

EPA has no authority to disapprove a redesignation request for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state recommendation, to use VCS in place of a state request that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National park, Wilderness area.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: June 27, 2005.

**George Pavlou,**

*Acting Regional Administrator, EPA Region 2.*

[FR Doc. 05-13344 Filed 7-6-05; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL-7933-9]

#### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete the Jones Sanitation Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 2 office is issuing this notice of intent to delete the Jones Sanitation Superfund Site (Site), located in Hyde Park, New York from the National Priorities List (NPL) and requests public comment on this action. The NPL is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. The EPA and the State of New York, through the Department of Environmental Conservation (NYSDEC), have determined that potentially responsible parties have implemented all appropriate response actions. Moreover, EPA and NYSDEC have determined that the Site poses no significant threat to

public health or the environment. In the "Rules and Regulations" Section of today's **Federal Register**, we are publishing a direct final notice of deletion for the Jones Sanitation Superfund Site without prior notice of this action because we view this as a noncontroversial revision and anticipate no significant adverse comment. We have explained our reasons for this action in the preamble to the direct final deletion. If we receive no significant adverse comment(s) on this notice of intent to delete or the direct final notice of deletion or other notices we may issue, we will not take further action on this notice of intent to delete. If we receive significant adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments. If, after evaluating public comments, EPA decides to proceed with deletion, we will do so in a subsequent final deletion notice based on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register**.

**DATES:** Comments concerning this Site must be received by August 8, 2005.

**ADDRESSES:** Written comments should be addressed to: Isabel Rodrigues, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, New York 10007-1866.

**FOR FURTHER INFORMATION CONTACT:** Ms. Isabel Rodrigues at the address provided above, or by telephone at (212) 637-4248, by Fax at (212) 637-4284 or via e-mail at [Rodrigues.Isabel@EPA.GOV](mailto:Rodrigues.Isabel@EPA.GOV).

**SUPPLEMENTARY INFORMATION:** For additional information, see the Direct Final Notice of Deletion which is located in the Rules section of this **Federal Register**.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601-9675; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: June 6, 2005.

**George Pavlou,**

*Acting Regional Administrator, U.S. EPA, Region II.*

[FR Doc. 05-13347 Filed 7-6-05; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 99-25; FCC 05-75]

#### Creation of a Low Power Radio Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission seeks comment on ownership and eligibility issues related to low power FM (LPFM) authorizations, including: whether LPFM authorizations should be transferable and, if so, whether transferability should be broadly permitted or limited to special circumstances; whether to extend the deadline for submission of a time-share proposal after a mutually exclusive group of LPFM applicants is announced; whether to permit renewal of licenses granted under involuntary time-sharing, successive license term procedures; whether to permanently restrict ownership of LPFM stations to local entities; and whether to permanently prohibit multiple ownership of LPFM stations. The Commission also seeks comment on technical issues related to LPFM authorizations, including: whether to extend the LPFM construction period to 36 months; whether to allow applicants submitting a time-share proposal to relocate the transmitter to a central location, notwithstanding the site relocation limits for minor amendments; whether and, if so, under what conditions LPFM applications should be treated as having "primary" status with respect to prior-filed FM translator applications and existing FM translator stations; and whether an LPFM station should be permitted to continue to operate even when interference is predicted to occur within the 70 dBu contour of a subsequently-authorized second- or third-adjacent channel full service FM station.

**DATES:** Comments must be filed on or before August 8, 2005, and reply comments must be filed on or before August 22, 2005. Written comments on the proposed information collection requirements contained in the document must be submitted by the public, the Office of Management and Budget (OMB), and other interested parties on or before September 6, 2005.

**ADDRESSES:** You may submit comments, identified by MM Docket No. 99-25, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Federal Communications Commission's Web Site: <http://www.fcc.gov/cgb/ecfs>. Follow the instructions for submitting comments.

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

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

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact Natalie Roisman, [Natalie.Roisman@fcc.gov](mailto:Natalie.Roisman@fcc.gov), of the Media Bureau, Policy Division, (202) 418-2120. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams, Federal Communications Commission, 445 12th St., SW., Room 1-C823, Washington, DC 20554, or via the Internet to [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov). If you would like to obtain or view a copy of this revised information collection, you may do so by visiting the FCC PRA Web page at: <http://www.fcc.gov/omd/pr>.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's Further Notice of Proposed Rulemaking (FNPRM) FCC 05-75, adopted on March 16, 2005, and released on March 17, 2005. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

### Initial Paperwork Reduction Act of 1995 Analysis

This FNPRM contains proposed information collection requirements. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104-13. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the proposed information collection requirements contained in this FNPRM, as required by the PRA. Written comments on the PRA proposed information collection requirements must be submitted by the public, OMB, and other interested parties on or before September 6, 2005. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 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."

*OMB Control Number:* 3060-0031.

*Title:* Application for Consent to Assignment of Broadcast Station Construction Permit or License; Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License; Section 73.3580, Local Public Notice of Filing of Broadcast Applications.

*Form Number:* FCC Form 314 and FCC Form 315.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities; not-for-profit institutions.

*Number of Respondents:* 4,510.

*Frequency of Response:* On occasion reporting requirement; third party disclosure requirement.

*Estimated Time Per Response:* 1 hour to 6 hours.

*Total Annual Burden:* 15,890 hours.

*Total Annual Costs:* \$33,349,150.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* On March 16, 2005 the Commission adopted a 2nd Order on

*Reconsideration and Further Notice of Proposed Rulemaking (FNPRM)*, In the Matter of the Creation of a Low Power Radio Service, MM Docket No. 99-25, FCC 05-75. The FNPRM proposes to permit the transfer and/or assignment of Low Power FM (LPFM) authorizations.

FCC Forms 314 and 315 have been revised to encompass the assignment of LPFM authorizations, as proposed in the FNPRM, and to reflect the ownership and eligibility restrictions applicable to LPFM permittees and licensees.

FCC Form 314 and the applicable exhibits/explanations are required to be filed when applying for consent for assignment of an AM, FM, TV or Low Power FM (LPFM) broadcast station construction permit or license. In addition, the applicant must notify the Commission when an approved assignment of a broadcast station construction permit or license has been consummated.

FCC Form 315 and applicable exhibits/explanations are required to be filed when applying for transfer of control of an entity holding an AM, FM, TV or LPFM broadcast station construction permit or license. In addition, the applicant must notify the Commission when an approved assignment of a broadcast station construction permit or license has been consummated.

