6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99-25; FCC 13-134]

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; denial and/or dismissal of petitions for reconsideration.

SUMMARY: In this document, the Federal Communications Commission (Commission) grants in part and denies in part Prometheus Radio Project's Petition for Reconsideration of the Sixth Report and Order (Sixth R&O) in this proceeding. In particular, the Commission makes minor revisions to the rule that protects the input signals of FM translator and FM booster stations from interference by low power FM ("LPFM") stations. The Commission also denied the remaining four petitions for reconsideration for the reasons set forth below. These actions will provide clarification of the LPFM rules for entities preparing for the upcoming LPFM filing window.

DATES: Effective [insert date 30 days after date of publication in Federal Register].

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Sixth Order on Reconsideration (Sixth OOR) in MM Docket No. 99-25, FCC 13-134, adopted September 30, 2013, and released October 17, 2013. The full text of the is document is available for inspection and copying during regular business hours in the FCC Reference Center, 445 12th Street, SW, Room CY-A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street, SW, Room CY-B402,

Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, http://www.bcpi.com, or call 1-800-378-3160. This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact the FCC by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

Paperwork Reduction Act Analysis. The Sixth OOR does not adopt any new or revised information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13 (44 U.S.C. 3501-3520). In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

Report to Congress. The Commission will send a copy of the Sixth OOR to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Summary of Sixth Order on Reconsideration

I. BACKGROUND

1. On March 19, 2012, the Commission released a Fourth Further Notice of Proposed Rulemaking (Fourth FNPRM), seeking comment on proposals to amend the Commission's rules to implement provisions of the Local Community Radio Act of 2010 ("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.

2. On December 4, 2012, the Commission released the Sixth R&O, in which it adopted numerous measures to complete implementation of the LCRA, service and licensing rules to promote the LCRA's aforementioned goals, and technical rules to ensure the efficient use of the radio broadcast spectrum. The five Petitions were filed following Federal Register publication of the Sixth R&O, 78 Fed. Reg. 2077 (Jan. 9, 2013). These Petitions address only a narrow range of rule changes -- LPFM eligibility requirements, whether to identify and award construction permits to "secondary" grantees, protection standards for FM translator input signals, protection requirements toward LPFM stations operating with reduced power, and periodic announcements by LPFM stations regarding potential interference. One petition addresses the decisions to eliminate the LP10 service class (that is, the class of LPFM stations that is authorized to operate at a power level of up to 10 Watts) and decline adoption of an LP50 service class (that is, a class that would be authorized to operate at a power level of up to 50 Watts).

II. DISCUSSION

3. The Petitions, for the most part, either repeat arguments that were considered and rejected in the Sixth R&O, raise issues that are beyond the scope of the Sixth R&O, or rely on arguments that were not previously presented. While reconsideration in these circumstances is generally unwarranted, we believe it is in the public interest to discuss certain of the petitioners' arguments and our analysis of the issues raised, particularly to provide guidance to potential applicants in the upcoming LPFM filing window.

A. Eligibility and Attribution Issues

4. LifeTalk Radio, Inc. ("LTR") seeks to "clarify or amend" § 73.858 of the Commission's rules ("Attribution of LPFM station interests"). Pursuant to § 73.858(b), a

broadcast interest of a national organization will not be attributed to the local chapter if the local chapter "is separately incorporated and has a distinct local presence and mission." Determining attribution is relevant because § 73.860(a) of our rules generally prohibits LPFM licensees from holding attributable interests in other broadcast stations. LTR believes these two provisions, together, will prevent an unincorporated local chapter of a larger organization from owning an LPFM station if the larger parent organization has other broadcast interests. LTR argues this result is inconsistent with Montmorenci United Methodist Church and urges the Commission to amend its rules to conform to Montmorenci.

5. Prometheus opposes LTR's request, noting that the LTR Petition is not appropriate because the Commission did not amend § 73.858(b) in the Sixth R&O. Moreover, Prometheus argues Montmorenci does not conflict with § 73.858(b) because that case involved a national organization and local chapter that were both unincorporated, and thus posed an attribution issue outside the scope of the rule.

6. We deny LTR's request to amend § 73.858(b). The Fourth FNPRM did not seek comment regarding changes to § 73.858(b). Thus, LTR's proposed amendment is beyond the scope of matters that can be addressed on reconsideration of the Sixth R&O. Moreover, on August 23, 2013, the Commission released a Memorandum Opinion and Order that, inter alia, concluded that the Bureau's grant of the Montmorenci United Methodist Church application was inconsistent with the language of § 73.858(b) of our rules and accordingly rescinded that grant, an action that eliminates any arguable inconsistency between this precedent and the Rule.

7. In addition, LTR, Michael Couzens and Alan Korn (collectively "C/K") seek to expand the "new entrant" comparative criterion. LTR argues our current rules are inconsistent because the broadcast interests of a national organization are attributable for purposes of

awarding a point under the new entrant selection criterion, but not attributable in certain cases for satisfying the cross-ownership eligibility restrictions set forth at § 73.860. LTR contends that local LPFM applicants that have separate and local purposes distinguishable from the larger organization also should qualify for a new entrant point. Similarly, C/K argue that a student-run station that is part of a larger multi-campus system should also qualify for a new entrant point if the applicant can show it is functionally independent of the larger entity in its day-to-day decision making.

