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■ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.

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**Ex Parte Rules.** This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenters’ written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission’s rules. In proceedings governed by section 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize

themselves with the Commission’s *ex parte* rules.

**FOR FURTHER INFORMATION CONTACT:** Ross Fisher, Wireline Competition Bureau, 202-418-7400.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Public Notice in WC Docket Nos. 21-450, 20-445, DA 22-574, released May 23, 2022. Due to the COVID-19 pandemic, the Commission’s headquarters will be closed to the general public until further notice. The full text of this document is available at the following internet address: <https://docs.fcc.gov/public/attachments/DA-22-574A1.pdf>.

### Synopsis

1. The Wireline Competition Bureau (Bureau) seeks comment on a petition filed by the National Lifeline Association (NaLA). NaLA seeks clarification of the Bureau and Enforcement Bureau Chiefs’ authority to suspend a participating provider’s Affordable Connectivity Program (ACP) enrollments and hold a participating provider’s funding based on the “adequate evidence” standard, or in the alternative, reconsideration of the removal rule (47 CFR 54.1801(e)(2)). NaLA also seeks reconsideration or clarification of the requirement that an ACP participating provider offering connected devices provide price information for at least one of the analogous devices from a major retailer.

Federal Communications Commission.

**Cheryl Callahan,**

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 74

[OMB Docket No. 03-185; FCC 22-40; FR ID 91304]

### Amendment of the Commission’s Rules To Establish Rules for Digital Low Power Television and Television Translator Stations

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rules.

**SUMMARY:** In this Fifth Notice of Proposed Rulemaking (NPRM), FCC 22-40, released June 7, 2022, the Commission seeks comment on the operation of analog FM radio services by channel 6 digital low power television stations. The Commission also seeks

comment on a proposal by National Public Radio to license additional noncommercial educational FM radio stations on 82-88 MHz in areas where channel 6 low power television and full-power stations are currently not operating. Finally, the Commission seeks comment on whether to eliminate or revise the television channel 6 distance separation rules for FM radio stations operating on reserved band FM channels 201-220.

### DATES:

*Comment Date:* July 18, 2022.

*Reply Comment Date:* August 1, 2022.

**ADDRESSES:** You may submit comments, identified by MB Docket No. 03-185, FCC 22-40, by any of the following methods:

■ **Federal Communications Commission’s Website:** <https://apps.fcc.gov/ecfs/>. Follow the instructions for submitting comments.

■ **Mail:** Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

■ **People with Disabilities:** Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Shaun Maher, Media Bureau, at (202) 418-2324 or [Shaun.Maher@fcc.gov](mailto:Shaun.Maher@fcc.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

• **Electronic Filers:** Comments may be filed electronically using the internet by accessing the ECFS: <https://apps.fcc.gov/ecfs/>.

• **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing.

• Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

• Commercial overnight mail (other than U.S. Postal Service Express Mail

and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

• Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

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**Paperwork Reduction Act of 1995 Analysis:** This document proposes new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens and pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13, invites the general public and the Office of Management and Budget (OMB) to comment on these information collection requirements. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

## Synopsis

1. In this NPRM, the Commission seeks comment on the operation of analog FM radio services by channel 6 digital low power television stations (FM6 operations). The Commission has been considering this issue since 2014, when, in the LPTV DTV Third NPRM in this proceeding, it sought comment on whether to allow analog channel 6 low power television (LPTV) stations to provide FM6 operations after they converted to digital operations on July 13, 2021—the LPTV digital transition deadline. The Commission asked if LPTV stations operating on digital channel 6 could be allowed to continue their FM6 radio operations on an ancillary or supplementary basis.

2. The LPTV digital transition is now complete, with analog television

operations terminated and channel 6 LPTV stations operating in digital. However, the Commission has granted STAs to 13 channel 6 LPTV stations to continue providing analog FM6 service. In these circumstances, the Commission seeks comment on whether allowing continued FM6 analog radio operations by existing digital channel 6 LPTV stations serves the public interest. In addition, the Commission seeks comment on whether to eliminate or revise the television channel 6 (TV6) distance separation rules for low power FM (LPFM), noncommercial educational (NCE) FM, Class D (10 watt) FM, and FM translator stations operating on reserved band FM Channels 201–220.

## Public Interest Benefits of Continued FM6 Operations

3. With the LPTV digital transition complete, the Commission seeks comment on whether it is in the public interest to allow continued FM6 operations in the digital LPTV world, and whether it should be authorized to continue in any capacity. Throughout this proceeding, FM6 supporters have trumpeted the merits of FM6 operations by maintaining that they provide diverse, niche, and local programming that is not otherwise available in the stations' communities. The FM6 stations state that "[t]he multi-dimensional use of analog channel 6 has given a voice to diverse constituencies and ethnic groups unable to find a home anywhere else on the FM dial." Importantly, FM6 commenters state that their LPTV television stations provide vital video content including weather, traffic, community event calendars, news and sports tickers and more.

4. Prior to the LPTV digital transition, the Commission estimates that there were close to 30 FM6 stations, based on representations made in the record in this proceeding. Today, it is believed that only 13 FM6 stations remain, in light of the impact on digital transition on channel 6 operations. The Commission seeks comment on whether this belief is correct and whether the reduction in the number of FM6 stations is the result of stations having to convert to digital last year. In addition, the Commission seeks comment on the extent to which in the post-LPTV digital transition world, consumers rely on FM6 programming. It is noted that the Commission has historically been reluctant to regulate based upon programming decisions made by broadcasters. With that policy in mind, the Commission reminds commenters that FM6 station programming can be changed—FM6 stations, like other broadcast stations, are not required to

air any particular type of programming. Thus, even to the extent that some of these stations do provide useful programming to local and niche audiences, that could change at any time. The Commission also notes that many FM6 stations have longstanding programming with entrenched audiences. The Commission seeks comment on whether these programming concerns should enter into our public interest analysis of FM6 services.

