

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

53. None.

**Ordering Clauses**

54. Pursuant to Sections 4(i), 301, 302, 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f) and 303(r), this *Notice of Proposed Rule Making* is adopted.

55. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

[FR Doc. E9-11066 Filed 5-12-09; 8:45 am]

**BILLING CODE 6712-01-P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 73 and 74**

[**MB Docket No. 09-52; FCC 09-30**]

**Policies To Promote Rural Radio Service and To Streamline Allotment and Assignment Procedures**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** In this document, the Commission adopted a Notice of Proposed Rulemaking (NPRM), seeking comment on a number of procedures designed to streamline the process of allocating new FM channels and AM frequency assignments, with an emphasis on encouraging policies that foster new and modified channel assignments favoring smaller communities, rural areas, and Native American and Alaska Native tribal areas. The Commission proposes a number of rule and procedural changes addressing channel assignment and allotment priorities under Section 307(b) of the Communications Act of 1934, as amended, including proposing a new priority for Native American and Alaska Native tribes and their members seeking to provide new radio service to tribal lands. The Commission also proposes a number of smaller but significant procedural changes designed to make the allotment and assignment of radio channels more efficient.

**DATES:** Comments may be filed no later than July 13, 2009 and reply comments may be filed no later than August 11, 2009. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB) and other interested parties on or before July 13, 2009.

**ADDRESSES:** You may submit comments, identified by MB Docket No. 09-52, 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.

- *E-mail:* [ecfs@fcc.gov](mailto:ecfs@fcc.gov). Include the docket number in the subject line of the message. See the **SUPPLEMENTARY INFORMATION** section of this document for detailed information on how to submit comments by e-mail.

- *Mail:* 445 12th Street, SW., Washington, DC 20554.

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

**FOR FURTHER INFORMATION CONTACT:**

Peter Doyle, Chief, Media Bureau, Audio Division, (202) 418-2700; Thomas Nessinger, Attorney-Advisor, Media Bureau, Audio Division, (202) 418-2700.

For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams at 202-418-2918, or via the Internet at [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), FCC 09-30, adopted April 7, 2009, and released April 20, 2009.

**Initial Paperwork Reduction Act of 1995 Analysis**

This NPRM 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), Public Law 104-13, 109 Stat 163 (1995). 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 NPRM, as required by the PRA. Public and agency comments on the PRA proposed information collection requirements are due July 13, 2009. 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, Public Law 107-198, 116 Stat 729 (2002), see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

The following existing information collection requirements would be modified if the proposed rules contained in the NPRM are adopted.

*OMB Control Number:* 3060-0996.

*Title:* AM Auction Section 307(b) Submissions.

*Form Number:* Not applicable.

*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.

*Estimated Number of Respondents and Responses:* 153 respondents; 153 responses.

*Estimated Time per Response:* 0.5 hours to 3 hours.

*Frequency of Response:* On occasion reporting requirement.

*Estimated Total Annual Burden:* 354 hours.

*Estimated Total Annual Costs:* \$43,050.00.

*Obligation To Respond:* Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i), 307(b) and 309 of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

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

*Needs and Uses:* Applicants in AM broadcast filing windows whose

applications are mutually exclusive with other filing window applications must submit information addressing how their applications comport with the fair, efficient, and equitable distribution of radio service pursuant to section 307(b) of the Communications Act of 1934, as amended (47 U.S.C. 307(b)) (“Section 307(b”). In the Notice of Proposed Rule Making in Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures, MB Docket No. 09–52, FCC 09–30, the Commission proposes allowing applicants to calculate a Service Value Index (“SVI”), which FM commercial allotment proponents may already submit, as a way of demonstrating that their AM proposal merits a dispositive Section 307(b) preference, or to demonstrate that an AM proposal would provide third, fourth, or fifth reception service to a significant population, both under the “other public interest matters” priority in a Section 307(b) analysis. The Commission also proposes adding a new Section 307(b) priority that would apply only to Native American and Alaska Native tribes and tribal consortia and their members, proposing to serve tribal lands. The priority is only available when all of the following conditions are met: (1) The applicant is either a federally recognized Tribe or tribal consortium, a member of a Tribe, or an entity more than 70 percent owned or controlled by members of a Tribe or Tribes; (2) at least 50 percent of the daytime principal community contour of the proposed facilities will cover tribal lands, in addition to meeting all other Commission technical standards; and (3) the applicant must propose at least first local transmission service to the proposed community of license, which must be located on tribal lands. Applicants claiming Section 307(b) preferences using these factors will submit information to substantiate their claims.

*OMB Control Number:* 3060–0029.

*Title:* Application for TV Broadcast Station License, Form FCC 302–TV; Application for DTV Broadcast Station License, FCC Form 302–DTV, Application for Construction Permit for Reserved Channel Noncommercial Educational Broadcast Station, FCC Form 340; Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station, FCC Form 349; Section 47 CFR 73.626.

*Form Number:* FCC Forms 302–TV, 302–DTV, 340, and 349.

*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.

*Estimated Number of Respondents and Responses:* 4,480 respondents; 6,480 responses.

*Estimated Time per Response:* 1 hour to 5 hours.

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

*Estimated Total Annual Burden:* 15,725 hours.

*Estimated Total Annual Costs:* \$22,660,540.