8. A number of parties oppose awarding the new entrant point to local chapters of national organizations. They contend that the new entrant point appropriately reflects the Commission's intent to increase ownership diversity. We agree. The new entrant comparative criterion and the exceptions to the general prohibition on cross-ownership, as set forth at § 73.860(b)-(d), serve different purposes. As discussed in the Sixth R&O, the new entrant point for LPFM applicants was adopted to encourage genuinely new entrants to broadcasting and to foster a more diverse range of community voices. In contrast, the cross-ownership exceptions reasonably expand community radio licensing opportunities for a narrow group of applicant entities consistent with the LPFM service's core localism goal. We reject the view that there is any "inconsistency" between these different comparative and eligibility rules. Neither LTR nor C/K provides any new information or arguments to justify reconsideration.

9. C/K also seek clarification that the acquisition of a permissible attributable interest during the pendency of an LPFM application would result in the loss of the new entrant credit and would constitute a reportable event. Our rules require applicants to continuously maintain the "accuracy and completeness of information furnished in a pending application." Previously, in the NCE context, this included all changes that negatively affected the applicant's

claimed points. We believe this same policy should apply to LPFM applicants. Thus, we clarify that an LPFM applicant may lose claimed points, such as the new entrant credit, as a result of changes made after the application filing. In addition, changes affecting an LPFM applicant could render the applicant ineligible for the proposed LPFM authorization.

10. Additionally, C/K seek clarification that local organizations must not only certify their pre-existing local status pursuant to § 73.872(b), but must also provide corroborative documentation of pre-existing local status. No clarification is necessary. Our revised Form 318 states: "Nonprofit educations organizations claiming a point for [established community presence] must submit evidence of their qualifications as an exhibit to their application forms."

11. Further, C/K seek clarification that applicants that merge and aggregate their points to prevail over other mutually exclusive applicants will be placed on public notice as the tentative selectee, allowing interested parties an opportunity to file petitions to deny. Again, no clarification is necessary. Section 73.870(d) of the Commission's rules already requires the Commission to "issue a Public Notice of the acceptance for filing of all applications tentatively selected pursuant to the procedures for mutually exclusive LPFM applications set forth at § 73.872. Petitions to deny such applications may be filed within 30 days of such public notice and in accordance with the procedures set forth at § 73.3584."

B. "Secondary" Grantees

12. C/K also argue that, once the Commission has awarded a construction permit to a tentative selectee in a mutually exclusive group, "to yield as many authorizations as possible," the Commission should review the other applicants in the mutually exclusive group for "secondary" grantees. No other party commented on this proposal. We do not believe awarding additional construction permits in this manner is appropriate. Our current policies already

provide LPFM applicants numerous opportunities in the settlement process to resolve mutual exclusivities. As noted in the Sixth R&O, the Commission will continue to accept both partial and global technical settlements in the upcoming LPFM window. We will also permit mutually exclusive applicants to move to any available channel during the period specified by § 73.872(e). We believe these procedures provide substantial flexibility to applicants to resolve conflicts and obtain multiple grants from mutually exclusive groups.

13. Further, in the NCE context, the Commission noted that although it might be beneficial to select more than one applicant in a mutually exclusive application group, doing so could potentially result in the selection of an inferior applicant as a secondary selectee. The Commission determined that the better approach would be to dismiss all non-selected applicants in a group, and permit them to file again in the next filing window, even if a particular application is not mutually exclusive with the primary selectee of the group. We believe the same reasoning and process apply in this context.

C. Protection of FM Translator and FM Booster Station Input Signals

14. Section 6 of the LCRA requires the Commission to "modify its rules to address the potential for predicted interference to FM translator input signals" based on independently conducted experimental measurements. This section is intended to protect the off-air input signal of an FM translator station. To implement this requirement, the Commission amended § 73.827 to prohibit the location of an LPFM station at certain locations – within the "potential interference area" – near an FM translator station that receives an off-air input signal on a third-adjacent channel to such LPFM station. This protection requirement applies to input signals from both "full-service FM stations and FM translator stations." However, § 73.827(a) exempts an LPFM applicant from these siting restrictions if the applicant can demonstrate that no actual

interference will occur. Moreover, to assist LPFM applicants in complying with the revised rule, the Commission strongly recommended that FM translator licensees update the information concerning their input signals if they have changed that information since their last such notification.

1. Protection of FM Translators That Use Other FM Translators for Input Signals

15. Prometheus contends that there is a discrepancy between revised rule § 73.827(a) and the associated discussion in the Sixth R&O. As noted above, the latter concluded "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." In contrast, § 73.827(a) protects the input signal only when "the LPFM application proposes to operate on a third-adjacent channel to the primary station." The National Translator Association ("NTA"), Educational Media Foundation ("EMF"), and National Public Radio, Inc. ("NPR") all agree with Prometheus's observation that the rule appears to inadvertently exclude input signals from FM translators.

