

or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting that will prohibit entry within certain navigable waters of Lahaina Boat Basin. It is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5;

Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T14–0743 to read as follows:

§ 165.T14–0743 Safety Zone; Pacific Ocean, Lahaina Boat Basin, Maui, HI—Emergency Operations and Port Recovery.

(a) *Location.* The following area is a safety zone: All waters extending 200 yards from shore starting from the northernmost boundary at Wahikuli Wayside Park, Maui, thenceforth to the southernmost boundary at Launiupoko Beach Park, Maui.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Honolulu (COTP) in the enforcement of the safety zone.

(c) *Regulations.* Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF/FM Channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced August 24, 2023, through September 27, 2023, unless an earlier end is announced by broadcast notice to mariners.

Dated: August 24, 2023.

A.L. Kirksey,

Captain, U.S. Coast Guard, Captain of the Port Sector Honolulu.

[FR Doc. 2023–18697 Filed 8–25–23; 4:15 pm]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MB Docket No. 03–185; FCC 23–58; FR ID 159756]

Digital Low Power Television and Television Translator Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) adopts rules to

clarify for all stakeholders the status of LPTV FM6 service and codify that these services may be provided by a group of 14 existing FM6 stations, and only by those stations.

DATES: Effective September 28, 2023, except for the amendments in § 74.790(o)(9) and (10), which are delayed indefinitely. The Commission will publish a separate document in the **Federal Register** announcing the effective date of those amendments.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Video Division, Media Bureau at (202) 418–2324 or Shaun.Maher@fcc.gov, or, Mark Colombo, Video Division, Media Bureau at (202) 418–7611 or Mark.Colombo@fcc.gov. For additional information concerning the Paperwork Reduction Act (PRA) information collection requirements contained in this document, contact Cathy Williams at 202–418–2918, or Cathy.Williams@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's R&O, in MB Docket No. 03–185; FCC 23–58, adopted on July 20, 2023, and released on July 20, 2023. The full text of this document is available for download at <https://docs.fcc.gov/public/attachments/FCC-23-58A1.pdf>. To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to FCC504@fcc.gov or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

Paperwork Reduction Act of 1995 Analysis

This document contains a new or modified information collection requirement subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirement contained in the proceeding. These new or modified information collections will become effective after the Commission publishes a document in the **Federal Register** announcing such approval and the relevant effective date. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, (Pub. L. 107–198), it previously sought specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25

employees.” (44 U.S.C. 3506(c)(4)). The Commission described impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis (FRFA), attached as Appendix C.

Congressional Review Act

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

Synopsis

Authorizing FM6 Operations as Ancillary or Supplementary Services

In the R&O, the Commission concludes that both the Communications Act of 1934 (Act) and its rules allow existing FM6 operations to be provided on an ancillary or supplementary basis to a channel 6 LPTV station’s digital television operation, and that it is in the public interest to preserve FM6 operations by existing FM6 LPTV stations. The Act provides that ancillary or supplementary services must be “consistent with the public interest, convenience, and necessity”; must be “consistent with the technology or method designated by the Commission for the provision of advanced television services”; and must “avoid derogation of any advanced television services.” The Commission concludes that existing FM6 services meet all of these requirements of the Act.

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

The Commission concludes that existing FM6 operations are consistent with the mandate of section 336(a)(2) of the Act that the Commission allow digital television stations “to offer such ancillary or supplementary services on designated frequencies as may be consistent with the public interest, convenience, and necessity.” Specifically, the Commission notes the length of time that certain FM6 LPTV stations have been operating and efforts they undertook to convert to digital operations to limit consumer impact. To preserve their programming (especially public safety and emergency information) that viewers have come to rely on, the Commission finds the

public interest will be served by continuing existing FM6 operations. Further, the Commission finds that the benefits of preserving *existing* FM6 LPTV stations outweigh concerns that FM6 operations are an inefficient use of spectrum or could cause interference to their own television service or other licensed users.

The Commission found that the record in this proceeding reflects widespread recognition of the long history of public interest benefits provided by existing FM6 LPTV stations’ FM6 operations. Since the 1980s, FM6 LPTV stations have maintained a close connection with the communities they serve through their FM6 programming. Listeners have tuned to existing FM6 LPTV stations for foreign language, religious and sports programming; programming intended to support historically underserved populations such as native Spanish speakers, immigrant populations; and programming designed for niche music audiences. In addition, existing FM6 LPTV stations provide emergency and public safety information that their listeners have come to rely upon in times of disasters. Although some commenters contend that certain FM6 LPTV stations are not serving the public interest because they are not providing any programming designed specifically for their local audiences but are merely airing music programming, the Commission does not make distinctions based on format. Therefore, the Commission finds that the record weighs in favor of the public interest benefits provided by existing FM6 LPTV stations.

Although FM6 LPTV stations were required to discontinue analog television operations and convert to digital in July 2021, there were 13 FM6 LPTV stations that were able to complete their digital transition and resume their FM6 operations with an FM6 STA with limited, if any, service interruptions. The Commission notes that more than half of the 13 existing FM6 LPTV stations were able to convert to digital and resume their FM6 operations within 2 months of terminating their analog operations in July 2021. The remaining stations resumed FM6 operations between 4 and 8 months after the July 2021 transition deadline mainly due to supply chain delays in obtaining the necessary FM6 equipment that were outside of their control. The Commission finds that preserving the long-time audio programming offered by these remaining FM6 LPTV stations aligns with one of the Commission’s core principles guiding the digital transition—

minimizing service disruptions. FM6 LPTV stations provide free, over-the-air synchronized video and audio programming using a standard-compliant ATSC 3.0 signal and supplement that programming with additional free, over-the-air analog audio broadcast services. The availability of these additional audio services has provided programmers with a platform on which to invest in programming directed to unserved or underserved audiences that may not be available on any other stations in their markets—all while continuing to provide free over-the-air video programming pursuant to their television licenses. To remove this service that radio listeners have relied on for many years would contravene the Commission’s goal of preserving service.

The public interest benefits of preserving existing FM6 operations also outweigh concerns about inefficient use of spectrum. Some analog FM6 LPTV stations had a history of minimal video service. With analog television operations, an FM6 LPTV station could not transmit a separate audio stream for its video programming and for radio reception. The rules the Commission adopted in the R&O address this issue. FM6 LPTV stations will be required to transmit a dual digital television and analog radio signal, thereby providing both new digital television services while maintaining existing audio services. The rules the Commission adopts ensure that FM6 LPTV stations are first and foremost LPTV stations and that their video programming stream is prioritized over any audio stream. Further, enhanced compression technologies encompassed in the ATSC 3.0 standard provide broadcasters even greater bandwidth capacity on their channel for television services than under the ATSC 1.0 standard. Therefore, the Commission believes the rules it adopts appropriately address previous concerns that FM6 LPTV stations are using their spectrum inefficiently. The Commission is not persuaded by commenters that suggest FM6 LPTV stations will abandon their current programming thereby undoing the public interest basis for allowing their continued FM6 operations. As the Commission has previously recognized, offering additional services on an existing television channel “contributes to efficient spectrum use and can expand and enhance use of existing spectrum.”

Further, the Commission concludes that the public interest benefits of preserving existing FM6 operations offset concerns about existing FM6 operations causing interference to an

FM6 LPTV station's own digital television service or to FM radio licensees. To date, existing FM6 LPTV stations that have been operating under the technical limitations in the FM6 STAs and using ATSC 3.0 for their digital television signal have an established track record of not causing interference to adjacent channel FM stations or their own television signal. Existing FM6 LPTV stations have been operating for almost two years via engineering STAs without any legitimate interference complaints from either adjacent channel FM radio stations or their own TV viewers. Moreover, the Commission notes that no commenter has presented credible evidence in the record that any of the existing FM6 LPTV stations have caused interference.