5. The Commission asks commenters to weigh the current radio programming benefits of FM6 stations against the lost opportunities from expanded adjacent NCE FM service or digital LPTV service on channel 6. For example, the Channel 6 Commenters maintain that LPTV licensees should be allowed to make "the most efficient use of spectrum" by providing FM6 services on an ancillary or supplementary basis. PCPC argues that allowing digital television stations to offer additional services on existing channels is efficient spectrum use. On the other hand, FM6 opponents contend that FM6 operations are not an efficient use of spectrum—using a full 6 MHz television channel to provide a 200 KHz aural service is not, according to these commenters, maximizing the potential of this scarce resource. In addition, opponents argue that because there are no programming rules for LPTV stations, FM6 stations could, in the absence of such requirements, provide only minimal visual programming. While the Commission notes that providing visual programming has been a condition of the current FM6 STAs, it recognizes that some FM6 stations have a history of such minimal video service. These opponents also argue that FM6 is at odds with the underlying statutory purpose of permitting ancillary or supplementary services: to enhance the use of existing spectrum, consistent with the Commission's basic statutory responsibility to manage the radio-frequency spectrum in the public interest. The Commission seeks comment on these assertions and whether continued FM6 operation is an efficient use of Commission spectrum. Does allowing continued analog FM6 operations comport with recent Commission efforts to adopt more efficient and innovative use of digital television spectrum?

6. To the extent that FM6 programming is fulfilling a programming need, the Commission seeks comment on whether it could be provided through other means of delivery. Specifically, the Commission seeks comment on whether FM6 programming could be delivered as a

digital audio-only stream on one of the LPTV station's multicast channels, via a lease of digital subchannels on local FM or LPFM stations, through the internet, or by entities obtaining an FM or LPFM radio license. Would these alternatives be more spectrally efficient? What is unique about FM6 operations that merits continued service through its existing means of delivery?

#### *FM6 Operations as Ancillary or Supplementary Services*

7. The Commission has twice sought comment on whether FM6 operations comply with the ancillary or supplementary provisions in the Act and the Commission's rules, whether the operation of analog FM radio services in conjunction with a digital television service would cause impermissible interference to other licensees, and, if permitted to continue, how best to authorize FM6 operations. The Commission once again seeks comment on these issues and whether and how recent developments in the LPTV service should affect its analysis.

#### *Compliance With the Communications Act and Commission Rules*

8. If the Commission permits FM6 operations as an ancillary or supplementary service, it seeks comment on whether to adopt a rule to formally authorize such operations and whether such a rule should include provisions requiring FM6 operations be subject to any or all of the conditions that were included in the FM6 engineering STAs. Throughout this proceeding, the Commission has asked whether a digital LPTV station can provide an analog FM radio-type service as an ancillary or supplementary service consistent with the Act and our rules. The Commission specifically focused on the rule requirement that digital LPTV stations, when operating, must transmit an over-the-air video program signal at no direct charge to viewers. In addition, the Commission has pointed to section 336(b)(1) of the Act that mandates that the Commission permit ancillary or supplementary services only "if the use of a designated frequency for such services is consistent with the technology or method designated by the Commission for the provision of advanced television services." The Commission questioned whether a digital LPTV station offering FM6 services on an ancillary or supplementary basis would be able to satisfy these requirements.

9. Would adopting a rule for FM6 operations that would codify conditions like those found in the FM6 engineering STAs help satisfy compliance with

these rule and statutory provisions? As noted above, the engineering STAs that FM6 stations are currently operating under contain conditions including: (1) a requirement that FM6 operations be conducted in ATSC 3.0 digital format; (2) FM6 operations may only be conducted on 87.75 MHz; (3) no interference is permitted to any other licensed user, including but not limited to broadcast television or radio users; (4) the station's audio and video coverage must reach similar populations; (5) the station must submit written reports, 90 days from the date of grant of the STA and again 180 days later detailing any reports of interference and a demonstration that the station's audio and video coverage reach similar populations; (6) the station must provide at least one stream of synchronized video and audio programming on the ATSC 3.0 portion of the spectrum on a full time (24x7) basis; (7) the station's technical facilities may not be modified; and (8) the station may not be assigned or transferred. The Commission seeks comment on whether to require that FM6 stations operate subject to a similar set of rules, with some modifications and omissions and in the proposed rule, as a means to resolve the outstanding issues surrounding FM6 operations as an digital LPTV station's ancillary or supplementary service.

10. *ATSC 3.0, 87.75 MHz and No Interference Requirements.* The Commission proposes that FM6 stations be operating in ATSC 3.0 digital format; that FM6 operations may only be conducted on 87.75 MHz; and that no interference be permitted to any other licensed user, including but not limited to broadcast television or radio users. By adopting a rule that authorizes service pursuant to these requirements, the Commission seeks to prevent the types of interference that were a concern for FM6 stations operating in ATSC 1.0. As discussed more fully below, unlike ATSC 1.0, the ATSC 3.0 digital format appears to be more configurable and allows for the digital TV signal to be made narrower purportedly helping to overcome the harmful interference to FM radio stations that FM6 opponents suggest could emanate from FM6 operations. The Commission seeks comment on these rule provisions.

