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6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99-25; FCC 12-144]

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: Final rule.

SUMMARY: In this document, the Commission modifies its rules in order to implement provisions of the Local Community Radio Act of 2010 ("LCRA"). 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: Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]**, except for amendments to §§ 73.807, 73.810, 73.827, 73.850, 73.853, 73.855, 73.860, 73.872 which contain information collection requirements that are not effective until approved by the Office of Management and Budget ("OMB"). The FCC will seek Paperwork Reduction Act comments via a separate notice in the Federal Register. The FCC will publish a document in the Federal Register announcing the effective date for those sections.

FOR FURTHER INFORMATION CONTACT: Peter Doyle (202) 418-2789.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Sixth Report and Order ("Sixth R&O"), FCC No. 12-144, adopted November 30, 2012. The full text of the Order 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.

Summary of Sixth Report and Order

1. On March 19, 2012, we released a Fourth Further Notice of Proposed Rule Making ("Fourth FNPRM") in this proceeding, seeking comment on proposals to amend the rules to implement provisions of the LCRA and to promote a more sustainable community radio service. These proposed changes were intended to advance the LCRA's core goals of localism and diversity while preserving the technical integrity of all of the FM services. We also sought comment on proposals to reduce the potential for licensing abuses.

2. In this Sixth R&O, we adopt an LPFM service standard for second-adjacent channel spacing waivers ("second-adjacent waivers"), in accordance with section 3(b)(2)(A) of the LCRA. We also specify the manner in which a waiver applicant can satisfy this standard and the manner in which we will handle complaints of interference caused by LPFM stations operating pursuant to second-adjacent waivers. As specified in section 7 of the LCRA, we establish separate third-adjacent channel interference remediation regimes for short-spaced and fully-spaced LPFM stations. Finally, as mandated by section 6 of the LCRA, we modify our rules to address the potential for predicted interference to FM translator input signals from LPFM stations operating on third-adjacent channels.

3. We also make a number of other changes to our rules to better promote the core localism and diversity goals of LPFM service. Specifically, we modify our rules to clarify that the localism requirement set forth in § 73.853(b) applies not just to LPFM applicants but also to LPFM permittees and licensees. We revise our rules to permit cross-ownership of an LPFM station and up to two FM translator stations, but we adopt a number of restrictions on such cross-

ownership in order to ensure that the LPFM service retains its extremely local focus. In the interests of advancing the Commission's efforts to increase ownership of radio stations by federally recognized American Indian Tribes and Alaska Native Villages ("Tribal Nations") or entities owned or controlled by Tribal Nations, we revise our rules to explicitly provide for the licensing of LPFM stations to Tribal Nations or entities owned and controlled by Tribal Nations (collectively, "Tribal Nation Applicants"), and to permit Tribal Nation Applicants to own or hold attributable interests in up to two LPFM stations. In addition, we modify the point system that we use to select from among MX LPFM applications. Specifically, we revise the established community presence criterion; retain the local program origination criterion; and add new criteria to promote the establishment and staffing of a main studio, radio service proposals by Tribal Nation Applicants to serve Tribal lands, and new entry into radio broadcasting. Given these changes, we revise the existing exception to the cross-ownership rule for student-run stations. We also modify the way in which involuntary time sharing works, shifting from sequential to concurrent license terms and limiting involuntary time sharing arrangements to three applicants. We adopt mandatory time sharing, which previously applied to full-service NCE stations but not LPFM stations, for the LPFM service. We also revise our rules to eliminate the LP10 class of LPFM facilities and eliminate the intermediate frequency ("I.F.") protection requirements applicable to LPFM stations. Finally, we briefly discuss administrative aspects of the upcoming filing window for LPFM stations**.**

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

4. Section 3(b)(2)(A) of the LCRA explicitly grants the Commission the authority to waive the second-adjacent channel spacing requirements set forth in § 73.807 of the rules. It permits

second-adjacent 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." In the Fourth FNPRM, we tentatively concluded that this waiver standard supersedes the interim waiver processing policy adopted by the Commission in 2007. We sought comment on this tentative conclusion. The three commenters that addressed this tentative conclusion agreed with it. As we noted in the Fourth FNPRM, the interim waiver processing policy requires the Commission to "balance the potential for new interference to the full-service station at issue against the potential loss of an LPFM station." This balancing is inconsistent with the language of section 3(b)(2)(A) of the LCRA described above, which does not contemplate such a balancing. Accordingly, we affirm our tentative conclusion that the waiver standard set forth in the LCRA and discussed herein supersedes the interim waiver processing policy previously adopted by the Commission.

5. In the Fourth FNPRM, we sought comment on the factors relevant to and showings appropriate for second-adjacent waiver requests. Some commenters express support for a requirement that waiver applicants demonstrate there are no fully-spaced channels available, a potential waiver standard about which we specifically sought comment. One commenter – the National Association of Broadcasters ("NAB") – proposes additional requirements for second-adjacent waivers. These commenters argue that the plain language of the LCRA and its legislative history require that the Commission grant second-adjacent waivers "only in strictly defined circumstances." In contrast, Prometheus and others argue that "[b]eyond a showing of non-interference as required by the statute, no other showing should be required for LPFM applicants seeking waivers." Prometheus states that "[t]he Commission is bound by the LCRA's

terms" and cannot "infer a wide range of additional limitations or prescriptions that appear nowhere in the statute."

6. We have reviewed both the text of the LCRA and the legislative history. The plain language of section 3(b)(2)(A) of the LCRA permits the Commission to grant second-adjacent waivers where a waiver applicant demonstrates that its proposed operations "will not result in interference to any authorized radio service." Nothing in the LCRA or its legislative history suggests that Congress intended to require that waiver applicants make any additional showings. The statute does not mandate any further conditions on the grant of such waivers, and it does not prescribe the burden of proof. We conclude that Congress intended to ensure that LPFM stations operating pursuant to second-adjacent waivers do not cause interference to full-service FM and other authorized radio stations. We find that additional limitations are not needed to achieve this goal. Indeed, to require additional showings of waiver applicants would impose requirements that go beyond those established in the LCRA that we do not believe are either necessary to the implementation of its interference protection goals or consistent with the localism and diversity goals underlying the LPFM service. Accordingly, we will not further restrict the availability of second-adjacent waivers. Likewise, we will not consider any of the other factors proposed in the Fourth FNPRM in determining whether to grant a waiver request, none of which received any support in the comments.

7. We find unconvincing the policy arguments made by supporters of requiring additional showings of waiver applicants. For instance, we are not persuaded that any additional limits are needed to preserve the technical integrity of the FM service. Neither NAB nor any other commenter has offered evidence to support the claim that granting second-adjacent waivers that satisfy the LCRA requirements will harm audio quality or disrupt the expectations of listeners.

Indeed, we are not sure how any commenter could since waivers will only be granted where an applicant makes a showing that its proposed operations will not cause interference. Moreover, we note that many FM translators successfully operate on second-adjacent channels, often at higher effective radiated powers ("ERPs") and heights above average terrain ("HAAT") than LPFM stations, under a protection scheme that permits second-adjacent channel operations at less than LPFM distance separation requirements. We believe LPFM stations can operate just as successfully. Should interference occur, the interference remediation obligations set forth in section 3(b)(2)(B) of the LCRA will serve as a backstop to ensure that the technical integrity of the FM band is maintained.

8. We find equally unpersuasive the argument that imposing additional limits on second-adjacent waivers is in the best interest of LPFM applicants. LPFM applicants may lack broadcast experience and technical expertise, and therefore, may have difficulty predicting interference issues. However, Commission staff will review each waiver request and will deny any request that they determine would cause interference. In addition, while the interference remediation obligations may prove burdensome to LPFM licensees and may require some LPFM stations to cease operations, we do not see this as a reason to limit waivers. We agree with Prometheus that the potential benefit of promoting a locally-based non-commercial radio service in potentially thousands of communities nationwide vastly outweighs the risks that individual LPFM licensees may face. In this regard, we note that, in spectrum-congested markets, few LPFM opportunities would exist without the use of second-adjacent waivers. For instance, applicants will be able to select from 19 unique LPFM channels in the Denver Arbitron Metro market and 18 in the New Haven Arbitron Metro market if second-adjacent waivers are available. If these waivers are not available, an applicant will have a much more limited

selection – four unique LPFM channels in the Denver Arbitron Metro market and three in the New Haven Arbitron Metro market.

9. We turn to the manner in which waiver applicants can "establish, using methods of predicting interference taking into account relevant factors, including terrain-sensitive propagation models, that their proposed operations will not result in interference to any authorized radio service." In the Fourth FNPRM, we asked 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." A number of commenters offer general support for this proposal. Prometheus grounds its support in the fact that, read together, sections 3(b)(2)(A) and (B) of the LCRA "set out a second adjacent waiver standard substantially identical to the rules allocating translators on the second adjacent frequency." NAB opposes the use of these showings by waiver applicants, arguing that it could lead to "over-packing of the FM band, unwanted interference, and the degradation of listeners' experience." NAB, however, does not offer any evidence to support its claims. Nor does NAB explain why the operations of the very large number of FM translators that have relied on these showings do not cause the same interference and signal degradation problems they predict as a result of LPFM second-adjacent waivers. NPR also opposes allowing LPFM applicants to make the same showings as FM translators. NPR argues that there are "significant differences" between the LPFM and FM translator services. However, it does not explain how these differences – the ability to originate programming or lack thereof, the highly local nature of the LPFM service, the relative inexperience of LPFM licensees when compared to FM translator licensees – would justify different waiver standards for FM translators and LPFM stations. We are not persuaded that the differences that NPR cites have any impact on whether a station will cause interference. Rather,

the potential for interference is principally dependent on the propagation characteristics of the "protected" and "interfering" FM signals and the quality of the utilized FM receiver.

10. We will permit waiver applicants to demonstrate that "no actual interference will occur" in the same manner as FM translator applicants. Put another way, we will permit waiver applicants to show that "no actual interference will occur" due to "lack of population" and will allow waiver applicants to use an undesired/desired signal strength ratio methodology to define areas of potential interference when proposing to operate near another station operating on a second-adjacent channel. Although the LCRA does not require the Commission to incorporate for second-adjacent channels the FM translator regime that Congress incorporated for third-adjacent channel interference protection, as Prometheus notes the second-adjacent waiver provisions of the LCRA establish a regime similar to that governing FM translators. Given the discretion afforded by Congress to the Commission for determining appropriate "methods of predicting interference," our experience in connection with methods for doing so in the analogous context of FM translators, and the similarities between the regime established in sections 3(b)(2)(A) and (B) and the regime applicable to FM translator stations, we believe it is appropriate to grant waiver applicants the same flexibility as FM translator applicants to demonstrate that, despite predicted contour overlap, interference will not in fact occur due to an absence of population in the overlap area. We note that, like FM translator stations, LPFM stations operating pursuant to second-adjacent waivers may not cause any actual interference.

11. We also will permit waiver applicants to propose use of directional antennas in making these showings. This is consistent with our treatment of FM translator applicants and supported by the vast majority of commenters. We clarify that, like FM translator applicants, waiver applicants may use "off the shelf" antenna patterns and will not be required to submit

information regarding the characteristics of the pattern with the construction permit application. In addition, as requested by Prometheus and Common Frequency, we will permit waiver applicants to propose lower ERPs and differing polarizations in order to demonstrate that their operations will not result in interference to any authorized radio service. We expect that this flexibility will facilitate the expansion of the LPFM service while still protecting the technical integrity of the FM band. In terms of proposals specifying lower ERPs, we will not accept proposals to operate at less than current LPFM minimum permissible facilities (i.e., power levels of less than 50 watts ERP at 30 meters HAAT, or its equivalent). Since the proposed operating parameters of a waiver applicant will be available in our Consolidated Database System ("CDBS") and since we do not require other applicants seeking waivers of our technical rules to serve their waiver requests on potentially affected stations, we will not require an LPFM applicant seeking a second-adjacent waiver to serve its waiver request on any potentially affected station. We will, however, instruct the Media Bureau to identify specifically all potentially affected second-adjacent channel stations in the public notice that accepts for filing an application for an LPFM station that includes a request for a second-adjacent waiver.

12. We remind potential LPFM applicants that the LCRA permits the Commission to grant waivers only of second-adjacent, and not co- and first-adjacent, spacing requirements. The flexibility discussed above regarding lower power, polarization and directional patterns extends only to waiver applicants seeking to demonstrate that their proposed operations will not result in any second-adjacent channel interference. We also caution LPFM applicants against using this technical flexibility to limit the already small service areas of LPFM stations to such an extent that, while their LPFM applications are grantable, the LPFM stations will not be viable. As the Media Bureau noted recently "the limitations on the maximum power of LPFM stations

substantially reduce the number of potential listeners they can serve." The Media Bureau went on to note that "[t]he low power of an LPFM station affects not only its geographic reach and coverage area, but also the quality of its signal and the ability of listeners to receive its signal consistently inside the station's coverage area." Finally, we take this opportunity to make clear the protection obligations of FM translators toward LPFM stations operating with lower powers, differing polarizations and/or directional antennas. To simplify matters and provide clear guidance to FM translator applicants, we will require FM translator modification applications and applications for new FM translators to treat such LPFM stations as operating with non-directional antennas at their authorized power.

13. We turn now to what happens if an LPFM station operating pursuant to a second-adjacent channel waiver causes interference. Section 3(b)(2)(B) provides a framework for handling an interference complaint resulting from an LPFM station operating pursuant to a second-adjacent waiver "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 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."

14. In the Fourth FNPRM, we proposed to incorporate these provisions into our rules. We will do so. We believe including these provisions in the rules will provide a clear framework for the efficient resolution of interference complaints.

15. We also requested comment on whether to define a "bona fide complaint" for the purpose of triggering these interference remediation procedures. Prometheus urges us to do so and to handle interference complaints against LPFM stations operating pursuant to second-adjacent waivers in a manner similar to complaints against FM translators and similar to the former third adjacent channel remediation requirements. As we described in the Fourth FNPRM, for FM translators, § 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 Commission has interpreted this rule 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 name, address, location(s) at which FM translator interference occurs, and a statement that the complainant 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 of FM translator interference 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 from an FM translator, it will notify the station that "interference is being caused" and direct the station to discontinue operations.

16. We conclude that it is appropriate to handle complaints in a manner similar to that used to handle complaints of interference caused by FM translators. As we noted above, we believe that the LCRA affords the Commission the discretion to rely on our successful FM translator experience in implementing the interference protection regime for second-adjacent LPFM stations. Accordingly, we will adopt the same requirements for complaints that we apply in the FM translator context. As described above, that means that a complaint must come from a disinterested listener and must include the listener's name and address, and the location at which the interference occurs. We are unconvinced by NPR's argument that a listener complaint is unnecessary. While NPR is correct that section 3(b)(2)(B)(iii) refers simply to "a complaint of interference" and does not specify the source of such complaint, we find this statutory term to be ambiguous. We conclude that it may reasonably be interpreted to refer to listener complaints. We note that we have interpreted § 74.1203 of the rules to require that complaints of interference in the FM translator context be filed by listeners. We also note that the scope of the rule prohibiting translator stations from causing "actual interference to … direct reception," and that of section 3(b)(2)(B) which prohibits LPFM stations from causing "interference to the reception of an existing or modified full-service station," are essentially equivalent. The Commission previously has interpreted the "direct reception" language included in § 73.1203(a) as limiting actionable complaints to those that are made by bona fide listeners. We believe it is appropriate

to interpret the "reception" language in section 3(b)(2)(B) of the LCRA as imposing this same limit.

17. Once the Commission receives a bona fide complaint of interference from an LPFM station operating pursuant to a second-adjacent waiver and notifies the LPFM station of the complaint, the LPFM station must "suspend operation immediately" and stay off the air until it eliminates the interference or demonstrates that the interference was not due to its emissions. We conclude that an LPFM station may demonstrate that it is not the source of the interference at issue by conducting an "on-off" test. "On-off" tests have been used by the FM translator and other services to determine whether identified transmissions are "the source of interference." In addition, the Commission specifically authorized LPFM stations to use "on-off" tests for determining "whether [third-adjacent interference] is traceable to [an] LPFM station." As the Commission did in that context, we require the full-service station(s) involved to cooperate in these tests.

B. Third-Adjacent Channel Interference Complaints and Remediation

18. As instructed by section 3 of the LCRA, in the Fifth Report and Order ("Fifth R&O"), we eliminated the third-adjacent channel spacing requirements. We then sought comment on the associated interference remediation obligations, set forth in section 7 of the LCRA, that Congress paired with this change. We 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 the third-adjacent channel spacing requirements in place when the LCRA was enacted, and one for LPFM stations that would be considered fully spaced under those requirements. We discuss this conclusion and each of the regimes below.

1. LPFM Interference Protection and Remediation Requirements

19. Two Distinct Regimes. Sections 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) 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 Section 74.1203 of [the] rules." Section 7(3), in contrast, directs the Commission to require "[LPFM] stations on third-adjacent channels … to address interference complaints within the protected contour of an affected station" and encourages such LPFM stations to address "all other interference complaints." In the Fourth FNPRM, we tentatively concluded that, through these two provisions, Congress intended to create 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 explained that the intended regimes differed both with respect to the locations at which an affected station's signal is protected from third-adjacent interference from an LPFM station and the extent of the remediation obligations applicable when interference occurs at these locations. We sought comment on our tentative conclusion.

20. Commenters addressing this question support our tentative conclusion. Accordingly, we find that section 7 of the LCRA creates two different interference protection and remediation regimes – one that applies to Section 7(1) Stations and one that applies to Section 7(3) Stations. As we noted in the Fourth FNPRM, 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), which incorporates the requirements for FM translators and

boosters, Section 7(1) Stations must "eliminate" any actual interference they cause to the signal of any authorized station in areas where that station's signal is "regularly used." Section 7(3), on the other hand, would obligate such stations only to "address" complaints of interference occurring within an affected station's protected contour. We conclude that this statutory interpretation is necessary to read section 7 as a harmonious whole.