To the extent that there have been interference-free FM6 operations, the Commission observes that such record is limited to the anecdotal history of the 13 existing FM6 LPTV stations. Based on co-existence concerns raised throughout this proceeding, the Commission has sought to develop a comprehensive record on the potential for FM6 operations to cause interference. One area of potential interference is to the "host" channel 6 LPTV station's own digital operations. A "host" station is a channel 6 LPTV station that provides a digital television service, but also provides an analog FM radio operation over the same channel. The Commission has asked if an FM6 LPTV station would be able to operate an analog transmitter without interfering or derogating its co-channel digital operation. Some commenters argued that an FM6 LPTV station operating in digital could experience so-called "host interference"—a phenomena where a new signal interferes with a station's existing signal, in this case an LPTV station operating both digital television and analog FM radio signals. Similarly, the Commission sought comment on the potential of interference to adjacent channel FM radio stations on 88.1 and 88.3 MHz. Some commenters raised concerns that higher power FM6 operations on 87.75 MHz could interfere with lower power adjacent channel FM radio stations operating on 88.1 MHz and 88.3 MHz. Despite repeated requests, commenters have failed to produce detailed interference studies that show that FM6 operations will not cause interference to either host digital television operations or adjacent channel FM radio stations in all circumstances. Therefore, because the Commission has only anecdotal

evidence involving specific unmodified stations, it is unable to conclusively state that no interference will occur from prospective new FM6 LPTV stations that do not have a track record of interference-free operations.

For prospective new FM6 operations, such interference concerns outweigh any benefits from adopting rules allowing new FM6 operations to commence, thus leading us to conclude that adopting rules to allow all channel 6 LPTV stations to offer new FM6 services would not serve the public interest as required by section 336(a)(2) of the Act. Even though some TV6 LPTV stations may have previously provided FM6 service while operating in analog before the digital transition (*i.e.*, legacy analog FM6 stations), the Commission again does not have sufficient technical analysis to say for certain that there would be no interference to their own television operations or adjacent FM radio stations were it to allow them to recommence FM6 operations. Accordingly, the Commission believes it prudent to proceed cautiously and establish rules in this Order only for existing FM6 stations, which have an established track record of non-interference and a history of providing FM6 service to the public. Commenters support limiting FM6 operations to the existing LPTV stations, provided the Commission take steps to ensure that the existing stations (and WVOA-LD) will continue to provide FM6 service without causing interference. To that end, the Commission adopts specific FM6 operational rules, such as limiting modifications and explicitly requiring that FM6 operations be conducted only on a non-interference basis.

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

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

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

Finally, the Commission finds that obtaining a separate FM or LPFM radio license provides an unlikely alternative. In particular, because LPFM stations must be operated on a noncommercial educational basis, they are not an option for FM6 LPTV stations that historically have operated as commercial stations. The Commission believes most if not all FM6 LPTV stations are operating on a commercial basis as evidenced by the fact that most FM6 LPTV stations submitted Annual DTV Ancillary/Supplementary Services Reports (LMS Form 2100—Schedule 317) indicating that they have had revenues from their FM6 operations. Further, in the case of either LPFM or full power FM, acquiring a station could be an expensive and time consuming proposition for many FM6 LPTV stations, especially for those in larger markets. Therefore, for all of the foregoing reasons, the Commission concludes that the public interest is best served by allowing existing FM6 operations to continue as an ancillary or supplementary service.

Existing FM6 Operations Satisfy Section 336(b)(1)

As required by section 336(b)(1), the Commission concludes that existing FM6 operations are “consistent with” the “technology or method designated by the Commission for the provision of advanced television services” As an initial matter, the Commission interprets the phrase “consistent with” to allow for a degree of flexibility by requiring ancillary or supplementary services to be compatible with the technology or method for providing advanced television services. A more narrow reading of the phrase “consistent with” that affords less flexibility would unreasonably constrain the types of ancillary or supplementary services stations can provide, thereby frustrating Congressional intent to “[p]ermit[] broadcasters more flexibility in using their spectrum assignments [] consistent with the public policy goal of providing additional services to the public.” The Commission has most recently interpreted this provision of the Act broadly, observing that “Congress recognized that the transition from analog to digital broadcast technology would enable DTV licensees to provide new and innovative services . . . over their additional spectrum capacity and wanted to provide licensees with the flexibility necessary to utilize fully that new potential.” In addition, the Commission interprets the phrase “technology or method designated by the Commission for the provision of advanced television services” to mean the transmission standards required for digital television stations that have been adopted by the Commission and incorporated in the rules. While the Commission’s rules allow LPTV stations to comply with either the ATSC 1.0 or 3.0 standard in providing advanced television services, the Commission analyzes here compatibility of analog FM6 with only ATSC 3.0 consistent with the rules the Commission adopts below.

The Commission finds that existing analog FM6 radio operations are compatible with the ATSC 3.0 standard, and therefore satisfy section 336(b)(1). The ATSC 3.0 standard allows for configurability, permitting FM6 LPTV stations to make their television signal narrower and/or have the signals settings modified to have increased error correction intended to prevent co-channel interference between the stations’ digital television and analog radio signals. Existing FM6 LPTV stations operating in ATSC 3.0 have been able to continue to deliver free

over-the-air ATSC 3.0 television signals configured to occupy approximately 5.5 MHz of their digital channel capacity while at the same time providing analog FM6 on a frequency within their 6 MHz channel. Television channel 6 encompasses the 82–88 MHz band. The Act and the rules do not require a licensee to use its *entire* 6 MHz channel solely for the provision of advanced television services. In fact, in adopting the ancillary or supplementary provisions of the rules, the Commission provided numerous examples of non-television services as being permissible ancillary or supplementary services including: “computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, audio signals, subscription video” whether offered on a “broadcast, point-to-point, or point-to-multipoint basis.” For these reasons, including the configurability afforded by ATSC 3.0, the Commission finds that existing analog FM6 radio operations are compatible with the ATSC 3.0 standard.

The Commission disagrees with commenters suggesting that the definition of “advanced television services” should apply to all services that are incorporated into a digital television station’s 6 MHz digital bitstream. Such a finding would be in complete contradiction with the flexibility afforded to broadcasters under the Act, and implemented by the rules, to offer ancillary or supplementary services. A digital LPTV station may offer ancillary or supplementary services on its assigned frequencies as long as such services are “consistent with the technology or method designated by the Commission for the provision of advanced television services” and, as discussed in greater detail below, “avoid derogation of any advanced television services . . . that the Commission may require using such frequencies.” Based on these facts, the Commission concludes that FM6 LPTV stations operations are consistent with the technology or method designated by the Commission for the provision of advanced television systems, as required by section 336(b)(1) of the Act and defined by the rules.

The Commission rejects arguments that FM6 operations are precluded by section 336(b)(1) of the Act because FM6 stations are providing separate audio and visual offerings or that FM6 operations are not “consistent with technology or method designated by the Commission for the provision of advanced television services” because neither the ATSC 3.0 standard nor the rules specifically refer to analog audio

signals. As an initial matter, neither section 336 nor the rules mandate that particular ancillary or supplementary services must be specifically integrated into or mentioned within the pertinent digital television transmission standard (in this case, ATSC 3.0) or in the rules. Rather, the Commission’s rules require only that a digital television station transmit at least one over-the-air video program signal at no charge to viewers as a precondition to offering ancillary and supplementary services. The rules also permit digital LPTV broadcasters to transmit separate aural and visual program material as long as the visual signal can be viewed on a receiver based on the ATSC standard. Here, FM6 stations comply with this rule by providing a television signal while the analog audio stream is transmitted through a separate analog audio carrier.