*OMB Control Number:* 3060-0009.

*Title:* Application for Consent to Assignment of Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License.

*Form Number:* FCC Form 316.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities; not-for-profit institutions; State, local or tribal government.

*Number of Respondents:* 730.

*Frequency of Response:* On occasion reporting requirement.

*Estimated Time Per Response:* 1-4 hours.

*Total Annual Burden:* 775 hours.

*Total Annual Costs:* \$423,720.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* On March 16, 2005 the Commission adopted a 2nd Order on *Reconsideration and Further Notice of Proposed Rulemaking (FNPRM)*, In the Matter of the Creation of a Low Power Radio Service, MM Docket No. 99-25, FCC 05-75. The FNPRM proposes to permit the assignment or transfer of control of Low Power FM (LPFM) authorizations where there is a change in the governing board of the permittee

or licensee or in other situations analogous to "pro forma" assignments or transfers of control for other types of broadcast authorizations. FCC Form has been revised to encompass the assignment and transfer on control of these LPFM authorizations.

*OMB Control Number:* 3060-0920.

*Title:* Application for Construction Permit for a Low Power FM Broadcast Station; Report and Order in MM Docket No. 99-25 Creation of Low Power Radio Service.

*Form Number:* FCC Form 318.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Not-for-profit institutions; State, local or tribal government.

*Number of Respondents:* 16,422.

*Frequency of Response:*

Recordkeeping requirement; on occasion reporting requirement; third party disclosure requirement.

*Estimated Time Per Response:* 15 minutes-12 hours.

*Total Annual Burden:* 33,866 hours.

*Total Annual Costs:* \$23,850.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* On March 16, 2005 the Commission adopted a 2nd Order on Reconsideration and Further Notice of Proposed Rulemaking (FNPRM). In the Matter of the Creation of a Low Power Radio Service, MM Docket No. 99-25, FCC 05-75. The FNPRM proposes to amend 47 CFR 73.870 and 73.871 to permit voluntary time-share applicants to relocate an LPFM transmitter to a central location by filing amendments to their pending FCC Form 318 applications.

FCC Form 318 is required to: (1) apply for a construction permit for a new LPFM station, (2) to make changes in the existing facilities of such a station or (3) to amend a pending FCC Form 318 application.

## Summary of the Further Notice of Proposed Rulemaking

### I. Introduction

1. In January 2000, the Commission adopted a *Report and Order* establishing the low power FM (LPFM) service, Creation of Low Power Radio Service, 65 FR 7616, February 15, 2000. The Commission authorized the LPFM service to provide opportunities for new voices to be heard, while at the same time maintaining the integrity of existing FM radio service and preserving its ability to transition to a digital transmission mode. In the *Report and Order*, the Commission authorized two classes of LPFM service: The LP100 class, consisting of stations with a

maximum power of 100 watts effective radiated power (ERP) at 30 meters antenna height above average terrain (HAAT), providing an FM service radius (1 mV/m or 60 dBu) of approximately 3.5 miles (5.6 kilometers), and the LP10 class, consisting of stations with a maximum power of 10 watts ERP at 30 meters HAAT, providing an FM service radius of approximately one to two miles (1.6 to 3.2 kilometers). The *Report and Order* also imposed separation requirements for LPFM with respect to full power stations.

2. In the *Report and Order*, the Commission also established ownership and eligibility rules for the LPFM service. The Commission restricted LPFM service to noncommercial educational (NCE) operation by non-profit entities and public safety radio services. With certain narrow exceptions, the Commission restricted ownership to entities with no attributable interest in any other broadcast station or other media subject to our ownership rules. The Commission prohibited the sale or transfer of an LPFM station. For the first two years of the LPFM service, the Commission prohibited multiple ownership of LPFM stations and limited ownership to locally-based entities. To resolve mutually exclusive applications, the Commission established a point system that favors local ownership and locally-originated programming, with time-sharing and successive license terms as tie-breakers.

3. The *Report and Order* directed the Mass Media Bureau to announce by public notice the opening of a national filing window for LP100 applications. In March 2000, the Mass Media Bureau announced that it would accept LPFM applications in five separate filing windows, each limited to an application group of ten states and at least one other U.S. jurisdiction, in order to "ensure the expeditious implementation of the LPFM service and to promote the efficient use of Commission resources." See FCC Announces Five-Stage National Filing Window for Low Power FM Broadcast Station Applications, DA 00-621 (MMB rel. Mar. 17, 2000). The Commission conducted a lottery to determine the order of the application groups, and the Mass Media Bureau announced that the first LPFM filing window would open on May 30, 2000. Subsequent filing windows opened on August 28, 2000, January 16, 2001, and June 11, 2001. The fourth and fifth LPFM application groups were consolidated into a single window in order to speed the filing process for applicants in these states.

4. On reconsideration in September 2000, the Commission issued some revisions and clarifications, but generally affirmed the decisions reached in the *Report and Order*. See 65 FR 67289, November 9, 2000. The Making Appropriations for the Government of the District of Columbia for FY 2001 Act (2001 DC Appropriations Act), Pub. L. 106-553 632, required the Commission to modify its rules to prescribe LPFM station third-adjacent channel spacing standards and to prohibit any applicant from obtaining an LPFM station license if the applicant previously had engaged in the unlicensed operation of a station. As a result of rule revisions adopted pursuant to the 2001 DC Appropriations Act, facilities proposed in a number of otherwise technically sufficient applications filed in the first two LPFM filing windows became short-spaced to existing full-power FM and/or FM translator stations, and were subsequently dismissed. The 2001 DC Appropriations Act also instructed the Commission to conduct an experimental program to evaluate whether LPFM stations would interfere with existing FM stations if the LPFM stations were not subject to the additional channel spacing requirements, and to submit a report to Congress, including the Commission's recommendations to Congress regarding reduction or elimination of the minimum separations for third-adjacent channels. The Commission selected an independent third party, the Mitre Corporation (Mitre), to conduct the field tests. On February 19, 2004, the Commission staff submitted the required report to Congress and, based on the Mitre study, recommended that Congress "modify the statute to eliminate the third-adjacent channel distant separation requirements for LPFM stations."

