

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

In the Matter of
Amendment of Parts 73 and 74 of the
Commission's Rules to Establish Rules for Digital
Low Power Television and Television Translator
Stations
MB Docket No. 03-185

FIFTH REPORT AND ORDER

Adopted: July 20, 2023

Released: July 20, 2023

By the Commission: Chairwoman Rosenworcel and Commissioner Carr issuing separate statements.

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I. INTRODUCTION

1. In this Fifth Report and Order (R&O), we conclude that the public interest will be served by allowing the continued operation of existing analog FM radio services (FM6 operations) by channel 6 digital low power television (LPTV) stations (FM6 LPTV stations), subject to certain conditions. We also decline to adopt a proposal discussed in the Further Notice1 that would allow new FM radio stations to be licensed on 82-88 MHz across the United States, for lack of record support.2

1 See Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Fifth Notice of Proposed Rulemaking, MB Docket No. 03-185, FCC 22-40, paras. 50-56 (2022) (Further Notice). Appendix A of this R&O contains a list of comments filed in response to the (continued....)

## II. BACKGROUND

2. *2014 LPTV DTV Third NPRM and 2019 Refresh PN.* Because the FM radio spectrum band is adjacent to the TV spectrum band, FM radio listeners are able to receive the audio portion of analog channel 6 stations at 87.75 MHz.<sup>3</sup> Due to their ability to reach radio audiences, in the 1980s, some channel 6 LPTV stations began to use a portion of television spectrum to provide *de facto* radio programming.<sup>4</sup> In the *LPTV DTV Third NPRM*,<sup>5</sup> we sought comment on whether analog FM6 operations are allowable by digital LPTV stations.<sup>6</sup> Specifically, we sought comment on whether a digital LPTV station providing an analog FM radio-type service as an ancillary or supplementary service is consistent with the Communications Act of 1934, as amended (Act) and the Commission's rules (rules).<sup>7</sup> We also sought comment on whether a digital LPTV station would be able to operate an analog transmitter without interfering or derogating its digital operation.<sup>8</sup> In addition, we sought information on the potential for FM6 operations to cause interference to primary licensees such as noncommercial educational (NCE) FM radio licensees, and whether to adopt rules to prevent such interference.<sup>9</sup> The record was split with a coalition of FM6 LPTV stations supporting the Commission's proposal to allow

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*Further Notice* and the shorthand abbreviations for each that appear in this *R&O*. A list of previous commenters in this proceeding was contained in Appendix A to the *Further Notice*. Previous comments are distinguished by the date they were filed.

<sup>2</sup> We also decline to address at this time a proposal to eliminate the television channel 6 (TV6) distance separation (interference protection) rules for radio services operating on reserved band FM channels 201-220, or to alternatively revise and update them for a post-digital transition world. *See infra* Section III. E. – Elimination of Certain TV6 Interference Protections.

<sup>3</sup> 87.75 MHz is adjacent to noncommercial educational (NCE) FM channel 201 (88.1 MHz). Prior to the LPTV digital transition, some FM6 LPTV stations also operated on 87.7 MHz.

<sup>4</sup> *See Further Notice* at paras. 3-13 for a detailed account of the history of FM6 operations. *See* comments filed by Venture Technology, LLC at 4 (Jan. 14, 2015) (Venture 2015 Comments). Prior to the LPTV digital transition, we estimate that there were close to 30 LPTV stations providing FM6 service. *See Further Notice*, para. 19 *citing* comments filed by Preserve Community Programming Coalition (PCPC) at 10 and Exhibit A (Jul. 3, 2019) (listing 28 stations providing FM6 services as of June 2019).

<sup>5</sup> *See Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, Third Notice of Proposed Rulemaking, MB Docket No. 03-185, 29 FCC Rcd 12536 (2014) (*LPTV DTV Third NPRM*).

<sup>6</sup> *See LPTV DTV Third NPRM*, 29 FCC Rcd at 12554, para. 47. *See* 47 CFR § 74.790(m) that replaced 47 CFR § 74.731(m) (mandating that LPTV stations terminate all analog operations not later than 11:59pm local time on July 13, 2021).

<sup>7</sup> *Id.* at 12554, para. 49. We also asked whether allowing this service would conflict with section 336(b)(1) of the Act, which states the TV frequency is “for the provision of advanced television services,” or conflict with the rule requiring that a digital LPTV station transmit an over-the-air *video* program signal at no direct charge to viewers. *Id.* at 12554-55, para. 49, *citing* 47 CFR § 74.790(g)(3) and 47 C.F.R. § 336(b)(1).

<sup>8</sup> *Id.* at 12555, para. 50, *citing* 47 U.S.C. § 336(b)(2). Section 336(b)(2) of the Act provides that the Commission shall “limit the broadcasting of ancillary or supplementary services on designated frequencies as to avoid derogation of any advanced television services, including high definition television broadcasts, that the Commission may require using such frequencies....” 47 U.S.C. § 336(b)(2).

<sup>9</sup> *LPTV DTV Third NPRM*, 29 FCC Rcd at 12555, para. 51. The Commission also asked whether the Commission's Part 73 FM radio rules should apply to FM6 operations, and whether FM6 operations should be subject to the five percent annual fee applicable to gross revenues from ancillary and supplementary services which are feeable. *Id.* at 12555-56, paras. 52-53, *citing* 47 U.S.C. §§ 336(b)(3), 336(e), and 47 CFR § 73.624(g).

FM6 operations to continue as ancillary or supplementary services<sup>10</sup> and FM radio broadcasters, including National Public Radio (NPR) and other noncommercial educational FM broadcasters, and full power television stations licensed on channel 6 opposing the proposal.<sup>11</sup>

3. In December 2019, after a lack of consensus in the 2014 record, the Media Bureau (Bureau) released a public notice seeking to refresh the record.<sup>12</sup> The Bureau sought specific comment on whether, and how, the Commission could legally limit the number of stations eligible to offer FM6 services and the basis for any such limitation.<sup>13</sup> The Bureau also sought comment on the possibility certain FM6 operations would cause impermissible interference to digital television stations (including co-channel interference) and to FM radio stations.<sup>14</sup> The Bureau requested parties submit more recent technical studies demonstrating the feasibility of transmitting analog audio signals within a digital television station's spectrum.<sup>15</sup> The record received in response to the *Refresh PN* largely mirrored the split record responding to the *LPTV DTV Third NPRM*.<sup>16</sup>

4. *2021 Digital Transition and FM6 STA Filings*. The LPTV digital transition was completed on July 13, 2021.<sup>17</sup> All remaining analog LPTV stations were required to terminate their

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<sup>10</sup> See, e.g., Electronic Media Foundation (EMF) Comments at 2 (Jan. 9, 2015); George Flinn Comments at 4 (Jan. 9, 2015); Venture Comments at 3-4 (Jan. 9, 2015); Signal Above LLC (Signal) Comments at 5-6 (Jan. 12, 2015); Metro TV, Inc. (Metro) Comments at 1 (Jan. 12, 2015); Murray Hill Broadcasting, LLC Comments at 1-3 (Jan. 9, 2015); One Ministries, Inc. (OMI) Comments at 1 (Jan. 12, 2015); Island Broadcasting, LLC (Island) Comments at 6 (Jan. 9, 2015); Joint FM6 Commenters Comments at 1 (Jan. 9, 2015); LPTV Spectrum Rights Coalition (LSRC) Comments at 12 (Jan. 14, 2015); Venture Reply Comments at 2-3 (Feb. 2, 2015); Signal Reply Comments at 3-4 (Feb. 2, 2015); OMI Reply Comments at 2-3 (Jan. 27, 2015); Joint FM6 Commenters Reply Comments at 4-6 (Feb. 2, 2015); and LSRC Reply Comments at 6 (Feb. 4, 2015).

<sup>11</sup> See, e.g., NPR Comments at 3-9 (Jan. 9, 2015); ABC, Inc. Reply Comments at 1-3 (Feb. 2, 2015); NPR Reply Comments at 3-8 (Feb. 2, 2015); and REC Networks (REC) Reply Comments at 1-8 (Feb. 2, 2015).

<sup>12</sup> See *Media Bureau Seeks to Update the Record on the Operation of Analog Radio Services by Digital LPTV Stations as Ancillary or Supplementary Services*, Public Notice, 34 FCC Rcd 11162 (MB 2019) (*Refresh PN*). The Bureau noted that a group of licensees of FM6 LPTV stations had submitted *ex parte* filings since the Commission's 2015 decision deferring action on the question of whether to permit FM6 operations as ancillary or supplementary services. *Id.* at 11163, n.2, citing Letter from Channel 6 Commenters (June 10, 2019) (Channel 6 Commenters 2019 *Ex Parte*); Letter from PCPC (Jul. 3, 2019) (PCPC 2019 *Ex Parte*); and Letter from Cal State (Aug. 1, 2019) (Cal State 2019 *Ex Parte*).

<sup>13</sup> Specifically, the Commission asked whether only those "currently operating" analog channel 6 LPTV stations should be eligible, and whether "currently operating" should be determined as of the release date of the *Refresh PN*. *Id.* at 11165, para. 5.

<sup>14</sup> *Id.* at 11164, para. 4, citing Channel 6 Commenters *Ex Parte* at 15; PCPC Informal Comments at 9; and Cal State *Ex Parte* at 2.

<sup>15</sup> *Id.* at 11164, para. 4.

<sup>16</sup> See e.g., LSRC Comments at 2-3, 5 (Jan. 23, 2020) (FM6 should not be charged 5% fee; should not be limited to existing operators; and will not cause interference); NPR Comments at 2-11, 13-18 (Jan. 23, 2020) (FM6 LPTV should not be allowed at all; creates interfere issues with other licensed users; is an inefficient use of spectrum; does not qualify as ancillary or supplementary service); cf. LSRC Comments, at 12 (Jan. 14, 2015) (FM6 LPTV should be permitted as ancillary and supplemental service; no interference issues have arisen; service should not be subject to 5% fee as it is not a "feasible" service); and NPR Reply Comments at 3-9 (Jan. 9, 2015) (permitting FM6 LPTV is not a permissible ancillary or supplementary service; would be an inefficient use of spectrum; would likely cause interference).

<sup>17</sup> See 47 CFR § 74.790(m) previously § 74.731(m).

analog operations and begin operating in digital on that day.<sup>18</sup> In March 2021, in an effort to preserve its FM6 operations following the digital transition deadline, a channel 6 LPTV station filed an application seeking authorization to convert its facility to ATSC 3.0 digital and to operate an ATSC 3.0 transmitter and a separate analog FM radio transmitter on 87.7 MHz.<sup>19</sup> On June 10, 2021, the Bureau granted a digital engineering request for special temporary authorization (FM6 STA)<sup>20</sup> to conduct such operations for a period of six months, subject to numerous conditions.<sup>21</sup> Specifically, the station was required to: Convert to ATSC 3.0 digital operations; provide at least one video stream on the ATSC 3.0 portion on a full time (24 x7) basis; limit FM6 operations to 87.75 MHz; operate on a non-interference basis; provide audio and video coverage to similar populations; and provide status reports at certain intervals regarding interference and population reach.<sup>22</sup> The station was also restricted from modifying, assigning or transferring the license of the facility.<sup>23</sup> These conditions were established to prevent interference, evaluate the operations of FM6 LPTV stations utilizing an FM transmitter and ATSC 3.0 transmitter at the same time, and maintain the status quo while the Commission continued to evaluate how to treat FM6 operations. The conditions were also intended to ensure that the FM6 LPTV station did not prioritize its FM operations over its television operations, which was an issue during analog operations. Other FM6 LPTV stations subsequently requested an FM6 STA. In total, the Bureau has granted FM6 STAs to 13 FM6 LPTV stations that had previously been providing FM6 service while they were operating in analog.<sup>24</sup> All the FM6 STAs contain the same conditions and have been extended multiple times. The status reports provided with the FM6 STAs and their extensions have shown no incidents of interference with their own ATSC 3.0 television operations and other licensees, including FM radio licensees.

5. *2022 Further Notice.* In our *Further Notice*, we sought to resolve the longstanding question of FM6 operations by seeking comment on whether allowing continued analog radio operations on TV channel 6 by existing FM6 LPTV stations serves the public interest.<sup>25</sup> Specifically, we sought comment on whether FM6 operations should be authorized to continue in any capacity,<sup>26</sup> the extent to which in the post-LPTV digital transition world consumers rely on FM6 programming, and whether such consumer reliance on programming should enter into the public interest analysis of FM6 services when programming is variable.<sup>27</sup> We asked commenters to weigh the current benefits of FM6 radio programming against the lost opportunities from an expanded adjacent NCE FM service or digital LPTV service on channel 6.<sup>28</sup> We also asked whether allowing continued analog FM6 operations is an efficient

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<sup>18</sup> *Id.* We note that a small number of LPTV and TV translator stations have not yet completed construction of their digital facilities and have been granted additional time to do so. Since analog television operations are no longer permitted, these LPTV and TV translator stations must remain silent until such time as they complete construction.

<sup>19</sup> See LMS File No. 0000138107; *Further Notice*, 34 FCC Rcd at 11166, para. 14.

<sup>20</sup> See LMS File No. 0000147729.

<sup>21</sup> See Letter from Barbara A. Kreisman, Chief, Video Division, to Licensee of KBKF-LD, San Jose, California, Venture Technologies Group, LLC (June 10, 2021) available at LMS File No. 0000147729.

<sup>22</sup> *Id.* at 2.

<sup>23</sup> *Id.* Following issuance of the *Further Notice*, an additional condition was added to the FM6 STA stating that the Bureau's action was not intended to prejudice the outcome of the instant proceeding and that all licensees must come into compliance with any rules adopted by the Commission as part of the instant proceeding. See e.g., Letter from Barbara A. Kreisman, Chief, Video Division, to Licensee of KBKF-LD, Venture Technologies Group, LLC (Jan. 20, 2023) available at LMS File No. 0000205892.

<sup>24</sup> A list of the 13 stations is provided at *infra* note 105. See also *Further Notice* at para. 16, n.43.

<sup>25</sup> *Id.* at para. 1.

<sup>26</sup> *Id.* at paras. 18-21.

<sup>27</sup> *Id.* at para. 19.

<sup>28</sup> *Id.* at para. 20.

use of Commission spectrum and comports with our recent efforts to adopt more efficient and innovative use of digital television spectrum,<sup>29</sup> or instead whether programming currently provided by FM6 operations could be provided through other means of delivery and would be more spectrally efficient.<sup>30</sup>

6. In addition, we sought comment on whether existing FM6 operations comply with the ancillary or supplementary provisions of the Act and our rules,<sup>31</sup> whether the operation of analog FM radio services in conjunction with a digital television service would cause impermissible interference to other radio and television licensees,<sup>32</sup> and whether the fact that FM6 stations are operating in ATSC 3.0 digital mode changes the potential for their analog FM6 operations to interfere with or derogate the LPTV station's television service.<sup>33</sup> To the extent we permitted FM6 operations to continue, we sought comment on how best to authorize FM6 operations, including whether the conditions attached to the FM6 STAs should remain<sup>34</sup> and whether to limit future FM6 operations to only those LPTV channel 6 stations with "active" FM6 STAs on the release date of the *Further Notice*.<sup>35</sup> We went on to ask whether, and under what circumstances, an LPTV station's ancillary or supplementary FM6 operations should be deemed "feasible" and subject to the five percent ancillary or supplementary fee.<sup>36</sup> We also asked whether FM6 operations are "analogous to other services subject to regulation by the Commission" within the meaning of section 336(b)(3) of the Act and our rules and, if so, which of the Part 73 rules should apply to FM6 operations.<sup>37</sup>

7. Finally, we asked for comment on a proposal to repurpose television channel 6 (TV channel 6) spectrum (82-88 MHz) for FM services in locations where the channels are not being used to provide "actual television programming."<sup>38</sup> We sought comment on the technical feasibility of this proposal, the potential for interference, the costs and benefits of an expanded FM band, and if permitted whether use should be limited to NCE FM stations.<sup>39</sup> We also sought comment on whether to eliminate TV channel 6 (TV6) interference protections for Low Power FM (LPFM) radio, NCE FM radio, Class D FM radio (10 watt), and FM translator stations operating on reserved band FM channels 201-220, or, to alternatively revise and update our interference protections to better reflect a post-digital television transition world.<sup>40</sup>

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at para. 21

<sup>31</sup> *Id.* at paras. 23-24.

<sup>32</sup> *Id.* at paras. 34-36.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at paras. 23-33.

<sup>35</sup> *Id.* at paras. 41-44. "Active" is defined as an initial engineering STA that is granted and unexpired or a request for extension of an engineering STA that is granted or pending at the time of the release date of the 2022 *Further Notice*. *Id.* at para. 41. The term "release date of the *Further Notice*" means the date the adopted *Further Notice* was released by the Commission, which was June 7, 2022.

<sup>36</sup> *Id.* at paras. 39-40.

<sup>37</sup> *Id.* at paras. 37-38.

<sup>38</sup> *Id.* at paras. 45-49.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at paras 50-56.

### III. DISCUSSION

#### A. Authorizing FM6 Operations as Ancillary or Supplementary Services

8. After a lengthy proceeding involving multiple rounds of comments, we conclude that both the Act and our rules allow existing FM6 operations to be provided on an ancillary or supplementary basis to a channel 6 LPTV station's digital television operation, and that it is in the public interest to preserve FM6 operations by existing FM6 LPTV stations.<sup>41</sup> The Act provides that ancillary or supplementary services must be "consistent with the public interest, convenience, and necessity";<sup>42</sup> must be "consistent with the technology or method designated by the Commission for the provision of advanced television services";<sup>43</sup> and must "avoid derogation of any advanced television services."<sup>44</sup> We conclude that existing FM6 services meet all of these requirements of the Act.

##### 1. Existing FM6 Operations Serve the Public Interest as Required by Section 336(a)(2)

9. We conclude that existing FM6 operations are consistent with the mandate of section 336(a)(2) of the Act that the Commission allow digital television stations "to offer such ancillary or supplementary services on designated frequencies as may be consistent with the public interest, convenience, and necessity."<sup>45</sup> Specifically, we note the length of time that certain FM6 LPTV stations have been operating and efforts they undertook to convert to digital operations to limit consumer impact. To preserve their programming (especially public safety and emergency information) that viewers have come to rely on, we find the public interest will be served by continuing existing FM6 operations. Further we find that the benefits of preserving *existing* FM6 LPTV stations outweigh concerns that FM6 operations are an inefficient use of spectrum or could cause interference to their own television service or other licensed users.

10. The record in this proceeding reflects widespread recognition of the long history of public interest benefits provided by existing FM6 LPTV stations' FM6 operations.<sup>46</sup> Since the 1980s, FM6 LPTV stations have maintained a close connection with the communities they serve through their

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<sup>41</sup> In addition to permitting the 13 FM6 LPTV stations with active FM6 STAs to continue FM6 operations as an ancillary and supplementary service, we also permit WVOA-LD, to commence FM6 operations based on its unique circumstances. See *infra* Section III.B – Limiting FM6 Operations to Existing Operators.

<sup>42</sup> 47 U.S.C. § 336(a)(2).

<sup>43</sup> 47 U.S.C. § 336(b)(1).

