except § 64.604 (c)(5)(iii)(C) of the Commission's rules, which contains information collection requirements that are not effective until approved by OMB. The Commission will publish a separate document in the **Federal Register** announcing the effective date of the rule.

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *2007 TRS Cost Recovery Order,* including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254 (k); secs. 403 (b)(2)(B), (c), Public Law 104–104, 110 Stat. 56.

Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254(k) unless otherwise noted.

■ 2. Section 64.604 is amended by revising paragraph (c)(5)(iii)(C) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(C) *Data collection from TRS providers.* TRS providers shall provide the administrator with true and adequate data, and other historical, projected and state rate related information reasonably requested by the administrator, necessary to determine TRS Fund revenue requirements and payments. TRS providers shall provide the administrator with the following: total TRS minutes of use, total interstate TRS minutes of use, total TRS operating expenses and total TRS investment in general accordance with part 32 of this chapter, and other historical or projected information reasonably requested by the administrator for purposes of computing payments and revenue requirements. The administrator and the Commission shall have the authority to examine, verify and audit data received from TRS providers as necessary to assure the accuracy and integrity of TRS Fund payments.

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[FR Doc. E8–759 Filed 1–16–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 99–25 FCC 05–75]

Creation of a Low Power Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Federal Communications Commission adopted rules to promote the operation and expansion of the low power FM (LPFM) service. These rules require Office of Management and Budget (OMB) approval to become effective. This document announces the effective date of these rules.

DATES: The rules published on July 7, 2005, 70 FR 39182 amending 47 CFR 73.870(a) and 73.871(c) are effective January 17, 2008.

FOR FURTHER INFORMATION CONTACT: For information on this proceeding, contact Holly Saurer, *Holly.Saurer@fcc.gov,* (202) 418–7283, of the Media Bureau. Questions concerning the OMB control number should be directed to Cathy Williams, Federal Communications Commission, (202) 418–2918 or via the Internet at *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Federal Communications Commission has received OMB approval for the rule changes published at 70 FR 39182, July 7, 2005. Through this document, the Commission announces that it received this approval on August 30, 2005.

In a Second Order on Reconsideration, released on March 17, 2005, FCC 05–75, and published in the **Federal Register** on July 7, 2005, 70 FR 39182, the Federal Communications Commission adopted rules which contained information collection requirements subject to that Paperwork Reduction Act. On August 30, 2005, the Office of Management and Budget approved the information collection requirements contained in 47 CFR 73.870(a) and 73.871(c). This information collection is assigned OMB Control Number 3060–0920. This publication satisfies the requirement that the Commission publish a document announcing the effective date of the rule changes requiring OMB approval.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–778 Filed 1–16–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 99–25; FCC 07–204]

Creation of a Low Power Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts rules and provides guidance to efforts to promote the operation and expansion of the low power FM (LPFM) service. The Commission solicited and reviewed comments regarding the status of LPFM service, and found that to promote the service, it was necessary to make rule changes related to ownership and technical issues.

DATES: The rules will become effective March 17, 2008.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Holly Saurer, *Holly.Saurer@fcc.gov* of the Media Bureau, Policy Division, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Report and Order*, FCC 07–204, adopted on November 27, 2007, and released on December 11, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and

Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Summary of the Third Report and Order

I. Introduction

1. In March 2005, the Commission released a *Second Order on Reconsideration* (Second Order), 70 FR 39182, July 7, 2005 and *Further Notice of Proposed Rulemaking* (FNPRM), 70 FR 39217, July 7, 2005 as part of its ongoing efforts to promote the operation and expansion of the low power FM (LPFM) service. In the *Second Order*, the Commission made minor changes to the LPFM rules. The accompanying *FNPRM* sought comment on a number of issues related to ownership and eligibility restrictions for LPFM licensees, as well as technical matters related to the LPFM service. This *Third Report and Order* resolves the issues raised in the *FNPRM*. In so doing, this Order advances the Commission's goal ''to ensure that we maximize the value of LPFM service without harming the interests of full-power FM stations or other Commission licensees.'' In light of changed circumstances since we last considered the issue of protection rights for LPFM stations from subsequently authorized full-service stations, we also find it necessary to consider certain rule changes to avoid the potential loss of LPFM stations. Accordingly, we issue a *Second Further Notice of Proposed Rulemaking* (*Second FNPRM*) to seek comment on these changes.

II. Background

2. In January 2000, the Commission adopted rules to establish two classes of LPFM facilities: (a) The LP100 class, consisting of stations with a maximum power of 100 Watts effective radiated power (ERP) at 30 meters antenna height above average terrain (HAAT), providing an FM service radius (1 mV/m or 60 dBμ) of approximately 3.5 miles (5.6 kilometers); and (b) the LP10 class, consisting of stations with a maximum of 10 Watts ERP at 30 meters HAAT, providing an FM service radius of approximately one to two miles (1.6 to 3.2 kilometers). The *Report and Order*, 65 FR 7615, February 15, 2000 announcing those classes imposed separation requirements for LPFM stations to protect full-power FM stations operating on the co-, first-, and second-adjacent channels, as well as stations operating on intermediate frequency (IF) channels. The *Report and Order* concluded, however, that imposition of a third-adjacent channel separation requirement would restrict unnecessarily the number of LPFM stations that could be authorized, and therefore declined to impose that requirement.

3. The *Report and Order* also established ownership and eligibility rules for the LPFM service. The Commission restricted LPFM service to noncommercial educational (NCE) operations, restricted licensee eligibility to applicants with no attributable interests in any other broadcast station or other media subject to our ownership rules, and prohibited the assignment or transfer of LPFM stations. The Commission also determined that, during the two years following the first LPFM filing window, no entity would be permitted to own more than one LPFM station and that ownership should be restricted to local entities. To choose among entities filing mutually exclusive applications for LPFM licenses, the *Report and Order* set forth a point system that favors local ownership and locally-originated programming, with ties between competing applicants resolved by either voluntary time-sharing agreements between such applicants or, in the event that they cannot so agree, the imposition of ''involuntary time-sharing,'' with each tied and grantable applicant awarded an equal, successive and non-renewable license term of no less than one year, for a combined total eight-year term. Finally, the *Report and Order* directed the then-Mass Media Bureau to establish filing windows for LP100 applications.

4. The Commission revised and clarified some of its LPFM rules in a September 2000 *Memorandum Opinion and Order on Reconsideration* (Reconsideration Order), 65 FR 67289, November 9, 2000. The *Reconsideration Order* declined to adopt the more restrictive channel separation requirements urged by certain petitioners. Instead, the Commission adopted complaint and license modification procedures to address unexpected third-channel interference problems caused by LPFM stations. The *Reconsideration Order* modified spacing standards to require LPFM stations to protect radio reading services. Beyond the issue of interference, the Commission increased ownership flexibility for universities, state and local governments, and entities operating public safety or transportation services. Finally, the *Reconsideration Order* addressed a number of technical and ownership issues and clarified the eligibility rules for certain groups.

5. After the Commission declined to impose third-adjacent channel separation requirements in the *Reconsideration Order*, Congress directed the agency to do so in the Making Appropriations for the Government of The District of Columbia for FY 2001 Act (2001 DC Appropriations Act). In that legislation, Congress instructed the Commission to prescribe third-adjacent channel spacing standards for LPFM stations and to deny LPFM applications of applicants that previously had engaged in the unlicensed operation of a radio station. The 2001 DC Appropriations Act also directed the Commission to evaluate the likelihood of interference to existing FM stations if LPFM stations were not subject to the third-adjacent channel spacing requirement.

6. As a result of the spacing requirement imposed by the 2001 DC Appropriations Act, a number of facilities proposed in otherwise technically grantable applications became short-spaced to existing full-power FM stations or translators, leading to the eventual dismissal of those applications. To evaluate the likelihood of interference in the absence of a third-adjacent channel separation requirement, the Commission selected an independent third party—the Mitre Corporation—to conduct field tests. The Commission then sought public comment on Mitre's reported findings. In February 2004, the Commission submitted its report to Congress, recommending that, based on the Mitre study, Congress ''modify the statute to eliminate the third-adjacent channel distan[ce] separation requirements for LPFM stations.''

7. In the March 2005 *Second Order*, the Commission reexamined some of the rules governing the LPFM service, noting that the rules might need adjustment in light of the experiences of LPFM applicants and licensees. The Commission also took into account comments made at a February 2005 forum on LPFM that had addressed ''achievements by LPFM stations and the challenges faced as the service mark[ed] its fifth year.'' The *Second Order* clarified that ''local program origination,'' as that term is used in § 73.872(b)(2) of the Commission's rules, does not include the airing of satellite-fed programming. The *Second Order* also modified slightly the definitions of ''minor change'' and ''minor amendment.''

8. In the accompanying *FNPRM*, the Commission sought comment on a number of issues with respect to LPFM ownership restrictions and eligibility. The Commission asked whether LPFM licenses should be assignable or transferable and whether the temporary restrictions on multiple ownership of

LPFM stations and on non-local ownership should be extended or allowed to sunset. Because ''introducing some level of transferability to the LPFM service is critical,'' the Commission delegated to the Media Bureau the authority to waive the prohibition on the assignment or transfer of a LPFM station contained in § 73.865 of the rules on a case-by-case basis and cited examples of circumstances in which the grant of such a waiver might be appropriate:

> a sudden change in the majority of a governing board with no change in the organization's mission; development of a partnership or cooperative effort between local community groups, one of which is the licensee; and transfer to another local entity upon the inability of the current licensee to continue operation. * * *

The Commission noted, however, that ''until we have further considered the transferability issue, we do not believe that waiver is appropriate to permit the for-profit sale of an LPFM station to any entity or the transfer of an LPFM station to a non-local entity or an entity that owns another LPFM station.''

9. The Commission also proposed certain changes to the rules governing the formation and duration of voluntary and involuntary time-sharing arrangements among mutually exclusive LPFM applicants. The *FNPRM* also considered a number of changes to the LPFM technical rules. The Commission proposed to extend the construction period for LPFM stations and to allow time-sharing applicants greater flexibility to amend their applications to relocate the transmitter to a central location. The *FNPRM* also sought comment on the relationship between the LPFM and full-power FM services. Noting that thousands of FM translator applications remained pending from the 2003 filing window, the Commission froze the processing of those applications and sought comment on possible adjustments to the co-equal status of LPFM stations and FM translators with regard to interference between them. The Commission also sought comment on whether LPFM stations should be protected from interference from subsequently authorized FM stations. Finally, the Commission denied a request by the Media Access Project (MAP) to schedule ''regular'' filing windows for LPFM new station applications and major modification applications.