16. We agree that the text of § 73.827(a) does not fully and accurately reflect the Commission's conclusion that section 6 requires the protection of all signals being delivered off-air on third adjacent channels. We therefore revise the first sentence of the rule to read (with the new language in italics and the deleted text in ~~strikethrough~~): "This subsection applies when an LPFM application proposes to operate near an FM translator station, the FM translator station is receiving its input ~~primary station~~ signal off-air (either directly from the primary station or from a translator station) and the LPFM application proposes to operate on a third-adjacent channel to the ~~primary station~~ station delivering an input signal to the translator station." To maintain

consistency, we will also revise the third sentence of the rule to read (with the new language in italics and the deleted text in ~~strikethrough~~): 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~~ input signal, the LPFM station will not be authorized unless it is located at least 10 kilometers from the FM translator station.

2. Methodology for Determining Predicted Interference to Input Signals

17. Prometheus also seeks revision of § 73.827(a)(1)'s requirement that an LPFM applicant proposing to operate near an FM translator station demonstrate "that no actual interference will occur due to an undesired (LPFM) to desired (primary station) ratio below 34 dB at all locations." Prometheus argues it is unnecessary and unreasonable to make this determination "at all locations" and asks the Commission to modify § 73.827(a)(1) to require only that an applicant specifying a transmitter location within the defined potential interference area establish that the signal strength ratio is below 34 dB "at the translator receive antenna" rather than "at all locations."

18. NPR argues that Prometheus improperly relies on arguments not previously presented, and therefore the Commission should dismiss this portion of Prometheus's Petition. Substantively, NPR argues that section 6 of the LCRA does not permit the Commission to accept and process an LPFM application based on a showing limited to the translator receive antenna location itself. On the other hand, NTA agrees "with Prometheus . . . that the term 'all locations' should refer to a single point which would be the receiver's input feeding the translator."

19. Prometheus counters that NPR misunderstands its request, which seeks clarification as to the required calculations for a good-faith demonstration when an LPFM applicant is within the "potential interference zone." It also notes that "the physical reality" is

that "the function of an in-band translator input depends only on the signal strength at its receive antenna, and not elsewhere." Prometheus argues it is a great burden to comply with the "at all locations" requirement, which it states will not technically improve the FM translator service.

20. As an initial matter, we agree with NPR that Prometheus raises a new argument on reconsideration. However, for the reasons set forth below, we believe it is in the public interest to consider the merits of the argument. 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 Mitre Report]." In the Fourth FNPRM the Commission "propose[d], as indicated in section 2.7 of the [Mitre] Report, that applicants may show that the ratio of [signal strengths] is below 34 dB at all locations" to establish lack of predicted interference. Although adopted in the Sixth R&O, the "at all locations" requirement does not accurately describe the Mitre Report methodology, which measured the effect of third-adjacent channel signals on a translator's receive antenna "at the translator input." Thus, contrary to NPR's claim, applying this interference standard at only one location is fully consistent with and, in fact, more faithfully implements section 6 of the LCRA because Congress determined that the predicted interference to FM translator input signals on third-adjacent channels should be consistent with the Mitre Report, which in fact measured the effect of third-adjacent channel signals on a translator's receive antenna at the translator input. We agree with Prometheus that it is neither sensible nor necessary to require LPFM applicants to demonstrate no actual interference will occur "at all locations" because the only technically relevant point to measure for the purpose of "address[ing] the potential for predicted interference to FM translator input signals on third-adjacent channels," is the location of the translator's receive antenna. In a case where a third-adjacent channel LPFM station is causing interference

to a translator input signal at other locations, the LPFM station is subject, of course, to § 73.810 complaint and remediation provisions. Accordingly, we will grant reconsideration on this issue.

21. For the same reasons as set forth above, we also find that the use of the term "primary station" in § 73.827(a)(1) erroneously excludes input signals from other FM translators. Therefore, we substitute "station delivering signal to translator station" for "primary station." We will revise § 73.827(a)(1) to read (with the new language in italics and deleted language in ~~strikethrough~~): ". . . demonstrates that no actual interference will occur due to an undesired (LPFM) to desired (~~primary~~ station delivering signal to translator station) ratio below 34 dB ~~at all locations~~ at such translator station's receive antenna." We recognize that this rule may place a burden on LPFM applicants because the Commission does not require licensees to submit or maintain separate receive antenna location data. Accordingly, unless a translator licensee has specified its specific receive antenna location in CDBS, LPFM applicants specifying transmitter locations within the defined potential interference area may assume that the translator receive antenna and its associated transmit antenna are co-located.

3. Database Records Regarding FM Translator Signal Delivery Methods and Input Signal Designations

22. To add more certainty to the LPFM application process, Prometheus requests that the Commission require translator licensees to update their records with the Commission regarding their input signal data and that it take further measures to improve the accuracy of that data available to applicants prior to the opening of the LPFM window. Prometheus states it has conducted a review of the Commission's CDBS records regarding translator input signals and has found that they contain contradictory, incomplete, or missing data. In cases where the data

may be inaccurate, missing or disputed, Prometheus seeks guidance on submitting a sufficient "no interference" showing.

23. NPR opposes Prometheus's request to require all translator licensees to update their records with the Commission. NPR points out that the Commission previously declined this Prometheus request, choosing instead to encourage licensees to voluntarily review and update this information. On the other hand, NTA and EMF agree there should be some simple path for LPFM applicants to determine the identity of the stations delivering signals to translator stations. NTA suggests that we modify CDBS to allow translators to identify translator receiver inputs, frequency, sources and locations. EMF also contends that protection of translator input signals should apply to the input signals specified in applications and construction permits for new translators as well as operational stations. Prometheus agrees with EMF that input signals specified by prior-filed translator applications should be protected by later-filed LPFM applications.