Existing FM6 Operations Satisfy Section 336(b)(2)

As required by section 336(b)(2), the Commission next finds that existing FM6 operations do not “derogate[] any advanced television services.” One commenter claims that, by providing an FM6 operation that uses a portion of an LPTV station’s bandwidth, it is “denying advanced television services to the entire 6 MHz band as required by statute” and that this “derogate[s] the NextGen ATSC 3.0 experience and therefore does not meet the statutory test.” The Commission disagrees. The derogation prong of section 336(b)(2) prohibits derogation of “any advanced television services . . . that the Commission may require using such frequencies.” The derogation standard does not address what hypothetical advanced television services a station could offer; rather, it addresses the advanced television services a station actually offers and are otherwise required by the Commission. Under the rules broadcasters are only required to provide one free over-the-air video programming stream. Further, as discussed above, broadcasters are not required to utilize their entire 6 MHz stream solely for television services and are authorized by the Act and the rules to offer ancillary or supplementary services over a portion of their spectrum. The record demonstrates that the use of ATSC 3.0 to broadcast a station’s television stream(s) is intended to prevent interference between the station’s digital television and analog radio signals and thereby does not run afoul of the derogation provision of section 336(b)(2) of the Act or § 73.624(c) of the rules.

Limiting FM6 Operations to Existing Operators

The Commission adopts its proposal to allow only FM6 LPTV stations with “active” FM6 STAs to continue to provide FM6 service. The Commission will define “active” FM6 STAs to be initial FM6 STAs that were either granted and unexpired, or a request for extension of an STA that was granted or pending on June 7, 2022 of the release date of the adopted Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Fifth Notice of Proposed Rulemaking, MB Docket No. 03–185, FCC 22–40 (87 FR 36440) (*Further Notice of Proposed Rulemaking (FNPRM)*). The Commission also requires that to be considered an “active” FM6 STA, the STA must remain unexpired (*i.e.*, through grant of subsequent extension(s)) or have a pending extension request on file as of the effective date of this R&O.

Eligible FM6 LPTV Stations. The Commission concludes that the public interest benefits of preserving the existing programming of the 13 FM6 LPTV stations with active FM6 STAs outweighs the risk of potential interference to other licensed users by these 13 FM6 LPTV stations. The Commission also finds that limiting the class of stations eligible to provide FM6 services is consistent with both section 336(a)(2) of the Act, which states that the Commission shall adopt regulations authorizing ancillary or supplementary services that “may be consistent with the public interest, convenience, and necessity,” and section 336(b)(5) of the Act, which states that in adopting regulations authorizing ancillary or supplementary services the Commission shall “prescribe such other regulations as may be necessary for the protection of the public interest, convenience, and necessity.” These 13 stations (as well as WVOA–LD), present unique circumstances that weigh in favor of permitting continued FM6 operations as an ancillary or supplementary service. Some commenters maintain that limiting the class of entities that can provide FM6 service is inconsistent with the requirement under section 307(b) of the Act to “provide a fair, efficient, and equitable distribution of radio service.” As an initial matter, section 307(b) applies only when the Commission is “considering applications for licenses, and modifications and renewals thereof.” In this R&O, however, no applications are before us; rather, the Commission establishes rules for existing licensees to

provide certain ancillary or supplementary services, so section 307(b) does not apply. In addition, given their lower power and secondary nature, the Commission has not considered the mandate of section 307(b) of the Act when deciding how to allocate LPTV stations.

The Commission finds the 13 FM6 LPTV stations with active FM6 STAs are distinguishable from other channel 6 LPTV stations that have either never provided FM6 service or were legacy FM6 stations when they were operating in analog, but are no longer providing such service. As an initial matter, the 13 FM6 LPTV stations with active FM6 STAs have a history of providing consistent FM6 service both prior to and following the July 13, 2021 LPTV digital television transition. These stations not only promptly transitioned to digital operations, but they also converted to ATSC 3.0 and obtained an FM6 STA within a reasonable period following their digital transition. As a result, listeners have maintained their reliance on these stations, and preserving access to programming on which listeners have come to rely weighs heavily in favor of permitting these 13 FM6 LPTV stations to continue their existing FM6 operations. Second, permitting only the existing FM6 LPTV stations to provide FM6 service presents a solution to the interference concerns raised by adjacent-band FM stations. Existing FM6 LPTV stations’ facilities have been “frozen” in place and were not permitted to be modified. While such stations have been operating without any verified complaints of interference, the Commission has established rules to ensure that such interference-free operations continue into the future with no negative impact on other licensees or their own digital television service. The same cannot be said of FM6 operations from prospective new FM6 LPTV stations for which the Commission does not have a track record of non-interference since the LPTV digital television transition.

WVOA–LD. The Commission concludes that WVOA–LD, Westvale, New York, licensed to Metro TV, Inc., should be permitted to provide FM6 operations. The station previously provided FM6 service while an analog station, and was prepared to operate an FM6 station prior to the release of the *FNPRM*. However, the station was unable to complete its conversion to ATSC 3.0 digital operations and initiate FM6 operations pursuant to an FM6 STA due to a delay in grant of an application for minor modification. Grant of the application was delayed because the requisite international

coordination clearance from Canada had not been received by the Commission prior to release of the *FNPRM*. WVOA–LD indicates that such minor modification was necessary in order to adequately implement their digital television service and recommence its FM6 operation. Because this proceeding was ongoing at the time of the grant, the license was granted with a condition stating that WVOA–LD was not permitted to conduct FM6 operations, subject to the outcome of this proceeding. Given the Commission’s decision to permit WVOA–LD to offer FM6 services, the Commission instructs the Media Bureau to add a notation to the WVOA–LD license indicating that FM6 operations are permitted pursuant to § 74.790(o) of the Commission’s rules and this R&O. The Commission finds the delay in obtaining international coordination was truly outside of WVOA–LD’s control, and good cause to permit WVOA–LD to provide FM6 operations. The Commission has recognized certain delays in international coordination as truly beyond the control of the station. Here, WVOA–LD took all steps necessary to secure Canadian approval and the delays in approval were truly outside the control of WVOA. No commenter opposes this finding.

In order to confirm that no interference will occur, the Commission requires that WVOA–LD initially commence FM6 operations under special temporary authority and operate under such authority for a period of one-year. Although WVOA–LD argues that such a requirement is unnecessary, the Commission disagrees because unlike the 13 existing FM6 LPTV stations, the Commission does not have a record of WVOA–LD operating in digital while providing FM6 service. Therefore, within 85 days of the effective date of this R&O, the Commission requires WVOA–LD to commence both ATSC 3.0 and FM6 operations by filing an application to convert its facility to ATSC 3.0, and request for engineering STA. The period of 85 days represents the amount of time WVOA–LD would have had to resume FM6 operations in order to have been included in the group of 13 FM6 LPTV stations with “active” FM6 STAs if its minor modification application did not require international coordination and was actionable upon filing when filed on March 11, 2022. WVOA–LD must notify the Bureau no more than 10 days after it commences FM6 operations by filing a written letter with the Secretary’s office, to the attention of the Chief, Video Division, Media Bureau

and by providing an electronic version of that letter to the Chief of the Video Division, Media Bureau. The letter must provide the date the Station completed its transition to ATSC 3.0 and the date that it commenced FM6 operations. During the one-year period the station is operating pursuant to an FM6 STA, WVOA-LD will be required to comply with all rules adopted in this *R&O* that would otherwise pertain to an LPTV station conducting FM6 operations. In addition, WVOA-LD is required to file status reports of interference, as required for FM6 STAs, disclosing whether it has received any complaints of interference. During the initial six-month STA, status reports will be required after 90 days and 180 days of operation. WVOA-LD's status reports must be filed with the Secretary's office, to the attention of the Chief of the Video Division, Media Bureau. An electronic copy must also be sent via electronic mail to the Chief of the Video Division, Media Bureau. Upon extension of its STA, if granted, WVOA-LD must file one final status report disclosing whether it has received any interference complaints within five days of expiration of the STA. It must also state whether it intends to continue to provide FM6 service on a permanent basis following expiration of the STA. If no interference is found and WVOA-LD states it wishes to continue FM6 operations permanently, then WVOA-LD will be permitted to continue FM6 operations on the same basis as the other 13 stations discussed herein without the need for an STA.

