6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99-25; FCC 12-28]

Implementation of the Local Community Radio Act of 2010; Revision of Service and Eligibility Rules for Low Power FM Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on how to amend its rules to implement certain provisions of the Local Community Radio Act of 2010 ("LCRA") that are not already the subject of Commission action. It also proposes changes to its rules intended to promote the low power FM service's localism and diversity goals, reduce the potential for licensing abuses, and clarify certain rules.

DATES: Comments must be filed on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and reply comments must be filed on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]**. 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 **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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

- Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/. Follow the instructions for submitting comments.
- Mail: Commission's Secretary, Office of the Secretary, Federal Communications Commission, 445 12th St., SW, Room TW-A325, Washington, DC 20554.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, 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.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via email to PRA@fcc.gov and to Nicholas A. Fraser, Office of Management and Budget, via email to Nicholas_A._Fraser@omb.eop.gov or via fax at 202-395-5167.

FOR FURTHER INFORMATION CONTACT: Peter Doyle (202) 418-2789. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to PRA@fcc.gov or contact Cathy Williams on (202) 418-2918.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's document in MM Docket No. 99-25, FCC No. 12-28, adopted March 19, 2012. A synopsis of the order segments of this decision were published in a previous issue of the Federal Register. The full text of this document is available for inspection and copying during normal business hours in the

FCC Reference Center (Room CY-A257), 445 12th Street, S.W., Washington, DC 20554. The full text may also be downloaded at: http://www.fcc.gov.

Comment Period and Procedures

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

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://fjallfoss.fcc.gov/ecfs2/.
- Paper Filers: Parties who choose to file by paper must file an original and one copy 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. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes 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 must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Paperwork Reduction Act of 1995

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

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; (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; and (e) way to further reduce the information collection burden on small business concerns with fewer than 25

employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

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 OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

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; §§ 73.807, 73.809, 73.827, 73.865, 73.870, 73.871, 73.872, 73.877, 73.878, 73.318, 73.1030, 73.1207, 73.1212, 73.1230, 73.1300, 73.1350, 73.1610, 73.1620, 73.1750, 73.1943, 73.3525, 73.3550, 73.3598, 11.61(ii), FCC Form 318.

Form No.: FCC Form 318.

Type of Review: Revision of a currently approved collection.

Respondents: Not-for-profit institutions; State, local or tribal governments

Number of Respondents and Responses: 21,337 respondents with multiple responses; 27,387 responses.

Estimated Time Per Response: .0025 – 12 hours**.**

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; monthly reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits**.** The statutory authority for this collection of information is contained in sections 154(i), 303, 308 and 325(a) of the Communications Act of 1934, as amended.

Total Annual Burden: 35,146 hours**.**

Total Annual Costs: $39,750**.**

Privacy Act Impact Assessment: This information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

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

Needs and Uses: On March 19, 2012, the FCC released a Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking and Third Order on Reconsideration, Creation of a Low Power Radio Service, MM Docket No. 99-25, FCC 12-28. In the Fourth Further Notice of Proposed Rulemaking (Fourth FNPRM), FCC 12-28, the FCC proposes to revise § 73.853(b) of the Commission's rules ("rules") to permit federally recognized Native American Tribes and Alaska Native Villages ("Native Nations") and entities owned or controlled by Native Nations to hold LPFM licenses. We have revised FCC Form 318 to reflect this proposal.

The FCC also proposes to modify its ownership rules. First, the FCC proposes to revise its cross-ownership rule to permit cross-ownership of an LPFM station and an FM translator or translators. Second, the FCC proposes to modify its cross-ownership rule to permit a full-service radio station permittee or licensee that is a Tribe or Tribal Organization to apply for an LPFM

station and to hold an attributable interest in such station. Third, the FCC proposes to permit Tribes or Tribal Organizations to seek more than one LPFM construction permit to ensure adequate coverage of tribal lands. We have revised FCC Form 318 to reflect this proposal.

The FCC further proposes to modify the point system used to select among mutually exclusive LPFM applicants and set forth in § 73.872 of the rules. First, the FCC proposes to modify the "established community presence" criterion to require that an applicant have maintained an established local presence for four years instead of the two years currently required. Second, it proposes to extend the "established community presence" standard in rural areas. Under the current rule, an LPFM applicant was deemed to have an established community presence if it was physically headquartered or had a campus within ten miles of the proposed LPFM transmitter site, or if 75 percent of its board members resided within ten miles of the proposed LPFM transmitter site. The Fourth Further Notice proposes to modify the ten-mile requirement to twenty miles for all LPFM applicants proposing facilities located outside the top fifty urban markets, for both the distance from transmitter and residence of board member standards. Third, the FCC proposes to allow local organizations, tribal organizations and/or tribes to file as consortia and receive one point under the established community presence criterion for each organization or tribe that qualifies for such a point. Fourth, the FCC proposes to award two points – as opposed to the one point currently awarded – to applicants qualifying under the local program origination criterion. Fifth, the FCC proposes to modify the point system to award a point to Native Nations and entities owned or controlled by Native Nations, when they propose to provide LPFM service to Native Nation communities. We have revised the Form 318 to reflect these changes to the point system.

Finally, the FCC proposes to modify the manner in which it processes requests for waiver of the second-adjacent channel minimum distance separation requirement, and to amend the rule that

sets forth the obligations of LPFM stations with respect to interference to the input signals of FM translator or FM booster stations. We have revised the Form 318 to reflect these proposed changes.

FCC staff uses the data to determine whether an applicant meets basic statutory and regulatory requirements to become a Commission licensee and to ensure that the public interest would be served by grant of the application. In addition, the information contained within this information collection ensures that (1) the integrity of the FM spectrum is not compromised, (2) unacceptable interference will not be caused to existing radio services, (3) statutory requirements are met, and (4) the stations operate in the public interest.

Summary of the Fourth Further Notice of Proposed Rulemaking

I. INTRODUCTION

1. In the Fourth Further Notice of Proposed Rule Making (Fourth FNPRM), we seek comment on proposals to amend our rules to implement the remaining provisions of LCRA and to promote a more sustainable community radio service. These changes are intended to advance the LCRA's core goals of localism and diversity while preserving the technical integrity of all of the FM services. In addition, we seek comment on proposals to reduce the potential for licensing abuses.

II. FOURTH FURTHER NOTICE OF PROPOSED RULEMAKING

A. Changes to Technical Rules Required by the LCRA

2. A number of provisions of the LCRA require Commission action. We seek comment below on how to amend our rules to most faithfully implement these provisions of the LCRA

1. Waiver of Second-Adjacent Channel Minimum Distance Separation Requirements

3. In 2007, the Commission established an interim waiver processing policy that permits an

LPFM station that will receive increased interference or be displaced by a new or modified full-service FM station to seek waiver of the second-adjacent channel spacing requirements in connection with an application to move the LPFM station to a new channel. The Commission found that circumstances had changed considerably since it last considered the issue of protection rights for LPFM stations from subsequently authorized full-service stations. Specifically, in late 2006, the Commission had streamlined its licensing procedures, and announced the lifting of its freeze on the filing of community of license modification applications. These actions resulted in "increased filings" that the Media Bureau ("Bureau") estimated could force approximately 40 LPFM stations to cease operations. For many of the LPFM stations at risk of displacement, the Bureau had identified alternate channels that would require waivers of the second-adjacent channel spacing requirements. To avoid "potential harm to this small but not insignificant number of LPFM stations," the Commission adopted the waiver processing policy. In adopting this policy, the Commission relied on the general waiver provisions set forth in § 1.3 of the rules.

4. Section 3(b)(2)(A) of the LCRA explicitly grants the Commission the authority to waive the second-adjacent channel spacing requirements. Section 3(b)(2)(A) permits waivers where an LPFM station establishes, "using methods of predicting interference taking into account all relevant factors, including terrain-sensitive propagation models," that its proposed operations "will not result in interference to any authorized radio service."

5. We tentatively conclude that the waiver standard set forth in section 3(b)(2)(A) of the LCRA supersedes the interim waiver processing policy adopted by the Commission in 2007. We note that, under the interim waiver processing policy, when the Commission considers a waiver request, it "balance[s] the potential for new interference to the full-service station at issue against

the potential loss of an LPFM station." Section 3(b)(2)(A) of the LCRA, on the other hand, clearly requires an LPFM station to establish that its proposed operations "will not result in interference to any authorized radio service." It leaves no room for balancing of the potential for interference with the potential for loss of service. We seek comment on our tentative conclusion and our reasoning. We also seek comment on whether we should permit LPFM applicants to make the sort of showings we routinely accept from FM translator applicants to establish that "no actual interference will occur." Section 74.1204(d) of the rules permits a translator applicant to demonstrate that "no actual interference will occur" due to "lack of population" and we have permitted translator applicants to use an undesired/desired signal strength ratio methodology to narrowly define areas of potential interference when proposing to operate near another station operating on a second- or third-adjacent channel. Are such showings consistent with the statutory mandate to accept showings that a proposed LPFM service "will not result in interference to any authorized radio service"? Should we permit the use of directional antennas in conjunction with proposals attempting to protect second-adjacent stations?

6. We request comment on the factors that we should take into account and the showings we should require when considering requests for waiver of the second-adjacent channel spacing requirements. Should we require a showing that there are no fully-spaced channels available to the LPFM applicant? Should we take into account that the proposal would eliminate or reduce the interference received by the LPFM applicant? Should we consider whether the proposal would avoid a short-spacing between the proposed LPFM facilities and a full-service FM station, FM translator or FM booster station on a third-adjacent channel? Should we also take into account the interference protection and remediation obligations such short-spacing would trigger? Should we consider whether the proposal would result in superior spacing to full-

service FM, FM translator or FM booster stations operating on co- and first-adjacent channels? Are there other factors or showings that we should consider?