24. Our CDBS database collects all of the information specified by NTA, with the exception of the receive antenna location (i.e., input signal, frequency, source, and location). As indicated in the Sixth R&O, we assume the receive antenna and the transmit antenna are normally co-located, thus identifying the location of transmit antennas in CDBS will suffice in identifying the receive antenna. No one has disputed the validity of this assumption and therefore we reject NTA's proposal to expand information burden collections (by requiring the fling of thousands of notifications identifying the locations of receive antennas) on translator licensees and applicants. With respect to the accuracy of the CDBS data, CDBS is a database that compiles information received by the Commission from thousands of licensees and applicants. As a result, at any given time there is some conflicting and missing translator data in

CDBS, mainly data concerning translator input delivery methods. We remind translator licensees that "[c]hanges in the primary FM station being retransmitted must be submitted to the FCC in writing," and that timely notification is required to qualify for the protections provided by § 73.827 with regard to LPFM applications filed in the upcoming window. We also continue to encourage FM translator licensees to review and update the Commission as to their operations, as necessary, so that staff may revise CDBS accordingly. In cases where LPFM applicants are unable to obtain data regarding signal delivery method, they should assume for evidentiary and exhibit purposes that the signal delivery method is off-air. We also direct the Media Bureau to issue a public notice providing guidance to potential LPFM applicants by identifying the various CDBS data fields that may contain relevant information.

4. Limitation on Input Signal Protection Obligations by LPFM Applicants

25. Section 73.827(b) currently provides, "[a]n authorized LPFM station will not be permitted 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." Prometheus seeks revision of this rule to require that an input signal be in use "prior to the release of the public notice announcing an LPFM application window period," rather than "at the time the LPFM station is authorized." Prometheus also seeks clarification that the term "in use" in § 73.827(b) means "in use as the input to that translator."

26. NPR states that this attempted reconsideration of § 73.827(b) should be dismissed because Prometheus did not offer any arguments previously as to why the Commission should so limit its proposed protection of FM translator input signals. NPR also argues that section 6 of the

LCRA requires the Commission to address the potential for predicted interference to an FM translator station's input signal, without limitations based on filing dates.

27. In response to Prometheus's request, NTA suggests revision of § 73.827(b) to allow FM translator licensees to change input sources as needed, at any time, and allow affected LPFM applicants to file, where necessary, displacement modification applications. Further, while NTA suggests that the Media Bureau protect changes to signal inputs up to the point the Bureau establishes a translator application filing freeze prior to the LPFM filing window, NTA also appears to acknowledge that LPFM window applicants will not be required to protect translator input signal changes made after the window. Prometheus agrees that while translators "may change their input signals as needed, these newly changed signals cannot be considered primary to previously filed LPFM applications . . . [which] would violate the co-equal status of LPFM stations and translators."

28. As an initial matter, while NPR is correct that Prometheus could have raised this issue earlier, for the reason discussed below, we believe it is in the public interest to consider the merits of the argument. Under the Commission's "cut-off" rules as between LPFM and FM translator filings, a prior-filed application in one service generally "cuts off" a subsequently-filed application in the other service. However, § 73.807(c) provides a different cut-off rule with regard to LPFM window filings. Only FM translator authorizations and applications filed prior to the release of the public notice announcing the LPFM window are cut-off from window-filed applications. This requirement provides stability and certainty to LPFM applicants regarding the LPFM applicants' protection responsibilities when they are searching for available frequencies. To ensure continued stability and certainty, we will apply this same policy to input signals. Moreover, we find that this cut-off rule is the best way to give effect to the LCRA section 5

requirement that the two services remain "equal in status." Thus, an application for an LPFM station must protect an input signal that is in use or proposed in an application filed with the Commission prior to the release of the public notice announcing the dates for the LPFM filing window. Contrary to NPR's assertion, this policy is consistent with the plain language of section 6 of the LCRA's requirement that the Commission address the potential for predicted interference to FM translator input signals; section 6 does not restrict the Commission's authority to establish cut-off rights for both LPFM and FM translator stations regarding translator input signals.

29. We also provide the following clarifications with regard to § 73.827(b). We agree with Prometheus that the phrase "in use" limits the applicability of the rule to the particular input signal that was in use as the input signal to the protected FM translator station as of the release date of the LPFM window public notice. Second, as noted by Prometheus, the text of the rule refers initially to "an FM translator or FM booster" but later only to "the FM booster." We agree that the rule should list both types of stations and that the rule should be amended accordingly. For these reasons, we will revise § 73.827(b) to read (with the new language in italics and deleted language in ~~strikethrough~~): "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 translator or FM booster station's input signal, provided that the same input signal was in use or proposed in an application filed with the Commission ~~at the time the LPFM station was authorized~~ prior to the release of the Public Notice announcing the dates for an LPFM application filing window and has been continuously in use or proposed since that time."

30. We will not adopt NTA's suggestion to extend protection requirements to input signal changes made and applications filed on or after June 17, 2013, the date of the release of the public notice announcing the LPFM window, and prior to the LPFM window. Translator licensees may change their input signals as needed during this period. However, pursuant to section 5(c) of the LCRA's mandate for co-equal status, these changes will cease to receive cut-off protection as of the release of the LPFM window Public Notice.

