) *Interference Complaints and Remediation.*

(a) Such an LPFM station is required to provide copies of all complaints alleging that its signal is causing third-adjacent channel interference to or impairing the reception of the signal of a full power FM, FM translator or FM booster station to such affected station and to the Commission.

(b) A full power FM, FM translator or FM booster station shall review all complaints it receives, either directly or indirectly, from listeners regarding alleged third-adjacent channel interference caused by the operations of such an LPFM station. Such full power FM, FM translator or FM booster station shall also identify those that qualify as *bona fide* complaints under this section and promptly provide such LPFM station with copies of all *bona fide* complaints. A *bona fide* complaint:

(i) Must include current contact information for the complainant;

(ii) Must state the nature and location of the alleged third-adjacent channel interference and must specify the call signs of the LPFM station and affected full power FM, FM translator or FM booster station, and the type of receiver involved; and

(iii) Must be received by either the LPFM station or the affected full power FM, FM translator or FM booster station within one year of the date on which the LPFM station commenced broadcasts with its currently authorized facilities.

(c) The Commission will accept *bona fide* complaints and will notify the licensee of the LPFM station allegedly causing third-adjacent channel interference to the signal of a full power FM, FM translator or FM booster station of the existence of the alleged interference within 7 calendar days of the Commission's receipt of such complaint.

(d) Such an LPFM station will be given a reasonable opportunity to resolve all complaints of third-adjacent channel interference within the protected contour of the affected full power FM, FM translator or FM booster station. A complaint will be considered resolved where the complainant does not reasonably cooperate with an LPFM station's remedial efforts. Such an LPFM station also is encouraged to address all other complaints of third-adjacent channel interference, including complaints based on interference to a full power FM, FM translator or FM booster station by the transmitter site of the LPFM station at any distance from the full power, FM translator or FM booster station.

(e) In the event that the number of unresolved complaints of third-adjacent channel interference within the protected contour of the affected full power FM, FM translator or FM booster station plus the number of complaints for which the source of third-adjacent channel interference remains in dispute equals at least one percent of the households within one kilometer of the LPFM transmitter site or thirty households, whichever is less, the LPFM and affected stations must cooperate in an "on-off" test to determine whether the third-adjacent channel interference is traceable to the LPFM station.

(f) If the number of unresolved and disputed complaints of third-adjacent channel interference within the protected contour of the affected full power, FM translator or FM booster station

exceeds the numeric threshold specified in subsection (b)(4) following an "on-off" test, the affected station may request that the Commission initiate a proceeding to consider whether the LPFM station license should be modified or cancelled, which will be completed by the Commission within 90 days. Parties may seek extensions of the 90-day deadline consistent with Commission rules.

(g) An LPFM station may stay any procedures initiated pursuant to paragraph (b)(5) of this section by voluntarily ceasing operations and filing an application for facility modification within twenty days of the commencement of such procedures.

(2) *Periodic Announcements*.

(a) For a period of one year from the date of licensing of a new LPFM station that is constructed on a third-adjacent channel and satisfies the third-adjacent channel minimum distance separations set forth in Section 73.807, such LPFM station shall broadcast periodic announcements. The announcements shall, at a minimum, alert listeners of the potentially affected third-adjacent channel station of the potential for interference, instruct listeners to contact the LPFM station to report any interference, and provide contact information for the LPFM station. The announcements shall be made in the primary language(s) of both the new LPFM station and the potentially affected third-adjacent channel station(s). Sample announcement language follows:

> On (date of license grant), the Federal Communications Commission granted (LPFM station's call letters) a license to operate. (LPFM station's call letters) may cause interference to the operations of (third-adjacent channel station's call letters) and (other third-adjacent channel stations' call letters). If you are normally a listener of (third-adjacent channel station's call letters) or (other third-adjacent channel station's call letters) and are having difficulty receiving (third-adjacent channel station call letters) or (other third-adjacent channel station's call letters), please contact (LPFM station's call letters) by mail at (mailing address) or by telephone at (telephone number) to report this interference.

(b) During the first thirty days after licensing of a new LPFM station that is constructed on a third-adjacent channel and satisfies the third-adjacent channel minimum distance separations set forth in Section 73.807, the LPFM station must broadcast the announcements specified in paragraph (b)(2)(a) at least twice daily. The first daily announcement must be made between the hours of 7 a.m. and 9 a.m., or 4 p.m. and 6 p.m. The LPFM station must vary the time slot in which it airs this announcement. For stations that do not operate at these times, the announcements shall be made during the first two hours of broadcast operations each day. The second daily announcement must be made outside of the 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. time slots. The LPFM station must vary the times of day in which it broadcasts this second daily announcement in order to ensure that the announcements air during all parts of its broadcast day. For stations that do not operate at these times, the announcements shall be made during the first two hours of broadcast operations each day. For the remainder of the one year period, the LPFM station must broadcast the announcements at least twice per week. The announcements must be broadcast between the hours of 7 a.m. and midnight. For stations that do not operate at these times, the announcements shall be made during the first two hours of broadcast operations each day.