7. Section 3(b)(2)(B) of the LCRA also sets out a framework for handling complaints when an LPFM station operating pursuant to a second-adjacent channel waiver has caused interference to the reception of any existing or modified full-service FM station "without regard to the location of the station receiving interference." Upon receipt of a complaint of interference caused by an LPFM station operating pursuant to a second-adjacent channel waiver, the Commission must notify the LPFM station "by telephone or other electronic communication within 1 business day." The LPFM station must "suspend operation immediately upon notification" by the Commission that it is "causing interference to the reception of any existing or modified full-service FM station." It may not resume operations "until such interference has been eliminated or it can demonstrate . . . that the interference was not due to [its] emissions." The LPFM station, however, may "make short test transmissions during the period of suspended operation to check the efficacy of remedial measures." We propose to incorporate this framework for handling complaints into the rules. We seek comment on this proposal. We also request comment on whether and how we should define what constitutes a bona fide complaint that would trigger the Commission's obligation to notify the LPFM station at issue and that station's obligation to suspend operations. Finally, we solicit comment on whether and how to specify the showing an LPFM station operating pursuant to a second-adjacent channel waiver must make to demonstrate that it was not the source of the interference at issue.

2. Third-Adjacent Channel Interference Complaints and Remediation

8. When the Commission created the LPFM service in 2000, it declined to impose third-adjacent channel distance separation requirements, stating "our own technical studies and our

review of the record persuade us that 100-watt LPFM stations operating without [third]-adjacent channel separation requirements will not result in unacceptable new interference to the service of existing FM stations." The Commission also noted that "imposing [third]-adjacent channel separation requirements on LPFM stations would unnecessarily impede the opportunities for stations in this new service, particularly in highly populated areas where there is a great demand for alternative forms of radio service."

9. Subsequently, on reconsideration, the Commission again declined to impose third-adjacent channel separation requirements. However, it did establish complaint and license modification procedures for third-adjacent channel interference. In doing so, the Commission stated:

> Although we expect it to be the rare case where an LPFM station operating on a [third-]adjacent channel causes more than a de minimis level of interference within the service area of a full power station protected by the distance separation requirements for other channel relationships, such a result would be unacceptable if it were to occur. Accordingly, we conclude on reconsideration that it would be prudent to establish procedures that would encourage cooperation between the parties and permit the Commission to take prompt remedial action where a significant level of interference can be traced to the commencement of broadcasts by a new LPFM station.

The procedures are set forth in § 73.810 of the rules.

10. As noted, in 2001, we adopted third-adjacent channel spacing requirements at the direction of Congress. While we did not delete the third-adjacent channel complaint and license

modification procedures from our rules, with the adoption of the spacing requirements, the procedures became irrelevant. Now, however, with the elimination of the third-adjacent spacing requirements under section 3 of the LCRA, a process for handling complaints of third-adjacent channel interference again has relevance. Congress has recognized this.

11. Rather than simply utilize the procedures set forth in § 73.810 of the rules, though, Congress has opted to impose broader remediation obligations, which are set forth in section 7 of the LCRA. Specifically, section 7 sets forth the following requirements:

- Section 7(1) of the LCRA requires the Commission to adopt "the same interference protections that FM translator stations and FM booster stations are required to provide as set forth in [§] 74.1203 of [the] rules." These obligations apply to LPFM stations that would be considered short-spaced under the existing third-adjacent channel spacing requirements ("Section 7(1) Stations").
- Section 7(2) requires that a new LPFM station "constructed on a third-adjacent channel" must "broadcast periodic announcements" that alert listeners that any interference they are experiencing could be the result of the station's operations and that instruct affected listeners to contact the station to report any interference.
- Section 7(3) directs the Commission to modify § 73.810 of the rules to require "[LPFM] stations on third-adjacent channels … to address interference complaints within the protected contour of an affected station" and encourage them to address "all other interference complaints."
- Section 7(4) requires the Commission, to the extent possible, to "grant low-power FM stations on third-adjacent channels the technical flexibility to remediate interference through the collocation of the transmission facilities of the low-power FM station and any stations on third-

adjacent channels."

- Section 7(5) requires the Commission to "permit the submission of informal evidence of interference, including any engineering analysis that an affected station may commission," "accept complaints based on interference to a full-service FM station, FM translator station, or FM booster station by the transmitter site of a low-power FM station on a third-adjacent channel at any distance from the full-service FM station, FM translator station, or FM booster station," and "accept complaints of interference to mobile reception."
- Section 7(6) requires the Commission to impose additional interference protection and remediation obligations on one class of LPFM stations.

12. Below, we discuss certain preliminary issues and tentatively conclude that section 7 of the LCRA creates two different LPFM interference protection and remediation regimes, one for LPFM stations that would be considered short-spaced under third-adjacent channel spacing requirements, and one for LPFM stations that would not be considered short-spaced under those requirements. Then, we proceed to discuss each of those regimes. Given the comprehensive nature of the regimes created by section 7, we propose to eliminate the existing interference complaint and remediation procedures set forth in § 73.810 of the rules and replace them with those set forth below.

a. LPFM Interference Protection and Remediation Requirements

13. Section 7(1) and 7(3) of the LCRA both address the interference protection and remediation obligations of LPFM stations on third-adjacent channels. Only section 7(1) specifies requirements for "low-power FM stations licensed at locations that do not satisfy third-adjacent channel spacing requirements . . . ." With regard to such stations, Section 7(1) instructs the Commission to adopt "the same interference protections that FM translator stations and FM

booster stations are required to provide as set forth in § 74.1203 of [the] rules." Section 7(3), in contrast, directs the Commission to modify § 73.810 of the rules to require "[LPFM] stations on third-adjacent channels … to address interference complaints within the protected contour of an affected station" and encourage them to address "all other interference complaints." We tentatively conclude that, through these two provisions, Congress has created two different interference protection and remediation regimes – one that applies to Section 7(1) Stations and one that applies to all other LPFM stations ("Section 7(3) Stations"). We seek comment on this tentative conclusion.

14. We note that, were we to conclude otherwise, Section 7(1) Stations would be subject to different and conflicting interference protection and remediation obligations. Specifically, under section 7(1), LPFM stations that would be considered short-spaced under third-adjacent channel spacing requirements must "eliminate" any actual interference they cause to the signal of any authorized station in areas where that station's signal is "regularly used." This requirement encompasses locations beyond the authorized station's protected contour. In contrast, section 7(3) merely requires LPFM stations to "address" complaints of interference occurring within a full-service FM station's protected contour. To conclude that sections 7(1) and (3) both apply to Section 7(1) Stations would run afoul of one of the cardinal rules of statutory construction – a statute should be read as a harmonious whole. We believe our conclusion that Congress has created two different interference protection and remediation regimes is the most reasonable reading of section 7 of the LCRA as a whole. It makes sense that Congress would impose more stringent interference protection and remediation obligations on stations that are located nearest to full-service FM stations and have the greatest potential to cause interference. Moreover, our reading is consistent with the general rule that, where a protection approach offers greater

flexibility, that flexibility is counter-balanced by more stringent interference remediation and protection requirements. The LCRA provides greater flexibility by eliminating third-adjacent channel spacing requirements for LPFM stations, but counter-balances that flexibility with a prohibition on LPFM stations that would be short-spaced under such requirements causing any actual interference to other stations.

15. Based on the text of section 7(1) of the LCRA, we tentatively conclude that, although section 3(a) of the LCRA mandates the elimination of the third-adjacent channel spacing requirements, we should retain them solely for purposes of reference in order to implement that section. We seek comment on this tentative conclusion and also on whether ultimately to retain the third-adjacent channel spacing requirements in § 73.807 for purposes of reference or transfer them to another section of the rules.

16. Sections 7(4) and (5) of the LCRA establish a number of requirements related to interference protection and remediation. These range from a requirement that the Commission allow LPFM stations on third-adjacent channels to remediate interference through collocation to requirements related to what constitutes a bona fide complaint of interference. We tentatively conclude these sections apply only to Section 7(3) Stations. We seek comment on our tentative conclusion. We believe this is the most reasonable reading of these provisions. We note that these provisions use the same "low-power FM stations on third-adjacent channels" language as section 7(3), not the more specific "low-power FM stations licensed at locations that do not satisfy third-adjacent channel spacing requirements" language set forth in section 7(1). In addition, as discussed above, section 7(1) subjects LPFM stations licensed at locations that would be considered short-spaced under third-adjacent channel spacing requirements to the interference protection and remediation regime set forth in § 74.1203 of the rules. Thus, Section

7(1) Stations must remediate any actual interference caused by their operations or go off the air; must respond to all complaints meeting the specifications set forth in § 74.1203; and, must do so in the manner described in that section. That Congress required our wholesale adoption of the well-established and comprehensive regime in § 74.1203 of the rules bolsters our tentative conclusion that sections 7(4) and 7(5), which establish discrete requirements inconsistent with the § 74.1203 regime, do not apply to Section 7(1) Stations.