<sup>44</sup> 47 U.S.C. § 336(b)(2).

<sup>45</sup> 47 U.S.C. § 336(a)(2).

<sup>46</sup> See *Further Notice* at para. 18 ("FM6 supporters have trumpeted the merits of FM6 operations by maintaining that they provide diverse, niche, and local programming that is not otherwise available in the stations' communities."); see also Electronic Media Foundation Comments at 2 (Jan. 9, 2015) (EMF 2015 Comments); George Flinn Comments at 4 (Jan. 9, 2015); Venture Comments at 3-4 (Jan. 9, 2015) (Venture 2015 Comments); Signal Above LLC (Signal) Comments at 5-6 (Jan. 12, 2015) (Signal 2015 Comments); MetroTV, Inc. Comments at 1 (Jan. 12, 2015); Murray Hill Broadcasting, LLC (Murray Hill) Comments at 1-3 (Jan. 9, 2015); One Ministries, Inc. (OMI) Comments at 1 (Jan. 12, 2015); Island Broadcasting, LLC (Island) Comments at 6 (Jan. 9, 2015); Joint Commenters Comments at 1 (Jan. 9, 2015); and LSRC Comments at 12 (Jan. 14, 2015) (LSRC 2015 Comments); Venture Reply Comments at 2-3 (Feb. 2, 2015); Signal Reply Comments at 3-4 (Feb. 2, 2015); OMI Reply Comments at 2-3 (Jan. 27, 2015); Joint Commenters Reply Commenters at 4-6 (Feb. 2, 2015); and LSRC Reply Commenters at 6 (Feb. 4, 2015); Lovcom, Inc. Comments at 1 (Jan. 23, 2020); EMF Comments at 2-4 (Jan. 23, 2020); Seattle 6 Broadcasting Company, LLC (Seattle 6) Comments at 1 (Jan. 22, 2020); Prism Broadcasting Network, Inc. Comments at 3 (Jan. 22, 2020); Kids Television, LLC Comments at 3 (Jan. 22, 2020); Hombre Network Reply Comments at 1 (Feb. 4, 2020).

FM6 programming.<sup>47</sup> Listeners have tuned to existing FM6 LPTV stations for foreign language, religious and sports programming; programming intended to support historically underserved populations such as native Spanish speakers, immigrant populations; and programming designed for niche music audiences.<sup>48</sup> In addition, existing FM6 LPTV stations provide emergency and public safety information that their listeners have come to rely upon in times of disasters.<sup>49</sup> Although some commenters contend that certain FM6 LPTV stations are not serving the public interest because they are not providing any programming designed specifically for their local audiences but are merely airing music programming,<sup>50</sup> we do not make distinctions based on format.<sup>51</sup> Therefore, we find that the record weighs in favor of the public interest benefits provided by existing FM6 LPTV stations.<sup>52</sup>

11. Although FM6 LPTV stations were required to discontinue analog television operations and convert to digital in July 2021, there were 13 FM6 LPTV stations that were able to complete their

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<sup>47</sup> See NAB Comments at 5 (“loyal audiences have developed around some FM6 stations . . . and NAB believes permanent authorization of those established services is warranted and would serve the public interest”); PCPC Comments at 6 (the nature of the programming offered by existing FM6 LPTV stations provides a unique and substantial public interest benefit, largely due to the distinctive programming provided by existing FM6 LPTV stations, many of which serve “historically underserved populations, including native Spanish speakers, first- and second- generation immigrants, and older Americans”); NPR Comments at 5-6 (“the public interest would be served” by permanently authorizing existing FM6 LPTV stations with a significant history of FM6 service); REC Comments at 18 (“the provision of analog audio services on 87.7 in the 13 FM6 markets have become something that the public has depended on”).

<sup>48</sup> See PCPC Comments at 2-4 (KEFM-LD, Sacramento, California, broadcasts EthnoFM, a locally produced source of information for Sacramento’s Ukrainian, Lithuanian, Moldavian, Romanian, Georgian, Uzbek, Polish, Russian and Jewish ethnic immigrant communities); AVHN Comments at 2 (FM6 programming includes religious talk and music, public affairs, local affairs and news, education and sports); Flinn Comments at 1-2 (FM6 programming includes minority-focused and religious programming); Guadalupe Radio Comments at 1 (KZNO-LD, Big Bear Lake, California and KRPE-LD, San Diego, California broadcast Spanish-language programming for the Roman Catholic Church); PCPC Comments at 2-4 (KXDP-LD, Denver, Colorado broadcasts La Invasora, a locally produced, community oriented program format that includes Spanish-language news, traffic, and weather reports); PCPC Comments at 2-4 and Signal Comments at 1-2 (WDCN-LD, Fairfax, Virginia broadcasts La Nueva, a Spanish language music format with news and talk with a particular focus on the Washington, D.C. area’s large Central American community); SOL Comments at 1-2 (WNYZ-LD, New York, New York serves the interests and needs of the Korean community in New York city); PCPC Reply Comments at 3-4.

<sup>49</sup> See PCPC Comments 21-22 (noting the FM6 LPTV stations could provide a public safety service by airing national security announcements); KTL Comments at 2 (FM6’s presence on the FM dial is essential to connecting community, facilitating civic participation, and maintaining public safety); LSRC 2015 Comments at 6 (FM6 audiences enjoy and benefit from local news, community affairs programming, and emergency messages in various languages); PCPC Reply Comments at 4-5 (Feb. 6, 2020) (FM6 stations provide an invaluable resource for emergency information during extreme weather events); David Ponomar Comments at 1 (Jan. 14, 2020) (FM6 station notifies its audience of fire, flood and other emergencies and explains what to expect in case of power blackouts).

<sup>50</sup> See CFI Comments at 3-4 (admonishing certain FM6 LPTV stations for playing Spanish-language and Christian music).

<sup>51</sup> See *Changes in the Entertainment Formats of Broadcast Stations*, Memorandum Opinion and Order, 60 F.C.C.2d 858, 863, para. 18 (1976) (“the marketplace is the best way to allocate entertainment formats in radio. . .”), *recon. denied*, Memorandum Opinion and Order, 66 FCC 2d 78 (1977), *rev’d sub nom.*, *WNCN Listeners Guild v. FCC*, 610 F.2d 838 (D.C. Cir. 1979), *rev’d*, 450 U.S. 582 (1981).

<sup>52</sup> Even NPR, which historically has been opposed to FM6 operations, now recognizes that “the public interest would be served” by permanently authorizing existing FM6 LPTV stations with a significant history of FM6 service. See NPR Comments at 5-6. And REC, another long-standing opponent of FM6 operations, acknowledges that “the provision of analog audio services on 87.7 in the 13 FM6 markets have become something that the public has depended on.” REC Comments at 18.

digital transition and resume their FM6 operations with an FM6 STA with limited, if any, service interruptions.<sup>53</sup> We find that preserving the long-time audio programming offered by these remaining FM6 LPTV stations aligns with one of the Commission’s core principles guiding the digital transition—minimizing service disruptions.<sup>54</sup> FM6 LPTV stations provide free, over-the-air synchronized video and audio programming using a standard-compliant ATSC 3.0 signal and supplement that programming with additional free, over-the-air analog audio broadcast services. As discussed above, the availability of these additional audio services has provided programmers with a platform on which to invest in programming directed to unserved or underserved audiences that may not be available on any other stations in their markets – all while continuing to provide free over-the-air video programming pursuant to their television licenses. To remove this service that radio listeners have relied on for many years would contravene the Commission’s goal of preserving service.

12. The public interest benefits of preserving existing FM6 operations also outweigh concerns about inefficient use of spectrum.<sup>55</sup> As we noted in the *Further Notice* and several commenters point out, some analog FM6 LPTV stations had a history of minimal video service.<sup>56</sup> With analog television operations, an FM6 LPTV station could not transmit a separate audio stream for its video programming and for radio reception.<sup>57</sup> The rules we adopt today address this issue.<sup>58</sup> As discussed further below, FM6 LPTV stations will be required to transmit a dual digital television and analog radio signal, thereby providing both new digital television services while maintaining existing audio services. The rules we adopt ensure that FM6 LPTV stations are first and foremost LPTV stations and that their video programming stream is prioritized over any audio stream. Further, enhanced compression technologies encompassed in the ATSC 3.0 standard provide broadcasters even greater bandwidth capacity on their channel for television services than under the ATSC 1.0 standard.<sup>59</sup> Therefore, we believe the rules we adopt appropriately address previous concerns that FM6 LPTV stations are using their spectrum inefficiently.<sup>60</sup> As the Commission has previously recognized, offering additional services

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<sup>53</sup> We note that more than half of the 13 existing FM6 LPTV stations were able to convert to digital and resume their FM6 operations within 2 months of terminating their analog operations in July 2021. The remaining stations resumed FM6 operations between 4 and 8 months after the July 2021 transition deadline mainly due to supply chain delays in obtaining the necessary FM6 equipment that were outside of their control. See, e.g., Application for Extension of Time of WNYZ-LD, LMS File No. 0000142452 (granted June 14, 2021).

<sup>54</sup> See *Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 5946, 5956, para. 22 (2001) (“While we wish to assure broadcasters a measure of flexibility in constructing their DTV facilities, we continue to want to assure that viewers do not lose service and we take seriously our mandate to speed the transition and to ensure that the spectrum is used efficiently.”); see also *Incentive Auction Task Force and Media Bureau Set Forth Tools Available to LPTV/Translator Stations Displaced Prior to the Special Displacement Window*, Public Notice, 32 FCC Rcd 4943 (IATF and MB 2017) (announcing a “toolkit” that LPTV stations displaced by the Incentive Auction could avail themselves of in order to remain on the air).

<sup>55</sup> *Further Notice* at para. 20; see also Common Frequency, Inc. (CFI) Comments at 4 (Jan. 23, 2020).

<sup>56</sup> *Id.* See also Reed Comments at 2 (FM6 LPTV stations - when previously analog stations – operated “effectively as aural-only FM radio stations; the video broadcast ha(d) little - or zero - connection to the aural broadcast”); REC Comments at 12 (“[w]hile the FM6 stations have had a track record for offering audio services, there is no true established track record for offering video services . . .”).

<sup>57</sup> PCPC Comments at 9.

<sup>58</sup> See *infra* Section III.C.1 – Codifying Certain FM6 STA Conditions.

<sup>59</sup> See *Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, GN Docket No. 16-142, Report and Order, 32 FCC Rcd 9930 (2017).

<sup>60</sup> We are not persuaded by commenters that suggest FM6 LPTV stations will abandon their current programming thereby undoing the public interest basis for allowing their continued FM6 operations. See Cal State Reply Comments at 4 (the ability of FM6 LPTV stations to abandon niche programming in favor of more profitable

(continued....)



on an existing television channel “contributes to efficient spectrum use and can expand and enhance use of existing spectrum.”<sup>61</sup>

13. Further, we conclude that the public interest benefits of preserving existing FM6 operations offset concerns about existing FM6 operations causing interference to an FM6 LPTV station’s own digital television service or to FM radio licensees. To date, existing FM6 LPTV stations that have been operating under the technical limitations in the FM6 STAs and using ATSC 3.0 for their digital television signal have an established track record of not causing interference to adjacent channel FM stations or their own television signal. Existing FM6 LPTV stations have been operating for almost two years via engineering STAs without any legitimate interference complaints from either adjacent channel FM radio stations or their own TV viewers.<sup>62</sup> Moreover, we note that no commenter has presented credible evidence in the record that any of the existing FM6 LPTV stations have caused interference.

14. To the extent that there have been interference-free FM6 operations, we observe that such record is limited to the anecdotal history of the 13 existing FM6 LPTV stations. Based on co-existence concerns raised throughout this proceeding, the Commission has sought to develop a comprehensive record on the potential for FM6 operations to cause interference. One area of potential interference is to the “host”<sup>63</sup> channel 6 LPTV station’s own digital operations. We have asked if an FM6 LPTV station would be able to operate an analog transmitter without interfering or derogating its co-channel digital operation.<sup>64</sup> Some commenters argued that an FM6 LPTV station operating in digital could experience so-called “host interference” – a phenomena where a new signal interferes with a station’s existing signal, in this case an LPTV station operating both digital television and analog FM radio signals.<sup>65</sup> Similarly, the Commission sought comment on the potential of interference to adjacent channel FM radio stations on 88.1 and 88.3 MHz.<sup>66</sup> Some commenters raised concerns that higher power FM6 operations on 87.75 MHz could interfere with lower power adjacent channel FM radio stations operating on 88.1 MHz and 88.3 MHz.<sup>67</sup> Despite repeated requests,<sup>68</sup> commenters have failed to produce detailed interference studies

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formats demonstrates that there is no necessity for the Commission to permanently authorize FM6 operations); REC Comments at 8 (there is no guarantee that the commercial niche programming on FM6 LPTV stations will remain on these channels); CFI Comments at 6 (there is no expected permanence to FM6 LPTV stations existence or expectation of the public for that programming service to be continual). To the contrary, the record throughout this proceeding indicates that “FM6 LPTV stations are highly incentivized, economically and otherwise, to continue offering their niche and localized content catering to very specific underserved communities.” PCPC Comments at 8-9.

<sup>61</sup> *Advanced Television Systems & Their Impact Upon the Existing Television Broadcast. Service, Report and Order*, 12 FCC Rcd. 12809, para. 32 (1997).

<sup>62</sup> See Barreto Comments at 1-2; CBC Comments at 4.

<sup>63</sup> A “host” station is a channel 6 LPTV station that provides a digital television service, but also provides an analog FM radio operation over the same channel.

<sup>64</sup> See *LPTV DTV Third NPRM*, 29 FCC Rcd at 12555, para. 50 (“we also seek comment on the potential for a digital LPTV station’s analog FM radio-type service to interfere with or disrupt the LPTV station’s digital TV service”); *Refresh PN*, 34 FCC Rcd at 11164.

<sup>65</sup> NPR Comments at 4 (Jan. 14, 2015) (NPR 2015 Comments) (“laboratory tests conducted by Linley Gumm and Charles Rhodes . . . demonstrate a high probability that an LPTV’s analog FM radio service will interfere with reception of the LPTV’s DTV service”); Bogner Comments at 1 (additional studies of FM6 operations in ATSC 3.0 environment are necessary).

<sup>66</sup> *LPTV DTV Third NPRM*, 29 FCC Rcd at 12555, para. 51 (“we seek comment on the potential of interference to other primary licensees”); *Refresh PN*, 34 FCC Rcd at 11164.

<sup>67</sup> See Cal State Comments at 6 (FM6 commenters ignore the potential for interference from FM6 LPTV stations to FM stations); Cal State 2020 *Ex Parte* at 2 (Commission is ignoring the potential for interference from FM6 LPTV stations operating in ATSC 1.0 to FM stations); Reed Comments at 3-4 (STA reporting requirements for FM6 LPTV

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that show that FM6 operations will not cause interference to either host digital television operations or adjacent channel FM radio stations in all circumstances. Therefore, because we have only anecdotal evidence involving specific unmodified stations, we are unable to conclusively state that no interference will occur from prospective new FM6 LPTV stations that do not have a track record of interference-free operations.<sup>69</sup>

15. For prospective new FM6 operations, such interference concerns outweigh any benefits from adopting rules allowing new FM6 operations to commence, thus leading us to conclude that adopting rules to allow all channel 6 LPTV stations to offer new FM6 services would not serve the public interest as required by section 336(a)(2) of the Act.<sup>70</sup> Accordingly, we believe it prudent to proceed cautiously and establish rules in this Order only for existing FM6 stations, which have an established track record of non-interference and a history of providing FM6 service to the public. Commenters support limiting FM6 operations to the existing LPTV stations, provided we take steps to ensure that the existing stations (and WVOA-LD)<sup>71</sup> will continue to provide FM6 service without causing interference.<sup>72</sup> To that end, we adopt specific FM6 operational rules, such as limiting modifications and explicitly requiring that FM6 operations be conducted only on a non-interference basis.<sup>73</sup>

16. We also conclude that the record in this proceeding demonstrates that there are no reasonable alternatives for existing FM6 operations that provide the same level of accessibility to existing audiences.<sup>74</sup> We are persuaded that the additional expense and/or lack of access make other options impractical as reasonable substitutes for established audiences and services. As commenters point out, to receive a digital audio stream on an LPTV station's multicast channel, the listener would need to purchase a digital television receive antenna in order to access the audio stream.<sup>75</sup> Further, listeners would lose the portability of an existing FM6 LPTV station's audio signal as it would only be available on a television set, which is generally a fixed device. Instead of having to take these additional, potentially costly steps to continue receiving this established audio programming, permitting existing FM6 operations to continue

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stations operating pursuant to STAs was not sufficient to determine the potential for interference to FM stations); NPR 2015 Comments at 4 (studies conducted in 2014 underestimated the interference between FM6 stations and FM radio); NPR Comments at 13 (Jan. 23, 2020) (FM6 LPTV stations present significant technical and interference issues); REC Networks at 6-7 (Jan. 13, 2015) (questioning whether the Commission can prevent interference from FM6 LPTV stations to FM radio stations).

<sup>68</sup> *Refresh PN*, 34 FCC Red at 11164 (“we request the submission of any more recent technical studies demonstrating the feasibility of transmitting analog audio signals with a digital television station’s spectrum”); *Further Notice* at para. 36 (“we encourage commenters to study the question of FM6 interference and to provide the results of these studies in their comments”).

<sup>69</sup> See Bogner Comments at 1 (additional studies of FM6 operations in ATSC 3.0 environment are necessary); NAB Reply Comments at 6 (unable to make an informed recommendation concerning the potential for interference from FM6 because the technical record is not yet sufficient).

<sup>70</sup> Even though some TV6 LPTV stations may have previously provided FM6 service while operating in analog before the digital transition (i.e., legacy analog FM6 stations), we again do not have sufficient technical analysis to say for certain that there would be no interference to their own television operations or adjacent FM radio stations were we to allow them to recommence FM6 operations.

<sup>71</sup> See *infra* Section III. B. – Limiting FM6 Operations to Existing Operators.

<sup>72</sup> See NPR Reply Comments at 3.

<sup>73</sup> See *infra* Section III. C. 1. – Codifying Certain FM6 STA Conditions.

<sup>74</sup> See *Further Notice* at para. 21 (asking whether other options – including a digital audio-only stream on a LPTV multicast channel, a lease of digital subchannels on a local FM or LPFM station, the Internet, or an FM or LPFM license – would be suitable alternatives to FM6 service).

<sup>75</sup> See PCPC Comments at 7-8; REC Comments at 15-17; VCY Comments at 5.

as they are currently offered will allow listeners to utilize existing FM radio receivers, including in cars and using other portable radio devices, and continue to obtain FM6 audio programming in the manner that radio listeners are accustomed to receiving such audio content.

17. Similarly, we find that relocating FM6 programming to digital subchannels on local FM or LPFM stations could also be a more costly option because it too would potentially involve the purchase of new equipment for some consumers instead of relying on existing receivers.<sup>76</sup> Additionally, FM6 LPTV stations would have to negotiate programming agreements with FM and LPFM radio stations and pay to air their programming on other stations instead of simply airing their programming on their own station.<sup>77</sup> Further, given the unique types of programming often provided by FM6 LPTV stations, it may be difficult to find an entity interested in carrying their streams that is different from the entity's programming.<sup>78</sup> As for making the programming available through the Internet, this would create significant barriers for listeners who do not have Internet access, may only have fixed Internet access (thus losing portability of the existing FM6 audio signal), or may not have mobile Internet access with sufficient data plans or a device capable of streaming audio.