10. During the seven years since we created the LPFM service, that service has flourished for the most part, but also has encountered unique obstacles. To date, the Media Bureau has received 3236 applications for new LPFM construction permits, of which 1,286 have been granted. Currently, there are 809 LPFM stations operating throughout the country. At the same time, the Media Bureau was compelled to cancel 17 station licenses and 95 construction permits for failure by the holder to satisfy certain procedural and/or technical requirements. In view of this practical experience with LPFM service, we now turn to the issues raised in the *FNPRM*. In resolving those issues, we seek to increase the number of LPFM stations that are on the air and providing service to the public, and to promote the continued operation of LPFM stations already broadcasting, while avoiding interference to existing FM service.

III. Discussion

A. Ownership and Eligibility

1. Alienability of Authorizations

a. Changes in Board Membership

11. Section 73.865 of the rules provides that ''[a]n LPFM authorization may not be transferred or assigned except for a transfer or assignment that involves: (1) Less than a substantial change in ownership or control; or (2) An involuntary assignment of license or transfer of control.'' The *Reconsideration Order* clarified that the gradual change of a licensee's governing board or membership body is a permissible ''insubstantial change,'' even if the majority of current members joined after the station's authorization was granted. As the *FNPRM* noted, however, ''[o]ur rules * * * do not permit a sudden change in the board or membership of an LPFM licensee, which would constitute an impermissible transfer of control.'' Panelists at the February 2000 LPFM forum and other parties concerned with the viability of LPFM stations remarked that the proscription of sudden changes in governing board membership causes unnecessary complications for LPFM licensees. Responding to that concern, the *FNPRM* proposed to amend our rules to permit sudden changes of more than 50 percent of the membership of governing boards.

12. As commenters have since observed, frequent elections and changes in governing board membership are common among volunteer organizations and other entities that operate LPFM stations. As LPFM station KVLP–LP noted, experience on the board of an LPFM station can confer valuable leadership experience to community members, leading community groups to encourage frequent shuffling of board membership. Unsurprisingly, then, most commenters favor amending our rules to permit transfers of control in the case of a sudden change in a majority of a governing board's membership so long as the overall mission of the organization remains unchanged.

13. We agree. In crafting our LPFM rules, the Commission intended to preserve the integrity of the LPFM service and of the local organizations operating LPFM stations. We did not intend, however, to hamper the customary governance procedures of those organizations or to make LPFM less ''accessible to community groups.'' To the extent that our rules have blocked that access, we now remove that inadvertent barrier and adopt the *FNPRM*'s proposal to allow sudden changes of more than 50 percent of the membership of governing boards. Accordingly, we will amend § 73.865 of our rules to clarify that transfers of control involving a sudden change of more than 50 percent of an LPFM licensee's governing board shall not be deemed ''a substantial change in ownership and control.''

b. Assignments and Transfers

14. The *FNPRM* sought comment on whether the rules should permit the sale of LPFM authorizations, for some or no consideration, and whether they should impose a holding period by the initial permittee and licensee. Noting that at least 221 construction permits have lapsed due to the permittee's failure to construct facilities, REC Networks (REC) argues that an LPFM permittee or licensee should be able to convey its authorization when doing so would prevent the loss of the permit. Indeed, most commenters support amending the rules to permit sales in at least some circumstances, although they express diverse views with respect to when such transactions should be allowed. At one extreme are those commenters who maintain that LPFM stations should be transferable without restriction because there is little risk of manipulation or take-over in the ''market'' for LPFM authorizations. At the opposite end of the spectrum are those who contend that transfers of control or assignments should be limited to those situations in which the assignee or transferee ''represents the community'' and no consideration is involved. Prometheus argues that the Commission should not allow transfers or assignments to be made in exchange for consideration, as such a rule could lead to speculation by those with substantial resources, at the expense of local community groups that lack funding.

15. The for-profit sale of LPFM authorizations to any buyer is fundamentally inconsistent with the Commission's desire to promote local, community based use and ownership of LPFM stations. Transfers of control or assignments for consideration will create a market for LPFM licenses and may facilitate trafficking in licenses by those who have no interest in providing LPFM services to the public. Such a state of affairs would likely interfere with, rather than spur development of, community-based programming and hamper the ability of community-based entities to obtain LPFM authorizations. Therefore, we will not permit the sale of LPFM licenses for consideration exceeding the depreciated fair market value of the physical equipment and facilities of the station, and will not allow under any circumstances the transfer or assignment of construction permits.

16. With respect to the imposition of eligibility restrictions on a transferee or assignee of an LPFM license, some commenters suggest that we permit the sale of an LPFM authorization to any willing buyer. Others suggest that we limit the universe of eligible assignees and transferees to other local nonprofits. We conclude that the appropriate balance is struck by requiring the assignee or transferee of an LPFM license to satisfy ownership and eligibility criteria existing at the time of the assignment or transfer. That restriction will prevent entities from using intermediaries to circumvent our LPFM eligibility requirements and will further address our concern about potential trafficking in LPFM authorizations by ensuring that future LPFM licensees meet the Commission's criteria for LPFM service. At the same time, permitting assignments or transfers among qualified parties will allow newly-''merged'' local entities, consisting of several eligible organizations, to pool their resources to provide the necessary financial support for quality local programming when, standing alone, those entities would be otherwise incapable of constructing and operating an LPFM station.

17. For all transfers and assignments, we will require a three year holding period from the issuance of license, during which a licensee cannot transfer or assign the license, and must operate the station, as suggested by Prometheus. That restriction will prevent entities from using the LPFM assignment and transfer process to undermine the Commission's LPFM policies and will ensure that the benefits to the public which were the basis for the license grant will be realized.

c. Procedures

18. The *FNPRM* asked what procedures would be appropriate to allow assignments and transfers while ensuring the integrity of the LPFM service. Because many LPFM permittees and licensees are entities that do not issue ownership shares, the Commission drew attention to the *Non-Stock Transfer NOI* for guidance in establishing the procedures for transfers of control of such licensees. The *Non-Stock Transfer NOI* proposed to treat a sudden change of a governing board's majority as an insubstantial transfer for which approval must be sought on an FCC Form 316 (short form) broadcast application. The *FNPRM* sought comment on adopting a similar approach for changes in the governing boards of LPFM permittees and licensees that are non-stock entities. The *FNPRM* also sought comment on the process by which LPFM stations should seek approval of assignments and transfers of control.

19. Few commenters addressed the issue of the appropriate procedures for transfers of control or assignments of LPFM authorizations. Christian Community Broadcasters proposed using a modified FCC Form 318 LPFM construction permit application to cover all instances of ownership changes or changes in board membership. Limestone Community Radio suggested instead that entities use a modified FCC Form 316 for ''typical'' changes in station ownership. Still other commenters suggest that the Commission should take a more active role in overseeing any LPFM ownership changes to ensure ''ethical use'' of LPFM licenses.

20. We will use existing FCC forms for the conveyance of LPFM licenses, rather than adopting new forms and filing procedures. We see no reason to depart from the filing procedures that currently are used for other broadcasting services. Accordingly, we direct LPFM licensees to use modified FCC Forms 314 and 315 for assignments and transfers of control, respectively, and FCC Form 316 for *pro forma* changes in ownership. We will apply the *Non-Stock Transfer NOI* to appropriate LPFM licensees, and thus, will interpret a sudden change of a governing board's majority as an insubstantial transfer for which approval must be sought on an FCC Form 316 (''short form'') broadcast application. Use of these forms offers many advantages, particularly to smaller entities that have few resources to dedicate to the application process, such as the ability to retrieve and submit the forms electronically.

2. Ownership and Eligibility Limitations

21. As discussed above, the rules required that, during the two years following the first LPFM filing window, no entity was permitted to own more than one LPFM station, and ownership was restricted to local entities. The rules gradually relaxed these restrictions. Currently, the rules limit the number of LPFM stations a single entity may own up to ten stations and the rule that allows only local entities to apply for LPFM licenses has sunsetted. As we explained in the *FNPRM*, the Commission's intention in gradually increasing the ownership limitation from one to ten stations and in allowing the local entity restriction to sunset ''was to make it more likely that local entities would operate this service, but to ensure that if no local entities came forward, the available spectrum would not go unused.'' In connection with its query of whether to allow the sale of LPFM stations, the *FNPRM* asked if either the ownership limitation or the restriction to local entities should be extended or reinstated.

22. Several organizations urge the Commission to maintain ''strict local and multiple ownership requirements,'' to ensure that LPFM service continues to advance the public's interest in localism and diversity. According to some of these commenters, any relaxation of either the multiple ownership restriction or the locality-based restriction is fundamentally at odds with the ''community radio'' rationale that justifies the existence of LPFM stations. Prometheus Radio Project argues that, even when no local entity applies for an LPFM authorization, non-local entities should be barred from applying, because ''LPFM is not a goal in itself, rather it is a means to promote localism.''

23. We agree. As emphasized in our *Report and Order*, our two primary goals in establishing the LPFM service were to ''create opportunities for new voices on the airwaves and to allow local groups, including schools, churches, and other community-based organizations, to provide programming responsive to local community needs and interests.'' The *Report and Order* also stated that the potential benefit of allowing multiple ownership—increased efficiency—was clearly outweighed by ''the benefit to a community of multiple community-based voices.'' By amending the rules to permanently limit LPFM eligibility, we protect the public interest in localism and foster greater diversity of programming from community sources. Thus, we will reinstate the prohibition

on the ownership of more than one LPFM station.

24. In addition, we agree with those parties that suggest that we reinstate the local ownership restrictions. Although growing in both usage and recognition, LPFM service is still in its nascence and doing away with the locality restriction could threaten its predominantly local character, in particular the hallmark of a LPFM station's local character, its local origination of programming. In upholding the local origination selection criterion for mutually exclusive applications, our *Second Order* emphasized that local origination is ''intended to encourage licensees to maintain production facilities and a meaningful staff presence within the community served by the station.'' Even outside the limited context of mutually exclusive applications, we view local origination as a central virtue of the LPFM service and therefore will reinstate the eligibility restriction contained in § 73.853(b) of the rules to encourage local origination. We also wish to clarify our definition of local origination. According to Prometheus, a licensee could theoretically create one program, continually repeat it on a tape loop, and still claim it meets the definition of local origination. Prometheus asserts that in order to meet the local origination requirement, programming cannot be automated, including randomized songs or long blocks of locally produced programming run multiple times, and cannot be aired more than two times. We agree that there is room for abuse here, and as such, we clarify that repetitious automated programming does not meet the local origination requirement. We will only allow a program to be broadcast twice in order to meet the local origination requirement. After its initial broadcast a program can be rebroadcast once and still meet our requirement. After that, the program cannot count toward the local origination requirement.