17. Finally, we tentatively conclude that sections 7(1), (2), (3), (4) and (5) of the LCRA apply only to third-adjacent channel interference. While Congress did not specify the type of interference to which these provisions apply, we believe this is the most reasonable reading of them. We note that, in each of these provisions, Congress refers specifically to LPFM stations on third-adjacent channels or LPFM stations that do not satisfy the third-adjacent channel spacing requirements. These references reflect a focus on those stations located on third-adjacent channels to LPFM stations and any interference caused to them, which necessarily would be third-adjacent channel interference. We believe that our conclusion is further supported by the fact that Congress separately addressed the possibility of second-adjacent channel interference in section 3 of the LCRA. We seek comment on our tentative conclusion.

b. Regime Applicable to Section 7(1) Stations

18. Section 7(1) Stations are subject to the same interference protection regime applicable to FM translator and booster stations, which is set forth in § 74.1203 of the rules. As indicated above, this regime is more stringent than that currently set forth in § 73.810. Section 74.1203(a) prohibits "actual interference to … [t]he direct reception by the public of the off-the-air signals of any authorized broadcast station . . . ." It specifies that "[i]nterference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by" the

interfering FM translator station. An interfering FM translator station must remedy the interference or cease operation. The rule has been interpreted broadly. It places no geographic or temporal limitation on complaints. It covers all types of interference. The reception affected can be that of a fixed or mobile receiver. The Commission also has interpreted "direct reception by the public" to limit actionable complaints to those that are made by bona fide listeners. Thus, it has declined to credit claims of interference or lack of interference from station personnel involved in an interference dispute. More generally, the Commission requires that a complainant "be 'disinterested,' e.g., a person or entity without a legal stake in the outcome of the translator station licensing proceeding." The staff has routinely required a complainant to provide his/her name, address, location(s) at which interference occurs, and a statement that the listener is, in fact, a listener of the affected station. Moreover, as is the case with other types of interference complaints, the staff has considered only those complaints where the complainant cooperates in efforts to identify the source of interference and accepts reasonable corrective measures. Accordingly, when the Commission concludes that a bona fide listener has made an actionable complaint of uncorrected interference, it will notify the station that "interference is being caused" and direct the station to discontinue operations. We seek comment on whether it would be appropriate to modify the regime set forth in § 74.1203 in any way in order to apply it to Section 7(1) Stations and, if so, whether we have authority to make any such changes in light of the statutory mandate to adopt "the same interference protections that FM translator stations and FM booster stations are required to provide as set forth in [§] 74.1203 of [the] rules."

19. We also request comment on requiring newly constructed LPFM stations that would be considered short-spaced under third-adjacent channel spacing requirements to make the same periodic announcements required of third-adjacent channel LPFM stations that would not be

considered short-spaced under section 7(2) of the LCRA. We see no reason to distinguish between listeners of stations that may experience interference as a result of the operations of Section 7(1) Stations and those that may experience interference as a result of the operations of Section 7(3) Stations for such purposes. Indeed, there will be less distance separating Section 7(1) Stations and full-service FM stations on third-adjacent channels and thus a greater potential for these stations to cause such interference, so that we believe requiring announcements would serve the public interest. We note, however, that section 7(1) explicitly requires the Commission to "provide the same [LPFM] interference protections that FM translator stations … are required to provide as set forth in § 74.1203 of its rules." Section 74.1203 does not require an FM translator station to notify either the Commission or an affected station of an interference complaint within 48 hours of the receipt of such a complaint. Accordingly, we seek comment on whether we may impose this requirement on Section 7(1) Stations and, if so, whether we should.

c. Regime Applicable to Section 7(3) Stations

20. Section 7(3) of the LCRA requires the Commission to modify § 73.810 of the rules to require Section 7(3) Stations "to address interference complaints within the protected contour of an affected station" and encourage them to address all other interference complaints, including complaints "based on interference to a full-service FM station, an FM translator station or an FM booster station by the transmitter site of a low-power FM station on a third-adjacent channel at any distance from the full-service FM station, FM translator station or FM booster station." As noted above, we tentatively conclude that sections 7(2), (4) and (5) apply only to Section 7(3) Stations. We discuss the general interference remediation requirements set forth in section 7(3) and the additional provisions below.

21. General Requirements. Unlike section 7(1), section 7(3) does not specifically refer to § 74.1203 of the rules. We request comment on whether the more lenient interference protection obligations currently set forth in § 73.810 should continue to apply to fully-spaced LPFM stations. We note that, while section 7(1) instructs the Commission to require Section 7(1) Stations "to provide" interference protections, section 7(3) merely instructs the Commission to require Section 7(3) Stations "to address" complaints of interference. What must a Section 7(3) Station do to "address" a complaint of third-adjacent channel interference? Finally, we observe that section 7(3) requires the Commission to provide notice to the licensee of a Section 7(3) Station of the existence of interference within 7 calendar days of the receipt of a complaint from a listener or another station. We seek comment on whether to establish certain basic requirements for such complaints. For instance, should we require copies of such complaints to be filed with the Bureau's Audio Division? Should we require such complaints to specify the call sign of the LPFM and/or affected full-service FM, FM translator or FM booster station? Should we require the complainant to provide contact information?

22. Periodic Broadcast Announcements. Section 7(2) of the LCRA directs the Commission to amend § 73.810 of the rules to include certain requirements related to periodic broadcast announcements. Section 7(2) instructs the Commission to require a newly constructed Section 7(3) Station to broadcast periodic announcements that alert listeners to the potential for interference and instruct them to contact the LPFM station to report any interference. These announcements must be broadcast for a period of one year after construction. We seek comment on whether we should specify the language to be used in these announcements and, if so, what to specify. We also seek comment on whether we should mandate when and how often the announcements must be aired. We note that we have done so with respect to other required

announcements and that ensuring uniformity may reduce listener confusion and provide regulatory certainty by allowing LPFM stations to be confident that they have satisfied the requirements of section 7(2).

23. Section 7(2) also directs the Commission to require newly constructed Section 7(3) Stations to notify the Commission and all affected stations on third-adjacent channels of an interference complaint by electronic communication within 48 hours of receipt of such complaint. Finally, section 7(2) mandates that we require newly constructed Section 7(3) Stations on third-adjacent channels to cooperate in addressing any such interference complaints. We seek comment on whether to specify the scope of efforts which a Section 7(3) Station must undertake, and whether to relieve newly constructed Section 7(3) Stations on third-adjacent channels of their obligations to cooperate in instances where the complainant does not reasonably cooperate with the LPFM stations' remedial efforts.

24. Bona Fide Complaints. Section 7(5) of the LCRA expands the universe of interference complaints which Section 7(3) Stations must remediate. Section 7(5) states:

> The Federal Communications Commission shall —(A) permit the submission of informal evidence of interference, including any engineering analysis that an affected station may commission; (B) accept complaints based on interference to a full-service FM station, FM translator station, or FM booster station by the transmitter site of a low-power FM station on a third-adjacent channel at any distance from the full-service FM station, FM translator station, or FM booster station; and (C) accept complaints of interference to mobile reception.

25. We request comment on whether any of the four criteria set forth in § 73.810(b)(1) of the

rules remain relevant. We tentatively conclude that section 7(5) requires us to delete § 73.810(b)(1) (bona fide complaint must allege interference caused by LPFM station that has its transmitter site located within the predicted 60 dBu contour of the affected station), (2) (bona fide complaint must be in form of affidavit and state the nature and location of the alleged interference) and (3) (bona fide complaint must involve a fixed receiver located within the 60 dBu contour of the affected station and not more than 1 kilometer from the LPFM transmitter site). We solicit comment on whether we should retain the remaining criterion, which requires a bona fide complaint to be received within one year of the date an LPFM station commenced broadcasts.

26. Technical Flexibility. Section 7(4) of the LCRA requires the Commission, to the extent possible, to "grant low-power FM stations on third-adjacent channels the technical flexibility to remediate interference through the collocation of the transmission facilities of the low-power FM station and any stations on third-adjacent channels." We note that, per section 3 of the LCRA, we are eliminating the third-adjacent channel spacing requirements set forth in § 73.807. We have identified no other provision of our rules that would hinder our ability to offer the flexibility specified in section 7(4) of the LCRA. Accordingly, we tentatively conclude that we need not modify or eliminate any other provisions of our rules to implement section 7(4). We seek comment on this tentative conclusion.

d. Additional Interference Protection and Remediation Obligations

27. One additional provision of section 7 – section 7(6) – requires the Commission to impose additional interference protection and remediation obligations on one class of LPFM stations. Specifically, section 7(6) of the LCRA directs the Commission to create special interference

protections for "full-service FM stations that are licensed in significantly populated States with more than 3,000,000 population and a population density greater than 1,000 people per square mile land area." The obligations apply only to LPFM stations licensed after the enactment of the LCRA. Such stations must remediate actual interference to full-service FM stations licensed to the significantly populated states specified in section 7(6) and "located on third-adjacent, second-adjacent, first-adjacent or co-channels" to the LPFM station and must do so under the interference and complaint procedures set forth in § 74.1203 of the rules. However, Congress has created an outer limit to the interference protection obligations in section 7(6). That outer limit is the co-channel spacing distance set forth in § 73.807 of the rules for the affected full-service station's class.

28. This statutory requirement is different than current policy. Today, if an LPFM station meets the spacing requirements, it is "not required to eliminate interference caused to existing FM stations." With the enactment of LCRA, at least with respect to full-service FM stations licensed to the significantly populated states that meet the criteria set forth in section 7(6), LPFM stations licensed after its effective date must remediate any actual interference that occurs. We note that the section 7(6) interference requirements are, with one exception, unambiguous. We seek comment on how to interpret the term – "States." Only New Jersey and Puerto Rico satisfy the population and population density thresholds set forth in section 7(6). This raises the question of whether Congress intended the term "States" to include the territories and possessions of the United States.

3. Translator Input Signals Complaint Procedure

29. Section 6 of the LCRA requires the Commission to "modify its rules to address the potential for predicted interference to FM translator input signals on third-adjacent channels set

forth in Section 2.7 of the technical report entitled 'Experimental Measurements of the Third-Adjacent Channel Impacts of Low Power FM Stations, Volume One—Final Report (May 2003)'" ("Final Report"). Section 2.7 of the Final Report finds that significant interference to translator input signals does not occur for undesired/desired ratio values below 34 dB at the translator input. Section 2.7 sets out a formula (the "Mitre Formula") that allows calculation of the minimum LPFM-to-translator separation that will ensure a undesired/desired ratio of 34 dB.