D. Protection Requirements Toward Certain Short-Spaced LPFM Stations

31. Among other things, the Sixth R&O implemented section 3(b)(2)(A) of the LCRA, which permits LPFM stations to request waiver of the second-adjacent channel distance separation requirements with respect to any authorized radio service. The Commission may grant a waiver if a waiver applicant demonstrates that its proposed operations "will not result in interference to any authorized radio service." One method in which waiver applicants can propose to eliminate interference is through the use of directional antennas. The Sixth R&O made clear the protection obligations of subsequently filed FM translator applications toward LPFM stations using directional antennas to ensure interference-free operations. Specifically, the Commission decided "[t]o simplify matters and provide clear guidance to FM translator applicants [by requiring] FM translator modification applications and applications for new FM translators to treat … LPFM stations [operating with directional antennas] as operating with non-directional antennas at their authorized power."

32. Prometheus Radio Project ("Prometheus") seeks clarification as to whether translator applicants' obligations to protect LPFM stations using directional antennas will also apply to future LPFM new station and modification applications. Specifically, Prometheus seeks clarification as to whether future LPFM applications or modifications will have to also treat

LPFM stations using directional antennas as operating with non-directional antennas at their authorized power. NTA suggests the Commission treat both FM translators and LPFM stations based on their actual operating (as opposed to their authorized) power and antenna patterns. We expect minimal use of directional antennas and therefore decline to adopt this more complex licensing standard. As noted in the Sixth R&O, the second-adjacent channel interfering contour for LPFM stations will generally encompass only the area in the immediate vicinity of an LPFM station's transmitter site. Thus, directional antennas will have little value in limiting or eliminating the area where interference would be predicted to occur. For consistency and simplicity, we believe that it is appropriate that both FM translator and LPFM applicants should treat LPFM stations that are using directional antennas as operating non-directionally at their authorized power.

E. Periodic Announcements by Section 7(1) and Section 7(3) LPFM Stations

33. In the Sixth R&O the Commission also addressed ambiguous language in section 7 of the LCRA and determined that Section 7 creates two different LPFM interference protection and remediation regimes, one for LPFM stations that would be short-spaced under the third-adjacent channel spacing requirements in place when the LCRA was enacted ("Section 7(1) Stations") and one for LPFM stations that would be fully spaced under those requirements ("Section 7(3) Stations"). Thereafter, the Commission determined that the LCRA required Section 7(3) Stations, but not Section 7(1) Stations, to broadcast periodic announcements that alert listeners to the potential for interference and codified this requirement in § 73.810(b)(2) of our rules.

34. REC Networks ("REC") argues Congress did not intend to create two separate regimes for periodic announcements. However, it then maintains that the periodic announcement

requirement should apply "only . . . to LPFM stations that do not meet the minimum spacing requirements to third-adjacent channel FM stations." In other words, contrary to its own interpretation that the LCRA established one regime for all third adjacent channel LPFM stations, REC would require periodic announcements for Section 7(1) Stations and eliminate the requirement for Section 7(3) Stations. REC, which made a similar argument previously, relies on prior legislative versions of the LCRA to support its interpretation. We reject this argument as internally inconsistent.

35. We also reject REC's interpretation for the reasons set forth in the Sixth R&O. The Commission is required to implement and interpret the legislation as enacted, which REC acknowledges included the addition of section 7(1). In section 7(2), Congress required that for a period of one year after "a new low-power FM station is constructed on a third adjacent channel, such low-power FM station shall be required to broadcast periodic announcements . . . ." In section 7(1), in contrast, Congress applied a specific interference protection regime to "those low-power FM stations licensed at locations that do not satisfy third-adjacent channel spacing requirements" under the applicable Commission rule. We recognize that the broad phrasing in section 7(3) is ambiguous, since it could be read to apply to all LPFM stations, not just those that are short-spaced. The Commission concluded based on its analysis of the text, structure, and purpose of the statute that it is more reasonable to construe the statute as reflecting two different LPFM interference protection and remediation regimes for short-spaced and non-short spaced third adjacent channel stations and to apply section 7(2) only to the latter group of stations. As the Commission stated previously, if Congress had wished to apply the periodic announcements requirement to Section 7(1) Stations, it could have done so explicitly in the LCRA. Instead, Congress expressly required the wholesale adoption of the well-established, comprehensive and

strict § 74.1203 FM translator non-interference regime for Section 7(1) Stations. That regime does not include periodic announcements. As NPR notes in its Comments, REC presented similar arguments, which the Commission rejected in the Sixth R&O. REC presents no new arguments or evidence in its Petition that would lead us to change that conclusion. Accordingly, we deny the REC Petition.

36. We note that REC attempts to provide further evidence that the Commission misinterpreted Section 7 of the LCRA by arguing that an LPFM's periodic announcement requirement under § 73.810(b)(2) includes no geographic limitation as to what could be a "potentially affected" station. Our rule regarding periodic announcements requires LPFM stations to alert listeners of a potentially affected third-adjacent channel station of the potential for interference. Specifically, "[f]or a period of one year from the date of licensing of a new LPFM station that is constructed on a third-adjacent channel…such LPFM station shall broadcast periodic announcements. The announcements shall, at 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." However, neither the LCRA nor the Sixth R&O address which stations would be considered the "potentially affected" stations that the LPFM station must include in its periodic announcements. Consequently, according to REC, the "periodic announcement could include hundreds if not thousands of potential interfering stations."