5. On February 8, 2005, the Commission held a forum on LPFM. The forum was intended to inform the Commission of achievements by LPFM stations and the challenges faced as the service marks its fifth year. As of March 2005, more than 1,175 LPFM construction permits have been granted. Of these 1,175 permits, approximately 590 stations are on the air, serving mostly mid-sized and smaller markets.

6. Since the LPFM service was created, the experiences of LPFM applicants, permittees, and licensees have demonstrated that the Commission's LPFM rules may need some adjustment in order to ensure that the Commission maximize the value of the LPFM service without harming the interests of full-power FM stations or other Commission licensees. The Commission's actions in this FNPRM,

based in part on testimony received at the LPFM forum, are designed to increase the number of LPFM stations on the air and strengthen the viability of those stations that are already operating. The Commission seeks comment on a number of technical and ownership issues related to LPFM.

## II. Further Notice of Proposed Rulemaking

7. In *ex parte* meetings and filings and at the recent LPFM forum hosted by the Commission, members of the LPFM community have urged the Commission to revise certain LPFM rules. Five years after the establishment of LPFM, the Commission believes it is now appropriate to assess the practical ramifications of the LPFM rules. The Commission believes that some of the LPFM community's proposals are appropriate for further consideration, and seeks comment on them as discussed below.

### Ownership and Eligibility

#### A. Transferability

8. In the *Report and Order*, the Commission declined to allow the sale of LPFM stations. The Commission determined that a prohibition on transfers or assignments of construction permits and licenses for LPFM stations would best promote the Commission's interest in ensuring spectrum use for low power operations as soon as possible, without the delay associated with license speculation. The Commission concluded that the goals of the LPFM service would be best met if unused permits and licenses were returned to the Commission. 47 CFR 73.865 provides that "[a]n LPFM authorization may not be transferred or assigned except for a transfer or assignment that involves: (1) Less than a substantial change in ownership or control; or (2) An involuntary assignment of license or transfer of control." Based on forum testimony, *ex parte* presentations, and requests for waiver of section 73.865 filed with the Media Bureau's Audio Division, the Commission now believes that the rule prohibiting transfer or assignment of LPFM construction permits or licenses may be unduly restrictive and may hinder, rather than promote, LPFM service. The Commission therefore seeks comment on whether to permit the transfer and/or assignment of LPFM authorizations and, if so, whether transfer or assignment should be broadly permitted or limited to special circumstances. The Commission also seeks comment on the effect, if any, of a change in transferability with respect

to ownership amendments to pending LPFM new and major change applications.

9. First, the Commission seeks comment on whether to amend its rules to permit the transfer of control of LPFM licensee entities. If the Commission permits the transfer of control of LPFM licensees, should any restrictions be imposed on such transfers, beyond the requirement that the licensee entity continue to meet the LPFM eligibility criteria? The Commission seeks comment regarding the types of organizational structures utilized by LPFM licensees and how transfers of control of LPFM licensees, if permitted, would be effectuated. For example, are LPFM licensees likely to undergo transfers of control by virtue of changes in governing boards, shifting composition of membership bodies, acquisition of a licensee by another organization, or other means? Because the question has been raised frequently on the record, the Commission seeks comment more specifically on whether and how to amend our rules to permit the transfer of control of an LPFM licensee in the case of a sudden change in the majority of a governing board. On reconsideration in 2000, the Commission clarified that the gradual change of a governing board or membership body to the point that a majority of its members are new since the authorization was granted will not, by itself, constitute a prohibited transfer of control. The Commission's rules, however, do not permit a sudden change in the board or membership of an LPFM licensee, which would constitute an impermissible transfer of control. Several panelists at the recent LPFM forum testified that this restriction causes unnecessary complications for LPFM licensees. The Media Access Project (MAP) has requested that the Commission modify its rules so that typical board changes on a non-profit board will be permissible under the Commission's rules. Prometheus Radio Project (Prometheus) argues that if the LPFM service is to be accessible to community groups, its regulations must take into account that changes in governing boards are part of the nature of existence of such groups. Based on the record, the Commission proposes to amend its rules to permit changes of more than 50 percent of the membership of governing boards that occur suddenly, in addition to the gradual board changes that are currently permitted under the rules. The Commission seeks comment on this proposal.

10. Similarly, the Commission seeks comment on whether to amend the rules

to permit the assignment of LPFM authorizations from the licensee to another entity. If LPFM authorizations may be assigned and control of LPFM licensees may be transferred, should the Commission allow consideration for these transactions? In short, should the Commission permit the sale of LPFM stations? If so, should the Commission establish a holding period during which a station may not be sold at all, or may not be sold for more than the licensee's legitimate and prudent expenses? The Commission seeks comment below on whether to permanently restrict eligibility for LPFM authorizations to local entities and/or permanently prohibit multiple ownership of LPFM stations and how any actions in that regard should affect assignments and transfers.

11. Finally, assuming that the Commission amends the rules to permit transfer and/or assignment of LPFM authorizations, what procedures should be implemented to ensure the integrity of the process and the promotion of local service? Can general guidelines be established for the transfer of control or assignment of LPFM stations, or should the Commission delegate to the Media Bureau authority to review proposed transfers and assignments on a case-by-case basis? In particular, the Commission seeks comment on the process by which LPFM permittees and licensees may request approval for or report transfers of control. For LPFM licensees with a traditional corporate organizational structure, should the Commission apply the rules governing transfers of control of stock corporations? (With respect to traditional corporations, the Commission has developed general guidelines for determining where control resides, what constitutes a transfer of control, and how permittees and licensees may seek approval of such transfers). Given the non-profit nature of LPFM licensees, it is likely that many LPFM authorizations are held by non-stock corporations. The Commission has never formally adopted a policy setting forth a clear standard for transfers of control by non-stock corporations. In 1989, the Commission issued a notice of inquiry (*NOI*) regarding transfers of non-stock corporations, but the proceeding did not reach the rulemaking stage. Nevertheless, this notice of inquiry may provide helpful guidance in establishing the process by which the Commission will consider transfers of control of LPFM licensees, if such transfers are permitted. In the *NOI*, the Commission proposed that gradual changes in the governing boards of membership

organizations and governmental entities—even if the changes ultimately resulted in the replacement of a majority of the original board members—would not be considered transfers of control within the meaning of the Act, and would need to be reported only as appropriate on the licensee's ownership reports. This approach is consistent with the Commission's clarification regarding LPFM stations on reconsideration in 2000. Under the proposal in the *NOI*, a sudden change in a majority of the governing board of a membership organization or governmental entity would be considered an insubstantial transfer of control, subject to a modified "short form" consent procedure, including the filing of an FCC Form 316. The Commission seeks comment on whether to adopt a similar approach for changes in governing boards of LPFM licensees that are non-stock entities.