*Obligation To Respond:* Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

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

*Needs and Uses:* FCC Form 340 and the applicable exhibits/explanations are required to be filed when applying for consent for a new reserved band noncommercial educational (“NCE”) FM broadcast station construction permit. On April 8, 2009, the Commission adopted a Notice of Proposed Rule Making in the Matter of Policies to Promote Rural Radio Service and to Streamline Allotment, and Assignment Policies, MB Docket No. 09–52, FCC 09–30 (released Apr. 20, 2009). In this Notice of Proposed Rule Making, the Commission proposes a number of changes to its policies and procedures in comparing mutually exclusive applications pursuant to Section 307(b). Among those changes is a new priority directed toward federally recognized Native American and Alaska Native tribes and tribal consortia. Under the new priority, a Section 307(b) priority would apply to an applicant meeting all of the following criteria: (1) The applicant is either a federally recognized Tribe or tribal consortium, a member of a Tribe, or an entity more than 70 percent owned or controlled by members of a Tribe or Tribes; (2) at least 50 percent of the daytime principal community contour of the proposed facilities covers tribal lands, in addition to meeting all other Commission technical standards; and (3) the applicant proposes at least first local transmission service to the proposed community of license, which must be located on tribal lands. For tribal applicants seeking an NCE FM station in the reserved band, the proposed tribal priority would apply, if applicable,

before the fair distribution analysis currently used by noncommercial educational applicants. Comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, 445 12th St., SW., Room 1–C823, Washington, DC 20554, or via the Internet at [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov) or [PRA@fcc.gov](mailto:PRA@fcc.gov); and also to Nicholas A. Fraser of the Office of Management and Budget (OMB), via Internet at [Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov) or via fax at (202) 395–5167.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the Web page called “Currently Under Review,” (3) click on the downward-pointing arrow in the “Select Agency” box below the “Currently Under Review” heading, (4) select “Federal Communications Commission” from the list of agencies presented in the “Select Agency” box, (5) click the “Submit” button to the right of the “Select Agency” box, (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.”

### Summary of Notice of Proposed Rule Making

1. In the ten years that the Commission has been awarding commercial broadcast station construction permits by means of competitive bidding procedures, it has noted some shortcomings in its procedures for the allotment and assignment of broadcast frequencies. The Commission believes it appropriate to consider rule and procedural changes that would better encourage the fair distribution of broadcast licenses, particularly in smaller communities, rural areas, and tribal areas, afford greater opportunities to participate in competitive bidding, promote the filing of technically sound applications, and deter speculation in broadcast permit applications. The Commission also proposes to modify the noncommercial educational (“NCE”) fair distribution comparative criterion by establishing a tribal priority.

2. In the NPRM, first, the Commission seeks comment on a proposal to modify the way in which proposals for new FM commercial allotments and AM channel assignments are evaluated for the fair, efficient, and equitable distribution of radio service under Section 307(b).

Currently, the Section 307(b) analysis is performed using four priorities established by the Commission in 1982. These are (1) Provision of first fulltime aural (reception) service; (2) provision of second fulltime aural (reception) service; (3) provision of first local transmission service; and (4) other public interest matters. Priorities (2) and (3) are co-equal. The Commission observes that Priority (1) and (2) claims are rare, and that its current procedures in this regard tend to favor large cities and Urbanized Areas that already receive abundant radio broadcast service. The NPRM tentatively concludes that in most instances, Priority (3) preferences should not be awarded where the proposed new station would or could place a principal community signal over the majority of an Urbanized Area. In addition, the Commission tentatively concludes that dispositive Section 307(b) preferences under Priority (4) should only be awarded to an AM new station or major change applicant in rare and exceptional circumstances, and that a dispositive preference would not be appropriate in other Priority (4) AM application cases. The Commission also tentatively concludes that that any new station proposal that would be located within an Urbanized Area or would place a daytime principal community signal over 50 percent or more of an Urbanized Area, or that could be modified to provide such coverage based on existing spectrum availability or rule-compliant power or pattern modifications from a site covering the same proposed community of license, should be deemed a proposal to serve the Urbanized Area rather than the proposed community. In such an instance, absent effective rebuttal of the presumption, the Commission would not award a Priority (3) dispositive preference. The Commission seeks comment on this proposal, and specifically as to any factors that should serve to rebut the presumption that an applicant proposes to serve the Urbanized Area rather than the proposed community of license. Also, given the proposed shift in emphasis to Urbanized Area coverage as the principal factor in determining whether an applicant may claim a Priority (3) preference, the Commission seeks comment on whether there remains any viability in the eight-factor analysis of independence vs. interdependence of a community with an Urbanized Area, first proposed in *Faye and Richard Tuck*, 3 FCC Rcd 5374, 5376 (1988).

3. The NPRM also proposes certain changes in the Priority (4) "other public

interest matters" analysis. As a threshold matter, the Commission seeks comment as to whether, in the AM licensing process, it should cease awarding dispositive Section 307(b) preferences based on a Priority (4) analysis when comparing new AM proposals. If an applicant cannot qualify for a dispositive Section 307(b) preference under Priorities (1)–(3), should the staff then determine that no Section 307(b) preference is appropriate, and the mutually exclusive engineering proposals proceed to competitive bidding procedures? In the alternative, the Commission asks whether it should permit dispositive Priority (4) findings in very narrowly defined circumstances with respect to such mutually exclusive applications. For example, should Priority (4) analysis be confined to situations in which either existing transmission or reception services to the proposed community or service area fall below a service level "floor?" The Commission tentatively concludes that where 75 percent or more of the population within a proposed new station's principal community contour (5 mV/m) already receives more than five aural services, and where the proposed community of license already has more than five transmission services, no dispositive Section 307(b) preference should be awarded to that applicant. If an applicant's proposal falls below these floors, it would then proceed to a Section 307(b) analysis that would differ from current practice. The Commission seeks comment on these proposals, and in particular on the proposed 75 percent threshold. The Commission further seeks comment on ways in which a Priority (4) analysis in the FM allocations process could or should be modified to de-emphasize service population totals, to alleviate the problem of unduly advantaging proposals for new FM allotments in or near large communities. The Commission seeks comment as to whether there are other factors that would more accurately reflect the need for new FM service.