New Entrants and Other "Legacy" Analog FM6 LPTV Stations. In contrast, the Commission cannot make similar conclusions about legacy analog FM6 LPTV stations that ceased FM6 operations or LPTV channel 6 stations that have never provided FM6 services. In the *FNPRM*, the Commission recognized that there may be a limited number of legacy analog FM6 LPTV stations that discontinued their FM6 operations at the time of the LPTV digital transition in July 2021, but intended to resume their FM6 operations once their new digital facilities were completed. The Commission asked if it should permit these stations to begin providing FM6 operations under the same conditions as existing FM6 LPTV stations. In response, the Commission received comments from two legacy FM6 LPTV stations—WJMF-LD, Jackson, Mississippi, licensed to KTL, and KBFW-LD, Arlington, Texas, licensed to Benavides. The Commission finds that these stations are distinguishable from

the 13 FM6 LPTV stations with active FM6 STAs and WVOA-LD.

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

As for KBFW-LD, it was a legacy analog FM6 LPTV station that did not convert to digital ATSC 1.0 until September 1, 2021. Unlike WJMF-LD, however, it continued its FM6 analog operation, without Commission authority, until sometime in May 2022 when the station was instructed by the Enforcement Bureau to cease and desist its FM6 analog operations. The station did not seek to convert to ATSC 3.0 until July 2022. KBFW-LD has pending before the Bureau an application to convert its station to ATSC 3.0. The Commission provides KBFW-LD 30 days following release of this *R&O* to notify the Video Division (Division) of its intent to proceed with transitioning its facility to ATSC 3.0 operations. If KBFW-LD intends to proceed with transitioning to ATSC 3.0, it must amend its pending application to

identify its new transition date.

Alternatively, KBFW-LD may withdraw its application. Should KBFW-LD fail to amend its request or seek withdrawal of its application within 30 days, the Bureau is instructed to dismiss the pending application. Benavides contends that Bureau staff assured him that he would be permitted to obtain an FM6 STA. This appears to be an inaccurate characterization of the guidance provided. In a series of emails dating back to August 2021, Bureau staff provided both Benavides and his counsel detailed instructions on how to proceed with filing an FM6 STA. Benavides and his counsel failed to follow these instructions and instead proceeded to continue to provide, at minimum, analog FM service, without a valid authorization. Notwithstanding any potential misunderstanding about obtaining an FM6 STA, Benavides still was not prepared to convert to ATSC 3.0 and commence FM6 operations pursuant to FM6 STA until July 2022.

Similar to WJMF-LD, the station has not provided FM6 service for an extended period of time—having last engaged in authorized operations nearly two years ago. As such, the Commission is unable to conclude there is an audience that has continued to rely on KBFW-LD's FM6 operations, as the Commission has for the 13 FM6 stations that have continued to provide FM6 service, with limited or no interruption. Further, as was the case with WJMF-LD, there is no record of the station operating as an FM6 LPTV station pursuant to an FM6 engineering STA upon which to determine if the station could operate without causing interference. KBFW-LD did operate in digital ATSC 1.0 with an FM6 operation for several months but such operation was not authorized and the Commission will not recognize it for purposes of determining the station's operational record. KBFW-LD also fails to provide any circumstances truly beyond its control, as in the case of WVOA-LD, that prevented it from taking steps to maintain its FM6 operations, as 13 other stations did following the LPTV digital television transition deadline. Like KTL, Benavides had ample time following the digital transition deadline and prior to release of the *FNPRM* to pursue steps to preserve its FM6 operations, but did not take the necessary steps in time. In light of all these facts, the Commission rejects KTL and Benavides' calls to be permitted to provide FM6 services on their channel 6 LPTV stations.

Likewise, channel 6 LPTV stations that are seeking to be new entrants to FM6 operations do not have similar equities at play as the 13 FM6 LPTV

stations, as they have no established listener base that relies upon them, and the Commission therefore finds that there are insufficient public interest reasons to outweigh the interference concerns brought on by new FM6 operations. The Commission also finds that WVOA-LD is distinguishable from potential “new entrants” because WVOA-LD had an established audience prior to the digital transition and was prepared to proceed with FM6 operations, but was prevented from doing so because approval of its application was pending international coordination. Even to the extent that there are licensees that obtained channel 6 LPTV stations with the expectation that they may be able to provide FM6 operations, the public interest rationale—maintaining service on which an audience has come to rely—does not apply to hypothetical scenarios about service a licensee might provide. In addition, these new entrant stations have no record regarding interference because they have not been providing FM6 service, unlike the 13 existing FM6 operators which have an established track record of no interference. For the foregoing reasons, the Commission also rejects these stations’ requests to be permitted to provide FM6 services in the future.

The Commission also rejects arguments that its decision to limit FM6 operations to certain stations is arbitrary and capricious. As discussed above, the Commission concludes that the public interest is served by maintaining existing FM6 services provided by stations that have actively taken steps to ensure continuity of service to their listeners. The Commission is also limiting the class of stations based on concerns of potential interference to other licensed users in areas where FM6 services are not currently provided or to their own digital channel 6 television operations. The 13 existing FM6 LPTV stations have a proven record of not causing interference to either other licensed FM station operations or to their own digital channel 6 operations. While the same cannot currently be said for WVOA-LD, as discussed above WVOA presents a unique circumstance in which the station was prepared to proceed with FM6 operations, but was prevented from doing so due to reasons truly outside of its control. It has subsequently completed construction of its facility and the Commission is adopting requirements herein to determine if the Station can establish a track record of no interference to other licensed operations. The Commission has no such record of interference-free

FM6 operations by new stations or legacy FM6 stations no longer operating. The Commission concludes that the risk of upsetting the current, interference-free environment outweighs the benefit of permitting new FM6 LPTV stations and is contrary to the public interest rationale by which the Commission has determined that continued operation of current analog FM6 operations following the stations’ digital television transition is justified.

The Commission is not persuaded by the argument that not all potential FM6 operators had the opportunity to convert to digital operations and obtain an FM6 STA. As discussed above, the Commission’s examination of whether to permit the continuation of such services has extended nearly a decade. As such, the Commission believes that all channel 6 LPTV stations have had adequate notice of a potential change in Commission rules. In fact, a significant number of stations did take note and have been providing FM6 service following their conversion to digital, thus undermining arguments by some commenters that FM6 LPTV stations were not able to continue operations in the face of regulatory uncertainty.

Establishing Rules Governing FM6 Operations

Codifying Certain FM6 STA Conditions

Existing FM6 LPTV stations will be permitted to continue their FM6 operations subject to a new rule the Commission adopts that codifies certain conditions that are currently contained in the FM6 STAs. FM6 LPTV stations will be required to keep current their FM6 STAs until the rules the Commission adopts become final. The Commission disagrees with commenters that suggest that no rules are necessary. The Commission finds that rules are needed to ensure that FM6 LPTV stations continue to operate in a manner that is consistent with the public interest rationale for allowing FM6 operations to continue, to prevent interference with other licensees, and to prevent the derogation of their television signal as required by the Act and the rules.

The Commission codifies the following requirements based the current conditions set forth in the FM STAs: (1) FM6 LPTV stations must operate in ATSC 3.0 digital format; (2) FM6 LPTV stations must provide their FM6 operations on 87.75 MHz; (3) FM6 operations must be conducted on a non-interference basis to any other licensed primary or secondary user; (4) FM6 LPTV stations must provide at least one stream of synchronized video and audio

programming on the ATSC 3.0 portion of the spectrum at any time the station is operating; (5) FM6 operations may not exceed the coverage area of the FM6 LPTV station’s ATSC 3.0 synchronized video/audio programming stream; and (6) FM6 LPTV stations may make modifications to their technical facilities, as otherwise permitted under Part 74 of the Rules, so long as the contour of the station’s modified facilities remains within its current protected contour. The Commission declines to require that FM6 LPTV station licenses be prohibited from being assigned or transferred or that they be subject to periodic reporting requirements, though the Commission does require that FM6 LPTV stations notify us of their intent to continue to or cease to provide FM6 operations and provide an ongoing certification as part of their license renewal application.