18. Finally, we find that obtaining a separate FM or LPFM radio license provides an unlikely alternative.<sup>79</sup> In particular, because LPFM stations must be operated on a noncommercial educational basis,<sup>80</sup> they are not an option for FM6 LPTV stations that historically have operated as commercial stations.<sup>81</sup> Further, in the case of either LPFM or full power FM, acquiring a station could be an expensive and time consuming proposition for many FM6 LPTV stations, especially for those in larger markets. Therefore, for all of the foregoing reasons, we conclude that the public interest is best served by allowing existing FM6 operations to continue as an ancillary or supplementary service.

## 2. Existing FM6 Operations Satisfy Section 336(b)(1)

19. As required by Section 336(b)(1), we conclude that existing FM6 operations are “consistent with” the “technology or method designated by the Commission for the provision of advanced television services . . . .”<sup>82</sup> As an initial matter, we interpret the phrase “consistent with” to allow for a degree of flexibility by requiring ancillary or supplementary services to be compatible with the technology or method for providing advanced television services.<sup>83</sup> A more narrow reading of the phrase

<sup>76</sup> See PCPC Comments at 7-8.

<sup>77</sup> See *id.*

<sup>78</sup> See *id.* at 8 (“because these limitations would fall disproportionately on low-income and non-English speaking listeners and threaten the Commission’s goal of providing access to more diverse programming, the public interest benefits of preserving FM6 programming are particularly pronounced”); see also REC Comments at 15.

<sup>79</sup> REC Comments at 16 (obtaining a license for an FM or LPFM station “would be an uphill battle as there is no true means to obtain a commercial FM license in a major market due to crowded spectrum and the financial ability to prevail in competitive bidding if such commercial operations are made available”).

<sup>80</sup> See 47 CFR § 73.853.

<sup>81</sup> We believe most if not all FM6 LPTV stations are operating on a commercial basis as evidenced by the fact that most FM6 LPTV stations submitted Annual DTV Ancillary/Supplementary Services Reports (LMS Form 2100 – Schedule 317) indicating that they have had revenues from their FM6 operations. See, e.g., LMS File Nos. 0000173200 (KBKF-LD); 0000204627 (WRME-LD); 0000173199 (KZNO-LD); and 0000204582 (WMTO-LD).

<sup>82</sup> 47 U.S.C. § 336(b)(1).

<sup>83</sup> See *Intelsat LLC*, Memorandum Opinion Order and Authorization, 16 FCC Rcd 12280 (2001) (“The courts have not construed ‘consistent’ to mean ‘alike’ or ‘the same as.’ Rather, when preceding the preposition ‘with,’ they have recognized ‘consistent’ as meaning ‘agreeing’ or according in substance or in a form that is congruous or compatible. . . . [W]e construe the ‘consistent with’ standard as inferring a degree of flexibility by requiring ‘congruity or compatibility.’”) citing *Environmental Defense Fund, Inc. v. Environmental Protection Agency*, 82 F.3d 451, 457 (D.C. Cir. 1996), *amended on other grounds*, 92 F.3d 1208 (D.C. Cir. 1996), citing Oxford English

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“consistent with” that affords less flexibility would unreasonably constrain the types of ancillary or supplementary services stations can provide, thereby frustrating Congressional intent to “[p]ermit[] broadcasters more flexibility in using their spectrum assignments [] consistent with the public policy goal of providing additional services to the public.”<sup>84</sup> The Commission has most recently interpreted this provision of the Act broadly, observing that “Congress recognized that the transition from analog to digital broadcast technology would enable DTV licensees to provide new and innovative services . . . over their additional spectrum capacity and wanted to provide licensees with the flexibility necessary to utilize fully that new potential.”<sup>85</sup> In addition, we interpret the phrase “technology or method designated by the Commission for the provision of advanced television services” to mean the transmission standards required for digital television stations that have been adopted by the Commission and incorporated in the rules.<sup>86</sup> While the Commission’s rules allow LPTV stations to comply with either the ATSC 1.0 or 3.0 standard in providing advanced television services, we analyze here compatibility of analog FM6 with only ATSC 3.0 consistent with the rules we adopt below.

20. We find that existing analog FM6 radio operations are compatible with the ATSC 3.0 standard, and therefore satisfy Section 336(b)(1). The ATSC 3.0 standard allows for configurability, permitting FM6 LPTV stations to make their television signal narrower and/or have the signals settings modified to have increased error correction intended to prevent co-channel interference between the stations’ digital television and analog radio signals.<sup>87</sup> Existing FM6 LPTV stations operating in ATSC 3.0 have been able to continue to deliver free over-the-air ATSC 3.0 television signals configured to occupy approximately 5.5 MHz of their digital channel capacity while at the same time providing analog FM6 on a frequency within their 6 MHz channel.<sup>88</sup> The Act and our rules do not require a licensee to use its *entire* 6 MHz channel solely for the provision of advanced television services.<sup>89</sup> For these reasons, including the configurability afforded by ATSC 3.0, we find that existing analog FM6 radio operations are compatible with the ATSC 3.0 standard.

21. We disagree with commenters suggesting that the definition of “advanced television services” should apply to all services that are incorporated into a digital television station’s 6 MHz digital bitstream.<sup>90</sup> Such a finding would be in complete contradiction with the flexibility afforded to

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Dictionary 773 (2d 1989), *N.L. Indes, Inc. v. Kaplan*, 792 F.2d 896, 898-899 (9th Cir. 1996), and *Wickland Oil Terminals v. Asarco, Inc.*, 792 F.2d 887, 891-892 (9th Cir. 1986).

<sup>84</sup> See House Report at 116.

<sup>85</sup> See *Promoting Broadcast Internet Innovation Through ATSC 3.0*, Declaratory Ruling and Notice of Proposed Rulemaking, 35 FCC Rcd 5916, 5919, para. 6 (2020); PCPC Comments at 10-11; SOL Comments at 5.

<sup>86</sup> 47 CFR §§ 73.682, 74.782. Section 336(i)(1) defines “advanced television services” as “television services provided using digital or other advanced technology as further defined in the opinion, report, and order of the Commission entitled ‘Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service’, MM Docket 87-268, adopted September 17, 1992, and successor proceedings.” 47 U.S.C. § 336(i)(1).

<sup>87</sup> See *infra* para. 37.

<sup>88</sup> Television channel 6 encompasses the 82-88 MHz band.

<sup>89</sup> In fact, in adopting the ancillary or supplementary provisions of our rules, the Commission provided numerous examples of non-television services as being permissible ancillary or supplementary services including: “computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, audio signals, subscription video” whether offered on a “broadcast, point-to-point, or point-to-multipoint basis.” See 47 CFR §73.624(c); see also *In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, Fifth Report and Order, MM Docket No. 87-268, 12 FCC Rcd 12809 (1997) adopting section 73.624(c) of the rules.

<sup>90</sup> See, e.g., REC Comments at 22-23 (maintaining that the additional transmission of a so-called “sidecar” analog signal is not a part of the “advanced television system,” and thus is inconsistent with Section 336 of the Act).

broadcasters under the Act, and implemented by our rules, to offer ancillary or supplementary services. A digital LPTV station may offer ancillary or supplementary services on its assigned frequencies as long as such services are “consistent with the technology or method designated by the Commission for the provision of advanced television services”<sup>91</sup> and, as discussed in greater detail below, “avoid derogation of any advanced television services . . . that the Commission may require using such frequencies.”<sup>92</sup> Based on these facts, we conclude that FM6 LPTV stations operations are consistent with the technology or method designated by the Commission for the provision of advanced television systems, as required by section 336(b)(1) of the Act and defined by our rules.

22. We reject arguments that FM6 operations are precluded by section 336(b)(1) of the Act because FM6 stations are providing separate audio and visual offerings or that FM6 operations are not “consistent with technology or method designated by the Commission for the provision of advanced television services” because neither the ATSC 3.0 standard nor our rules specifically refer to analog audio signals.<sup>93</sup> As an initial matter, neither Section 336 nor our rules mandate that particular ancillary or supplementary services must be specifically integrated into or mentioned within the pertinent digital television transmission standard (in this case, ATSC 3.0) or in our rules. Rather, the Commission’s rules require only that a digital television station transmit at least one over-the-air video program signal at no charge to viewers as a precondition to offering ancillary and supplementary services.<sup>94</sup> Our rules also permit digital LPTV broadcasters to transmit separate aural and visual program material as long as the visual signal can be viewed on a receiver based on the ATSC standard.<sup>95</sup> Here, FM6 stations comply with this rule by providing a television signal while the analog audio stream is transmitted through a separate analog audio carrier.

### 3. Existing FM6 Operations Satisfy Section 336(b)(2)

23. As required by Section 336(b)(2), we next find that existing FM6 operations do not “derogate any advanced television services.”<sup>96</sup> One commenter claims that, by providing an FM6 operation that uses a portion of an LPTV station’s bandwidth, it is “denying advanced television services to the entire 6 MHz band as required by statute” and that this “derogate[s] the NextGen ATSC 3.0 experience and therefore does not meet the statutory test.”<sup>97</sup> We disagree. The derogation prong of section 336(b)(2) prohibits derogation of “any advanced television services . . . that the Commission may require using such frequencies.”<sup>98</sup> The derogation standard does not address what hypothetical advanced television services a station could offer; rather, it addresses the advanced television services a station actually offers and are otherwise required by the Commission. Under our rules broadcasters are only required to provide one free over-the-air video programming stream.<sup>99</sup> Further, as discussed above, broadcasters are not required to utilize their entire 6 MHz stream solely for television services and are authorized by the Act and our rules to offer ancillary or supplementary services over a portion of their spectrum.<sup>100</sup> The record demonstrates that the use of ATSC 3.0 to broadcast a station’s television

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<sup>91</sup> 47 U.S.C. § 336(b)(1) (emphasis added).

<sup>92</sup> 47 U.S.C. § 336(b)(2) (emphasis added).

<sup>93</sup> See REC Comments at 22-23.

<sup>94</sup> 47 CFR § 73.624(b).

<sup>95</sup> 47 CFR § 74.795.

<sup>96</sup> 47 U.S.C. § 336(b)(2).

<sup>97</sup> See REC Comments at 23.

<sup>98</sup> 47 U.S.C. § 336(b)(1).

<sup>99</sup> See *supra* para. 22.

<sup>100</sup> See *supra* para. 20.

stream(s) is intended to prevent interference between the station's digital television and analog radio signals and thereby does not run afoul of the derogation provision of section 336(b)(2) of the Act or section 73.624(c) of our rules.<sup>101</sup>

### **B. Limiting FM6 Operations to Existing Operators**

24. We adopt our proposal<sup>102</sup> to allow only FM6 LPTV stations with “active” FM6 STAs to continue to provide FM6 service. As proposed in the *Further Notice*, we will define “active” FM6 STAs to be initial FM6 STAs that were either granted and unexpired, or a request for extension of an STA that was granted or pending at the time of the release date of the adopted *Further Notice* (that is, June 7, 2022).<sup>103</sup> We also require that to be considered an “active” FM6 STA, the STA must remain unexpired (i.e., through grant of subsequent extension(s)) or have a pending extension request on file as of the effective date of this *R&O*.

25. *Eligible FM6 LPTV Stations.* We conclude that the public interest benefits of preserving the existing programming of the 13 FM6 LPTV stations with active FM6 STAs outweighs the risk of potential interference to other licensed users by these 13 FM6 LPTV stations.<sup>104</sup> We also find that limiting the class of stations eligible to provide FM6 services is consistent with both section 336(a)(2) of the Act, which states that the Commission shall adopt regulations authorizing ancillary or supplementary services that “may be consistent with the public interest, convenience, and necessity,”<sup>105</sup> and section 336(b)(5) of the Act, which states that in adopting regulations authorizing ancillary or supplementary services the Commission shall “prescribe such other regulations as may be necessary for the protection of the public interest, convenience, and necessity.”<sup>106</sup> These 13 stations (as well as WVOA-LD), present unique circumstances that weigh in favor of permitting continued FM6 operations as an ancillary or supplementary service.<sup>107</sup>

26. We find the 13 FM6 LPTV stations with active FM6 STAs are distinguishable from other channel 6 LPTV stations that have either never provided FM6 service or were legacy FM6 stations when they were operating in analog, but are no longer providing such service. As an initial matter, the 13 FM6 LPTV stations with active FM6 STAs have a history of providing consistent FM6 service both prior to

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<sup>101</sup> See *infra* para. 37. 47 U.S.C. § 336(b)(1); 47 CFR § 73.624(c).

<sup>102</sup> *Further Notice* at para. 41.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at para. 19. The 13 existing FM6 LPTV stations are: KBKF-LD, San Jose, California; WMTO-LD, Norfolk, Virginia; KXDP-LD, Denver, Colorado; WTBS-LD, Atlanta, Georgia; WRME-LD, Chicago, Illinois; KZNO-LD, Big Bear Lake, California; KEFM-LD, Sacramento, California; WEYS-LD, Miami, Florida; WDCN-LD, Fairfax, Virginia; KRPE-LD, San Diego, California; KGHD-LD, Las Vegas, Nevada; WPGF-LD, Memphis, Tennessee; and WNYZ-LD, New York, New York.

<sup>105</sup> 47 U.S.C. § 336(a)(2).

<sup>106</sup> 47 U.S.C. § 336(b)(5).

<sup>107</sup> Some commenters maintain that limiting the class of entities that can provide FM6 service is inconsistent with the requirement under section 307(b) of the Act to “provide a fair, efficient, and equitable distribution of radio service.” See CMC Comments at 1; OMI Comments at 1 *citing* 47 U.S.C. § 307(b). As an initial matter, Section 307(b) applies only when the Commission is “considering applications for licenses, and modifications and renewals thereof.” 47 U.S.C. § 307(b). In this Order, however, no applications are before us; rather, we establish rules for existing licensees to provide certain ancillary or supplementary services, so section 307(b) does not apply. In addition, given their lower power and secondary nature, the Commission has not considered the mandate of section 307(b) when deciding how to allocate LPTV stations. See *Inquiry into the Future Role of Low-Power Television Broadcasting and TV Translators*, BC Docket No. 78-253, Report and Order, 51 Rad. Reg. 2d 476, 490-91 (1982) (concluding that, given their lower power and secondary status, LPTV applicants should be free to choose their proposed channels subject to the technical rules) (subsequent citations omitted).

and following the July 13, 2021 LPTV digital television transition. These stations not only promptly transitioned to digital operations, but they also converted to ATSC 3.0 and obtained an FM6 STA within a reasonable period following their digital transition. As a result, listeners have maintained their reliance on these stations, and preserving access to programming on which listeners have come to rely weighs heavily in favor of permitting these 13 FM6 LPTV stations to continue their existing FM6 operations. Second, permitting only the existing FM6 LPTV stations to provide FM6 service presents a solution to the interference concerns raised by adjacent-band FM stations. Existing FM6 LPTV stations' facilities have been "frozen" in place and were not permitted to be modified. While such stations have been operating without any verified complaints of interference,<sup>108</sup> we have established rules to ensure that such interference-free operations continue into the future with no negative impact on other licensees or their own digital television service.<sup>109</sup> The same cannot be said of FM6 operations from prospective new FM6 LPTV stations for which we do not have a track record of non-interference since the LPTV digital television transition.

27. *WVOA-LD*. We conclude that WVOA-LD, Westvale, New York, should be permitted to provide FM6 operations.<sup>110</sup> In the *Further Notice*, we specifically sought comment on the case of WVOA-LD, and whether it should qualify as an exception to our finding that eligibility for continuing to provide FM6 service should be cut-off as of the release date of the adopted *Further Notice*.<sup>111</sup> The station previously provided FM6 service while an analog station, and was prepared to operate an FM6 station prior to the release of the *Further Notice*.<sup>112</sup> However, the station was unable to complete its conversion to ATSC 3.0 digital operations and initiate FM6 operations pursuant to an FM6 STA due to a delay in grant of an application for minor modification. Grant of the application was delayed because the requisite international coordination clearance from Canada had not been received by the Commission prior to release of the *Further Notice*.<sup>113</sup> WVOA-LD indicates that such minor modification was necessary in order to adequately implement their digital television service and recommence its FM6 operation.<sup>114</sup> We

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<sup>108</sup> See *supra* paras. 13-14.

<sup>109</sup> See *infra* Section III. C. - Establishing Rules Governing FM6 Operations.

<sup>110</sup> WVOA-LD is licensed to Metro TV, Inc.

<sup>111</sup> *Further Notice* at para. 44, n.115.

<sup>112</sup> See Letter from David D. Oxenford, Esq. counsel for Metro TV., Inc. to Marlene H. Dortch, Secretary, FCC, MB Docket No. 03-185 at 3 (filed May 31, 2022) (Metro TV May 2022 *Ex Parte*) (maintaining that the station has provided FM6 service since 2013); Metro TV Comments at 2-5 (discussing the station's extensive history of FM6 operations).

<sup>113</sup> Metro TV Comments at 4-6 (discussing WVOA-LD's efforts to complete its digital conversion and the circumstances outside of its control that prevented it from commencing FM6 operations prior to release of the *Further Notice*). The Commission has since received concurrence from Canada and granted the minor modification. LMS File No. 0000186547 (filed Mar. 11, 2022; granted Aug. 15, 2022). WVOA-LD subsequently completed construction of the minor modification facilities and filed a license to cover application that was granted on May 31, 2023. See LMS File No. 000215263. Because this proceeding was ongoing at the time of the grant, the license was granted with a condition stating that WVOA-LD was not permitted to conduct FM6 operations, subject to the outcome of this proceeding. Given our decision today to permit WVOA-LD to offer FM6 services, we instruct the Media Bureau to add a notation to the WVOA-LD license indicating that FM6 operations are permitted pursuant to Section 74.790(o) of the Commission's rules and this *R&O*.

<sup>114</sup> Metro TV Comments at 4-6.

find the delay in obtaining international coordination was truly outside of WVOA-LD's control,<sup>115</sup> and good cause to permit WVOA-LD to provide FM6 operations.<sup>116</sup> No commenter opposes this finding.<sup>117</sup>

28. In order to confirm that no interference will occur, we require that WVOA-LD initially commence FM6 operations under special temporary authority and operate under such authority for a period of one-year. Although WVOA-LD argues that such a requirement is unnecessary,<sup>118</sup> we disagree because unlike the 13 existing FM6 LPTV stations, we do not have a record of WVOA-LD operating in digital while providing FM6 service.<sup>119</sup> Therefore, within 85 days of the effective date of this *R&O*<sup>120</sup> we require WVOA-LD to commence both ATSC 3.0 and FM6 operations by filing an application to convert its facility to ATSC 3.0, and request for engineering STA.<sup>121</sup> During the one-year period the station is operating pursuant to an FM6 STA, WVOA-LD will be required to comply with all rules adopted in this *R&O* that would otherwise pertain to an LPTV station conducting FM6 operations. In addition, WVOA-LD is required to file status reports of interference, as required for FM6 STAs, disclosing whether it has received any complaints of interference. During the initial six-month STA, status reports will be required after 90 days and 180 days of operation.<sup>122</sup> Upon extension of its STA, if granted, WVOA-LD must file one final status report disclosing whether it has received any interference complaints within five days of expiration of the STA. It must also state whether it intends to continue to provide FM6 service on a permanent basis following expiration of the STA. If no interference is found and WVOA-LD states it wishes to continue FM6 operations permanently, then WVOA-LD will be permitted to continue FM6 operations on the same basis as the other 13 stations discussed herein without the need for an STA.