30. The Commission currently requires LPFM stations to remediate actual interference to the input signal of an FM translator station but has not established any minimum distance separation requirements or other preventative measures. Based on the language of section 6, which requires the Commission to "address the potential for predicted interference," we tentatively conclude that our existing requirements regarding remediation of actual interference must be recast as licensing rules designed to prevent any predicted interference.

31. We propose to adopt a basic threshold test. This test is designed to closely track the interference standard developed by Mitre, without necessarily requiring LPFM applicants to obtain the receive antenna technical characteristics that are incorporated into the Mitre Formula. We propose that any application for a new or modified LPFM station construction permit may not use a transmitter site within the "potential interference area" of any FM translator station that receives directly off-air, the signal of a third-adjacent channel FM station. For these purposes, we define the "potential interference area" to be any area within 2 km of the translator site or any area within 10 km of the translator site within the azimuths from -30 degrees to +30 degrees of the azimuth from the translator site to the site of the station being rebroadcast by the translator. For example, if the primary station is located at 280 degrees true (from the translator site), the LPFM station must not be within 10 km of the translator between the azimuths 250 to 310

degrees true (from the translator site), and must be at least 2 km from the translator tower site in all other directions. If an LPFM application proposes a transmitter site within the potential interference area and fails to include an exhibit demonstrating lack of interference to the off-air reception, we would dismiss the application as defective.

32. We propose two ways for an LPFM applicant within the potential interference area to show lack of interference to the input signal of a potentially affected translator. First, we propose, as indicated in section 2.7 of the Final Report, that LPFM applicants may show that the ratio of the signal strength of the LPFM (undesired) proposal to the signal strength of the FM (desired) station is below 34 dB at all locations. Second, we propose to allow use of the equation provided in Section 2.7 of the Final Report to demonstrate lack of interference to the reception of the FM station at the translator transmitter site. Because we do not authorize translator receive antenna locations, we propose to assume that the translator receive antenna is co-located with its associated translator transmit antenna. In addition, this equation would require the horizontal plane pattern of the translator's receive antenna. This information is not typically available publicly or in the Consolidated Database System ("CDBS"). Therefore, we propose to allow the use of a "typical" pattern in situations where an LPFM applicant is not able to obtain information from the translator licensee, despite reasonable efforts to do so. We seek comment on this proposal.

33. As with similar situations involving dismissals for violation of interference protection requirements, we propose to permit LPFM applicants to seek reconsideration of a dismissal and reinstatement nunc pro tunc by demonstrating that their proposals will not cause any actual interference to the input signal of any FM translator station using either the ratio or the Mitre Formula. Furthermore, we seek comment on whether this process should be applicable to only

translators receiving FM station signals, or also include those that receive third-adjacent channel translator signals directly off-air.

B. Other Rule Changes

34. In this Fourth FNPRM, we also propose changes to our rules intended to promote the LPFM service's localism and diversity goals, reduce the potential for licensing abuses, and clarify certain rules. We discuss these proposed changes below. We seek comment on whether these proposed changes are consistent with the LCRA and whether they will promote the public interest.

1. Classes of Service

35. There are two classes of LPFM facilities: LP100 and LP10. The Commission permits LP100 stations to operate with a maximum power of 100 watts ERP at 30 meters HAAT. LP10 stations may operate with a maximum power of 10 watts ERP at 30 meters HAAT. To date, the Commission has issued construction permits and licenses only for LP100 class facilities. Accordingly, we seek comment on whether to eliminate the LP10 class of service.

36. In addition, we seek comment on whether to permit LPFM stations in smaller communities, rural areas or "non-core" locations (i.e., areas outside population centers) in larger markets to increase power levels to a maximum ERP of 250 watts at 30 meters HAAT, as urged by both the Amherst Alliance ("Amherst") and the Catholic Radio Association ("CRA"). Both Amherst and CRA support permitting LPFM stations to operate with up to 250 watts ERP. They focus on the particular challenges of maintaining economically viable LPFM stations in rural areas where population densities are low and larger coverage areas are possible.

37. We seek comment on whether increased power levels could offset limited potential audiences, promote LPFM station viability and expand radio service to areas where full service operations may not be economically feasible. Such an approach would be consistent with the

Commission's decision to adopt a more flexible definition of "local" applicant in non-urban areas. We note that this potential revised maximum operating limit would put LPFM stations on similar footing to FM translator stations which may operate with a maximum power of 250 watts ERP.

38. We seek comment on whether establishing a higher power level for certain LPFM stations would allow these stations to better meet the needs of their local communities. Notwithstanding the potential service benefits, we also seek comment on whether an increase in the maximum LPFM power level can be implemented in a manner that would not undermine the detailed LCRA protection standards and interference remediation procedures, which are presumably grounded on the current LPFM maximum power level. Such an increase in power for certain LPFM stations may be possible as we will be maintaining or increasing the spacing requirements, not decreasing them. We also seek comment on appropriate geographical restrictions for the higher powered LPFM operations. For example, should we permit increased power levels anywhere outside the top 100 markets and limit higher powered operations in the top 20 markets to transmitter locations more than thirty kilometers from the center city coordinates, in markets 21-50, to locations more than twenty kilometers from center city coordinates and in markets 51-100, to locations more than ten kilometers from center city coordinates. Alternatively, we seek comment on whether power limit increases should not be permitted anywhere in the top 50 markets where we believe that licensing opportunities to be limited because of spectrum constraints and where there may be population centers outside core market locations. We ask that commenters address whether we should limit eligibility to operate in excess of the current 100 watts/30 meters maximum to previously licensed LPFM facilities in order to provide those LPFM licensees that have demonstrated their ability to construct and

operate a limited opportunity to expand their listenership. Finally, we ask that commenters address whether increasing the maximum LPFM power level could result in an increased potential for interference. Specifically, should eligibility to increase power to 250 watts be limited to only those stations that can fully satisfy co-, first-, and second-adjacent channel spacing requirements?

2. Removal of I.F. Channel Minimum Distance Separation Requirements

39. LPFM stations are currently required to protect full-service stations on their intermediate frequencies ("I.F."), while translator stations operating with less than 100 watts ERP are not. We recognize this disparity and propose to remove I.F. protection requirements for LPFM stations operating with less than 100 watts. We believe the same reasoning that the Commission applied in exempting FM translator stations operating with less than 100 watts ERP from the I.F. protection requirements applies for LPFM stations operating at less than 100 watts ERP. These stations too are the equivalent of Class D FM stations, which are not subject to I.F. protection requirements. We note that FM allotments would continue to be protected on the I.F. channels based on existing international agreements. We seek comment on this proposal.

3. Eligibility and Ownership

a. Requirement That Applicant Be Community-Based

40. The LPFM service is reserved solely to non-profit, community-based entities. However, we believe that the wording of § 73.853 of the rules is unclear and could be read to require that an applicant be "local" only at the time of application. Such a reading would contravene our intent in adopting – and reinstating – the local ownership requirement, which rested on our predictive judgment that "local entities with their roots in the community will be more attuned

and responsive to the needs of that community, which have heretofore been underserved by commercial broadcasters." We therefore propose to clarify this requirement by revising § 73.853(b) to read: "Only local applicants will be permitted to submit applications. For the purposes of this paragraph, an applicant will be deemed local if it can certify, at the time of application, that it meets the criteria listed below and if such applicant continues to satisfy the criteria at all times thereafter …." We seek comment on this proposed requirement.

b. Eligibility of Native Nations

41. The current version of § 73.853 of the rules does not include federally recognized American Indian Tribes and Alaska Native Villages ("Native Nations"), consortia of Native Nations, or entities majority owned by Native Nations or consortia, among the categories of eligible applicants for stations in the LPFM service. We have recently expressed our commitment to assisting Native Nations in establishing radio service to their members living on tribal lands, including a Tribal Priority that we incorporated into the threshold fair distribution analysis performed pursuant to section 307(b) of the Communications Act of 1934, as amended ("Act"), when comparing mutually exclusive applications for permits to construct new or modified full-service NCE FM stations that propose service to different communities. In keeping with this commitment, we seek comment in this Fourth FNPRM, inter alia, on whether to modify the LPFM point system to award a point to a Native Nation proposing LPFM service to its community. However, before we seek comment on Native Nation participation in LPFM application proceedings, we must first ensure that, under our rules, Native Nations are eligible to apply for stations in the LPFM service.

42. Accordingly, we propose to revise § 73.853(a) of the rules by adding the following: "(3) Tribal Applicants, as defined in [§] 73.7000 of this [p]art, that will provide non-commercial

radio services." We further propose to revise § 73.853(b) of the rules by adding the following: "(4) In the case of a Tribal Applicant, as defined in [§]73.7000 of this [p]art, the proposed site for the transmitting antenna is located on that Tribal Applicant's 'Tribal Lands,' as defined in [§] 73.7000 of this [p]art." We believe that allowing Native Nations to hold LPFM licenses will be consistent with the localism and diversity goals of the LPFM service and will further our goal of assisting Native Nations in establishing radio service to their members on tribal lands.

c. Cross-Ownership

43. From the outset, the Commission has prohibited common ownership of an LPFM station and any other broadcast station, as well as other media subject to the Commission's ownership rules. This prohibition furthers one of the most important purposes of establishing the LPFM service – "to afford small, community-based organizations an opportunity to communicate over the airwaves and thus expand diversity of ownership." We seek comment on whether to revise our rules to permit cross-ownership of an LPFM station and an FM translator or translators. We note that this revision could enable LPFM stations to expand their listenership and provide another way in which translators could serve the needs of a community. We do not believe allowing limited cross-ownership of LPFM stations and FM translators will have a negative effect on the diversity of ownership. However, we solicit comment on this issue. In addition, we request comment on how cross-ownership of an LPFM station and an FM translator station would impact the extremely localized service that LPFM stations provide. Finally, we solicit input on whether to authorize such cross-ownership only if the FM translator rebroadcasts the programming of its co-owned LPFM station; whether we should require some overlap of the 60 dBu contours of the cross-owned stations; whether to set some distance or geographic limits on the cross-ownership; and whether to permit an LPFM station to use an alternative signal delivery

mechanism to deliver its signal to a commonly owned FM translator.