Requirement to Operate in ATSC 3.0 Format. The Commission requires FM6 LPTV stations operate using the ATSC 3.0 digital standard. Commenters unanimously support this requirement as a condition of being able to provide FM6 operations. The Commission recognizes that this is a departure from its policy of a voluntary transition for television stations to the ATSC 3.0 digital format; however, the Commission finds in this unique circumstance it is a necessary requirement in order to address concerns that FM6 operations will derogate the FM6 LPTV station’s television service. LPTV stations may choose to operate in ATSC 3.0 but are not required to. Some commenters argue that previous studies show the potential for interference from FM6 operations to the LPTV station’s own digital operation. However, these studies were conducted while FM6 LPTV stations were operating in ATSC 1.0. As evidenced by the “Perry Priestly” study and more recently through real-world operations under the FM6 STAs, because the ATSC 3.0 digital format is more configurable the existing FM6 LPTV stations have been able to make their television signal narrower and/or have the signals settings modified to have increased error correction intended to prevent co-channel interference between the stations’ digital television and analog radio signals. Accordingly, in the case of the 13 existing FM6 LPTV stations, operating in ATSC 3.0 appears to have addressed concerns that FM6 operations will interfere with or derogate their own digital television operation. Therefore, in order to ensure that FM6 LPTV stations comply with the derogation standard set forth in the

Act and the rules, the Commission will require that they transmit their television signal using the ATSC 3.0 standard.

Operation on 87.75 MHz. The Commission requires FM6 transmissions to be conducted at 87.75 MHz. A majority of commenters supported this requirement. This is the frequency currently being used by all current FM6 LPTV stations and as a result it has been tested and shown by the 13 existing FM6 LPTV stations through their FM6 STAs to provide a quality FM signal without causing interference to other FM stations. As a condition to their FM6 engineering STAs, FM6 LPTV stations were required to operate on 87.75 MHz and to report any interference that occurred from their operations. No such interference has been reported to date. Absent additional technical data supporting a shift to 87.7 MHz, none of which has been provided in the record, the Commission finds taking the time now to develop a record would only serve to needlessly prolong an already complex proceeding. In addition, it is not clear what cognizable benefit to receivability there would be based on the documented experiences of FM6 LPTV stations that have been providing FM service over 87.75 MHz.

Operation of FM6 on a Non-Interference Basis. The Commission requires that FM6 operations be conducted on a non-interference basis “to any other licensed user, including but not limited to broadcast television or radio users.” The Commission agrees with commenters that FM6 LPTV stations must operate without causing any impermissible interference to other licensed users, both users with primary and secondary interference protection rights. The Commission disagrees with NAB that codification of this condition is unnecessary if FM6 operations are restricted to just a limited number of stations. By codifying this condition, the Commission seeks to continue to prevent interference and make clear that any interference to other licensed users will not be permitted as these services are being offered purely on an ancillary or supplementary basis.

Synchronized Video and Audio. The Commission further adopts the requirement that FM6 LPTV stations must provide at least one stream of synchronized video and audio programming on the ATSC 3.0 portion of the spectrum at any time the station is operating. The Commission concludes that adoption of this operational requirement will ensure that FM6 LPTV stations remain dedicated to providing the type of digital television service that

viewers have come to expect from TV stations in addition to their FM6 operations. This requirement will also ensure that the spectrum, which has been allocated for the provision of television service, is being used in an efficient manner and for its primary purpose. A majority of commenters support this requirement. The Commission disagrees with the single commenter that called this requirement “constitutionally dubious.” Its decision to require one stream of synchronized video and audio programming is “content neutral” in that it does not reference or implement any requirements regarding the content of the speech. The D.C. Circuit has applied a “heightened rational basis” standard of review to content-neutral broadcast regulation. Applied here, requiring one stream of synchronized video and audio programming is reasonably tailored to satisfying the substantial governmental interest in ensuring that frequencies allocated for television service continue to be used for the types of television services viewers have come to expect from TV stations.

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

stream of synchronized video and audio programming. This will ensure that FM6 LPTV stations provide the type of digital television service that viewers have come to expect from TV stations while also preserving their FM6 operations.

The Commission also declines to adopt the condition imposed in the current FM6 STAs that the synchronized audio and video programming be provided on a full time (24 × 7) basis. Because the rules provide that LPTV stations are “not required to adhere to any regular schedule of operation,” the Commission finds it more appropriate to adopt the revised version of this condition proposed in the *FNPRM* that requires that FM6 LPTV stations provide at least one stream of synchronized video and audio programming on the ATSC 3.0 portion of the spectrum “at any time the station is operating.” There was no opposition to this proposed revision. In order to ensure that a station’s FM6 operations are not prioritized over its television service and that television remains its primary purpose, the Commission will consider a station to be “operating” any time it is engaged in FM6 operations over its channel.

LPTV and FM6 Operational Contours. The Commission also adopts the requirement that the service contour of a station’s FM6 operation may not exceed the protected contour of the LPTV station. The Commission defines “service contour” as the service contour provided for in § 73.313 of the rules. The Commission defines “protected contour” as the protected contour provided for in § 74.792 of the rules. In the *FNPRM*, it proposed that “the FM6 coverage area must be contained within and may not exceed the coverage area of the LPTV station’s synchronized video/audio programming stream” To more accurately describe the coverage areas of the FM6 and TV operations and to reflect the language used by the rules, the Commission will use the term “service contour” to describe the FM6 station’s coverage area and “protected contour” to describe the TV station’s coverage area. A similar condition was included in the FM6 STAs to prevent FM6 LPTV stations from configuring their LPTV station’s technical facilities in a manner that would favor their FM6 operation over their digital television operation, something that, as just discussed, occurred while FM6 LPTV stations were solely operating in analog. The Commission finds that adopting a similar provision here will help to ensure that FM6 LPTV stations continue to focus their attention on the operation of their digital LPTV station—the primary purpose of their station license.

Further, it concludes that adoption of this requirement will provide a predictable coverage area for the FM6 signal. The Commission notes that currently FM6 LPTV stations operate with co-located television and FM6 facilities. FM6 LPTV stations operate separate transmitters—one digital television and one analog FM radio—that are combined into one transmission line and broadcast with a combined antenna. The rules the Commission adopts today permit only this type of configuration.

Commenters are united in their support for this requirement, however, there is disagreement on how to determine if the service contour of a station's FM6 operation is exceeding the protected contour of its television operation. After considering the record and further technical analysis, the Commission concludes that the best approach is to require the service contour of FM6 operations to be contained within, and may not exceed, the LPTV station's protected contour. The Commission finds the alternative approaches suggested by commenters are impractical and overly burdensome. It would be difficult, if not impossible, for an FM6 station to test all locations where both the synchronized video/audio and the analog FM signal can be heard. Further, the rules recognize different standards for measuring the strength of a digital LPTV signal and an FM audio signal. Rather than try to reconcile those differences in a single, "one-size-fits-all rule," the Commission will allow FM6 LPTV stations to demonstrate the service contour of their FM6 operations and the protected contour of their TV operations using established methodologies for each service in the rules. FM6 LPTV stations have been using this approach in their 90-day and 180-day status reports filed as a condition to their FM6 STAs. FM6 LPTV stations have been successfully demonstrating in these reports that the service contour of their FM6 operations (as determined using the standard Part 73 methodology) does not exceed that of the protected contour of their LPTV operations (as determined using the standard Part 74 methodology). The Commission has no reason to question either the methodologies or results of these showings, especially as it has not received any evidence to the contrary.

Technical Modifications. The Commission will permit FM6 LPTV stations to make modifications to their technical facilities, as otherwise permitted under Part 74 of the Rules, so long as the protected contour of the station's modified television facilities remains within its current protected

contour and the service contour of the station's FM6 operations does not exceed the protected contour of the station's television operation. For example, LPTV stations on channel 6 are not authorized to operate with an ERP greater than 3 kW. Initially, as a condition in FM6 engineering STAs, the Bureau restricted modifications in order to "lock" the FM6 LPTV station facilities operations in place while it were evaluating the potential for interference from FM6 operations to other users. The condition stated: "[d]uring the term of this STA, the technical facilities of (FM6 LPTV station) may not be modified." In the *FNPRM* the Commission sought comment on whether to maintain this condition and whether to provide any exceptions. Commenters felt that this restriction was too stringent and expressed their concerns that such a condition could limit FM6 LPTV stations from making modifications to better serve their audiences.