21. As we noted in the Fourth FNPRM, we can also reasonably conclude that Congress intended to impose more stringent interference protection and remediation obligations on LPFM stations that are located nearest to full-service FM stations and, therefore, have a greater potential to cause interference. The LCRA provides greater flexibility by eliminating third-adjacent channel spacing requirements for LPFM stations, but counterbalances that flexibility with a prohibition on LPFM stations that would be short-spaced under such requirements causing any actual interference to other stations. Accordingly, our reading is consistent with the general licensing rule of counterbalancing flexible technical standards with more stringent interference remediation requirements.

22. Retention of Third-Adjacent Channel Spacing Requirements for Reference. We tentatively concluded that, although section 3(a) of the LCRA mandates the elimination of the third-adjacent channel spacing requirements, we should retain them solely for reference purposes in order to implement section 7(1) of the LCRA. We sought comment on this tentative conclusion and also on whether, if the spacing tables are retained in the rules, to include them in § 73.807 or a different rule section.

23. Commenters addressing this issue agree that the rules should reference the former third-adjacent channel distance separation requirements, but are divided on the best approach. REC expresses concern that references to third-adjacent spacing in § 73.807 could confuse new

applicants. Common Frequency asserts that it would be confusing to eliminate the third-adjacent spacing provisions, rename them, and then insert them in a table elsewhere in the rules.

24. We will retain the third-adjacent channel spacing provisions in § 73.807 for reference purposes only. It is necessary to reference the former third-adjacent channel spacing requirements in order to clarify which stations must adhere to the section 7(1) regime. We are sympathetic to commenters' concerns of confusion. However, we believe that licensees will find it easier and more convenient to have all the spacing standards (reference or otherwise) in one section of the rules. We make clear in the new version of § 73.807 that LPFM stations need not satisfy these standards, and that they are included solely to determine which third-adjacent interference regime applies.

25. Applicability of sections 7(4) and (5) of the LCRA. Sections 7(4) and (5) of the LCRA establish a number of protection and interference remediation requirements. These provisions mandate that the Commission allow LPFM stations on third-adjacent channels to collocate and establish certain complaint procedures and standards. In the Fourth FNPRM, we tentatively concluded these sections apply only to Section 7(3) Stations.

26. We affirm our tentative conclusion, which was supported by Prometheus, the sole commenter on this issue. We believe this is the most reasonable reading of these provisions. Sections 7(4) and (5) 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) Stations are subject to the well-established and comprehensive interference protection and remediation regime set forth in § 74.1203 of the rules.

We therefore will not apply sections 7(4) and 7(5), which establish discrete requirements inconsistent with the § 74.1203 regime, to Section 7(1) stations.

27. Third-Adjacent Channel Interference Only. We tentatively concluded that sections 7(1), (2), (3), (4) and (5) of the LCRA apply only to third-adjacent channel interference. We affirm our conclusion, which commenters support. Although Congress did not specify the type of interference to which these provisions apply, we believe this is the most reasonable reading. 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 LPFM stations causing interference to stations located on third-adjacent channels. 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.

2. Regime Applicable to Section 7(1) Stations

28. General Requirements. Section 7(1) Stations are subject to the same interference protection and remediation regime applicable to FM translator and booster stations. These requirements, set forth in § 74.1203 of the rules, are more stringent than those currently applicable to LPFM stations. § 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. As previously noted, the rule has been interpreted broadly.

29. Southwestern Ohio Public Radio ("SOPR"), the only commenter to address this issue, comments that "it appears that the requirements in Section 7(1) give the Commission very little

leeway in its interpretation." Section 7(1) is explicit in its direction to "provide the same interference protections that FM translator stations and FM booster stations are required to provide as set forth in Section 74.1203." There is no evidence in the statute or legislative history that Congress intended the § 74.1203 requirements to be merely a list of minimum criteria that could be supplemented or modified; indeed, the statute expressly says that the interference protections must be "the same." Further, the LCRA refers to the particular version of § 74.1203 "in effect on the date of enactment of this Act" (i.e., January 4, 2011). Accordingly, we will apply the relevant sections of § 74.1203, without modification, to Section 7(1) Stations. We will interpret these provisions in the same manner as we have in the FM translator context. In addition, we will consider directional antennas, lower ERPs and/or differing polarizations to be suitable techniques for eliminating third-adjacent channel interference. FM translators have the flexibility to employ all of these options in their operations. Thus, permitting LPFM stations to use these same remedial techniques is consistent with Congress' decision to require the wholesale adoption of the well-established and comprehensive regime in § 74.1203 of the rules.

30. Periodic Announcements. We also requested comment on requiring newly constructed Section 7(1) Stations to make the same periodic announcements required of Section 7(3) Stations under section 7(2) of the LCRA. We questioned whether we could reasonably 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. We noted, 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 section 74.1203 of its rules," and that § 74.1203 does not require an FM translator station to broadcast periodic announcements that alert listeners

to the potential for interference. Thus, we asked commenters to address whether we could and, if so, whether we should impose the periodic announcement requirement on Section 7(1) Stations.

31. Commenters addressing this issue were divided. SOPR states that the Commission must strictly adhere to the requirements of § 74.1203, in accordance with the section 7(1) mandate, and therefore, periodic announcements should not be required of Section 7(1) Stations. Similarly, Common Frequency highlights the inconsistency of the Commission finding distinctions between Section 7(1) and 7(3) Stations, but then conversely stating that there is no reason to distinguish between Section 7(1) Stations and Section 7(3) Stations for purposes of periodic announcements. REC, on the other hand, argues that the section 7(2) periodic announcement requirement applies to Section 7(1) Stations. It believes "that the differences in references to how a LPFM station operating on a third adjacent channel in respect to a full-service FM station may be due to how the 2010 version of the LCRA was marked-up by Congress," and that Congress intended the periodic announcement requirement to apply to all LPFM stations constructed on third-adjacent channels.

32. We believe that Congress, in framing section 7, did not intend to apply the periodic announcement requirement to Section 7(1) Stations. If it had wished to apply this requirement to Section 7(1) Stations, it could have done so explicitly in the LCRA. Instead, Congress required our wholesale adoption of the well-established and comprehensive § 74.1203 regime for Section 7(1) Stations. That regime does not include any form of periodic announcements. We agree with Common Frequency that it is incongruous to find clear distinctions between the section 7(1) and 7(3) Station interference protection and remediation regimes, as we have done, but then to ignore these distinctions in this context. Accordingly, for the reasons discussed above, we will not impose a periodic announcement requirement on Section 7(1) Stations.

3. Regime Applicable to Other LPFM Stations

33. 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 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 these other provisions below.

34. "Addressing" Complaints of Third-Adjacent Channel Interference. Unlike section 7(1), section 7(3) does not specifically refer to § 74.1203 of the rules. 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. Section 7(2) of the LCRA – which we conclude applies only to Section 7(3) Stations – further mandates that we require newly constructed Section 7(3) Stations on third-adjacent channels to cooperate in "addressing" any such interference complaints. Therefore, in the Fourth FNPRM, we sought comment on (1) what a Section 7(3) Station must do to "address" a complaint of third-adjacent channel interference; (2) whether to specify the scope of efforts which a Section 7(3) Station must undertake; (3) whether to relieve a Section 7(3) Station of its obligations in instances where the complainant does not reasonably cooperate with the Section 7(3) Station's remedial efforts; and (4) whether the more lenient interference protection obligations currently set forth in § 73.810 should continue to apply to Section 7(3) Stations.

35. Commenters offer varied interpretations of the actions a Section 7(3) Station must take to "address" a complaint of third-adjacent channel interference. SOPR argues that "to address" means "to respond to the complaint with reasonable effort to remediate the interference based on accepted engineering practices and with the cooperation of the complainant." It urges the Commission to clearly specify the scope of required efforts. Common Frequency proposes that "addressing" interference complaints "could mean visiting the impacted area, turning on the receiver in question, and shutting down temporarily." NPR, in contrast, contends that this phrase imposes the full scope of section 7(1) remediation requirements on Section 7(3) Stations when interference occurs within the protected contour of the affected station. Notwithstanding these divergent interpretations, we find unanimous support for relieving Section 7(3) Stations of their obligations in instances where a complainant does not reasonably cooperate with an LPFM station's remedial efforts. Finally, in lieu of applying the interference protection obligations currently set forth in § 73.810 to Section 7(3) Stations, one commenter suggests that we instead employ the current FM translator rules, which, it asserts, "have worked for decades and [are] seen as 'tried and tested.'"

36. We find that it is most reasonable to conclude that the substantial differences between the language of sections 7(1) and 7(3) reflect Congress's intention to establish differing remediation regimes for these two classes of stations. Moreover we find a clear difference in meaning between the § 74.1203 obligation to "eliminate" interference and the lesser section 7(3) obligation to "address . . . interference complaints." Accordingly, we will define "address" in accordance with the current version of § 73.810 of the rules, meaning "an LPFM station will be given a reasonable opportunity to resolve all interference complaints." We will not require Section 7(3) Stations to cease operations while resolving interference complaints, and we decline

to specify the scope of remedial efforts Section 7(3) Stations must undertake. Section 7(3) Stations fully comply with the Commission's former third-adjacent spacing requirements, a stringent licensing standard, which is based on a proven methodology for ensuring interference-free operations between nearby stations. Accordingly, similarly stringent interference remediation obligations are unnecessary. We expect Section 7(3) Stations, however, to make good faith and diligent efforts to resolve any complaints received. For example, a Section 7(3) Station may agree to provide new receivers to impacted listeners or to install filters at the receiver site. Section 7(3) Stations also may wish to consider colocation, a power reduction and/or other facility modifications (e.g., use of directional antennas or differing polarizations) to alleviate the interference. Finally, we will continue to consider a complaint resolved if the complainant does not reasonably cooperate with a Section 7(3) Station's investigatory and remedial efforts.

37. Complaints. 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. Further, 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.

38. We requested comment on whether any of the four criteria for bona fide complaints set forth in § 73.810(b) of the rules remain relevant. We tentatively concluded that section 7(5) of the LCRA 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 asked commenters to address whether we should retain the remaining criterion set forth in § 73.810(b)(4), which requires a bona fide complaint to be received within one year of the date an LPFM station commenced broadcasts. We also sought comment on whether to establish certain basic requirements for complaints.

39. No commenter opposes our conclusion that section 7(5) of the LCRA mandates that we delete §§ 73.810(b)(1) and (b)(3) from our rules. One commenter, however, proposes that we add a provision limiting complaints to those involving interference within the 100 dBu contour of the affected station. With respect to § 73.810(b)(2) (bona fide complaint must be in form of affidavit and state the nature and location of the alleged interference), several commenters recommend that we retain some semblance of the former rule and also establish additional basic requirements for complaints. For instance, Athens Community Radio Foundation asserts that bona fide complaints should state the nature and location of the alleged interference, the call letters of the stations involved, and accurate contact information. Similarly, Common Frequency

argues that an actionable complaint must specify the location and date of interference, the type of receiver, channel, time/day of interference, whether ongoing or intermittent, and contact information for the complainant. Several commenters also assert that the Commission should require complainants to file copies of their complaints with the Audio Division, and that the Commission should consider only complaints from bona fide listeners who are "disinterested." Finally, those discussing it unanimously agree that we should retain the criterion set forth in § 73.810(b)(4), which requires a bona fide complaint to be received within one year of the date an LPFM station commenced broadcasts.

40. We will, as proposed, eliminate §§ 73.810(b)(1) and (b)(3) from our rules. These distance restrictions conflict with the explicit mandate of section 7(5) of the LCRA to "accept complaints based on interference … *at any distance* from the full-service FM station, FM translator station, or FM booster station." In addition, the § 73.810(b)(3) fixed receiver limitation is inconsistent with section 7(5)(C) of the LCRA, which requires us to accept complaints of interference at fixed locations and to mobile reception.

41. In this same vein, we decline to adopt the proposal to limit complaints to those occurring within the 100 dBu contour of the affected station. We agree, however, with commenters' suggestions that we impose explicit, basic requirements for complaints. A list of minimum criteria likely will help LPFM stations quickly address issues while also curbing the risk of frivolous filings. Accordingly, while we will delete the § 73.810(b)(2) criterion that the complaint be in the form of an affidavit, we retain the requirement that the complaint state the nature and location of the alleged interference. We will also require complainants to specify: (1) the call signs of the LPFM station and the affected full-service FM, FM translator or FM booster station; (2) the type of receiver; and (3) current contact information. We strongly encourage

listeners to file copies of the complaints with the Media Bureau's Audio Division to ensure proper oversight. LPFM stations also must promptly forward copies of complaints to the Audio Division for resolution. However, an affected station may forward copies of complaints that it receives to the Audio Division as a courtesy to the complainant listeners. When complainants fail to include all the necessary information listed above, Audio Division staff will take efforts to correct any deficiencies. We also limit actionable listener complaints to those that are made by bona fide "disinterested" listeners (e.g., persons or entities without legal, economic or familial stakes in the outcome of the LPFM station licensing proceeding). Finally, we will preserve the § 73.810(b)(4) criterion, which requires a bona fide complaint to be received within one year of the date an LPFM station commenced broadcasts with its currently authorized facilities. Any interference caused by a Section 7(3) Station should be detectable within one year after it commences such operations. This time restriction will reasonably limit uncertainty regarding the potential modification or cancellation of an LPFM station's license and such station's financial obligation to resolve interference complaints. We believe that the efficient, limited complaint procedure that we are adopting is fully consistent with the LCRA and fairly balances the interests of full-service broadcasters against the benefits of fostering the LPFM radio service.

42. Periodic Broadcast Announcements. Section 7(2) of the LCRA directs the Commission to amend § 73.810 of the rules 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 station to report any interference. These announcements must be broadcast for a period of one year after construction. We sought comment on whether we should adopt specific announcement language and whether we should mandate the timing and frequency of these announcements.

43. Commenters agree that the Commission should provide some guidance regarding the text of the announcements. One commenter recommends that the Commission specify explicit uniform language. Other commenters state that the Commission should merely suggest language and allow operators of Section 7(3) Stations the flexibility to modify the wording. REC emphasizes that broadcasters need to have "latitude to word the message in a way to get the points across without overwhelming listeners with technical jargon."

44. With respect to the timing and frequency of the mandatory announcements, REC argues that we should aim to achieve "a balance between educating radio listeners of changes in the 'dialscape' as a result of the new [LPFM] station while … not confus[ing] the listener or excessively burden[ing] the [LPFM] broadcaster." Jeff Sibert ("Sibert") and Prometheus each urge us to address the announcements in a manner that is simple, flexible and imposes a minimum burden on new Section 7(3) Stations. One commenter suggests that we allow the affected full-power station to waive the Section 7(3) Station's periodic announcement requirement.

45. Several commenters recommend that we use the pre-filing and post-filing license renewal announcement schedule as a template. REC, in particular, suggests a very detailed schedule based on a modified version of the renewal announcement schedule. It argues that any bona fide interference will be discovered in the first month of the Section 7(3) Station's operation, and accordingly, it is necessary to air the highest frequency of announcements during the first month. Sibert asserts that the requirement to broadcast the announcement should be no greater than once per day between the hours of 6 a.m. and midnight for the first three months, and once per week during the same hours for the last nine months.

46. We agree that we should provide licensees of newly constructed Section 7(3) Stations explicit guidance on the language to be used in the periodic announcements. Therefore, we will amend our rules to specify sample language that may be used in the announcements. Specific language will make it easier for licensees of new Section 7(3) Stations to comply with this section 7(2) requirement. We will not, however, mandate that licensees of Section 7(3) Stations follow the sample text verbatim, but rather, allow licensees the discretion to modify the exact wording, as the vast majority proposed. To ensure consistency, the announcement must, however, at a minimum: (1) alert listeners of a potentially affected third-adjacent channel station of the potential for interference; (2) instruct listeners to contact the Section 7(3) Station to report any interference; and (3) provide contact information for the Section 7(3) Station. Further, the message must be broadcast in the primary language of both the newly constructed Section 7(3) Station and any third-adjacent station that could be potentially affected.

47. We will, as the commenters suggest, dictate the timing and frequency of the required announcements. We believe that an explicit schedule will promote compliance with this requirement. We also believe that the schedule specified below achieves the benefits of effectively notifying listeners of the potential for interference while minimizing the costs of doing so for the new Section 7(3) Station.

48. We agree with REC that any interference is likely to be detected within the first month of the new Section 7(3) Station's operation. Accordingly, during the first thirty-days after a new Section 7(3) Station is constructed, we direct such station to broadcast the announcements at least twice daily. One of these daily announcements shall be made between the hours of 7 a.m. and 9 a.m. or 4 p.m. and 6 p.m. The second daily announcement shall be made outside of these time slots. Between days 31 and 365 of operation, the station must broadcast the announcements

a minimum of twice per week. The required announcements shall be made between the hours of 7 a.m. and midnight.

49. Finally, we decline to allow an affected full-power station to waive the newly constructed Section 7(3) Station's periodic announcement obligation, as one commenter suggests. Section 7(2) of the LCRA explicitly mandates that newly constructed Section 7(3) Stations broadcast periodic announcements. The announcement is intended to benefit listeners, by alerting them of the potential for interference. Allowing potentially affected stations to waive the announcements would be inconsistent with section 7(2) of the LCRA and deprive listeners of its intended benefits.

50. 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 colocation of the transmission facilities of the low-power FM station and any stations on third-adjacent channels." In the Fourth FNPRM, we tentatively concluded that, other than eliminating the third-adjacent channel spacing requirements as mandated by section 3(a) of the LCRA, we need not modify or eliminate any other provisions of our rules to implement section 7(4).