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<sup>115</sup> Metro TV Comments at 4, 6-8. The Commission has recognized certain delays in international coordination as truly beyond the control of the station. See *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 23 FCC Rcd 2994, 3038, para. 78 (2007) ("We will consider delays due to international coordination where resolution of the international coordination issue is truly beyond the control of the station . . ."). Here, WVOA-LD took all steps necessary to secure Canadian approval and the delays in approval were truly outside the control of WVOA.

<sup>116</sup> See *ICO Glob. Commc'ns (Holdings) Ltd. v. F.C.C.*, 428 F.3d 264, 270 (D.C. Cir. 2005) (finding no inconsistency and therefore no abuse of discretion in agency's decision to grant a waiver to one licensee based on certain factors, including a gap due to a special legal obstacle created by a limit on investment in Canadian licensees, but not to a second licensee in whose case those factors were absent).

<sup>117</sup> See NPR Comments at 10-1 ("NPR recognizes that, although WVOA-LD's service has been offline since the DTV deadline of July 13, 2021, WVOA-LD had an established listenership at the time and a pending construction-permit application. To this end, should the Commission permit FM6 operations outside of the STA Stations, we urge the Commission to limit permission only to WVOA-LD.").

<sup>118</sup> See WVOA Comments at 6.

<sup>119</sup> See *infra* paras. 13-14 (discussing the 13 FM6 LPTV stations' history of interference-free operation under the FM6 STAs); see also Metro TV Comments at 4-6 (WVOA could not complete conversion and commence service by the release date of the *Further Notice* due to then pending approval of its application).

<sup>120</sup> The period represents the amount of time WVOA-LD would have had to resume FM6 operations in order to have been included in the group of 13 FM6 LPTV stations with "active" FM6 STAs if its minor modification application did not require international coordination and was actionable upon filing when filed on March 11, 2022.

<sup>121</sup> WVOA-LD must notify the Bureau no more than 10 days after it commences FM6 operations by filing a written letter with the Secretary's office, to the attention of the Chief, Video Division, Media Bureau and by providing an electronic version of that letter to the Chief of the Video Division, Media Bureau. The letter must provide the date the Station completed its transition to ATSC 3.0 and the date that it commenced FM6 operations.

<sup>122</sup> WVOA-LD's status reports must be filed with the Secretary's office, to the attention of the Chief of the Video Division, Media Bureau. An electronic copy must also be sent via electronic mail to the Chief of the Video Division, Media Bureau.



29. *New Entrants and Other “Legacy” Analog FM6 LPTV Stations.* In contrast, we cannot make similar conclusions about legacy analog FM6 LPTV stations that ceased FM6 operations or LPTV channel 6 stations that have never provided FM6 services. In the *Further Notice*, we recognized that there may be a limited number of legacy analog FM6 LPTV stations that discontinued their FM6 operations at the time of the LPTV digital transition in July 2021, but intended to resume their FM6 operations once their new digital facilities were completed.<sup>123</sup> We asked if we should permit these stations to begin providing FM6 operations under the same conditions as existing FM6 LPTV stations.<sup>124</sup> In response, we received comments from two legacy FM6 LPTV stations – WJMF-LD, Jackson, Mississippi, licensed to KTL,<sup>125</sup> and KBFW-LD, Arlington, Texas, licensed to Benavides.<sup>126</sup> We find that these stations are distinguishable from the 13 FM6 LPTV stations with active FM6 STAs and WVOA-LD.

30. WJMF-LD terminated its analog television operations in July 2021 to comply with the LPTV digital transition deadline<sup>127</sup> and completed its conversion to ATSC 1.0 digital operations in January 2022.<sup>128</sup> Although it was a legacy FM6 LPTV station, the station, at a minimum, has not provided FM6 service since at least July 13, 2021, nor (unlike WVOA-LD) did it take steps to preserve FM6 operations. As such we are unable to conclude that there is an audience that relies on WJMF-LD’s FM6 operations, in contrast to the 13 existing operators that have been providing service and submitting periodic reporting demonstrating a lack of interference from their operations. There is also no record of FM6 operations upon which to determine if the station could operate without causing interference. While the Station’s current digital license largely mirrors the contour of its former analog facility, in May 2022 WJMF-LD was granted a construction permit to increase its coverage area.<sup>129</sup> Such a modification could significantly alter the potential interference profile of the station and remains unbuilt, unlike the 13 existing operators about whose FM6 operations we do have a record of non-interference. WJMF-LD also failed to provide any circumstances, as in the case of WVOA-LD, that prevented it from taking steps to maintain its FM6 operations, as the 13 other stations did, following the digital television transition deadline. KTL had ample time following the digital transition deadline and prior to release of the *Further Notice* to pursue steps to preserve its FM6 operations, but for its own independent reasons chose not to take action.

31. As for KBFW-LD, it was a legacy analog FM6 LPTV station that did not convert to digital ATSC 1.0 until September 1, 2021.<sup>130</sup> Unlike WJMF-LD, however, it continued its FM6 analog operation, without Commission authority, until sometime in May 2022 when the station was instructed by the Enforcement Bureau to cease and desist its FM6 analog operations.<sup>131</sup> The station did not seek to convert to ATSC 3.0 until July 2022.<sup>132</sup> Similar to WJMF-LD, the station has not provided FM6 service

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<sup>123</sup> *Further Notice* at para. 44.

<sup>124</sup> *Id.*

<sup>125</sup> KTL Comments at 1-2.

<sup>126</sup> Benavides Comments at 2-3.

<sup>127</sup> LMS File No. 0000152481.

<sup>128</sup> LMS File No. 0000179353.

<sup>129</sup> LMS File No. 0000190172 (granted May 9, 2022) .

<sup>130</sup> LMS File No. 0000158342 (granted Nov. 18, 2021).

<sup>131</sup> Benavides Comments at 3-4.

<sup>132</sup> *Id.* at 4. KBFW-LD has pending before the Bureau an application to convert its station to ATSC 3.0. LMS File No. 0000195651. We provide KBFW-LD 30 days following release of this *R&O* to notify the Video Division (Division) of its intent to proceed with transitioning its facility to ATSC 3.0 operations. If KBFW-LD intends to proceed with transitioning to ATSC 3.0, it must amend its pending application to identify its new transition date.

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for an extended period of time – having last engaged in authorized operations nearly two years ago. As such, we are unable to conclude there is an audience that has continued to rely on KBFW-LD’s FM6 operations, as we have for the 13 FM6 stations that have continued to provide FM6 service, with limited or no interruption. Further, as was the case with WJMF-LD, there is no record of the station operating as an FM6 LPTV station pursuant to an FM6 engineering STA upon which to determine if the station could operate without causing interference.<sup>133</sup> KBFW-LD also fails to provide any circumstances truly beyond its control, as in the case of WVOA-LD, that prevented it from taking steps to maintain its FM6 operations, as 13 other stations did following the LPTV digital television transition deadline. Like KTL, Benavides had ample time following the digital transition deadline and prior to release of the *Further Notice* to pursue steps to preserve its FM6 operations, but did not take the necessary steps in time. In light of all these facts, we reject KTL and Benavides’ calls to be permitted to provide FM6 services on their channel 6 LPTV stations.

32. Likewise, channel 6 LPTV stations that are seeking to be new entrants to FM6 operations do not have similar equities at play as the 13 FM6 LPTV stations, as they have no established listener base that relies upon them,<sup>134</sup> and we therefore find that there are insufficient public interest reasons to outweigh the interference concerns brought on by new FM6 operations. We also find that WVOA-LD is distinguishable from potential “new entrants” because WVOA-LD had an established audience prior to the digital transition and was prepared to proceed with FM6 operations, but was prevented from doing so because approval of its application was pending international coordination.<sup>135</sup> Even to the extent that there are licensees that obtained channel 6 LPTV stations with the expectation that they may be able to provide FM6 operations, the public interest rationale — maintaining service on which an audience has come to rely — does not apply to hypothetical scenarios about service a licensee might provide. In addition, these new entrant stations have no record regarding interference because they have not been providing FM6 service, unlike the 13 existing FM6 operators which have an established track record of

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Alternatively, KBFW-LD may withdraw its application. Should KBFW-LD fail to amend its request or seek withdrawal of its application within 30 days, the Bureau is instructed to dismiss the pending application

Benavides contends that Bureau staff assured him that he would be permitted to obtain an FM6 STA. Benavides Comments at 2, n.2; *see also id.* at 4-6. This appears to be an inaccurate characterization of the guidance provided. In a series of e-mails dating back to August 2021, Bureau staff provided both Benavides and his counsel detailed instructions on how to proceed with filing an FM6 STA. Benavides and his counsel failed to follow these instructions and instead proceeded to continue to provide, at minimum, analog FM service, without a valid authorization. Notwithstanding any potential misunderstanding about obtaining an FM6 STA, Benavides still was not prepared to convert to ATSC 3.0 and commence FM6 operations pursuant to FM6 STA until July 2022. *See* e-mail correspondence between Benavides, his counsel and Bureau staff, copies of which are available at LMS File No. 0000195651.

<sup>133</sup> KBFW-LD did operate in digital ATSC 1.0 with an FM6 operation for several months but such operation was not authorized and we will not recognize it for purposes of determining the station’s operational record.

<sup>134</sup> *See* Barreto Comments at 1 (licensee of an channel 6 LPTV station W06DA-D, Aguada, PR and would develop FM6 operations if given the opportunity); CBC Comments at 1-2 (licensee of a channel 6 LPTV station KMCF-LD, Visalia, CA that sought and was denied an FM6 engineering STA because it was not a legacy FM6 station); Luna Comments at 1 (licensee of two channel 6 LPTV stations, K06PU-D Yakima, WA, and K06QD-D Pasco, WA, and has been awaiting a Commission decision on the FM6 matter before pursuing FM6 operations); OMI Comments at 1-2 (licensee of three unnamed channel 6 LPTV stations and would like the opportunity to provide FM6 operations); VCY Comments at 9 (licensee of channel 6 LPTV station WDMY-LD, Toledo, OH that sought and was denied an FM6 STA because it was not a legacy FM6 station),

<sup>135</sup> *See infra* para. 27.

no interference.<sup>136</sup> For the foregoing reasons, we also reject these stations' requests to be permitted to provide FM6 services in the future.<sup>137</sup>

33. We also reject arguments that our decision to limit FM6 operations to certain stations is arbitrary and capricious.<sup>138</sup> As discussed above, we conclude that the public interest is served by maintaining existing FM6 services provided by stations that have actively taken steps to ensure continuity of service to their listeners. We are also limiting the class of stations based on concerns of potential interference to other licensed users in areas where FM6 services are not currently provided or to their own digital channel 6 television operations.<sup>139</sup> The 13 existing FM6 LPTV stations have a proven record of not causing interference to either other licensed FM station operations or to their own digital channel 6 operations.<sup>140</sup> We have no such record of interference-free FM6 operations by new stations or legacy FM6 stations no longer operating. We conclude that the risk of upsetting the current, interference-free environment outweighs the benefit of permitting new FM6 LPTV stations and is contrary to the public interest rationale by which we have determined that continued operation of current analog FM6 operations following the stations' digital television transition is justified.

34. We also are not persuaded by the argument that not all potential FM6 operators had the opportunity to convert to digital operations and obtain an FM6 STA.<sup>141</sup> As discussed above, the Commission's examination of whether to permit the continuation of such services has extended nearly a decade. As such, we believe that all channel 6 LPTV stations have had adequate notice of a potential change in Commission rules.<sup>142</sup> In fact, a significant number of stations did take note and have been providing FM6 service following their conversion to digital, thus undermining arguments by some

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<sup>136</sup> See *infra* paras. 13-14.

<sup>137</sup> VCY, licensee of WDMY-LD, Toledo, Ohio, sought reconsideration of the Division's denial of its request for special temporary authority to provide FM6 operations. See VCY America, Inc.'s Petition for Reconsideration (July 11, 2022) seeking reconsideration of Letter to VCY America, Inc. from Barbara A. Kreisman, Chief Video Division (June 8, 2022) (both available at the station's LMS Facility ID No. 49188). In light of our decision today, we instruct the Bureau to dismiss VCY's petition for reconsideration. VCY also has pending before the Bureau a pending application to convert its station to ATSC 3.0. LMS File No. 0000191355. We provide VCY 30 days following release of this *R&O* to notify the Division of its intent to proceed with transitioning its facility to ATSC 3.0 operations. If VCY intends to proceed with transitioning to ATSC 3.0, it must amend its pending application to identify its new transition date. Alternatively, VCY may withdraw its application. Should VCY fail to amend its request or seek withdrawal of its application within 30 days, the Bureau is instructed to dismiss the pending application.

<sup>138</sup> See CFI Comments at 8 (citing *AT&T Servs., Inc. v. Fed. Comm'n's Comm'n*, 21 F.4th 841, 845-46 (D.C. Cir. 2021) quoting *Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 43, 103 S. Ct. 2856, 77 L.Ed.2d 443 (1983)); Multicultural Radio Broadcasting, Inc. Comments at 3 (Jan. 22, 2020).

<sup>139</sup> See *supra* paras. 25-26.

<sup>140</sup> While the same cannot currently be said for WVOA-LD, as discussed above WVOA presents a unique circumstance in which the station was prepared to proceed with FM6 operations, but was prevented from doing so due to reasons truly outside of its control. It has subsequently completed construction of its facility and we are adopting requirements herein to determine if the Station can establish a track record of no interference to other licensed operations. See *supra* paras. 27-28.

<sup>141</sup> See CMC Comments at 1; VCY Comments at 8; Luna Comments at 1; SOL Comments at 10; Barreto Comments at 3; KTL Comments at 2-3; ATBA Comments at 2-3; Ridgeline Reply Comments at 1-2; TZSTC Comments at 1-2; Metro Comments at 7-8; OMI Reply Comments at 1-2; CBC Comments at 2-3.

<sup>142</sup> See *Further Notice* at para. 43.

commenters that FM6 LPTV stations were not able to continue operations in the face of regulatory uncertainty.<sup>143</sup>

### C. Establishing Rules Governing FM6 Operations

#### 1. Codifying Certain FM6 STA Conditions

35. Existing FM6 LPTV stations will be permitted to continue their FM6 operations subject to a new rule we adopt that codifies certain conditions that are currently contained in the FM6 STAs.<sup>144</sup> FM6 LPTV stations will be required to keep current their FM6 STAs until the rules we adopt become final. We disagree with commenters that suggest that no rules are necessary.<sup>145</sup> We find that rules are needed to ensure that FM6 LPTV stations continue to operate in a manner that is consistent with the public interest rationale for allowing FM6 operations to continue, to prevent interference with other licensees, and to prevent the derogation of their television signal as required by the Act and our rules.

36. In the *Further Notice* we sought comment on whether any rules permitting FM6 operations should include the conditions in the FM6 STAs, as discussed above.<sup>146</sup> For the reasons outlined more fully below, we codify the following requirements based the current conditions set forth in the FM STAs: (1) FM6 LPTV stations must operate in ATSC 3.0 digital format; (2) FM6 LPTV stations must provide their FM6 operations on 87.75 MHz; (3) FM6 operations must be conducted on a non-interference basis to any other licensed primary or secondary user; (4) FM6 LPTV stations must provide at least one stream of synchronized video and audio programming on the ATSC 3.0 portion of the spectrum at any time the station is operating; (5) FM6 operations may not exceed the coverage area of the FM6 LPTV station's ATSC 3.0 synchronized video/audio programming stream; and (6) FM6 LPTV stations may make modifications to their technical facilities, as otherwise permitted under Part 74 of the Rules, so long as the contour of the station's modified facilities remains within its current protected contour. We decline to require that FM6 LPTV station licenses be prohibited from being assigned or transferred or that they be subject to periodic reporting requirements, though we do require that FM6 LPTV stations notify us of their intent to continue to or cease to provide FM6 operations and provide an ongoing certification as part of their license renewal application.

37. *Requirement to Operate in ATSC 3.0 Format.* As the Bureau included as a condition in the FM6 STAs, we require FM6 LPTV stations operate using the ATSC 3.0 digital standard.<sup>147</sup> In the *Further Notice*, we sought comment on whether the fact that FM6 stations are operating in ATSC 3.0 digital mode changes the potential for their analog FM6 operations to interfere with or disrupt the LPTV

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<sup>143</sup> Barreto Comments at 3 (existence of the FM6 service in doubt and extinction seemed inevitable so station declined to initiate FM6 service during uncertainty); CBC Comments at 2-3 (FM6 service threatened with prohibition, some licensees would have liked to initiate FM6 operations, but too uncertain); CMC Comments at 1 (“For the smaller guy like CMC, the expense and risk were too high in the past to have already converted.”); KTL Comments at 2-3 (“Without knowing that the FCC will authorize these services on a permanent basis, it was too great a financial risk to spend the money needed to make the conversion and request the STA previously.”); Luna Comments at 1 (“wealthy broadcasters who were able to deploy this kind of service early before minority broadcasters were given the chance to”); OMI Reply Comments at 1 (“distinction between rich LPTV broadcasters who have converted to ATSC 3.0 early and ... the smaller operators who haven't yet had a chance.”).

<sup>144</sup> See *infra* App. B – Final Rules.

<sup>145</sup> See CMC Comments at 1 (“FM6 authorizations should simply fall under the licensed operation of the LPTV station without any restrictions other than the 87.75 MHz operation being at or less than the authorized power for the LPTV station”); and Marquee Comments at 1-2 (FM6 LPTV stations “should not be subject to any meaningful additional oversight as long as it causes no improper interference with other stations”).

<sup>146</sup> *Further Notice* at para. 23.

<sup>147</sup> See 47 CFR § 73.682(f) outlining the Next Gen TV broadcast television transmission standard.

station's ATSC 3.0 digital TV service.<sup>148</sup> Commenters unanimously support this requirement as a condition of being able to provide FM6 operations.<sup>149</sup> We recognize that this is a departure from our policy of a voluntary transition for television stations to the ATSC 3.0 digital format;<sup>150</sup> however, we find in this unique circumstance it is a necessary requirement in order to address concerns that FM6 operations will derogate the FM6 LPTV station's television service.<sup>151</sup> Some commenters argue that previous studies show the potential for interference from FM6 operations to the LPTV station's own digital operation.<sup>152</sup> However, these studies were conducted while FM6 LPTV stations were operating in ATSC 1.0. As evidenced by the "Perry Priestly" study<sup>153</sup> and more recently through real-world operations under the FM6 STAs, because the ATSC 3.0 digital format is more configurable the existing FM6 LPTV stations have been able to make their television signal narrower and/or have the signals settings modified to have increased error correction intended to prevent co-channel interference between the stations' digital television and analog radio signals. Accordingly, in the case of the 13 existing FM6 LPTV stations, operating in ATSC 3.0 appears to have addressed concerns that FM6 operations will interfere with or derogate their own digital television operation. Therefore, in order to ensure that FM6 LPTV stations comply with the derogation standard set forth in the Act and our rules,<sup>154</sup> we will require that they transmit their television signal using the ATSC 3.0 standard.