37. As discussed above, the LCRA requires periodic announcements for Section 7(3) Stations, and not for Section 7(1) Stations. We believe it will be useful to provide some guidance to help these stations broadcast periodic announcements as directed by the LCRA. Accordingly, for purposes of § 73.810(b)(2), we will consider "potentially affected" stations to

be the two fully spaced third-adjacent channel stations operating above and below the frequency of the LPFM station whose transmitter sites are closest to that of the LPFM station, unless any such third adjacent channel station's transmitter site is more than 100 km from the LPFM station transmitter site. We believe that this standard reasonably defines the universe of "potentially affected" stations for listeners within a fully-spaced LPFM station's service contour, while also being relatively easy to administer. Unlike short-spaced stations, which are subject to the more stringent Section 7(1) requirements, the potential for interference from fully-spaced LPFM stations is unlikely and when it does occur it will be both localized and limited. In this regard, the Commission has consistently held that third-adjacent channel interference is restricted to the immediate vicinity of the LPFM transmitter site. This standard is reasonably designed to identify in a simple and straight forward manner those third-adjacent channel stations that are most likely to have listeners near to the LPFM transmitter site.

F. Elimination of LP10 Class of Service

38. The Sixth R&O eliminated the LP10 class of service after determining licensing LP10 stations would be an inefficient utilization of spectrum. The Commission noted that LP10 stations could only offer more limited service and would be more susceptible to interference than LP100 stations. Given the increasingly crowded nature of the FM band, the Commission found it appropriate to take this into account. The Commission was also concerned that the coverage area of LP10 stations would be too small for the stations to be economically viable. Faced with the loss of the LP10 class, some commenters proposed the creation of an LP50 class, which would allow licensees to transmit at any Effective Radiated Power ("ERP") from 1 to 50 Watts. The Commission declined to create an LP50 class, noting that the Fourth FNPRM only sought comment on whether to eliminate the LP10 class, retain the LP100 class, and/or introduce a new

LP250 class. Accordingly, the Commission determined that a decision to introduce a new LP50 class could not have been reasonably anticipated by all interested parties, and thus, was outside the scope of this proceeding.

39. Let the Cities In!! ("LTCI"), along with a number of other parties, seeks reconsideration of the decision to eliminate the LP10 class of service and the decision not to allow another lower class of LPFM service, such as an LP50 class of service. In LTCI's view, in order to maximize the number of new LPFM facilities, the Commission should authorize stations operating at less than 50 Watts in "urban core" areas, those in the top 100 Arbitron Markets. NPR states LTCI's Petition should be denied because LTCI relies on the same arguments that the Commission found insufficient to retain the LP10 class of service, while National Association of Broadcasters similarly argues the Commission has addressed and disposed of LTCI's concerns previously.

40. Specifically, LTCI argues that elimination of the LP10 class violates the Administrative Procedure Act ("APA") because the Commission offered no explanation as to why it proposed to eliminate that service. This claim is without legal basis. Section 553(b) and (c) of the APA require the Commission to give public notice of a proposed rulemaking that includes "either the terms or substance of the proposed rule or a description of the subjects and issues involved" and to give interested parties an opportunity to submit comments on the proposal. Notice is sufficient where the description of the subjects and issues involved affords interested parties a reasonable opportunity to participate in the proceeding. The Fourth FNPRM clearly and explicitly sought "comment on whether to eliminate the LP10 class of service." In response, numerous parties provided comments for and against retaining the LP10 class. It is

evident that all interested parties had an opportunity to submit comments on the proposal to eliminate the LP10 class of service and that APA requirements have been satisfied.

41. Substantively, LTCI maintains the Commission's technical and financial concerns do not justify the elimination of the LP10 service, which it believes could provide community radio service in "urban core" areas in which spectrum is very limited. LTCI argues the Commission erred in finding LP10 stations would not be an efficient use of spectrum. LTCI argues LP10 stations "can be 'dense packed' on the same channel in a neighborhood" to increase efficiency and the use of directional antennas can also increase the efficiency of an LP10 service class. LTCI also argues an LP10 service is technically viable since the Commission licenses 10 Watt translator stations. LTCI further argues the Commission "has grossly overestimated the level of fund raising needed to sustain an LP10 station financially." Essentially, it appears LTCI believes the Commission's decision to eliminate the LP10 service is arbitrary and capricious.

42. Even though, due to spectrum congestion, some areas may present limited or no opportunities for an LP100 service, the elimination of the LP10 service is reasonable and supported by the record. The Commission must balance the various statutory objectives of the LCRA, and based on its expertise as well as the record in response to its proposed elimination of the LP10 service, the Commission reasonably concluded that LP10 stations would be an inefficient use of available spectrum.