(c) Any new LPFM station that is constructed on a third-adjacent channel and satisfies the minimum distance separations set forth in Section 73.807 must:

(i) notify the Audio Division, Media Bureau, and all affected stations on third-adjacent channels of an interference complaint. The notification must be made electronically within 48 hours after the receipt of an interference complaint by the LPFM station; and

(ii) cooperate in addressing any third-adjacent channel interference.

5. Section 73.811 is amended to read as follows:

§ 73.811 LPFM power and antenna height requirements.

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

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

6. Section 73.816 is amended to read as follows:

§ 73.816 Antennas.

(a) Permittees and licensees may employ nondirectional antennas with horizontal only polarization, vertical only polarization, circular polarization or elliptical polarization.

(b) Directional antennas generally will not be authorized and may not be utilized in the LPFM service, except as provided in paragraph (c) of this section.

(c)(1) Public safety and transportation permittees and licensees, eligible pursuant to § 73.853(a)(ii), may utilize directional antennas in connection with the operation of a Travelers' Information Service (TIS) provided each LPFM TIS station utilizes only a single antenna with standard pattern characteristics that are predetermined by the manufacturer. Public safety and transportation permittees and licensees may not use composite antennas (*i.e.*, antennas that consist of multiple stacked and/or phased discrete transmitting antennas).

(2) LPFM permittees and licensees proposing a waiver of the second-adjacent channel spacing requirements of Section 73.807 may utilize directional antennas for the sole purpose of justifying such a waiver.

(d) LPFM TIS stations will be authorized as nondirectional stations. The use of a directional antenna as provided for in paragraph (c) of this section will not be considered in the determination of compliance with any requirements of this part.

7. Section 73.825 is amended to read as follows:

§ 73.825 Protection to reception of TV channel 6.

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

FM channel number	LPFM to TV channel 6 (km)
201	140
202	138
203	137
204	136
205	135
206	133
207	133
208	133
209	133
210	133
211	133
212	132
213	132
214	132
215	131
216	131
217	131
218	131
219	130
220	130

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

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

8. Section 73.827 is amended by adding new paragraph (a), revising the previous paragraph (a) to (b), and revising the previous paragraph (b) to (c) as follows:

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

(a) *Interference to the direct reception of the input signal of an FM translator station*. This subsection applies when an LPFM application proposes to operate near an FM translator station, the FM translator station is receiving its primary station signal off-air and the LPFM application proposes to operate on a third-adjacent channel to the primary station. In these circumstances, the LPFM station will not be authorized unless it is located at least 2 km from the FM translator station. In addition, in cases where an LPFM station is located within +/- 30 degrees of the azimuth between the FM translator station and its primary station, the LPFM station will not be authorized unless it is located at least 10 kilometers from the FM translator station. The provisions of this subsection will not apply if the LPFM applicant:

(1) demonstrates that no actual interference will occur due to an undesired (LPFM) to desired (primary station) ratio below 34 dB at all locations,

(2) complies with the minimum LPFM/FM translator distance separation calculated in accordance with the following formula: $d_u = 133.5 \text{ antilog } [(P_{eu} + G_{ru} - G_{rd} - E_d) / 20]$, where d_u = the minimum allowed separation in km, P_{eu} = LPFM ERP in dBW, G_{ru} = gain (dBd) of the FM translator receive antenna in the direction of the LPFM site, G_{rd} = gain (dBd) of the FM translator receive antenna in the direction of the primary station site, E_d = predicted field strength (dBu) of the primary station at the translator site, or

(3) reaches an agreement with the licensee of the FM translator regarding an alternative technical solution.

NOTE TO PARAGRAPH (a): LPFM applicants may assume that an FM translator station's receive and transmit antennas are collocated.

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

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

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

§73.850 Operating schedule.

* * * * *

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

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

(2) The Commission desires to facilitate the reaching of agreements on time sharing. However, if the licensees of stations authorized to share time are unable to agree on a division of time, the

prospective licensee(s) must submit a statement with the Commission to that effect filed with the application(s) proposing time sharing.

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

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

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

§ 73.853 Licensing requirements and service.

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

* * * * *

(3) Tribal Applicants, as defined in paragraph (c) of this section that will provide non-commercial radio services.

(b) Only local organizations will be permitted to submit applications and to hold authorizations in the LPFM service. For the purposes of this paragraph, an organization will be deemed local if it can certify, at the time of application, that it meets the criteria listed below and if it continues to satisfy the criteria at all times thereafter.