12. As discussed in detail above, the current rule prohibiting the transfer of LPFM stations is hampering the LPFM service by, for example, impeding routine transitions to new governing boards and limiting the ability of an LPFM licensee to assign its license to a new, jointly-controlled entity composed of several similarly focused organizations. Introducing some level of transferability to the LPFM service is critical, and delaying relief to LPFM stations until this proceeding is completed will not serve the public interest. Accordingly, the Commission delegates to the Media Bureau authority to consider, on a case-by-case basis, requests for waivers of 47 CFR 73.865. The Media Bureau may grant a waiver upon determination that such waiver will maximize spectrum use for low power FM operations. For example, waiver may be appropriate, assuming the public interest would be served, in certain circumstances: a sudden change in the majority of a governing board with no change in the organization's mission; development of a partnership or cooperative effort between local community groups, one of which is the licensee; and transfer to another local entity upon the inability of the current licensee to continue operations. This is not an exhaustive list of circumstances appropriate for waiver. However, until the Commission has further considered the transferability issue, waiver is not appropriate to permit the for-profit sale of an LPFM station to any entity or the transfer of an LPFM station to a non-local entity or an entity that owns another LPFM station.

#### B. Ownership and Eligibility Limitations

13. In the *Report and Order*, the Commission placed certain restrictions on LPFM ownership for the first two years after the opening of the first filing window for the LPFM service. First, for the first two years, no entity may own more than one LPFM station. After the first two years, one entity may own up to five stations nationally, and after the first three years, an entity may own up to ten stations nationwide. No entity may own more than 10 LPFM stations. Second, for the initial and subsequent windows opened within two years of the first filing window for LPFM, all LPFM applicants were required to be based within 10 miles of the station they sought to operate. Beginning two years after the first window for LPFM service opened, non-local applicants were eligible to apply for LPFM stations. UCC requests that the Commission permanently prohibit multiple ownership and either permanently restrict eligibility to local entities or extend the restriction for an additional period of time.

14. The Commission adopted these rules in order to foster diversity and to maximize the opportunities for applicants to obtain LPFM authorizations by disallowing any common ownership of LPFM stations during the start-up of the service. After the start-up phase was over, however, the Commission allowed the accumulation of additional stations where local applicants had not applied. The Commission stated in the *Report and Order* that, in addition to ensuring the fullest use of LPFM spectrum in the long term, this approach would balance the interests of local entities, whom the Commission expected to be the first entrants in the service, and national NCE entities, which the Commission anticipated would be interested in additional local outlets to increase their reach and achieve certain efficiencies of operation. Our intention was to make it more likely that local entities would operate this service, but to ensure that if no local entities came forward, the available spectrum would not go unused. On reconsideration, the Commission considered a request from UCC to extend the two-year time periods for the community-based requirement and the national cap, and concluded that the *Report and Order* struck an appropriate balance between the interests of local groups and the Commission's interest in ensuring that the LPFM service is used fully. Accordingly, the Commission declined to modify these rules at that time.

15. Now that more than two years has passed since the first set of LPFM filing windows, the Commission seeks comment regarding whether to amend the rules to reinstate for a period of time or make permanent the restrictions regarding local entities and multiple ownership. Would a continued limitation on multiple ownership foster diversity of programming and viewpoint or would it prevent LPFM licensees from achieving economies of scale? Does an eligibility restriction for local entities ensure local service for listeners or might it result in some communities losing LPFM service because no local entity seeks to provide it? Should the Commission permanently restrict eligibility to local entities but grant a waiver of such restriction in cases in which the applicant can demonstrate that no local entity has sought to provide service? The Commission further seeks comment regarding the relationship between any such restrictions and our consideration regarding transferability of LPFM stations. Specifically, if the Commission makes permanent the local entity eligibility restriction and the prohibition on multiple ownership, how should such limitations be considered in the context of applications for assignment or transfer of control of LPFM stations, discussed above?

#### C. Time-Sharing

16. In the *Report and Order*, the Commission established a point system for resolving mutual exclusivity among LPFM applicants. If mutually exclusive applicants have the same point total, any two or more of the tied applicants may propose to share use of the frequency by submitting a time-share proposal within 30 days of the release of a public notice announcing the tie. Such proposals are treated as amendments to the time-share proponents' applications and become part of the terms of the station's license. MAP asserts that because LPFM applicants have few resources, the 30-day deadline for the submission of a time-share proposal is too short. MAP has requested that the Commission extend the submission deadline to 90 days from the date a mutually exclusive group is announced. The Commission agrees that 30 days may not afford sufficient time for two or more small organizations to commence and complete negotiations and prepare a time-share proposal for the Commission's consideration. Accordingly, the Commission proposes to extend the period to 90 days and seeks comment on this proposal.

17. If a tie among mutually exclusive applications is not resolved through time-sharing, the tied applications are reviewed for acceptability and applicants with tied, grantable applications are eligible for equal, successive, non-renewable license terms of no less than one year each for a total combined term of eight years. In the *Report and Order*, although LP100 and LP10 licensees were provided with the same license terms and renewal expectancy as full-power FM radio stations, the Commission determined not to extend a renewal expectancy to licenses granted under these final tie-breaker procedures. The Commission now believes that the public interest would be better served by permitting the renewal of viable time-share arrangements, rather than subjecting operating stations to the uncertainty of window filing schedules and the risks of the LPFM comparative process. Accordingly, the Commission tentatively proposes to permit the renewal of licenses granted under involuntary time-sharing successive license term procedures. The Commission seeks comment on this proposal and the means of implementing such renewal expectancy. Should licenses be renewed in the same order as they are granted, *i.e.*, the sequence in which the parties file applications for licenses to cover their construction permits? Increased flexibility in transferability of LPFM licenses, combined with a renewal expectancy, may result in involuntary time-sharing licensees modifying their time-sharing arrangements prior to seeking renewal. The Commission seeks comment on how best to accommodate such developments in the renewal process.