38. *Operation on 87.75 MHz.* We require FM6 transmissions to be conducted at 87.75 MHz. We observed in the *Further Notice* that limiting operations to 87.75 MHz would help prevent interference to any other licensed user.<sup>155</sup> A majority of commenters supported this requirement.<sup>156</sup> This is the frequency currently being used by all current FM6 LPTV stations and as a result it has been tested and shown by the 13 existing FM6 LPTV stations through their FM6 STAs to provide a quality FM signal without causing interference to other FM stations.<sup>157</sup> We reject requests by commenters that ask us to allow FM6 operations on 87.7 MHz in order to give licensees the opportunity to improve analog FM6 reception.<sup>158</sup> This is a 50 kHz shift from what has been authorized under the current FM6 STAs and as

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<sup>148</sup> *Further Notice* at para. 36.

<sup>149</sup> See AVHN Comments at 3; NAB Comments at 5-6; PCPC Comments at 18; CBC Comments at 4; SOL Comments at 7; VCY Comments at 6.

<sup>150</sup> LPTV stations may choose to operate in ATSC 3.0 but are not required to. See *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9930, 9932, para. 1 (2017) (authorizing television broadcasters including LPTV stations to use the ATSC 3.0 standard on a voluntary, market-driven basis).

<sup>151</sup> See *supra* para. 23; see also *LPTV Digital Third NPRM*, 29 FCC Rcd at 12555, para. 50; *Refresh PN*, 34 FCC Rcd at 11164, para. 4.

<sup>152</sup> See comments filed by Linley Gumm at 1-13 (Nov. 14, 2014); NPR at 8-11 (Jan. 15, 2015); NPR at 13-17 (Jan. 23, 2020); and REC Networks at 6-14 (Jan. 21, 2020).

<sup>153</sup> See *Further Notice* at paras. 35-36 citing Reply comments filed in MB Docket No. 03-185 by PCPC at 11-12 and Engineering Statement (Feb. 14, 2020) (maintaining that the Perry Priestly study demonstrates that, "not only is ATSC 3.0 compatible with an 87.7 MHz analog audio carrier, but the two signals can operate simultaneously with almost no degradation to either signal.")

<sup>154</sup> 47 U.S.C. § 336(b)(2); 47 CFR § 73.624(c).

<sup>155</sup> *Further Notice* at para. 25.

<sup>156</sup> See AVHN Comments at 3; CMC Comments at 1; PCPC Comments at 18; SOL Comments at 7.

<sup>157</sup> As a condition to their FM6 engineering STAs, FM6 LPTV stations were required to operate on 87.75 MHz and to report any interference that occurred from their operations. No such interference has been reported to date. See, e.g., FM6 STA of KBKF-LD, San Jose, California at LMS File No. 0000147729, granted June 10, 2021.

<sup>158</sup> See NAB Comments at 8. NAB argues that "[t]his small 50 kHz shift in frequency away from the FM band would presumably reduce the potential for interference to FM stations operating in the reserved band while

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such, we are reluctant to permit this change without a thorough technical examination of such a move. Absent additional technical data supporting a shift to 87.7 MHz, none of which has been provided in the record, we find taking the time now to develop a record would only serve to needlessly prolong an already complex proceeding. In addition, it is not clear what cognizable benefit to receivability there would be based on the documented experiences of FM6 LPTV stations that have been providing FM service over 87.75 MHz.

39. *Operation of FM6 on a Non-Interference Basis.* We adopt our proposal from the *Further Notice* and require that FM6 operations be conducted on a non-interference basis “to any other licensed user, including but not limited to broadcast television or radio users.”<sup>159</sup> We agree with commenters that FM6 LPTV stations must operate without causing any impermissible interference to other licensed users, both users with primary and secondary interference protection rights.<sup>160</sup> We disagree with NAB that codification of this condition is unnecessary if FM6 operations are restricted to just a limited number of stations.<sup>161</sup> By codifying this condition, we seek to continue to prevent interference and make clear that any interference to other licensed users will not be permitted as these services are being offered purely on an ancillary or supplementary basis.

40. *Synchronized Video and Audio.* We further adopt the requirement that FM6 LPTV stations must provide at least one stream of synchronized video and audio programming on the ATSC 3.0 portion of the spectrum at any time the station is operating.<sup>162</sup> We conclude that adoption of this operational requirement will ensure that FM6 LPTV stations remain dedicated to providing the type of digital television service that viewers have come to expect from TV stations in addition to their FM6 operations. This requirement will also ensure that the spectrum, which has been allocated for the provision of television service, is being used in an efficient manner and for its primary purpose.<sup>163</sup> A majority of commenters support this requirement.<sup>164</sup> We disagree with the single commenter that called this requirement “constitutionally dubious.”<sup>165</sup> Our decision to require one stream of synchronized video and audio programming is “content neutral” in that it does not reference or implement any requirements regarding the content of the speech.<sup>166</sup> The D.C. Circuit has applied a “heightened rational basis” standard of review to content-neutral broadcast regulation.<sup>167</sup> Applied here, requiring one stream of synchronized video and audio programming is reasonably tailored to satisfying the substantial governmental interest in ensuring that frequencies allocated for television service continue to be used for the types of television services viewers have come to expect from TV stations.

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improving compatibility and fidelity for FM receivers that can tune only in 200 kHz steps.” *See also* Bovis Comments at 1 (“[b]ecause analog TV is now defunct, there is no reason to require these stations to transmit only on 87.75 as opposed to 87.7 which is what . . . most FM radios with digital tuners actually tune”).

<sup>159</sup> *Further Notice* at para. 25.

<sup>160</sup> *See* AVHN Comments at 3; PCPC Comments at 18; PCPC Reply Comments at 13-14; Reed Comments at 2.

<sup>161</sup> NAB Comments at 5-6.

<sup>162</sup> *See Further Notice* at para. 28.

<sup>163</sup> *See id.* at paras. 28-29.

<sup>164</sup> *See* AVHN Comments 3; NAB Comments at 8; PCPC Comments at 8; SOL Comments at 7; VCY Comments at 9.

<sup>165</sup> Bovis Comments at 1.

<sup>166</sup> *See Virginia Pharmacy Bd v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 771 (1976) (defining “content-neutral” speech regulations as “those that are justified without reference to the content of the regulated speech”).

<sup>167</sup> *Ruggiero v. FCC*, 317 F.3d 239, 243-44, 247 (D.C. Cir. 2003).

41. The synchronized video and audio programming condition was originally imposed on the FM6 STAs to ensure that digital LPTV stations providing FM6 operations continued to provide television service that meets viewers' expectations.<sup>168</sup> Prior to the LPTV digital television transition in July 2021, when FM6 operations were being conducted as part of an LPTV station's analog channel 6 operation, most FM6 LPTV stations were sacrificing the extent of their television service by airing limited video-only programming.<sup>169</sup> Because the audio signal for their analog TV station was dedicated to providing the FM6 service, the video service contained minimal video-only content, such as community bulletin boards.<sup>170</sup> FM6 LPTV stations appeared to be focusing their resources on their radio FM6 operation over their television operation.<sup>171</sup> However, digital television provides these stations a new opportunity to offer more substantial, independent video content synchronized with audio while still preserving their FM6 operations. Although other digital television stations are required to provide only one over-the-air video program signal at no direct charge to viewers,<sup>172</sup> and may offer video only or separate video and audio on their television operations, given FM6 LPTV stations' past practice favoring their FM6 operations at the expense of their television operations, we continue to believe it is prudent to make clear that an FM6 LPTV station must offer at least one stream of synchronized video and audio programming. This will ensure that FM6 LPTV stations provide the type of digital television service that viewers have come to expect from TV stations while also preserving their FM6 operations.

42. As proposed in the *Further Notice*, we also decline to adopt the condition imposed in the current FM6 STAs that the synchronized audio and video programming be provided on a full time (24x7) basis.<sup>173</sup> Because our rules provide that LPTV stations are "not required to adhere to any regular schedule of operation,"<sup>174</sup> we find it more appropriate to adopt the revised version of this condition proposed in the *Further Notice* that requires that FM6 LPTV stations provide at least one stream of synchronized video and audio programming on the ATSC 3.0 portion of the spectrum "at any time the station is operating."<sup>175</sup> There was no opposition to this proposed revision.

43. *LPTV and FM6 Operational Contours.* We also adopt the requirement that the service contour<sup>176</sup> of a station's FM6 operation may not exceed the protected contour<sup>177</sup> of the LPTV station.<sup>178</sup>

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<sup>168</sup> Advanced Television Systems & Their Impact Upon the Existing Television Broadcast. Service, Report and Order, 12 FCC Rcd. 12809, para. 28 (1997) (in authorizing the use of ancillary or supplementary service the Commission stated: "We expect that the fundamental use of the 6 MHz DTV license will be for the provision of free over-the-air television service.")

<sup>169</sup> See, e.g., comments filed in MB Docket No. 03-185 by CFI at 1 (Jan. 23, 2020); NPR at 2 (Jan. 23, 2020); and reply comments filed in MB Docket No. 03-185 by NPR at 6 (Feb. 2, 2015).

<sup>170</sup> *Id.*

<sup>171</sup> See, e.g., comments filed in MB Docket No. 03-185 by CFI at 1 (Jan. 23, 2020); NPR at 2-4 and 10-11 (Jan. 23, 2020); Heller at 1 (Jan. 23, 2020); and reply comments filed in MB Docket No. 03-185 by NPR at 11-12 (Feb. 7, 2020).

<sup>172</sup> 47 CFR § 73.624(b).

<sup>173</sup> *Further Notice* at para. 30.

<sup>174</sup> See 47 CFR § 74.763.

<sup>175</sup> *Further Notice* at 30. In order to ensure that a station's FM6 operations are not prioritized over its television service and that television remains its primary purpose, we will consider a station to be "operating" any time it is engaged in FM6 operations over its channel. See *supra* para. 12 (finding that allowing existing FM6 operations to continue is in the public interest because we are adopting rules that ensure FM6 LPTV stations are "first and foremost LPTV stations and that their video programming stream is prioritized over any audio stream.").

<sup>176</sup> We define "service contour" as the service contour provided for in section 73.313 of the rules. See 47 CFR § 73.313.

A similar condition was included in the FM6 STAs to prevent FM6 LPTV stations from configuring their LPTV station's technical facilities in a manner that would favor their FM6 operation over their digital television operation, something that, as just discussed, occurred while FM6 LPTV stations were solely operating in analog.<sup>179</sup> We find that adopting a similar provision here will help to ensure that FM6 LPTV stations continue to focus their attention on the operation of their digital LPTV station - the primary purpose of their station license.<sup>180</sup> Further, we conclude that adoption of this requirement will provide a predictable coverage area for the FM6 signal.<sup>181</sup>

44. Commenters are united in their support for this requirement,<sup>182</sup> however, there is disagreement on how to determine if the service contour of a station's FM6 operation is exceeding the protected contour of its television operation.<sup>183</sup> After considering the record and further technical analysis, we conclude that the best approach is to require the service contour of FM6 operations to be contained within, and may not exceed, the LPTV station's protected contour. We find the alternative approaches suggested by commenters are impractical and overly burdensome. It would be difficult, if not impossible, for an FM6 station to test all locations where both the synchronized video/audio and the analog FM signal can be heard.<sup>184</sup> Further, our rules recognize different standards for measuring the strength of a digital LPTV signal and an FM audio signal. Rather than try to reconcile those differences in a single, "one-size-fits-all rule," we will allow FM6 LPTV stations to demonstrate the service contour of their FM6 operations and the protected contour of their TV operations using established methodologies for each service in our rules.<sup>185</sup>

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<sup>177</sup> We define "protected contour" as the protected contour provided for in section 74.792 of the rules. See 47 CFR § 74.792.

<sup>178</sup> We note that, in the *Further Notice*, we proposed that "the FM6 coverage area must be contained within and may not exceed the coverage area of the LPTV station's synchronized video/audio programming stream . . ." *Further Notice* at para. 28. To more accurately describe the coverage areas of the FM6 and TV operations and to reflect the language used by our rules, we will use the term "service contour" to describe the FM6 station's coverage area and "protected contour" to describe the TV station's coverage area. See *supra* notes 176 and 177.

<sup>179</sup> *Id.* at para. 41.

<sup>180</sup> *Further Notice* at para. 29.

<sup>181</sup> We note that currently FM6 LPTV stations operate with co-located television and FM6 facilities. FM6 LPTV stations operate separate transmitters - one digital television and one analog FM radio - that are combined into one transmission line and broadcast with a combined antenna. The rules we adopt today permit only this type of configuration.

<sup>182</sup> See AVHN Comments 3; NAB Comments at 8; PCPC Comments at 8; SOL Comments at 7; VCY Comments at 9.

<sup>183</sup> REC Comments at 24 (FM6 LPTV stations should be required to go "on drive tests with antennas of similar design to show that in all places where the analog audio FM station can be heard, the video signal is able to decode 100 percent of the time"); Reed Comments at 3 ("a better limiting factor is to require that the FM6 operation's 28 dBu F(50,50) contour not exceed the current DTV noise-limited contour for DTV6, which is 28dBu F(50,90)"); Bovis Comments at 1 ("[i]t would be better to simply limit the ERP of the FM aural carrier to either match or not exceed the licensed digital (television) ERP").

<sup>184</sup> See REC Comments at 24.

<sup>185</sup> See 47 CFR §§ 73.313 and 74.792 (referencing 73.625(b)(1)). FM6 LPTV stations have been using this approach in their 90-day and 180-day status reports filed as a condition to their FM6 STAs. FM6 LPTV stations have been successfully demonstrating in these reports that the service contour of their FM6 operations (as determined using the standard Part 73 methodology) does not exceed that of the protected contour of their LPTV operations (as determined using the standard Part 74 methodology). We have no reason to question either the methodologies or results of these showings, especially as we have not received any evidence to the contrary.



45. *Technical Modifications.* We will permit FM6 LPTV stations to make modifications to their technical facilities, as otherwise permitted under Part 74 of the Rules, so long as the protected contour of the station's modified television facilities remains within its current protected contour and the service contour of the station's FM6 operations does not exceed the protected contour of the station's television operation.<sup>186</sup> Initially, as a condition in FM6 engineering STAs, the Bureau restricted modifications in order to "lock" the FM6 LPTV station facilities operations in place while we were evaluating the potential for interference from FM6 operations to other users.<sup>187</sup> In the *Further Notice* we sought comment on whether to maintain this condition and whether to provide any exceptions.<sup>188</sup> Commenters felt that this restriction was too stringent and expressed their concerns that such a condition could limit FM6 LPTV stations from making modifications to better serve their audiences.<sup>189</sup>

46. Although the record reflects that there have been no reports of interference from the FM6 operations of the 13 existing FM6 LPTV stations, this has been based on their current operations which have been frozen for almost two years. Therefore, in order to prevent possible interference that could result if an FM6 LPTV station were to modify its facilities, we find it is appropriate to limit modifications that could expand an FM6 LPTV station's FM6 operations beyond the protected contour of its television operations as of the release date of this *R&O*. Allowing such changes could potentially upset the current interference free environment that serves as one basis for permitting continued FM6 operations.<sup>190</sup> FM6 LPTV stations may seek to alter their protected contour if they can demonstrate that the change is an "engineering necessity"<sup>191</sup> or can meet the Commission's general waiver standard.<sup>192</sup> Any showing of

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<sup>186</sup> For example, LPTV stations on channel 6 are not authorized to operate with an ERP greater than 3 kW. *See* 47 CFR § 74.735(b)(1).

<sup>187</sup> The condition stated: "[d]uring the term of this STA, the technical facilities of (FM6 LPTV station) may not be modified." *See, e.g.,* LMS File No. 0000184381.

<sup>188</sup> *Further Notice* at para. 31.

<sup>189</sup> *See* ATVN Comments at 3-4 (modifications to facilities are often necessitated by circumstances not of the licensee's making and FM6 LPTV stations should be permitted to make technical modifications without having to request and obtain a waiver); Flinn Comments at 3 (any prohibition on reasonable technical modifications threatens to impede FM6 LPTV stations and harm their listeners); Metro Comments at 8 ("[i]f these FM6 services are valuable and in the public interest, providing those services to more people, if the increases in service do not create increased interference, would be in the public interest as well"); PCPC Comments at 18-19 (prohibiting LPTV stations providing FM6 operations from modifying their facilities is an unnecessary restriction that would potentially inhibit the ability of FM6 LPTV stations to provide consistent service); TZSTC Comments at 2 (questioning whether it is necessary or even in the public interest to limit modifications); VCY Comments at 7 (no analogous service includes permanent prohibitions on modification).

<sup>190</sup> *See supra* paras. 13-14.

<sup>191</sup> For example, loss of a tower site or change in equipment due to malfunction would constitute "engineering necessity." Generally things that are voluntary business decisions, such as seeking to relocate facilities to serve a larger audience, would not be deemed an "engineering necessity." We note that during the pendency of this proceeding, the Division allowed an FM6 station, WRME-LD, Chicago, Illinois, to make modifications to its technical facilities. *See* Letter to WLFM, LLC from Barbara A. Kreisman, Chief, Video Division (Feb. 8, 2023) available at LMS File No. 0000208892. The Division found that the proposed modification was the result of the station's landlord adding an additional tenant to its shared tower and therefore the station was forced to lower the height of its antenna to avoid possible issues with distortion to the station's antenna pattern. *Id.* at 2. The Division concluded that the change was an "engineering necessity" and the public interest would be served by grant of the minor change application. *Id.* The Division also permitted an FM6 station, WDCN-LD, Fairfax, Virginia, to operate at reduced power for a limited period of time while it was repairing failing equipment. *See* Letter to Signal Above, LLC from Barbara A. Kreisman, Chief, Video Division (May 15, 2023) available at LMS File No. 0000211128. The Division granted the station's request for STA and waived the condition on the station's FM6 STA prohibiting modifications to its facility. *Id.*

“engineering necessity” must include a detailed demonstration that the modification will not cause any interference to other licensed users.<sup>193</sup> We conclude that allowing stations the flexibility to make minor modifications while remaining within the station’s protected contour, or to alter their protected contour based upon a showing of “engineering necessity” or under the Commission’s general waiver standard, balances any concerns about a station’s ability to maximize their service to viewers.

47. *Assignment and Transfer of FM6 LPTV Stations.* We conclude that FM6 LPTV stations should be permitted to be assigned or transferred. The FM6 STAs included a condition that limited FM6 LPTV stations from being assigned or transferred while FM6 operations were being conducted.<sup>194</sup> While licensees of FM6 LPTV stations were always free to transfer their stations, such action would have required the termination of their FM6 operation. In the *Further Notice*, we questioned whether inclusion of such a limit in our final FM6 rules would continue to serve the public interest.<sup>195</sup> We now conclude that it would not.