4. The Commission further seeks comment on other modifications to a Priority (4) Section 307(b) analysis that would serve to level the playing field between proposals to serve larger and more populous communities and those to serve smaller communities and rural areas. The Commission has modified the comparison of raw population totals, in the FM allocations context, by permitting the computation of a "service value index." Essentially, the service value index ("SVI") is a method of discounting raw population totals based

on the number of services received, enabling the proponent to claim that its application would better serve the public interest by serving underserved areas. The SVI was first proposed in *Greenup, Kentucky and Athens, Ohio*, 6 FCC Rcd 1493, 1495 (1991). SVI is computed by dividing the proposed service area into "pockets" of population based on the number of aural services received in each pocket. The population within each pocket is divided by the number of aural services received, and the results for each pocket are then added together. In the FM allocations context, the applicant proposing the higher SVI receives an allotment. The Commission seeks comment on whether this method could prove useful in comparing proposals for new AM service as well. The Commission notes that, in *Greenup*, a difference in SVI of 18.8 percent was found to be dispositive. Because a comparison of competing FM allotment proposals must arrive at a clear winner, however, the Commission proposes that a substantially higher SVI differential, of at least 50 percent, should be required before a dispositive preference should be awarded to an AM applicant proposing new service. If AM applications do not demonstrate a sufficiently large SVI differential, no dispositive 307(b) preference would be awarded on this basis and the mutual exclusivity between competing applications would then be resolved through competitive bidding. The Commission seeks comment on this proposal, including comments on the magnitude of the dispositive SVI differential, and on whether using such a method to allow more applications to proceed to competitive bidding serves the public interest. Alternately, the Commission seeks comment on whether, when evaluating mutually exclusive AM proposals, it should only engage in a Priority (4) analysis when both (a) the proposed community does not meet a specified transmission and/or reception "floor," and (b) there is at least a 50 percent differential in SVI between or among competing communities.

5. The Commission also seeks comment on a Section 307(b) priority for AM auction and FM allotment proposals that would provide new third, fourth, or fifth reception service to a substantial number of listeners. The Commission seeks comment on whether to establish an "underserved listeners" priority—co-equal to Priorities (2) and (3)—for proposals that would provide a third, fourth, or fifth aural reception service to a substantial portion of the

proposed service population. Should such a priority be limited to proposals that would provide such service to at least 15, 25, 35, or 50 percent of the proposed service population? Should such an “underserved listeners” priority outweigh a Priority (3) proposal only if the total number of underserved listeners exceeds the population of the community for which a first local service is proposed? The Commission invites comment on these alternatives, as well as the specifics of their application. For instance, commenters could suggest alternate metrics for defining underserved populations or rural areas. The Commission also seeks comments as to combinations of the alternatives referenced above, or other methods by which it could promote additional transmission services at smaller communities or those that serve as the population centers for rural areas. Finally, the Commission seeks comment on how the proposals stated above would affect small business entities, including those owned by minorities and women.

6. The Commission further proposes to modify the Section 307(b) standards applied to licensees and permittees seeking to change their community of license. In *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, 21 FCC Rcd 14212 (2006) (petitions for reconsideration pending), the Commission established procedures making a community of license change a minor modification to a station’s authorization. Included among those procedures was the requirement that the applicant demonstrate that the community of license change would constitute a preferential arrangement of allotments under Section 307(b) as compared to the existing allotment(s). The Section 307(b) standards applied in this context are those developed from FM Allocations proceedings, including the *Faye and Richard Tuck* test of independence/interdependence of a community proposed as receiving a first local transmission service, and an absolute bar against removing the sole local transmission service at a community. Experience has shown that some modifications to this procedure may be warranted, however, and that concerns regarding loss of radio service to rural and smaller communities should be addressed. Accordingly, the Commission proposes that a community of license change that creates “white” or “gray” areas (areas with no or only one reception service) should not be allowed under any circumstances. Given that

provision of first or second reception service are the first two Section 307(b) priorities, the Commission believes that such an absolute bar is necessary to ensure that the least well-served populations do not suffer further drops in the level of reception service. The Commission also proposes that the presumption of Urbanized Area service described in paragraph 2, above, should also be used in evaluating AM and FM applications to change existing stations’ communities of license, to ensure that applicants claiming preference under Priority (3) are not using the streamlined procedures as a way of relocating from smaller communities to large urbanized areas, under the guise of providing first local transmission service to a smaller community in or adjacent to an Urbanized Area. Thus, in evaluating a modification application to move a station to become a new community’s first local transmission service, the Commission proposes to treat such an application as proposing service to the Urbanized Area if the new facilities would be located in or would or could place a daytime principal community signal over 50 percent or more of an Urbanized Area. The Commission seeks comment on these proposals, and specifically on whether they would help restrict the migration of stations to metropolitan areas with larger audiences, and more effectively fulfill the Commission’s Section 307(b) mandate. The Commission further seeks comment on other criteria that should be considered in evaluating a proposed change of community of license or move of facilities, including possibly outweighing even a Priority (3) first local transmission service preference. To the extent that a proposed station move would deprive a significant population of its third, fourth, or fifth reception service, the Commission seeks comment on whether such a move should be presumed contrary to the public interest. For example, what should be considered a “significant population?” Should the loss of reception service pose an absolute bar to the proposed move-out, or should the magnitude of the increased level of service, or the size of the new community, be weighed in some fashion against the size of the population losing reception service? Should such a policy favoring preservation of service to underserved populations over new first local transmission service be limited to the move-out context only, or both move-outs and proposals for new service, as discussed above? The Commission likewise seeks comment as to whether removal of the second local

transmission service from a community, even to provide a first local service to a new community, should be prohibited. Alternatively, should removal of second local service not be an absolute bar, but rather be weighed against a proposed station move, and if so, how much weight should be accorded this factor? The Commission also seeks comment on the effect of any changes on station ownership by small businesses, including those owned by minorities and women.