#### Technical Rules

##### A. Construction Period

18. In the *Report and Order*, the Commission established an 18-month construction period for both LP10 and LP100 services. The Commission believed that most permittees would be able to and would have sufficient incentive to construct their low power stations in a much shorter time period than other broadcast permittees, given the relative technical simplicity of such stations. The Commission recognized, however, that zoning and permitting processes could, in some cases, delay construction. Accordingly, the Commission afforded permittees 18 months to construct, and stated that the 18-month deadline would be strictly enforced. The Commission is aware that some LPFM permittees have met the

construction deadline only with great difficulty, and that some have been unable to complete construction within the 18-month period. MAP has requested that the Commission waive or extend construction deadlines to avoid forfeit of LPFM construction permits for failure to construct. However, the Commission's current policy regarding all broadcast station construction deadlines is to extend such deadlines only in extremely limited situations that dictate the tolling of the construction period: Acts of God; administrative or judicial review of a construction permit grant; failure of a Commission-imposed condition precedent on the permit; or judicial action related to necessary local, state, or federal requirements. See 47 CFR 73.3598. Thus, although some LPFM permittees may face delays that are outside of their control, if such delays do not qualify under the tolling rules, a permittee must either complete construction or forfeit the permit. The policy regarding extension of broadcast station construction deadlines generally serves the public interest. The Commission recognizes, however, that the LPFM 18-month construction period may be too short in some cases. The Commission's intention is to maximize the likelihood that LPFM permittees will get on the air. Accordingly, the Commission proposes to extend the LPFM construction period to three years, the same period afforded other broadcast permittees, and seeks comment on this proposal.

19. Some LPFM construction permits are scheduled to expire in the near future, while the Commission is considering this issue, and other LPFM permittees with expired permits have requests pending before the Media Bureau for additional time to construct. The Commission adopts an interim waiver policy to increase the likelihood that these permittees will complete construction and commence operation. Although the rules do not generally permit waiver of broadcast construction permit deadlines, all other broadcast permittees are afforded 36 months to construct facilities. See 47 CFR 73.3598. Here, where the construction period is half as long, the Commission finds that waivers generally are warranted to extend outstanding LPFM construction permits to three years. Pending Commission action on this *FNPRM*, the Commission delegates to the Media Bureau the authority to consider requests for waiver of the construction period even if the requirements under the tolling rules are not met. The Media Bureau may determine that a waiver is appropriate if an LPFM permittee

demonstrates that it cannot complete construction within the allotted 18 months for reasons beyond its control, that it reasonably expects to be able to complete construction within the additional 18 months that the construction extension would provide, and that the public interest would be served by the extension.

##### B. Technical Amendments

20. In the *Order on Reconsideration* accompanying this *FNPRM*, the Commission amends 47 CFR 73.871 to permit greater flexibility for applicants to file minor amendments to relocate transmitter sites. However, the amended rule will continue to preclude time-sharing applicants from relocating the transmitter to a central location, unless such location falls within the new distance limits. UCC has requested that the Commission amend its rules to allow applicants that submit a time-share agreement to relocate the transmitter to a central location, provided one is available in the channel finder. The Commission agrees that increasing flexibility for time-sharing applicants to relocate the transmitter will facilitate time-share arrangements and expedite grant of LPFM licenses. Accordingly, the Commission proposes to permit applicants that submit a time-sharing proposal to file a minor amendment proposing to relocate the transmitter to a central location, notwithstanding the site relocation limits set forth in 47 CFR 73.871, and seeks comment on this proposal.

##### C. Interference Protection Requirements

21. As part of the overall plan to protect FM stations from interference from new LPFM stations, the *Report and Order* adopted minimum distance separation requirements for LPFM stations. The Commission concluded that minimum spacing rules would provide the most efficient means to process a large number of applications while ensuring the overall technical integrity of the FM service. Because FM translator and booster stations generally do not have specific class limitations, LPFM-FM translator separation requirements were determined by analyzing the 60 dBu contours of authorized translator stations and grouping them into three cohorts based on station power and height. The *Report and Order* also amended certain part 74 rules to require that FM translator and booster stations protect the 60 dBu contour of LP100 stations. On reconsideration, the Commission stated that the interference protections "place LPFM stations and FM translators on essentially equal footing" with respect

to protecting each other from interference. However, Commission policy treats translators as a secondary service and a “proper role of FM translators among aural services to the public is to provide secondary service to areas in which direct reception of signals from FM broadcast stations is unsatisfactory due to distance or intervening terrain obstructions.” The Commission declined on reconsideration to eliminate the protections afforded to LP100 stations because such modifications would have rendered LPFM stations secondary to translators.

22. LPFM advocates now request that the Commission reassess the relationship between FM translators and LPFM stations for licensing purposes. Prometheus argues that because NCE translators may be fed by satellite, *see* 47 CFR 74.1231(b), such translators often are used to retransmit distant signals, contrary to the intended purpose of the translator service to merely extend the reach of local stations. Prometheus contends that every new translator that does not expand the reach of a station originating local programming takes the place of a potential LPFM station that will originate local programming. In particular, Prometheus argues that the Commission’s March 2003 filing window for translator applications opened in major cities before a full LPFM filing window opened, thereby eliminating virtually all opportunities for new LPFM stations in top-25 markets. Prometheus also claims that translator applications are being filed not by members of local communities, but by non-local organizations applying for large numbers of translator licenses. To overcome the preclusive impact of the 2003 translator window, Prometheus requests that the Commission give locally controlled and operated LPFM stations priority over translators.

23. The Commission agrees that it is appropriate to reevaluate the current co-equal status of LPFM and FM translator stations as a result of the extraordinary volume of FM translator construction permit applications—more than 13,000—filed with the Commission during the March 2003 filing window. The Media Bureau’s Audio Division already has granted approximately 3,300 new station construction permit applications from the singleton filings, a number nearly equal to the total number of FM translator stations licensed and operating prior to the filing window. Approximately 8,000 applications remain on file. New LPFM station applications must protect each of these authorized facilities and pending

applications. Because LPFM and FM translator stations are licensed under fundamentally different technical rules, it is impossible to determine the precise extent to which the 2003 window-filed FM translator applications have impacted the potential licensing of new LPFM stations. In this regard, Prometheus’s contention that every new translator “takes the place” of a potential LPFM station is incorrect. Nonetheless, the Commission is confident that these filings have had a significant preclusive impact on future LPFM licensing opportunities based solely on application volume. This impact is of particular concern because the 2000–2001 national LPFM window filing process demonstrated that very few opportunities for LPFM stations remained in major markets at that time. Moreover, as Prometheus notes, many of the translator applications were filed by a relatively small number of non-local filers without any apparent connection to the communities specified in the applications.