11. Separately, the Commission seeks comment on whether requiring FM6 services to be conducted only in conjunction with an ATSC 3.0 digital operation also has the benefit of satisfying the requirement of section 336(b)(1) of the Act that the "use of a designated frequency for [ancillary or supplementary] services is consistent

with the technology or method designated by the Commission for the provision of advanced television services." Specifically, commenters were asked to address whether and how analog use of a digital channel is "consistent with" the digital technology mandated by the Commission for the provision of advanced television services. FM6 opponents have maintained throughout this proceeding that a digital LPTV station providing FM6 services was not consistent with existing the ATSC digital standard, which at the time they commented was ATSC 1.0. They contended that a revision to the digital standard would have to be adopted in order for FM6 to be permitted. FM6 stations disagreed, saying digital LPTV stations providing an analog FM radio service would be in compliance with the Commission's digital broadcast television transmission standard as set forth in section 74.795(b) of the rules that provides that digital transmitters be designed to produce digital television signals that can be "satisfactorily viewed" on consumer receiving equipment based on the digital broadcast television transmission standard in section 73.682(d) the rules. FM6 stations argued that they would provide a ATSC 3.0 digital television signal that would meet the requirements of section 74.795(b) in addition to the separate analog FM radio signal.

12. Has the fact that FM6 services are now being offered via ATSC 3.0 digital stations changed these arguments? The Commission notes that the ATSC 3.0 standard also does not have a provision specific to FM6. And, as NPR notes, in the Commission's ATSC 3.0 R&O released in December 2020, the Commission amended the definition of the minimum standard definition digital television signal for full-power stations, removed all references to the analog standard, and confirmed that it "continue[d] to 'expect that the fundamental use of the 6 MHz DTV license will be for the provision of free over-the-air television service.'" Given the fact that analog television is now truly a legacy service, does operation of an analog FM radio service on an ATSC 3.0 digital channel meet the requirements of section 336(b)(1) of the Act? Furthermore, should the fact that the number of U.S. households that possess an ATSC 3.0 capable television receiver remains limited affect our determination?

13. *Similar Coverage and One Free Synchronized Stream Requirements.* The Commission proposes that FM6 stations comply with the following operational requirements: 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; and the LPTV station 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. By requiring that the station's FM6 coverage not exceed its video coverage, and that stations provide at least one stream of synchronized video and audio programming on the digital portion of the spectrum at any time the station is operating, the Commission seeks to ensure that the spectrum is being used efficiently and in the public interest.

14. Conditions similar to these provisions were included in the FM6 engineering STAs. The requirement that the LPTV station's FM6 and video coverage reach similar populations was imposed to address the concerns of FM6 opponents that FM6 stations would configure their LPTV station's technical facilities in such a manner that would favor their FM6 operation over their digital TV operation. The Commission proposes a similar provision here that would limit the FM6 coverage area to not greater than the LPTV station's coverage area for similar reasons and it believes this limit will help to allay these concerns and ensure that digital LPTV stations providing FM6 operations continue to focus their attention on the operation of their digital LPTV station—the primary purpose of their station license. The Commission seeks comment on this proposal.

15. As for its proposed rule provision requiring that FM6 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, a similar condition was included in the FM6 engineering STAs. The Commission proposes to adopt a slightly different version in our FM6 rules. The STA condition required that the one stream of synchronized video and audio programming be provided on “a full time (24x7) basis.” Because the Commission's rules provide that LPTV stations are “not required to adhere to any regular schedule of operation,” the Commission finds it more appropriate to propose a revised version of this condition that requires that FM6 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.” The reason the synchronized video and audio programming condition was originally imposed on the FM6 engineering STAs

was to ensure that digital LPTV stations providing FM6 operations continued to provide adequate television service to viewers. Prior to the LPTV digital television transition in July 2021, when FM6 operations were being conducted as part of the LPTV station's analog channel 6 operation, most FM6 stations were not offering any type of meaningful television service. Because the audio signal for their analog TV station was dedicated to providing the FM6 service, these stations would often times offer minimal television service on their stations such as community bulletin boards. FM6 stations appeared to be focusing their resources on their radio FM6 operation over their television operation. The Commission seeks comment on whether requiring the FM6 stations be subject to the separate synchronized video and audio programming requirement will address the concerns of FM6 opponents and ensure that FM6 stations continue to provide adequate television service to viewers.

16. *Limits on Technical Modifications.* The Commission proposes to adopt a rule, similar to the condition contained in FM6 engineering STAs, that would limit LPTV stations providing FM6 operations from modifying their facilities during the time that FM6 operations are being conducted. This condition was placed on FM6 engineering STAs in an effort to “lock” the FM6 station facilities in place while they were being operated pursuant to STA to prevent the station from making changes to their facilities that could impact the potential for interference from FM6 operations to other users. The Commission seeks comment on whether codification of such a modification limit could be a useful way to prevent FM6 stations from causing interference. By locking FM6 stations into their existing facilities, that have already been shown to not cause interference, the Commission would seek to preserve the status quo and prevent technical changes that could upset the current interference-free environment. The Commission proposes to define “existing facilities” as the FM6 station's licensed technical facilities on the release date of this NPRM. While the Commission is required to consider requests for waivers of its rules, it also seeks comment on whether to provide for an exception to this rule that would allow for technical modifications if certain criteria are met. The Commission seeks comment on such criteria, such as a showing of no potential interference to affected licensees and/or a demonstration that

all affected licensees have consented to the modification. The Commission seeks comment on these issues.

17. *Transfers.* In the STAs, the Commission limited FM6 stations from being transferred while FM6 operations are being conducted. The Commission seeks comment as to whether inclusion of such a limit in its FM6 rules would serve the public interest. The Media Bureau imposed this condition in an effort to prevent parties from seeking to operate an FM6 station without any intention of continuing FM6 operations and for the sole purpose of immediately selling the station to another party. Given the fact that the Commission is proposing to limit FM6 to only those stations that are providing FM6 operations on the release date of this NPRM, and thereby preventing parties from “speculating” in FM6 stations, it seeks comment as to whether inclusion of a limitation on transfer of FM6 stations in its rules would serve the public interest.