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

Assignment and Transfer of FM6 LPTV Stations. The Commission concludes that FM6 LPTV stations should be permitted to be assigned or transferred. The FM6 STAs included a condition that limited FM6 LPTV stations from being assigned or transferred while FM6 operations were being conducted. While licensees of FM6 LPTV stations were always free to transfer their stations, such action would have required the termination of their FM6 operation. In the *FNPRM*, the Commission questioned whether inclusion of such a limit in its final FM6 rules would continue to serve the public interest. The Commission now concludes that it would not.

The Bureau imposed a restriction on transfers and assignments in an effort to maintain the status quo during the pendency of this proceeding and to prevent speculative transactions. This action stemmed from a concern that, during the pendency of this proceeding, parties could seek to obtain an FM6 station without any intention of continuing FM6 operations and for the sole purpose of immediately "flipping" the station to another party for a quick profit if continued FM6 operations were ultimately permitted. A small number of commenters believe it should be retained "in perpetuity" in order to prevent future speculation of FM6 LPTV stations. However, now that this proceeding is complete and the Commission has confined FM6 LPTV stations to only a limited number of stations that have demonstrated an interest in maintaining their FM6 operations into the future, the Commission concludes that there is no longer a risk of parties speculating in FM6 LPTV stations. As discussed above, the steps taken by the remaining FM6 LPTV stations to complete their digital television transition and quickly resume FM6 operations shows their clear desire to continue to provide FM6 service to their listeners. Furthermore, the Commission finds that prohibiting the assignment or transfer of these stations would undermine a key rationale by which it has based its decision to permit the continued operation of these stations—the preservation of existing service that listeners rely upon. To the extent a current licensee no longer wishes to operate its station it should be permitted, like any other licensee, to sell its station to someone that wants to continue to offer its television operations, along with its FM6 operations if they so choose. Accordingly, the Commission finds the limitation on transfers is no longer necessary and it concludes that the public interest would not be served maintaining the restriction. To the extent that an FM6 LPTV station is assigned or transferred and the new licensee intends to continue FM6 operations it must include a statement to that effect in its assignment or transfer application. The new licensee will be required to meet all the requirements in the rules for FM6 operations and should they choose to discontinue FM6 operations, such discontinuation is permanent.

The Commission finds that an FM6 LPTV station's FM6 operation is not severable from its digital television license and may not be assigned or transferred independently from the FM6

LPTV station. The Commission bases this conclusion upon the fact that it is not separately authorizing FM6 operations, but rather are allowing them as an ancillary or supplementary service to the FM6 LPTV station's main digital television license. An FM6 LPTV station is permitted to provide FM6 operations only as a result of it offering a free over-the-air television service.

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

Other parties argue that the submission of written reports is still needed in order to confirm system operation and to gather data to confirm that the FM6 service can be implemented and operated in the public interest. The Commission disagrees. The record, which includes real-world information collected over nearly the last two years from FM6 LPTV stations' FM6 STA operations demonstrates that interference from the 13 existing FM6 LPTV stations is not likely to occur to either adjacent-band FM radio operations or to the host LPTV station's channel 6 operations. Further, there have been no legitimate reports of interference being caused by the 13 FM6 LPTV stations that have been operating under STAs. In addition, FM6 LPTV stations are permitted to make modifications to their facilities only under very limited circumstances. As a result of these facts, the Commission sees no basis for requiring FM6 LPTV stations to continue to submit periodic reports.

Required FM6 Operational Notices. The Commission will require that, after review and approval of the information collection requirements adopted herein by the Office of Management and Budget (OMB), the Bureau will issue a

Public Notice announcing the deadline for all FM6 LPTV stations to notify the Media Bureau whether they will continue FM6 operations and confirm their precise FM6 operational parameters. Because the Commission is not licensing FM6 operations separately, this verification enables a confirmation of which stations' FM6 operations will be ongoing and provide continued certainty with regards to those operations. FM6 LPTV stations will also be required to include in this notification the current operating parameters of their FM6 operations. Such information must include: maximum effective radiated power (ERP); radiation center above ground level (RCAGL); radiation center above mean sea level (RCAMSL); antenna height above average terrain (HAAT); antenna type (directional or non-directional); directional antenna pattern (if applicable); antenna make and model; transmitter power output (TPO); and a description of the transmission system, including any transmission lines, connectors, combiners, etc., and their associated losses. Should any technical parameters of the station's FM6 operations change, the licensee must provide written notification to the Media Bureau at least ten (10) days prior to such modifications occurring. An FM6 LPTV station that voluntarily chooses to permanently discontinue FM6 operations is required to notify the Media Bureau within 30 days of permanently ceasing FM6 operations. If an FM6 station permanently ceases FM6 operations either voluntarily or is deemed to have discontinued operations pursuant to The Commission's Part 73 rules, it will not be permitted to resume FM6 operations in the future. All actions with respect to the cessation of FM6 operation will be final as with any action to permanently discontinue a broadcast operation. As part of its finding below that FM6 LPTV station's requirement to comply with certain analogous FM rules, the Commission notes that pursuant to 47 CFR 73.1740(a)(1) FM6 LPTV stations' FM6 operations must adhere to the minimum operating schedule for FM stations. Failure to do so absent valid special temporary authority to operate at variance, will result in sanction or other actions, which could include consideration at renewal of whether the station has served the public interest. One of the primary rationales by which the Commission is permitting continued FM6 operations is in order to provide continuity service. The Commission finds that failure by an FM6 LPTV station to adhere to the minimum

operating schedule for FM stations, without valid special temporary authority, is presumptively adverse to the public interest. The Commission also notes that should an FM6 LPTV station's digital television operation temporarily cease operations, the station will be required to also discontinue its FM6 operation until such time as the digital television operation resumes as engaging in FM6 operations is dependent upon it providing the digital television service. Cessation of FM6 operations only shall not affect the status of an LPTV station's license or its ability to continue to provide digital television service. Finally, as an additional measure to ensure that FM6 LPTV stations are continuing to serve the public, the Commission will also require that FM6 LPTV stations certify in their license renewal application that they have continued to provide FM6 operations in accordance with the FM6 rules during their prior license term. The Commission delegates authority to the Media Bureau to determine the most appropriate means for these stations to make such certification, be it by an attachment to the renewal application or some other reasonable means. All notifications required by this paragraph shall be made by written letter and mailed to the FCC Office of the Secretary, Attention: Chief, Video Division, Media Bureau. An electronic copy of any notification must also be sent via electronic mail to the Chief of the Video Division, Media Bureau. A copy of all notifications shall be uploaded by the Media Bureau to the station's LMS file.

Application of Part 73 FM Rules

Although FM6 operations are not separately authorized or licensed, the Commission concludes that the public interest will be best served by requiring FM6 operations to be subject to appropriate Part 73 rules that currently apply to full service FM radio stations, including emergency alert and online public file requirements. The Commission also finds that application of certain of the rules is consistent with and required by section 336(b)(3) of the Act. The Commission also concludes that it adopts such rules and policies for FM6 operations under its general Title III authority. Furthermore, FM6 LPTV stations, as they are licensed as LPTV stations, must continue to comply with all applicable Part 73 and 74 rules that pertain to their digital television operations.

Section 336(b)(3) of the Act provides that, in prescribing the regulations required by ancillary or supplementary services, the Commission shall "apply

to any other ancillary or supplementary service such of the Commission's regulations as are applicable to the offering of analogous services by any other person" Based on this statutory requirement, the Commission concludes that certain rules that pertain to full service FM radio stations should be applied to FM6 LPTV stations since FM6 LPTV stations offer services that are "analogous" to full service FM radio stations. A majority of commenters support this approach.