25. Finally, we adopt the suggestion by Prometheus that we extend the local standard for rural markets. Pursuant to § 73.853(b) of the rules, an LPFM applicant is deemed local if it is physically headquartered or has a campus within ten miles of the proposed LPFM transmitter site, or if 75 percent of its board members reside within ten miles of the proposed LPFM transmitter site. The ten-mile limit was adopted based on the ''station's likely effective reach.'' Prometheus' comments express concern that this ten-mile local entity standard is difficult to meet for rural applicants, especially in finding board members who reside within ten miles of the proposed transmitter site. Prometheus states that people in rural communities often listen to and participate in stations that are outside of their home coverage area, because they listen to the station while driving to and from work. As such, Prometheus requests modifying the ten-mile requirement to twenty miles for all LPFM applicants for proposed facilities in other than the top fifty urban markets, for both the distance from transmitter and residence of board member standards. We agree with Prometheus that applicants for stations located in rural communities find it particularly challenging to meet the current ten-mile standard. We also agree that the concept of ''local'' should be more expansive in rural areas. Accordingly, we will revise § 73.853(b) of the rules to reflect Prometheus' proposal.

3. Time-Sharing

26. The *Report and Order* established a comparative point system for determining which among mutually exclusive LPFM applicants should receive the authorization that they commonly seek. If such applicants have the same point total, two or more of the tied applicants may propose to share use of the LPFM frequency by submitting a time-share proposal within 30 days of the release of a public notice announcing their tie. If the tie among the applicants is not resolved through a voluntary time-sharing agreement, the tied applicants submitting grantable applications are placed in an involuntary time-sharing arrangement, and granted equal, successive, non-renewable license terms for the applied-for facility of no less than one year each, for a total combined term of eight years. The *FNPRM* proposed amending the rules governing mutually exclusive LPFM applications in two key respects. First, in response to a request by MAP, the *FNPRM* proposed to extend, from 30 to 90 days, the period allowed for applicants to submit a voluntary time-sharing agreement. Second, the *FNPRM* proposed to amend the rules to permit the renewal of licenses granted under the involuntary time-sharing successive licensing procedures. We address those proposals in turn.

a. Deadline for Submission of Voluntary Time-Sharing Agreements

27. In its Petition for Reconsideration of the *Report and Order*, MAP observed that ''LPFM applicants are largely comprised of small organizations with few administrative resources,'' and that few applicants ''have access to the expertise of professional engineers.'' Accordingly, few applicants are able to identify mutually exclusive applications before receiving notice from the Commission that they are tied with others, leaving them only 30 days to contact the other applicants, complete negotiations and execute and file their agreements with the Commission. Because those negotiations likely will be conducted by inexperienced volunteers, MAP argues, reaching a successful compromise within that time frame is very unlikely. Finding MAP's argument persuasive, the *FNPRM* proposed to extend to 90 days the time period within which mutually exclusive LPFM applicants must reach and file a voluntary time-sharing arrangement.

28. All commenters who addressed the issue favor adoption of the proposal to so extend the negotiation and filing period to 90 days. NPR, ''recogniz[ing] the fundamental importance of a diversity of programming services and station ownership,'' observes that allowing LPFM applicants more time to enter into voluntary time-sharing arrangements will promote that diversity. Similarly, REC contends that 30 days is not enough time in which to reach and file a viable time-sharing agreement. REC sought to assist applicants with negotiations of universal settlements, but found that often basic contact information supplied on the applications was inaccurate. Drawing from that experience and similar considerations, REC urges the Commission to extend the period of time in which mutually exclusive applicants may negotiate and file time-sharing agreements.

29. We agree with the views of NPR, REC, and others, and therefore adopt the *FNPRM*'s proposal to extend the negotiating and filing period to 90 days. Mutually exclusive LPFM applicants should be given every opportunity to arrive at a negotiated time-sharing arrangement before the LPFM rules impose a successive-term licensing scheme on the applicants. To the extent that the 30-day time period in § 73.872 of the rules has impeded the successful negotiation of time-sharing arrangements, we remove that impediment and hope that this will reduce considerably the likelihood that involuntary time-sharing arrangements with multiple successive license terms will be necessary.

b. License Renewal Procedures for Parties to Time-Sharing Arrangements

30. Section 73.872(d) of the rules provides that an LPFM authorization issued under involuntary time-sharing arrangements, under which mutually exclusive applicants are granted

successive license terms, is not renewable. The *FNPRM* also proposed that we change this provision and make such authorizations renewable. The *FNPRM* sought comment on how the renewal process should operate, given that increased flexibility in the rules governing assignments and transfers of control may lead licensees under such arrangements to negotiate voluntary time-sharing agreements among themselves.

31. REC is one of the few commenters to respond to our queries about involuntary time-sharing arrangements. In its submission, REC suggests that if licensees under an involuntary time-sharing arrangement ''come up with a universal settlement to engage in a conventional time-share arrangement * * * the Commission should grant such an arrangement and remove the non-renewable condition of the permit and/or license.'' REC further proposes that, at the end of the eight-year term, all licensees in a successive license term group should each be permitted to file a renewal application.

32. The *FNPRM* tentatively proposed to make renewable all viable licenses under both voluntary and involuntary time-sharing arrangements. Making renewable only the authorizations of those organizations that can reach a mutually acceptable agreement with respect to scheduling, however, will provide a powerful incentive to licensees that thus far have been unable to reach such agreement. This will lead to more efficient use of the spectrum. Accordingly, we agree with REC that when organizations subject to an involuntary time-sharing arrangement reach a ''universal settlement'' with respect to the allocation of time on the relevant frequency, the non-renewable condition of their authorizations should be removed.

33. For the same reasons, we also agree with REC that stations subject to involuntary time-sharing under successive license terms that subsequently enter into a voluntary time-sharing agreement should be permitted to file a renewal application. However, we are not persuaded that we should accommodate those licensees with successive license terms that fail to reach a universal voluntary agreement with the ability to renew. By doing this, we would be rewarding such applicants' unwillingness or inability to reach such agreements. We note that, of the more than 1,200 construction permits granted in the LPFM service, currently no stations hold authorizations for involuntary time sharing. In this Order, we have extended the 30-day time period in § 73.872 of the rules for applicants to negotiate and file universal voluntary time-share agreements to 90 days. We have also enabled those applicants originally issued involuntary time-share permits that reach such agreements to ultimately acquire renewable licenses. We believe that these measures will greatly reduce the likelihood that involuntary time-sharing arrangements will be necessary. Therefore, we decline to provide a renewal expectancy for involuntary time-share licensees. We strongly encourage any such permittees and licensees and future mutually exclusive applicants to enter into universal voluntary time-share agreements.

34. Making renewable the authorizations of parties who time-share who have reached voluntary time-sharing agreements raises a number of practical questions with respect to how and when those arrangements will supersede involuntary ones. First, we must determine when a voluntary time-sharing agreement should replace the successive-term structure of the involuntary arrangement. As we noted in the *FNPRM*, it is likely that licensees will reach universal time-sharing agreements prior to seeking renewal. We will therefore construe the superseding agreement as a ''minor change,'' allowing the licensees who seek to operate under a universal voluntary time-sharing agreement to file the minor change application as soon as the agreement is reached, rather than having to wait for a filing window. Expediting our approval of voluntary time-sharing arrangements in this manner will encourage prompt negotiations among licensees operating under involuntary time-sharing arrangements and, it is hoped, promote a more efficient use of scarce LPFM spectrum than that under the successive licensing terms that apply to involuntary time-sharing arrangements. Accordingly, we will revise the rules to facilitate those voluntary agreements. We stress, however, that voluntary time-sharing agreements must be genuinely universal, involving all permittees and licensees of a particular LPFM facility. That is, to give rise to a renewal expectancy, all of those in a time-share group must be parties to the time-sharing agreement.

35. To ensure that voluntary time-sharing arrangements will result in the most efficient use of LPFM spectrum, we also must address how to apportion unused airtime among licensees in a time-share group. This circumstance may arise in a number of ways. For example, a permittee in that group could fail to construct its facilities, decide to cease operations, or have its authorization revoked for a serious violation of the rules. There might also be situations in which no permittee or licensee has come forward requesting to operate during a certain part of the day or week. REC points to an example in Visalia, California, where one licensee, KFSC–LP, broadcasts from 5 to 9 a.m. Monday through Saturday and a second licensee, KQOF–LP, broadcasts from 5 to 9 p.m. Monday through Saturday. No licensee broadcasts other than those times. REC proposes that, prior to the opening of a new filing window, new entrants who can reach a universal settlement with existing stations should be allowed to do so. REC also argues that new entrants should be allowed to apply for periods of unused time once a window for new applications has opened.

36. We agree with REC that, during filing windows for new applications, new parties should be permitted to apply for unused and unwanted time on a particular frequency. We will not entertain such applications outside of an open filing window, however, even when the potential new entrant could successfully negotiate a universal settlement with existing licensees. Aside from the administrative burden that such out-of-window filings could create, allowing a new entrant to act before a formally-announced filing window could prejudice unfairly other potential applicants who, under the comparative criteria set forth in § 73.872(b) of the rules, would be entitled to a preference over the would-be new entrant's mutually exclusive application. Restricting applications for unwanted time to new filing windows does raise a potential concern in that the restriction will leave periods of time on a particular frequency vacant until the Commission elects to open a filing window for new applications. To alleviate that concern, and to promote a more efficient use of available LPFM frequency, we will allow existing stations in a voluntary time-share group to apportion among themselves any time that, for any reason, becomes unused. As with the negotiation and execution of voluntary time-sharing agreements by parties in an involuntary time-share arrangement, we will deem amendments to a voluntary time-sharing agreement to account for unused time requests to be minor modifications that may be filed at any time.

B. Technical Rules

1. Construction Period

37. The *Report and Order* established an 18-month construction period for all LPFM facilities, stating that deadlines

would be strictly enforced. However, as a temporary measure, the *FNPRM* adopted an interim waiver policy to allow permittees with soon-to-expire permits to request additional time to construct their facilities. Under that policy, the Media Bureau has the authority to consider and grant requests for an additional 18 months to construct facilities, upon a showing that the permittee reasonably can be expected to complete construction within the extended period.

38. As a permanent solution, the *FNPRM* proposed extending the construction period for LPFM stations to 36 months, the construction period afforded to all other broadcast permittees. During the six years since the release of the 2000 *Report and Order*, our assumption that LPFM facilities would require significantly less time to build than that required to construct full-power FM facilities has proven to be overly optimistic. LPFM licensees have encountered varying difficulties in locating suitable transmitter sites, raising sufficient funds for the proposed facilities, and obtaining the necessary zoning permits. The *FNPRM* thus proposed extending the construction period in order ''to maximize the likelihood that LPFM permittees will get on the air.''