18. *Periodic Reporting.* As a condition to their FM6 STAs, FM6 stations were required to submit reports, 90 and 180 days after the grant of their STAs, detailing any reports of interference and a demonstration that the station's FM6 and video coverage reach similar populations. The Media Bureau included this reporting requirement in the FM6 engineering STAs so that it could monitor the ongoing STA operations of FM6 stations for reports of interference and to see if FM6 stations were complying with the condition that their digital television and analog FM radio operations were serving similar populations. The Commission is now proposing to adopt rule provisions that would mandate that FM6 operations be conducted without interference to other users and that an FM6 station's FM6 and video coverage reach similar populations. Accordingly, the Commission tentatively concludes that such a reporting requirement is not necessary given the force and effect of our proposed FM6 rule. It seeks comment on this tentative conclusion.

#### *Potential for Interference*

19. Throughout this proceeding, concern about the potential for analog FM6 operations to interfere with or disrupt the LPTV station's digital TV service has been paramount. Section 336(b)(2) of the Act provides that the Commission shall “limit the broadcasting of ancillary or supplementary services on designated frequencies so as to avoid derogation of any advanced television services, including high definition television broadcasts, that the Commission may

require using such frequencies.” The Commission has also sought comment on whether the analog FM6 radio transmitter could cause interference to FM radio licensees. FM6 opponents previously expressed concern about the potential for interference, citing studies conducted in 2014 by Linley Gumm and Charles Rhodes to support their claims. FM6 stations responded that there had not been a single report of interference from the numerous FM6 stations operating their LPTV stations in analog mode. FM6 opponents counter that lack of current interference is not probative given the existence of Commission rules preventing interference.

20. The Commission recognizes that previous questions and analysis about the potential for FM6 interference were based on the assumption that the digital LPTV station would be operating in ATSC 1.0. However, all existing FM6 stations are instead operating in ATSC 3.0 digital mode and there have been no reports of interference from these stations. The results of a more recent 2019 “Perry Priestly” study submitted by PCPC seem to show that, unlike ATSC 1.0, the ATSC 3.0 digital format is more configurable and allows for the TV signal to be made narrower to reduce that interference and/or have its settings modified to have increased error correction, helping it overcome such interference. Thus, PCPC concludes “stations that transition directly to the ATSC 3.0 standard can provide both the most robust video signals available today and a strong analog audio signal.”

21. In light of this more recent study, the Commission seeks comment on whether the fact that FM6 stations are operating in ATSC 3.0 digital mode changes the potential for their analog FM6 operations to interfere with or disrupt the LPTV station’s ATSC 3.0 digital TV service. The Commission seeks to determine if an ATSC 3.0 digital LPTV station will be able to operate an analog FM radio transmitter without interfering or derogating its co-channel digital operation. The Commission observes that the Perry Priestly study indicates that an ATSC 3.0 station would typically reduce the width of its digital TV signal and/or increase the level of error correction to make this operation possible, both of which would seem to reduce the amount of available throughput of the ATSC 3.0 signal. The Commission seeks comment on whether these changes in configuration constitute a “derogation” of its digital operation. Should the Commission decide to allow FM6 operations, should it be limited to those stations operating in ATSC 3.0? As before, the Commission encourages

commenters to study the question of FM6 interference and to provide the results of these studies in their comments.

#### *Application of Part 73 FM Radio Rules*

22. If the Commission decides to permit digital channel 6 LPTV stations to provide analog FM6 services on an ancillary or supplementary basis, it must still resolve the outstanding question of whether such operations should be subject to the Part 73 rules applicable to FM radio stations. Section 336(b)(3) of the Communications Act mandates that the Commission “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 . . . .” Commenters previously maintained that the Commission, as part of its decision in this proceeding, would need to amend its Part 73 and 74 rules to accommodate the FM6 service.

23. The Commission once again seeks comment on whether FM6 operations are “analogous to other services subject to regulation by the Commission” within the meaning of section 336(b)(3) of the Act and the Commission’s implementing rules and, if so, which of the Part 73 rules should apply to FM6 operations. The Commission previously asked whether it should apply to FM6 operations the Part 73 rules requiring that an FM radio station file an application for a construction permit and license to operate, that stations be located on channels 88.1 MHz through 107.9 MHz, that primary FM channels be allotted through rulemaking, that such stations maintain a public inspection file, and that the use of such frequencies in border areas be coordinated with Canada and Mexico. The Commission seeks comment on whether these questions are still relevant, whether other Part 73 rules, including technical rules, should apply, and whether its analysis should be affected by the fact that it may limit channel 6 LPTV stations providing FM6 services to operating only in ATSC 3.0 digital mode and from modifying their technical facilities while providing FM6 operations.