51. Two commenters propose additional modifications to our rules in order to implement section 7(4). REC argues that LPFM stations should have the flexibility to co-locate with or operate from a site "very close to the third-adjacent full-service station as long as no new short spacing is created, even if this means moving the transmitter site to a location that may be outside the current service contour of the LPFM station." REC points out that, under existing rules, such a change would constitute a "major change" and an applicant seeking authority to make such a change would have to do so during a filing window. We infer that REC would like

us to modify our rules to clarify that we will treat as a "minor change" a proposal to move a Section 7(3) Station's transmitter site, including a move outside its current service contour, in order to co-locate or operate from a site close to a third-adjacent channel station and remediate interference to that station. We will adopt REC's proposed modification. We note that section 7(4) of the LCRA explicitly requires the Commission to grant "low-power FM stations on third-adjacent channels the technical flexibility to remediate interference through the colocation of the transmission facilities of the low-power FM station and any stations on third-adjacent channels." We believe that REC's suggested expansion of the definition of "minor change" will provide Section 7(3) Stations the sort of "technical flexibility" that Congress intended. We also will treat as a "minor change" an LPFM proposal to locate "very close" to a third-adjacent channel station. Although the LCRA does not explicitly direct the Commission to employ "flexible" licensing standards in this context, colocation and "very close" locations can eliminate the potential for interference for exactly the same reason (i.e., they result in acceptable signal strength ratios between the two stations at all locations). Generally, this will limit LPFM site selections and relocations pursuant to this policy to transmitter within 500 meters of stations operating on third-adjacent channels. The approach we adopt will advance the overarching goal of section 7 to prevent third-adjacent channel interference by LPFM stations. Accordingly, we will modify § 73.870(a) of our rules to treat these moves as "minor changes," and we will routinely grant applications for authority to make these moves, upon a showing of potential interference from the authorized site, and provided that the licensee would continue to satisfy all eligibility requirements and maintain any comparative attributes on which the grant of the station's initial construction permit was predicated.

52. If interference is remediated through colocation, Common Frequency recommends that we consider allowing "flexible operating proposals," such as upgrades to LP250 if the colocation takes the LPFM transmitter far from the existing transmitter site, the use of different or directional antennas, and the use of close-by towers instead of colocation. We decline to permit Section 7(3) Stations seeking to remediate interference by co-locating their transmission facilities with those of an affected full-service FM station to operate at powers exceeding 100 watts ERP at 30 meters HAAT. We will, however, permit Section 7(3) Stations to propose lower powers, use of directional antennas and use of differing polarizations to remediate interference. This is consistent with our decision to afford applicants seeking second-adjacent waivers the flexibility to employ these methods.

4. Additional Interference Protection and Remediation Obligations

53. 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. It 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. In the Fourth FNPRM, we found that the section 7(6) interference requirements are, with one exception, unambiguous. We sought comment on whether to interpret the term "States" to include the territories and possessions of the United

States. We noted that only New Jersey and Puerto Rico satisfy the population and population density thresholds set forth in section 7(6).

54. Commenters are divided how we should construe the term "States." REC and SOPR argue that Congress did not intend to include Puerto Rico as a "State" for purposes of section 7(6). REC contends that, following lobbying from the New Jersey Broadcasters Association ("NJBA"), Congress amended the Act to include the current section 7(6), and that Congress intended this section to apply solely to the state of New Jersey. Arso Radio Corporation ("Arso"), in contrast, asserts that "States" should include the territories and possessions of the United States, and therefore, the more restrictive section 7(6) interference protections should apply to both New Jersey and Puerto Rico. Although Arso acknowledges that an examination of the legislative history "does not yield any clues as to congressional intent regarding use of the word 'States,'" it insists that Congress intended to define the words "States" in the same way as it defined "States" in section 153(47) of the Communications Act of 1934, as amended ("Act"), which provides that the term "State" includes the District of Columbia and the Territories and possessions.

55. We recognize that the term "States" is susceptible to different interpretations. It is unclear from the statutory text whether Congress intended the term "States" to mean the definition of "States" as it appears in the Act, which includes all territories and possessions, or whether Congress intended to use the word "State" in its literal sense. We believe, however, that the best construction of this term, based on context and the current record before us, is that "State" means one of the 50 states. Congress knows how to implement its directives as amendments to the Communications Act, and chose not to do so in the LCRA. Thus, there is no basis for expanding on the common meaning of the term "states" here to include territories. We

also agree with REC that New Jersey is "in a unique situation where there are two significant out-of-state metro markets (New York and Philadelphia) on each side of the state." With the New York and Philadelphia Arbitron Metro markets dominating much of the state, full power radio stations in New Jersey generally operate with lower powers and smaller protected contours than other full power radio stations. This could make them uniquely susceptible to interference from LPFM and FM translator stations. Moreover, we note that this provision of the LCRA was introduced by Senator Lautenburg, the senior Senator from New Jersey. This legislative history provides additional support for our conclusion that the term "States" in section 7(6) was not intended to include territories.

C. Protection of Translator Input Signals

56. 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).'" Section 2.7 of this report finds that "significant interference to translator input signals does not occur for [desired/undesired ratio] values of -34 dB or higher at the translator input." Section 2.7 sets out a formula ("Mitre Formula") that allows calculation of the minimum LPFM-to-translator separation that will ensure a desired/undesired ratio equal to or greater than -34 dB.

57. In the Fourth FNPRM, we noted that the Commission 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 protection standards. Based on the language of section 6, which requires the Commission to "address the potential for predicted interference," we tentatively concluded that our existing requirements regarding

remediation of actual interference must be recast as licensing rules designed to prevent any predicted interference. No commenter suggested another interpretation of section 6 of the LCRA. Thus, we affirm our tentative conclusion that section 6 of the LCRA requires us to adopt rules designed to prevent predicted interference to FM translator input signals on third-adjacent channels.

58. In the Fourth FNPRM, we sought comment on whether we should require LPFM applicants to protect the input signals of only those translators receiving third-adjacent channel full-service FM station signals, or whether we also should require them to protect the input signals of translators that receive third-adjacent channel translator signals directly off-air. Commenters' opinions vary on this issue. Prometheus argues that the protections should be limited to translators receiving input signals from FM stations. Prometheus believes that any protections beyond those to translators receiving off-air signals from FM stations would violate section 5 of the LCRA, which requires the Commission to ensure that LPFM stations and FM translators remain "equal in status." NPR and Western Inspirational, on the other hand, assert that the protections should extend to translators receiving input signals from other FM translators. NPR claims that, by its plain terms, section 6 of the LCRA requires protection of all signal inputs to translators. NPR notes that this interpretation is consistent with the Commission's current rule protecting translator input signals. Western Inspirational asserts that, with increased spectrum congestion, it has found it necessary for many of its translators to use an off-air input from another translator, not the originating FM station, in order to obtain a reliable input signal.

59. After considering the comments and reviewing the text of the LCRA, we conclude that LPFM applicants must protect the reception directly, off-air of third-adjacent channel input

signals from any station, including full-service FM stations and FM translator stations. Section 6 of the LCRA asks the Commission to address predicted interference to "FM translator input signals on third adjacent channels." This unqualified mandate is consistent with our rules, which require LPFM stations to operate without causing actual interference to the input signal of an FM translator or FM booster station.

60. We turn next to the issue of a predicted interference standard for processing LPFM applications. We adopt the basic threshold test proposed in the Fourth FNPRM, which received overwhelming support from commenters. This threshold test closely tracks the interference standard developed by Mitre but for the reasons stated below does not require an LPFM applicant to obtain the receive antenna technical characteristics that are incorporated into the Mitre Formula. It provides that an applicant for a new or modified LPFM construction permit may not propose a transmitter site within the "potential interference area" of any FM translator station that receives its input signal directly off-air from a full-service FM or FM translator station on a third-adjacent channel. For these purposes, we define the "potential interference area" as both the area within 2 kilometers of the translator site and also the area within 10 kilometers 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 FM station being rebroadcast by the translator.

61. As proposed in the Fourth FNPRM and supported by commenters, we will permit an LPFM applicant proposing to locate its transmitter within the "potential interference area" to use either of two methods to demonstrate that LPFM station transmissions will not cause interference to an FM translator input signal. First, as indicated in Section 2.7 of the Mitre Report, an LPFM applicant 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, an LPFM

applicant may use the equation provided in Section 2.7 of the Mitre Report. As requested by Prometheus, we also will permit an LPFM applicant to reach an agreement with the licensee of the potentially affected FM translator regarding an alternative technical solution.

62. We do not authorize FM translator receive antenna locations. However, we believe that most receive and transmit antennas are co-located on the same tower. Accordingly, we proposed to assume that the translator receive antenna is co-located with its associated translator transmit antenna. We received no comment on this proposal. We continue to believe that assuming colocation of translator receive and transmit antennas will facilitate the use of the methods described above. We noted that the Mitre Formula would require the horizontal plane pattern of the FM translator's receive antenna – information that is not typically available publicly or in CDBS. Therefore, we also proposed to allow the use of a "typical" pattern in situations where an LPFM applicant is not able to obtain this information from the FM translator licensee, despite reasonable efforts to do so. Both Prometheus and Common Frequency support this proposal. No commenter opposes it. Accordingly, we adopt our proposal to allow use of a "typical" pattern when an LPFM station makes reasonable efforts but is unable to obtain the horizontal plane pattern of an FM translator station from that station.

63. Prometheus proposes that we relieve an LPFM applicant of its obligation to protect an FM translator's input signal if, despite reasonable efforts to do so, the applicant is unable to determine the delivery method or input channel for that translator. We will not adopt this proposal because the LCRA requires us to "address the potential for predicted interference" in this context. We lack authority to adopt a processing rule that abdicates this responsibility. For this same reason, we also reject Prometheus' proposal to relieve an LPFM station applicant from this protection obligation if a translator licensee fails to maintain accurate and current

Commission records regarding its primary station and input signal. In any event, we note that we specify the primary station call sign, frequency and community of license in FM translator authorizations. In addition, we require each FM translator licensee to identify its primary station when filing its renewal application. We strongly recommend that FM translator licensees update the Commission if they have changed their primary stations since they last filed renewal applications.

64. We proposed to dismiss as defective an LPFM application that specifies a transmitter site within the third-adjacent channel "potential interference area" but fails to include an exhibit demonstrating lack of interference to the off-air reception by that translator of its input signal. We proposed to permit an LPFM applicant to seek reconsideration of the dismissal of its application and to request reinstatement nunc pro tunc. We also proposed that an LPFM applicant seeking reconsideration and reinstatement nunc pro tunc demonstrate that its proposal would not cause any predicted interference using either the undesired/desired ratio or the Mitre Formula discussed above. Commenters support these proposals. We continue to believe it is appropriate to treat an application dismissed on these grounds the same as an application dismissed for violation of other interference protection requirements. Accordingly, we adopt our proposal to allow an applicant to seek reconsideration and reinstatement nunc pro tunc by making one of the showings discussed herein. In addition, consistent with our decision to permit applicants to do so at the application filing stage, we will permit applicants to reach an agreement with the licensee of the potentially affected FM translator regarding alternative technical solutions.

D. Other Rule Changes

65. The Fourth FNPRM proposed 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 sought comment on whether the proposed changes were consistent with the LCRA and whether they would promote the public interest. We discuss each proposed change in turn below.

1. Eligibility and Ownership

a. Requirement That Applicants Remain Local

66. The LPFM service is reserved solely for non-profit, local organizations. In the Fourth FNPRM, we expressed concern that, because our rules define "local" in terms of "applicants" and their eligibility to "submit applications," applicants and licensees might not understand that the localism requirement extends beyond the application stage. We proposed to clarify this 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 …."

67. Prometheus and SOPR support our proposal. Prometheus notes that to require otherwise (i.e., to require that an organization be local only at the time it submits its application) "would controvert the LCRA and the policies of the Commission." SOPR asserts that this clarification may prevent abuse. Catholic Radio Association ("CRA") suggests language it believes will better achieve our policy objective.

68. Given the limited reach of LPFM stations, we continue to believe that LPFM entities must be local at all times and we will clarify that requirement by amending § 73.853(b). At

CRA's suggestion, we will adopt language slightly different from that originally proposed. Our revised rule (with the new language underlined) will read: "Only local organizations will be permitted to submit applications and to hold authorizations in the LPFM service. For the purposes of this paragraph, an organization will be deemed local if it can certify, at the time of application, that it meets the criteria listed below and if it continues to satisfy the criteria at all times thereafter …." We address changes we proposed to the criteria used to define "local," later in this decision.

b. Cross-Ownership of LPFM and FM Translator Stations

69. From the outset, the Commission has prohibited common ownership of an LPFM station and any other media subject to the Commission's ownership rules. This prohibition fosters 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." In the Fourth FNPRM, we sought comment on whether to allow LPFM station licensees to own or hold attributable interests in one or more FM translator stations. We noted that this could enable LPFM stations to expand their listenership and provide another way for FM translators to serve the needs of communities. We asked whether it was possible to achieve such benefits without changing the extremely local nature of the LPFM service. We further asked whether we should limit cross-ownership of FM translators and LPFM stations by, for example, requiring that (1) any cross-owned FM translator rebroadcast the programming of its co-owned LPFM station; (2) the 60 dBu contours of the co-owned LPFM and FM translator stations overlap; and/or (3) the co-owned LPFM and FM translator stations be located within a set distance or geographic limit of each other. Finally, we asked whether to permit an LPFM station to use alternative methods to deliver its signal to a commonly owned FM translator.

70. A few commenters oppose cross-ownership. These commenters express concerns about the impact of LPFM/FM translator cross-ownership on the local character of the LPFM service and the availability of spectrum for new LPFM stations. NPR points out that the Commission, in creating the LPFM service, considered but ultimately rejected the option of allowing cross-ownership of LPFM and other broadcast stations, finding that its interest in providing for new voices to speak to the community and providing a medium for new speakers to gain broadcasting experience would be best served by barring cross-ownership.

71. In contrast, many commenters support LPFM/FM translator cross-ownership. REC and Nexus/Conexus assert that cross-ownership would enable LPFM stations to better reach their intended communities. REC observes that FM translator stations owned by unrelated entities have been rebroadcasting LPFM signals for over a decade. REC does not believe that limited common ownership of FM translator and LPFM stations would change the nature of the LPFM service. National Lawyers Guild and Media Alliance state that translators might be useful if a terrain obstruction blocks an LPFM signal within the LPFM station's primary contour. Several commenters contend that cross-ownership could enhance localism because many communities are larger than the typical reach of an LPFM station's signal. They contend that FM translators could allow stations to serve their entire intended service area, such as a single county.

72. Most commenters qualify their support for cross-ownership, suggesting various limits or restrictions to ensure that any co-owned FM translator enhances an LPFM station's local mission. Commenters support (1) establishing a distance or geographic limit on FM translator cross-ownership, (2) requiring the service contours of co-owned LPFM and FM translator stations to overlap; (3) limiting the number of FM translators an LPFM licensee may own to a "modest" number, such as one or two; and/or (4) requiring co-owned translators to rebroadcast

only the LPFM station. Commenters also support requiring an LPFM station to feed the FM translator with an off-air signal, the same delivery restriction that applies to non-reserved band FM translators.

73. We believe that commenters on both sides of this issue raise valid points. As many observe, use of FM translators to rebroadcast LPFM stations could be beneficial, improving local service to oddly-shaped communities and to rural communities that could receive, at best, only partial LPFM coverage. However, as others aptly note, cross-ownership without adequate safeguards poses a potential danger to the local character of the LPFM service. On balance, we believe that the benefits of FM translator ownership by LPFM licensees will outweigh any disadvantages, provided that we take steps to limit potential risks.

74. Accordingly, we will amend § 73.860 of our rules to allow LPFM/FM translator cross-ownership. We will limit cross-ownership, however, in order to prevent large-scale chains and "leapfrogging" into unconnected, distant communities. We adopt the following five limits on cross-ownership, which are intended to ensure that the LPFM service retains its extremely local focus. First, we will permit entities – other than Tribal Nation Applicants – to own or hold attributable interests in one LPFM station and a maximum of two FM translator stations. Second, we will require that the 60 dBu contours of a commonly-owned LPFM station and FM translator station(s) overlap. Third, we will require that an FM translator receive the signal of its co-owned LPFM station off-air and directly from the LPFM station, not another FM translator station. Fourth, we will limit the distance between an LPFM station and the transmitting antenna of any co-owned translator to 10 miles for applicants in the top 50 urban markets and 20 miles for applicants outside the top 50 urban markets. An LPFM station may use either its transmitter site or the reference coordinates of its community of license to satisfy these distance restrictions.

Fifth, we will require the FM translator station to synchronously rebroadcast the primary analog signal of the commonly-owned LPFM station (or for "hybrid" stations, the digital HD-1 program-stream) at all times.

75. We believe that allowing cross-ownership of an LPFM station and up to two FM translator stations will provide maximum flexibility, while the requirement that these translators link directly to their commonly-owned LPFM station rather than to each other will prevent the type of chained-networks of concern to commenters. To keep the service provided by the LPFM/FM translator combinations locally focused, we will limit the placement of co-owned FM translators to conform to the same ten- and twenty-mile distances which define "local" applicants in the top 50 and all other markets, respectively. We believe that such a requirement is more easily understood and achieved than alternatives phrased in terms of a signal's ability to stay within political boundaries of a county or city. Our requirement that an FM translator rebroadcast the primary signal of its co-owned LPFM station addresses Grant County's concern that LPFM stations may begin to broadcast multiple digital streams and that stations operating in such a hybrid mode might use translators to network secondary, less locally-oriented programming rather than the station's primary program stream. We are aware of only one LPFM station currently operating in hybrid mode, so this issue is currently of limited applicability. Nevertheless, we adopt Grant County's suggestion that co-owned translators simultaneously rebroadcast the LPFM station's analog programming, as a forward-looking protection to preserve the service's local nature as more LPFM stations avail themselves of technological advances. We further agree with commenters that alternative signal delivery of LPFM signals to FM translators could regionalize LPFM service. Accordingly, we will require that an FM translator

receive the signal of its co-owned LPFM station off-air and directly from the LPFM station itself in order to maintain the service's local character.

c. Ownership Issues Affecting Tribal Nations

76. We posed additional ownership-related questions in the Fourth FNPRM, including whether Tribal Nations are eligible and, if not, whether they should be eligible to own LPFM stations. We also sought comment on whether they should be permitted to own more than one LPFM station and/or to own or hold an attributable interest in an LPFM station in addition to a full-power station. We address each of these proposals below.

77. Basic Eligibility**.** § 73.853 of the rules currently provides for the licensing of an LPFM station to a state or local government, but does not explicitly establish the eligibility of a Tribal Nation Applicant. Notwithstanding this omission, it is well established that Tribal Nations are inherently sovereign Nations, with the obligation to "maintain peace and good order, improve their condition, establish school systems, and aid their people in their efforts to acquire the arts of civilized life," within their jurisdictions. The Commission, as an independent agency of the United States Government, has an historic federal trust relationship with Tribal Nations, and a longstanding policy of promoting Tribal self-sufficiency and economic development. To this end, the Commission has taken steps to aid in their efforts to provide educational and other programming to their members residing on Tribal Lands, as well as to assist them in acquiring stations for purposes of business and commercial development.