7. The Commission also proposes a Section 307(b) priority that may be employed by Native American Tribes and Alaska Native Villages (collectively “Tribes”), their members, and entities owned and controlled by members of Tribes. As of the 2000 U.S. Census, there are more than 4.1 million Native Americans and Alaska Natives living in the United States. There are 563 federally recognized Tribes. At present, there are approximately 41 full-power noncommercial educational (“NCE”) FM radio stations in the United States licensed to federally recognized tribes or affiliated groups, with another 31 construction permits for full-power NCE FM stations having been granted to such Tribes. Several tribal groups have expressed concern about their ability to establish radio service to their people and tribal lands. The problem is most acute in the case of tribal lands that are near large Urbanized Areas, or where the suburbs of such Urbanized Areas have begun to encroach upon areas adjacent to tribal lands. In such instances, spectrum scarcity may limit the opportunities for new radio service. Further, while communities located on tribal lands may well qualify for first local transmission service priorities in a Section 307(b) analysis, obtaining such a priority hinges upon the absence of other proposals for first local transmission service in larger communities. It is well established that Tribes are inherently sovereign Nations, with the obligation to maintain peace and good order, improve their condition, establish school systems, and aid their people in their efforts to acquire the arts of civilized life within their jurisdictions. Moreover, the Commission, as an independent agency of the United States Government, has an historic federal trust relationship with Tribes, and a longstanding policy of promoting tribal self-sufficiency and economic development. The Commission therefore believes that it is in keeping with its policy toward and relationship with Tribes, as well as the public interest, to aid Tribes and tribal consortia in their efforts to provide

educational and other programming to their members residing on tribal lands, as well as to assist them in acquiring and operating commercial stations for purposes of business and commercial development.

8. Accordingly, the Commission tentatively concludes that it is in the public interest to provide federally recognized Tribes with a Section 307(b) priority in FM allotments, AM filing window applications, and NCE FM filing window applications. To qualify for the new priority, an applicant would have to demonstrate all of the following: (1) The applicant would have to be either a federally recognized Tribe or tribal consortium, a member of a Tribe, or be an entity more than 70 percent owned or controlled by members of a Tribe or Tribes; (2) at least 50 percent of the daytime principal community contour of the proposed facilities would have to cover tribal lands, in addition to meeting all other Commission technical standards; and (3) the applicant would have to propose at least first local transmission service to the proposed community of license, which would have to be located on tribal lands. The Commission proposes that such a tribal priority fit between the current Priority (1) and co-equal Priorities (2) and (3). In other words, the tribal priority would not take precedence over a proposal to provide first reception service to a greater than *de minimis* population, but would take precedence over the provision of second local reception service or, more importantly, over a proposal for first local transmission service. While this would place the proposed tribal priority very high in the Section 307(b) analysis, the Commission believes such placement would be justified due to the inherent sovereignty of Tribes and their obligations to their members on tribal lands, and the fact that the priority is specifically designed to facilitate those obligations by Tribes or tribal members. The proposed tribal priority would be applied only at the allotment stage of the commercial FM licensing procedures, as this is the only point at which a Section 307(b) analysis is currently conducted. It would be applied to commercial or NCE AM applications filed during an AM filing window, as part of the threshold Section 307(b) analysis. The tribal priority would be applied to applications filed in an NCE FM filing window as the first part of the fair distribution analysis, before application of the "first or second reserved channel NCE service" criterion set forth in Section 73.7002(b) of the Commission's Rules. 47 CFR 73.7002(b). NCE applicants also would be required

to meet all NCE eligibility and licensing requirements. Because the tribal priority would likely be dispositive in many situations, the Commission tentatively concludes that a holding period, commencing with the award of a construction permit until the completion of four years of on-air operation, should apply to any station or allotment awarded pursuant to the tribal priority. In the case of an AM or NCE FM station awarded to a tribal applicant, the holding period would prohibit any change in ownership that would lower the 70 percent tribal ownership threshold, change of community of license, or technical change that would cause less than 50 percent of the principal community contour to cover tribal lands. In the case of a commercial FM allotment, the restriction would apply only to any proposed change of community of license or technical change as described in the preceding sentence. While the Commission believes that the restriction in technical or community changes would serve to make such allotments more attractive to Tribal members and entities, even a non-Tribal owner that is awarded a permit would still be required to provide broadcast service primarily to tribal lands for four years.

9. The Commission seeks comment on the proposals and tentative conclusions set forth above. In particular, the Commission requests comment on the proposed compositional requirements and on the specific composition that should be required of applicant entities to claim the proposed tribal priority; on the percentage of the principal community contour that must serve tribal lands; on whether any other requirements should be imposed to qualify for the priority; on the length and parameters of the holding period proposed above; or on any other matters relating to the goal of providing Tribes with greater access to broadcast frequencies covering their lands. With regard to FM commercial allotments and applications in the non-reserved band, and given that the Commission has traditionally performed Section 307(b) analyses only at the FM commercial allotment stage, the Commission specifically seeks comment as to the effect, if any, of applying the tribal priority, particularly the compositional component, only at the allotment stage. Is the geographic component of the proposed tribal priority sufficient to limit interest in such allotments to tribal applicants, or is there a way to further prioritize tribal applicants within the existing Section 307(b) framework for commercial FM applications?

Alternately, should the compositional requirement in the allocations Section 307(b) analysis be eliminated, relying solely on the geographic component in the FM commercial context? The Commission also seeks comment on modifications to the tribal priority that could apply to Tribes that do not have tribal lands, or to Tribes seeking to provide service to significant tribal populations living in communities that are not, or are not primarily, located on tribal lands. Additionally, the Commission seeks comment on any statutory or constitutional issues raised by this proposal, particularly whether the Commission's discretion under Section 307(b), which mandates "such distribution of licenses \* \* \* among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same," is broad enough to establish such a priority, as well as whether the proposed priority, which as set forth above is premised on principles of tribal sovereignty and the federal trust responsibility, would be likely to be deemed a racial classification subject to strict judicial scrutiny.