39. Many commenters favor extending the construction period. Some state that the blanket adoption of a 36-month construction period has administrative advantages over a conditional extension or case-by-case review of individual waiver requests. Moreover, extending the construction period to 36 months would put the LPFM and full-power FM services on equal footing and avoid disenfranchising able, willing, but inexperienced, LPFM permittees. Prometheus Radio Project and others contend that the better approach is to grant an 18-month extension to complete construction, but only upon demonstration of good cause. Prometheus argues that such a procedure would give able and willing LPFM permittees a total of 36 months to construct their facilities but prevent unable or unwilling LPFM permittees from warehousing valuable spectrum, without service to the public, for an extended period of time.

40. We seek to encourage permittees to construct their facilities within 18 months, and therefore, decline to adopt a blanket 36-month construction period for LPFM. We agree with Prometheus that this approach will prevent unwilling/unable applicants from sitting on valuable spectrum. We recognize, however, that some permittees may face difficulties in meeting this deadline. Therefore, we will amend the rules to allow all permittees, including current ones whose construction permits have yet to expire, the opportunity to seek an 18-month extension to complete construction of their facilities upon a showing of good cause. Because any such extension should account adequately for the delays resulting from the potential inexperience of the permittee, as well as for potential obstacles that may arise during the zoning or permitting processes, that extended construction deadline will be strictly enforced, as it is with all other radio broadcast stations; we do not expect to entertain, and most likely will not grant, waiver requests or those for further extensions.

2. Technical Amendments

41. Section 73.871 of the rules limits the ability of applicants to propose site changes by minor amendment to relocations of 3.2 kilometers or less for an LP10 station, and 5.6 kilometers or less for an LP100 station. That rule prevents time-sharing applicants from relocating their transmitters to a central location unless the site falls within those distance limits. To increase flexibility for time-sharing applicants and thereby promote voluntary time-sharing agreements, the *FNPRM* proposed to allow time-sharing applicants to file minor amendments to relocate their transmitters to a central location, notwithstanding the site relocation limits imposed by § 73.871 of the rules.

42. Few commenters have responded to our queries about technical amendments by time-sharing applicants under § 73.871 of the rules. In 2001, UCC requested that we amend the rules to allow applicants that submit a voluntary time-share agreement to relocate the transmitter to a central location, provided that one is available. The Commission has a long-standing policy of providing mutually exclusive applicants with maximum flexibility to enter into time-share agreements in order to facilitate rapid licensing in the service. For instance, in 2003, the Commission by public notice waived § 73.871 of the rules for a time to permit all LPFM settling applicants the ability to file major change amendments specifying new FM channels. Permitting parties to file time-share agreements to specify a ''central location'' beyond the current minor amendment distance limitations would remove one more potential impediment to such agreements. Accordingly, we amend § 73.871 of the rules to permit time-sharing applicants to specify a central transmitter location with a minor amendment without regard to the respective 3.2 and 5.6 kilometer limitations on such amendments. These agreements, which permit a number of different organizations to reach local audiences, promote diversity. Providing applicants additional flexibility and the opportunity to avoid the construction of duplicate facilities also serves the public interest. For the same reason, we amend that rule to allow permittees and licensees that reach a voluntary time-sharing agreement after their permits have been granted to submit such site change applications by minor submission. We anticipate that this rule change will encourage time-share applicants, permittees and licensees to consolidate transmission and studio facilities.

3. LPFM–FM Translator Interference Priorities

43. The *FNPRM* identified several possible ways to modify the LPFM–FM translator interference protection requirements. Currently, stations in these two services operate on a substantially co-equal basis, with a facility proposed in an application having ''priority'' over one specified in any subsequently filed application. The *FNPRM* sought comment on whether, and if so, under what circumstances LPFM applications should be treated as having priority status over prior-filed FM translator applications and granted authorizations. In particular, the Commission sought comment on how to overcome the significant preclusive impact of the 2003 Auction No. 83 translator filing window, asking among other things whether all pending applications for new FM translator stations filed during the window should be dismissed. The *FNPRM* explained that the staff already had granted approximately 3,500 new station construction permit applications from the singleton filings, ''a number nearly equal to the total number of FM translator stations licensed and operating prior to the filing window,'' that 7,000 applications remained on file, that very few opportunities for LPFM stations in major markets remained prior to the 2003 translator filing window, and that the Auction No. 83 filing would have a ''significant preclusive impact on future LPFM licensing opportunities.'' The voluminous comments submitted in response to the priority issue focus on two possible theories supporting modification of the current rule: (1) That LPFM provides a ''preferred'' radio service to that offered by translators; and (2) that priority status for LPFM applications is necessary to overcome

the preclusive impact of the over 13,000 technical proposals filed during the 2003 Auction No. 83 FM translator window.

44. LPFM advocates contend that their service is preferable to translator service. They note that the rules require LPFM stations to be locally owned and permit local program origination. They note that, in contrast, many translators merely rebroadcast satellite-distributed national programming. Some LPFM advocates request priority status for only those LPFM stations that originate programming. Others request priority status over all ''distant'' translators, *i.e.*, translators that rebroadcast the signals of non-local stations.

45. NAB, NPR, the various state broadcast associations, and virtually all full-service commercial and NCE broadcasters support retention of the current interference protection rules. They argue that there are no simple ways to distinguish preferred stations or programming. They also claim that there is no such thing as a typical LPFM or FM translator station. They reject as unfounded the contention that program origination or local ownership correlates to more desirable programming. They note that LPFM licensees have limited service responsibilities with regard to their communities of license: LPFM stations need not originate programming; many serve the needs of niche interest groups rather than their entire communities of license; they are not required to maintain a main studio or public file; and they are required to operate for only 35 hours per week. Many broadcasters contend that, because the LPFM service is still in its infancy, it is premature to reassess the ''co-equal'' status of LPFM and FM translator stations. NCE and public radio broadcasters argue that giving LPFMs priority over operating FM translator stations would significantly disrupt established and valued translator service to millions of listeners, particularly those in rural areas and in situations in which broadcasters rely on ''chains'' of translators to distribute programming. The public radio commenters note that translators are a critical component of the public radio infrastructure. A number of other commenters urge that a ''fill-in'' translator should be treated as the equivalent of its associated primary full-service station and, therefore, always preferred to an LPFM station.

46. With regard to the potentially preclusive impact of the over 13,000 FM translator applications filed in 2003, some commenters argue that the LPFM service is not entitled to any special consideration because LPFM applicants had the first opportunity during the 2000–2001 national LPFM windows to apply for new stations. Translator advocates note that their last opportunity for non-reserved band FM translators occurred in 1997. Edgewater Broadcasting, Inc. (Edgewater) submits an extensive analysis of the preclusive impact of the construction permits issued out of the 2003 translator filing window and the more limited impact of the over 1,000 permits issued to it and its commonly-owned Radio Assist Ministries. Edgewater contends that the preclusive impact has been ''miniscule,'' notes that the Commission received no LPFM applications to serve many of the areas specified in its translator filings, and argues that its studies demonstrate that vast areas in the country remain available for new LPFM stations. REC also submits both national and market-specific analyses and identifies several communities in which 2003 window filings have allegedly precluded or diminished LPFM station licensing opportunities.

47. The Station Resource Group, an alliance of 45 public radio broadcasters that operate 168 radio stations, contends that the chief contributor to LPFM station preclusion is a ''maxed out spectrum situation'' which prevents any broadcasters, NCE or commercial, translators or LPFM stations, from obtaining new licenses in virtually all major markets and many medium-sized markets. Several commenters argue that the statutory third-adjacent channel LPFM protection requirement blocks many otherwise-licensable LPFM opportunities.

48. A number of commenters argue that the Commission's concern is misdirected. They urge the Commission to instead move vigorously against alleged FM translator filing abuses, speculators, and deficient application filings. They suggest imposing numerical application filing limits, either on a prospective basis or with regard to the still-pending translator applications. Several contend that the high demand for new FM translators is unsurprising, given the extended freeze on non-reserved band licensing.

49. As demonstrated by the comments filed on this issue, the LPFM and FM translator services are each valuable components of the nation's radio infrastructure. We agree with the advocates for each of these services regarding the important programming that these stations can provide to their local communities. We do not reach the merits of the priority rules between these two services here. Instead, we seek further comment in the attached Second *FNPRM* to develop a better record on whether and how our current rule affects our core goals of localism, diversity and competition. The current rules will remain in effect until the Commission resolves the issue in that proceeding.

50. We also must consider the question of whether Auction No. 83 filing activity has adversely impacted our goal to provide to both LPFM and translator applicants reasonable access to limited FM spectrum in a manner which promotes the ''fair, efficient, and equitable distribution of radio service * * *.'' This issue has taken on much greater significance over the past few years as demand for new radio stations has increased dramatically while the spectrum for such stations has become increasingly scarce, particularly in many mid-sized communities and in virtually all urbanized areas. Station Resource Group is correct—the primary licensing impediment is the nation's ''maxed out'' spectrum situation. New Jersey LPFM licensing activity is illustrative of the limited new station opportunities in spectrum-congested areas. Only 29 New Jersey LPFM applications were filed during that state's June 2001 window. Of those submissions, the Media Bureau has issued only eleven construction permits and only one additional authorization possibly may be granted. Only seven LPFM stations are currently operating in the state. We find these statistics more probative of the LPFM service's growth potential than the studies completed by Edgewater because LPFM stations, due to their limited service area potential, generally require higher population densities to be viable. It seems unlikely that the availability of spectrum in the vast rural portions of the nation will generate significant levels of LPFM station licensing.

51. Demand for radio spectrum is, if anything, increasing. The number of applications filed during the AM new and major change windows jumped from 258 in 2000 to more than 1,300 in 2004. Competitive bidding activity for FM new station construction permits has been robust since the commencement of open FM auctions in 2004. The 2003 FM translator window provides further evidence of this trend, especially when compared to historic licensing levels for this service. As of September 30, 1990, a total of 1,847 licensed FM translators and (co-channel) boosters operated throughout the nation. As of December 31, 1997, shortly after the date on which the Commission imposed a freeze on new non-reserved band translator filings (but not on new boosters or new reserved band stations), a total of 2,881 FM

translators operated nationally. The number of licensed stations continued to grow modestly over the next six years, chiefly as a result of ongoing reserved band filing activity. A total of 3,818 licensed stations were in operation in March 2003 when the Commission opened the FM translator window, a total of 3,897 licensed stations when the Commission imposed the Auction No. 83 construction permit freeze in March 2005.