78. In view of our commitment to assist Tribal Nations in establishing radio service on Tribal lands and our consideration of whether to include a Tribal Nation selection criterion in the LPFM comparative analysis, in the Fourth FNPRM we proposed to recognize explicitly the eligibility of Tribal Nation Applicants to hold LPFM licenses. We proposed to rely on the definitions of the

terms "Tribal applicant" and "Tribal lands" as they are currently defined in our rules governing full-power NCE FM licensing. By specifically cross-referencing the definition of "Tribal applicant" set forth in § 73.7000 of the rules, which includes a reference to the term "Tribal coverage," we implicitly proposed to incorporate the definition of "Tribal coverage" set forth therein.

79. Commenters, including NPM and NCAI, supported without significant discussion the proposal to expand the LPFM eligibility rule to include Tribal Nation Applicants. No commenter opposed this proposal. Accordingly, we will amend § 73.853(a) to clarify that Tribal Nation Applicants are eligible to hold LPFM licenses. This rule amendment further underscores the Commission's commitment to recognize the sovereignty of Tribal Nations and to ensure their equal treatment under our rules. However, we will not, as originally proposed, rely on the definition of "Tribal applicant" or "Tribal coverage" currently used in the NCE FM context. The definition of "Tribal coverage" set forth in the NCE FM rules includes a coverage requirement and a requirement that the proposed station serve at least 2,000 people living on Tribal Lands. As NPM and NCAI note, the limited scope of LPFM coverage and the scattered populations on lands occupied by Tribal Nations warrant a departure from the definition of "Tribal coverage" set forth in § 73.7000. Unlike NPM and NCAI, however, we believe that not only the 2,000 person threshold but also the coverage requirements are unsuitable for the LPFM context. Instead, for LPFM licensing purposes, we will define a "Tribal applicant" by retaining the requirement that the applicant be a Tribe or entity that is 51 percent or more owned or controlled by a Tribe. Such action is consistent with the localism and diversity goals of the LPFM service and will better achieve our goal of assisting Tribal Nations in establishing radio service to their members on Tribal Lands. Tribal stations currently account for less than one-third of one percent of the more

than 14,000 radio stations in the United States. Thus, it is self-evident that expanding Tribal radio ownership opportunities will help bring needed new service to chronically underserved communities. Moreover, restricting ownership to Tribes and Tribally controlled entities, which are obligated to preserve their histories, languages, cultures and traditions, will promote the licensing of stations to entities that are uniquely capable of providing radio programming tailored to local community needs and interests.

80. Finally, as NPM and NCAI propose, we will consider a Tribal Nation Applicant local throughout its Tribal lands, so long as such lands are within the LPFM's station's service area. We are persuaded that this better recognizes the sovereign status of Tribal Nations than our original proposal to consider a Tribal Nation Applicant local only if it proposed to locate the transmitting antenna of the proposed LPFM station on its Tribal lands. Moreover, this is consistent with the rules applicable to Tribal Nations and state and local governments operating full-service NCE-FM and Public Safety land mobile services.

81. Ownership of Multiple LPFM stations. The Commission currently prohibits entities from owning more than one LPFM station unless they are "[n]ot-for-profit organizations with a public safety purpose." This prohibition is intended to further diversity of ownership and foster a local, community-based LPFM service. In the Fourth FNPRM, we sought comment on whether to permit Tribal Nation Applicants to seek more than one LPFM construction permit to ensure adequate coverage of Tribal lands. For instance, we noted that ownership of multiple LPFM stations might be appropriate if Tribal Nation Applicants seek to serve large, irregularly shaped or rural areas that could not be covered adequately with one LPFM station. We explained that we believed that permitting Tribal Nations to hold more than one LPFM license could advance the Commission's efforts to enhance the ability of Tribal Nations to produce programming

tailored to their specific needs and cultures, and expand Tribal Nation LPFM station ownership opportunities. We questioned, however, whether we should limit ownership of multiple LPFM stations by a Tribal Nation Applicant to situations where channels also are available for other applicants, thereby eliminating the risk that a new entrant would be precluded from offering service. Finally, we sought comment on whether to implement this policy through amendment of § 73.855(a) of the rules or by rule waivers.

82. A number of commenters support Tribal Nation ownership of multiple LPFM stations on Tribal lands to permit more complete coverage than would be achieved with a single LPFM station. NPM and NCAI note that Tribal Nations already are eligible to own multiple LPFM stations as governmental entities under the public safety exception to our ban on multiple ownership of LPFM stations. They and REC believe Tribal Nations should also be able to own multiple LPFM stations for other noncommercial purposes.

83. Common Frequency, NLG and Media Alliance believe that multiple ownership by Tribal Nations is appropriate on Tribal lands, and in rural areas and small towns where there would be few other organizations interested in applying for LPFM stations. REC, however, would allow Tribal Nation Applicants to own or hold attributable interests in multiple LPFM stations only if Tribal lands constitute at least 50 percent of the land area covered by each additional LPFM station licensed to a Tribal Nation Applicant.

84. CRA, Matt Tuter ("Tuter") and William Spry ("Spry") urge us to eliminate the ban on multiple ownership of LPFM stations altogether. CRA and Tuter contend that maintaining multiple ownership restrictions for all applicants except for Tribal Nation Applicants is mistaken "because it proceeds from a false notion that only Tribal governments can serve the interests of Tribal Americans." Spry, on the other hand, argues that allowing multiple ownership of LPFM

stations is no different than permitting cross-ownership of an LPFM station and FM translator stations. According to Spry, "Multiple licenses are multiple licenses. The service should not matter."

85. We will allow Tribal Nation Applicants to seek up to two LPFM construction permits to ensure adequate coverage of Tribal lands. Our rules already permit governments, including Tribal Nations, to own multiple LPFM stations for public safety purposes, provided that they designate one application as a priority and provided that non-priority applications do not face MX applications. Consistent with our decision above, we will permit each such co-owned LPFM station to retransmit its signal over two FM translator stations, creating the potential for a Tribal Nation Applicant to have attributable interests in a total of two LPFM stations and four FM translator stations. We believe that this action will significantly further opportunities for LPFM service by Tribal Nations to their members. We will not eliminate our prohibition on multiple ownership altogether as CRA, Tuter and Spry urge. In the Fourth Report and Order in this proceeding we found that limited licensing opportunities remain for future LPFM stations in many larger markets while abundant spectrum is available in the more sparsely populated areas where Tribal Nation stations would operate predominantly. Moreover, the voluminous record of this proceeding testifies to the unmet demand for community radio stations. Given the imbalance between spectrum supply and applicant demand in larger markets, eliminating the current prohibition entirely could undermine the LPFM service goal to promote diversity of ownership. Nor will we restrict Tribal Nation ownership of multiple LPFM stations as proposed by REC. Tribal Nation Applicants will need to satisfy our localism requirement in order to be eligible to hold LPFM licenses. We believe this will provide adequate assurance that Tribal

Nation ownership of multiple LPFM stations furthers our goal of promoting service to Tribal lands and members.

86. Finally, we note that, in the past, the Commission has prohibited an LPFM applicant from filing more than one application in a filing window. In doing so, it relied upon the fact that "no one may hold an attributable interest in more than one LPFM station" and noted that "a second application filed by an applicant in [a] window would be treated as a 'conflicting' application subject to dismissal under Section 73.3518." As discussed above, we are creating a limited exception to the ban on multiple ownership of LPFM stations for Tribal Nation Applicants. Accordingly**,** we will permit Tribal Nation Applicants to file up to two applications in a filing window.

87. Cross-Ownership of LPFM and Full Power Stations. We also sought comment on whether to permit a full-service radio station permittee or licensee that is a Tribal Nation Applicant to file for an LPFM station and hold an attributable interest in such station. As discussed previously, our rules prohibit cross-ownership in order "to afford small, community-based organizations an opportunity to communicate over the airwaves and thus expand diversity of ownership." We stated that we believed that adding an exception for Tribal Nations would enhance their ability to provide communications services to their members on Tribal lands without significantly undermining diversity of ownership. We asked commenters to discuss whether such an exception should be limited to situations where the Tribal Nation Applicant demonstrates that it would serve currently unserved Tribal lands or populations.

88. Few commenters discussed this proposal. NPM, NCAI and Common Frequency express general support. CRA supports cross-ownership of LPFM and full-power stations but believes

this option should be available to all applicants. REC supports the proposal but would impose certain cross-ownership restrictions.

89. After considering the comments, we do not believe that there is a sufficient record on which to modify our rules to provide for Tribal Nation cross-ownership of LPFM and full-service stations. The record at this time does not demonstrate that this is necessary or would provide significant public interest benefit. A Tribal Nation with an LPFM authorization may file at any time a rulemaking petition for a Tribal allotment, provided that it pledges to divest the LPFM station. Although we recognize that cross-ownership could permit a Tribal Nation to program separately for different audiences, we remain concerned that this type of cross-ownership might undermine the diversity goals of the LPFM service. It is also not clear, on the record before us, how it would advance our goal of expanding service to Tribal lands and members. Finally, the record did not identify a demonstrated need unique to Tribal Nations that this change would address. Accordingly, we decline at this time to adopt a cross-ownership exception that would allow a Tribal Nation Applicant to hold both LPFM and full-power radio station authorizations. A Tribal Nation Applicant that can demonstrate that a waiver would advance our LPFM goals, and advance our goal of expanding service to Tribal lands and members or is otherwise in the public interest, may seek a waiver of this ownership restriction. Moreover, in light of the trust relationship we share with federally recognized Tribal Nations, the Commission will endeavor, through efforts coordinated by the Office of Native Affairs and Policy and the Audio Division, to engage in further consultation with Tribal Nations and coordination with inter-Tribal government organizations on this cross-ownership issue.

d. Ownership of Student-Run Stations

90. Two commenters ask us to make changes to the exception to the cross-ownership prohibition for student-run stations, which is set forth in § 73.860(b) of the rules. Currently, we permit an accredited school that has a non-student-run full power broadcast station also to apply for an LPFM station that will be managed and operated by students of that institution, provided that the LPFM application is not subject to competing applications. The Commission dismisses the student-run LPFM application if competing applications are filed.

91. REC and Common Frequency propose that we consider applications for student-run stations even if there are competing applications, so that all applicants can participate in settlements and time sharing negotiations. We agree that it would serve the public interest to eliminate this automatic dismissal requirement. When the Commission first adopted this exception to the general prohibition on cross-ownership, it was seeking to strike a balance between an LPFM service comprised entirely of new entrants and one which would enable new speakers including students to gain experience in the broadcast field, even if their universities held other broadcast interests. The Commission believed that the exception properly balanced the interests of local groups in acquiring a first broadcast facility and of university licensees in providing a distinct media outlet for students. Our decision today, however, alters the LPFM comparative process by adding a selection criterion for applicants with no other broadcast interests. Given this change, we believe it is appropriate to eliminate our limitation on eligibility for student-run LPFM applications by schools with non-student run full power broadcast stations.

92. Common Frequency also proposes that we allow university systems with multiple campuses serving distinct regions, such as those in New York, Georgia, and California, to apply

for student-run LPFM stations at any campus without another station, provided that the 60 dBu service contours do not overlap. For example, Common Frequency argues that the newest campus of the University of California at Merced could benefit from a student-run LPFM station but cannot apply because the university owns full-power stations at other campuses. We do not believe that a rule change is needed, however, concerning multiple campuses. Under our rules, a local chapter of a national or other large organization is not attributed with the interests of the larger organization, provided that the local chapter is separately incorporated and has a distinct local presence and mission. In 2000, the Commission clarified that this LPFM attribution exception for "local chapters" applies to schools that are part of the same school system, including university systems with multiple campuses, provided that the "local chapter" seeks its own licenses. Thus, in Common Frequency's example, the University of California's ownership of full power broadcast stations licensed to separate campus institutions would not prevent the University of California at Merced from applying for an LPFM new station construction permit for a student-run station. We note, however, that "local chapters" of larger organizations that hold broadcast interests will not qualify for a "new entrant" point, as discussed below. Any broadcast interests held by the "parent" organization will be considered attributable for the purposes of this criterion only.

2. Selection Among Mutually Exclusive Applicants

93. The Commission accepts applications for new LPFM stations or major changes to authorized LPFM stations only during filing windows. After the close of an LPFM filing window, the Commission makes mutual exclusivity determinations with regard to all timely and complete filings. The staff then processes any applications not in conflict with any other application filed during the window, and offers applicants identified as MX with other applicants

the opportunity to settle their conflicts. If conflicts remain, the Commission applies the LPFM point system. Specifically, under our current rules, the Commission awards one point to each applicant that has an established community presence, one point to each applicant that pledges to operate at least twelve hours per day, and one point to each applicant that pledges to originate locally at least eight hours of programming per day. The Commission takes the pledges made by applicants seriously. We will consider complaints that a licensee is not making good on a pledge it made during the application process and take appropriate enforcement action if we find a licensee has not followed through on its pledge. Moreover, as we noted in establishing the point system, "As with other broadcast applications, the Commission will rely on certifications but will use random audits to verify the accuracy of the certifications." In the event of a tie, the Commission employs voluntary time sharing as the initial tie-breaker. As a last resort, the Commission awards each tied and grantable applicant an equal, successive and non-renewable license term of no less than one year, for a combined total eight-year term.

94. In the Fourth FNPRM, we proposed certain changes to our existing criteria, suggested that we award a point to Tribal Nation Applicants, and requested suggestions for new selection criteria that would improve the efficiency of the selection process. As discussed in more detail below, we adopt a revised point system. We will award one point to applicants for each of the following: (1) established community presence; (2) local program origination; (3) main studio/staff presence (with an extra point going to those applicants making both the local program origination and main studio pledges); (4) service to Tribal lands by a Tribal Nation Applicant; and (5) new entry into radio broadcasting. We will continue to accept voluntary timeshare arrangements, and will continue to accept partial settlements not involving timeshare arrangements, as an additional means to eliminate ties, discourage gamesmanship in timesharing

arrangements, and reduce involuntary timeshare outcomes. We eliminate successive timeshare arrangements as the last resort, and will instead allow remaining qualified applicants to share time designated in the manner described below. Finally, we revise our rules to extend mandatory time sharing to LPFM stations that meet the Commission's minimum operating requirements but do not operate 12 hours per day each day of the year.

a. Point System Structure, and Elimination of Proposed Operating Hours Criterion

95. REC and Prometheus each offer modifications to the current point system, but also submit alternative or enhanced methods by which to resolve MX groups. Each party maintains that the purpose of its proposed structure is to decrease the number of potential timeshares and successive licensees. Prometheus proposes a multistage "waterfall evaluation process" in which there are multiple opportunities for a single winner to emerge. It notes that, under this system, the Commission would be able to emphasize its "top priority" criteria by placing them in the first tier, and explains the process as follows:

> In this system, each criterion would be worth a single point and would be placed – according to priority—into one of several tiers. The Commission would first compare applications using only the criteria in "Tier 1." If, after relying only on the criteria in Tier 1, a single applicant receives more points than any of its competitors, that winning applicant becomes the tentative selectee. However, in the event of a tie between two or more applicants with the most points, those tied applicants would then advance to Tier 2. Applicants with fewer points would be dismissed. These procedures would then be repeated to evaluate the remaining applicants using Tier 2 and, if necessary, Tier 3 criteria.

96. REC, on the other hand, suggests that we retain the established community presence and local programming criteria, and award additional points as follows:

- one point to any applicant that is a municipal or state agency eligible under Part 90 of the rules and provides emergency service;
- one point to any applicant that is an accredited school and will use the proposed LPFM station for a "hands on" educational experience in broadcasting;
- one point to any applicant proposing to broadcast children's programming for at least 3 hours per week;
- one point to any applicant that will maintain a main studio staff presence for at least 40 hours per week;
- one point to any applicant volunteering to maintain an online public file;
- one point to any applicant that is owned or controlled by a recognized Tribal Nation that currently has no attributable interests in any other broadcast facility, proposes a transmitter site located within the boundaries of a Tribal Nation, and has not received a point under this criterion in connection with another LPFM station for which the applicant holds a construction permit or license;
- one point to any applicant that pledges to create a public access broadcasting regime that solicits and presents programming created by and directly submitted by members of the public within the proposed LPFM station's service contour; and
- one point to any applicant willing to accept a time share agreement in lieu of being allowed to broadcast full time.

97. We continue to believe that our basic points structure remains the most effective and efficient method of resolving mutual exclusivities. This conclusion is based in part on our recent

experience with NCE applications filed during the 2007 and 2010 windows, where we have successfully resolved hundreds of groups of MX applications based on a very similar point system process. We decline to adopt Prometheus' proposed "waterfall" system. While doing so may reduce the likelihood of involuntary timesharing outcomes, we do not believe, as Prometheus suggests, that it would "reduce the administrative complexity" of the comparative process generally. Indeed, we believe that it would have the opposite effect, as it would also create the potential for "waterfall" levels of comparative analysis and re-analysis. For example, for every successful challenge to the tentative selection of an applicant in a tiered category, the Commission would be forced to re-evaluate the group as a whole to determine which applicant, if any, should proceed to the next tier. If the new applicant in the next tier was successfully challenged, the Commission would have to repeat the evaluation process. This outcome is much less efficient than the current points system, which allows the Commission to weigh all points claimed by all applicants simultaneously. Even if we were to conclude that this approach was administratively feasible, we believe that we would need a far more comprehensive record, developed through a supplemental rulemaking, before we could attempt to "rank" the LPFM selection criteria into "tiers."

98. As discussed below, however, we adopt some of the new criteria suggested by REC, which we believe will enhance the localism and diversity policies underlying the LPFM service and anticipate will reduce the number of involuntary timesharing outcomes. We reject the remaining criteria suggested by REC and others, as they fail to demonstrate any unmet need that warrants preferences for particular types of programming, would be difficult and time-consuming to administer or enforce, or would not substantially further the Commission's localism goals.