10. Additionally, the Commission proposes a prohibition on downgrading any technical proposal that forms the basis of a construction permit award under a dispositive Section 307(b) priority. The Commission believes it is critical that the applicant not be allowed to downgrade such a proposal in a way that would serve a smaller population, or otherwise negate the factors that led to the award of a dispositive preference. To do so merely encourages "gaming" of the Section 307(b) process, leading applicants to promise more service in their applications than they plan to deliver, and can therefore undermine confidence in the fairness of procedures for awarding new construction permits. NCE FM applicants that receive a decisive preference for fair distribution of service are precluded from downgrading service to the area on which the preference is based for a period of four years of on-air operations. The Commission tentatively concludes that AM licensees or permittees receiving Section 307(b) preferences likewise should be required to provide service substantially as proposed in their short-form tech box submissions. The Commission seeks comment on this tentative conclusion, in particular on the amount of time such a licensee or permittee should be precluded from downgrading. Should it be four years, as with NCE FM applicants, or is some other period of time needed to deter such behavior?

11. Further, the Commission proposes a “technically eligible for auction processing at the time of filing” standard to be applied to all AM auction filing window “tech box” submissions. Currently, Commission staff only reviews these submissions to determine mutual exclusivity, and does not analyze them for acceptability or grantability. Although this auction processing rule was designed to reduce staff burdens by limiting comprehensive technical reviews only to singleton applications, recipients of dispositive Section 307(b) preferences, and auction winners, the Commission believes that it has instead contributed to the filing of patently defective applications, undermined the accuracy and reliability of its mutual exclusivity and Section 307(b) determinations, and frustrated the staff’s ability to manage the window filing process efficiently. Moreover, such defective applications preclude the filing of meritorious modification applications by existing facilities, which must protect the prior-filed defective applications. Thus, the Commission tentatively concludes that Section 73.3571(h)(1)(ii) of its Rules, 47 CFR 73.3571(h)(1)(ii), should be modified to require that applicants in future AM broadcast auctions must at the time of filing meet basic technical eligibility criteria, including community of license coverage (day and night), and protection of co- and adjacent-channel stations and prior-filed applications (day and night). The Commission also tentatively concludes that the Rules should be modified to prohibit the amendment of applications that, at time of filing, are technically ineligible to proceed with auction processing, and prohibit applicants that propose such technically ineligible applications from participating in the auction. This proposal would preclude attempts to amend or correct data submitted in Form 175 or the tech box, including proposals to change community of license before an applicant has been awarded a construction permit. The Commission invites comment on this proposal.

12. The Commission also proposes a number of smaller but significant rule and policy changes designed to streamline various allotment and assignment processes. One such proposed change is to codify the permissibility of non-universal settlements in mutually exclusive groups of AM filing window applicants. The broadcast auction anti-collusion rules apply generally upon the filing of a short-form application, and prohibit applicants from communicating with

each other. Section 73.5002(d) of the Commission’s Rules, 47 CFR 73.5002(d), provides applicants in certain mutually exclusive application groups a limited opportunity to resolve conflicts by means of technical amendment or settlement. This exception to the anti-collusion rules applies only to those groups that include either (1) At least one AM major modification; (2) at least one noncommercial educational application; or (3) applications for new stations in the secondary broadcast services. Currently, the rule neither prohibits the Commission from accepting non-universal technical amendments or settlement proposals—which reduce the number of applicants in a group but do not completely resolve the mutual exclusivities of that group—nor requires it to do so. The Commission tentatively concludes that the staff should be given delegated authority, at its discretion and where appropriate, to permit non-universal technical amendments and settlement proposals that make at least one application grantable. However, an applicant submitting a technical amendment pursuant to this policy must resolve all of its mutual exclusivities with respect to the other applications in the specified mutually exclusive group. If the applicant cannot resolve all of its own application’s mutual exclusivities, its amendment will not be accepted. The Commission invites comment on this tentative conclusion.

13. The Commission’s experience with AM filing windows has suggested that many AM applicants may be filing multiple proposals merely to maximize their chances of having some granted without auction, circumventing auction participation. However, such a practice increases the likelihood of mutually exclusive applications, leads to large and technically complex mutually exclusive groups, and as discussed in connection with the proposal to require pre-auction study of application acceptability, may impose undue burdens on Commission staff. Therefore, the Commission seeks comment on whether to give the Media Bureau and Wireless Telecommunications Bureau delegated authority to determine, in an AM auction filing window, whether there should be a limit on the number of AM applications that may be filed by individual applicants and, if so, the appropriate application cap. The Bureaus routinely announce application filing procedures by public notice, and could announce application caps by public notice as well, as has been done in previous secondary service filing

windows. Against the possibility that some applicants may seek to avoid cap limits by using affiliates or even sham entities, the Commission seeks comment on whether, under this proposal, it should apply Commission attribution standards to determine the number of filings submitted by any party. Should the Commission also adopt special attribution rules beyond those set forth in Note 2 to Section 73.3555 of the Commission’s Rules (47 CFR 73.3555)? The use of application caps could force applicants to focus on preferred proposals, deter speculation, and ease staff processing burdens, thereby facilitating more frequent filing windows, speedier processing of window-filed applications, and shorten the time between application filing and auction. On the other hand, a cap may restrict new entrants into markets and programming choices for listeners. The Commission seeks comment on whether allowing the Bureaus to impose application caps would be a useful mechanism to balance the competing interests in promoting new and expanded broadcast services and the statutory obligation to prevent abuses of Commission licensing procedures, including trafficking in new AM station construction permits. Finally, the Commission seeks comment on how application caps could impact small business entities.

14. The Commission’s Rules currently provide, without exception, that each winning bidder in a broadcast auction must submit an appropriate long-form application within thirty (30) days following the close of bidding. This lack of flexibility has proven to be problematic as when, for example, the long-form filing date falls on or near major holidays. The Commission tentatively concludes that Section 73.5005 of the Rules, 47 CFR 73.5005, should be modified to delegate authority to the Media Bureau and the Wireless Telecommunications Bureau to extend the filing deadline for the submission of long-form applications in broadcast auctions, as circumstances warrant. The Commission invites comment on this conclusion.