52. Measured against this historical licensing record, Auction No. 83 window filing activity was significant. Proposals exceeded authorized stations by a factor of three in a service in which little licensing was done before the 1980s. The 2003 window already has nearly doubled the total number of authorized stations. To date, three times more translator stations have been authorized out of this one window than LPFM stations authorized through the initial LPFM window filing process. Approximately 7,000 translator applications remain pending. The Commission faces two chief difficulties in trying to balance spectrum allocations for LPFM stations and translators. First, FM translators are licensed under substantially more flexible technical rules. Thus, some of the Auction No. 83 filing activity involves spectrum which is unavailable for LPFM use. By the same token, LPFM station proponents have far fewer licensing opportunities in spectrum-congested markets because LPFM technical rules are substantially less flexible. Second, it is impossible to accurately predict future demand for LPFM station licenses. While engineering studies can identify areas in which additional licensing is technically permissible, the interest of local organizations to apply for, construct, and operate new LPFM stations can only be determined at the time a window is opened.

53. Although precise preclusionary calculations are not possible, we believe that processing all of the approximately remaining 7,000 translator applications would frustrate the development of the LPFM service and our efforts to promote localism. Several factors support the adoption of some remedial measures. The sheer volume of Auction No. 83 filings, when compared to historic translator and LPFM licensing levels, is a significant concern. We recognize that LPFM proponents had the ''first'' opportunity to file for the spectrum which Auction No. 83 filers now propose to use. However, it is apparent that the translator filings have precluded or diminished LPFM filing opportunities in many communities. For example, a REC national study found that 16 percent of all census designated communities that otherwise would have LPFM channels available in their communities have been precluded by the translator filings and that the greatest preclusionary impact has been in the largest such communities. Moreover, the Media Bureau has found that its efforts to identify alternative channels for LPFM stations either causing or receiving interference have been significantly limited in numerous cases by the requirement to protect pending FM translator applications and authorizations granted out of the 2003 window. The licensing asymmetries between these two services also support this finding. Translator filings can materially impact LPFM new station options which are far more limited than FM translator filing opportunities. In contrast, it is unlikely that LPFM filings will materially affect translator licensing options. FM translator contour-based station licensing is substantially more flexible than the strict distance separation requirements which LPFM stations must satisfy. This difference is tied in part to the fact that unlike an LPFM station, an FM translator station must cease broadcast operations if it is causing ''actual interference'' to any authorized broadcast station. In short, any translator station construction is at the risk of the permittee. The level of Auction No. 83 filing activity and the fact that many applications were filed for facilities in the top 100 markets both illuminate the significant difference in the licensing opportunities between these two services. The next LPFM window may provide the last meaningful opportunity to expand the LPFM service in spectrum-congested areas. In contrast, we expect significant filing activity in many future translator windows.

54. Certain equitable considerations also tilt in favor of adopting remedial measures to limit the preclusive impact of Auction No. 83 filings. Each applicant filing in Auction No. 83 submitted one Form 175 Application to Participate in an FCC Auction and a separate Form 349 ''Tech Box'' for each translator proposal. 861 filers submitted 13,377 such proposals in the window. Applicant filing activity divided between the hundreds of applicants who filed a limited number of applications and a very small number of applicants who filed for hundreds or thousands of construction permits. For example, approximately half the filers submitted one or two proposals. Approximately 80 percent of filers submitted 10 or fewer proposals. 97 percent filed 50 or fewer proposals. In contrast, the two most active filers, commonly-owned Radio Assist Ministries and Edgewater (collectively, RAM), filed 4,219 proposals, constituting almost one-third of all Auction No. 83 filings. The fifteen most active filers were responsible for one-half of all Tech Box submissions.

55. We are concerned that the heavily skewed filing activity in Auction No. 83 raises concerns about the integrity of our FM translator licensing procedures. Even if lawful, it is fair to question whether the acquisition of unprecedented numbers of FM translator authorizations by a handful of entities through our window filing application procedures promotes either diversity or localism. The rapid flipping of hundreds of permits acquired through the window process for substantial consideration does suggest that our current procedures may be insufficient to deter speculative conduct. Some commenters have been critical of RAM's business strategy. ''The [National Translator Association] considers those applicants who intend to obtain construction permits and then sell those permits to be simply speculators for profit.'' Most fundamentally, it appears that our assumption that our competitive bidding procedures would deter speculative filings has proven to be unfounded in the Auction No. 83 context. RAM, alone, has sought to assign more than 50 percent of the 1,046 construction permits it has been awarded through the window and has consummated assignments for over 400 of all such permits.

56. In order to further our twin goals of increasing the number of LPFM stations and promoting localism, we find it necessary to take action. Accordingly, we will limit further processing of applications submitted during the Auction No. 83 filing window to ten proposals per applicant. Applicants with more than ten proposals pending will be provided an opportunity to identify those applications which they wish to have processed and those for which they seek voluntary dismissal. The Media Bureau is directed to complete its processing of the approximately 100 pending but frozen singleton long-form applications without regard to the ten application limit. However, construction permits granted from this group will count toward the limit for future Auction No. 83 licensing purposes. This cap will only apply to short-form applications, and will not impact the ability of Auction No. 83 filers with granted construction permits or pending long-form applications to obtain licenses to

cover. This limit will not have an adverse impact on the more than 80 percent of those who filed ten or fewer proposals in the Auction No. 83 filing window. It will require certain filers to identify priority proposals. This cut-off will limit the preclusive impact of Auction No. 83 filings on LPFM licensing opportunities by barring the processing of thousands of applications filed by a very small number of applicants, without impacting the approximately 80 percent of filers who filed ten or fewer applications. Although we recognize the equitable interests of the remaining 20 percent of filers in the processing of all of their short-form applications, on balance we conclude that the public interest requires a bar on the processing of more than ten applications per filer. We are hopeful that as a result of this cap the Media Bureau will be able to shorten the period between windows for both new LPFM and FM translator stations. We direct the Media Bureau to issue a public notice announcing the opening of the settlement window required by §§ 73.5002(c) and (d) of the rules. Applicants must select the ten applications they wish to preserve before the settlement window opens. With the imposition of this cap, we direct the Media Bureau to resume the processing of Auction No. 83 filings. Specifically, the Media Bureau is to expeditiously process the applications of any applicant that is now in compliance or brings itself into compliance with the ten proposal cap.

57. We are mindful of the expenses that translator applicants have incurred in preparing their non-feeable Form 175 short-form applications and Form 349 Tech Box submissions but believe that the imposition of this cap treats all applicants equitably. We have attempted to accommodate applicants to the greatest extent possible, consistent with statutory requirements and competing Commission goals. All applicants will benefit from expedited processing and the Media Bureau's ability to open future windows more quickly. Thus, this action is entirely consistent with Commission's rules and precedent for the dismissal of pending applications as a necessary adjunct of efficient and effective rulemaking. Finally, we note that there is ample precedent for the mass dismissal of applications based on a rule or policy change. This procedural change is a reasonable exercise of the Commission's administrative discretion. Accordingly, we conclude that the imposition of a cap in these circumstances is lawful.

4. Interference Protection From Subsequently Authorized Full-Service FM Stations

58. *Background.* The *Report and Order* establishing the LPFM service set minimum distance separation requirements to ensure that LPFM stations protect existing commercial and NCE full-service FM stations, as well as FM translator and booster stations. The *Report and Order* also concluded that existing full-service stations would not be required to protect proposed LPFM facilities. Moreover, ''operating LPFM stations will not be protected against interference from subsequently authorized full-service facility modifications, upgrades, or new FM stations.'' Conversely, an LPFM station is not permitted to cause interference within the 3.16 mV/m (70 dBμ) contour of a full-service FM station. An LPFM station generally may continue to operate within that contour so long as it can demonstrate that actual interference is unlikely to occur. Section 73.809 of the rules sets forth detailed complaint procedures to resolve disputes over the likelihood of actual interference and the sufficiency of actions taken by LPFM stations to eliminate that interference.

59. In September 2000, the Commission dismissed a motion to reconsider the regulatory status of LPFM stations. In the *FNPRM,* however, the Commission stated that ''it would be useful to consider whether to limit the § 73.809 interference procedures to situations involving co- and first-adjacent channel predicted interference, where the predicted interference areas are substantially greater than for second and third-adjacent channel interference.'' The Commission also asked whether an LPFM station should be permitted to remain on the air if the full-power FM station did not serve the area of predicted interference prior to the facilities modification (in the case of an existing station) or the grant of the construction permit (in the case of a new station). Similarly, the Commission sought comment on whether an LPFM station should be permitted to remain on the air if the full-service station's community of license would not be subject to interference. Finally, the Commission asked whether an amendment to § 73.809 of the rules would be consistent with Congress' directive mandating third-adjacent channel interference protection from LPFM stations.

60. Although, to date, only one LPFM station has been forced off the air pursuant to the requirements of § 73.809 of the rules, some commenters believe that numerous LPFM stations are under a significant threat of such ''encroachment.'' On March 5, 2007, the Commission received a petition for rulemaking requesting: (1) Immediate issuance of a moratorium on the displacement of licensed LPFM stations and Class D Educational stations by new, relocating and/or upgrading full-power radio stations, and (2) a proposed rule permanently prohibiting or otherwise restricting such displacement. *See* Petition for Rulemaking of the Amherst Alliance, Talk Radio of Pahrump, Midwest Christian Media, Providence Community Radio and Nickolaus E. Leggett N3NL at 1. In light of the discussion herein, we dismiss this petition. In 2005, REC released a study claiming that 134 LPFM construction permits and licenses were then at risk of being cancelled due to pending full-power station modification applications for vacant allotments. The study also claimed that hundreds of LPFM stations faced less significant levels of increased interference. REC has updated this analysis to assess the impact of applications filed under the recently-adopted rules that established streamlined community of license modification procedures. This study claims that 257 LPFM stations could suffer at least some signal degradation as a result of these facility changes and that 38 of these LPFM stations might be required to cease operations. Prometheus and other commenters call for the Commission to grant LPFM stations co-equal protection status with full-power stations. Alternatively, they suggest that a full-power station proposing to eliminate or seriously degrade the listening area of an LPFM station be required to receive full Commission approval for such a modification. At a minimum, these commenters request that impacted LPFM stations be provided with the ability to make major engineering changes to preserve service.

61. Conversely, many other commenters believe that no changes to § 73.809 of the rules are warranted. Instead, NAB proposes that flexible procedures be put in place to encourage LPFM stations to relocate. NPR contends that the Commission should maintain the current interference protections between FM and LPFM stations. Indeed, NPR and others suggest that the Commission lacks statutory authority to eliminate second and third-adjacent channel protections. Educational Media Foundation states that relaxing § 73.809 of the rules would be harmful to listener-supported NCE stations. Finally, NSBA contends that

there is a strong likelihood of harmful interference to full-service FM stations if the rule is changed and that harm outweighs any speculative benefit to the public interest that would result from a rule change.