48. The Bureau imposed a restriction on transfers and assignments in an effort to maintain the status quo during the pendency of this proceeding and to prevent speculative transactions.<sup>196</sup> This action stemmed from a concern that, during the pendency of this proceeding, parties could seek to obtain an FM6 station without any intention of continuing FM6 operations and for the sole purpose of immediately “flipping” the station to another party for a quick profit if continued FM6 operations were ultimately permitted.<sup>197</sup> A small number of commenters believe it should be retained “in perpetuity” in order to prevent future speculation of FM6 LPTV stations.<sup>198</sup> However, now that this proceeding is complete and we have confined FM6 LPTV stations to only a limited number of stations<sup>199</sup> that have demonstrated an interest in maintaining their FM6 operations into the future, we conclude that there is no longer a risk of parties speculating in FM6 LPTV stations. As discussed above, the steps taken by the remaining FM6 LPTV stations to complete their digital television transition and quickly resume FM6 operations shows their clear desire to continue to provide FM6 service to their listeners.<sup>200</sup> Furthermore,

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<sup>192</sup> A waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) (citing *Northeast Cellular Telephone Co.*, 897 F.2d 1164, 1166 (1990)). Generally, the Commission may waive any rule if there is good cause to do so and, in making this determination, may take into account considerations such as hardship, equity, or more effective implementation of overall policy on an individual basis. See 47 C.F.R. § 1.3; *Northeast Cellular*, 897 F.2d at 1166 (“[A] waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest. The agency must explain why deviation better serves the public interest and articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on notice as to its operation”); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (“The agency’s discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances.”).

<sup>193</sup> See ATVN Comments at 3-4; PCPC Comments at 18-19; PCPC Reply Comments at 14.

<sup>194</sup> *Further Notice* at para. 32.

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> See Cal State Reply Comments at 7 (if FM6 LPTV station operators feel so strongly about serving their niche audiences, let them continue to do so in perpetuity); Reed Comments at 3 (existing restriction on transfer should remain in place to help deter other LPTV stations from moving to channel 6 for the purpose of creating an FM radio station to then sell at a profit).

<sup>199</sup> See *supra* Section III. B. – Limiting FM6 Operations To Existing Operators.

<sup>200</sup> See *supra* para. 26.

we find that prohibiting the assignment or transfer of these stations would undermine a key rationale by which we have based our decision to permit the continued operation of these stations – the preservation of existing service that listeners rely upon.<sup>201</sup> To the extent a current licensee no longer wishes to operate its station it should be permitted, like any other licensee, to sell its station to someone that wants to continue to offer its television operations, along with its FM6 operations if they so choose. Accordingly, we find the limitation on transfers is no longer necessary and we conclude that the public interest would not be served maintaining the restriction.<sup>202</sup>

49. We clarify that an FM6 LPTV station’s FM6 operation is not severable from its digital television license and may not be assigned or transferred independently from the FM6 LPTV station.<sup>203</sup> We base this conclusion upon the fact that we are not separately authorizing FM6 operations, but rather are allowing them as an ancillary or supplementary service to the FM6 LPTV station’s main digital television license. An FM6 LPTV station is permitted to provide FM6 operations only as a result of it offering a free over-the-air television service.<sup>204</sup>

50. *Reporting Requirements.* We adopt our tentative conclusion and will not require FM6 LPTV stations to undertake periodic reporting requirements similar to those contained in their FM6 STAs.<sup>205</sup> The periodic reporting requirement was included as a condition to the FM6 STAs to monitor the ongoing STA operations of FM6 LPTV stations for reports of interference and to see if FM6 LPTV stations were complying with the condition that their digital television and analog FM radio operations were serving similar populations.<sup>206</sup> We agree with the majority of commenters that the periodic reporting requirement is no longer necessary.<sup>207</sup> In this *R&O*, we adopt permanent rules to address the circumstances that the reporting requirement was established to monitor. Failure to comply with these rules will result in sanction and potentially loss of the ability to continue providing FM6 service.

51. Other parties argue that the submission of written reports is still needed in order to confirm system operation and to gather data to confirm that the FM6 service can be implemented and operated in the public interest.<sup>208</sup> We disagree. The record, which includes real-world information collected over nearly the last two years from FM6 LPTV stations’ FM6 STA operations demonstrates that interference from the 13 existing FM6 LPTV stations is not likely to occur to either adjacent-band FM radio operations or to the host LPTV station’s channel 6 operations.<sup>209</sup> Further, there have been no

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<sup>201</sup> See AVHN Comments at 3; Flinn Comments at 3; KTL Comments at 3-4; Metro Comments at 8-9 (“[it] would make no sense to preserve service to the public through this proceeding only for that service to have to terminate if a station was ever assigned or transferred.”); NAB Comments at 5-6; PCPC Comments at 19-21 (the purpose of authorizing FM6 operations is to preserve an existing and much valued program service for listeners, not to preserve the benefits of ownership); VCY Comments at 7; EMF Comments at 3-4 (Jan. 22, 2020); LSRC Comments at 5 (Jan. 22, 2020).

<sup>202</sup> To the extent that an FM6 LPTV station is assigned or transferred and the new licensee intends to continue FM6 operations it must include a statement to that effect in its assignment or transfer application. The new licensee will be required to meet all the requirements in the rules for FM6 operations and should they choose to discontinue FM6 operations, such discontinuation is permanent.

<sup>203</sup> See PCPC Comments at 21 (asking that the Commission clarify this point).

<sup>204</sup> See 47 U.S.C. 336(b)(1) and 47 CFR § 73.624(b).

<sup>205</sup> *Further Notice* at para. 33.

<sup>206</sup> *Id.*

<sup>207</sup> See Metro Comments at 8-9; AVHN Comments at 3-4; Flinn Comments at 3; NAB Comments at 5-6; PCPC Comments at 19-21; VCY Comments at 7; PCPC Reply Comments at 14; KTL Comments at 3-4.

<sup>208</sup> See SOL Comments at 7-8; Reed Comments at 3.

<sup>209</sup> Copies of the FM6 LPTV station 90-day and 180-day status reports are available at each of the FM6 LPTV stations’ main station records on LMS. See *supra* note 104. We again note that our analysis of interference free

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legitimate reports of interference being caused by the 13 FM6 LPTV stations that have been operating under STAs.<sup>210</sup> In addition, FM6 LPTV stations are permitted to make modifications to their facilities only under very limited circumstances. As a result of these facts, we see no basis for requiring FM6 LPTV stations to continue to submit periodic reports.<sup>211</sup>

52. *Required FM6 Operational Notices.* We will require that, after review and approval of the information collection requirements adopted herein by the Office of Management and Budget (OMB), the Bureau will issue a Public Notice announcing the deadline for all FM6 LPTV stations to notify the Media Bureau whether they will continue FM6 operations and confirm their precise FM6 operational parameters.<sup>212</sup> Because we are not licensing FM6 operations separately, this verification enables a confirmation of which stations' FM6 operations will be ongoing and provide continued certainty with regards to those operations.<sup>213</sup> FM6 LPTV stations will also be required to include in this notification the current operating parameters of their FM6 operations.<sup>214</sup> An FM6 LPTV station that voluntarily chooses to permanently discontinue FM6 operations is required to notify the Media Bureau within 30 days of permanently ceasing FM6 operations. If an FM6 station permanently ceases FM6 operations either voluntarily or is deemed to have discontinued operations pursuant to our Part 73 rules,<sup>215</sup> it will not be

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FM6 operations applies solely to the 13 stations that have been operating under FM6 STAs. This does not mean that interference would not occur if we were to allow other TV6 stations to commence FM6 operations.

<sup>210</sup> Cal State has long insisted that FM6 operations will cause interference to stations in the NCE portion of the FM radio band (88 to 92 MHz). Cal State Reply Comments at 6-7. The Enforcement Bureau (EB) received an interference complaint from KKJZ(FM), licensed to Cal State, regarding FM6 station KZNO-LD in Big Bear Lake, CA (KZNO), licensed to Venture Technologies Group that included an engineering exhibit. *See* Interference Complaint of California State University, Long Beach Research Foundation, Licensee of KKJZ(FM), Long Beach, CA (Nov. 22, 2022), a copy of which is available at station Facility ID 8197. Upon investigation, and following a request for additional information, the purported interference could not be confirmed. Based on this fact and a separate Media Bureau review of the engineering exhibit included, Cal State's complaint was closed by the Enforcement Bureau.

<sup>211</sup> *See* Barreto Comments at 1-2; CBC Comments at 4; NAB Reply Comments at 3.

<sup>212</sup> The Media Bureau is instructed to add a notation to each FM6 LPTV station's license to reflect that it is permitted to provide FM6 operations pursuant to the rules adopted by this *R&O*.

<sup>213</sup> The notation added to the station's license shall reflect that it is permitted to provide FM6 operations pursuant to the rules adopted by this *R&O* and operational parameters specified in its notification.

<sup>214</sup> Such information must include: maximum effective radiated power (ERP); radiation center above ground level (RCAGL); radiation center above mean sea level (RCAMSL); antenna height above average terrain (HAAT); antenna type (directional or non-directional); directional antenna pattern (if applicable); antenna make and model; transmitter power output (TPO); and a description of the transmission system, including any transmission lines, connectors, combiners, etc., and their associated losses. Should any technical parameters of the station's FM6 operations change, the licensee must provide written notification to the Media Bureau at least ten (10) days prior to such modifications occurring.

<sup>215</sup> *See infra* Section III. C. 2 – Application of Part 73 FM Rules; App. B - Final Rules. As part of our finding below that FM6 LPTV station's requirement to comply with certain analogous FM rules, we note that pursuant to 47 CFR § 73.1740(a)(1) FM6 LPTV stations' FM6 operations must adhere to the minimum operating schedule for FM stations. Failure to do so absent valid special temporary authority to operate at variance, *see* 47 CFR §§ 73.1740(a)(4) or 73.1635, will result in sanction or other actions, which could include consideration at renewal of whether the station has served the public interest. 47 U.S.C. § 309(k). One of the primary rationales by which we are permitting continued FM6 operations is in order to provide continuity service. *See supra* paras. 10-12. We find that failure by an FM6 LPTV station to adhere to the minimum operating schedule for FM stations, without valid special temporary authority, is presumptively adverse to the public interest. We also note that should an FM6 LPTV station's digital television operation temporarily cease operations, the station will be required to also discontinue its FM6 operation until such time as the digital television operation resumes as engaging in FM6 operations is dependent upon it providing the digital television service. *See* 47 CFR § 73.624(b).

permitted to resume FM6 operations in the future.<sup>216</sup> Finally, as an additional measure to ensure that FM6 LPTV stations are continuing to serve the public, we will also require that FM6 LPTV stations certify in their license renewal application that they have continued to provide FM6 operations in accordance with the FM6 rules during their prior license term.<sup>217</sup> All notifications required by this paragraph shall be made by written letter and mailed to the FCC Office of the Secretary, Attention: Chief, Video Division, Media Bureau.<sup>218</sup>

## 2. Application of Part 73 FM Rules

53. Although FM6 operations are not separately authorized or licensed,<sup>219</sup> we conclude that the public interest will be best served by requiring FM6 operations to be subject to appropriate Part 73 rules that currently apply to full service FM radio stations, including emergency alert and online public file requirements. We also find that application of certain of our rules is consistent with and required by section 336(b)(3) of the Act.<sup>220</sup> Furthermore, FM6 LPTV stations, as they are licensed as LPTV stations, must continue to comply with all applicable Part 73 and 74 rules that pertain to their digital television operations.

54. In the *Further Notice* we sought comment on whether FM6 operations are analogous to other services and whether, and if so which, Part 73 rules should apply.<sup>221</sup> Section 336(b)(3) of the Act provides that, in prescribing the regulations required by ancillary or supplementary services, the Commission shall “apply to any other ancillary or supplementary service such of the Commission’s regulations as are applicable to the offering of analogous services by any other person . . . .”<sup>222</sup> Based on this statutory requirement, we conclude that certain rules that pertain to full service FM radio stations should be applied to FM6 LPTV stations since FM6 LPTV stations offer services that are “analogous” to full service FM radio stations. A majority of commenters support this approach.<sup>223</sup>

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<sup>216</sup> All actions with respect to the cessation of FM6 operation will be final as with any action to permanently discontinue a broadcast operation. See 47 CFR § 73.1750. Cessation of FM6 operations only shall not affect the status of an LPTV station’s license or its ability to continue to provide digital television service.

<sup>217</sup> See 47 USC § 336(d) (“In the Commission’s review of any application for renewal of a broadcast license for a television station that provides ancillary or supplementary services, the television licensee shall establish that all of its program services on the existing or advanced television spectrum are in the public interest. Any violation of the Commission rules applicable to ancillary or supplementary services shall reflect upon the licensee’s qualifications for renewal of its license.”). We delegate authority to the Media Bureau to determine the most appropriate means for these stations to make such certification, be it by an attachment to the renewal application or some other reasonable means.

<sup>218</sup> An electronic copy of any notification must also be sent via electronic mail to the Chief of the Video Division, Media Bureau. A copy of all notifications shall be uploaded by the Media Bureau to the station’s LMS file.

<sup>219</sup> Commenters were in agreement that FM6 should not be separately authorized. See, e.g., EMF 2015 Comments at 3-4; Signal Above 2015 Comments at 8; Venture 2015 Comments at 7

<sup>220</sup> See *infra* App. B – Final Rules. We also conclude that we adopt such rules and policies for FM6 operations under our general Title III authority. See 47 U.S.C. § 303 – Powers and Duties of Commission.

<sup>221</sup> *Further Notice* at para. 38.

<sup>222</sup> 47 U.S.C. § 336(b)(3).

<sup>223</sup> See AVHN Comments at 4 (FM6 operations should be subject to Part 73 of the rules that apply to full-service FM stations); Cal State Reply Comments at 5-6 (Commission must impose the same service, power and height limitation rules on FM6 LPTV stations that regulate FM translator stations under Part 74 of the rules); NPR Comments at 7-8 (“to the extent they do not conflict with or duplicate the specific conditions the Commission proposes, every rule governing over-the-air FM radio broadcast service should also apply to FM6 LPTV stations”); Public Media Comments at 5 (FM6 LPTV stations should be subject to the same public interest obligations as any other FM radio station); Reed Comments at 4 (if an FM6 LPTV station is going to provide an FM broadcast service,

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55. As a practical matter, we agree that listeners are not necessarily able to distinguish between an FM6 LPTV station's FM operations and a traditional FM station.<sup>224</sup> Further, viewers watching an FM6 LPTV station's digital television programming may not be simultaneously listening to the station's analog FM6 audio programming, and vice versa.<sup>225</sup> As a result, we find it is important that FM6 LPTV stations continue to comply with the rules that are otherwise applicable to FM radio operations, including but not limited to our rules related to advertising/commercials, programming, and the Emergency Alert System (EAS).<sup>226</sup> In particular, in order to prevent viewers and listeners from missing vital EAS alerts, we want to make clear that FM6 LPTV stations must maintain the capability to separately air EAS alerts on both their television and their FM6 operations.<sup>227</sup>

56. Further, although LPTV stations are not required to maintain an online public inspection file (OPIF),<sup>228</sup> we find it is appropriate to require FM6 LPTV stations to maintain one for their FM6 operations. While some commenters argue that there is no purpose to be served by requiring that FM6 LPTV stations maintain an OPIF solely for their FM6 operations,<sup>229</sup> we agree with commenters maintaining that such a requirement safeguards regulatory compliance with regard to FM operations and provides parity with other FM stations.<sup>230</sup> To be clear, the OPIF requirement will apply only to the FM6 LPTV station's FM6 operations.

57. We disagree with the argument that requiring FM6 LPTV stations to comply with both LPTV and certain Part 73 FM rules is unnecessary or inappropriate as a result of their secondary status or because all relevant regulations already apply by nature of their status as an LPTV station.<sup>231</sup> This argument does not reflect how FM6 operations are actually conducted in the digital context and would be inconsistent with section 336(b)(3) of the Act.<sup>232</sup> First, the Act specifically mandates that the Commission apply regulations to ancillary or supplementary services that are analogous to other regulated services.<sup>233</sup> The secondary nature of LPTV stations is irrelevant to whether the analogous services

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it must adhere to all Part 73 broadcast rules); VCY Comments at 5 (certain Part 73 rules for FM radio should be applied to FM6 LPTV stations); Joint Commenters 2015 Comments at 2-3; Venture 2015 Comments at 7-8.

<sup>224</sup> See Public Media Comments at 5.

<sup>225</sup> See NAB Comments at 7-8.

<sup>226</sup> See *infra* App. B – Final Rules - Section 74.790(o).

<sup>227</sup> See 47 CFR § 11.1(a) outlining the equipment deployment requirements for FM radio stations.

<sup>228</sup> See 47 CFR § 73.3526.

<sup>229</sup> Barreto Comments at 1 (“it would not be logical to require an FM6 operator to maintain a public inspection file for the FM6 service when none is required for the parent secondary LPTV station”); NAB Reply Comments at 5 (because LPTV stations are not required to maintain a public inspection file, NAB agrees with commenters that argue FM6 LPTV stations should not have to maintain a separate file).

<sup>230</sup> See Public Media Comments at 5 (requiring FM6 LPTV stations to maintain an OPIF will serve as a vital resource for the public and local television stations for any matters of regulatory compliance). We instruct the Media Bureau to create an OPIF for each FM6 LPTV station in the Commission's database for all FM6 LPTV stations and to notify the Stations by written letter once they are able to file documents in their OPIF. Compliance with the OPIF requirement will take effect either upon effective date of the rule or 30 days following creation of the Stations' OPIF, whichever is later.

<sup>231</sup> PCPC Comments at 21 (arguing that “any relevant regulations already apply by nature of an FM6 station's status as a licensed LPTV station ... [n]othing about FM6 operations justifies applying rules designed for primary stations to a station operating as a secondary service.”); PCPC Reply Comments at 14-15; EMF 2015 Comments at 3-4; Signal 2015 Comments at 8.

<sup>232</sup> 47 U.S.C. § 336(b)(3).

<sup>233</sup> See *supra* para. 54.

provision of the Act should apply. There is no exception in either the Act or our rules from this requirement for stations with secondary status that are providing ancillary or supplementary services. Second, while LPTV and FM radio may have some overlapping rules, they are distinct and independent services with different rules.<sup>234</sup> For example, LPTV stations do not have an OPIF requirement and have different station identification requirements.<sup>235</sup> The record is clear that the aim of these FM6 operations is to provide an audio service that is analogous to other FM radio service and received using FM radio tuners.<sup>236</sup> Therefore, we find that such FM6 operations provided by FM6 LPTV stations is analogous to those of licensed FM radio operations and should be regulated as such.