44. We also seek comment on whether to modify our cross-ownership rule to permit a full-service radio station permittee or licensee that is a Native Nation or an entity owned or controlled by a Native Nation to apply for an LPFM station and to hold an attributable interest in such station. We believe this modification would enhance the ability of Native Nations to provide communications services to their members on tribal lands without significantly undermining diversity of ownership. We seek comment on whether this exception to the general cross-ownership prohibition should be limited to situations where the Native Nation or Native Nation-controlled applicant demonstrates that it will serve currently unserved tribal lands or populations.

d. Multiple Ownership

45. To further its diversity goals and foster local, community-based service, the Commission prohibits entities from owning more than one LPFM station in the same community. We seek comment on whether we should permit Native Nations and entities owned or controlled by Native Nations to seek more than one LPFM construction permit to ensure adequate coverage of tribal lands. For instance, we could permit this when Native Nations and entities owned or controlled by Native Nations seek to serve large, irregularly shaped or rural areas. Where this is the case, an applicant may be unable to ensure adequate coverage of tribal members and tribal lands with one LPFM station. We also could permit multiple ownership only when there are available channels for other applicants. In such instances, there would be no risk that a new entrant would be precluded from offering service. We believe permitting Native Nations to hold more than one LPFM license would advance the Commission's efforts to enhance the ability of Native Nations not only to receive radio service tailored to their specific needs and cultures, but to increase ownership of such radio stations by Native Nations and entities owned or controlled

by Native Nations. We seek comment on whether to accomplish this through amendment of § 73.855(a) of the rules or through waiver.

4. Selection Among Mutually Exclusive Applicants

46. Below, we propose certain changes to the manner in which we process mutually exclusive LPFM applications. These changes are intended to better ensure that we award LPFM licenses to those organizations most capable of serving the very localized communities and underrepresented groups the LPFM service was designed to serve, and to improve the efficiency of the selection process.

a. Point System

(i) Established Community Presence

47. Currently, under the LPFM selection procedures for mutually exclusive LPFM applications set forth in § 73.872 of the rules, the Commission awards one point to an applicant that has an established community presence. The Commission deems an applicant to have such a presence if, for at least two years prior to application filing, the applicant has been headquartered, has maintained a campus or has had three-quarters of its board members residing within ten miles of the proposed station's transmitter site. In adopting this criterion, the Commission intended to "favor organizations that have been operating in the communities where they propose to construct an LPFM station and thus have 'track records' of community-service and established constituencies in their communities." The Commission believed that, because of their longstanding organizational ties to their communities, applicants with established community presences were likely to be "more attuned to, and have organizational experience addressing, the needs and interests of their communities."

48. We propose to revise the language of § 73.872(b)(1) to clarify that an applicant must

have had an established local presence for a specified period of time prior to filing its application and must maintain that local presence at all times thereafter. We note that, while Section 73.872(b)(1) currently does not include the requirement that an applicant maintain its local presence, we believe that is the only reasonable interpretation of the rule. We seek comment on this proposed change to § 73.872(b)(1).

49. In addition, we seek comment on three additional changes to the rule. First, we request comment on whether to revise our definition of "established community presence" to require that an applicant have maintained such a presence for a longer period of time, such as four years. While this change in the rules would result in a smaller pool of organizations that could earn this comparative point, we believe it would better ensure that LPFM licensees are attuned to the local interests of the communities they seek to serve. Alternatively, should we maintain the two-year threshold but also award an additional point to applicants that have a substantially longer established community presence (e.g., four years)? Second, we solicit comment on whether we should modify § 73.872(b)(1) to extend the "established community presence" standard to 20 miles in rural areas. We note that such a change would bring § 73.872(b)(1) in line with § 73.853(b). Finally, we seek comment on whether to allow local organizations filing as consortia to receive one point under the established community presence criterion for each organization that qualifies for such a point. If we were to revise § 73.872(b)(1) in this fashion, should we cap the number of points awarded to consortia at three? We note that, currently, applicants tied with the highest number of points may enter into time-share agreements. In such a situation, their points are aggregated. This proposal would operate in a similar fashion, except that it would precede and potentially preclude post-filing point aggregation settlements. We believe this proposed change could significantly promote diversity, speed the licensing process and provide

further incentive for applicants to enter into voluntary time-sharing arrangements in spectrum-limited areas. However, we seek comment on whether there is any potential for abuse of such a change in the rules and, if so, how we can prevent it. For instance, could this proposed rule change lead local organizations interested in constructing and operating an LPFM station to recruit other local organizations that have no interest in doing so to participate in a consortium in order to inflate the consortium's point total?

(ii) Local Program Origination

50. The Commission currently encourages LPFM stations to locally originate programming. It does so by incorporating local program origination as one of the three one-point criteria used to select among mutually exclusive applicants. In adopting the local program origination criterion, the Commission reasoned that "local program origination can advance the Commission's policy goal of addressing unmet needs for community-oriented radio broadcasting" and concluded that "an applicant's intent to provide locally-originated programming is a reasonable gauge of whether the LPFM station will function as an outlet for community self-expression." We seek comment on whether to place greater emphasis on this selection factor by awarding two points – instead of the one point currently awarded – to an applicant that pledges to originate at least eight hours of programming each day. Do the limited licensing opportunities for LPFM stations in major markets support giving greater weight to this criterion? Does the potential for awarding up to three points to a consortium under the established community presence criterion justify an increase in the points awarded under this criterion? Should we modify the definition of local program origination for LPFM stations that serve rural areas? We request that commenters specifically address whether increasing the weight of this criterion is warranted in light of our previous finding that local programming is not

the only programming of interest or value to listeners in a particular locale. Alternately, should we impose a specific requirement that all new LPFM licensees provide locally-originated programming? Parties supporting this proposal are requested to show that the Commission's prior finding is no longer valid and identify problems or short-comings in the current LPFM licensing and service rules that this change would remedy. Parties supporting this proposal also are requested to address any constitutional issues that it raises.

(iii) Additional Selection Criteria

51. We seek comment on whether to develop additional selection criteria for the LPFM point system in order to limit the number of involuntary time-share licensing outcomes. Specifically, we seek comment on whether we should modify our point system to award a point to Native Nations and entities owned or controlled by Native Nations, when they propose to provide LPFM service to Native Nation communities. We note that this criterion would be similar to the "Tribal Priority" that we incorporated into the threshold fair distribution analysis that we perform pursuant to Section 307(b) of the Act, when we are faced with mutually exclusive applications for permits to construct new or modified full-service FM, AM or NCE FM stations that propose service to different communities. We also note that we believe adoption of a Native Nation selection criterion would further our efforts to increase ownership of radio stations by Native Nations and entities owned or controlled by Native Nations and to enable Native Nations and such entities to serve the unique needs and interests of their communities. Finally, in addition to seeking comment on this "Native Nation" criterion, we invite the submission of additional proposals for new selection criteria, provided they are (a) specifically linked to Commission policy, and (b) structured to withstand scrutiny under applicable legal standards.

b. First Tiebreaker, Voluntary Time Sharing

52. In the event the point analysis results in a tie, the Commission employs voluntary time-sharing as the initial tie-breaker. In these circumstances, the Commission releases a public notice announcing the tie and gives the tied applicants the opportunity to propose voluntary time-sharing arrangements. Currently, following the award of voluntary time-share construction permits, if one of the participants in a voluntary time-sharing arrangement does not construct or surrenders its station license after commencing operations, the remaining time-share participants are free to apportion the vacant air-time as they see fit. We seek comment on the procedures we should adopt to address the surrender or expiration of a construction permit – or the surrender of a license – issued to a participant in a voluntary time-sharing arrangement. We note that the current policy regarding air-time reapportionment presents the potential for abuse in the LPFM licensing process. For instance, out of a group of tied mutually exclusive applicants, some could enter into a time-share arrangement in order to aggregate their points and prevail over others with the knowledge that not all of the prevailing applicants intend to build and operate their LPFM stations. We solicit comment on ways to reduce the potential for abuse of the air-time reapportionment policy. Should we open a "mini-window" for the filing of applications for the abandoned air-time? Could we limit eligibility to unsuccessful applicants from the same mutually exclusive group in the initial window? Is such an approach consistent with Ashbacker requirements? We believe limiting the applicant pool for a "mini-window" to unsuccessful applications from the same mutually exclusive group will provide organizations with an incentive to participate in the LPFM licensing process at the earliest opportunity (i.e., during the initial filing window). It also will expedite the filling of dead air-time and promote the goal of reducing the potential for abuse of the air-time reapportionment policy while minimizing the

administrative complexities involved. In this regard, we believe that the procedures we develop to select successor permittees and licensees must operate efficiently. The air-time being filled will cover only a limited portion of each broadcast day. We must balance our desire fill air-time with the need for administrative efficiency, particularly as we anticipate the considerable licensing burdens that are likely to result from the upcoming LPFM window. Under another approach, a non-prevailing applicant could express its interest in being selected as a successor time share permittee in the event that the tentatively selected applications are granted and either a permittee fails to construct or a licensee abandons its time. One option would be to require the filing of such expressions of interest by the deadline for filing of petitions to deny the applications of the tentative selectees. The staff then could identify the applicant with the highest point total among those filing an expression of interest and retain this application in pending status. If we modify our air-time reapportionment policy in voluntary time sharing situations to reduce the potential for abuse, we propose that the changes would apply only during the first four years of licensed station operations, as they do in the NCE FM licensing context. If a time share licensee abandons its air-time after the first four years of licensed station operations, we propose to allow the remaining time-share participants to apportion the vacant air-time as they see fit just as they do under the current air-time reapportionment policy. We seek comment on these proposals. Finally, we seek comment on whether, if we modify the established community presence criterion to award additional points to consortia, these new procedures also should apply to permits awarded under this modified criterion.