#### *Application of Five Percent Ancillary or Supplementary Fee*

24. To the extent it permits digital channel 6 LPTV stations to provide FM6 services on an ancillary or supplementary basis, the Commission must resolve the question of whether FM6 services should be subject to a five percent fee. The ancillary or supplementary rule provides that digital

television stations “must annually remit a fee of five percent of the gross revenues derived from all ancillary and supplementary services . . . which are feeable . . . .” “Feeable” services are defined as “[a]ll ancillary or supplementary services for which payment of a subscription fee or charge is required in order to receive the service.” “Feeable” services are also defined as “[a]ny ancillary or supplementary service for which no payment is required from consumers in order to receive the service . . . if the DTV 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).” As previously observed, FM6 operations, thus far, appear to have been available to the general public without subscription. Comments were previously split on this question. Because FM6 services are provided free of charge, some commenters believed that no fee should apply. Other commenters argued that, because the FM6 operation is not available on a DTV receiver, and can be only be received on a separate FM radio receiver, we should view FM6 operations as “point-to-point or point-to-multi point” operation that section 73.624(c) of the rules describes as an “ancillary or supplementary” service. Channel 6 Commenters agreed that “a supplementary 87.7 MHz audio signal qualifies as an ancillary service, which entitles the government to 5% of its revenue.”

25. The Commission seeks comment on whether, and under what circumstances, an LPTV station’s ancillary or supplementary FM6 service provided without a subscription fee should be deemed “feeable” and subject to the five percent fee. To the extent an LPTV station leases its spectrum to a third party to provide the programming transmitted using FM6 and receives compensation from that third party, such FM6 operation would be feeable under section 336(e)(1)(B) of the Act because the station “receives compensation from a third party in return for transmitting material furnished by such third party.” In a scenario, however, where the FM6 station does not lease its spectrum and instead itself provides a free, over-the-air radio service without a subscription fee, is there any basis to deem such a service “feeable” and thus subject to the five percent fee? The Commission seeks comment on this issue.

### *Limiting FM6 to Existing Operators*

26. If the Commission decides to allow FM6 operations to continue in the future, it proposes to limit the scope of FM6 operations to only those LPTV channel 6 stations with “active” FM6 engineering STAs on the release date of this NPRM. The Commission proposes to define “active” as an initial engineering STA that is granted and unexpired or a request for extension of an engineering STA that is granted or pending at the time of the release date of this NPRM. The Commission seeks comment on this proposal. The Commission assumes that stations holding an active FM6 STA or with a pending FM6 STA extension request are actually providing FM6 service to the public. It seeks comment on this assumption and whether there are other measures it should take to ensure its rules cover only those stations actually providing FM6 service to the public on the release date of this NPRM.

27. The record is filled with examples of local, niche programming being provided by FM6 stations and we seek to minimize disruption to listeners that have come to rely on these services. Limiting the number of FM6 stations to those currently in operation (and that have demonstrated that they do not cause interference to other users) and limiting the technical modifications permitted by these stations could also help to serve our goal of preventing harmful interference to other services. Would such a limitation allay the concerns of some commenters that have opposed FM6 operations?

28. Would this limitation also ensure continued service to consumers who have relied upon this service? With regard to any parity concerns of limiting FM6 authorization to existing FM6 stations, the Commission notes that all channel 6 LPTV stations had the opportunity to provide an FM analog service and chose not to do so. Moreover, the Commission’s examination of whether to permit the continuation of such services has extended over decade, so it believes that all channel 6 LPTV stations have been placed on adequate notice of a potential change in Commission rules. Further, if a channel 6 LPTV station has not requested that the Commission permit it to continue to provide FM6 operations by now (since terminating analog operations in July 2021), it seems unlikely that there is consumer reliance on the programming. The Commission seeks comment on this proposal, other cut-off dates, or alternate ways to limit eligibility to ensure continued service to

the established listeners of FM6 operations.

29. The Commission seeks comment on whether it should also permit FM6 operations by LPTV stations that, as of the release date of this NPRM, have pending applications for construction permits and that have a significant history of providing FM6 to the public to also be grandfathered. We recognize that there may be a limited number of stations that stopped providing FM6 service in July 2021, at the time of the LPTV digital transition, but intend to resume such service once new facilities are approved and constructed. Would permitting such stations to resume providing FM6 services, subject to the conditions discussed above, be consistent with the rationale discussed above to ensure continued service to consumers who have relied upon this service? Are the conditions discussed above adequate to address any technical concerns? Because such stations are not yet operational, does the Commission need to consider additional technical conditions to address unforeseen potential interference? The Commission seeks comment on the implications of expanding the scope of continued FM6 service in this manner.

### *Licensing Additional NCE FM Stations*

30. The Commission also takes this opportunity to seek comment on National Public Radio’s (NPR) proposal to repurpose television channel 6 (TV channel 6) spectrum (82–88 MHz) for FM services in locations where the channels are not being used to provide “actual television programming.” As previously described, NPR believes that the continued use of a digital TV channel 6 to provide an analog FM radio service (aka FM6) is contrary to the statute and poor public policy. Instead, NPR contends, “TV channel 6 spectrum is a valuable resource the Commission should use to expand opportunities for existing and prospective radio broadcasters whose demand for spectrum cannot be satisfied in the crowded FM radio band.” Specifically, NPR maintains that the spectrum occupied by a single TV channel 6 station could potentially accommodate up to 30 new FM stations, exponentially increasing the variety of programming available for a diverse audience. Repurposing this spectrum to allow new FM radio stations to be authorized, NPR maintains, would increase the diversity of voices and programming available to the public and be a “far better use of a scarce resource” than the analog audio operations (FM6) that exist in some locations today. NPR also argues that it would increase the opportunities for

diverse providers to provide local public interest programming for unserved and underserved audiences, especially in the rural parts of the country. The Commission seeks comment on these issues.

31. If it decides to allow new FM stations to operate on 82–88 MHz, the Commission seeks comment on whether such stations should be limited to noncommercial educational (NCE) FM stations or whether commercial FM stations should be allowed to operate on these new frequencies as well, consistent with TV6 stations currently occupying this spectrum. The Commission notes that the adjacent FM channels 201–220 (87.9 MHz to 91.9 MHz) are reserved for NCE FM station use. The Commission seeks to determine whether to adopt a similar restriction were it to allow additional FM stations to operate on 82–88 MHz.