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

Further, although LPTV stations are not required to maintain an online public inspection file (OPIF), the Commission finds it is appropriate to require FM6 LPTV stations to maintain one for their FM6 operations. While some commenters argue that there is no purpose to be served by requiring that FM6 LPTV stations maintain an OPIF solely for their FM6 operations, the Commission agrees with commenters maintaining that such a requirement safeguards regulatory compliance with regard to FM operations and provides parity with other FM stations. To be clear, the OPIF requirement will apply only to the FM6 LPTV station's FM6 operations. The Media Bureau will create an OPIF for each FM6 LPTV station in the Commission's database for all FM6 LPTV stations and to notify the Stations by written letter once they are able to file documents in their OPIF. Compliance with the OPIF requirement will take effect either upon effective date of the rule or 30 days following creation of the Stations' OPIF, whichever is later.

The Commission disagrees with the argument that requiring FM6 LPTV stations to comply with both LPTV and certain Part 73 FM rules is unnecessary

or inappropriate as a result of their secondary status or because all relevant regulations already apply by nature of their status as an LPTV station. This argument does not reflect how FM6 operations are actually conducted in the digital context and would be inconsistent with section 336(b)(3) of the Act. First, the Act specifically mandates that the Commission apply regulations to ancillary or supplementary services that are analogous to other regulated services. The secondary nature of LPTV stations is irrelevant to whether the analogous services provision of the Act should apply. There is no exception in either the Act or the rules from this requirement for stations with secondary status that are providing ancillary or supplementary services. Second, while LPTV and FM radio may have some overlapping rules, they are distinct and independent services with different rules. For example, LPTV stations do not have an OPIF requirement and have different station identification requirements. The record is clear that the aim of these FM6 operations is to provide an audio service that is analogous to other FM radio service and received using FM radio tuners. Therefore, the Commission finds that such FM6 operations provided by FM6 LPTV stations is analogous to those of licensed FM radio operations and should be regulated as such.

The Commission does, however, find that specific Part 73 technical rules for full service FM radio stations should not apply to FM6 operations because FM6 LPTV stations are operating on frequencies and subject to certain conditions that make the application of certain FM technical rules unnecessary and impractical. Although FM6 LPTV stations operate separate television and radio transmission systems, pursuant to the new rules the Commission has adopted today, the FM6 operations will be restricted in certain respects. For example, FM6 LPTV stations are permitted to make changes to their FM6 station facilities only under very limited circumstances (without a showing of "engineering necessity" or a waiver), are limited to operating on 87.75 MHz, may offer FM6 service only within the LPTV station's protected contour, and may operate only on a non-interference basis. The Commission has also limited the number of FM6 LPTV stations to a finite group that have already proven they do not cause the interference that many of the Part 73 technical rules for FM stations are intended to prevent. Accordingly, the Commission finds that applying the specific technical rules in

§§ 73.201–73.277, 73.310–73.312, and 73.314–73.318 in the context of FM6 operations are not only unnecessary, but could be contradictory to the specific rules it has adopted governing FM6 operations.

Five Percent Fee For Ancillary or Supplementary Services

Consistent with its determination to allow FM6 operations to continue on an ancillary or supplementary basis, the Commission finds that FM6 LPTV stations that offer feeable ancillary or supplementary services are subject to the five percent fee on the gross revenue of such services and must submit an Annual DTV Ancillary/Supplementary Services Report. Commenters unanimously agree that FM6 LPTV stations offering feeable ancillary or supplementary services should be subject to this fee and reporting requirement. The Commission also notes that several FM6 LPTV stations began making fee payments on their FM6 operations.

As the Commission observed in the *FNPRM*, its ancillary or supplementary rules provide that digital television stations (including digital LPTV stations) must annually remit a fee of five percent of the gross revenues derived from all "feeable" ancillary and supplementary services. The Commission has defined "feeable" ancillary or supplementary services as services for which payment of a subscription fee or charge is required in order to receive the service," or if no payment is required from consumers, the licensee "directly or indirectly receives compensation from a third party in return for the transmission of material provided by that third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required)." Moreover, the rules provide that "[t]he fee required by this provision shall be imposed on any and all revenues from such services, including revenues derived from subscription fees and from any commercial advertisements transmitted on the service." Given these rules, any FM6 LPTV station that provides "feeable services" is required to comply with the Rules and both remit the required fee and submit an Annual DTV Ancillary/Supplementary Services Report to indicate that they provided feeable services, the amount of gross revenues of such services, and whether they have remitted the requisite five percent fee.

Licensing of Additional NCE FM Stations

The Commission declines to adopt the proposal discussed in the *FNPRM* to repurpose TV6 spectrum (82–88 MHz) for FM services nationwide in locations where the channels are not being used to provide television programming. In July 2020, NPR argued FM6 is not an efficient use of spectrum, the TV6 resource was not being fully utilized by television broadcasters and much of the spectrum was laying fallow, especially in the rural parts of the country. The Commission finds that the record does not support such a plan to remove a portion of the remaining spectrum allotted for television use and converting it to radio use. The Commission finds that the plan is neither feasible, because of the possibility of interference; nor efficient, because receivers are not capable of receiving FM stations below 87.7 MHz; nor appropriate, because TV6 spectrum is still needed for broadcast television use.

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

The Commission finds that even in places where there are available allocations for FM stations under the proposal, listeners would not be able to receive most transmissions because FM radio receivers receive only the top-most portion of the 82–88 MHz band (87.7 or 87.9 MHz) of the 6 MHz channel that comprises TV6. The Commission agrees with commenter concerns that FM radio receivers cannot “tune down” to the rest of the spectrum—82.1–87.5 MHz. Therefore, the Commission agrees that it would be impractical to reallocate unused TV6 spectrum for use by new FM radio stations when it is unlikely that listeners would be able to receive most of the broadcasts from these new FM radio stations.

Finally, although some commenters support NPR's proposal by suggesting that it is a better use of spectrum

because TV6 is not ideal for digital television broadcasting, the Commission disagrees, and note that many TV stations operate on TV6. According to NAB, as of July 2022, 98 television stations were authorized to operate on TV6 in the United States. Some of these stations serve large, sparsely populated areas where the relatively low power consumption of TV6 transmitters makes it economical to provide television service to rural Americans. Others serve densely populated urban areas where no alternative channels exist in more desirable spectrum. Furthermore, ATBA contends a number of TV6 stations could also serve as “lighthouse” stations for NextGen TV, providing a critical transition path for television broadcasters as they migrate to ATSC 3.0. The record persuades us that 82–88 MHz is still needed for television, especially given that the UHF spectrum available for broadcast television has been dramatically reduced in recent years. Therefore, the Commission declines to repurpose TV6 spectrum in areas where there are presently no TV6 stations to permit the construction of new FM stations that, in many cases, listeners will be unable to receive because their receivers cannot “tune down” to the lower portions of the 82–88 MHz frequency (*i.e.*, 82.1–87.5 MHz).

Elimination of Certain TV6 Interference Protections

Although the Commission received comments on this matter, it did not receive sufficient technical studies and analysis upon which to base any final decisions to revise its TV6 interference rules. Any changes to these rules, which were originally adopted when television was operating in analog, would need to reflect the fact that all television is now operating in digital. Despite asking in the *FNPRM* for commenters to analyze the existing digital television landscape and suggest whether and how the existing TV6 interference provisions should be retained, revised or updated, the Commission received little comment to that effect. Therefore, given the incomplete nature of the record, the Commission declines to revise the TV6 interference rules at this time. The Commission will seek additional comment about this matter at a future date. In addition, NPR proposed that the Commission adopt a narrow rule change to enable existing NCE FM radio stations to modify their authorizations to relocate to channel 200 (87.9 MHz). As this change could impact the revisions to the TV6 interference rules, the Commission finds that it would be more appropriate to consider NPR's proposal in conjunction with a future

TV6 interference proceeding. The Commission encourages interested parties to continue to work together to find a solution and develop comprehensive technical studies to support their position. REC Networks (REC) included a petition for rulemaking requesting that the Commission consider the reallocation of television channels 5 and 6 for use with a new “WIDE FM” service. The Commission concludes that REC's proposal is outside of the scope of this proceeding and will not be considered in this *R&O*.