5. Operating Schedule, Time Sharing

53. Currently, the Commission requires LPFM stations to meet the same minimum operating hour requirements as full-service NCE FM stations. Like NCE FM stations, LPFM stations must

operate at least 36 hours per week, consisting of at least 5 hours of operation per day on at least 6 days of the week. However, while the Commission has mandated time sharing for NCE FM stations that meet the Commission's minimum operating requirements but do not operate 12 hours per day each day of the year, it has not done so for LPFM stations. We seek comment on whether we should extend this mandatory time-sharing to the LPFM service. We believe that doing so could increase the number of broadcast voices and promote additional diversity in radio voices and program services.

III. ADMINSTRATIVE MATTERS

A. Filing Requirements

54. Ex Parte Rules. The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with § 1.1206(b) of the rules. In proceedings governed by § 1.49(f) of

the rules or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

B. Initial Regulatory Flexibility Analysis

55. 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).

56. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"), 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 Fourth Further Notice of Proposed Rulemaking ("Fourth FNPRM"). 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 Fourth FNPRM provided in paragraph 74. The Commission will send a copy of this entire Fourth FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA"). In

addition, the Fourth FNPRM and the IRFA (or summaries thereof) will be published in the Federal Register.

57. **Need For, and Objectives of, the Proposed Rules.** This rulemaking proceeding is initiated to seek comment on how to implement the provisions of the Local Community Radio Act of 2010 ("LCRA") discussed below. The Fourth FNPRM tentatively concludes that the second-adjacent channel spacing waiver standard set forth in section 3(b)(2) of the LCRA supersedes the interim waiver processing policy currently in place and seeks comment on this tentative conclusion and on what factors the Commission should take into account in considering waiver requests. The Fourth FNPRM also proposes to implement section 3(b)(2)(B), which provides a framework for handling complaints of interference from low-power FM ("LPFM") stations operating pursuant to second-adjacent channel waivers. Similarly the Fourth FNPRM also proposes to amend the Commission's rules to implement section 7 of the LCRA, which creates two different LPFM interference protection and remediation regimes, one for LPFM stations that would be considered short-spaced under third-adjacent channel spacing requirements, and one for LPFM stations that would not be considered short-spaced under those requirements. Lastly, the Fourth FNPRM takes up implementation of section 6 of the LCRA, which requires the Commission to modify its rules to address the potential for predicted interference to translator input signals on third-adjacent channels. The Fourth FNPRM proposes to adopt a basic threshold test to determine whether a proposed LPFM station will cause such predicted interference. Specifically, the Fourth FNPRM proposes to prohibit an applicant for a new or modified LPFM station construction permit from specifying a transmitter site within the "potential interference area" of any FM translator station that receives directly off-air, the signal of a third-adjacent channel FM station. The Fourth FNPRM would define the "potential

interference area" to be any area within 2 km of the translator site or any area within 10 km of the translator site within the azimuths from -30 degrees to +30 degrees of the azimuth from the translator site to the site of the station being rebroadcast by the translator.

58. The Fourth FNPRM also proposes changes to our rules intended to promote the LPFM service's localism and diversity goals, reduce the potential for licensing abuses, and clarify certain rules. First, the Fourth FNPRM seeks comment on whether to increase the maximum facilities for LPFM stations. Second, the Fourth FNPRM seeks comment on proposed rule changes that will clarify that an LPFM applicant must satisfy the local ownership requirement at all times. Third, it also requests comment on whether to allow cross-ownership of an LPFM station and FM translator stations and whether to allow federally recognized Native American Tribes and Alaska Native Villages ("Native Nations") to own multiple LPFM stations. Fourth, the Fourth FNPRM proposes to modify the criteria used in the point system, add an additional criterion to the point system, and revise the voluntary time-sharing tie-breaker used for selecting among mutually exclusive LPFM applications when the point analysis results in a tie. Fifth, the Fourth FNPRM seeks comment on whether to extend to the LPFM service the mandatory time-sharing requirements that currently apply to FM translators that meet the Commission's minimum operating requirements but do not operate 12 hours per day each day of the year. Finally, noting that LPFM stations are currently required to protect full-service stations on their intermediate frequencies ("I.F."), while translator stations operating with less than 100 watts ERP are not, the Fourth FNPRM proposes to eliminate the spacing requirements related to Intermediate Frequency channels.

59. **Legal Basis.** The authority for this proposed rulemaking is contained in the Local Community Radio Act of 2010, Pub. L. 111-371, 124 Stat. 4072 (2011), and sections 1, 2, 4(i),

303, 307, and 309(j) of the Communications Act of 1934, 47 U.S.C 151, 152, 154(i), 303, 307, and 309(j).

60. **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 SBA.

61. Radio Broadcasting. The proposed policies could apply to radio broadcast licensees, and potential licensees of radio service. The SBA defines a radio broadcast station as a small business if such station has no more than $7 million in annual receipts. Business concerns included in this industry are those primarily engaged in broadcasting aural programs by radio to the public. According to Commission staff review of the BIA Publications, Inc. Master Access Radio Analyzer Database as of September 15, 2011, about 10,960 (97 percent) of 11,300 commercial radio station have revenues of $7 million or less and thus qualify as small entities under the SBA definition We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

62. In addition, an element of the definition of "small business" is that the entity not be

dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any radio station from the definition of a small business on this basis and therefore may be over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

63. FM translator stations and low power FM stations. The proposed policies could affect licensees of FM translator and booster stations and low power FM (LPFM) stations, as well as potential licensees in these radio services. The same SBA definition that applies to radio broadcast licensees would apply to these stations. The SBA defines a radio broadcast station as a small business if such station has no more than $7 million in annual receipts. Currently, there are approximately 6,131 licensed FM translator stations and 859 licensed LPFM stations. In addition, there are approximately 646 applicants with pending applications filed in the 2003 translator filing window. Given the nature of these services, we will presume that all of these licensees and applicants qualify as small entities under the SBA definition.

64. **Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.** None.

65. **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.

66. The passage of the LCRA required the Commission to propose certain changes to its technical rules. The Commission considered maintaining the *status quo* regarding the proposed changes to its non-technical rules, but concluded that these proposed rule changes will benefit small businesses and existing LPFM licensees.

67. The LPFM service has created and will continue to create significant opportunities for new small businesses by allowing small businesses to develop LPFM service in their communities. In addition, the Commission generally has taken steps to minimize the impact on existing small broadcasters. To the extent that rules proposed in the Fourth FNPRM would impose any burdens on small entities, we believe 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. Among other things, the Fourth FNPRM proposes to allow FM translator licensees to own or hold attributable interests in LPFM stations. This is prohibited under the current rules. Likewise, the Fourth FNPRM proposes to permit Native Nations and entities owned or controlled by Native Nations to seek more than one LPFM construction permit to ensure adequate coverage of tribal lands. Today, multiple ownership of LPFM stations is prohibited.

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

IV. ORDERING CLAUSES

69. Accordingly, IT IS ORDERED, pursuant to the authority contained in the Local Community Radio Act of 2010, Pub. L. No. 111-371, 124 Stat. 4072 (2011), and sections 1, 2, 4(i), 303, 307, and 309(j) of the Communications Act of 1934, 47 U.S.C 151, 152, 154(i), 303, 307, and 309(j), that this Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking and Fourth Order on Reconsideration IS ADOPTED.

70. IT IS FURTHER ORDERED that the Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking and Fourth Order on Reconsideration, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, and shall cause it to be published in the Federal Register.

List of Subjects in 47 CFR Part 73

Radio.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,
Secretary

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 part 73 as follows:

PART 73 – RADIO BROADCAST SERVICES

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

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

2. Revise § 73.807 to read as follows:

§ 73.807 Minimum distance separation between stations.

Minimum separation requirements for LP250 and LP100 stations, as defined in §§ 73.811 and 73.853, are listed in the following paragraphs. Except as noted below, an LPFM station will not be authorized unless the co-channel, first- and second-adjacent and I.F. channel separations are met. An LPFM station need not satisfy the third-adjacent channel separations listed in paragraphs (a) through (d) in order to be authorized. These third-adjacent channel separations are included for informational purposes only.

Minimum distances for co-channel and first-adjacent channel are separated into two columns. The left-hand column lists the required minimum separation to protect other stations and the right-hand column lists (for informational purposes only) the minimum distance necessary for the LPFM station to receive no interference from other stations assumed to be operating at the maximum permitted facilities for the station class. For second-adjacent channel and intermediate frequency (I.F.) channels, the required minimum distance separation is sufficient to avoid interference received from other stations.

(a)(1) An LP100 station will not be authorized initially unless the minimum distance separations in the following table are met with respect to authorized FM stations, applications for new and existing FM stations filed prior to the release of the public notice announcing an LPFM

window period for LP100 stations, authorized LP250 and LP100 stations, LP250 and LP100 station applications that were timely-filed within a previous window, and vacant FM allotments. LPFM modification applications must either meet the distance separations in the following table or, if short-spaced, not lessen the spacing to subsequently authorized stations.