62. *Discussion.* In the *Report and Order,* we declined to provide LPFM stations with an interference protection right that could prevent a full-service station from seeking to modify its transmission facilities or could foreclose future new full-service radio station licensing opportunities. Our experience to date confirms our belief that in most instances the interests of both full-service and LPFM stations can be accommodated. We applaud those full-service stations that have provided technical and/or financial assistance to LPFM stations that have been required to undertake facility modifications to remain on the air. We are particularly appreciative of those broadcasters that have consented to short-spacings to avoid LPFM station displacements. We urge licensees seeking community of license modifications or other changes that could lead to LPFM displacement or signal degradation to continue these cooperative efforts on a going-forward basis. The Media Bureau also has played an important role in crafting technical solutions to preserve LPFM stations potentially at risk from new station and facility modification proposals. It already has taken action on dozens of LPFM modification applications that were filed to eliminate or reduce caused interference to or received interference from a full-service FM station. We direct the Media Bureau to continue to attempt to resolve conflicts between full-service and LPFM stations in ways that accommodate the interests of both services.

a. Section 73.809 Interference Procedures

63. Circumstances have changed considerably since we last considered the issue of protection rights for LPFM stations from subsequently authorized full-service stations. Most importantly, the January 2007 lifting of the freeze on the filing of FM community of license modification proposals combined with the implementation of new streamlined licensing procedures resulted in a one-time flurry of filing activity, with approximately 100 FM community of license modification proposals submitted in the first week of the new rules. In all, over 200 community of license modification applications have been filed under the new rules. Increased filings under the new rules and the arguments of LPFM advocates persuade us that the Commission should put policies in place to address current and future LPFM station displacement threats. The Media Bureau has identified approximately 40 LPFM stations that could be forced to cease operations. In these circumstances, we find that the rules should be amended to limit § 73.809 interference procedures to situations involving co- and first-adjacent channel interference.

Thus, § 73.809 will no longer apply to situations involving predicted second-adjacent channel interference. We encourage full-service and LPFM stations to work cooperatively to minimize or eliminate the impact of the full-service station proposal on both stations. In this regard, we encourage each ''encroaching'' full-service station to provide technical and financial assistance to any LPFM station at risk from a full-service station facility proposal and to identify and facilitate the implementation of measures to ameliorate any potential increase in received interference by the LPFM station. As described in more detail below, second-adjacent channel interference to a full service station is generally predicted to occur only in the immediate vicinity of the LPFM station transmitter site. Predicted interference to listeners can be substantially reduced or eliminated in these situations by various techniques, *e.g.,* increasing LPFM antenna height, relocating LPFM transmission facilities away from populated areas, etc.

b. Section 73.807 Second-Adjacent Channel Waiver Standard

64. The Media Bureau has identified for many of the stations now at risk of displacement alternate channels that would require waivers of § 73.807 of the rules because operations on the new channels would be short-spaced to full service stations operating on second-adjacent channels. Based on the potential harm to this small but not insignificant number of LPFM stations, we believe that it would be beneficial to establish a procedural framework for the consideration of showings from LPFM stations that may seek such waivers to avoid displacement, as well as to avoid unnecessary disruption of LPFM service to the public during such consideration. This procedure will apply to both pending applications and those filed, but not disposed of, prior to the effective date of any rule changes proposed in the *Second FNPRM.* The clarification of our second-adjacent channel LPFM waiver standards set forth below is intended to avoid the unwarranted loss of many LPFM stations while the Commission considers certain rule changes set forth in a *Second FNPRM* that we also adopt today. The interim procedural protections we establish in connection with such waiver standards are designed to safeguard the interests of all affected parties and to aid the Commission in identifying those situations in which strict compliance with our rules would not serve the public interest. We also provide guidance below regarding processing standards that the Commission will apply to full-service station modification applications where the modification would place an LPFM station at risk of displacement and no alternate channel is available. In such circumstances, we will consider waiving the Commission's rule making LPFM stations secondary to subsequently-authorized full-service stations and denying the modification application to protect an LPFM station that is demonstrably serving the need of the public from being required to cease operations.

65. In evaluating whether the public interest would be served by grant of a waiver of § 73.807 of the rules for a second-adjacent channel short-spacing to an LPFM station at risk of displacement, the Commission must balance the potential for new interference to the full-service station against the potential loss of an LPFM station. An LPFM station operating within the 60 dBμ contour of a second-adjacent channel full-service station would cause interference to the full-service station in the immediate vicinity of the LPFM transmitter site. Based on desired-to-undesired (D/U) signal strength ratio calculations, in most circumstances interference would be predicted to extend from ten to two hundred meters from the LPFM station antenna. Clearly, it will be advantageous to an LPFM applicant's waiver showing to propose modifications that minimize the area of predicted interference, *e.g.,* by proposing maximum possible antenna heights above average terrain, and by selecting transmitter sites not located near densely populated areas. We encourage the encroaching full-service station licensee to provide technical assistance to LPFM stations to develop modification proposals that would avoid impacting current radio listening patterns.

66. The following procedures will be limited to those situations in which implementation of the full-service new station or modification, including community of license, proposal would result in the full-service and LPFM stations operating at less than the minimum distance separations set forth in § 73.807 of the rules. In addition,

implementation of the full-service proposal must result in either an increase in interference caused to the LPFM station or result in the displacement, *i.e.,* the suspension or termination of LPFM station operations pursuant to § 73.809 of the rules, of the LPFM station. These procedures will not be available where an alternate, fully-spaced, and rule-compliant channel is available for the LPFM licensee or permittee. Finally, Special Temporary Authorizations (STA) will be available pursuant to these procedures only if the LPFM station is proposing a waiver (or waivers) of LPFM second-adjacent channel spacing requirements.

67. We direct the Media Bureau to contact LPFM stations that are currently, or in the future may become, eligible to seek facility modifications under these procedures. To receive consideration, an LPFM station must file promptly an application on Form 318 and include a § 73.807 of the rules waiver request and showing. If the Media Bureau determines that the request falls within the scope of these procedures, it will issue an order to show cause to the potentially impacted full-service station(s) as to why the modification of such station license(s) to allow a second-adjacent channel short-spacing would not be in the public interest. In the event that the Media Bureau concludes that the public interest would be better served by waiving § 73.807 of the rules, it will retain the LPFM station's application in pending status and issue an STA for the proposed LPFM station modifications. STAs issued pursuant to these procedures will be subject to any action taken by the Commission in the *Second FNPRM.* The Commission will withhold final determination of the waiver request until action on the *Second FNPRM* proposals. We encourage each ''encroaching'' full-service station to provide technical and financial assistance to any LPFM station which avails itself of these procedures. We also direct the Media Bureau to include a condition, as appropriate, in the ''encroaching'' full-service station's construction permit requiring such station to provide technical assistance and assume financial responsibility for all direct expenses associated with resolving actual interference complaints, *e.g.,* the purchase of radio filters, etc.

c. LPFM Station Displacement

68. In certain circumstances no alternative channel will be available for an LPFM station at risk of displacement. With regard to full-service modification applications filed after the release of this *Third Report and Order,* we provide the following guidance on the standards that the Commission will use to determine whether grant of such applications are in the public interest. Generally, the Commission will favor grant of the full-service station modification application. However, we believe that it is appropriate to apply a presumption that the public interest would be better served by a waiver of the Commission's rule making LPFM stations secondary to subsequently authorized full-service stations and the dismissal of an ''encroaching'' community of license reallotment application when the threatened LPFM station can demonstrate that it has regularly provided at least eight hours per day of locally originated programming, as that term is defined for the LPFM service. This presumption will apply only when implementation of a community of license modification would result in the displacement of an LPFM station or result in such a significant increase in caused interference to the LPFM station such that continued operations are infeasible, *i.e.*, when the LPFM transmitter site is located within the interfering contour of a co- or first-adjacent channel community of license modification proposal. This presumption will also be limited to those situations in which no ''suitable'' alternate channel is available for the LPFM station. This presumption will not apply where opportunities are available for the impacted LPFM station to alter operations in order to avoid conflict with a full-service station.

69. Our evaluation of these competing demands for scarce spectrum will take into account the benefits of the move-in proposal under section 307(b) of the Communications Act of 1934, as amended, the amount of locally originated programming by the LPFM station, the extent to which other LPFM stations are licensed to and/or provide service to the area currently served by the threatened LPFM station, the extent to which other noncommercial educational (NCE) radio stations are providing locally originated programming to listeners in the LPFM station's service area, the number of LPFM stations at risk of displacement from the proposed community of license modification proposal, and any other public interest factors raised by the full-service and LPFM station applicants or other parties. LPFM stations that wish to make a showing under this waiver standard must file an informal objection to the ''encroaching'' community of license modification application within sixty days of the **Federal Register** notice of such application filing. Oppositions and replies may be filed in accordance with § 1.45 of the rules. This presumption is rebuttable and does not bind the Commission to a particular result. We caution parties that even if the required showing is made, the Commission in the exercise of its discretion may conclude that denial of the full-service station application and grant of the waiver would not serve the public interest.

70. We intend to narrowly limit this policy to the class of LPFM stations that are demonstrably serving the needs of local listeners. Moreover, this policy will not apply in a situation in which a full-service station proposes a facility change to improve service to its current community of license. We emphasize that we will dismiss a community of license modification proposal only when no technically reasonable accommodation is available and the LPFM station makes the requisite waiver showing. We conclude that this processing policy appropriately balances the interests of full-service and LPFM stations, and recognizes the role that each service plays in promoting diversity and localism. The Commission is seeking comment on the presumption in the attached *Second FNPRM* and may modify it based on the comments received in response thereto.

71. We believe that § 73.807 of the rules and LPFM displacement standards will effectively balance the interests of LPFM and full-service broadcasters while the Commission considers the *Second FNPRM* proposals. While REC has identified many LPFM stations that ultimately may be required to modify their facilities as a result of encroachment, we do not see this as a threat to the viability of the LPFM service, especially with the additional protections and procedures we adopt herein. REC's claim that many LPFM stations face interference merely describes a basic feature of the service in today's congested FM broadcast radio spectrum. Opportunities exist for many LPFM stations to change locations, reduce power, or change channels in the event that a conflict arises with a full-service station. Furthermore, the majority of the stations identified as ''less significant risks'' by REC solely exist today because of the flexible nature of the spacing rules under § 73.807 of the rules. Section 73.807 clearly identifies the distance separations necessary for LPFM stations to avoid received interference but does not require LPFM stations to meet this stringent standard. This rule fully protects nearby full-power FM stations while also allowing interference to

LPFM stations in some instances. Therefore, LPFM stations at distances less than those specified in § 73.807 of the rules in the column labeled ''for no interference received from max. class facility'' can expect to receive interference.

IV. Conclusion

72. The rules and policies adopted herein will promote the continued operation and expansion of LPFM service. Our actions today further the public interest and ensure that we maximize the value of LPFM service without harming the interests of full-power FM stations or other Commission licensees. To further these goals, we also recommend to Congress that it remove the requirement that LPFM stations protect full-power stations operating on third adjacent channels.