* * * * *

(4) In the case of a Tribal Applicant, as defined in paragraph (c) of this section, the Tribal Applicant's Tribal lands, as that term is defined in Section 73.7000 of this Part, are within the service area of the proposed LPFM station.

(c) A Tribal Applicant is a Tribe or an entity that is 51 percent or more owned or controlled by a Tribe or Tribes. For these purposes, Tribe is defined as set forth in Section 73.7000 of this Part.

11. Section 73.855 is amended by revising paragraph (a), inserting a new paragraph (b), and renaming paragraph (b) as paragraph (c) and revising it as follows:

§ 73.855 Ownership limits.

(a) No authorization for an LPFM station shall be granted to any party if the grant of that authorization will result in any such party holding an attributable interest in two or more LPFM stations.

(b) Notwithstanding the general prohibition set forth in paragraph (a) of this section, Tribal Applicants, as defined in Section 73.853(c) of this Part, may hold an attributable interest in up to two LPFM stations.

(c) Notwithstanding the general prohibition set forth in paragraph (a) of this section, not-for-profit organizations and governmental entities with a public safety purpose may be granted multiple licenses if:

(1) One of the multiple applications is submitted as a priority application; and

(2) The remaining non-priority applications do not face a mutually exclusive challenge.

12. Section 73.860 is amended by revising paragraph (a), inserting new paragraphs (b) and (c), renaming paragraph (b) as paragraph (d) and revising it, and renaming paragraph (c) as paragraph (e) as follows:

§ 73.860 Cross-ownership.

(a) Except as provided in paragraphs (b), (c) and (d) of this section, no license shall be granted to any party if the grant of such authorization will result in the same party holding an attributable interest in any other non-LPFM broadcast station, including any FM translator or low power television station, or any other media subject to our broadcast ownership restrictions.

(b) A party that is not a Tribal Applicant, as defined in Section 73.853(c) of this Part, may hold attributable interests in one LPFM station and no more than two FM translator stations provided that the following requirements are met:

(1) The 60 dBu contours of the commonly-owned LPFM station and FM translator station(s) overlap;

(2) The FM translator station(s), at all times, synchronously rebroadcasts the primary analog signal of the commonly-owned LPFM station or, if the commonly-owned LPFM station operates in hybrid mode, synchronously rebroadcasts the digital HD-1 version of the LPFM station's signal;

(3) The FM translator station(s) receives the signal of the commonly-owned LPFM station over-the-air and directly from the commonly-owned LPFM station itself; and

(4) The transmitting antenna of the FM translator station(s) is located within 16.1 km (10 miles) for LPFM stations located in the top 50 urban markets and 32.1 km (20 miles) for LPFM stations outside the top 50 urban markets of either the transmitter site of the commonly-owned LPFM station or the reference coordinates for that station's community of license.

(c) A party that is a Tribal Applicant, as defined in Section 73.853(c) of this Part, may hold attributable interests in no more than two LPFM stations and four FM translator stations provided that the requirements set forth in paragraph (b) are met.

(d) Unless such interest is permissible under paragraphs (b) or (c) of this section, a party with an attributable interest in a broadcast radio station must divest such interest prior to the commencement of operations of an LPFM station in which the party also holds an interest. However, a party need not divest such an attributable interest if the party is a college or university that can certify that the existing broadcast radio station is not student run. This exception applies only to parties that:

(1) Are accredited educational institutions;

(2) Own an attributable interest in non-student run broadcast stations; and

(3) Apply for an authorization for an LPFM station that will be managed and operated on a day-to-day basis by students of the accredited educational institution.

(e) No LPFM licensee may enter into an operating agreement of any type, including a time brokerage or management agreement, with either a full power broadcast station or another LPFM station.

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

§ 73.870 Processing of LPFM broadcast station applications.

(a) A minor change for an LPFM station authorized under this subpart is limited to transmitter site relocations of 5.6 kilometers or less. These distance limitations do not apply to amendments or applications proposing transmitter site relocation to a common location filed by applicants that are parties to a voluntary time-sharing agreement with regard to their stations pursuant to § 73.872 paragraphs (c) and (e). These distance limitations also do not apply to an amendment or application proposing transmitter site relocation to a common location or a location very close to another station operating on a third-adjacent channel in order to remediate interference to the other station; provided, however, that the proposed relocation is consistent with all localism certifications made by the applicant in its original application for the LPFM station. Minor changes of LPFM stations may include:

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

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

* * * * *

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

§ 73.871 Amendment of LPFM broadcast station applications.