58. We do, however, find that specific Part 73 technical rules<sup>237</sup> for full service FM radio stations should not apply to FM6 operations because FM6 LPTV stations are operating on frequencies and subject to certain conditions that make the application of certain FM technical rules unnecessary and impractical.<sup>238</sup> Although FM6 LPTV stations operate separate television and radio transmission systems, pursuant to the new rules we have adopted today, the FM6 operations will be restricted in certain respects. For example, FM6 LPTV stations are permitted to make changes to their FM6 station facilities only under very limited circumstances (without a showing of “engineering necessity” or a waiver), are limited to operating on 87.75 MHz, may offer FM6 service only within the LPTV station’s protected contour, and may operate only on a non-interference basis.<sup>239</sup> We have also limited the number of FM6 LPTV stations to a finite group that have already proven they do not cause the interference that many of the Part 73 technical rules for FM stations are intended to prevent.<sup>240</sup> Accordingly, we find that applying the specific technical rules in sections 73.201-73.277, 73.310-73.312, and 73.314-73.318 in the context of FM6 operations are not only unnecessary, but could be contradictory to the specific rules we have adopted governing FM6 operations.

### 3. Five Percent Fee For Ancillary or Supplementary Services

59. Consistent with our determination to allow FM6 operations to continue on an ancillary or supplementary basis, we find that FM6 LPTV stations that offer feeable ancillary or supplementary services are subject to the five percent fee on the gross revenue of such services and must submit an Annual DTV Ancillary/Supplementary Services Report.<sup>241</sup> Commenters unanimously agree that FM6 LPTV stations offering feeable ancillary or supplementary services should be subject to this fee and reporting requirement.<sup>242</sup>

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<sup>234</sup> The situation before us is inherently different from the “FM multicast” scenario cited by PCPC where an FM radio station provides multiple HD streams all of which are all subject to the same FM radio operational rules. PCPC Comments at 21.

<sup>235</sup> Cf. 47 CFR §74.783 with 47 CFR § 73.1201.

<sup>236</sup> See *supra* paras. 10-12.

<sup>237</sup> The FM radio technical rules are contained in 47 CFR § 73.201 – 73.333.

<sup>238</sup> See PCPC Comments at 21; PCPC Reply Comments at 14-15; LSRC Comments at 4-5 (Jan. 21, 2020).

<sup>239</sup> See *supra* Section III. C. 1 - Codifying Certain FM6 STA Conditions and App. B – Final Rules.

<sup>240</sup> See *supra* Section III. B. – Limiting FM6 Operations To Existing Operators and paras. 13-14.

<sup>241</sup> FCC Form 2100 Schedule 317. See 47 CFR § 73.624(g)(1)(i); PCPC Comments at 16.

<sup>242</sup> See AVHN Comments at 4 (no objection to such a fee, provided that revenues derived from commercial advertisements would be excluded from the fee calculation, as is currently the case); Barreto Comments at 3-4 (it is appropriate that FM6 services be considered ancillary or supplementary and subject to the fees imposed on revenues received from such services); Marquee Comments at 2 (imposing the five percent fee on FM6 operations will “strongly benefit the public by bringing in new monies to the FCC and the U.S. Treasury”); PCPC Comments at 18 (if the licensee receives compensation in return for transmitting material other than commercial advertisements, those operations should be considered an ancillary service and subject to the 5 percent regulatory fee). We also note

(continued....)

60. As we observed in the *Further Notice*,<sup>243</sup> our ancillary or supplementary rules provide that digital television stations (including digital LPTV stations) must annually remit a fee of five percent of the gross revenues derived from all “feeable” ancillary and supplementary services.<sup>244</sup> The Commission has defined “feeable” ancillary or supplementary services as services for which payment of a subscription fee or charge is required in order to receive the service,<sup>245</sup> or if no payment is required from consumers, the licensee “directly or indirectly receives compensation from a third party in return for the transmission of material provided by that third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required).”<sup>246</sup> Given these rules, any FM6 LPTV station that provides “feeable services” is required to comply with the Rules and both remit the required fee and submit an Annual DTV Ancillary/Supplementary Services Report to indicate that they provided feeable services, the amount of gross revenues of such services, and whether they have remitted the requisite five percent fee.<sup>247</sup>

#### D. Licensing of Additional NCE FM Stations

61. We decline to adopt the proposal discussed in the *Further Notice* to repurpose TV6 spectrum (82-88 MHz) for FM services nationwide in locations where the channels are not being used to provide television programming.<sup>248</sup> We find that the record does not support such a plan to remove a portion of the remaining spectrum allotted for television use and converting it to radio use. We find that the plan is neither feasible, because of the possibility of interference; nor efficient, because receivers are

(Continued from previous page) \_\_\_\_\_

that several FM6 LPTV stations began making fee payments on their FM6 operations. See *Further Notice* at n.111 (noting that last year KBKF-LD, San Jose, California submitted a payment of \$7,875 reflecting its five percent fee payment); see also Venture 2015 Comments at 8; Seattle 6 Comments at 1 (Jan. 22, 2020); PCPC Comments at 30-31 (Jan. 22, 2020); PCPC Reply Comments at 10 (Feb. 6, 2020).

<sup>243</sup> *Further Notice* at paras. 39-40.

<sup>244</sup> 47 CFR § 73.624(g); see also 47 U.S.C. § 336(e).

<sup>245</sup> See 47 CFR § 73.624(g)(1)(i); see also 47 U.S.C. § 336(e)(1)(A). Moreover, the rules provide that “[t]he fee required by this provision shall be imposed on any and all revenues from such services, including revenues derived from subscription fees and from any commercial advertisements transmitted on the service.” See 47 CFR § 73.624(g)(1)(i).

<sup>246</sup> See 47 CFR § 73.624(g)(1)(ii); see also 47 U.S.C. § 336(e)(1)(B). Further, the rules provide that “[t]he fee required by this provision shall be imposed on any and all revenues from such services, other than revenues received from a third party in return for the transmission of commercial advertisements used to support broadcasting for which a subscription fee is not required.” See 47 CFR. § 73.624(g)(1)(ii).

<sup>247</sup> The Media Bureau and Office of Managing Director are directed to issue any guidance, as necessary, to facilitate payment of the required fee.

<sup>248</sup> See *Further Notice* at paras. 45-49. See also NPR Comments at 16. In July 2020, NPR argued FM6 is not an efficient use of spectrum, the TV6 resource was not being fully utilized by television broadcasters and much of the spectrum was laying fallow, especially in the rural parts of the country. Accordingly, we sought comment in the *Further Notice* about whether to allow FM on 82-88 MHz, whether it should be limited to NCEs, and technical feasibility. *Further Notice* at para. 45-49, citing Letter from Gregory A. Lewis, Deputy General Counsel, NPR, to Marlene H. Dortch, Secretary, FCC, in MB Docket No. 03-185 (Jul. 9, 2020) at 1 (NPR July 2020 *Ex Parte*); see also Letter from Christina H. Burrow, Cooley, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 03-185 (filed Apr. 13, 2021) (NPR April 2021 *Ex Parte*). In recent filings, NPR has modified its request to ask that the Commission instead make changes to interference protections. See, e.g., NPR Comments at 15-16; see also Letter from Amanda Huetinck, Assistant General Counsel, NPR, to Marlene H. Dortch, Secretary, FCC, in MB Docket No. 03-185 (Jul. 25, 2022) at 1 (NPR July 2022 *Ex Parte*) (stating NPR supports “the Commission’s proposal to allow permanent operation of legacy FM6 operations, so long as FM6 operations are limited to only the legacy stations discussed in the NPRM and those operations are subject to appropriate rules to ensure parity with FM stations.”); see also NPR Reply Comments at 3-6.



not capable of receiving FM stations below 87.7 FM; nor appropriate, because TV6 spectrum is still needed for broadcast television use.

62. First, we agree with commenters that the interference implications of NPR's plan to reallocate unused TV6 spectrum have not been adequately considered.<sup>249</sup> Further, we find that NPR's stated efficiency goal of adding up to 30 new FM channels cannot be achieved because it would not be possible to use all 30 channels in one place.<sup>250</sup> Although in theory 30 FM channels are available in the band that comprises TV6, in practice it would not be possible to use all 30 channels in one place given interference considerations.<sup>251</sup> Practically speaking, the number of channels for use by new FM radio stations in any one area would be significantly fewer.<sup>252</sup>

63. We find that even in places where there are available allocations for FM stations under the proposal, listeners would not be able to receive most transmissions because FM radio receivers receive only the top-most portion of the 82-88 MHz band (87.7 or 87.9 MHz) of the 6 MHz channel that comprises TV6.<sup>253</sup> We agree with commenter concerns that FM radio receivers cannot "tune down" to the rest of the spectrum – 82.1-87.5 MHz.<sup>254</sup> Therefore, we agree that it would be impractical to reallocate unused TV6 spectrum for use by new FM radio stations when it is unlikely that listeners would be able to receive most of the broadcasts from these new FM radio stations.<sup>255</sup>

64. Finally, although some commenters support NPR's proposal by suggesting that it is a better use of spectrum because TV6 is not ideal for digital television broadcasting,<sup>256</sup> we disagree, and note that many TV stations operate on TV6. According to NAB, as of July 2022, 98 television stations were authorized to operate on TV6 in the United States.<sup>257</sup> Some of these stations serve large, sparsely

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<sup>249</sup> See Bovis Comments at 1; Bovis Reply Comments at 1; KTL Comments at 3 (no objection to NPR's proposal as long as the FCC establishes protection from interference so that NCE stations and FM6 operations can co-exist); REC Reply Comments at 14 ("NPR's comments also lack any kind of technical showing that would need to be implemented in the event that Channel 200 or any other channels in the 76-88 MHz spectrum were to be opened for sound broadcasting.").

<sup>250</sup> See *Further Notice* at para. 47.

<sup>251</sup> *Id.* See also PCPC Comments at 10.

<sup>252</sup> *Further Notice* at n.124 (noting as an example that in New York City, there are only 7 full-power radio stations licensed to the top 6 MHz of the FM radio band. The other 23 frequencies are licensed to stations on Long Island, New Jersey, Connecticut, and areas of New York north of New York City to avoid interference.).

<sup>253</sup> See *Further Notice* at para. 48.

<sup>254</sup> See Ridgeline Comments at 1-2 ("Extending the FM band lower into channel 6 bandwidth is a non-starter. With no receivers in automobiles capable of receiving these frequencies it would be ineffective use of bandwidth to use channel 6 for radio."); OMI Comments at 1 ("most all of the car radios in the United States do not tune down further than 87.5 MHz"); PCPC Comments at 10 ("listeners would not even be able to receive FM stations below 87.7").

<sup>255</sup> See CMC Comments at 1 ("If the spectrum was made available for radio, there wouldn't be anyone who could receive it, and this would deprive the use of this spectrum for TV for which receivers are ubiquitous.").

<sup>256</sup> See, e.g., Marquee Comments at 1 ("it boils down to an argument of whether a television broadcaster's FM station is any better or worse than a non-profit station's use of the channel"); IBS Comments at 3 ("IBS strongly supports reserving 87.5, 87.7, and 87.9 for new NCE FM stations, and opposes the authorization of a hybrid commercial and NCE operation for stations operating at such frequencies."); CFI Comments at 1-2 ("FCC should adopt 82-88 MHz across the United States for FM radio broadcasting."); Lee Comments at 1 ("it would be far more effective to repurpose the TV Channel 6 spectrum to up to 30 new all-digital FM radio stations, rather than limit the "TV6" spectrum to just one "Franken FM station"); Rogers Comments at 3 (TV channels 2-6 "are seen as a no-man's land by TV stations now with only a handful of stations broadcasting across these five channels"); REC Comments at 9 (the current trend for full-service TV stations is to move from low VHF channels to channels in the high VHF and UHF spectrum).

<sup>257</sup> See NAB Comments at 2 (July 18, 2022).

populated areas where the relatively low power consumption of TV6 transmitters makes it economical to provide television service to rural Americans. Others serve densely populated urban areas where no alternative channels exist in more desirable spectrum.<sup>258</sup> Furthermore, ATBA contends a number of TV6 stations could also serve as “lighthouse” stations for NextGen TV, providing a critical transition path for television broadcasters as they migrate to ATSC 3.0.<sup>259</sup> The record persuades us that 82-88 MHz is still needed for television, especially given that the UHF spectrum available for broadcast television has been dramatically reduced in recent years.<sup>260</sup> Therefore, we decline to repurpose TV6 spectrum in areas where there are presently no TV6 stations to permit the construction of new FM stations that, in many cases, listeners will be unable to receive because their receivers cannot “tune down” to the lower portions of the 82-88 MHz frequency (i.e., 82.1-87.5 MHz).<sup>261</sup>

#### **E. Elimination of Certain TV6 Interference Protections**

65. Although we received comments on this matter,<sup>262</sup> we did not receive sufficient technical studies and analysis upon which to base any final decisions to revise our TV6 interference rules. Any changes to these rules, which were originally adopted when television was operating in analog, would need to reflect the fact that all television is now operating in digital. Despite asking in the *Further Notice* for commenters to analyze the existing digital television landscape and suggest whether and how the existing TV6 interference provisions should be retained, revised or updated, we received little comment to that effect.<sup>263</sup> Therefore, given the incomplete nature of the record, we decline to revise the TV6 interference rules at this time. We will seek additional comment about this matter at a future date.<sup>264</sup> We

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<sup>258</sup> *Id.* See also PCPC Reply Comments at 15-16 (“Between the need for television service on channel 6 and the demonstrated problems with an expanded FM band, preserving existing channel 6 stations and service to their viewers remains in the public interest.”).

<sup>259</sup> ATBA Comments at 6 (“But it also cannot be ignored that LPTV stations are uniquely situated to deliver next generation video and data services that harness the power of broadcast technology to benefit the public without the constraints faced by many full power stations....”). See also Public Media Reply Comments at 1 (“Any reduction in spectrum available for television services could severely hinder implementation of new innovative television technologies, such as NextGen TV (ATSC 3.0) and distributed transmission systems . . .”).

<sup>260</sup> See Public Media Comments at 2-3 (discussing the impact of the television incentive auction and post-incentive auction repacking process).

<sup>261</sup> See NAB Comments at 3 (July 18, 2022) (“However, the minimal relief afforded by a limited repurposing of TV channel 6 to the FM service in areas where there are presently no channel 6 stations is unlikely to outweigh the potential costs.”); Bovis Reply at 2 (arguing that NPR’s proposal prioritizes currently non-existent radio listeners over existing TV viewers of channels 5 and 6).

<sup>262</sup> See University of Alabama Reply Comments at 1-3; ATBA Comments at 7-8; Bovis Comments at 2; CFI Comments at 10; CMC Comments at 1; CTI Reply Comments at 1; EMF Reply Comments at 1-5; IBS Comments at 4; Luna Comments at 1; NAB Comments at 9-10 and Reply Comments at 5-6; NPR Comments at 12-15 and Reply Comments at 5-6; OMI Comments at 1; PCPC Comments at 23-24 and Reply Comments at 17-18; Public Media Reply Comments at 1-2; Reed Comments at 6-7; REC Networks Comments at 25 and Reply Comments at 5-13 and 21-22; SOL Comments at 11-12; WPVI Comments at 2-6 and Reply Comments at 1-4; Letter from Michelle Bradley, Founder, REC Networks, MB Docket No. 03-185 at 1-2 (filed July 3, 2023).

<sup>263</sup> See *Further Notice* at paras. 54 and 56.

<sup>264</sup> In addition, NPR proposed that the Commission adopt a narrow rule change to enable existing NCE FM radio stations to modify their authorizations to relocate to channel 200 (87.9 MHz). See NPR Comments at 15-16; NPR Reply Comments at 6-7. As this change could impact our revisions to the TV6 interference rules, we find that it would be more appropriate to consider NPR’s proposal in conjunction with a future TV6 interference proceeding.

encourage interested parties to continue to work together to find a solution and develop comprehensive technical studies to support their position.<sup>265</sup>

#### IV. PROCEDURAL MATTERS

66. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>266</sup> requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”<sup>267</sup> Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Report and Order* on small entities. The FRFA is set forth in Appendix C.

67. *Paperwork Reduction Act.* The *R&O* contains a new or modified information collection requirement subject to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirement contained in the proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002,<sup>268</sup> we previously sought specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”<sup>269</sup> We have described impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis (FRFA), attached as Appendix C.

68. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this *Fifth Report and Order* to Congress and the Government Accountability office, pursuant to 5 U.S.C. § 801(a)(1)(A).

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

70. *Additional Information.* For additional information on this proceeding, please contact Shaun Maher, Video Division, Media Bureau at (202) 418-2324 or [Mark Colombo](mailto:Mark.Colombo@fcc.gov), Video Division, Media Bureau at (202) 418-7611 or [Mark.Colombo@fcc.gov](mailto:Mark.Colombo@fcc.gov).

#### V. ORDERING CLAUSES

71. Accordingly, **IT IS ORDERED**, pursuant to the authority contained in sections 1, 4, 301, 303, 307, 308, 309, 310, 316, 319, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 301, 303, 307, 308, 309, 310, 316, 319, and 336, this Fifth Report Order **IS ADOPTED**.

72. **IT IS FURTHER ORDERED** that, pursuant to the authority contained in sections 1, 4, 301, 303, 307, 308, 309, 310, 316, 319, and 336 of the Communications Act of 1934, as amended, 47

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<sup>265</sup> REC Networks (REC) included a petition for rulemaking requesting that the Commission consider the reallocation of television channels 5 and 6 for use with a new “WIDE FM” service. See REC Comments at 26-109; REC Reply Comments at 58. We conclude that REC’s proposal is outside of the scope of this proceeding and will not be considered in this *R&O*.

<sup>266</sup> 5 U.S.C. §§ 601–612. The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>267</sup> 5 U.S.C. § 605(b).

<sup>268</sup> Pub. L. No. 107-198.

<sup>269</sup> 44 U.S.C. § 3506(c)(4).

U.S.C. §§ 151, 154, 301, 303, 307, 308, 309, 310, 316, 319, 336, part 74 of the Commission's rules, 47 CFR part 74, **IS AMENDED** as set forth in Appendix B effective thirty (30) days after publication in the Federal Register, except for sections 74.790(o)(9) and 74.790(o)(10) which contain new or modified information collection requirements that require review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The Commission directs the Media Bureau to announce the effective date of that information collection in a document published in the Federal Register after the Commission receives OMB approval.