Station class protected by LP100	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second and third adjacent channel minimum separation (km)	I.F. channel minimum separations
	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility	Required	10.6 or 10.8 MHz
LP100	24	24	14	14	None	None
LP250	26	29	15	16	None	None
D	24	24	13	13	6	3
A	67	92	56	56	29	6
B1	87	119	74	74	46	9
B	112	143	97	97	67	12
C3	78	119	67	67	40	9
C2	91	143	80	84	53	12
C1	111	178	100	111	73	20
C0	122	193	111	130	84	22
C	130	203	120	142	93	28

(2) LP100 stations must satisfy the second-adjacent channel minimum distance separation requirements of paragraph (a)(1) of this section with respect to any third-adjacent channel FM station that, as of September 20, 2000, broadcasts a radio reading service via a subcarrier frequency.

(3) An LP250 station will not be authorized initially unless the minimum distance separations in the following table are met with respect to authorized FM stations, applications for new and existing FM stations filed prior to the release of the public notice announcing an LPFM window period for LP250 stations, authorized LP250 and LP100 stations, LP250 and LP100 station applications that were timely-filed within a previous window, and vacant FM allotments. LPFM modification applications must either meet the distance separations in the following table

or, if short-spaced, not lessen the spacing to subsequently authorized stations.

Station class protected by LP250	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second and third adjacent channel minimum separation (km)	I.F. channel minimum separations
	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility	Required	10.6 or 10.8 MHz
LP100	29	26	16	15	None	None
LP250	31	31	17	17	None	None
D	29	26	16	15	7	3
A	67	92	56	56	30	6
B1	87	119	74	74	47	9
B	112	143	97	97	68	12
C3	78	119	67	67	41	9
C2	91	143	80	84	54	12
C1	111	178	100	111	74	20
C0	122	193	111	130	85	22
C	130	203	120	142	94	28

(4) LP250 stations must satisfy the second-adjacent channel minimum distance separation requirements of paragraph (a)(3) of this section with respect to any third-adjacent channel FM station that, as of September 20, 2000, broadcasts a radio reading service via a subcarrier frequency.

(5) LP100 stations operating with less than 100 watts effective radiated power (ERP) need not satisfy the I.F. channel minimum separations requirements.

(b)(1) In addition to meeting or exceeding the minimum separations in paragraph (a), new LP100 stations will not be authorized in Puerto Rico or the Virgin Islands unless the minimum distance separations in the following tables are met with respect to authorized or proposed FM stations:

Station class protected by LP100	Co-channel minimum separation (km)	First-adjacent channel minimum separation (km)	Second and third adjacent	I.F. channel minimum separations—

	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility	channel minimum separation (km)—required	10.6 or 10.8 MHz
A	80	111	70	70	42	9
B1	95	128	82	82	53	11
B	138	179	123	123	92	19

(2) In addition to meeting or exceeding the minimum separations in paragraph (a), new LP250 stations will not be authorized in Puerto Rico or the Virgin Islands unless the minimum distance separations in the following tables are met with respect to authorized or proposed FM stations:

Station class protected by LP250	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second and third adjacent channel minimum separation (km)—required	I.F. channel minimum separations—10.6 or 10.8 MHz
	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility		
A	80	111	70	70	43	9
B1	95	128	82	82	54	11
B	138	179	123	123	93	19

(3) LP 100 stations operating with less than 100 watts ERP need not satisfy the I.F. channel minimum separations requirements.

Note to paragraphs (a) and (b): Minimum distance separations towards “grandfathered” superpowered Reserved Band stations are as specified.

Full service FM stations operating within the reserved band (Channels 201-220) with facilities in excess of those permitted in § 73.211(b)(1) or § 73.211(b)(3) shall be protected by LPFM stations in accordance with the minimum distance separations for the nearest class as determined under § 73.211. For example, a Class B1 station operating with facilities that result in a 60 dBu

contour that exceeds 39 kilometers but is less than 52 kilometers would be protected by the Class B minimum distance separations. Class D stations with 60 dBu contours that exceed 5 kilometers will be protected by the Class A minimum distance separations. Class B stations with 60 dBu contours that exceed 52 kilometers will be protected as Class C1 or Class C stations depending upon the distance to the 60 dBu contour. No stations will be protected beyond Class C separations.

(c)(1) In addition to meeting the separations specified in paragraphs (a) and (b), LP100 applications must meet the minimum separation requirements in the following table with respect to authorized FM translator stations, cutoff FM translator applications, and FM translator applications filed prior to the release of the Public Notice announcing the LPFM window period.

Distance to FM translator 60 dBu contour	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second and third adjacent channel minimum separation (km)—required	I.F. channel minimum separations (km) 10.6 or 10.8 MHz
	Required	For no interference received	Required	For no interference received		
13.3 km or greater.....	39	67	28	35	21	5
Greater than 7.3 km, but less than 13.3 km ….	32	51	21	26	14	5
7.3 km or less	26	30	15	16	8	5

(2) In addition to meeting the separations specified in paragraphs (a) and (b), LP250 applications must meet the minimum separation requirements in the following table with respect to authorized FM translator stations, cutoff FM translator applications, and FM translator applications filed prior to the release of the Public Notice announcing the LPFM window period:

Distance to FM translator 60 dBu contour	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second and third adjacent channel minimum separation (km)—required	I.F. channel minimum separations (km) 10.6 or 10.8 MHz
	Required	For no interference received	Required	For no interference received		
13.3 km or greater.....	44	67	30	37	22	4
Greater than 7.3 km, but less than 13.3 km ….	37	51	23	27	15	4

7.3 km or less	31	30	17	18	9	3

(3) LP100 stations operating with less than 100 watts ERP need not satisfy the I.F. channel minimum separations requirements.

(d) Existing LP250 and LP100 stations which do not meet the separations in paragraphs (a) through (c) of this section may be relocated provided that the separation to any short-spaced station is not reduced.

(e) Commercial and noncommercial educational stations authorized under subparts B and C of this part, as well as new or modified commercial FM allotments, are not required to adhere to the separations specified in this rule section, even where new or increased interference would be created.

(f) International considerations within the border zones.

(1) Within 320 km of the Canadian border, LP100 stations must meet the following minimum separations with respect to any Canadian stations:

Canadian station class	Co-channel (km)	First-adjacent channel (km)	Second-adjacent channel (km)	Third-adjacent channel (km)	Intermediate frequency (IF) channel (km)
A1 & Low Power …….....	45	30	21	20	4
A ……...	66	50	41	40	7
B1 …….....	78	62	53	52	9
B ……...	92	76	68	66	12
C1 …….....	113	98	89	88	19
C ……...	124	108	99	98	28

(2) Within 320 km of the Canadian border, LP250 stations must meet the following minimum separations with respect to any Canadian stations:

Canadian station class	Co-channel (km)	First-adjacent channel (km)	Second-adjacent channel (km)	Third-adjacent channel (km)	Intermediate frequency (IF) channel (km)
A1 & Low Power …….....	54	33	22	20	4
A ……...	74	53	42	40	6

B1 …….....	86	65	54	52	9
B ……...	101	79	68	67	12
C1 …….....	122	101	90	88	19
C ……...	132	111	100	98	26

(3) Within 320 km of the Mexican border, LP100 stations must meet the following separations with respect to any Mexican stations:

Mexican station class	Co-channel (km)	First-adjacent channel (km)	Second- and third-adjacent channel (km)	Intermediate frequency (IF) channel (km)
Low Power ……. …….....	27	17	9	3
A …….....	43	32	25	5
AA ……	47	36	29	6
B1 …….....	67	54	45	8
B …….....	91	76	66	11
C1 …….....	91	80	73	19
C …….....	110	100	92	27

(4) Within 320 km of the Mexican border, LP250 stations must meet the following separations with respect to any Mexican stations:

Mexican station class	Co-channel (km)	First-adjacent channel (km)	Second- and third-adjacent channel (km)	Intermediate frequency (IF) channel (km)
Low Power ……. …….....	33	19	10	3
A …….....	48	34	26	6
AA ……	52	38	30	6
B1 …….....	73	57	46	9
B …….....	101	79	68	12
C1 …….....	96	83	74	19
C …….....	116	102	93	26

(5) The Commission will notify the International Telecommunications Union (ITU) of any LPFM authorizations in the US Virgin Islands. Any authorization issued for a US Virgin Islands LPFM station will include a condition that permits the Commission to modify, suspend or terminate without right to a hearing if found by the Commission to be necessary to conform to any international regulations or agreements.

(6) The Commission will initiate international coordination of a LPFM proposal even where the above Canadian and Mexican spacing tables are met, if it appears that such coordination is necessary to maintain compliance with international agreements.

3. Section 73.809 is amended by revising paragraph (a) introductory text to read as follows:

§ 73.809 Interference protection to full service FM stations.

(a) If a full service commercial or NCE FM facility application is filed subsequent to the filing of an LPFM station facility application, such full service station is protected against any condition of interference to the direct reception of its signal that is caused by such LPFM station operating on the same channel or first-adjacent channel and is protected from any condition of interference to the direct reception of its signal caused by such LPFM station operating on an intermediate frequency (IF) channel with more than 100 watts ERP, provided that the interference is predicted to occur and actually occurs within:

*** * * * ***

4. Revise § 73.811 to read as follows:

§ 73.811 LPFM power and antenna height requirements.

(a) LP250 stations:

(1) Maximum facilities. LP250 stations will be authorized to operate with maximum facilities of 250 watts effective radiated power (ERP) at 30 meters antenna height above average terrain (HAAT). An LP250 station with a HAAT that exceeds 30 meters will not be permitted to operate with an ERP greater than that which would result in a 60 dBu contour of 7.1 kilometers. In no event will an ERP less than one watt be authorized.

(2) Minimum facilities. LP250 stations may not operate with facilities less than 101 watts ERP at 30 meters HAAT or the equivalent necessary to produce a 60 dBu contour that extends at least 5.7 kilometers.