15. The Commission also proposes to prohibit the practice of “band hopping” by applicants for FM translator stations. Many parties filed for translators in the non-reserved FM band (Channels 221–300) during the March 2003 Auction No. 83 filing window. Despite the fact that the Commission is not accepting applications for new FM translator stations in the reserved band, a number of Auction No. 83 applicants have attempted to “hop” into the reserved band upon grant of their initial

construction permits by filing minor change applications that proposed changes to first-, second-, or third-adjacent channels, or intermediate frequency channels. Upon relocation to a channel in the reserved band, such FM translators would be able to operate under the less restrictive NCE rules, which permit the use of alternative methods of signal delivery, such as satellite and terrestrial microwave facilities. The filing of such band-hopping applications by FM translator stations prior to construction of their facilities wastes staff resources and is patently unfair to those potential applicants that have waited for the opening of a reserved band FM translator window. The same problem can arise with applicants in the next reserved band FM translator window attempting to “hop” into the non-reserved band, while those waiting for a new non-reserved band window are precluded from applying. The Commission tentatively concludes, therefore, that Section 74.1233 of the Commission’s Rules, 47 CFR 74.1233, should be modified to prohibit this practice. Specifically, the Commission proposes to require that applications to move into the reserved band from the non-reserved band, or to move into the non-reserved band from the reserved band, may only be filed by FM translator stations that have filed license applications or are licensed, and that have been operating for at least two years. The Commission also tentatively concludes that there should be a holding period for new FM translator permittees before they are allowed to “hop” from one band to the other, and that the holding period should be two years of on-air operation following the filing of a license application. The Commission solicits comment on these proposals, and as to the duration of the proposed holding period.

16. Two AM applications filed during the same filing window are considered mutually exclusive if either fails to fully protect the other as required by the Commission’s technical rules. In *Nelson Enterprises, Inc.*, 18 FCC Rcd 3414 (2003), the Commission held that the staff properly calculated predicted nighttime interference levels, pursuant to Section 73.182(k) of the Rules, 47 CFR 73.182(k), by considering interference caused to or received from other window-filed applications as well as to existing stations. It also rejected the contention that window-filed applications should not be considered mutually exclusive if they could be granted by processing them in a particular sequence and treating one

application as having been “first filed,” and therefore entitled to cut-off protection. The Commission tentatively concludes that it should modify Section 73.3571 of the Rules, 47 CFR 73.3571, to codify the *Nelson Enterprises, Inc.* decision, by explicitly providing that Section 73.182(k) interference standards are applicable in determining nighttime mutual exclusivity between applications to provide AM service that are filed in the same window. That is, two applications would be deemed to be mutually exclusive if either application would be subject to dismissal because it would enter the 25 percent limit of the other. It is anticipated that this rule change would promote the strict interference standard that the Commission has determined is necessary to revitalize the AM service. The Commission invites comment on this tentative conclusion.

17. The Commission further proposes to clarify two aspects of the new entrant bidding credit, which is afforded to auction applicants with attributable interests in few or no media of mass communication. First, under Section 73.5007(b) of the Commission’s Rules, 47 CFR 73.5007(b), a winning bidder is not eligible for the bidding credit if it, or any party with an attributable interest in the winning bidder, has an attributable interest in any existing mass media facility in the “same area” as the proposed new facility. The existing and proposed facilities are in the “same area” if the principal community contours of the two facilities would overlap. The Commission proposes to clarify that, for purposes of the new entrant bidding credit, the contour of a proposed new FM broadcast facility is defined by the maximum class facilities at the allotment site. Thus, for example, an applicant could not seek to avoid principal community contour overlap and, thereby, qualify for a credit, by specifying preferred site coordinates in its short-form application. Applying the same principle, a winning bidder found eligible for the new entrant bidding credit because there is no contour overlap between its existing facility and the proposed facility would not be required to reimburse the Commission if, in its long-form application, it were to employ a one-step upgrade to the proposed facility that would create an overlap with its existing station. Despite the overlap, there would be no diminishment to the applicant’s originally claimed bidding credit because the maximum class facilities at the original allotment site would control for purposes of the bidding credit. The Commission seeks comment on this

proposal. Second, to prevent unjust enrichment by parties that acquire broadcast permits through the use of the bidding credit, Section 73.5007(c) of the Commission’s Rules, 47 CFR 73.5007(c), requires that such parties must reimburse the government for all or part of the credit, plus interest, upon a subsequent assignment or transfer of control of the permit or license, if the proposed assignee or transferee is not eligible for the same bidding credit. This rule is routinely applied to assignment or transfer of control applications filed on FCC Forms 314 and 315, respectively. The Commission tentatively concludes that the analysis should apply to assignments or transfers of control that are considered *pro forma* in nature and may be filed on FCC Form 316. This is designed to eliminate confusion among applicants, because the rule as written does not distinguish between *pro forma* and non-*pro forma* assignments and transfers of control. The Commission seeks comment on this tentative conclusion.

18. The Commission also proposes to clarify that an applicant’s maximum new entrant bidding credit eligibility is established as of the short-form filing deadline for a given auction filing window, but may be reduced based on events occurring after filing the Form 175 short form application. This is especially true with regard to the post-filing acquisition of additional attributable interests in media of mass communication. Accordingly, the Commission proposes to amend Section 73.5007(a) of the Rules, 47 CFR 73.5007(a), to state unequivocally that the new entrant bidding credit eligibility set forth in an applicant’s FCC Form 175 application is the maximum eligibility for that auction, but that such bidding credit may be diminished based upon post-filing changes, and that such changes must be reported promptly. Under this proposal, final determinations regarding an applicant’s eligibility to hold a construction permit, including eligibility for the new entrant bidding credit, will continue to be made when the Commission is ready to grant the post-auction long-form construction permit application. In the event that an applicant’s eligibility for the new entrant bidding credit changes between the final payment deadline and the date on which the construction permit application is granted, the applicant would be required to make any additional payment prior to the issuance of the permit or license.