32. The Commission invites commenters to study the current use of TV channel 6 by television broadcasters and the extent to which TV channel 6 could accommodate additional FM radio stations without causing interference to existing TV channel 6 licensees. The Commission also seeks comment on the technical feasibility of NPR’s proposal. First, it notes that, although there are in theory 30 available 200 kHz FM radio channels in the band that comprises TV channel 6, 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 less. The Commission seeks comment on whether this technical reality should affect its consideration of NPR’s proposal. Furthermore, the Commission seeks comment on whether NPR’s argument, that FM6 is not an efficient use of spectrum, would be allayed by its proposal to limit FM6 operations to only the limited number of TV channel 6 LPTV stations that are currently providing such services and to further require that such stations provide a separate video offering at all times they are providing FM6 operations.

33. In addition, the Commission seeks comment on whether radio listeners will be able to receive new FM radio stations on the frequencies that NPR suggests should be allowed for new FM radio station operations—82–88 MHz. The Commission notes that FM radio receivers currently only receive the top-most portion of the 82–88 MHz band (87.7 or 87.9 MHz) of the 6 MHz channel that comprises TV channel 6. Today’s FM radio receivers cannot tune down to the rest of the spectrum—82.1–

87.5 MHz. The Commission invites comment on how this technical roadblock should influence our consideration of this issue. The Commission also seeks comment on whether changes would need to be made to the Domestic Table of Frequency Allocations (Table) to reflect this change. The Commission notes that the 76–88 MHz band is generally allocated as “Broadcasting” but seek comment on whether the Table contemplates radio uses at 82–88 MHz. In addition, should it adopt NPR’s proposal, the Commission seeks comment on whether there are other technical issues to consider such as the establishment of separation distances for co-channel operations.

34. Finally, the Commission seeks comment on the benefits of expanding FM radio service to all of TV channel 6 to create new FM radio stations versus the costs of precluding existing TV stations from using the currently unused locations where TV channel 6 is viable and foreclosing new TV stations on channel 6. The Commission also seeks comment on how allowing additional FM radio stations on the 82–88 MHz band would affect other entities that use these frequencies including wireless microphones and white space device users. Finally, the Commission notes that one of its concerns about authorizing the continued provision of FM6 services is the interference potential they may pose. The Commission addresses this concern through its proposal of limiting any technical modifications by these FM6 stations. The Commission seeks comment on the potential for interference if it permitted new FM radio services as contemplated by NPR. Would such services pose the threat of interference with existing services in this band? If so, how should these concerns be mitigated to extent the Commission pursues such an expansion?

#### *Elimination of TV6 Interference Protection*

35. The Commission seeks comment on an issue that the Commission previously raised and that is related to its consideration of whether to permit continued FM6 operations. That is the question of whether to completely eliminate the television channel 6 (TV6) distance separation (interference protection) rules for Low Power FM radio (LPFM), NCE FM radio, Class D FM radio (10 watt), and FM translator stations operating on reserved band FM channels 201–220, or to alternatively revise and update them for a post-digital transition world. The Commission last

considered this issue in the context of its efforts to improve the LPFM technical rules based on suggestions made by REC Networks in a 2018 petition for rulemaking. The Commission seeks comment on this issue now that the LPTV digital transition is complete and all TV6 stations are no longer operating in analog, and in light of our proposals related to FM6 in this proceeding.

36. To provide LPFM stations relief from TV6 protection rules, the Commission, in its LPFM NPRM, proposed to eliminate TV6 protections entirely on July 13, 2021—the date of the LPTV digital transition. The Commission noted that it had been requiring FM stations on channels 201 to 220 to protect television stations operating on TV6 since 1985. The Commission cited to REC Networks arguments that the LPFM TV6 protection rules “significantly overprotect TV6 stations and could be reduced with little impact.” REC Networks pointed out that this was because the rules were designed when television was operating with analog technology. The Commission also noted studies performed by NPR in conjunction with the 2009 digital television transition that showed that newer digital television technologies have better filters and synchronous detection to reject unwanted FM signals. The Commission tentatively accepted NPR’s conclusion that digital television receivers are substantially less vulnerable to FM-induced TV6 interference than analog sets. The Commission sought comment on whether this conclusion was still valid “after so many additional years of experience with digital broadcasts.” The Commission sought comment on its expectation that the proposed elimination of LPFM/TV6 spacing requirements will not result in any interference to TV6 stations and it tentatively concluded, upon July 13, 2021, to eliminate the distance separate requirement between LPFM stations and all television stations operating on TV6.

37. A limited number of commenters weighed in on the Commission’s proposal and were evenly split for and against elimination of the TV6 protections. For instance, in response to support from petitioners, Disney posited that the record did “not provide actual evidence demonstrating that the full-power Channel 6 Protections are unnecessary,” and that the TV6 protection rules “have functioned quite well to protect full-power television stations from interference, and have done so without imposing significant burdens on FM reserved band stations.”

The Commission in its 2020 Report and Order deferred consideration of this issue to a future proceeding finding that it “will be in a better position to reach an informed decision by addressing TV6 issues in a separate proceeding with a more developed record on this issue.”

38. Since that decision, events have occurred that could affect our previous analysis as to the continued need for TV6 protection rules. The post-Incentive Auction transition was completed in July 2020 and repacked stations have settled into their new post-auction channel assignments. And, given the digital transition, analog television is now truly a legacy service. With the completion of the Incentive Auction and the LPTV digital transition, the Commission now has experience with respect to TV6 and whether interference has been occurring with respect to digital TV6 stations and FM radio stations.