* * * * *

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

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

* * * * *

(5) Other changes in general and/or legal information;

(6) Filings proposing transmitter site relocation to a common location submitted by applications that are parties to a voluntary time-sharing agreement with regard to their stations pursuant to § 73.872 paragraphs (c) and (e); and

(7) Filings proposing transmitter site relocation to a common location or a location very close to another station operating on a third-adjacent channel in order to remediate interference to the other station.

15. Section 73.872 is amended by revising paragraphs (b) through (e) to read as follows:

§ 73.872 Selection procedure for mutually exclusive LPFM applications.

* * * * *

(b) Each mutually exclusive application will be awarded one point for each of the following criteria, based on certifications that the qualifying conditions are met and submission of any required documentation:

(1) *Established community presence.* An applicant must, for a period of at least two years prior to application and at all times thereafter, have qualified as local pursuant to Section 73.853(b) of this Part. Applicants claiming a point for this criterion must submit any documentation specified in FCC Form 318 at the time of filing their applications.

(2) *Local program origination.* The applicant must pledge to originate locally at least eight hours of programming per day. For purposes of this criterion, local origination is the production of programming by the licensee, within ten miles of the coordinates of the proposed transmitting antenna. Local origination includes licensee produced call-in shows, music selected and played by a disc jockey present on site, broadcasts of events at local schools, and broadcasts of musical performances at a local studio or festival, whether recorded or live. Local origination does not include the broadcast of repetitive or automated programs or time-shifted recordings of non-local programming whatever its source. In addition, local origination does not include a local program that has been broadcast twice, even if the licensee broadcasts the program on a different day or makes small variations in the program thereafter.

(3) *Main studio.* The applicant must pledge to maintain a publicly accessible main studio that has local program origination capability, is reachable by telephone, is staffed at least 20 hours per week between 7 a.m. and 10 p.m., and is located within 16.1 km (10 miles) of the proposed site for the transmitting antenna for applicants in the top 50 urban markets and 32.1 km (20 miles) for applicants outside the top 50 urban markets. Applicants claiming a point under this criterion must specify the proposed address and telephone number for the proposed main studio in FCC Form 318 at the time of filing their applications.

(4) *Local program origination and main studio.* The applicant must make both the local program origination and main studio pledges set forth in subparagraphs (2) and (3).

(5) *Diversity of ownership.* An applicant must hold no attributable interests in any other broadcast station.

(6) *Tribal Applicants serving Tribal Lands.* The applicant must be a Tribal Applicant, as defined in Section 73.853(c) of this Part, and the proposed site for the transmitting antenna must be located on that Tribal Applicant's "Tribal Lands," as defined in Section 73.7000 of this Part. Applicants claiming a point for this criterion must submit the documentation set forth in FCC Form 318 at the time of filing their applications.

(c) *Voluntary time-sharing.* If mutually exclusive applications have the same point total, any two or more of the tied applicants may propose to share use of the frequency by electronically submitting, within 90 days of the release of a public notice announcing the tie, a time-share proposal. Such proposals shall be treated as minor amendments to the time-share proponents' applications, and shall become part of the terms of the station authorization. Where such proposals include all of the tied applications, all of the tied applications will be treated as tentative selectees; otherwise, time-share proponents' points will be aggregated.

* * * * *

(4) Concurrent license terms granted under paragraph (d) may be converted into voluntary time-sharing arrangements renewable pursuant to § 73.3539 by submitting a universal time-sharing proposal.

* * * * *

(d) *Involuntary time-sharing.* (1) If a tie among mutually exclusive applications is not resolved through voluntary time-sharing in accordance with paragraph (c) of this section, the tied applications will be reviewed for acceptability. Applicants with tied, grantable applications will be eligible for equal, concurrent, non-renewable license terms.

(2) If a mutually exclusive group has three or fewer tied, grantable applications, the Commission will simultaneously grant these applications, assigning an equal number of hours per week to each applicant. The Commission will determine the hours assigned to each applicant by first assigning hours to the applicant that has been local, as defined in Section 73.853(b) of this Part, for the longest uninterrupted period of time, then assigning hours to the applicant that has been local for the next longest uninterrupted period of time, and finally assigning hours to any remaining applicant. The Commission will offer applicants an opportunity to voluntarily reach a time-sharing agreement. In the event that applicants cannot reach such agreement, the Commission will require each applicant subject to involuntary time-sharing to simultaneously and confidentially submit their preferred time slots to the Commission. If there are only two tied, grantable applications, the applicants must select between the following 12-hour time slots (1) 3:00 am – 2:59 pm, or (2) 3:00 pm – 2:59 am. If there are three tied, grantable applications, each applicant must rank their preference for the following 8-hour time slots: (1) 2:00 am – 9:59 am, (2) 10:00 am- 5:59 pm, and (3) 6:00 pm-1:59 am. The Commission will require the applicants to certify that they did not collude with any other applicants in the selection of time slots. The Commission will give preference to the applicant that has been local for the longest uninterrupted period of time. The Commission will award time in units as small as four hours per day. In the event an applicant neglects to designate its preferred time slots, staff will select a time slot for that applicant.