V. Administrative Matters

A. Regulatory Flexibility Analysis

73. *Final Regulatory Flexibility Analysis.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

74. As required by the Regulatory Flexibility Act, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Third Report and Order.

75. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *FNPRM* in this proceeding. The Commission sought written public comment on the proposals in the *FNPRM*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Third Report and Order

76. The policies and rules set forth herein are required to ensure that the Commission advances the goal of maximizing the value of LPFM service without harming the interests of full-power FM stations or other Commission licensees. In this *Third Report and Order,* the Commission (1) eases the paperwork burdens on LPFM licensees, by clarifying that transfers of control involving a sudden change of more than 50 percent of an LPFM licensee's governing board shall not be deemed ''a substantial change in ownership and control'', as LPFM boards can be subject to substantial turnover; (2) allows for the transfer and assignment of LPFM stations subject to certain conditions, such as: a cap on the sale price to the depreciated fair market value of the physical assets of the facility; (3) the imposition of a three year holding period during which the initial licensee must operate the station, a requirement that the assignee or transferee of an LPFM license is required to satisfy the ownership and eligibility criteria existing at the time of the assignment or transfer, and a prohibition on the assignment or transfer of construction permits; (4) reinstates the LPFM local ownership eligibility restriction; (5) allows an 18 month extension for good cause of the LPFM construction period; and (6) provides for additional technical amendments, such as allowing time-sharing applications to seek authority to place their transmitter at a central location, limiting the processing of applications submitted during the Auction No. 83 filing window to ten proposals per applicant, amending the rules to limit § 73.809 interference procedures to situations involving co- and first-adjacent channel interference, and a procedural framework for the consideration of showings from LPFM stations that may seek waivers of § 73.807 of the rules to avoid displacement, as well as to avoid unnecessary disruption of LPFM service to the public.

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

77. None.

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

78. 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. The RFA generally defines the term ''small entity'' as encompassing the terms ''small business,'' ''small organization,'' and ''small governmental entity.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

79. LPFM Radio Stations. The proposed rules and policies potentially will apply to all low power FM radio broadcasting licensees and potential licensees. The SBA defines a radio broadcasting station that has $6.5 million or less in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. As of the date of release of this *Third Report and Order*, the Commission's records indicate that more than 1,225 LPFM construction permits have been granted. Of those permits, approximately 820 stations are on the air, serving mostly mid-sized and smaller markets. It is not known how many entities ultimately may seek to obtain low power radio licenses. Nor do we know how many of these entities will be small entities. We expect, however, that due to the small size of low power FM stations, small entities would generally have a greater interest than large ones in acquiring them.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

80. The rules adopted in this *Third Report and Order* will impose different reporting or recordkeeping requirements on existing LPFM stations. First, the clarification that transfers of control involving a sudden change of more than 50 percent of an LPFM licensee's governing board shall not be deemed ''a substantial change in ownership and control,'' will ease paperwork burdens upon licensees. The *Third Report and Order* will also involve additional paperwork burdens. First, as this *Third Report and Order* will allow for the transfer and assignment of LPFM licenses, the Commission will require the collection of information necessary for the purposes of processing such applications. Second, this *Third Report and Order* clarifies the renewal process for time-sharing entities, and the process for the administration of such applications. Third, Auction 83

applicants that filed more than 10 applications must select the ten applications they wish to preserve, versus those that will be automatically dismissed, after the Media Bureau issues a Public Notice on this subject. There is no disproportionate impact on small entities as these additional reporting and recordkeeping requirements since these requirements are imposed equally on large and small entities.

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

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

82. Consideration of alternatives methods to reduce the impact on small entities is unnecessary. The *Third Report and Order* decreases existing burdens on small entities and increases their flexibility. First, the clarification that transfers of control involving a sudden change of more than 50 percent of an LPFM licensee's governing board shall not be deemed ''a substantial change in ownership and control,'' will ease paperwork burdens upon LPFM station, many of which are small entities. Further, the changes in the ownership rules will allow greater flexibility for LPFM licensees. Finally, the changes in the technical rules will allow more small entity LPFM stations to exist. In addition, the *Third Report and Order* does not impose different burdens on large and small entities. The record keeping requirements will help facilitate the transfer and assignment of licenses and clarifies the renewal process for time-sharing entities, including the administration of such applications.

83. LPFM service has created and will continue to create significant opportunities for new small businesses by allowing small businesses to develop LPFM service in their communities. In addition, the Commission generally has taken steps to minimize any burdensome regulation on existing small broadcasters. To the extent that the *Third Report and Order* imposes any burdens on small entities, these burdens are only incident to the benefits conferred: greater flexibility of LPFM stations in transferring, assigning and renewing LPFM stations.

B. Report to Congress

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

C. Paperwork Reduction Act Analysis

85. This *Third Report and Order* contains new and modified information collection requirements which were proposed in the *FNPRM*, and are subject to the Paperwork Reduction Act of 1995 (PRA).

86. We have assessed the effects of requiring documentation in relation to: (1) the proposed changes to Forms 314, 315 and 316 for the transfer and/or assignment of LPFM licenses; and (2) the proposed changes to Form 318 for the relocation of transmitter sites for voluntary time-share applicants. We find that to the extent that this *Third Report and Order* imposes any burdens on small entities, the resulting impact on small entities is favorable because the rules expand opportunities for LPFM applicants, permittees, and licensees to transfer and assign licenses, relocate transmitter sites, and extend construction deadlines. These information collection requirements were submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. In addition, the general public and other Federal agencies were invited to comment on these information collection requirements in the *FNPRM*. We further note that pursuant to the Small Business Paperwork Relief Act of 2002, we previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' We received no comments concerning these information collection requirements. On August 25 and 30, 2005, the Commission obtained OMB approval for these information collection requirements, encompassed by OMB Control Nos. 3060–0031 (Forms 314–315), 3060–0009 (Form 316) and 3060–0920 (Form 318). This *Third Report and Order* adopts portions of the above information collection requirements, as proposed. Additional changes are necessary to Forms 314, 315, 316 and 318, and will be submitted to OMB for approval.

87. This document contains modified and new information collection requirements. In this *Third Report and Order*, we require documentation in relation to: (1) An optional 18-month extension of a construction permit upon a showing of good cause; (2) the voluntary withdrawal of Form 349 tech box proposals in order to come into compliance with the cap of 10 proposals; (3) the voluntary filing of a request, on Form 318, for waiver of § 73.807 of the rules for a second-adjacent short-spacing to an LPFM station at risk of displacement by a full-service station; and (4) the voluntary filing of waiver of the Commission rule making LPFM stations secondary to subsequently authorized full-service stations, where an LPFM station at risk of displacement by a full-service station can demonstrate that it provides at least eight hours a day of locally originated programming and that no suitable alternate channel is available. As discussed above, additional changes are necessary to Forms 314, 315, 316 and 318, and will be submitted to OMB for review and approval under section 3507(d) of the PRA. The Commission will publish a separate **Federal Register** notice seeking these comments from the public. OMB, the general public, and other Federal agencies are invited to comment on the modified and new information collection requirements contained in this proceeding.

D. Congressional Review Act

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

E. Additional Information

89. For additional information on this proceeding, please contact Peter Doyle, Audio Division, Media Bureau, at (202) 418–2700, or Holly Saurer, Policy Division, Media Bureau, at (202) 418–7283. For PRA-related questions, please contact Cathy Williams, at (202) 418–2918 or via e-mail at *Cathy.Williams@fcc.gov*.

VI. Ordering Clauses

90. *It is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i), 303, 403 and 405 of the Communications Act of 1934, 47 U.S.C.

151, 152, 154(i), 303, 403, and 405, this *Third Report and Order is adopted*.

91. *It is further ordered* that, pursuant to the authority contained in Sections 1, 2, 4(i), 303, 303(a), 303(b), and 307 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 303, 303(a), 303(b), and 307, the Commission's rules *are hereby amended* as set forth in Appendix B. It is our intention in adopting these rule changes that, if any provision of the rules is held invalid by any court of competent jurisdiction, the remaining provisions shall remain in effect to the fullest extent permitted by law.

92. *It is further ordered* that the rules as revised in Appendix B *shall be effective* March 17, 2008. Changes to FCC Forms 314, 315, 316 and 318 will be effective 60 days after **Federal Register** publication of OMB approval of the forms. With respect to renewal applications, we will evaluate compliance with these requirements in applications filed in the next renewal cycle. Licensee performance during any portion of the renewal term that predates the effective date of the rules in the *Third Report and Order* will be evaluated under current rules, and licensee performance that post-dates the effective date of the revised rules will be judged under the new provisions.

93. *It is further ordered* that, pursuant to §§ 0.201 through .204 of the Commission's rules, 47 CFR 0.201 through .204, and section 5(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c)(1), the Chief, Media Bureau, *is delegated authority* to act as described in paragraphs 40, 56, 62 and 67 herein.

94. *It is further ordered* that the Petition for Rulemaking filed by the Amherst Alliance, Talk Radio of Pahrump, Midwest Christian Media, Providence Community Radio, and Nickolaus E. Leggett N3NL *is hereby dismissed*.

95. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Third Report and Order and Second Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis and the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

96. *It is further ordered* that the Commission *shall send* a copy of this *Third Report and Order and Second Further Notice of Proposed Rulemaking* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

■ 2. Section 73.809 is amended by revising paragraphs (a) and (b) to read as follows:

§ 73.809 Interference protection to full service FM stations.

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

(1) The 3.16 mV/m (70 dBu) contour of such full service station;

(2) The community of license of such full service station; or

(3) Any area of the community of license of such full service station that is predicted to receive at least a 1 mV/m (60 dBu) signal. Predicted interference shall be calculated in accordance with the ratios set forth in § 73.215 paragraphs (a)(1) and (a)(2). Intermediate frequency (IF) channel interference overlap will be determined based upon overlap of the 91 dBu F(50,50) contours of the FM and LPFM stations. Actual interference will be considered to occur whenever reception of a regularly used signal is impaired by the signal radiated by the LPFM station.

(b) An LPFM station will be provided an opportunity to demonstrate in connection with the processing of the commercial or NCE FM application that interference as described in paragraph (a) of this section is unlikely. If the LPFM station fails to so demonstrate, it will be required to cease operations upon the commencement of program tests by the commercial or NCE FM station.

* * * * *

■ 3. Section 73.853 is amended by revising paragraph (b) to read as follows:

§ 73.853 Licensing requirements and service.