(b) LP100 stations:

(1) Maximum facilities. LP100 stations will be authorized to operate with maximum facilities of 100 watts ERP at 30 meters HAAT. An LP100 station with a HAAT that exceeds 30 meters will not be permitted to operate with an ERP greater than that which would result in a 60 dBu contour of 5.6 kilometers. In no event will an ERP less than one watt be authorized. No facility will be authorized in excess of one watt ERP at 450 meters HAAT.

(2) Minimum facilities. LP100 stations may not operate with facilities less than 50 watts ERP at 30 meters HAAT or the equivalent necessary to produce a 60 dBu contour that extends at least 4.7 kilometers.

5. Section 73.816 is amended by revising paragraph (c) to read as follows:

§ 73.816 Antennas.

* * * * *

(c)(1) Public safety and transportation permittees and licensees, eligible pursuant to §73.853(a)(ii), may utilize directional antennas in connection with the operation of a Travelers' Information Service (TIS) provided each LPFM TIS station utilizes only a single antenna with standard pattern characteristics that are predetermined by the manufacturer. In no event may composite antennas (i.e., antennas that consist of multiple stacked and/or phased discrete transmitting antennas) and/or transmitters be employed.

(2) LPFM permittees and licensees may utilize directional antennas for the purpose of preventing interference to a second-adjacent channel station when requesting a waiver of the

second-adjacent channel minimum distance separations set forth in § 73.807.

* * * * *

6. Revise § 73.825 to read as follows:

§ 73.825 Protection to reception of TV channel 6.

(a) LPFM stations will be authorized on Channels 201 through 220 only if the pertinent minimum separation distances in the following table are met with respect to all full power TV Channel 6 stations.

FM channel number	Class LP100 to TV channel 6 (km)	Class LP250 to TV channel 6 (km)
201	140	143
202	138	141
203	137	139
204	136	138
205	135	136
206	133	135
207	133	133
208	133	133
209	133	133
210	133	133
211	133	133
212	132	133
213	132	133
214	132	132
215	131	132
216	131	132
217	131	132
218	131	131
219	130	131
220	130	130

(b) LPFM stations will be authorized on Channels 201 through 220 only if the pertinent minimum separation distances in the following table are met with respect to all low power TV, TV translator, and Class A TV stations authorized on TV Channel 6.

FM channel number	Class LP100 to TV channel 6	Class LP250 to TV channel 6

	(km)	(km)
201	98	101
202	97	99
203	95	97
204	94	96
205	93	94
206	91	93
207	91	92
208	91	92
209	91	92
210	91	92
211	91	92
212	90	91
213	90	91
214	90	91
215	90	90
216	89	90
217	89	90
218	89	89
219	89	89
220	89	89

7. Section 73.827 is amended by redesignating paragraphs (a) and (b) as paragraphs (b) and (c) and adding new paragraph (a) to read as follows:

§ 73.827 Interference to the input signals of FM translator or FM booster stations.

(a) Interference to the direct reception of FM signals at a translator input. An LPFM station will not be authorized unless it remains at least 2 km from a translator receiving a third-adjacent channel FM station (as compared to the LPFM) directly off-air, and unless it remains at least 10 km from the translator site within the azimuths from -30 degrees to +30 degrees of the azimuth from the translator site to the site of the station being rebroadcast by the translator. The provisions of this subsection will not apply if it can be demonstrated that no actual interference will occur due to an undesired (LPFM) to desired (FM) ratio below 34 dB at all locations, or due to a location at a distance from the translator that satisfies the following: $d_u = 133.5 \text{ antilog } [(P_{eu} + G_{ru} - G_{rd} - E_d) / 20]$, where d_u = the minimum allowed separation in km, P_{eu} = LPFM ERP in dBW, G_{ru} = gain (dBd) of the translator receive antenna in the direction of the LPFM site, G_{rd} =

gain (dBd) of the translator receive antenna in the direction of the FM site, E_d = predicted field strength (dBu) of the FM station at the translator site.

* * * * *

8. Section 73.850 is amended by adding paragraph (c) to read as follows:

§73.850 Operating schedule.

* * * * *

(c) All LPFM stations, including those meeting the requirements of paragraph (b) of this section, but which do not operate 12 hours per day each day of the year, will be required to share use of the frequency upon the grant of an appropriate application proposing such share time arrangement. Such applications must set forth the intent to share time and must be filed in the same manner as are applications for new stations. They may be filed at any time, but in cases where the parties are unable to agree on time sharing, action on the application will be taken only in connection with a renewal application for the existing station filed on or after June 1, 2019. In order to be considered for this purpose, such an application to share time must be filed no later than the deadline for filing petitions to deny the renewal application of the existing licensee.

(1) The licensee and the prospective licensee(s) shall endeavor to reach an agreement for a definite schedule of periods of time to be used by each. Such agreement must be in writing and must set forth which licensee is to operate on each of the hours of the day throughout the year. Such agreement must not include simultaneous operation of the stations. Each licensee must file the same in triplicate with each application to the Commission for initial construction permit or renewal of license. Such written agreements shall become part of the terms of each station's license.

(2) The Commission desires to facilitate the reaching of agreements on time sharing. However, if the licensees of stations authorized to share time are unable to agree on a division of time, the prospective licensee(s) must submit a statement with the Commission to that effect filed with the application(s) proposing time sharing.

(3) After receipt of the type of application(s) described in subsection (c)(2), the Commission will process such application(s) pursuant to §§ 73.3561 through 73.3568 of this part. If any such application is not dismissed pursuant to those provisions, the Commission will issue a notice to the parties proposing a time-sharing arrangement and a grant of the time-sharing application(s). The licensee may protest the proposed action, the prospective licensee(s) may oppose the protest and/or the proposed action, and the licensee may reply within the time limits delineated in the notice. All such pleadings must satisfy the requirements of section 309(d) of the Act. Based on those pleadings and the requirements of section 309 of the Act, the Commission will then act on the time-sharing application(s) and the licensee's renewal application.

(4) A departure from the regular schedule set forth in a time-sharing agreement will be permitted only in cases where a written agreement to that effect is reduced to writing, is signed by the licensees of the stations affected thereby, and is filed in triplicate by each licensee with the Commission, Attention: Audio Division, Media Bureau, prior to the time of the proposed change. If time is of the essence, the actual departure in operating schedule may precede the actual filing of the written agreement, provided that appropriate notice is sent to the Commission in Washington, D.C., Attention: Audio Division, Media Bureau.

9. Section 73.853 is amended by adding paragraph (a)(3), revising paragraph (b) introductory text and adding paragraphs (b)(4) and (c) to read as follows:

§ 73.853 Licensing requirements and service.

(a) * * *

(3) Tribal Applicants, as defined in § 73.7000 of this part, that will provide non-commercial radio services.

(b) Only local applicants will be permitted to submit applications. For the purposes of this paragraph, an applicant will be deemed local if it can certify, at the time of application, that it meets the criteria listed below and if such applicant continues to satisfy the criteria at all times thereafter.

* * * * *

(4) In the case of a Tribal Applicant, as defined in § 73.7000 of this part, the proposed site for the transmitting antenna is located on that Tribal Applicant's "Tribal Lands," as defined in § 73.7000 of this part.

(c) An LP250 station will be licensed only to applicants that:

(1) Propose transmitter sites located at least 30 kilometers from the reference coordinates for the top 100 radio markets; and (2) currently operate an LP100 station serving the community of license proposed to be served by the LP250 station.

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

§ 73.870 Processing of LPFM broadcast station applications.

(a) A minor change for an LP250 station authorized under this subpart is limited to transmitter site relocations of 7.1 kilometers or less. A minor change for an LP100 station authorized under this subpart is limited to transmitter site relocations of 5.6 kilometers or less. These distance limitations do not apply to amendments or applications proposing transmitter site relocation to a common location filed by applicants that are parties to a voluntary time-sharing

agreement with regard to their stations pursuant to § 73.872 paragraphs (c) and (e). Minor changes of LPFM stations may include:

* * * * *

11. Section 73.871 is amended by revising paragraphs (c)(1) and (c)(2) to read as follows:

§ 73.871 Amendment of LPFM broadcast station applications.

* * * * *

(c) * * * (1) Filings subject to paragraph (c)(5) of this section, site relocations of 5.6 kilometers or less for LP100 stations;

(2) Filings subject to paragraph (c)(5) of this section, site relocations of 7.1 kilometers or less for LP250 stations;

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12. Section 73.872 is amended by revising paragraphs (b) introductory text and (b)(1), and adding paragraph (b)(4) to read as follows:

§ 73.872 Selection procedure for mutually exclusive LPFM applications.

* * * * *

(b) Except as specified in paragraph (b)(1) below, each mutually exclusive application will be awarded one point for each of the following criteria, based on application certification that the qualifying conditions are met:

(1) Established community presence. An applicant must, for a period of at least 4 years prior to application and at all times thereafter, have been physically headquartered, have had a campus or have had seventy-five percent of its board members residing within 16.1 km (10 miles) of the coordinates of the proposed transmitting antenna for applicants in the top 50 urban markets, and 32.1 km (20 miles) for applicants outside of the top 50 urban markets. If an applicant does not

satisfy the requirements of the preceding sentence but was formed jointly by two or more organizations that do meet such requirements and maintains representation on its governing board by at least one member from each such organization, that applicant will be awarded one point for each such formative organization. Applicants claiming a point or more for this criterion must submit the documentation set forth in the application form at the time of filing their applications.

* * * * *

(4) Tribal applicants serving Tribal Lands. The applicant must be a Tribal Applicant, as defined in § 73.7000 of this part, and the proposed site for the transmitting antenna must be located on that Tribal Applicant's "Tribal Lands," as defined in § 73.7000 of this part.

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[FR Doc. 2012-8239 Filed 04/05/2012 at 8:45 am; Publication Date: 04/06/2012]