73. **IT IS FURTHER ORDERED** that the Commission's Office of the Secretary, Reference Information Center, **SHALL SEND** a copy of the Fifth Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

74. **IT IS FURTHER ORDERED** that, pursuant to section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A), the Commission **SHALL SEND** a copy of this Fifth Report and Order to Congress and to the Government Accountability Office.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A****List of Commenters and Reply Commenters****Comments**

Advanced Television Broadcasting Alliance (ATBA)  
AlmaVision Hispanic Network, Inc. (AHNI)  
Public Media - America's Public Television Stations, Joint Licensee Group, National Educational  
Telecommunications Association, Public Broadcasting Service (Public Media)  
Barreto, Juan Matos (Barreto)  
Bogner, Richard (Bogner)  
Bovis, Hank (Bovis)  
CMC Broadcasting Company Incorporated (CMC)  
Cocola Broadcasting Cos. LLC (Cocola or CBC)  
Common Frequency, Inc. (CFI)  
Flinn, George (Flinn)  
Gerald Benavides (Benavides)  
Guadalupe Radio (GR)  
Intercollegiate Broadcasting System, Inc. (IBS)  
Kids Television LLC (KTL)  
Woodward - KORE Broadcasting, LLC (Woodward)  
Luna Foods, Inc. (Luna)  
Marquee Broadcasting, Inc. (MBI)  
Metro TV, Inc. (Metro TV)  
National Association of Broadcasters (NAB)  
National Public Radio, Inc. (NPR)  
Rogers, Nelson Jay (Rogers)  
One Ministries, Inc. (OMI)  
Preserve Community Programming Coalition (PCPC)  
Lee - QXZ Media Works LLC (Lee)  
Read, Aaron (Read)  
REC Networks (REC)  
Signal Above, LLC (Signal)  
Sound of Long Island, Inc. (Sound)  
T Z Sawyer Technical Consultants (TZ)  
VCY America, Inc. (VCY)  
WPVI Television (Philadelphia), LLC (WPVI)

**Reply Comments**

Bogner  
Bovis  
California State University Long Beach Research Foundation (Cal State)  
Cocola or CBC  
Communications Technologies, Inc. (CTI)  
Educational Media Foundation (EMF)  
La Favorita Radio Network, Inc. (LFRN)  
OMI  
Public Media  
Metro TV  
NAB  
NPR  
PCPC  
REC

Squires, Caleb (Squires)  
Ridgeline TV (Ridgeline)  
University of Alabama  
WPVI

**Ex Partes**

Metro TV, filed June 1, 2022  
Metro TV, filed November 7, 2022  
Metro TV, filed November 15, 2022  
NPR, filed July 25, 2022  
REC, filed September 14, 2022  
REC, filed July 7, 2023  
Venture Technologies Group, filed July 1, 2022 (Venture)

**APPENDIX B****Final Rules**

Part 74 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

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

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

2. Add section 74.790(o) to read as follows:

**74.790 - Permissible service of digital TV translator and LPTV stations.**

\* \* \* \* \*

(o) Provision of analog FM radio operations by digital LPTV channel 6 stations (FM6 LPTV stations). FM6 LPTV stations may provide analog FM radio operations (FM6 operations) on an ancillary or supplementary basis subject to the following:

- (1) The FM6 LPTV station must have been providing FM6 operations pursuant to an active engineering special temporary authority on June 7, 2022, or as otherwise permitted by the Commission.

- (2) The FM6 LPTV station must be operating in ATSC 3.0 digital format, as authorized in § 74.782.

- (3) FM6 operations may only be conducted on 87.75 MHz.

- (4) FM6 operations shall be conducted on a non-interference basis to any other licensed user, including but not limited to broadcast television or radio users.

- (5) the FM6 LPTV station's FM6 service contour must be contained within and may not exceed the protected contour of the FM6 LPTV station's synchronized video/audio programming stream. These contours shall be determined using established methodologies in § 73.313 of this chapter (FM radio) and § 74.792 (LPTV).

- (6) the FM6 LPTV station must provide at least one stream of synchronized video and audio programming, at any time the station is operating.

- (7) FM6 LPTV stations may make minor modifications to their technical facilities, as otherwise permitted under parts 73 or 74 of this chapter, so long as the station's proposed modified "protected contour," as defined in § 74.792, does not exceed its protected contour as it was authorized on July 20, 2023, or where the station can demonstrate that such change is being made due to an engineering necessity such as the loss of a tower site or change in equipment due to malfunction and where the station can also demonstrate that the modification will not cause any interference to other licensed users.

- (8) FM6 LPTV stations may be assigned or transferred; however, an FM6 LPTV station's FM6 operation is not severable from its digital license and may not be assigned or transferred separate from the FM6 LPTV station.

- (9) FM6 LPTV stations must notify the Media Bureau within 30 days of permanently ceasing FM6 operations. Such notification shall be made by written letter and mailed to the FCC Office of the Secretary, Attention: Chief, Video Division, Media Bureau. If an FM6 LPTV station permanently ceases FM6 operations, FM6 operations may not resume.

- (10) FM6 LPTV stations must certify in an attachment to their license renewal application that they have continued to provide FM6 service in accordance with the FM6 rules during the prior license term.

(11) FM6 LPTV stations shall continue to be subject to all part 73 and 74 rules applicable to low power television stations. In addition, the following rules shall apply to FM6 LPTV stations with respect to their FM6 operations:

- Part 11 of this chapter The Emergency Alert System (EAS)
- 73.293 Use of FM multiplex subcarriers.
- 73.295 FM subsidiary communications services.
- 73.297 FM stereophonic sound broadcasting.
- 73.310 FM technical definitions.
- 73.313 Prediction of coverage.
- 73.319 FM multiplex subcarrier technical standards.
- 73.322 FM stereophonic sound transmission standards.
- 73.333 Engineering charts
- 73.1201 Station identification.
- 73.1206 Broadcast of telephone conversations.
- 73.1207 Rebroadcasts.
- 73.1208 Broadcast of taped, filmed, or recorded material.
- 73.1209 References to time.
- 73.1211 Broadcast of lottery information.
- 73.1212 Sponsorship identification; list retention; related requirements.
- 73.1216 Licensee-conducted contests.
- 73.1217 Broadcast hoaxes.
- 73.1250 Broadcasting emergency information.
- 73.1300 Unattended station operation.
- 73.1635 Special temporary authorizations (STA).
- 73.1740 Minimum operating schedule.
- 73.1750 Discontinuance of operation.
- 73.1940 Legally qualified candidates for public office.
- 73.1941 Equal opportunities.
- 73.1942 Candidate rates.
- 73.1943 Political file.
- 73.1944 Reasonable access.
- 73.2080 Equal employment opportunities (EEO).
- 73.3526 Online public inspection file of commercial stations.
- 73.4005 Advertising - refusal to sell.
- 73.4045 Barter agreements.
- 73.4055 Cigarette advertising.
- 73.4060 Citizens agreements.
- 73.4075 Commercials, loud.
- 73.4095 Drug lyrics.
- 73.4097 EBS (now EAS) attention signals on automated programing systems.
- 73.4165 Obscene language.
- 73.4170 Obscene broadcasts.
- 73.4180 Payment disclosure: Payola, plugola, kickbacks.
- 73.4185 Political broadcasting and telecasting, the law of.
- 73.4190 Political candidate authorization notice and sponsorship identification.
- 73.4215 Program matter: Supplier identification.
- 73.4242 Sponsorship identification rules, applicability of.
- 73.4250 Subliminal perception.
- 73.4255 Tax certificates: Issuance of.
- 73.4260 Teaser announcements.
- 73.4265 Telephone conversation broadcasts (network and like sources).



## APPENDIX C

## Final Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA)<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, Fifth Notice of Proposed Rulemaking (*Further Notice*) released June 7, 2022.<sup>2</sup> The Commission sought written public comment on the proposals in the *Further Notice*, including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>3</sup>

**A. Need For, and Objectives of, the Report and Order**

2. This *Report and Order* adopts rule changes to allow channel 6 digital low power television stations that have been providing analog FM radio services, and only those stations, to continue their FM6 operations, subject to certain conditions which will also be codified in the rules. Continuing to allow existing FM6 operations serves the public interest and minimizes service disruptions to programming on which listeners have relied.

3. In the *Report and Order*, the Commission adopts rules for FM6 operations, including that FM6 LPTV stations must operate in ATSC 3.0 digital format, must transmit FM6 at 87.75 MHz, and FM6 operations must not interfere with any other licensed user. The coverage area of an FM6 LPTV station's analog FM radio operation may not exceed the coverage area of the LPTV station's ATSC 3.0 synchronized video/audio programming stream. FM6 LPTV stations must also provide at least one stream of synchronized video and audio programming on the ATSC 3.0 portion of the spectrum at any time the station is operating. FM6 LPTV stations may make modifications to their technical facilities, as otherwise permitted under Part 74 of the rules, so long as the protected contour of the station's modified facilities remains within its current protected contour.

4. The *Report and Order* also adopts reporting requirements, requiring that if an FM6 LPTV station decides to permanently discontinue FM6 operations, it must notify the Media Bureau within 30 days of permanently ceasing FM6 operations. FM6 LPTV stations must also certify in an attachment to their octennial license renewal application that they have continued to provide FM6 operations in accordance with the FM6 rules during their prior license term. Section 74.763(c) of the rules apply to FM6 operations, so that an FM6 LPTV station that does not provide an FM6 operation for a period of 30 days or more, absent circumstances beyond its control, will be deemed to have permanently discontinued FM6 operations. Additionally, FM6 LPTV stations must include all of the items required by the public inspection file (PIF) rule for full service FM radio stations in their LPTV station PIF.

5. The *Report and Order* also adopts requirements for application of Part 73 and 74 rules to these stations and services. FM6 LPTV stations will continue to be subject to all applicable Part 73 and 74 rules that pertain to their television station operations, and their FM6 operations will be separately subject to those Part 73 rules to which full service FM radio stations are currently subject, as contained in our new FM6 rule – 74.790(o).

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996).

<sup>2</sup> See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, Fifth Notice of Proposed Rulemaking, MB Docket No. 03-185, FCC 22-40, Appx. C (2022) (*Further Notice*).

<sup>3</sup> See 5 U.S.C. § 604.

6. Finally, the *Report and Order* adopts the fee requirements for FM6 LPTV stations. Any FM6 LPTV station that receives compensation for the transmission of material by a third party, other than commercial advertisements used to support non-subscription based broadcasting, on its FM6 operation shall be subject to the existing rule requiring a five percent fee on gross revenues from such compensation. FM6 LPTV stations that do not receive such compensation shall not be subject to the five percent fee. Any FM6 LPTV station providing feeable ancillary or supplementary services must submit an Annual DTV Ancillary/Supplementary Services Report and report that they provided such fee-based services, the amount of gross revenues of such services, and whether they have remitted the requisite five percent fee.

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

7. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

**C. Response to comments by the Chief Counsel for Advocacy of the Small Business Administration**

8. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.<sup>4</sup>

9. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

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

10. 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 adopted herein.<sup>5</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.”<sup>6</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>7</sup> A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration.<sup>8</sup>

11. *Television Broadcasting.* This industry is comprised of “establishments primarily engaged in broadcasting images together with sound.”<sup>9</sup> These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.<sup>10</sup> These

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<sup>4</sup> *Id.* § 604(a)(3).

<sup>5</sup> *Id.* § 603(a)(4).

<sup>6</sup> *Id.* § 601(6).

<sup>7</sup> *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

<sup>8</sup> 15 U.S.C. § 632.

<sup>9</sup> See U.S. Census Bureau, *2017 NAICS Definition, “515120 Television Broadcasting”* <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

<sup>10</sup> *Id.*

establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule.<sup>11</sup> Programming may originate in their own studio, from an affiliated network, or from external sources.<sup>12</sup> The SBA small business size standard for this industry classifies businesses having \$41.5 million or less in annual receipts as small.<sup>13</sup> 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year.<sup>14</sup> Of that number, 657 firms had revenue of less than \$25,000,000.<sup>15</sup> Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

12. As of March 31, 2023, there were 1,375 licensed commercial television stations.<sup>16</sup> Of this total, 1,282 stations (or 93.2%) had revenues of \$41.5 million or less in 2021, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on April 7, 2023, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of March 31, 2023, there were 383 licensed noncommercial educational (NCE) television stations, 381 Class A TV stations, 1,887 LPTV stations and 3,119 TV translator stations.<sup>17</sup> The Commission, however, does not compile and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

#### **E. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities**

13. The *Report and Order* contains new reporting, recordkeeping, and other compliance requirements for the licensing and certification for small entity FM6 LPTV stations that provide FM6 service.

14. While the Commission is not in a position to determine whether small entities will have to hire professionals to comply with our decisions and cannot quantify the cost of compliance for small entities, the approaches we have taken to implement the requirements have minimal or de minimis cost implications for impacted entities because many of these requirements are part of an existing reporting process.

15. The *Report and Order* adopts four new reporting requirements for FM6 LPTV stations that wish to continue to or cease to provide FM6 service, including the requirement that FM6 LPTV stations notify the Media Bureau within 30 days if they decide to permanently discontinue FM6 operations. FM6 LPTV stations must certify in an attachment to their octennial license renewal

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

<sup>12</sup> *Id.*

<sup>13</sup> See 13 CFR § 121.201, NAICS Code 515120 (as of 10/1/22 NAICS Code 516120).

<sup>14</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515120, <https://data.census.gov/cedsci/table?y=2017&n=515120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

<sup>15</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term\\_ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>16</sup> *Broadcast Station Totals as of March 31, 2023*, Public Notice, DA 23-300 (MB rel. Apr. 6, 2023) (*March 2023 Broadcast Station Totals PN*), <https://www.fcc.gov/document/broadcast-station-totals-march-31-2023>.

<sup>17</sup> *Id.*

application that they have continued to provide FM6 operations in accordance with the FM6 rules during their prior license term. FM6 LPTV stations must also include all of the items required by the PIF rule for full service FM radio stations in their LPTV station PIF. Additionally, FM6 LPTV stations that provided feeable ancillary or supplementary service must submit an Annual DTV

Ancillary/Supplementary Services Report and report that they provided feeable services, the amount of gross revenues of such services and whether they have remitted the requisite five percent fee. These requirements will result in a modified paperwork obligation for small entities and other licensees. The Commission will seek the requisite approval, such as those required to comply with the Paperwork Reduction Act of 1995 (PRA),<sup>18</sup> to account for the increased burdens resulting from this modified reporting requirement.

#### **F. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered**

16. The RFA requires an agency to provide, “a description of the steps the agency has taken to minimize the significant economic impact on small entities, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.”<sup>19</sup>

17. The actions taken by the Commission in the *Report and Order* were considered to be the least costly and minimally burdensome for small and other entities impacted by the rules. As such, the Commission does not expect the adopted requirements to have a significant economic impact on small entities. Below we discuss actions we take in the *Report and Order* to minimize any significant economic impact on small entities and some alternatives that were considered.

18. Among the alternatives considered to minimize significant impact on small entities, the Commission considered whether FM6 programming could be delivered via another delivery method such as other broadcast methods or internet only, and found that these methods were less efficient and potentially more costly to small entities than maintaining the existing service.<sup>20</sup> The Commission also considered whether to preserve or alter the service contour for FM6 service. In deciding that the service contour not exceed the protected contour of the LPTV station’s ATSC 3.0 synchronized video/audio programming stream, the Commission determined that alternative approaches presented where impractical and overly burdensome.<sup>21</sup>

19. It is anticipated that some of the new reporting requirements will likely result in minimal additional costs because the Commission adopted requirements which can be executed as part of an existing process and within the timeframe for certain other filing requirements. This includes certifying in an attachment to an existing octennial license renewal application that the station provided FM6 service during the prior license term in accordance with the FM6 rules. Further, FM6 LPTV stations must adhere to the requirements of licensed users providing similar services, including the PIF rule for full service FM radio stations in their LPTV station PIF, and submitting an Annual DTV Ancillary/Supplementary Services Report if they provide a feeable service, report provision of feeable services, their gross revenues, and whether they have remitted the requisite five percent fee.

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<sup>18</sup> Pub. L. No. 104-13.

<sup>19</sup> 5 U.S.C. § 604(a)(6).

<sup>20</sup> *Report and Order* at paras. 13-15; *Further Notice* at para. 21.

<sup>21</sup> *Report and Order* at paras. 40-41; *Further Notice* at para. 30-31.

**G. Report to Congress**

20. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.<sup>22</sup> In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order*, and FRFA (or summaries thereof) will also be published in the *Federal Register*.<sup>23</sup>

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<sup>22</sup> 5 U.S.C. § 801(a)(1)(A).

<sup>23</sup> *See Id.* § 604(b).

**STATEMENT OF  
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, MB Docket No. 03-185, Fifth Report and Order (July 20, 2023).

Back in the 1980's a small number of low power television stations operating on channel 6 began to provide supplemental audio programming. They took advantage of the physics of their location on the broadcast television band, because the uppermost portion of the channel where these television stations made their home was also capable of reception on the lowermost portion of the FM radio dial.

So far, so good. Because ultimately this led to more broadcast services to more people in the community. But when the low power digital television transition rolled around, this got complicated—fast. That's because when these stations upgraded to digital transmission, they were unable to reach their analog radio audience.

For the past two years, we have kept these stations on the air with the equivalent of regulatory gum and bailing wire. We set up a temporary process that allowed for the use of a separate analog radio transmitter in combination with a digital television facility.

Now it is time for something sturdier and more permanent. In light of the fact that we have had two years of experience with this arrangement and no incidents of interference with television operations and adjacent licensees, including other stations on FM radio, we are authorizing these FM6 stations to continue providing analog radio service as “ancillary or supplementary services” under the Communications Act.

That may sound technical. But to the communities these stations serve it really matters. Right here in Washington, for instance, WDCN—La Nueva is one of these stations. Broadcasting out of Fairfax, Virginia, it is targeted to those with ties to Central America, featuring public service programming, music, and content from El Salvador, Honduras, and Guatemala. This is a small station that is a big deal to its listeners. We make it possible today for them to continue to broadcast to their radio listeners, because we know in a world where content feels like it is everywhere, there is still something special about local radio and a signal in the air.

Thank you to the team responsible for this effort, including Jim Bradshaw, Mark Colombo, Robin Fagan, Tom Horan, Barbara Kreisman, Shaun Maher, Evan Morris, Holly Saurer, and Al Shuldiner from the Media Bureau as well as David Konczal and Anjali Singh from the Office of General Counsel.

**STATEMENT OF  
COMMISSIONER BRENDAN CARR**

Re: *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, MB Docket No. 03-185, Fifth Report and Order (July 20, 2023).

Throughout his life, Percy Spencer was many things—an orphan, a farmer, a drop out, a Navy man, and a self-taught engineer. In 1945, it was his love of electricity that had brought him to the Raytheon Corporation. Among other things, Percy was responsible for testing magnetrons, which are vacuum tubes inside of radars that operate at very high power levels.

Now, in addition to being a jack of all trades, Percy had a bit of a sweet tooth. And on one particular day, he had a candy bar in his pocket. After a while, and more than a few close passes to the magnetrons, he noticed that the candy bar had melted. In fact, it had gotten quite warm.

Percy thought he might be on to something, but, being a man of science, he needed more proof. Next came some popcorn kernels that started popping like mad. Then came an egg that blew up in the face of a skeptical colleague. I can't say for certain that this is where we got the expression "egg on your face," but I can say that these culinary adventures brought us what we now know as the microwave.

Today's item presents us with a similar story of serendipity. For many years, the Commission has been trying to figure out what to do with the FM6 stations. And just when it looked like the DTV transition would be the final entry in the FM6 Wikipedia page—yes, they have their own Wikipedia page—a new technology breathed life into the service. I have long believed that ATSC 3.0 would revolutionize the broadcast television industry, but I had no idea that this cutting-edge technology would help preserve over-the-air radio service near the bottom of the TV band. So I applaud the ingenuity of these stations, and I am pleased that, moving forward, they will also be increasing their video programming in ATSC 3.0.

If I'm being honest, I doubt our action today will be as consequential as Percy's discovery. After all, there are probably over a hundred microwaves in the FCC Headquarters alone. But for the listeners in these markets who have come to rely on these stations for entertainment and emergency information, our action today may be just as meaningful.

I would like to thank the Media Bureau staff for their long and diligent work on this matter. The item has my support.