Final Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act of 1980 (RFA), *see* 5 U.S.C. 603, as amended, Public Law 104–121, Title II, 110 Stat. 847 (1996), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the (*FNPRM*) released June 7, 2022 at 87 FR 36440. The Commission sought written public comment on the proposals in the *FNPRM*, including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, 5 U.S.C. 604.

Need For, and Objectives of, the Report and Order

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

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

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

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

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

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

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

Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

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

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

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

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 having the same meaning as the terms “small business,” “small organization,” and “small government 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.

Television Broadcasting. This industry is comprised of “establishments primarily engaged in broadcasting images together with sound.” These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having \$41.5 million or less in annual receipts as small. 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year. Of that number, 657 firms had revenue of less than \$25,000,000. Based on this data the Commission estimates that the majority of television broadcasters are small entities under the SBA small business size standard.

As of March 31, 2023, there were 1,375 licensed commercial television

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

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

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

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

The *Report and Order* adopts four new reporting requirements for FM6 LPTV stations that wish to continue to or cease to provide FM6 service, including the requirement that FM6 LPTV stations notify the Media Bureau within 30 days if they decide to permanently discontinue FM6 operations. FM6 LPTV stations must certify in an attachment to their octennial license renewal application that they have continued to provide FM6 operations in accordance with the FM6 rules during their prior license term. FM6 LPTV stations must also include all of the items required by the PIF rule for full service FM radio stations in their LPTV station PIF. Additionally, FM6 LPTV stations that

provided feeable ancillary or supplementary service must submit an Annual DTV Ancillary/Supplementary Services Report and report that they provided feeable services, the amount of gross revenues of such services and whether they have remitted the requisite five percent fee. These requirements will result in a modified paperwork obligation for small entities and other licensees. The Commission will seek the requisite approval, such as those required to comply with the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, to account for the increased burdens resulting from this modified reporting requirement.

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

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

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

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

It is anticipated that some of the new reporting requirements will likely result in minimal additional costs because the

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

Report to Congress

Commission will send a copy of the *Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act. 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order*, and FRFA (or summaries thereof) will also be published in the **Federal Register**. 5 U.S.C. 604(b).

List of Subjects in 47 CFR Part 74

Communications equipment, Education, Mexico, Radio, Reporting and recordkeeping requirements, Research, Telecommunications, Television.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 74 as follows:

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

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

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

■ 2. Amend § 74.790 by adding paragraph (o) to read as follows:

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

* * * * *

(o) Provision of analog FM radio operations by digital LPTV channel 6

stations (FM6 LPTV stations). FM6 LPTV stations may provide analog FM radio operations (FM6 operations) on an ancillary or supplementary basis subject to the following:

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

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

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

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

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

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

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

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

(9)–(10) [Reserved]

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

(i) Part 11 of this chapter The Emergency Alert System (EAS).

(ii) Section 73.293, Use of FM multiplex subcarriers.

(iii) Section 73.295, FM subsidiary communications services.

(iv) Section 73.297, FM stereophonic sound broadcasting.

(v) Section 73.310, FM technical definitions.

(vi) Section 73.313, Prediction of coverage.

(vii) Section 73.319, FM multiplex subcarrier technical standards.

(viii) Section 73.322, FM stereophonic sound transmission standards.

(ix) Section 73.333, Engineering charts.

(x) Section 73.1201, Station identification.

(xi) Section 73.1206, Broadcast of telephone conversations.

(xii) Section 73.1207, Rebroadcasts.

(xiii) Section 73.1208, Broadcast of taped, filmed, or recorded material.

(xiv) Section 73.1209, References to time.

(xv) Section 73.1211, Broadcast of lottery information.

(xvi) Section 73.1212, Sponsorship identification; list retention; related requirements.

(xvii) Section 73.1216, Licensee-conducted contests.

(xviii) Section 73.1217, Broadcast hoaxes.

(xix) Section 73.1250, Broadcasting emergency information.

(xx) Section 73.1300, Unattended station operation.

(xxi) Section 73.1635, Special temporary authorizations (STA).

(xxii) Section 73.1740, Minimum operating schedule.

(xxiii) Section 73.1750, Discontinuance of operation.

(xxiv) Section 73.1940, Legally qualified candidates for public office.

(xxv) Section 73.1941, Equal opportunities.

(xxvi) Section 73.1942, Candidate rates.

(xxvii) Section 73.1943, Political file.

(xxviii) Section 73.1944, Reasonable access.

(xxix) Section 73.2080, Equal employment opportunities (EEO).

(xxx) Section 73.3526, Online public inspection file of commercial stations.

(xxxi) Section 73.4005, Advertising—refusal to sell.

(xxxii) Section 73.4045, Barter agreements.

(xxxiii) Section 73.4055, Cigarette advertising.

(xxxiv) Section 73.4060, Citizens agreements.

(xxxv) Section 73.4075, Commercials, loud.

(xxxvi) Section 73.4095, Drug lyrics.

(xxxvii) Section 73.4097, EBS (now EAS) attention signals on automated programing systems.

(xxxviii) Section 73.4165, Obscene language.

(xxxix) Section 73.4170, Obscene broadcasts.

(xl) Section 73.4180, Payment disclosure: Payola, plugola, kickbacks.

(xli) Section 73.4185, Political broadcasting and telecasting, the law of.

(xlii) Section 73.4190, Political candidate authorization notice and sponsorship identification.

(xliii) Section 73.4215, Program matter: Supplier identification.

(xliv) Section 73.4242, Sponsorship identification rules, applicability of.

(xlv) Section 73.4250, Subliminal perception.

(xlvi) Section 73.4255, Tax certificates: Issuance of.

(xlvii) Section 73.4260, Teaser announcements.

(xlviii) Section 73.4265, Telephone conversation broadcasts (network and like sources).

■ 3. Delayed indefinitely, further amend § 74.790 by adding paragraphs (o)(9) and (10) to read as follows:

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

* * * * *

(o) * * *

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

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

* * * * *

[FR Doc. 2023–17414 Filed 8–28–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 221215–0272; RTID 0648–XD279]

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Quota Transfers From NJ to NC and RI

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

ACTION: Notification of quota transfers.

SUMMARY: NMFS announces that the State of New Jersey is transferring a portion of its 2023 commercial bluefish quota to the States of North Carolina and Rhode Island. These adjustments to the 2023 fishing year quotas are necessary to comply with the Atlantic Bluefish Fishery Management Plan quota transfer provisions. This announcement informs the public of the revised 2023 commercial bluefish quotas for New Jersey, North Carolina, and Rhode Island.

DATES: Effective August 28, 2023, through December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Laura Deighan, Fishery Management Specialist, (978) 281–9184.

SUPPLEMENTARY INFORMATION:

Regulations governing the Atlantic bluefish fishery are found in 50 CFR 648.160 through 648.167. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through Florida. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.162, and the final 2023 allocations were published on December 21, 2022 (87 FR 78011).

The final rule implementing Amendment 1 to the Bluefish Fishery Management Plan (FMP), as published in the **Federal Register** on July 26, 2000 (65 FR 45844), provided a mechanism for transferring bluefish commercial quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can request approval to transfer or combine bluefish commercial quota under § 648.162(e)(1)(i) through (iii). The Regional Administrator must approve any such transfer based on the criteria in § 648.162(e). In evaluating requests to transfer a quota or combine quotas, the Regional Administrator shall consider whether: the transfer or combinations would preclude the overall annual quota from being fully harvested; the transfer addresses an unforeseen variation or contingency in the fishery; and the transfer is consistent with the objectives of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Regional Administrator has determined these three criteria have been met for the transfers approved in this notification.

New Jersey is transferring 45,000 pounds (lb) (20,412 kilograms (kg)) to North Carolina and 15,000 lb (6,804 kg) to Rhode Island, through mutual