(3) 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 Section 73.853(b) of this Part, for the longest uninterrupted periods of time. The Commission then will process the remaining applications as set forth in paragraph (d)(2) of this section.

(4) If concurrent license terms granted under this section are converted into universal voluntary time-sharing arrangements pursuant to paragraph (c)(4) of this section, the permit or license is renewable pursuant to §§ 73.801 and 73.3539.

(e) *Settlements.* Mutually exclusive applicants may propose a settlement at any time during the selection process after the release of a public notice announcing the mutually exclusive groups. Settlement proposals must comply with the Commission's rules and policies regarding settlements, including the requirements of §§ 73.3525, 73.3588 and 73.3589. Settlement proposals may include time-share agreements that comply with the requirements of paragraph (c) of this section, provided that such agreements may not be filed for the purpose of point aggregation outside of the 90 day period set forth in paragraph (c) of this section.

16. Section 73.873 is revised by deleting paragraph (b) and renaming paragraph (c) as paragraph (b) as follows:

§ 73.873 LPFM license period.

(a) Initial licenses for LPFM stations will be issued for a period running until the date specified in § 73.1020 for full service stations operating in the LPFM station's state or territory, or if issued after such date, determined in accordance with § 73.1020.

(b) The license of an LPFM station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.

STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI

Re: *Creation of a Low Power Radio Service*, MM Docket No. 99-25

We're delighted and honored to have the two key sponsors of the LPFM bill here to speak to us, Congressman Mike Doyle and Congressman Lee Terry. They've been strong advocates for this legislation over the years and we appreciate their tremendous efforts. This is a great example of Congress and the FCC working together, and of Democrats and Republicans working together. It's significant for all Americans – rural to urban.

This is a big step to empower community voices, promote media diversity, and enhance local programing. Our order creates opportunities for thousands of new FM radio stations throughout the country.

Thanks to Congress's work on the Local Community Radio Act, today we are taking the most far-reaching actions in decades to empower new programmers to provide local radio programming and expand media diversity throughout the country.

The Information Needs of Communities report we released last year found that 86 percent of the news and public affairs programming broadcast on news-talk radio was national and not local. Low-power community radio is intended to be a hyper-local radio service. This was the vision of my friend, former Chairman Bill Kennard, who led the Commission in authorizing LPFM.

I have a personal connection to this item. I worked in a small radio station myself while I was in college as a DJ. I know firsthand both the opportunities that small stations can provide, and how important they can be to the communities they reach.

Right now, low power radio stations are already allowing diverse voices to provide valuable local service in some communities. In Lincoln, Nebraska, the Lincoln Chinese Ministry Association provide Chinese language programming from KJFT. In South Bend, Indiana, the League of United Latin American Citizens operates the only Spanish-language radio station within 25 miles. WSBL airs more than 100 hours of local programming each week, including English language vocabulary shows, outreach programming for area students, and information about health and social services available to Spanish-speaking residents.

The Pascua Yaqui Tribe is the licensee of KPYT near Tucson. The station airs Yaqui language programming three days a week and health and wellness education programming daily. It uses its mobile recording studio to visit local elementary and middle schools.

I am delighted that a number of schools have seized the opportunity that the LPFM service provides to support student-run stations. For example, the University of the Cumberland's low power station WCCR covers campus news and sports. The station boasts 20 separate on-air personalities who produce more than 40 hours of programming each week.

These stations are doing fantastic things, but now only a handful of low power FM stations operate in large markets. With today's vote, we are fully realizing the vision of creating an opportunity to bring the diverse voices of community radio to Americans across the country, including those in large urban areas. I am happy that our work will enable LPFM to fulfill its original promise.

In order to make this possible, Commission staff has completed an intensive and detailed LPFM spectrum analysis, and is prepared to implement procedures, both for LPFM and translator applicants, that preserve this limited spectrum. I want to thank the staff for all their hard work. These diligent efforts are creating many more opportunities for diverse media voices to be heard. There is no way of knowing exactly who will apply, but we expect to see literally thousands of new applicants.

This includes hundreds of registered community groups – such as Parent Teacher Associations, Girl and Boy Scouts clubs, colleges and others. Minority and tribal groups will be empowered to participate more widely in community radio, and their voices will enrich local programming in communities across the country, harnessing speech to create new platforms for innovation. This is vital work and I am pleased we can move forward.

Thank you to the FCC staff for their terrific work on this item. And, of course, none of this would have happened without the hard work done in Congress, allowing us to create licensing opportunities in virtually every market while protecting existing radio service. I would like to extend my personal thanks to all the sponsors of the LCRA and especially Congressmen Mike Doyle and Lee Terry, who joined us here today, and Senators Maria Cantwell and John McCain, and the leadership of the House Energy and Commerce Committee and the Senate Commerce Committee.

STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL

Re: *Creation of a Low Power Radio Service*, MM Docket No. 99-25

Today marks the fifth round of attempts to resolve the tensions between FM translator applicants and the low power FM community since I joined the Commission. Yes, the *fifth* round. Each time, I am reminded that these issues are complex, highly technical, and important to American radio listeners, and seemingly intractable – especially after five rounds. After the conclusion of each round, we seem to forget just how difficult finding a solution can be. And then, before you know it, we find ourselves in yet another round of reconsideration. Or, to quote comedian Stephen Wright, "Right now I'm having amnesia and déjà vu at the same time."

Nonetheless, in today's order, we revise the licensing process, adopted this past March, to resolve FM translator applications that have been pending before the Commission since 2003. My hope is that we have *finally* forged a workable compromise that will allow for the licensing and successful operation of both translators and LPFM stations to benefit all Americans.

Specifically, I approve of revising our licensing procedures to allow applicants to acquire up to three FM translators, as opposed to just one, in 156 larger markets if they meet certain requirements. Allowing the acquisition of more FM translators will enable applicants to serve their entire communities. Not only is this policy common sense, but is also helpful to broadcasters and listening audiences alike, especially in light of our earlier decision to permit the use of FM translators to rebroadcast AM station's signals.

I also support relaxing the nationwide cap to allow licensees to acquire an additional 20 translators to serve smaller markets and rural America.[1] Earlier this year, I proposed edits to adopt a similar framework prior to the adoption of the March order but I fell a few votes short, so naturally I'm happy that, after further reflection, we can all agree to include those ideas this time around. Now, FM translator applicants will ultimately have this additional flexibility to better serve their listeners.

We also adopt rules regarding LPFM interference and licensing procedures. I am pleased that our licensing rules successfully take into account the community-oriented purpose of the LPFM service, including recognizing the importance of providing radio services to Tribal and Alaska Native lands. I am also encouraged that the interference rules and waiver processes take into account the need to promote viable LPFM stations while ensuring that other FM stations do not experience harmful interference.

It is of paramount importance that we put these issues to rest once and for all, dispose of the remaining FM translator applications, and open a window to license new LPFM stations by October 15, 2013.[2] In doing so, we will fulfill Congress's mandate in the Local Community Radio Act of 2010 to ensure that both LPFM stations and FM translators have ample licensing opportunities.

[1] FM translator applicants will be restricted to prosecuting 70 applications in total; 50 of which may be for licenses in the 156 markets defined in the order.

[2] I recognize, however, that the Media Bureau may have to delay opening the licensing window if there are legal challenges or issues with processing the translator applications.

I thank the Chairman for his willingness to incorporate these constructive edits. Further, I would like to acknowledge and thank Representatives Lee Terry and Mike Doyle for their leadership on these issues.

Finally, I thank the hard-working staff of the Media Bureau, whom I have thanked during each of my five rounds on this matter for their patience, thoughtful work and, of course, persistence. Hopefully, we won't have to have a sixth vote.

STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN

Re: *Creation of a Low Power Radio Service*, MM Docket No. 99-25

"*Low power radio is truly radio of the people, by the people, and for the people*." This sentiment was proudly exclaimed by Commissioner Michael Copps last year when we first began implementing the Local Community Radio Act. And today, we take a major step toward the creation of a media landscape more reflective of the greatness in nation.

Congressman Michael Doyle and Congressman Lee Terry – special thanks are due to you, for none of this would be possible without your tireless efforts. Now, more constituents in Pittsburgh and Omaha may have their voices heard, and their interests expressed, and I can only imagine how elated you must be to know that your friends, family and neighbors very soon may have enhanced entertainment and information options.

Over the past several months, we have been inundated with stories from Low-Powered FM station supporters: tribal entities in the Southwest, Hmong communities in the Midwest, farm workers at the Southern tip of Florida, science fiction lovers up north in Maine, high-school students and senior citizens in Maui, liberals, conservatives, and groups across the board… making their voices heard through discussions and advocacy for unique and interesting programs found only on these radio properties.

So it is in this order that I am pleased to affirm we will greatly increase the number of LPFM stations to augment the airwaves through a process that waives the second-adjacent channel spacing requirement. What this means is that in major urban markets, space will be freed up for LPFM stations and they will soon achieve a share of the dial previously dominated mainly by larger, national entities. Through this Order, we take a resource that has been indispensable in rural communities and bring it into major metropolitan areas.