99. Finally, REC, Prometheus and others suggest that we eliminate the proposed operating hours criterion, noting that, because of automation software, "even one-person LPFM stations easily meet this standard." We agree with the commenters that this criterion does not meaningfully distinguish among applicants. Thus, we eliminate it.

b. Established Community Presence

100. Currently, under the LPFM selection procedures for MX 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 the Fourth FNPRM, we proposed 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 noted that while § 73.872(b)(1) currently does not include the requirement that an applicant maintain a local presence, we believed that was the only reasonable interpretation of the rule. Commenters that addressed this proposal agreed that this was a reasonable interpretation. Accordingly, we adopt this proposed revision.

101. In addition, we sought comment on other changes to the rule. First, we requested 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. Commenters largely disagreed with this proposal, asserting that the duration of a nonprofit organization's existence is not indicative of its level of responsiveness to local concerns. Others noted that the proposal could "shut out" suitable applicants or have "unintended discriminatory

consequences." A few commenters, however, generally embraced our proposal to maintain the two-year threshold but supported an award of an additional point to applicants that have a substantially longer established community presence (e.g., four years).

102. We continue to believe that established local organizations are more likely to be aware of community needs and better able to "hit the ground running" upon commencement of broadcast operations. However, we are persuaded by commenters that organizations that have been established in the community for four years will not necessarily be more responsive to community needs or likely to establish a viable community radio station than those who have been present for two. We likewise agree that extending the length to four years may unnecessarily limit the pool of qualified organizations. Finally, parties supporting a "bonus" point for applicants with more established ties to the community failed to offer any demonstration of greater responsiveness supporting its adoption. Accordingly, we will retain the current two-year standard.

103. We also solicited comment on whether we should modify § 73.872(b)(1) to extend the established community presence standard to 20 miles in rural areas. We will adopt this modification as proposed. We note that the Commission extended the "local" standard in § 73.853(b) to 20 miles only for rural areas, based on a record indicating special challenges for rural stations. While many commenters support an extension of the established community presence standard to 20 miles in *all* areas, not just rural areas, we are unconvinced that limiting our extension of the standard to rural areas only is unduly harsh or will create disadvantages to applicants with geographically dispersed board member residences, as some commenters suggest.

104. Finally, we sought 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. Most commenters rejected this proposal, noting that it would encourage gamesmanship and unethical behavior. Amherst Alliance and others state that they are "deeply concerned that unethical LPFM applicants could manufacture 'paper partners' in order to gain a dramatic advantage over their rivals," predicting that the paper partners would eventually either leave the scene or simply "rubber stamp" the station operator's actions. Prometheus notes that the proposal could lead to discrimination, and potentially lead to a contest "favoring the best connected, best resourced groups" in a given community. It further notes that non-consortium applicants competing with consortium applicants would almost always lose, even if the non-consortium applicants have received points that are arguably more "directly related" to a licensee's potential to serve its community. Finally, Common Frequency notes that the proposal would "discourage diversity," effectively rewarding consortia organizations that hold similar viewpoints over single minority groups, such as foreign-language speakers and LGBT organizations.

105. The few commenters supporting the proposal note that the consortia proposal could speed up the licensing process by lessening the Commission's burden of sorting out MX applications, and would help avoid involuntary time sharing by applicants whose proposed programming formats are incompatible and likely to confuse potential audiences. To help deter potential abuse, Cynthia Conti ("Conti") suggests that the Commission require consortia applicants to submit with their applications proof of their intention to coexist at their future station, such as a "joint plan of action" that would include descriptions of the participating organizations, their individual and collective intentions for the station, and a proposed programming schedule.

106. We are persuaded by commenters that the risk of licensing abuses and the potential for excluding unrepresented or underrepresented niche communities far outweigh potential service benefits or mere administrative efficiencies. Even if we were to require supporting documentation at the application stage, we would still have no reliable mechanism, given our limited administrative resources, to ultimately ensure that such consortia relationships are being meaningfully maintained throughout the license period. Thus, we do not adopt the consortia proposal.

c. Local Program Origination

107. The Commission currently encourages LPFM stations to originate programming locally by awarding one point to each MX applicant that pledges to provide at least eight hours per day of locally originated programming. The rules define "local origination" as "the production of programming, by the licensee, within ten miles of the coordinates of the proposed transmitting antenna." 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."

108. In the Fourth FNPRM, we sought comment on whether to place greater emphasis on this selection factor by awarding two points for this criterion instead of the current one point. Alternatively, we sought comment on whether to impose a specific requirement that all new LPFM licensees provide locally-originated programming. We asked parties supporting such a requirement to explain why our prior finding that it was not necessary to impose specific requirements for locally originated programming no longer is valid and to identify problems or

short-comings in the current LPFM licensing and service rules that such a change would remedy. We also asked parties supporting a locally-originated programming requirement to address potential constitutional issues.

109. Many commenters generally support the adoption of a locally originated programming obligation, but provide little or no analysis. Prometheus, which devotes the most significant discussion to this issue, would require every LPFM station to air at least 20 hours per week of locally originated programming, maintaining that such a requirement would more effectively ensure that a station would serve community needs, would be consistent with the Commission's policy goal of promoting localism, and would help remediate the "drastic decline" of local programming in the media. Prometheus asserts that today, approximately 20 percent of all licensed LPFM stations produce no local programming whatsoever, and states that, without such a requirement, a "significant number" of LPFM stations will not offer any local programming. It further maintains that a local program origination requirement is constitutionally sound, pointing to the fact that "federal legislation, Commission decisions and Supreme Court precedent support the importance of local programming … and support Commission actions to adopt content-neutral broadcaster obligations that embrace substantial broadcaster discretion." In particular, Prometheus cites proceedings in which the Commission has regulated children's television and network programming.

110. Several commenters do not agree with Prometheus' position, instead arguing that local program origination should remain a comparative criterion. REC fears that "during tough times," stations may not have the financial resources to generate 20 hours weekly of local programming. Other commenters observe that local program origination is "an easily manipulated requirement," is of "limited value" with no enforcement mechanism in place, and is

not necessarily more responsive to community needs than non-local content. Conti states that, "given the concern over the constitutionality of requiring programming, the addition of a locally-originated programming requirement could make LPFM rules vulnerable to complaints" and does not "think it is worth the risk considering that the criterion does not necessarily result in its stated goal."

111. After careful consideration of the record, we decline to impose a local program origination requirement. When we first created the LPFM service, we sought comment on whether to impose a local program origination requirement. We noted that listeners benefit from locally originated programming because it often reflects needs, interests, circumstances or perspectives that may be unique to a community. However, we also found that programming need not be locally originated to be responsive to local needs. Ultimately, we concluded that the nature of the LPFM service, combined with eligibility criteria and preferences, would ensure that LPFM licensees would provide locally originated programming or programming that would otherwise respond to local needs.

112. Nothing in the record persuades us that these findings are no longer valid. The Commission has consistently maintained that non-local programming can serve community needs. While Prometheus points to a decline in the production of local programming as support for a local program origination requirement, it has failed to counter the argument that non-locally produced programming *can* serve community needs. Indeed, as commenters have noted, non-local programming can serve the unique needs of a community. For instance, a foreign language station may carry programming "from home," other LPFM stations may broadcast public affairs programming from a neighboring county, and still other LPFM stations may broadcast religious programming.

113. We also continue to believe that the nature of the service inherently ensures that LPFM stations will be responsive to community needs. The record supports this conclusion. Last year, in the INC Report, we noted several LPFM "success" stories in which LPFM stations were serving their communities. Moreover, while Prometheus points to the fact that 20 percent of all LPFM licensees currently produce no locally originated programming as evidence of a local media crisis, we believe this is a "glass half empty" perspective, and are instead encouraged by the fact that 80 percent of all LPFM licensees are producing some local programming.

114. Moreover, given the current economic climate, we believe a local program origination requirement could unnecessarily restrict LPFM licensees and jeopardize their financial health. Many, if not all, of these stations are run by volunteers and operate on a shoestring budget. LPFM licensees often have difficulty finding underwriters to support their stations. Prometheus argues that LPFM stations could arguably afford to produce locally originated programming. However, our own records show that, as a whole, the LPFM service remains financially vulnerable. This is evidenced by the fact that, of the 1,286 LPFM construction permits granted out of the last LPFM application filing window, only 903 LPFM stations ultimately became fully licensed. Moreover, 84 of these station licenses now have either expired or been cancelled, with nearly half of these expirations/cancellations occurring in the last two years. Of the remaining 819 licensed stations, 26 are currently silent. Given these alarming statistics, we believe it is essential to provide LPFM licensees with maximum flexibility to choose their own programming as a measure to ensure their continued viability.

115. Finally, we recognize that Prometheus' support of a local program origination requirement is based on its belief that this option will most effectively further the Commission's goal of ensuring that the LPFM service will "enhance locally focused community-oriented radio

broadcasting." We agree that this goal is one of the bedrocks of the LPFM service. However, we find that there are better, alternative ways of furthering this goal without imposing further regulatory restrictions. Specifically, as discussed in more detail below, we believe we can better effectuate our localism goals by retaining a one-point preference for local program origination and supplementing that preference with two additional selection criteria that award points to those applicants best positioned to locally originate programming. Accordingly, given the lack of a clear record basis to support its adoption, we decline to adopt a program origination requirement for LPFM stations. In short, while our selection criteria seek to promote local origination, we believe the benefits of imposing it as a requirement are far outweighed by the costs to a financially vulnerable fledgling sector of the industry.

116. That said, we note that the comments filed in this proceeding reflect some misunderstanding of what constitutes "locally originated programming" under our previous orders, and we take this opportunity to provide additional guidance to current and prospective LPFM licensees. In the Second Order on Reconsideration in this docket, the Commission held that time-shifted, non-local, satellite-fed programming does not qualify toward the local origination pledge. Commenters indicate that some licensees believe that such programming is local provided that it is delivered in a way other than satellite. This inference is incorrect. Any non-local programming, whether delivered by satellite, over the Internet or other means, does not qualify as locally originated programming. Similarly, in the Third Report and Order, we clarified that repetitious automated programming does not meet the definition of local origination, and specifically stated that once a station has broadcast a program twice it can no longer count it as locally originated. According to commenters, some LPFM licensees believe that this is a daily restriction (i.e., cannot repeat programming more than twice in one day), while

others believe that a program becomes "new" for local purposes if musical selections within a program are re-shuffled. Again, these inferences are incorrect. Once a station has broadcast a program twice it can never again be counted toward the local program origination pledge. Likewise, programs that have been "tweaked" or reorganized do not count toward the requirement if the underlying program has already been played twice. Generally speaking, locally originated programming – whether locally created content (e.g., live call-in shows or news programs), or locally curated content (e.g., a music program reflecting non-random song choices) – must involve a certain level of local production (i.e., creation of new content, in order for the programming to be considered locally originated). Each of the examples discussed above lacks this critical element. Our deliberations in this proceeding, including the clarification we provide today, have been consistent with this underlying principle. Accordingly, we will revise § 73.872 of our rules, as well as the FCC Form 318, to incorporate these clarifications.

d. Main Studio

117. REC, Common Frequency and Prometheus each suggest that we modify our rules to award one point to applicants that pledge to maintain a main studio with a staff presence. They assert that an organization that maintains a staffed main studio within the community served by its LPFM station will be better resourced to serve its community's needs. We agree. The local program origination selection criterion was created in part "to encourage licensees to maintain production facilities and a meaningful staff presence within the community served by the station." The Commission has long held that the maintenance of a main studio is integral to a station's ability to serve community needs and produce programming that is responsive to those needs. As indicated by commenters, however, some licensees have chosen not to maintain a main studio and have instead originated programming using automated software, iPods, or CD

players. While applicants claiming the local program origination point will retain the discretion to determine the origination point of their programming, we believe that a separate main studio criterion will better effectuate the intent underlying the creation of the local program origination pledge. Accordingly, we will award one point to any organization that pledges to maintain a meaningful staff presence (i.e., staffed by persons whose duties relate primarily to the station and not to non-broadcast related activities of licensee) in a publicly accessible main studio location that has local program origination capability for at least 20 hours per week between 7 a.m. and 10 p.m. Staff may be paid or unpaid, and staffing may alternate among individuals. We will not require stations to have "management" staff present during main studio hours. The main studio should be located within 10 miles of the proposed site for the transmitting antenna for applicants in the top 50 urban markets, and 20 miles for applicants outside the top 50 urban markets. We will require applicants to list the proposed main studio address in their applications, as well as the local telephone number to be maintained by the main studio at all times. Applicants failing to include this information will not receive credit for this point.

118. In addition, we will revise § 73.872 of our rules to provide that applicants that claim both the local program origination point and the main studio point will receive a total of three points. We find that the creation of this "bonus" point will more effectively foster the production of focused community-oriented radio programming than would a general local program origination requirement, as it will reward those applicants best situated to further this goal in a meaningful way. We believe that an applicant that plans to originate programming from a main studio will be in a better position to provide programming reflecting community needs and interests than an applicant that will originate programming elsewhere. As the Commission has noted previously, the maintenance of a main studio in the station's community can help "promote the use of local

talent and ideas," can "assure meaningful interaction between the station and the community," and can "increase the ability of the station to provide information of a local nature to the community of license." Indeed, both our main studio rules and the LPFM service were created for the same purpose: to ensure that stations would serve as an outlet for community self-expression. The Commission implicitly recognized this nexus when it created the local program origination criterion as a way to "advance the Commission's policy goal of addressing unmet needs for community oriented radio broadcasting" and as a means to encourage licensees to maintain production facilities. Moreover, these attributes, of themselves, reflect our core vision of and animating purpose for community radio: licensees that make their stations accessible to their local communities and that are committed to responding to unmet local programming needs.

119. Many LPFM stations fulfill their local program origination commitments without the benefit of equipment and facilities that could be reasonably characterized as "main studios." We also anticipate that some applicants in the upcoming LPFM window may conclude that maintaining and staffing a main studio is not feasible or necessary. On the other hand, the "bonus" point will provide a substantial incentive to applicants to assume these responsibilities notwithstanding the associated costs. It is also likely to permit resolution of mutual exclusivities based on Commission policy goals rather than complex tie-breaking procedures and also avoid voluntary and involuntary time sharing arrangements – outcomes that many commenters view negatively. Given commenters' general support of local program origination, our longstanding policy goal of ensuring that the LPFM service provides an outlet for local community voices, and the benefits that would result from implementation of a more robust point system that promotes

this goal, we conclude that the record supports our award of a total of three points to those applicants that make both the local program origination and main studio pledges.

e. Tribal Nations

120. In the Fourth FNPRM, we sought comment on whether to give a point to Tribal Nation Applicants when they propose new radio services that primarily would serve Tribal lands. We proposed to modify § 73.872(b) of our rules to include a Tribal Nations criterion. As with our proposed revisions to the LPFM eligibility requirements set forth at § 73.853 of the rules, we proposed to rely on the definitions of the terms "Tribal Applicant," "Tribal Coverage," and "Tribal Lands" as they are currently defined in our rules for this comparative criterion.

121. Commenters largely supported the creation of a Tribal Nation criterion. As we stated in the Fourth FNPRM, we believe that adding this criterion will further our efforts to increase ownership of radio stations by Tribal Nation Applicants and enable Tribal Nation Applicants to serve the unique needs and interests of their communities. We find unpersuasive the argument of NPM and NCAI that we should create a "Tribal Priority," i.e., a dispositive preference, for LPFM Tribal Applicants as the rules now provide for in the full power NCE and commercial radio services. The expansion of Tribal stations unquestionably advances our section 307(b) policies. However, as we have explained, Tribes, which hold sovereign responsibilities for the welfare and improvement of their Members, are well-positioned to advance the localism and diversity goals of the LPFM service. Thus, it is reasonable to treat this factor as we have the other comparative factors that also advance these same LPFM goals. Finally, we find no basis in the record for elevating this criterion to a dispositive factor. Accordingly, we adopt our proposal to create a Tribal Nation point criterion.

122. We will not, as originally proposed, rely on the definitions of "Tribal Applicant" or "Tribal Coverage." For the reasons discussed above, we instead will define a "Tribal Applicant" as a Tribe or entity that is 51 percent or more owned and controlled by a Tribe. We will, however, require that any Tribal Nation Applicant claiming a point under the Tribal Nation criterion propose to locate the transmitting antenna for its proposed station on its Tribal lands. While NPM and NCAI oppose the imposition of such a requirement, arguing "it is easy to imagine circumstances in which the site which delivers the best, most affordable service to Tribal Lands is a developed antenna site located near, but not on, Tribal Lands," we are not persuaded that this requirement will hinder the provision of LPFM service on Tribal lands. Many Tribal Nations occupy unserved or underserved areas. We believe it is highly unlikely that there will be developed antenna sites located near most Tribal lands. However, in the event that there is a developed antenna site near, but not on, the Tribal lands of a Tribal Nation Applicant and the Tribal Nation Applicant can demonstrate that the use of such site will better promote our goals of increasing ownership of radio stations by Tribal Nations and enabling Tribal Nations to serve the unique needs and interests of their communities, we will entertain requests to waive the requirement that the transmitting antenna for the proposed LPFM station be located on the Tribal lands of the Tribal Nation Applicant. Finally, we note that we will not, as REC proposes, require a Tribal Nation Applicant to have no attributable interests in any other broadcast facility in order to qualify for a point under the Tribal Nation criterion. We believe our adoption of a new entrant criterion adequately addresses the concerns underlying REC's proposal. At bottom, through its proposal, REC seeks to ensure that diversity of ownership remains an important goal underlying the LPFM service. By adopting a new entrant criterion, which awards a point to applicants with no attributable interests in other broadcast facilities, we retain an emphasis on diversity of

ownership without deemphasizing the importance of promoting the provision of service by Tribal Nation Applicants to Tribal lands and citizens of Tribal Nations.

f. New Entrants

123. As discussed above, we are relaxing our ownership rules to allow LPFM licensees to own or apply for other broadcast interests. Among other things, we are allowing Tribal Nation Applicants to own up to two LPFM stations. In response to this revision, REC suggests that we only allow a Tribal Nation Applicant to claim a point under the Tribal Nations criterion if it is applying for its first LPFM station. We agree with REC's proposal to the extent that it suggests that multiple ownership should be a relevant factor in our analysis. Indeed, we raised this issue in the Fourth FNPRM. However, we believe that a Tribal Nation Applicant should be eligible to receive a point under the Tribal Nation criterion regardless of whether or not it owns or has applied for other LPFM stations, and that any restriction of a Tribal Nation Applicant's eligibility to claim this point would run contrary to our commitment to increase the ownership of radio stations by Tribal Nations and to increase service to Tribal lands and citizens of Tribal Nations. However, we also believe that our selection process should encourage new entrants to broadcasting and foster a diverse range of community voices. We find that allocating a point to new entrants strikes the appropriate balance between these two competing goals. Likewise, adding a new entrants criterion addresses concerns raised by REC and Common Frequency regarding student-run stations. Accordingly, we will award one point to an applicant that can certify that it has no attributable interest in any other broadcast station.

g. Tiebreakers - Voluntary and Involuntary Time Sharing

124. As noted above, in the event the point analysis results in a tie, the Commission releases a public notice announcing the tie and gives the tied applicants the opportunity to propose

voluntary time sharing arrangements. Some or all parties in an MX group may enter into a timeshare agreement and aggregate their points. Where applicants cannot reach either a universal settlement or a voluntary time sharing arrangement, the Commission awards each tied and grantable applicant in the MX group an equal, successive and non-renewable license term of no less than one year, for a combined total eight-year term.