14. Section 73.313(e) of the Commission’s Rules, 47 CFR 73.313(e), states that alternate methods for predicting FM contours may be



employed in cases where the terrain in one or more directions from the antenna site “departs widely” from the average elevation used by the staff in predicting contours. The standard method measures the average terrain in a segment of a given radial from three to 16 kilometers from the antenna site, and assumes a terrain roughness factor of 50 meters, which is considered to be representative of average terrain in the United States. Often, applicants will submit contour calculations using alternate prediction methods, usually to demonstrate that their proposed facilities will meet Commission technical standards, for example, those requiring certain levels of signal coverage of the community of license. The Commission proposes, in order to provide a measure of certainty to applicants, to codify the standards it has used informally since 2001 as the showings required in order to justify submission of contour calculations by methods other than the Commission’s standard methodology. These standards are, first, to consider that terrain departs widely when the antenna height above average terrain (“HAAT”) along a single radial in the direction of a community’s center, from three to 16 kilometers from the antenna site (i.e., the Commission’s standard measurement methodology), varies by more than 30 percent from the HAAT along the same radial, measured from three kilometers from the antenna site to the community’s outer boundary. Second, when there is line of sight coverage from the antenna to the community of license, the staff has found terrain to depart widely when the actual terrain roughness factor, measured along the radial running from the antenna site to the community center from a distance of 10 to 50 kilometers from the antenna site, is less than or equal to 20 meters or greater than or equal to 100 meters (known as “delta-h”). If one of these two conditions is met, the staff will allow a contour showing using an alternate prediction method, provided that (a) the contour predicted by the alternate method is at least ten percent greater than that predicted by the standard methodology, and (b) for stations in the non-reserved FM band, the 70 dBμ principal community contour predicted by the alternate method is not greater than the 60 dBμ contour predicted by the standard methodology. The Commission proposes to set forth these guidelines in a note to Section 73.313(e). The Commission notes that, because a principal community contour calculated using alternate prediction methods must be at least ten percent

larger than the contour calculated using standard methodology, and because the 60 dBμ principal community contour of an NCE FM station in the reserved band is the same as its protected contour (see 47 CFR 73.509, 73.515), these guidelines preclude the use of alternate contour prediction methods for NCE FM stations in the reserved band. The Commission invites comment on this proposal, or on any modifications to, additions to, or substitutions for these guidelines.

15. Comments and Reply Comments. Pursuant to §§ 1.415 and 1.419 of the Commission’s Rules (47 CFR 1.415, 1.419), interested parties must file comments on or before July 13, 2009, and must file reply comments on or before August 11, 2009. 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.

16. Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cbg/ecfs>, or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web sites 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 for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, “get form.” A sample form and directions will be sent in response.

17. 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 (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 mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

18. Contact the FCC to request materials in accessible formats (Braille, large print, electronic files, audio format, etc.) by e-mail at [FCC504@fcc.gov](mailto:FCC504@fcc.gov), or call the Consumer & Governmental Affairs Bureau at 202-418-0531 (voice), 202-418-7365 (TTY).

19. The full text of the Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission’s copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/CC-09-30.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/CC-09-30.pdf).

20. *Ex Parte* Rules. This proceeding will be treated as a “permit-but-disclose” proceeding subject to the “permit-but-disclose” requirements under § 1.1206(b) of the Commission’s Rules (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 § 1.1206(b) of the Commission’s Rules.

21. *Initial Regulatory Flexibility Analysis*. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant



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

22. As required by the Regulatory Flexibility Act of 1980, as amended (RFA) (5 U.S.C. 603), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided herein. The Commission will send a copy of this entire NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and the IRFA (or summaries thereof) will be published in the **Federal Register**.

23. *Need For, and Objectives of, the Proposed Rules.* This rulemaking proceeding is initiated to obtain comments concerning the Commission’s proposals to change its Rules regarding analysis and processing procedures for AM commercial applications subject to competitive bidding rules, and certain procedures for analyzing and processing proposals for new FM allotments and noncommercial educational FM channel assignments. Specifically, the NPRM proposes to add a presumption that a proposal that would cover more than 50 percent of an Urbanized Area not be able to receive a dispositive Priority (3) preference if it proposes first local transmission service at a community in or adjacent to the Urbanized Area; proposes to eliminate Priority (4) preferences in AM auction applications except in extraordinary circumstances, such as when a defined service “floor” exists, an applicant proposes a Service Value Index 50 percent greater than a competing applicant, or an applicant proposes to provide third, fourth, or fifth reception service to a significant population, and to prohibit downgrading such service if an applicant receives a dispositive Section 307(b) preference based on such a proposal; to limit or prohibit station

community of license changes from rural, small, and underserved communities; to add a new Section 307(b) priority for applications filed by members of, or entities owned by members of, federally recognized Native American and Alaska Native tribes; to require that AM auction applications be technically eligible for auction processing when the short form is filed; to allow non-universal settlements among certain mutually exclusive AM auction applicants; to delegate to the Media Bureau authority to cap the number of AM applications that may be filed, to be more flexible in setting filing deadlines for post-auction long-form applications, and to allow requests for dismissal of “tech box” information submitted with a short-form application; to prohibit FM translator licensees from “hopping” from the reserved to non-reserved bands and vice-versa; and to codify or clarify the technical standards for determining AM nighttime mutual exclusivity among window-filed AM applications, application of the new entrant bidding credit unjust enrichment rule, and new entrant bidding credit eligibility. The Commission believes these proposals will speed the licensing process, better conform broadcast and auction ownership disclosure rules, promote the filing of technically sound applications, deter speculation, and encourage the fair distribution of broadcast licenses.