24. On the other hand, “translator-based delivery of broadcast programming is an important objective,” and the Commission continues to support this objective. Some FM translators provide important aural services to unserved and underserved areas. Translators also are used to deliver syndicated national programming to well-served communities. The Commission’s rules impose strict ownership limits on commercial translator licensees, *see* 47 CFR 74.1232(d), and require the use of off-air signal delivery systems, *see* 47 CFR 74.1231(b), for both commercial and NCE translators operating in the non-reserved FM band. (The March 2003 window was limited to proposals for non-reserved band stations, none of which may rebroadcast signals delivered direct to the station via satellite; thus, the Commission finds misplaced Prometheus’s attempt to link the “problem” of the 2003 window to the satellite delivery rules). These rules generally prohibit a commercial FM station from using translators to expand service beyond its protected contour. In contrast, an NCE licensee may own and operate translators that reach listeners far beyond the service area of its co-owned primary station. Thus, many NCE licensees use FM translators to distribute programming throughout the country. Notwithstanding Prometheus’s complaint regarding non-local filers in the March 2003 translator window, this is not a recent development in the FM translator service.

25. In a notice of inquiry in the broadcast localism proceeding, the

Commission sought comment on how best to harmonize the licensing processes for FM translators and LPFM stations to enhance localism. *See* 19 FCC Rcd 12425. As the Commission asked, “[r]ecognizing that both LPFM stations and translators provide valuable service, what licensing rule changes should the Commission adopt to resolve competing demands by stations in these two services for the same limited spectrum?” The Commission seeks comment on whether and, if so, under what conditions LPFM applications should be treated as having “primary” status to prior-filed FM translator applications and authorized FM translator stations. Should all LPFM applications have primary status because LPFM stations are permitted to originate local programming? Should primary status be limited to LPFM applicants that pledge to originate locally at least eight hours of programming per day? Should the Commission provide “grandfathered” protection rights to certain classes of FM translators? Possible class designations include currently licensed and operating stations; stations licensed prior to the adoption of the *Report and Order*; currently authorized translator stations, including the construction permits issued to the 2003 window filers; and/or “fill-in” FM translators but not “other area” translator stations. Should the Commission dismiss all pending applications for new FM translator stations and make potential refilings subject to the resolution of the licensing issues raised in this proceeding? Should the Commission dismiss the pending mutually exclusive FM translator applications? As an interim measure while considering these important questions, the Commission directs the Media Bureau to stop granting FM translator new station construction permits for which short-form applications were filed in the 2003 window. This freeze is effective upon the release of this *FNPRM* and shall remain in effect for six months.

26. In addition to requesting that the Commission grant LPFM stations priority with respect to FM translators, some LPFM advocates have requested that the Commission adopt more flexible technical licensing rules for the LPFM service as a partial remedy to the preclusive impact of the FM translator filings and limited LPFM spectrum availability in many large and medium-sized communities. Specifically, they have requested that LPFM applicants be permitted to utilize the contour overlap interference protection approach, rather than mileage separations. Adoption of a

contour overlap approach is statutorily barred at this time. Congress has mandated the use of a distance separation methodology to protect FM stations from LPFM station interference by directing the Commission to prescribe co-, first-, second-, and third-adjacent channel "minimum distance separations" for LPFM stations. Thus, the Commission may not use the fundamentally different contour methodology to license LPFM stations.

27. Even if the Commission were not statutorily prohibited from adopting a contour approach, significant policy considerations weigh in favor of continuing to license LPFM stations in accordance with the minimum distance separation methodology adopted in the *Report and Order*. This protection scheme is modeled on the certain "go-no go" predicted interference licensing methodology utilized for commercial FM stations. Although this methodology is more restrictive than the FM translator contour methodology, implementation of LPFM minimum distance separation requirements has proven to be simple and reliable, and therefore appropriate for the LPFM service. Because adoption of a contour methodology would require the preparation of complex and costly engineering exhibits, such approach would inevitably result in higher application error rates, extended processing time frames, and licensing delays. The Media Bureau has processed over 3000 applications from the first LPFM window. At this point, it is abundantly clear that many LPFM applicants had significant problems successfully preparing basic technical showings, completing simplified application forms, and responding to staff requests for required amendments. Excluding the Congressionally mandated dismissals of applications that failed to protect full service stations operating on third-adjacent channels, the staff dismissed approximately one-third of all applications for basic technical and legal defects. The Commission believes that the more complex contour methodology would create even more processing problems. In addition, the choice of a distance separation methodology was critically important in the Audio Division's development of the extremely accessible and successful LPFM channel finder tool utility.

28. An equally important policy consideration is that an integral part of the more flexible translator rules, 47 CFR 74.1203(a), would be wholly inappropriate for the LPFM service. Under this rule, an FM translator may not cause any actual interference to any

authorized broadcast station. (In contrast, an LPFM station may continue to operate when it would cause interference within the 60 dBu contour, but not 70 dBu contour, of a full service FM station; in addition, if an LPFM station is predicted to cause interference within a full service station's 70 dBu contour, it may continue to operate if it can show that actual interference would be unlikely). This rule is a necessary complement to the more flexible translator contour rule, essentially shifting to translator applicants, permittees, and licensees the risk that a translator must go off the air if interference cannot be eliminated. The 47 CFR 73.1203(a) interference complaint procedure regularly results in the cancellation of FM translator authorizations by the Media Bureau. The risks associated with a rule prohibiting any interference, such as the rule applicable to translators, far outweigh the potential benefit of additional LPFM licensing opportunities that use of the contour method might afford. The Commission believes that it would be inappropriate to expose community organizations with limited funds and little technical and legal sophistication to this kind of uncertainty, particularly given the effort invested by organization members, station management, and numerous volunteers. Given the high level of uncertainty associated with the more flexible translator allocation scheme, adoption of this approach for LPFM seems ill-advised in light of the interest expressed by many LPFM operators for greater "primary" status and for greater protection against "encroachments" from new full power stations and facility modifications by existing stations.