125. Several commenters voiced dissatisfaction with both the voluntary and involuntary timesharing processes. REC asserts that we should eliminate point aggregation in voluntary time sharing because it "can lead to discriminatory behavior intended to silence [other] voices …." As an alternative, it suggests that applicants move straight to an involuntary time sharing process in cases where parties cannot agree on a voluntary time share (without aggregating points) or other settlement arrangement. Under REC's proposed process, an applicant would have the option to select an "involuntary time share trigger point" as a points criterion. In the event of a tie in an MX group, the involuntary time share point would be reviewed. At this point, one of the following scenarios could take place: (1) if all or no applicants claim the point, then they would all proceed to the time share process; or (2) if one or some applicants claim the trigger point, then those claiming the point would proceed to the time share process and remaining applications would be dismissed. Under REC's proposal, applicants reaching the time sharing process would either voluntarily agree on a time sharing arrangement, or be subject to a "last resort" method that would allocate time to the top three applicants based on the date of the organization's establishment in the community (i.e., the applicant with the oldest community presence date would get the first opportunity to select its time share slot). REC notes that "an effective time share group should have no more than three members."

126. Brown Student Radio also argues that allowing a "partial settlement" for the purposes of aggregating points invites the potential for abuse in the LPFM licensing process, where dominant applicants can effectively "squeeze out" fellow timeshare applicants by forcing them to accept minimal and suboptimal air time. It cites two examples from the last LPFM filing window in which the dominant applicant in a timesharing arrangement claimed virtually all of the shared air time and left only the required minimum of 10 hours a week (during suboptimal air time) for the other applicants. As such, it urges the Commission to allow parties to partially settle, but without the benefit of aggregating points, or otherwise revise the share-time rules to increase the minimum number of hours that must be awarded to each party to a settlement. Brown Broadcast Services notes that settlements involving less than all of the MX parties were explicitly allowed for in the full-power NCE filing window of 2007, when the action resulted in a grantable singleton application and no new mutual exclusivities were created. Common Frequency likewise supports the use of partial settlements involving technical changes, and additionally suggests that the Commission set up an online settlement process that will allow competing applicants to monitor for potential gamesmanship.

127. While we are cognizant of the potential for gamesmanship in the voluntary timesharing process, we continue to believe that it is one of the most efficient and effective means of resolving mutual exclusivity among tied LPFM applicants. We are not persuaded that REC's proposal, which essentially eliminates voluntary timesharing as a tie breaker and replaces it with an involuntary time sharing regime, will better serve the public interest. We are doubtful that a group of unaffiliated applicants with different formats, budgets and levels of broadcast experience would work together to operate a station under a forced time sharing arrangement as successfully as a group of applicants that have voluntarily agreed to share time. We further

believe that we must allow as much flexibility as possible for LPFM stations, especially those subject to time sharing arrangements, to allow them to build and maintain audiences. It is possible that some LPFM applicants may not desire to operate for more than a few hours a week, and in such cases, pooling resources with a timeshare applicant wishing to use more time would result in more diversity and more efficient use of spectrum. Accordingly, we will not revise our time sharing rules, and will continue to allow existing time share participants to reach voluntary arrangements that allow them to apportion the time as they see fit, subject to our requirements under § 73.872(c) of the rules. While we will not set up an online process designed specifically to monitor settlements, as Common Frequency suggests, we note that the Commission has recently upgraded CDBS to permit the electronic filing of pleadings. This feature makes electronically filed pleadings promptly available to the general public, thereby increasing the transparency of the broadcast licensing processes. We will require a party submitting a timeshare agreement or other settlement agreement to file it through CDBS. As such, parties to an MX group should be able to sufficiently monitor competing applications for any developments within their respective group.

128. We turn next to the suggestion that we entertain partial settlements. During the last LPFM filing window, we accepted partial "technical" settlements (i.e., technical amendments that eliminated all conflicts between at least one application and all other applications in the same MX group). Thus, through a technical settlement, the Commission can grant one or more applications immediately, with the remaining applicants in that MX group considered separately under the LPFM comparative criteria. These partial settlements worked well during the 2007 NCE FM filing window, where we granted dozens of settlements that resulted in the disposal of hundreds of applications. We will continue to accept such settlements in the upcoming LPFM

window, as they provide an additional means for applicants to resolve mutual exclusivities. To provide increased flexibility to this process, we will also, as suggested by Brown Broadcast Services, temporarily waive our rules to allow MX applicants to move to any available channel during the prescribed settlement period. Amendments proposing new channels will be processed in accordance with established first-come, first-served licensing procedures.

129. We agree with commenters that the system of serial license terms as a tie breaker of last resort has proven unworkable. Of the more than 1,200 construction permits granted in the LPFM service, not a single station currently holds an authorization for involuntary time sharing. While we have little historical data on involuntary timesharing outcomes from the last LPFM window, we presume this is the case either because (1) involuntary time share permittees did not want to invest in building out facilities that would be used by them for as little as one year, or (2) involuntary time share situations proved to be unworkable. To promote more efficient use of available LPFM frequencies, time shares under the final tie breaker will run concurrently and not serially. As suggested by CMAP and, to some extent REC, each party to the involuntary time share will be assigned an equal number of hours per week. We agree with REC that time share situations involving more than three parties may prove cumbersome. As REC proposes, we will limit involuntary time sharing arrangements under this final tie breaker to the three applicants that have been "established" in their respective communities for the longest periods of time. Accordingly, each applicant will be required to provide, as part of its application, its date of establishment. If more than three applications are tied and grantable, we will dismiss the applications of all but the three longest "established" applicants. We will offer these applicants an opportunity to voluntarily reach a time sharing arrangement. If they are unable to do so, we will ask these applicants to simultaneously and confidentially submit their preferred time slots to

the Commission. To ensure that there is no gamesmanship, we will require that these applicants certify that they have not colluded with any other applicants in the selection of time slots. We will use the information provided by the applicants to assign time slots to them. The staff will give preference to the applicant with the longest "established community presence." However, it will award time in units as small as four hours per day to accommodate competing demands for airtime to the maximum extent possible. We believe these procedures are a more sustainable and practical solution to involuntary time share arrangements than our previous measures, and will revise our rules and FCC Form 318 accordingly.

130. Turning to the final issues raised in the Fourth FNPRM on share time arrangements, we asked whether we should open a "mini-window" for the filing of applications for the abandoned air-time in such arrangements, rather than allowing remaining time share licensees to re-apportion the remaining air time. We did not receive any substantive comments voicing strong opinions on this proposal. We believe that opening such mini-windows would pose a great administrative burden on Commission staff. Such a burden would significantly outweigh the modest benefits that would be realized by filling such limited portions of a broadcast day with additional programming provided by a new timeshare licensee. Moreover, we believe that our adoption of the mandatory timesharing procedures discussed below will provide adequate opportunities to applicants that wish to apply for abandoned airtime. Accordingly, we do not adopt this proposal.

3. Operating Schedule

131. 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 sought comment on whether we should extend such mandatory time sharing to the LPFM service. We noted that we believe that doing so could increase the number of broadcast voices and promote additional diversity in radio voices and program services.

132. Only CRA commented on this proposal. It urges the Commission to "reject this impulse," noting that LPFM applicants need as much flexibility as possible to ensure the viability of these small stations. We continue to believe that this measure will increase the number of broadcast voices and promote additional diversity in radio voices and program services in the most administratively efficient manner. However, we find merit to CRA's concerns and will adopt this proposal with safeguards designed to ensure that LPFM licensees have as much opportunity and flexibility as needed to ensure their success. Specifically, in order to provide sufficient "ramp up" time, we will not accept applications to share time with any LPFM licensee that has been licensed and operating its station for less than three years. Accordingly, we adopt this proposal, with the modification just described.

4. Classes of Service

133. Currently, there are two classes of LPFM facilities: LP100 and LP10. To date, we have licensed only LP100 stations. In the Fourth FNPRM, we proposed to eliminate the LP10 class. We also sought comment on whether to create a new, higher power LP250 class. We specifically sought comment on how the creation of an LP250 class of LPFM facilities could be harmonized with the LCRA, which was "presumably grounded on the current LPFM maximum power level."

134. A number of LPFM proponents urge us to retain the LP10 class of service, arguing that it is needed to ensure that LPFM opportunities are available in urban areas. Other commenters advocate eliminating the LP10 class. They point out that, from an engineering standpoint, the LP10 class is spectrally inefficient. We agree that the existing LP10 class is an inefficient utilization of spectrum. LP10 stations offer more limited service but are more susceptible to interference than LP100 stations. Given the increasingly crowded nature of the FM band, we find it appropriate to take this into account. We also are concerned that the reach of LP10 stations would be too small for the stations to be economically viable. As the Media Bureau recently noted, even higher-powered LP100 stations have small service areas and are constrained in "their ability to gain listeners" and "appeal to potential underwriters." Because we find that licensing LP10 stations would be an inefficient use of available spectrum and are concerned that LP10 stations would have an even higher failure rate than LP100 stations, we eliminate the LP10 station class.

135. Faced with the loss of the LP10 class, some commenters propose that we create other classes that would transmit at less than 100 watts. Many in the LPFM community support a proposal to replace the LP10 class with an LP50 class, which would allow licensees to transmit at any ERP from 1 to 50 watts. In support, they argue that LP50 stations would offer higher quality service than LP10 stations and may permit station locations closer to city centers. In contrast, NAB opposes creation of an LP50 class, arguing that such action would exceed the intent of Congress. NAB also asserts that the proposal is not a logical outgrowth of the *Fourth Further Notice* and, therefore, is untimely. Finally, NAB asserts that, like the LP10 class of stations, an LP50 class would be "technically inefficient."

136. We will not create an LP50 class. In the Fourth FNPRM, we proposed to eliminate the LP10 class, retain the LP100 class and introduce a new LP250 class. We proposed these changes in order to address our concerns with the efficiency and viability of stations operating at powers at or below those authorized for LP100 stations. We agree with NAB that a decision to introduce a new LP50 class could not have been reasonably anticipated by all interested parties. Moreover, we believe that LP50 stations would suffer many of the same technical deficiencies as LP10 stations. Accordingly, we have decided not to adopt the proposed LP50 class.

137. The LPFM community offers broad support for the creation of a new LP250 class. These commenters cite benefits including improved LPFM station viability through better access to underwriting, more consistent signal coverage throughout the community served by the LPFM station, and the ability to serve areas of low population density and/or more distant communities. Several commenters, however, strenuously oppose the creation of an LP250 class. These commenters do not dispute the benefits cited by those supportive of an LP250 class. Instead, they argue that an LP250 class would pose a greater interference risk to full power stations, is unnecessary given the availability of 250 watt Class A licenses, would be a departure from the local character of the LPFM service, and goes beyond the intent of Congress in enacting the LCRA.

138. At this time, we will not adopt our proposal to create an LP250 class. Given the disagreement among commenters about, among other things, LP250 station location restrictions and technical parameters, we believe the issue of increasing the maximum facilities for LPFM stations requires further study. We note, however, that the LCRA does not contain any language limiting the power levels at which LPFM stations may be licensed. We also find unpersuasive NAB's and NPR's reliance on certain statements in the legislative history. These statements

merely describe the rules governing LPFM service at the time Congress was considering the LCRA. Since we have decided not to adopt the proposal, we need not definitively resolve the question.

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

139. In the Fourth FNPRM, we noted that LPFM stations are currently required to protect full-service stations on I.F. channels while translator stations operating with less than 100 watts are not. To address this disparity, we proposed to remove I.F. protection requirements for LPFM stations operating with less than 100 watts. We noted that we believe the same reasoning that the Commission applied in exempting FM translator stations operating with less than 100 watts ERP from I.F. protection requirements would apply 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 further noted that FM allotments would continue to be protected on the I.F. channels based on existing international agreements. We sought comment on this proposal.

140. Commenters generally support removal of the I.F. protection requirements applicable to LPFM stations. Some ground their support in the need to put LPFM stations and translators on an "equal footing" while others assert that improvements in receiver technology render I.F. protection requirements unnecessary. NPR is the lone commenter urging retention of I.F. protection requirements. NPR infers an intent to retain the I.F. protections from the fact that Congress specifically addressed minimum distance separations but did not eliminate those related to I.F. We find NPR's argument unpersuasive. In the absence of explicit direction in the LCRA regarding I.F. protection requirements, and in light of the fact that Congress explicitly

required retention of the co-channel and first- and second-adjacent channel spacing requirements, we believe that it is reasonable to read the statute not to require the Commission to retain I.F. protection requirements. Had Congress wished to ensure that the I.F. protections remained in place, we believe that it would have done so in the text of the LCRA.

141. NPR also requests that the Commission study the impact of its decision "roughly 20 years ago" to exempt from I.F. protection requirements FM translator stations operating with less than 100 watts ERP. NPR urges us to complete this study prior to acting on our proposal. Common Frequency asserts, however, that the Commission would have investigated I.F. interference by now if it had proved a problem. Common Frequency is correct. We have not received any recent complaints regarding I.F. interference from FM translators exempted from the I.F. protection requirements. Indeed, it is telling that NPR has not cited a single instance of such interference. Therefore, and in light of the fact that a receiver does not distinguish between the signal of an LPFM station or an FM translator, we find that the proposed change will not result in significant I.F. interference.

142. Accordingly, we adopt this proposal. We find this change necessary to ensure parity between LPFM stations and FM translator stations, which, for I.F. interference purposes, are indistinguishable. As requested by commenters, we will eliminate these requirements for LPFM stations operating at or below 100 watts ERP. We had originally proposed to exempt only LPFM stations operating at less than 100 watts ERP from the I.F. protection requirements. However, commenters pointed out that, if we adopted the proposal set forth in the Fourth FNPRM, LP100 stations would remain subject to I.F. protection requirements. These commenters argue that there is little difference between LPFM stations operating at 99 versus 100 watts ERP and urge us to eliminate the I.F. protection requirements for LPFM stations

operating at 100 watts or less ERP. We agree. Moreover, since going forward we will license LPFM stations to operate at ERPs ranging from 50 watts to 100 watts, we find that eliminating the I.F. protection requirements for stations operating at 100 watts or less ERP is the more sensible choice.

E. Window Filing Process

143. Several commenters voiced concern about the timing and mechanics of the upcoming LPFM application filing window. Several LPFM advocates ask that "adequate time" be given for applicants to prepare their applications after adoption of the revised rules. Prometheus urges the Commission to give six to nine months lead time up to the filing window, maintaining that applicants need time to raise funds, hire a consulting engineer and assess spectrum availability. REC, on the other hand, opposes any "artificial" delay, stating that any delay between the issuance of final rules and the window should occur naturally. To some extent, this debate is moot as there is a substantial cushion of time organically built into the process for the final rules we adopt or modify today, as well as any related form changes. Moreover, to maximize LPFM filing opportunities it is critical for the Media Bureau to complete substantially all of its processing of the pending FM translator applications prior to the opening of the LPFM window. Thus, the window will open approximately nine months from the effective date of the Fifth Order on Reconsideration. To help potential LPFM applicants prepare for the upcoming window, we announce a target date of October 15, 2013. However, we delegate authority to the Media Bureau to adjust this date in the event that future developments affect window timing. In sum, there will be ample time for all LPFM applicants to familiarize themselves with the rules and plan accordingly before the filing window opens.

144. Commenters also suggest multiple windows in order to ease the demand for affordable engineering assistance immediately before the opening of the window. Prometheus further suggests that we bifurcate the application into short and long forms, with second-adjacent waiver showings submitted in the long form. Prometheus argues that multiple filing windows and a short form/long form application process would help address the scarcity issue of qualified, affordable consulting engineers and allow more interested parties to file. Common Frequency echoes these concerns, reporting that in the 2007 NCE window "[s]ome applicants could not file because they could not find engineers, and others were priced-out from applying because an engineer and lawyer could run as much as $5000." We recognize these concerns. Thus, in order to ease upfront technical burdens and engineering costs, we will accept a threshold second-adjacent waiver technical showing when an applicant seeks to make a "no interference" showing based on lack of population in areas where interference is predicted to occur. Under this procedure an applicant would use "worst-case" assumptions about the area of potential interference in combination with a USGS map or a Google map to demonstrate "lack of population" within this area. Applicants should be able to complete this simple showing without the use of a consulting engineer. In light of our adoption of this threshold showing, we see no need to bifurcate our application process into short and long forms or to open multiple filing windows. We believe that this alternative showing will ease some of the technical and financial burdens of application filing and will help ensure that new entrants in underserved communities are not "priced out" of the opportunity to file an LPFM application in the upcoming window. We further believe that these measures will help alleviate any obstacles applicants face due to an "engineering shortage," as those applicants that choose to make the threshold showing will no longer need to hire a consulting engineer.

II. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis.

145. As required by the Regulatory Flexibility Act ("RFA"), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the Fourth FNPRM in MM Docket No. 99-25. The Commission sought written public comment on the proposals in the Fourth FNPRM, including comment on the IRFA. We received no comments specifically directed toward the IRFA. This Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.