39. Therefore, the Commission seeks comment on the continued need for TV6 interference protection rules. Specifically, the Commission seeks comment on whether the interference protection provisions, adopted while television stations were operating in analog mode, continue to be necessary in light of the fact that all TV6 stations have now converted to digital. The Commission invites commenters to analyze the number of current TV6 stations, their current locations and the potential for TV6–FM radio cross-service interference. The Commission notes that it has not received reports of interference to either TV or radio services from stations in their counterpart services. Does the lack of reports indicate the protections are no longer necessary, or that they are fulfilling their purpose? Alternatively, the Commission seeks comment on whether to preserve the existing protections but revise and update them for digital TV6 operations, and if so, how to update them. In that circumstance, the Commission seeks comment on whether those protections should apply to currently authorized channel 6 stations or to future channel 6 stations or to both.

40. The Commission notes that retention or revision of the TV6 interference protection rules could potentially be impacted by its decision whether to permit continued FM6 operations. Given this, the Commission seeks comment on whether the elimination of TV6 protection by LPFM and other FM radio stations would be compatible with FM6 operations if it determines to permit such operations to continue. That is, if FM6 and LPFM and NCE FM stations are allowed to come



into closer proximity if the TV6 protection rules are eliminated, would that increase concerns about interference from FM6 to LPFM/NCE FM stations—an important factor in our FM6 considerations? The Commission notes that one of the conditions it is seeking to impose on continued FM6 operations is that the LPTV station not be permitted to modify its facilities while providing FM6 operations, thus locking into place the technical facilities by which the LPTV station provides its FM6 operations. If it limits station modifications in this manner, would this impact the Commission's analysis of whether elimination of TV6 protection by LPFM and other FM radio stations would be compatible with FM6 operations?

41. The Commission's goal in this proceeding, as with any proceeding involving interference protection, is to ensure that licensees can operate in an environment in which the potential for interference is minimized. The Commission stresses that interference protections are essential to spectrum usage rights to prevent licensees from unduly affecting other licensees in terms of system operation or cost. Nonetheless, the Commission attempts to establish rules that are no more restrictive than necessary to achieve our goals in order to provide maximum flexibility to our licensees. Therefore, commenters suggesting that the existing interference provisions be retained, revised or updated should demonstrate that their proposed restrictions are necessary to achieve these goals.

#### *Cost-Benefit and Diversity, Equity and Inclusion Analysis*

42. Finally, the Commission seeks comment on the benefits and costs associated with adopting the proposals set forth in this NPRM. In addition to any benefits to the public at large, are there also benefits to industry through adoption of any of its proposals? The Commission also seeks comment on any potential costs that would be imposed on licensees and regulatees if it adopts the proposals contained in this NPRM. Comments should be accompanied by specific data and analysis supporting claimed costs and benefits.

43. As part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, the Commission invites comment on how the proposals set forth in the NPRM can advance equity in the provision of

broadcast services for all people of the United States, without discrimination on the basis of race, color, religion, national origin, sex, or disability. Specifically, the Commission seeks comment on how its proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

#### **Initial Regulatory Flexibility Act Analysis**

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), The Third Notice of Proposed Rulemaking in this proceeding included an Initial Regulatory Flexibility Analysis (IRFA) pursuant to 5 U.S.C. 603, exploring the potential impact on small entities of the Commission's proposals. Because this Fifth Notice of Proposed Rulemaking (NPRM) contains new proposals, the Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified in the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

#### *Need for, and Objectives of, the Proposed Rules*

The NPRM seeks comment on whether to permit digital low power television (LPTV) stations on channel 6 to continue to operate analog FM radio-type services and, if so, how to authorize these services. Prior to the July 13, 2021 LPTV digital transition deadline, a number of analog LPTV stations licensed on channel 6 operated with very limited visual programming and an audio signal that is programmed like a radio station (FM6). FM radio listeners were able to receive the audio portion of these LPTV stations at 87.75 MHz, which is adjacent to noncommercial educational (NCE) FM channel 201 (88.1 MHz). When these LPTV stations converted to digital, however, they would be unable to continue providing such radio service because the digital audio portion of their signal could no longer be received by standard FM receivers. Currently, some digital channel 6 LPTV stations have converted to ATSC 3.0 digital format and are operating pursuant to engineering special temporary authority (STA) with a separate analog FM radio transmitter.

In an effort to bring a final resolution to the FM6 question, the Commission seeks comment on whether FM6 operations are serve the public interest and should be authorized to continue in any capacity. The NPRM also seeks comment on whether FM6 should be authorized as “ancillary or supplementary” services as suggested previously in this proceeding. The NPRM seeks comment on whether the Commission can and should limit future FM6 operations to only those LPTV channel 6 stations with active FM6 engineering STAs on the release date of the NPRM.

The NPRM alternatively seeks comment on whether to license additional FM radio stations on 82–88 MHz in areas where channel 6 LPTV and full-power stations are currently not operating.

Finally, regardless of whether it decides to permit continued FM6 operations or license additional FM radio stations on 82–88 MHz, the NPRM seeks comment on whether to eliminate or revise the TV6 distance separation rules for LPFM, NCE, Class D (10 watt), and FM translator stations operating on reserved band FM Channels 201–220.

#### *Legal Basis*

The proposed action is authorized under Sections 151, 154(i), 154(j), 303, 307, 316, 336, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303, 307, 316, 336, and 403.