#### D. Protection From Subsequently Authorized Full Service FM Stations

29. Full-service FM stations, including subsequently authorized new stations, facility modifications, and upgrades, are not required to protect facilities specified in LPFM applications or authorizations. In order to provide a measure of stability to operating LPFM stations, however, the Commission concluded in the *Report and Order* that an LPFM station generally may continue to operate even if it is predicted to cause interference within the protected service contour of a subsequently authorized FM service, including new stations and facilities modifications or upgrades of existing stations. Under 47 CFR 73.809, LPFM stations are responsible for resolving all allegations of actual interference to the reception of a co-channel or first-, second-, or third-

adjacent channel full service station within the full service station's 70 dBu contour. This rule requires an LPFM station to cease operations if the LPFM station cannot demonstrate that interference is unlikely to occur.

30. Although to date only one LPFM station has been forced off the air pursuant to this procedure, operating LPFM stations have expressed concerns about the potential impact of "encroaching" full-service stations. MAP has requested that the Commission adopt a "processing policy" that would permit the denial of a full service FM station's modification application if "grant of the application will deny a local community content by reducing the coverage area available to LPFM stations." Such an ad hoc processing policy would afford any degree of certainty to operating LPFM stations. Moreover, the Commission disagrees with the basic thrust of this proposal, which effectively would provide primary status to LPFM stations with respect to subsequently filed applications for new or modified full service station facilities. As stated in the *Report and Order*, "[w]e do not believe that an LPFM station should be given an interference protection right that would prevent a full-service station from seeking to modify its transmission facilities or upgrade to a higher service class. Nor should LPFM stations foreclose opportunities to seek new full-service radio stations." It would be useful, however, to consider whether to limit the 47 CFR 73.809 interference procedures to situations involving co- and first-adjacent channel predicted interference, where the predicted interference areas are substantially greater than for second- and third-adjacent channel interference. Although the effective service area of an LPFM station could be diminished as a result of a second- or third-adjacent channel full service station "move-in," the predicted interference area to the full service station would be limited to a small area in the immediate vicinity of the LPFM station transmitter site. In these circumstances, the public interest may favor continued LPFM second- and third-adjacent channel operations over a subsequently authorized upgrade or new full service station.

31. The Commission seeks comment on whether to amend 47 CFR 73.809. Should an LPFM station be permitted to continue to operate even when interference is predicted to occur within the 70 dBu contour of an "encroaching" second- or third-adjacent channel full service station? Should an LPFM station be permitted to remain on the air if the area of predicted interference does not



receive service from the full service station prior to the grant of a construction permit for a new station or facilities modification of an existing station? Should the LPFM station be permitted to remain on the air if the full service station's community of license would not be subject to predicted interference? It is always the case that an "encroachment" issue involves the licensing of a subsequently filed full service station application. As such, would an amendment to 47 CFR 73.809 be consistent with Congress's directive barring the reduction of third-adjacent channel distance separations for "low-power FM radio stations"?

#### *Filing Windows*

32. The Commission has not announced any upcoming filing windows for new or major change LPFM applications. MAP requests that the Commission establish "regular" filing windows for new LPFM stations. Currently, all licensable aural services use some form of a window filing process for new stations and for major modifications to authorized stations. As a general matter, the Commission agrees that windows should be scheduled at reasonable intervals for each of the aural services. However, it would be premature to schedule a window for the filing of LPFM new station and major modification applications at this time. First, it would be inefficient to open a window prior to the Commission completing consideration of the FM translator and other licensing issues raised in this *FNPRM*. Second, the Media Bureau has recently begun the process of awarding construction permits under the new NCE full-service comparative criteria. Following the resolution of the approximately 170 "closed" NCE groups (consisting of approximately 870 applications), the Commission will open a national filing window for new NCE stations and for major changes in authorized NCE facilities, the first such filing opportunity since April 21, 2000. Although the Commission recognizes the critically valuable service that LPFM stations can play in serving their communities, this NCE full service licensing process must remain a higher priority at this time. The Commission intends to proceed in a manner that takes into account the limited staff resources that can be devoted to processing applications for service in the FM band. This approach will, in the long run, permit the more prompt processing of applications filed in the next LPFM window, a goal endorsed by numerous LPFM advocates.

### **III. Procedural Matters**

#### *Regulatory Flexibility Act*

33. As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this *FNPRM*. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *FNPRM*, and they should have a separate and distinct heading designating them as responses to the IRFA. The Commission will send a copy of the *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). See 5 U.S.C. 603(a).

#### *Need for, and Objectives of, the Second Order on Reconsideration*

34. Since the LPFM service was created in 2000, the experiences of LPFM applicants, permittees, and licensees have demonstrated that the Commission's LPFM rules may need some adjustment in order to ensure that the Commission maximizes the value of the LPFM service without harming the interests of full-power FM stations or other Commission licensees. In this *FNPRM*, the Commission seeks comment on a number of technical and ownership issues related to LPFM. The Commission believes this proceeding will result in an improved LPFM service, while maintaining the integrity of the FM service.

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

35. 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 proposed rules, if adopted. See 5 U.S.C. 603(b)(3). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small government jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the 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.

36. The Small Business Administration (SBA) defines a radio broadcasting station that has \$5 million or less in annual receipts as a small

business. See 13 CFR 121.201. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. The 1992 Census indicates that 96 percent (5,861 of 6,127) of radio station establishments produced less than \$5 million in revenue in 1992.

37. The Commission's LPFM rules apply to a new category of FM radio broadcasting service. As of the date of release of this *FNPRM*, the Commission's records indicate that more than 1,175 LPFM construction permits have been granted. Of these 1,175 permits, approximately 590 stations are on the air, serving mostly mid-sized and smaller markets. It is not known how many entities ultimately may seek to obtain low power radio licenses. Nor does the Commission know how many of these entities will be small entities. The Commission expects, however, that due to the small size of low power FM stations, small entities would generally have a greater interest than large ones in acquiring them.