146. Need For, and Objectives of, the Proposed Rules. This rulemaking proceeding was initiated to seek comment on how to implement certain provisions of the LCRA. The Sixth R&O amends certain technical rules to implement the LCRA. The Sixth R&O adopts the waiver standard for second-adjacent channel spacing waivers set forth in section 3(b)(2)(A) of the LCRA. It specifies the manner in which a waiver applicant can satisfy this standard and the manner in which the Commission will handle complaints of interference caused by LPFM stations operating pursuant to second-adjacent channel waivers. As required by section 7 of the LCRA, the Sixth R&O modifies the regimes applicable if an LPFM station causes third-adjacent channel interference. As specified by the LCRA, the Sixth R&O applies the protection and interference remediation requirements applicable to FM translator stations to those LPFM stations that would have been short-spaced under the third-adjacent channel spacing requirements eliminated in the Fifth R&O in MM Docket No. 99-25. The Sixth R&O states that the Commission will consider directional antennas, lower ERPs and/or differing polarizations to be suitable techniques for eliminating third-adjacent channel interference. The Sixth R&O applies the more lenient interference protection obligations currently applicable to LPFM stations that would have been fully-spaced under the third-adjacent channel spacing requirements

eliminated in the Fifth R&O ("fully-spaced LPFM stations"). The Sixth R&O addresses the timing, frequency and content of the periodic broadcast announcements that newly constructed fully-spaced LPFM stations must make pursuant to section 7(2) of the LCRA. It revises the rules to treat as a "minor change" a proposal to move a fully-spaced LPFM station's transmitter outside its current service contour in order to co-locate or operate from a site close to a third-adjacent channel station and remediate interference to that station. Finally, the Sixth R&O implements section 6 of the LCRA, modifying the Commission's rules to address the potential for predicted interference to FM translator input signals from LPFM stations operating on third-adjacent channels. It adopts a basic threshold test designed to identify applications that are predicted to cause interference to FM translator input signals on third-adjacent channels and states that the Commission will dismiss any application that does not satisfy this threshold test as unacceptable for filing.

147. The Sixth R&O also makes a number of other changes to the Commission's rules to better promote localism and diversity, which are at the very heart of the LPFM service. It clarifies that the localism requirement set forth in § 73.853(b) of the rules applies not just to LPFM applicants but also to LPFM permittees and licensees. The Sixth R&O revises the rules to permit cross-ownership of an LPFM station and up to two FM translator stations but, at the same time, establishes a number of restrictions on such cross-ownership in order to ensure that the LPFM service retains its extremely local focus.

148. In the interests of advancing the Commission's efforts to increase ownership of radio stations by federally recognized Tribal Nations or entities owned or controlled by Tribal Nations, the Sixth R&O amends the Commission's rules to explicitly provide for the licensing of LPFM

stations to Tribal Nation Applicants, and to permit Tribal Nation Applicants to own or hold attributable interests in up to two LPFM stations.

149. In addition, the Order modifies the point system that the Commission uses to select among MX LPFM applications. Specifically, the Sixth R&O eliminates the proposed operating hours criterion, revises the established community presence criterion, affirms the local program origination criterion, and adds new criteria related to maintenance and staffing of a main studio, offering by Tribal Nation Applicants of new radio services that primarily serve Tribal lands, and new entry into radio broadcasting. Given these changes, the Sixth R&O also revises the existing exception to the cross-ownership rule for student-run stations. The Sixth R&O announces the Commission will continue to entertain partial "technical" settlements in the LPFM context and modifies the way in which involuntary time sharing works, shifting from sequential to concurrent license terms and limiting involuntary time sharing arrangements to three applicants. It adopts mandatory time sharing, which currently applies to full-service noncommercial educational translator stations but not LPFM stations.

150. Finally, the Sixth R&O eliminates the LP10 class of LPFM facilities and removes all of the I.F protection requirements applicable to LPFM stations except those established by international agreements.

151. Summary of Significant Issues Raised by Public Comments in Response to the IRFA. None.

152. Description and Estimate of the Number of Small Entities to Which Rules Will Apply. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules. 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.

153. Radio Broadcasting. The policies 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 stations 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.

154. 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 the rules apply does 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.

155. FM translator stations and low power FM stations. The policies adopted in the Sixth R&O 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 6,105 licensed FM translator stations and 824 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.

156. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements. The Sixth R&O modifies existing requirements and imposes additional paperwork burdens. The Sixth R&O modifies the Commission's policy regarding waivers ("second-adjacent waivers") of the second-adjacent channel minimum distance separations set forth in § 73.807 of the rules. As required by the LCRA, the Sixth R&O requires an applicant seeking a second-adjacent waiver to submit a showing that demonstrates that its proposed operations will not result in interference to any authorized radio service. The Sixth R&O specifies that a waiver applicant can make this showing in the same manner as an FM translator applicant (i.e., by showing that no interference will occur due to lack of population and using undesired/desired signal strength ratio methodology to narrowly define areas of potential interference). The Sixth R&O also permits certain applicants to propose to use directional antennas and/or differing antenna polarizations to make the required showing. The Sixth R&O mandates that complaints about interference from

stations operating pursuant to second-adjacent waivers include certain information. For instance, a complaint must include the listener's name and address and the location at which the interference occurs. The Sixth R&O specifies that the Commission will treat as a "minor change" a proposal to move the transmitter site of an LPFM station operating pursuant to a second-adjacent waiver outside its current service contour in order to co-locate or operate from a site close to a second-adjacent channel station and remediate interference to that station.

157. The Sixth R&O modifies the regime governing complaints about and remediation of third-adjacent channel interference caused by LPFM stations. As required by the LCRA, the Sixth R&O modifies the requirements applicable to complaints about third-adjacent channel interference caused by stations that do not satisfy the third-adjacent minimum distance separations set forth in § 73.807 of the rules. It also permits such stations to propose to use directional antennas and/or differing antenna polarizations in order to eliminate third-adjacent channel interference caused by their operations. The Sixth R&O modifies the requirements applicable to complaints about third-adjacent interference caused by LPFM stations that satisfy the third-adjacent minimum distance separations set forth in § 73.807 of the rules and strongly encourages that such complaints be filed with the Media Bureau's Audio Division. As in the second-adjacent channel context, the Sixth R&O explains that the Commission will treat proposals from LPFM stations seeking to remediate third-adjacent channel by co-locating or operating from a site close to a third-adjacent channel station as "minor changes." As required by the LCRA, the Sixth R&O requires newly constructed LPFM stations that satisfy the third-adjacent minimum distance separations set forth in § 73.807 of the rules to make periodic announcements. It also adopts requirements related to the timing and content of these announcements.

158. The Sixth R&O adopts certain New Jersey-specific provisions regarding complaints of interference. The Sixth R&O also adopts a threshold test to determine whether an LPFM applicant adequately protects translator input signals. In order to ensure that an LPFM applicant protects the correct input signal for an FM translator, the Sixth R&O recommends that FM translator licensees update the Commission if they have changed their primary station since they last filed a renewal application. If an applicant proposes to locate its transmitter within the "potential interference area" for another station, the applicant must demonstrate that it will not cause interference by making one of three showings. The Sixth R&O provides that an applicant can make these same showings in the context of a petition for reconsideration and reinstatement nunc pro tunc.

159. The Sixth R&O modifies the rules governing eligibility to hold licenses for LPFM stations. Specifically, it alters the eligibility rule to authorize issuance of an LPFM license to a Tribal Nation Applicant. The Sixth R&O also revises the localism requirement to clarify that an LPFM applicant must certify that, at the time of application, it is local and must pledge to remain local at all times thereafter. In addition, the Sixth R&O revises the definition of "local" to specify that a Tribal Nation Applicant is considered "local" throughout its Tribal lands.

160. The Sixth R&O revises the rules to permit multiple ownership of LPFM stations by Tribal Nation Applicants and cross-ownership of LPFM and FM translator stations. As a result, the Commission is revising the ownership certifications set forth in FCC Form 318.

161. The Sixth R&O makes a number of changes to the point system used to select among MX applications for LPFM stations. It extends the established community presence standard from 10 to 20 miles in rural areas. The Commission is revising FCC Form 318 to reflect this change. The Sixth R&O also adopts four new points criteria. Specifically, it adopts a new main studio

criterion and requires an applicant seeking to qualify for a point under this criterion to submit certain information (i.e., an address and telephone number for its proposed main studio) on FCC Form 318. In addition, the Sixth R&O specifies that the Commission will award a point to an LPFM applicant that makes both the local program origination and main studio pledges and adopts Tribal Nations and new entrant criteria. The Commission is revising FCC Form 318 to reflect these new criteria.

162. The Sixth R&O makes a number of changes related to time sharing. It adopts a requirement that parties submit voluntary time sharing agreements via the Commission's Consolidated Database System. It also revises the Commission's involuntary time sharing policy, shifting from sequential to concurrent license terms and limiting involuntary time sharing arrangements to three applicants. As a result of these changes, an LPFM applicant must submit, on FCC Form 318, the date on which it qualified as having an "established community presence" and may be required to submit information to the Commission regarding the time slots it prefers. Finally, the Sixth R&O adopts a mandatory time sharing policy similar to that applicable to full-service NCE FM stations. Applicants seeking to time-share pursuant to this policy must submit applications on FCC Form 318 and include an exhibit related to mandatory time sharing.

163. 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.

164. Consideration of alternative methods to reduce the impact on small entities is unnecessary because the passage of the LCRA required the Commission to make changes to a number of its technical rules. Moreover, the changes made to the Commission's non-technical rules benefit small businesses and existing LPFM licensees, offering them greater flexibility and additional licensing opportunities.

165. The LPFM service has created and will continue to create significant opportunities for small businesses, allowing them to develop LPFM service in their communities. To the extent that any modified or new requirements set forth in the Sixth R&O impose any burdens on small entities, we believe that the resulting impact on small entities would be favorable because the rules would expand opportunities for LPFM applicants, permittees, and licensees to commence broadcasting and stay on the air. Among other things, the Sixth R&O allows limited cross-ownership of LPFM and FM translator stations. This is prohibited under the current rules. Likewise, the Sixth R&O permits Tribal Nation Applicants to own or hold attributable interests in up to two LPFM stations to ensure adequate coverage of Tribal lands. Today, multiple ownership of LPFM stations is prohibited. The Sixth R&O also modifies the point system that the Commission uses to select among MX LPFM applications to award a point to an applicant that can certify that it has no attributable interest in any other broadcast station. Finally, the Sixth R&O extends mandatory time sharing to the LPFM service. If the licensee of an LPFM station does not operate the station 12 hours per day each day of the year, another organization may file an application to share-time with that licensee.

166. Report to Congress. The Commission will send a copy of the Sixth R&O, including this FRFA, in a report to be sent to Congress pursuant to the SBREFA. In addition, the Commission will send a copy of the Sixth R&O, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Sixth R&O and the FRFA (or summaries thereof) will also be published in the Federal Register.

B. Paperwork Reduction Act.

167. The Sixth R&O contains new information collection requirements subject to the Paperwork Reduction Act of 1995 ("PRA"). The requirements will be submitted to the Office of Management and Budget for review under section 3507(d) of the PRA. The Commission will publish a separate notice in the Federal Register inviting comments on the new information collection requirements adopted in this document. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. We describe impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the FRFA in Appendix B, *infra*.

C. Congressional Review Act.

168. The Commission will send a copy of this Sixth R&O in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

III. ORDERING CLAUSES

169. IT IS FURTHER ORDERED that pursuant to the authority contained in sections 1, 4(i), 4(j), 303, 307, 309(j), and 316 of the Communications Act of 1934, as amended, 47

U.S.C. 151, 154(i), 154(j), 303, 307, 309(j), and 316, and the Local Community Radio Act of 2010, Pub. L. No. 111-371, 124 Stat. 4072 (2011), this Sixth Report and Order is hereby ADOPTED and Part 73 of the Commission's rules IS AMENDED as set forth in Appendix C, effective 30 days after publication in the Federal Register, except pursuant to paragraph 140 below.

170. IT IS FURTHER ORDERED that the rules adopted herein that contain new or modified information collection requirements that require approval by the Office of Budget and Management under the Paperwork Reduction Act WILL BECOME EFFECTIVE after the Commission publishes a notice in the Federal Register announcing such approval and the relevant effective date.

171. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Sixth Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

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 amends 47 CFR 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. Section 73.807 is revised to read as follows:

§ 73.807 Minimum distance separation between stations.

Minimum separation requirements for LPFM stations are listed in the following paragraphs. Except as noted below, an LPFM station will not be authorized unless the co-channel, and first- and second-adjacent channel separations are met. An LPFM station need not satisfy the third-adjacent channel separations listed in paragraphs (a) through (c) of this section in order to be authorized. The third-adjacent channel separations are included for use in determining for purposes of § 73.810 which third-adjacent channel interference regime applies to an LPFM station. 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, the required minimum distance separation is sufficient to avoid interference received from other stations.

(a)(1) An LPFM 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, authorized LPFM stations, LPFM 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 LPFM	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second and third adjacent channel minimum separation (km)
	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility	Required
LPFM	24	24	14	14	None
D	24	24	13	13	6
A	67	92	56	56	29
B1	87	119	74	74	46
B	112	143	97	97	67
C3	78	119	67	67	40
C2	91	143	80	84	53
C1	111	178	100	111	73
C0	122	193	111	130	84
C	130	203	120	142	93

(2) LPFM 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.

(b) In addition to meeting or exceeding the minimum separations in paragraph (a) of this setion, new LPFM 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 LPFM	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second and third adjacent channel minimum separation (km)—required
	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility	
A	80	111	70	70	42
B1	95	128	82	82	53
B	138	179	123	123	92

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 (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) In addition to meeting the separations specified in paragraphs (a) and (b), LPFM 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
	Required	For no interference received	Required	For no interference received	
13.3 km or greater.....	39	67	28	35	21
Greater than 7.3 km, but less than 13.3 km ….	32	51	21	26	14
7.3 km or less	26	30	15	16	8

(d) Existing LPFM 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)(1) Waiver of the second-adjacent channel separations. The Commission will entertain requests to waive the second-adjacent channel separations in paragraphs (a) through (c) of this section on a case-by-case basis. In each case, the LPFM station must establish, 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. The LPFM station may do so by demonstrating that no actual interference will occur due to intervening terrain or lack of population. The LPFM station may use an undesired/desired signal strength ratio methodology to define areas of potential interference.

(2) Interference. (i) Upon receipt of a complaint of interference from an LPFM station operating pursuant to a waiver granted under paragraph (e)(1) of this section, the Commission shall notify the identified LPFM station by telephone or other electronic communication within one business day.

(ii) An LPFM station that receives a waiver under paragraph (e)(1) of this section shall suspend operation immediately upon notification by the Commission that it is causing

interference to the reception of an existing or modified full-service FM station without regard to the location of the station receiving interference. The LPFM station shall not resume operation until such interference has been eliminated or it can demonstrate to the Commission that the interference was not due to emissions from the LPFM station. Short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures.

(f) 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.

(g) International considerations within the border zones. (1) Within 320 km of the Canadian border, LPFM 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 Mexican border, LPFM 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

(3) 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.

(4) 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 provided that the interference is predicted to occur and actually occurs within:

* * * * *

4. Section 73.810 is revised to read as follows:

§ 73.810 Third adjacent channel interference.

(a) LPFM Stations Licensed at Locations That Do Not Satisfy Third-Adjacent Channel Minimum Distance Separations. An LPFM station licensed at a location that does not satisfy the

third-adjacent channel minimum distance separations set forth in § 73.807 is subject to the following provisions:

(1) Such an LPFM station will not be permitted to continue to operate if it causes any actual third-adjacent channel interference to:

(i) The transmission of any authorized broadcast station; or

(ii) The reception of the input signal of any TV translator, TV booster, FM translator or FM booster station; or

(iii) The direct reception by the public of the off-the-air signals of any authorized broadcast station including TV Channel 6 stations, Class D (secondary) noncommercial educational FM stations, and previously authorized and operating LPFM stations, FM translators and FM booster stations. Interference will be considered to occur whenever reception of a regularly used signal on a third-adjacent channel is impaired by the signals radiated by the LPFM station, regardless of the quality of such reception, the strength of the signal so used, or the channel on which the protected signal is transmitted.

(2) If third-adjacent channel interference cannot be properly eliminated by the application of suitable techniques, operation of the offending LPFM station shall be suspended and shall not be resumed until the interference has been eliminated. Short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures. If a complainant refuses to permit the licensee of the offending LPFM station to apply remedial techniques which demonstrably will eliminate the third-adjacent channel interference without impairment to the original reception, the licensee is absolved of further responsibility for that complaint.

(3) Upon notice by the Commission to the licensee that such third-adjacent channel interference is being caused, the operation of the LPFM station shall be suspended within three

minutes and shall not be resumed until the interference has been eliminated or it can be demonstrated that the interference is not due to spurious emissions by the LPFM station; provided, however, that short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures.

(b) LPFM Stations Licensed at Locations That Satisfy Third-Adjacent Channel Minimum Distance Separations. An LPFM station licensed at a location that satisfies the third-adjacent channel minimum distance separations set forth in § 73.807 is subject to the following provisions:

(1) Interference Complaints and Remediation. (i) Such an LPFM station is required to provide copies of all complaints alleging that its signal is causing third-adjacent channel interference to or impairing the reception of the signal of a full power FM, FM translator or FM booster station to such affected station and to the Commission.

(ii) A full power FM, FM translator or FM booster station shall review all complaints it receives, either directly or indirectly, from listeners regarding alleged third-adjacent channel interference caused by the operations of such an LPFM station. Such full power FM, FM translator or FM booster station shall also identify those that qualify as bona fide complaints under this section and promptly provide such LPFM station with copies of all bona fide complaints. A bona fide complaint:

(A) Must include current contact information for the complainant;

(B) Must state the nature and location of the alleged third-adjacent channel interference and must specify the call signs of the LPFM station and affected full power FM, FM translator or FM booster station, and the type of receiver involved; and

(C) Must be received by either the LPFM station or the affected full power FM, FM translator or FM booster station within one year of the date on which the LPFM station commenced broadcasts with its currently authorized facilities.