Extraordinary diversity can be found in major cities across this great nation, so I can only imagine how urban communities will utilize this great resource. Ethnically and culturally-diverse people will have a greater opportunity to unite and share their collective experiences with others. In that vein, one proposed project that got my attention is an effort championed by the Gullah People's Movement in South Carolina. If granted a license, this applicant proposes to feature as its first offering a program hosted by octogenarians who plan to convey the oral history of African-Americans in the lowcountry of South Carolina and Georgia.

This order is a victory for applicants like them and an opportunity for those who express themselves through other artistic means as well. The music lovers on my staff are hoping for an explosion of "indie music" returning to the airwaves, where listeners can tap a variety of genres now primarily found only on the Internet and satellite radio.

The FCC recognizes that radio remains a vital tool not only for niche interests but for the communications needs of the entire nation. I am reminded of that LPFM property in New Orleans that stayed on the air throughout the Hurricane Katrina crisis, battling rising flood waters but keeping Bayou residents informed after every other area FM radio station went silent. In the absence of electricity, Internet access, and cell phone coverage, many of those affected by Hurricane Sandy turned to battery-powered radios as their sole link to the outside world. In the months ahead, there will be no shortage of opportunities for community radio stations to unite communities, keep them connected, and help them rebuild and move on in the event of terrible losses.

Just over a year ago, I spoke about striking a balance between competing interests in this docket. Today's order represents months of working not only with LPFM supporters but with organizations representing the interests of translator applicants as well. Through their tireless advocacy, we reached a solution that will allow translators and LPFM stations to complement one another in what we trust will be a richer and more vibrant media landscape.

Both translators and LPFMs connect users in rural and underserved areas with programming that would not be available otherwise, and the compromise in today's order will allow the vast majority of translator applicants to continue serving these communities. Indeed, during the last application window, 97% of translator applicants filed fewer than the 50-application limit we put in place today. This limit will ensure that translator and LPFM licenses go to those applicants that are committed to connecting users with content while curbing counter-productive speculative behavior. To date, over 25% of translator authorizations have not been constructed, and nearly 40% have been assigned to parties other than the original applicants. Much of this represents speculative engagement, and many of these licenses could have been granted to LPFM *and* translator applicants who have a vision for community use.

We not only make more room for LPFM stations, but this order also ensures that LPFM licenses go to those applicants who can best contribute to this thriving landscape. Where there are multiple or competing applicants for the same coverage area, we employ a point system which gives preference to stations that best reflect the varied interests of their communities.

Origination of local content in this regard is key. How better to communicate the interests of a community than by producing content *in and from* that community? Preference will be given to organizations that have an established presence in those neighborhoods, by keeping a local studio staffed regularly, and producing content locally. For then a station has a greater opportunity to stay better connected to the community where it operates.

We also understand that there is no one voice for any geographical area, so preference will be granted to new entrants – that is, to applicants who have no attributable interest in another broadcasting entity. With a diversity of viewpoints and ideas, we want to ensure that citizens across the spectrum of thoughts and ideas will remain connected and engaged with content tailored to *them*.

Finally, I am ecstatic that we have an actual date for the opening of the filing window. So no matter what, my spirits will still be soaring on that day, as will those of countless entities and individuals as we embark on an endeavor that could potentially add tremendously new dimension to our media ecosystem.

Special thanks are due to the stakeholders involved in reaching today's compromise, notably REC, Common Frequency, and Prometheus. Their advocacy for the future of radio is inspiring, and this order is a testament to their hard work and dedication. Peter "The Oracle" Doyle, Jim Bradshaw, and others in the Media Bureau, including the engineers, thank you for an enormous amount of heavy lifting in this proceeding and for the work which will continue after the filing window closes.

And again, Congressmen Doyle and Terry, thank you. When this Order frees up broadcast space in the "Steel City" and the "Gateway to the West," I'm sure your constituents will join us in praising you.

I for one can't wait to tune in and further engage with the communities that I am committed to serve, not only as a policymaker, but as a fellow citizen.

Thank you.

STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL

Re: *Creation of a Low Power Radio Service*, MM Docket No. 99-25

There are few things more compelling than the human voice. Think of the words of a storyteller; the commanding sound of breaking news; the dulcet tones of a lullaby; and the wail of a singer accompanied by a raucous band. The medium is made that much more meaningful when the voices are local and speak directly to the needs and interests of the neighborhood. In these days of exploding global online content, there is still great value and art in community broadcasting. That is why I am pleased to support today's decision.

This decision opens the door for non-profit associations, schools, religious organizations, and public safety groups to provide new local content through low power radio broadcasting.

The road to today's decision has been long, but that makes the arrival no less sweet.