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

38. The *FNPRM* seeks comment on a number of technical and ownership issues related to LPFM. The potential reporting requirements that could be adopted include: (i) applications to be filed to seek authority for assignment of an LPFM station or transfer of control of an LPFM permittee or licensee; (ii) waiver requests for assignment of an LPFM station or transfer of control of an LPFM permittee or licensee, pending the Commission's consideration of the issues raised in the *FNPRM*; (iii) forms to be filed by new applicants or proposed assignees or transferees to demonstrate local eligibility and/or compliance with a multiple ownership prohibition; (iv) renewal applications to be filed by involuntary time-share licensees; (v) waiver requests for extension of an LPFM construction period; and (vi) applications to be filed seeking approval to centrally relocate a transmitter site in the case of a voluntary time share proposal.

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

39. 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. See 5 U.S.C. 603(c)(1)–(c)(4).

40. The LPFM service has created and will continue to create significant opportunities for new small businesses. In addition, the Commission generally has taken steps to minimize the impact on existing small broadcasters. To the extent that rules proposed in the *FNPRM* would impose any burdens on small entities, the Commission believes that the resulting impact on small entities would be favorable because the proposed rules, if adopted, would expand opportunities for LPFM applicants, permittees, and licensees to commence broadcasting and stay on the air.

41. The Commission will send a copy of this *FNPRM* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

#### *Ex Parte Rules*

42. Permit-But-Disclose. This proceeding will be treated as a “permit-but-disclose” proceeding subject to the “permit-but-disclose” requirements under 47 CFR 1.1206(b). *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one-or two-sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in 47 CFR 1.1206(b).

#### *Filing Requirements*

43. Comments and Replies. Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before 30 days after publication in the **Federal Register** and reply comments on or before 45 days after publication in the **Federal Register**. Comments may be filed using: (1) The Commission’s Electronic Comment Filing System (ECFS), (2) the

Federal Government’s eRulemaking Portal, or (3) by filing paper copies.

44. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message: “get form.” A sample form and directions will be sent in response.

45. Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission’s contractor will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.

46. In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork

Reduction Act information collection requirements contained herein should be submitted to Cathy Williams Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov), and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, via Internet to [Kristy.L.LaLonde@omb.eop.gov](mailto:Kristy.L.LaLonde@omb.eop.gov), or via fax at 202–395–5167.

47. Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.

48. Accessibility Information. To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the FCC’s Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov>.

#### List of Subjects in 47 CFR Part 73

Radio.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

#### Proposed Rule Changes

For the reasons discussed in the preamble, the FCC proposes to amend 47 CFR part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

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

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

2. Section 73.855 is revised to read as follows:

#### § 73.855 Ownership limits.

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

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

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

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

3. Section 73.865 is revised to read as follows:

**§ 73.865 Assignment and transfer of LPFM authorizations.**

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

4. Section 73.870 is amended by revising paragraph (a) to read as follows:

**§ 73.870 Processing of LPFM broadcast station applications.**

(a) Except as provided in § 73.872(c), a minor change for an LP100 station authorized under this subpart is limited to transmitter site relocations of 5.6 kilometers or less. Except as provided in § 73.872(c), a minor change for an LP10 station authorized under this subpart is limited to transmitter site relocations of 3.2 kilometers or less. Minor changes of LPFM stations may include changes in frequency to adjacent or IF frequencies or, upon a technical showing of reduced interference, to any frequency.

5. Section 73.871 is amended by revising paragraph (c) to read as follows:

**§ 73.871 Amendment of LPFM broadcast applications.**

(c) Only minor amendments to new and major change applications will be accepted after the close of the pertinent filing window. Subject to the provisions of this section, such amendments may be filed as a matter of right by the date specified in the FCC's Public Notice announcing the acceptance of such applications. For the purposes of this section, and except as provided in § 73.872(c), minor amendments are limited to:

(1) Site relocations of 3.2 kilometers or less for LP10 stations;

(2) Site relocations of 5.6 kilometers or less for LP100 stations;

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

(4) Other changes in general and/or legal information.

6. Section 73.872 is amended by revising paragraphs (c) introductory text, (c)(1), and (d)(1) to read as follows:

**§ 73.872 Selection procedure for mutually exclusive LPFM applications.**

(c) *Voluntary time-sharing.* If mutually exclusive applications have the same point total, any two or more of the tied applicants may propose to share use of the frequency by submitting, within 90 days of the release of a public notice announcing the tie, a time-share proposal. Such proposals shall be treated as amendments to the time-share proponents' applications and shall become part of the terms of the station license. Such proposals may include amendments to the applications proposing to relocate the transmitter to a central location between the proposed transmitter sites, notwithstanding the site relocation limits set forth in §§ 73.870 and 73.871. Where such proposals include all of the tied applications, all of the tied applications will be treated as tentative selectees; otherwise, time-share proponents' points will be aggregated to determine the tentative selectees.

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

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

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

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

(iv) If the time-share proponents propose to relocate the transmitter site to a central location beyond the site relocation limits set forth in § 73.871, the proposal must demonstrate that the proposed transmitter site is centrally located.

(d) \* \* \*

(1) If a tie among mutually exclusive applications is not resolved through time-sharing in accordance with paragraph (c) of this section, the tied applications will be reviewed for acceptability and applicants with tied, grantable applications will be eligible for equal, successive license terms of no less than one year each for a total combined term of eight years, in accordance with § 73.873. Eligible applications will be granted simultaneously, and the sequence of the applicants' license terms will be determined by the sequence in which they file applications for licenses to cover their construction permits based on the day of filing, except that eligible applicants proposing same-site facilities

will be required, within 30 days of written notification by Commission staff, to submit a written settlement agreement as to construction and license term sequence. Failure to submit such an agreement will result in the dismissal of the applications proposing same-site facilities and the grant of the remaining, eligible applications.

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

**§ 73.3598 Period of construction.**

(a) Each original construction permit for the construction of a new TV, AM, FM, or International Broadcast; low power TV; TV translator; TV booster; FM translator; FM booster; or LPFM station, or to make changes in such existing stations, shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed.

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018-AT88**

**Endangered and Threatened Wildlife and Plants; Reopening of the Comment Period on Proposed Designation of Critical Habitat for the Southwestern Willow Flycatcher**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of public comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period for the proposal to designate critical habitat for the southwestern willow flycatcher (*Empidonax traillii extimus*) to allow all interested parties to comment on the proposed critical habitat designation under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*); the draft economic analysis; draft environmental assessment; and the associated required determinations discussed below.

Comments previously submitted on the October 12, 2004, proposed rule (69 FR 60705), and the December 13, 2004 (69 FR 72161), March 31, 2005 (70 FR