43. First, the record supports the Commission's conclusion that the LP10 service would be susceptible to interference. In addition to the crowded nature of the FM band, other external forces can also affect the viability of the LP10 signal, such as natural and man-made structures that lie between the transmitter and the receiver. These obstructions can affect a signal in various ways such as by attenuating the signal so that the actual signal received is weaker than

that predicted in the absence of any such obstructions or by creating multipath interference, which occurs when a signal bounces off structures and the out-of-phase main and reflected signals arrive at the receiver. All of these challenges are particularly significant for the mobile receivers that account for most radio listening. Indeed, as discussed in the Sixth R&O, the Commission previously discontinued a class of service because of interference concerns: a similar concern regarding the crowded nature of the FM band led the Commission to cease accepting applications for Class D FM stations and require Class D FM stations to either upgrade to Class A facilities or migrate from the reserved to the non-reserved portion of the FM band or to Channel 200, where they would be considered secondary operations.

44. Additionally, for the reasons stated above, we reject LTCI's claim that the use of directional antennas will increase the efficiency of the LP10 service. Moreover, LTCI's argument about "dense packed" co-channel LPFMs in a neighborhood, where "[e]ach receiver's 'capture effect' selects the strongest station for each listener," appears to involve a new model of licensing that would require rule changes that are beyond the scope of this proceeding.

45. We also find unpersuasive LTCI's argument that LP10 service should be allowed based on its alleged similarities to 10 Watt translator service. Translator stations generally do not originate programming and do not require a staff to operate. In contrast, LPFM stations are authorized to originate programming and require staff to operate and maintain. Moreover, a 10 Watt translator can place a 60 dBu strength signal 12 to 15 kilometers from its transmitter site, while the same signal might extend only 3 kilometers from an LP10 station's transmitter site because maximum power and height restrictions in the LP10 service (10 Watts at 30 meters HAAT) substantially restrict an LP10 station's coverage area. In contrast, certain 10 Watt FM translators can operate with no antenna height restrictions. We continue to maintain that these

differences - the limited coverage area, the technical and environmental challenges, and the resources required to maintain an LPFM station – render an LP10 service difficult to sustain economically.

46. The record also supports our conclusion that an LP10 service would be difficult to sustain economically. The Commission noted that a recent study found even higher-powered LP100 stations have small service areas and are constrained in "their ability to gain listeners" and "appeal to potential underwriters." LTCI's vague anecdotal claims about LP10 viability fail to undercut this study, which was mandated by Congress and represents the most comprehensive economic analysis of LPFM operations that exists.

47. Accordingly, in light of the significant record and the Commission's experience on the issue, as well as LTCI's failure to rebut the record submissions relied upon by the Commission, we find no merit to LTCI's claims that the Commission's concerns regarding efficiency and financial stability are insufficient to justify the elimination of the LP10 service.

48. LTCI also disagrees with the Commission's decision not to create an LP50 service. The Commission concluded that introducing a new LP50 class was not a logical outgrowth of this proceeding because it could not have been reasonably anticipated by interested parties. LTCI fails to address this notice issue, which we find bars substantive consideration of the possible LP50 class of service at this time.

49. LTCI also argues that allowing only an LP100 class of service violates section 5 of the LCRA's mandate that the Commission make available both LPFM stations and translators based on the needs of the community, because the decision not to license stations at LP50 or below will leave urban areas unserved or underserved. In the Fourth Report and Order, the Commission determined that sections 5(1) and (2) of the LCRA required both LPFM and

translator licenses be available in as many local communities as possible, according to their needs. The Commission concluded the primary focus under section 5 was to ensure that translator licensing procedures did not foreclose or unduly limit future LPFM licensing. The Commission undertook exhaustive technical analyses to determine the availability of LPFM licensing opportunities in over 150 markets and adopted strict translator processing and dismissal standards to preserve identified LPFM licensing opportunities in these markets, including "urban core" areas. In doing so, as discussed above, after careful consideration of the record and based on its experience, the Commission determined that an LP10 or LP50 class of service is neither a practical or efficient use of the spectrum nor economically sustainable.

50. Finally, LTCI argues the Commission's decision violates the Equal Protection component of the Fifth Amendment to the United States Constitution because the failure to allow an LP10 or LP50 class of service disproportionally impacts racial and ethnic minorities. LTCI's general, unsupported allegations are not sufficient to establish an equal protection violation.

51. We also note the LPFM service grew out of the Commission's commitment to promote diversity on the radio airwaves. The Commission stated its "goal in creating a new LPFM service [was] to create a class of radio stations designed to serve very localized communities or underrepresented groups within communities." The Commission also "made clear that we will not compromise the integrity of the FM spectrum." As discussed above, we believe an LP10 service would not only be an inefficient use of the spectrum, but would also not be financially viable. We do not believe that such a precarious class of radio service would fulfill our commitment to add diversity to the airwaves.

52. For the reasons discussed above, we deny LTCI's Petition to implement a class of service for LPFM facilities operating at less than 50 Watts in "urban core" markets.

III. PROCEDURAL MATTERS

A. Regulatory Flexibility Act

53. The Regulatory Flexibility Act of 1980, as amended ("RFA") requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

54. Final Regulatory Flexibility Certification. As required by the RFA, as amended, the Commission has prepared this Final Regulatory Flexibility Certification of the possible impact on small entities of the Sixth OOR. In this proceeding, the Commission's goal remains to implement the LCRA and to promote a more sustainable community radio service. The Commission addresses five petitions for reconsideration of the Sixth R&O, which adopted numerous measures to complete implementation of the LCRA, service and licensing rules to promote core localism and diversity goals, and technical rules to ensure the efficient use of the radio broadcast spectrum.