Over a decade ago, in 2000, the Commission first authorized the creation of low power FM (LPFM) stations to provide noncommercial, educational, and local groups with the opportunity to provide a community-based radio service. The same year, Congress passed legislation delaying the removal of third-adjacent channel separation requirements and also requiring the Commission to study interference issues and report its findings. While "third- adjacent channel separation requirements" sounds technical and small, it has had big impact, limiting the Commission's ability to issue licenses for community broadcasting, especially in urban areas.

However, for years, a stalwart group of legislators fought to change the law. It is an honor to have Representative Doyle and Representative Terry join us today to celebrate this agency effort. They are true heroes of community broadcasting who worked over multiple congresses to get the Local Community Radio Act signed into law. They were determined. I know, because I spent quite a bit of time during my tenure as staff on the Senate Commerce Committee assisting Senator Cantwell and Senator McCain advance similar legislation in the Senate.

Tenacity, it turns out, has its rewards. And as a result, today we put the final pieces of implementing the Local Community Radio Act in place. The Commission's decision is balanced. It protects full power stations while providing opportunities for new low power applicants. It also resolves challenges to the procedures we adopted to process over 6000 applications that remain pending from Auction 83—in a manner that is fair to both translator applicants and potential LPFM licensees. Critically, we announce an October 15, 2013 target date for an open window for low power applicants, giving them time to prepare for this new opportunity. It is an exciting time for community broadcasting—because we can all look forward to new local voices on the FM dial.

STATEMENT OF
COMMISSIONER AJIT PAI

Re: *Creation of a Low Power Radio Service*, MM Docket No. 99-25

In the Local Community Radio Act of 2010, Congress sought to expand low-power FM while protecting the operations of full-power broadcasters. I commend Representatives Lee Terry and Mike Doyle for their leadership in crafting this legislation. Because today's item reasonably maintains the balance they and their colleagues struck in the Local Community Radio Act, I am pleased to support it.

The rules that we adopt today will enable the development of new low-power FM stations, which can play a critical role in advancing the Commission's diversity goals. To give one example from my home state, there is currently a Chinese-language low-power FM station on the air in Manhattan, Kansas. While you probably wouldn't be surprised to hear Chinese-language radio stations on the air in the New York City borough of Manhattan (what we Kansans refer to as "the other Manhattan"), the ability of a Chinese-language station to broadcast in the hometown of Kansas State University is a testament to the unique benefits that the low-power service can provide.

Perhaps the most contentious issue we face in today's item involves second-adjacent channel waivers. The Local Community Radio Act makes clear that in order to receive such a waiver, low-power FM applicants must show that their operations will not "result in interference to any authorized radio service."[1] That is the standard we codify in our rules today, and I am supporting this item with every expectation that the Media Bureau will faithfully and firmly enforce it.

One thing missing from these rules is a requirement that a low-power station seeking a second-adjacent waiver serve its request on potentially affected FM stations. Such a requirement would impose a minimal burden and would make it easier for those FM broadcasters to weigh in early with any concerns. I nonetheless encourage low-power applicants and full-power broadcasters to work together to address potential interference problems *before* low-power stations commence operations, and I hope the Media Bureau will alert full-power stations of second-adjacent waiver requests that may affect their operations. Prolonged interference disputes will not serve anyone's interests: not low-power operators, not full-power broadcasters, and certainly not the listening public.

I would like to thank the Chairman and my colleagues for incorporating many of my other suggestions into this item. For example, I am pleased that we are announcing October 15, 2013 as the target date when the low-power filing window will open. This will encourage community organizations to begin preparing applications and allow them to engage in more focused planning for establishing new low-power stations.

Two other aspects of today's order are notable. First, it resolves petitions for reconsideration addressing thousands of pending Auction 83 FM translator applications. These applications were filed way back in 2003, and it is time for the Commission to finish processing them.

Second, today's item raises the per-market translator cap and relaxes the national cap. Raising the per-market cap from one translator to three will provide broadcasters a better opportunity to extend their service across large metropolitan areas. Moreover, the national cap of 50 translators would have forced broadcasters into choosing between more service for rural America and more service in profitable urban areas. I am grateful to the floor for adopting my suggestion and giving broadcasters the flexibility to pursue up to 70 applications so long as no more than 50 are in the nation's largest markets. This change fulfills the purpose of section 307(b) of the Communications Act, which calls for us to "provide a

[1] Local Community Radio Act of 2010, § 3(b)(2)(A).

fair, efficient, and equitable distribution of radio service" among communities.

Finally, I would like to thank Peter Doyle, Tom Hutton, James Bradshaw, Heather Dixon, and Kelly Donohue for their exemplary work on this item. The Bureau's Audio Division has much work ahead of it to implement today's order, from processing thousands of pending translator applications to addressing the large number of low-power applications I hope we will soon receive. I am confident that the staff of the Audio Division will continue to discharge their responsibilities in a manner that makes us all proud.