24. *Legal Basis.* The authority for this proposed rulemaking is contained in sections 1, 2, 4(i), 303, and 307, of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 303, and 307.

25. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term “small entity” as encompassing the terms “small business,” “small organization,” and “small governmental entity.” In addition, the term “small Business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

26. *Radio Stations.* The proposed rules and policies potentially will apply to all AM and commercial FM radio broadcasting licensees and potential licensees. The SBA defines a radio broadcasting station that has \$6 million

or less in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations that are primarily engaged in radio broadcasting and that produce radio program materials are similarly included. However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number. According to BIA Advisory Services, L.L.C., MEDIA Access Pro Database on March 17, 2009, 10,884 (95%) of 11,404 commercial radio stations have revenue of \$6 million or less. However, many radio stations are affiliated with much larger corporations having much higher revenue. Our estimate, therefore, likely overstates the number of small entities that might be affected by any ultimate changes to the allocation and assignment rules.

27. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* The proposed rule and procedural changes may impose some additional reporting requirements on existing and potential radio licensees and permittees, insofar as they would require or allow certain applicants to file new technical and population coverage information after the short form application (FCC 175) or in the noncommercial educational long form application (FCC 340). However, the forms to be filed would be existing FCC application forms with which broadcasters are already familiar, and the information requested to claim the tribal priority is similar to current Section 307(b) showings, so any additional burdens would be minimal. We seek comment on the possible cost burden these requirements would place on small entities. Also, we seek comment on whether a special approach toward any possible compliance burdens on small entities might be appropriate.

28. *Steps Taken to Minimize Significant 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 Commission seeks comment on procedures to award commercial broadcast licenses through Section 307(b) analyses and competitive bidding that will, in most instances, reduce the burdens on all broadcasters, including small entities, compared to current procedures. The Commission further seeks comment on changes proposed in this NPRM to FM allotment procedures that may reduce the burdens on broadcasters, including small entities, or will not increase the burdens compared to current procedures. The Commission also seeks specific comments on the burden our proposals may have on small broadcasters. There may be unique circumstances these entities may face and we will consider appropriate action for small broadcasters at the time when a Report and Order is considered.

29. *Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals.* None.

30. This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact Brian Millin at (202) 418-7426 (voice), (202) 418-7365 (TTY), or via e-mail at [Brian.Millin@fcc.gov](mailto:Brian.Millin@fcc.gov).

Federal Communications Commission.

**Marlene H. Dortch,**  
Secretary.

[FR Doc. E9-11067 Filed 5-12-09; 8:45 am]

BILLING CODE 6712-01-P

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 0811201490-9322-02]

RIN 0648-AX42

#### Fisheries of the Exclusive Economic Zone Off Alaska; Central Gulf of Alaska Rockfish Program; Amendment 85; Correction

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

**ACTION:** Proposed rule; extension of comment period; correction.

**SUMMARY:** This document corrects an error in the regulatory text of a proposed

rule published on April 6, 2009 (74 FR 15420) and extends the proposed rule's comment period by 30 days (from May 21, 2009 to June 22, 2009). The proposed rule would implement Amendment 85 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. The proposed rule would amend the Central Gulf of Alaska Rockfish Program to remove a restriction that prohibits certain catcher/processors from participating in directed groundfish fisheries in the Bering Sea and Aleutian Islands Management Area in July. It incorrectly removes a similar restriction on such vessels participating in directed groundfish fishing in the Gulf of Alaska. This notice corrects the error in the proposed regulatory text. Amendment 85 is necessary to improve flexibility and reduce operating costs for catcher/processors that participate in the Central Gulf of Alaska Rockfish Program.

**DATES:** Comments must be received by June 22, 2009.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by "RIN 0648-AX42," by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at <http://www.regulations.gov>.

- Mail: P. O. Box 21668, Juneau, AK 99802.

- Fax: 907-586-7557.

- Hand delivery to the Federal Building: 709 West 9<sup>th</sup> Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of Amendment 85 to the Fishery Management Plan for Groundfish of the Gulf of Alaska, the proposed rule to implement Amendment 85, the Regulatory Impact Review (RIR), the Initial Regulatory

Flexibility Analysis (IRFA), the categorical exclusion prepared for this action, and the Environmental Assessment (EA), RIR, and Final Regulatory Flexibility Analysis (FRFA) prepared for the Central Gulf of Alaska Rockfish Program are available from the NMFS Alaska Region at the address above or from the Alaska Region website at <http://www.alaskafisheries.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Rachel Baker, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fisheries in the exclusive economic zone of the Gulf of Alaska (GOA) are managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP). The North Pacific Fishery Management Council prepared the GOA FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* Regulations implementing the GOA FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

NMFS proposed regulations to implement Amendment 85 to the GOA FMP on April 6, 2009 (74 FR 15420). Amendment 85 would amend the Central Gulf of Alaska Rockfish Program (Rockfish Program) to remove a restriction that prohibits certain catcher/processors from participating in directed groundfish fisheries in the Bering Sea and Aleutian Islands (BSAI) in July.

#### Need for Correction

The regulations at 50 CFR 679.82(g)(3) prohibit certain catcher/processor vessels that participate in the Rockfish Program limited access fishery from participating in GOA and BSAI groundfish fisheries during a specific period of time in July. The proposed regulatory text incorrectly includes a provision to change the period of time that the prohibition against directed fishing in GOA groundfish fisheries is in effect. This incorrect proposed change is inconsistent with Amendment 85 to the GOA FMP. Amendment 85 would not change the prohibition against directed fishing in the GOA groundfish fisheries for certain catcher/processor vessels that participate in the Rockfish Program limited access fishery; it only would remove the prohibition against directed fishing by these vessels in the BSAI. This notice corrects the error in the proposed regulatory text by revising the paragraph (g)(3) to accurately reflect the intent of Amendment 85 and extends the comment period for the proposed rule to implement Amendment 85 to the