(iii) The Commission will accept bona fide complaints and will notify the licensee of the LPFM station allegedly causing third-adjacent channel interference to the signal of a full power FM, FM translator or FM booster station of the existence of the alleged interference within 7 calendar days of the Commission's receipt of such complaint.

(iv) Such an LPFM station will be given a reasonable opportunity to resolve all complaints of third-adjacent channel interference within the protected contour of the affected full power FM, FM translator or FM booster station. A complaint will be considered resolved where the complainant does not reasonably cooperate with an LPFM station's remedial efforts. Such an LPFM station also is encouraged to address all other complaints of third-adjacent channel interference, including complaints based on interference to a full power FM, FM translator or FM booster station by the transmitter site of the LPFM station at any distance from the full power, FM translator or FM booster station.

(v) In the event that the number of unresolved complaints of third-adjacent channel interference within the protected contour of the affected full power FM, FM translator or FM booster station plus the number of complaints for which the source of third-adjacent channel interference remains in dispute equals at least one percent of the households within one kilometer of the LPFM transmitter site or thirty households, whichever is less, the LPFM and affected stations must cooperate in an "on-off" test to determine whether the third-adjacent channel interference is traceable to the LPFM station.

(vi) If the number of unresolved and disputed complaints of third-adjacent channel interference within the protected contour of the affected full power, FM translator or FM booster station exceeds the numeric threshold specified in paragraph (b)(1)(v) of this section following an "on-off" test, the affected station may request that the Commission initiate a proceeding to consider whether the LPFM station license should be modified or cancelled, which will be completed by the Commission within 90 days. Parties may seek extensions of the 90-day deadline consistent with Commission rules.

(vii) An LPFM station may stay any procedures initiated pursuant to paragraph (b)(1)(vi) of this section by voluntarily ceasing operations and filing an application for facility modification within twenty days of the commencement of such procedures.

(2) Periodic Announcements. (i) For a period of one year from the date of licensing of a new LPFM station that is constructed on a third-adjacent channel and satisfies the third-adjacent channel minimum distance separations set forth in § 73.807, such LPFM station shall broadcast periodic announcements. The announcements shall, at a minimum, alert listeners of the potentially affected third-adjacent channel station of the potential for interference, instruct listeners to contact the LPFM station to report any interference, and provide contact information for the LPFM station. The announcements shall be made in the primary language(s) of both the new LPFM station and the potentially affected third-adjacent channel station(s). Sample announcement language follows:

> On (date of license grant), the Federal Communications Commission granted (LPFM station's call letters) a license to operate. (LPFM station's call letters) may cause interference to the operations of (third-adjacent channel station's call letters) and (other third-adjacent channel stations' call letters). If you are normally a listener of (third-adjacent channel station's call letters) or (other third-adjacent channel station's call

letters) and are having difficulty receiving (third-adjacent channel station call letters) or (other third-adjacent channel station's call letters), please contact (LPFM station's call letters) by mail at (mailing address) or by telephone at (telephone number) to report this interference.

(ii) During the first thirty days after licensing of a new LPFM station that is constructed on a third-adjacent channel and satisfies the third-adjacent channel minimum distance separations set forth in Section 73.807, the LPFM station must broadcast the announcements specified in paragraph (b)(2)(i) of this section at least twice daily. The first daily announcement must be made between the hours of 7 a.m. and 9 a.m., or 4 p.m. and 6 p.m. The LPFM station must vary the time slot in which it airs this announcement. For stations that do not operate at these times, the announcements shall be made during the first two hours of broadcast operations each day. The second daily announcement must be made outside of the 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. time slots. The LPFM station must vary the times of day in which it broadcasts this second daily announcement in order to ensure that the announcements air during all parts of its broadcast day. For stations that do not operate at these times, the announcements shall be made during the first two hours of broadcast operations each day. For the remainder of the one year period, the LPFM station must broadcast the announcements at least twice per week. The announcements must be broadcast between the hours of 7 a.m. and midnight. For stations that do not operate at these times, the announcements shall be made during the first two hours of broadcast operations each day.

(iii) Any new LPFM station that is constructed on a third-adjacent channel and satisfies the minimum distance separations set forth in § 73.807 must:

(A) notify the Audio Division, Media Bureau, and all affected stations on third-adjacent channels of an interference complaint. The notification must be made electronically within 48 hours after the receipt of an interference complaint by the LPFM station; and

(B) cooperate in addressing any third-adjacent channel interference.

5. Section 73.811 is revised to read as follows:

§ 73.811 LPFM power and antenna height requirements.

(a) Maximum facilities. LPFM stations will be authorized to operate with maximum facilities of 100 watts ERP at 30 meters HAAT. An LPFM 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.

(b) Minimum facilities. LPFM 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.

6. Section 73.816 is amended by revising paragraphs (b) and (c) to read as follows:

§ 73.816 Antennas.

* * * * *.

(b) Directional antennas generally will not be authorized and may not be utilized in the LPFM service, except as provided in paragraph (c) of this section.

(c)(1) Public safety and transportation permittees and licensees, eligible pursuant to § 73.853(a)(2), 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. Public safety and

transportation permittees and licensees may not use composite antennas (i.e., antennas that consist of multiple stacked and/or phased discrete transmitting antennas).

(2) LPFM permittees and licensees proposing a waiver of the second-adjacent channel spacing requirements of § 73.807 may utilize directional antennas for the sole purpose of justifying such a waiver.

* * * * *

7. Section 73.825 is amended by revising the Tables to paragraphs (a) and (b) to read as follows:

§ 73.825 Protection to reception of TV channel 6.

(a) * * *

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

(b) * * *

FM channel	LPFM

number	to TV channel 6 (km)
201	98
202	97
203	95
204	94
205	93
206	91
207	91
208	91
209	91
210	91
211	91
212	90
213	90
214	90
215	90
216	89
217	89
218	89
219	89
220	89

8. Section 73.827 is revised 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 the input signal of an FM translator station. This subsection applies when an LPFM application proposes to operate near an FM translator station, the FM translator station is receiving its primary station signal off-air and the LPFM application proposes to operate on a third-adjacent channel to the primary station. In these circumstances, the LPFM station will not be authorized unless it is located at least 2 km from the FM translator station. In addition, in cases where an LPFM station is located within +/- 30 degrees of the azimuth between the FM translator station and its primary station, the LPFM station will not be authorized unless it is located at least 10 kilometers from the FM translator station. The provisions of this subsection will not apply if the LPFM applicant:

(1) Demonstrates that no actual interference will occur due to an undesired (LPFM) to desired (primary station) ratio below 34 dB at all locations,

(2) Complies with the minimum LPFM/FM translator distance separation calculated in accordance with the following formula: $d_u = 133.5 \text{ antilog } [(P_{eu} + G_{ru} – G_{rd} – E_d) / 20]$, where d_u = the minimum allowed separation in km, P_{eu} = LPFM ERP in dBW, G_{ru} = gain (dBd) of the FM translator receive antenna in the direction of the LPFM site, G_{rd} = gain (dBd) of the FM translator receive antenna in the direction of the primary station site, E_d = predicted field strength (dBu) of the primary station at the translator site, or

(3) Reaches an agreement with the licensee of the FM translator regarding an alternative technical solution.

NOTE TO PARAGRAPH (a): LPFM applicants may assume that an FM translator station's receive and transmit antennas are collocated.

(b) An authorized LPFM station will not be permitted to continue to operate if an FM translator or FM booster station demonstrates that the LPFM station is causing actual interference to the FM booster station's input signal, provided that the same input signal was in use at the time the LPFM station was authorized.

(c) Complaints of actual interference by an LPFM station subject to paragraph (b) of this section must be served on the LPFM licensee and the Federal Communications Commission, Attention: Audio Division, Media Bureau. The LPFM station must suspend operations upon the receipt of such complaint unless the interference has been resolved to the satisfaction of the complainant on the basis of suitable techniques. Short test transmissions may be made during the period of suspended operations to check the efficacy of remedial measures. An LPFM station may only resume full operation at the direction of the Federal Communications

Commission. If the Commission determines that the complainant has refused to permit the LPFM station to apply remedial techniques that demonstrably will eliminate the interference without impairment of the original reception, the licensee of the LPFM station is absolved of further responsibility for the complaint.

9. 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. Such applications may be filed at any time after an LPFM station completes its third year of licensed operations. In cases where the licensee and the prospective licensee 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, 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 paragraph (c)(2) of this section, 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.

10. 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 paragraph (c) of this section that will provide non-commercial radio services.

(b) Only local organizations will be permitted to submit applications and to hold authorizations in the LPFM service. For the purposes of this paragraph, an organization will be deemed local if it can certify, at the time of application, that it meets the criteria listed below and if it continues to satisfy the criteria at all times thereafter.

* * * * *

(4) In the case of a Tribal Applicant, as defined in paragraph (c) of this section, the Tribal Applicant's Tribal lands, as that term is defined in § 73.7000, are within the service area of the proposed LPFM station.

(c) A Tribal Applicant is a Tribe or an entity that is 51 percent or more owned or controlled by a Tribe or Tribes. For these purposes, Tribe is defined as set forth in § 73.7000.

11. Section 73.855 is revised to read as follows:

§ 73.855 Ownership limits.

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

(b) Notwithstanding the general prohibition set forth in paragraph (a) of this section, Tribal Applicants, as defined in § 73.853(c), may hold an attributable interest in up to two LPFM stations.

(c) Notwithstanding the general prohibition set forth in paragraph (a) of this section, not-for-profit organizations and governmental entities with a public safety purpose may be granted multiple licenses if:

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

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

12. Section 73.860 is revised to read as follows:

§ 73.860 Cross-ownership.

(a) Except as provided in paragraphs (b), (c) and (d) of this section, no license shall be granted to any party if the grant of such authorization will result in the same party holding an attributable interest in any other non-LPFM broadcast station, including any FM translator or low power television station, or any other media subject to our broadcast ownership restrictions.

(b) A party that is not a Tribal Applicant, as defined in § 73.853(c), may hold attributable interests in one LPFM station and no more than two FM translator stations provided that the following requirements are met:

(1) The 60 dBu contours of the commonly-owned LPFM station and FM translator station(s) overlap;

(2) The FM translator station(s), at all times, synchronously rebroadcasts the primary analog signal of the commonly-owned LPFM station or, if the commonly-owned LPFM station operates in hybrid mode, synchronously rebroadcasts the digital HD-1 version of the LPFM station's signal;

(3) The FM translator station(s) receives the signal of the commonly-owned LPFM station over-the-air and directly from the commonly-owned LPFM station itself; and

(4) The transmitting antenna of the FM translator station(s) is located within 16.1 km (10 miles) for LPFM stations located in the top 50 urban markets and 32.1 km (20 miles) for LPFM stations outside the top 50 urban markets of either the transmitter site of the commonly-owned LPFM station or the reference coordinates for that station's community of license.

(c) A party that is a Tribal Applicant, as defined in § 73.853(c), may hold attributable interests in no more than two LPFM stations and four FM translator stations provided that the requirements set forth in paragraph (b) of this section are met.

(d) Unless such interest is permissible under paragraphs (b) or (c) of this section, a party with an attributable interest in a broadcast radio station must divest such interest prior to the commencement of operations of an LPFM station in which the party also holds an interest. However, a party need not divest such an attributable interest if the party is a college or university that can certify that the existing broadcast radio station is not student run. This exception applies only to parties that:

(1) Are accredited educational institutions;

(2) Own an attributable interest in non-student run broadcast stations; and

(3) Apply for an authorization for an LPFM station that will be managed and operated on a day-to-day basis by students of the accredited educational institution.

(e) No LPFM licensee may enter into an operating agreement of any type, including a time brokerage or management agreement, with either a full power broadcast station or another LPFM station.

13. 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 LPFM 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). These distance limitations also do not apply to an amendment or application proposing transmitter site relocation to a common location or a location very close to another station operating on a third-adjacent channel in order to remediate interference to the other station; provided, however, that the proposed relocation is consistent with all localism certifications made by the applicant in its original application for the LPFM station. Minor changes of LPFM stations may include:

* * * * *

14. Section 73.871 is amended by revising paragraphs (c)(1), (5), and (6) and adding paragraph (c)(7) 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 LPFM stations;

* * * * *

(5) Other changes in general and/or legal information;

(6) Filings proposing transmitter site relocation to a common location submitted by applications that are parties to a voluntary time-sharing agreement with regard to their stations pursuant to § 73.872 (c) and (e); and

(7) Filings proposing transmitter site relocation to a common location or a location very close to another station operating on a third-adjacent channel in order to remediate interference to the other station.

* * * * *

15. Section 73.872 is amended by revising paragraphs (b) , (c) introductory text, (c)(4), (d), and (e) to read as follows:

§ 73.872 Selection procedure for mutually exclusive LPFM applications.

* * * * *

(b) Each mutually exclusive application will be awarded one point for each of the following criteria, based on certifications that the qualifying conditions are met and submission of any required documentation:

(1) Established community presence. An applicant must, for a period of at least two years prior to application and at all times thereafter, have qualified as local pursuant to § 73.853(b). Applicants claiming a point for this criterion must submit any documentation specified in FCC Form 318 at the time of filing their applications.

(2) Local program origination. The applicant must pledge to originate locally at least eight hours of programming per day. For purposes of this criterion, local origination is the production of programming by the licensee, within ten miles of the coordinates of the proposed transmitting antenna. Local origination includes licensee produced call-in shows, music selected and played by a disc jockey present on site, broadcasts of events at local schools, and broadcasts of musical

performances at a local studio or festival, whether recorded or live. Local origination does not include the broadcast of repetitive or automated programs or time-shifted recordings of non-local programming whatever its source. In addition, local origination does not include a local program that has been broadcast twice, even if the licensee broadcasts the program on a different day or makes small variations in the program thereafter.

(3) Main studio. The applicant must pledge to maintain a publicly accessible main studio that has local program origination capability, is reachable by telephone, is staffed at least 20 hours per week between 7 a.m. and 10 p.m., and is located within 16.1 km (10 miles) of the proposed site for the transmitting antenna for applicants in the top 50 urban markets and 32.1 km (20 miles) for applicants outside the top 50 urban markets. Applicants claiming a point under this criterion must specify the proposed address and telephone number for the proposed main studio in FCC Form 318 at the time of filing their applications.

(4) Local program origination and main studio. The applicant must make both the local program origination and main studio pledges set forth in paragraphs (b)(2) and (3) of this section.

(5) Diversity of ownership. An applicant must hold no attributable interests in any other broadcast station.

(6) Tribal Applicants serving Tribal Lands. The applicant must be a Tribal Applicant, as defined in § 73.853(c), and the proposed site for the transmitting antenna must be located on that Tribal Applicant's "Tribal Lands," as defined in § 73.7000. Applicants claiming a point for this criterion must submit the documentation set forth in FCC Form 318 at the time of filing their applications.

(c) Voluntary time-sharing. If mutually exclusive applications have the same point total, any two or more of the tied applicants may propose to share use of the frequency by electronically

submitting, within 90 days of the release of a public notice announcing the tie, a time-share proposal. Such proposals shall be treated as minor amendments to the time-share proponents' applications, and shall become part of the terms of the station authorization. Where such proposals include all of the tied applications, all of the tied applications will be treated as tentative selectees; otherwise, time-share proponents' points will be aggregated.

* * * * *

(4) Concurrent license terms granted under paragraph (d) of this section may be converted into voluntary time-sharing arrangements renewable pursuant to § 73.3539 by submitting a universal time-sharing proposal.

(d) Involuntary time-sharing. (1) If a tie among mutually exclusive applications is not resolved through voluntary time-sharing in accordance with paragraph (c) of this section, the tied applications will be reviewed for acceptability. Applicants with tied, grantable applications will be eligible for equal, concurrent, non-renewable license terms.

(2) If a mutually exclusive group has three or fewer tied, grantable applications, the Commission will simultaneously grant these applications, assigning an equal number of hours per week to each applicant. The Commission will determine the hours assigned to each applicant by first assigning hours to the applicant that has been local, as defined in § 73.853(b) , for the longest uninterrupted period of time, then assigning hours to the applicant that has been local for the next longest uninterrupted period of time, and finally assigning hours to any remaining applicant. The Commission will offer applicants an opportunity to voluntarily reach a time-sharing agreement. In the event that applicants cannot reach such agreement, the Commission will require each applicant subject to involuntary time-sharing to simultaneously and confidentially submit their preferred time slots to the Commission. If there are only two tied,

grantable applications, the applicants must select between the following 12-hour time slots 3 am – 2:59 pm, or 3 pm – 2:59 am. If there are three tied, grantable applications, each applicant must rank their preference for the following 8-hour time slots: 2 am – 9:59 am, 10 am- 5:59 pm, and 6 pm-1:59 am. The Commission will require the applicants to certify that they did not collude with any other applicants in the selection of time slots. The Commission will give preference to the applicant that has been local for the longest uninterrupted period of time. The Commission will award time in units as small as four hours per day. In the event an applicant neglects to designate its preferred time slots, staff will select a time slot for that applicant.

(3) Groups of more than three tied, grantable applications will not be eligible for licensing under this section. Where such groups exist, the Commission will dismiss all but the applications of the three applicants that have been local, as defined in § 73.853(b) , for the longest uninterrupted periods of time. The Commission then will process the remaining applications as set forth in paragraph (d)(2) of this section.

(4) If concurrent license terms granted under this section are converted into universal voluntary time-sharing arrangements pursuant to paragraph (c)(4) of this section, the permit or license is renewable pursuant to §§ 73.801 and 73.3539.

(e) Settlements. Mutually exclusive applicants may propose a settlement at any time during the selection process after the release of a public notice announcing the mutually exclusive groups. Settlement proposals must comply with the Commission's rules and policies regarding settlements, including the requirements of §§ 73.3525, 73.3588 and 73.3589. Settlement proposals may include time-share agreements that comply with the requirements of paragraph (c) of this section, provided that such agreements may not be filed for the purpose of point aggregation outside of the 90 day period set forth in paragraph (c) of this section.

16. Section 73.873 is revised to read as follows:

§ 73.873 LPFM license period.

(a) Initial licenses for LPFM stations will be issued for a period running until the date specified in § 73.1020 for full service stations operating in the LPFM station's state or territory, or if issued after such date, determined in accordance with § 73.1020.

(b) The license of an LPFM station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.

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