* * * * *

(b) Only local applicants will be permitted to submit applications. For the purposes of this paragraph, an applicant will be deemed local if it can certify that:

(1) The applicant, its local chapter or branch is physically headquartered or has a campus within 16.1 km (10 miles) of the proposed site for the transmitting antenna for applicants in the top 50 urban markets, and 32.1 km (20 miles) for applicants outside of the top 50 urban markets;

(2) It has 75% of its board members residing within 16.1 km (10 miles) of the proposed site for the transmitting antenna for applicants in the top 50 urban markets, and 32.1 km (20 miles) for applicants outside of the top 50 urban markets; or

(3) In the case of any applicant proposing a public safety radio service, the applicant has jurisdiction within the service area of the proposed LPFM station.

■ 4. Section 73.855 is revised to read as follows:

§ 73.855 Ownership limits.

(a) No authorization for an LPFM station shall be granted to any party if the grant of that authorization will result in any such party holding an attributable interest in two or more LPFM stations.

(b) Not-for-profit organizations and governmental entities with a public safety purpose may be granted multiple licenses if:

(1) One of the multiple applications is submitted as a priority application; and

(2) The remaining non-priority applications do not face a mutually exclusive challenge.

■ 5. Section 73.865 is revised to read as follows:

§ 73.865 Assignment and transfer of LPFM licenses.

(a) Assignment/Transfer: No party may assign or transfer an LPFM license if:

(1) Consideration promised or received exceeds the depreciated fair market value of the physical equipment and facilities; and/or

(2) The transferee or assignee is incapable of satisfying all eligibility criteria that apply to a LPFM licensee.

(b) A change in the name of an LPFM licensee where no change in ownership or control is involved may be accomplished by written notification by the licensee to the Commission.

(c) *Holding Period:* A license cannot be transferred or assigned for three years from the date of issue, and the licensee must operate the station during the three-year holding period.

(d) No party may assign or transfer an LPFM construction permit at any time.

(e) Transfers of control involving a sudden change of more than 50 percent of an LPFM's governing board shall not be deemed a substantial change in ownership or control, subject to the filing of an FCC Form 316.

■ 6. Section 73.870 is amended by revising paragraph (a) and adding paragraph (f) to read as follows:

§ 73.870 Processing of LPFM broadcast station applications.

(a) A minor change for an LP100 station authorized under this subpart is limited to transmitter site relocations of 5.6 kilometers or less. A minor change for an LP10 station authorized under this subpart is limited to transmitter site relocations of 3.2 kilometers or less. These distance limitations do not apply to amendments or applications proposing transmitter site relocation to a common location filed by applicants that are parties to a voluntary time-sharing agreement with regard to their stations pursuant to § 73.872 paragraphs (c) and (e). Minor changes of LPFM stations may include:

(1) Changes in frequency to adjacent or IF frequencies or, upon a technical showing of reduced interference, to any frequency; and

(2) Amendments to time-sharing agreements, including universal agreements that supersede involuntary arrangements.

* * * * *

(f) New entrants seeking to apply for unused or unwanted time on a time-sharing frequency will only be accepted during an open filing window, specified pursuant to paragraph (b) of this section.

■ 7. Section 73.871 is amended by revising paragraph (c) as follows:

§ 73.871 Amendment of LPFM broadcast station applications.

* * * * *

(c) Only minor amendments to new and major change applications will be accepted after the close of the pertinent filing window. Subject to the provisions of this section, such amendments may be filed as a matter of right by the date specified in the FCC's Public Notice announcing the acceptance of such applications. For the purposes of this section, minor amendments are limited to:

(1) Filings subject to paragraph (c)(5), site relocations of 3.2 kilometers or less for LP10 stations;

(2) Filings subject to paragraph (c)(5), site relocations of 5.6 kilometers or less for LP100 stations;

(3) Changes in ownership where the original party or parties to an application retain more than a 50 percent ownership interest in the application as originally filed;

(4) Universal voluntary time-sharing agreements to apportion vacant time among the licensees;

(5) Other changes in general and/or legal information; and

(6) Filings proposing transmitter site relocation to a common location submitted by applicants that are parties to a voluntary time-sharing agreement with regard to their stations pursuant to § 73.872 paragraphs (c) and (e).

* * * * *

■ 8. Section 73.872 is amended by revising paragraphs (c) and (d)(1), adding paragraph (d)(3) and revising paragraph (e) to read as follows:

§ 73.872 Selection procedure for mutually exclusive LPFM applications.

* * * * *

(c) *Voluntary time-sharing.* If mutually exclusive applications have the same point total, any two or more of the tied applicants may propose to share use of the frequency by submitting, within 90 days of the release of a public notice announcing the tie, a time-share proposal. Such proposals shall be treated as minor amendments to the time-share proponents' applications, and shall become part of the terms of the station authorization. Where such proposals include all of the tied applications, all of the tied applications will be treated as tentative selectees; otherwise, time-share proponents' points will be aggregated to determine the tentative selectees.

(1) Time-share proposals shall be in writing and signed by each time-share proponent, and shall satisfy the following requirements:

(i) The proposal must specify the proposed hours of operation of each time-share proponent;

(ii) The proposal must not include simultaneous operation of the time-share proponents; and

(iii) Each time-share proponent must propose to operate for at least 10 hours per week.

(2) Where a station is authorized pursuant to a time-sharing proposal, a change of the regular schedule set forth therein will be permitted only where a written agreement signed by each time-sharing permittee or licensee and complying with requirements in paragraphs (c)(1)(i) through (iii) of this section is filed with the Commission, Attention: Audio Division, Media Bureau, prior to the date of the change.

(3) Where a station is authorized pursuant to a voluntary time-sharing proposal, the parties to the time-sharing agreement may apportion among themselves any air time that, for any reason, becomes vacant.

(4) Successive license terms granted under paragraph (d) may be converted into voluntary time-sharing arrangements renewable pursuant to § 73.3539 by submitting a universal time-sharing proposal.

(d) *Successive license terms.* (1) If a tie among mutually exclusive applications is not resolved through voluntary time-sharing in accordance with paragraph (c) of this section, the tied applications will be reviewed for acceptability and applicants with tied, grantable applications will be eligible for equal, successive, non-renewable license terms of no less than one year each for a total combined term of eight years, in accordance with § 73.873. Eligible applications will be granted simultaneously, and the sequence of the applicants' license terms will be determined by the sequence in which they file applications for licenses to cover their construction permits based on the day of filing, except that eligible applicants proposing same-site facilities will be required, within 30 days of written notification by the Commission staff, to submit a written settlement agreement as to construction and license term sequence. Failure to submit such an agreement will result in the dismissal of the applications proposing same-site facilities and the grant of the remaining, eligible applications.

* * * * *

(3) If successive license terms granted under this section are converted into universal voluntary time-sharing arrangements pursuant to paragraph (c)(4) of this section, the permit or license is renewable pursuant to §§ 73.801 and 73.3539.

(e) Mutually exclusive applicants may propose a settlement at any time during the selection process after the release of a public notice announcing the mutually exclusive groups. Settlement proposals must include all of the applicants in a group and must comply with the Commission's rules and policies regarding settlements, including the requirements of §§ 73.3525, 73.3588, and 73.3589. Settlement proposals may include time-share agreements that comply with the

requirements of paragraph (c) of this section, provided that such agreements may not be filed for the purpose of point aggregation outside of the 90 day period set forth in paragraph (c) of this section.

■ 9. Section 73.3598 is amended by revising paragraph (a) to read as follows:

§ 73.3598 Period of Construction.

(a) Each original construction permit for the construction of a new TV, AM, FM or International Broadcast; low power TV; TV translator; TV booster; FM translator; FM booster station; or to make changes in such existing stations, shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed. Each original construction permit for the construction of a new LPFM station shall specify a period of eighteen months from the date of issuance of the construction permit within which construction shall be completed and application for license filed. A LPFM permittee unable to complete construction within the time frame specified in the original construction permit may apply for an eighteen month extension upon a showing of good cause. The LPFM permittee must file for an extension on or before the expiration of the construction deadline specified in the original construction permit.

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[FR Doc. E8–783 Filed 1–16–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 070518142–7238–02]

RIN 0648–AV45

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Gulf of Mexico Vermilion Snapper Fishery Management Measures; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule to implement a regulatory amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico that was published in the **Federal Register** Thursday, January 3, 2008.

DATES: This correction is effective February 4, 2008.

FOR FURTHER INFORMATION CONTACT: Anik Clemens, 727–824–5305; fax: 727–824–5308; e-mail: *Anik.Clemens@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Correction

The final rule that is the subject of this correction was published Thursday, January 3, 2008 (73 FR 406). The final rule. That final rule contains an amendatory instruction that is no longer needed. Amendatory instruction 9 removes the last sentence of paragraph (a)(2) in § 622.9, however, a final rule published on December 27, 2007 (72 FR 73270) revises this same paragraph. Therefore, on page 410, in the last column, amendatory instruction 9 is removed. All other information remains unchanged and will not be repeated in this correction.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 11, 2008

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E8–791 Filed 1–16–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213033–7033–01]

RIN 0648–XF05

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel Lottery in Areas 542 and 543

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of fishery assignments.

SUMMARY: NMFS is notifying the owners and operators of registered vessels of their assignments for the 2008 A season Atka mackerel fishery in harvest limit area (HLA) 542 and/or 543 of the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the harvest of the 2008 A season HLA limits established for area 542 and area 543 pursuant to the 2007 and 2008 harvest specifications for groundfish in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 14, 2008, until 1200 hrs, A.l.t., April 15, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(8)(iii)(A), owners and operators of vessels using trawl gear for directed fishing for Atka mackerel in the HLA are required to register with NMFS. Four vessels have registered with NMFS to fish in the A season HLA fisheries in areas 542 and/or 543. In accordance with § 679.20(a)(8)(iii)(B), the Administrator, Alaska Region, NMFS, has randomly assigned each vessel to the HLA directed fishery for Atka mackerel for which they have registered and is now notifying each vessel of its assignment.

For the Amendment 80 cooperative, the vessel authorized to participate in the first HLA directed fishery in area 542 and the second HLA directed fishery in area 543 in accordance with § 679.20(a)(8)(iii) is as follows: Federal Fishery Permit number (FFP) 3835 Seafisher.

For the Amendment 80 limited access sector, vessels authorized to participate in the first HLA directed fishery in area 542 and in the second HLA directed fishery in area 543 in accordance with § 679.20(a)(8)(iii) are as follows: Federal Fishery Permit number (FFP) 4093 Alaska Victory and FFP 3819 Alaska Spirit.

For the Amendment 80 limited access sector, the vessel authorized to participate in the first HLA directed fishery in area 543 and the second HLA directed fishery in area 542 in accordance with § 679.20(a)(8)(iii) is as follows: FFP 3423 Alaska Warrior.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is unnecessary. This notice merely advises the owners of these