55. Pursuant to the RFA, a Final Regulatory Flexibility Analysis ("FRFA") was incorporated into the Sixth R&O. The instant Sixth OOR makes minor revisions to the rule which protects the input signals of FM translator and FM booster stations from interference by LPFM stations. The Sixth OOR makes non-substantive changes to the Commission's rules by:

(1) revising the language in § 73.827(a) to accurately reflect the Commission's conclusion that the LCRA requires protection from interference of all input signals being delivered off-air on third adjacent channels; and (2) revising the language in § 73.827(b) to accurately reflect the applicability of the rule to both FM translator and FM booster stations and to reflect that the input signal must be in use prior to the public notice announcing the LPFM window and the input signal has been continuously in use. These rule changes are only for the purpose of clarification and meaning, and therefore, do not create any new rules that by regulating small entities, impose any burdens or costs of compliance on such entities.

56. Additionally, we revise the language in § 73.827(a)(1) to require demonstration of no interference at one location instead of showing no interference at multiple locations, which is consistent with the requirements of the Local Community Radio Act of 2010 and a showing at multiple locations would be irrelevant for determining potential interference. For a number of reasons, there will be no significant economic impact, if any, on a substantial number of small entities as a result of this change. First, § 73.827(a)(1) continues to apply only in cases where an LPFM applicant proposes to operate near the input signal of an FM translator station. Second, although the rule generally does not allow an LPFM station to operate near the input signal of the FM translator station, the LPFM applicant will be allowed to operate the LPFM station if it is able to comply with any one of the three provisions in § 73.827(a)(1)-(a)(3). Therefore, § 73.827(a)(1) continues to be one of three methods by which an LPFM applicant can demonstrate that it should be allowed to operate near the input signal. Finally, the change to § 73.827(a)(1) will reduce the burden and costs of the information being collected by the LPFM applicant because the modified methodology simplifies § 73.827(a)(1) "no interference" showing to the calculation of a single signal strength ratio at a defined location and by eliminating the

requirement to make the calculation at locations which would be irrelevant for determining potential interference. Furthermore, the change does not harm the LPFM applicant's competitive ability or raise costs for the applicant in any way. Also, there is no additional cost to implement the rule; no additional record keeping requirements; and no disincentive to the LPFM applicant or station to seek or invest capital. This change also will have no impact on translator licensees. For example, the rule change does not harm the translator licensee's competitive ability or reduce its revenues or raise costs in any way. Plus, there is no cost to the translator licensee to implement the rule; no additional record keeping requirements; and no disincentive to the translator licensee to seek or invest capital for its translator.

57. Therefore, we certify that the requirements of the Sixth OOR will not have a significant economic impact on a substantial number of small entities.

58. The Commission will send a copy of the Sixth OOR, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A). In addition, the Sixth OOR and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the Federal Register. See 5 U.S.C. 605(b).

B. Paperwork Reduction Act

59. The Sixth OOR does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 ("PRA"), Public Law 104-13. The information collection requirements were approved under OMB control number 3060-0920. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

IV. ORDERING CLAUSES

60. Accordingly, IT IS ORDERED, pursuant to the authority contained in the Local Community Radio Act of 2010, Pub. L. 111-371, 124 Stat. 4072 (2011) and the authority contained in sections 1, 2, 4(i), 303, and 307 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 303, and 307, that the Sixth OOR IS ADOPTED, effective 30 days after date of publication in the federal register.

61. IT IS ORDERED that, pursuant to the authority contained in contained the Local Community Radio Act of 2010, Pub. L. 111-371, 124 Stat. 4072 (2011) and the authority contained in in sections 1, 2, 4(i), 303, and 307 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 303, and 307, the Commission's rules ARE HEREBY AMENDED.

62. IT IS FURTHER ORDERED that the Petition for Partial Reconsideration, filed by REC Networks; the Petition for Reconsideration of Fifth Order on Reconsideration and Sixth R&O, filed by Michael Couzens and Alan Korn; the Petition for Reconsideration of Fifth Order on Reconsideration and Sixth R&O, filed by LifeTalk Radio, Inc.; and the Petition for Reconsideration, filed by Let the Cities In!! ARE DENIED. IT IS FURTHER ORDERED that the Petition for Reconsideration, filed by Prometheus Radio Project, IS GRANTED IN PART AND DENIED IN PART, to the extent discussed herein.

63. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the 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 broadcast services.

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 citation for part 73 continues to read as follows:

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

2. Amend § 73.827 by revising the second and fourth sentence of paragraph (a) introductory text, paragraph (a)(1), and paragraph (b) to read as follows:

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

(a) * * * This subsection applies when an LPFM application proposes to operate near an FM translator station, the FM translator station is receiving its input signal off-air (either directly from the primary station or from a translator station) and the LPFM application proposes to operate on a third-adjacent channel to the station delivering an input signal to the 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 input signal, the LPFM station will not be authorized unless it is located at least 10 kilometers from the FM translator station.

(1) Demonstrates that no actual interference will occur due to an undesired (LPFM) to desired (station delivering signal to translator station) ratio below 34 dB at such translator station's receive antenna.

* * * * *

(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 translator or FM booster station's input signal, provided that the same input signal was in use or proposed in an application filed with the Commission prior to the release of the public notice

announcing the dates for an LPFM application filing window and has been continuously in use or proposed since that time.

* * * * *

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