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

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rule revisions, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act (SBA). A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

*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 we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

The Commission estimates that as of March 2022, there were 1,373 licensed commercial television stations. Of this total, 1,280 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 June 1, 2022, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of March 2022, there were 384 licensed noncommercial educational (NCE) television stations, 383 Class A TV stations, 1,840 LPTV stations and 3,231 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, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

**Radio Stations.** This industry is comprised of “establishments primarily engaged in broadcasting aural programs by radio to the public.” 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 firms having \$41.5 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year. Of this number, 1,879 firms operated with revenue of less than \$25 million per year. Based on this data and the SBA’s small business size standard,

we estimate a majority of such entities are small entities.

The Commission estimates that as of September 2021, there were 4,519 licensed commercial AM radio stations, 6,682 licensed commercial FM radio stations and 4,211 licensed noncommercial (NCE) FM radio stations. The Commission however does not compile, and otherwise does not have access to financial information for these radio 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 radio station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

The Commission notes, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations must be included. Its estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific radio or television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and is therefore possibly over-inclusive. An additional element of the definition of “small business” is that the entity must be independently owned and operated. Because it is difficult to assess these criteria in the context of media entities, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and similarly may be over-inclusive.

#### *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

As a condition to be allowed to continue their FM6 operations on an ancillary or supplementary basis, the Commission seeks comment on whether FM6 stations should be required to submit written reports, every 90 days, detailing any reports of interference and

a demonstration that the station’s FM6 and video coverage reach similar populations. The NPRM tentatively concludes that such a reporting requirement is not necessary. Should the Commission ultimately decide to adopt this requirement, this proposed reporting requirement would result in a new paperwork obligation. If adopted, the Commission will seek approval and the corresponding burdens to account for this reporting requirement.

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

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

The NPRM seeks to determine if continued provision of FM6 services by digital LPTV channel 6 stations serve the public interest and should FM6 be authorized to continue in any capacity. All of the licensees of FM6 stations are licensees of LPTV stations and most if not all are considered small entities by SBA definitions. Therefore, by allowing FM6 operations to continue, the Commission is seeking to help small entities and to preserve their current programming offerings. The alternative would be to force these entities to discontinue FM6 operations that have proved to be a source of additional income for these small entities that have struggled to operate LPTV stations and that have operated with a disadvantage to their full power television brethren. Unlike full power television stations, LPTV stations operate without mandatory cable carriage rights and with secondary interference rights that can result in their operating channel being displaced and their having to find a new frequency.

The NPRM seeks comment on whether to permit FM6 operations as “ancillary or supplementary” services. This approach is an attempt to authorize existing FM6 operations in the easiest and least costly manner to reduce the administrative and financial burden on FM6 stations, all of which are LPTV and most if not all are small entities. Using

existing rules and procedures will enable FM6 stations to easily become authorized through familiar and low cost measures.

The Commission must balance the positive financial benefits for small entities of allowing all channel 6 LPTV stations to provide FM6 operations against the possible negative effects of impermissible interference that could result between FM6 operations and other FM radio operators. Although it recognizes the positive benefits for small entities that may accrue from FM6 operations, the Commission proposes that it must limit FM6 operations to only those stations providing such services on the release date of the NPRM in order to limit the universe of FM6 stations that could potentially interfere with other users. The Commission notes that all channel 6 LPTV stations had the opportunity to provide an FM analog service and their failure to do so by now demonstrates that it was not in their interest to do so.

Similarly, the Commission must balance whether to allow channel 6 LPTV stations to continue providing FM6 operations versus entities interested in providing new FM radio service to operate on TV channel 6 in areas where television service is currently not being offered. There are small entities in both the LPTV and FM radio services especially NCE FM stations whose operation is limited to only noncommercial educational entities most if not all of which are small entities. The Commission will have to consider the benefits and costs of allowing additional FM radio operations and whether it will negatively affect future TV operations on low VHF channels such as channel 6 that have technical limitations and that are not favored by television operators.

The Commission also proposes to eliminate or modify a current protection for television stations operating on Channel 6 which are also small entities, a proposal which seeks to assist low power FM (LPFM), noncommercial educational (NCE), and FM translator

stations. The Commission believes that any potential negative impact on such television stations is minimal because full power TV6 stations transitioned to digital operations in 2009; LPTV stations in 2021; and there has been a lack of interference complaints from these stations since their transitions. Further, digital television receivers are more selective than the analog the equipment that existed when the Commission adopted the TV6 protection requirement. The Commission is open to consideration of alternatives to the proposals under consideration including but not limited to alternatives that will minimize the burden on FM broadcasters, many of whom are small businesses, as well as TV6 broadcasters that are small entities. There may be unique circumstances these entities may face, and the Commission will consider appropriate action for small broadcasters when preparing a Report and Order in this matter.

*Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule*

None.

**Report to Congress**

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

**List of Subjects in 47 CFR Part 74**

Low Power TV and TV translator stations.

Federal Communications Commission.

**Marlene Dortch**,  
Secretary.

**Proposed Rules**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 74 to read 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, 336, and 554.

■ 2. Section 74.790 is revised by adding paragraph (l) as follows:

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

\* \* \* \* \*

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

(1) The LPTV station must have been providing FM6 operations pursuant to an active engineering special temporary authority on the release date of the Fifth Notice of Proposed Rulemaking in MB Docket No. 03–185;

(2) The LPTV station must be operating in ATSC 3.0 digital format;

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

(4) no interference is permitted to any other licensed user, including but not limited to broadcast television or radio users;

(5) the LPTV station's FM6 coverage area must be contained within and may not exceed the coverage area of the LPTV station's synchronized video/audio programming stream;

(6) the LPTV station 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; and

(7) while FM6 operations are being conducted, the LPTV station's technical facilities may not be modified from those that existed on the release date of the Fifth Notice of Proposed Rulemaking in MB Docket No. 03–185.

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