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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 18-184; FCC 18-69]

New FM Radio Broadcast Class C4 and to Modify the Requirements for Designating Short-Spaced Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: In this document, the Commission adopted a Notice of Inquiry (NOI), based on a petition for rulemaking filed by SSR Communications, Inc., in which the Commission sought comment on a proposal to create a new class of FM radio stations, Class C4, and to establish a procedure for designating certain FM stations.

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

ADDRESSES: You may submit comments, identified by MB Docket No. 18-184, by any of the following methods:

- Federal Communications Commission's Website: [http:// www.fcc.gov/cgb/ecfs/](http://www.fcc.gov/cgb/ecfs/).
Follow the instructions for submitting comments.
- Mail: Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal

Communications Commission.

- **People with Disabilities**: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov or phone: (202) 418-0530 or TTY: (202) 418-0432. For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Albert Shuldiner, Chief, Media Bureau, Audio Division, (202) 418-2721; James Bradshaw, Deputy Division Chief, Media Bureau, Audio Division, (202) 418-2739. Direct press inquiries to Janice Wise at (202) 418-8165.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Inquiry, FCC 18-69, adopted June 4, 2018, and released June 5, 2018. The full text of this document is available electronically via the FCC's Electronic Document Management System (EDOCS) website at <http://https://www.fcc.gov/edocs> or via the FCC's Electronic Comment Filing System (ECFS) website at <http://https://www.fcc.gov/ecfs/>. (Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) This document is also available for public inspection and copying during regular business hours in the FCC Reference Information Center, which is located in Room CY-A257 at FCC Headquarters, 445 12th Street, SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m. Alternative formats are available for people with disabilities (braille, large print,

electronic files, audio format), by sending an e-mail to fcc504@fcc.gov or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Synopsis of Notice of Inquiry

1. **Introduction.** In this Notice of Inquiry (NOI), the Commission explores the possibility of amending Part 73 of the Commission's Rules to create an intermediate class of FM broadcast stations in Zone II between Class A and Class C3, to be designated Class C4. Commission staff estimates that 127 Class C3 stations, or 14 percent of the total number of Class C3 stations, are operating with facilities that are less than the proposed Class C3 minimums and thus could be subject to reclassification to Class C4. It also explores the possibility of establishing a procedure whereby an FM station in the non-reserved band (Channels 221-300), regardless of Zone or station class, could be designated as a Section 73.215 facility, resulting in such station receiving interference protection based on its actual authorized operating parameters rather than the maximum permitted parameters for its station class.

2. **Class C4 proposal.** This proceeding was initiated by a petition for rulemaking filed by SSR Communications, Inc. (SSR). SSR advocates the creation of a new Class C4 with an effective radiated power (ERP) that must exceed 6 kilowatts, a maximum ERP of 12 kilowatts, and a reference HAAT of 100 meters. The ERP that Class C3 stations must exceed would increase from 6 kilowatts to 12 kilowatts, but the maximum ERP would remain at 25 kilowatts. In addition, under the current rules, a station can operate below the minimum ERP for its class provided its HAAT allows it to exceed the class contour distance for the next lower class (for example, a Class C3 station must

exceed the Class A contour distance of 28 kilometers). Under the SSR proposal, the next lower class for a Class C3 station would be Class C4, with a contour distance of 33 kilometers. SSR proposes amending Sections 73.207(b)(1), 73.210(a), 73.210(b), 73.211(a)(1), 73.211(b), and 73.215(e) of the Rules to implement these changes. SSR argues that a new Class C4 would provide upgrade opportunities for Class A facilities, particularly minority-owned stations, and create consistent ERP intervals between FM classes.

3. Affected stations and their listeners. Would the creation of a Class C4 materially benefit existing Class A stations by providing them with an opportunity to upgrade that is not possible today based on the current Class C3 parameters? Would Class A stations and their listeners, particularly in rural or underserved areas, benefit from the new Class C4? Is there a significant demand for the rule changes proposed by SSR? How many stations are likely to be affected by such a rule change? As suggested by SSR, would the creation of a Class C4 be particularly beneficial for minority-owned Class A stations by providing them with an opportunity to upgrade? Would this action encourage diversity of ownership in the FM broadcast industry? Would there be a detrimental effect on existing stations and/or their listeners generally, either from increased interference or reclassification (upgrade or downgrade)?

4. Secondary services. How would a new Class C4 affect secondary services (FM translators and LPFM stations), as well as AM primary stations that rebroadcast on FM translator stations? Are there lawful ways to mitigate or eliminate the impact of this proposal on secondary services, and, if so, what measures would be effective or appropriate? To what extent, if any, does the Local Community Radio Act of 2010

(LCRA) impact the Commission's ability to protect existing FM translator and LPFM stations? In particular, would such protections be consistent with the LCRA directive that the "Federal Communications Commission, when licensing new FM translators, FM booster stations, and low-power FM stations ... ensure ... that ... (3) [these stations] remain equal in status and secondary to existing and modified full-service FM stations"? In this respect, the Commission notes that it would be reluctant to adopt any proposal in this area that would have a significantly negative impact on FM translators and LPFM stations.

5. Allocation goals. Given the maturity of the FM service, would an increased density of signals resulting from Class A stations upgrading to Class C4 provide improved FM service coverage, or merely contribute to a higher "noise floor" overall while only modestly benefiting individual stations? Would upgrades to Class C4 increase the overall number of radio stations available to listeners or create interference that would degrade reception for stations in areas where there is currently a listenable signal, resulting in fewer listening choices for listeners? More generally, is there a "tipping point" at which increasingly granular station classifications are no longer conducive to efficient signal coverage and, if so, has that point been reached?

6. Implementation procedures. What is the appropriate balance of interests between the anticipated benefit of creating a new class of FM stations and the disruption entailed in the reclassification of existing stations? If a new class is created, should the Commission implement a blanket reclassification process, as it did in 1983 and 1989, by requiring existing Class C3 stations to file for modification to meet the proposed revised minimum facility requirements for Class C3 stations within a set time frame or be

reclassified based on their actual operating facilities? Should the mere filing for a modification be sufficient to avoid reclassification or should the Commission also require construction to be completed by a date certain? If a date certain is set for filing a modification or completing construction, what would be a reasonable amount of time for licensees to comply? Would a blanket reclassification provide more reliable and timely opportunities for upgrade than the show cause procedure outlined in the next paragraph?

7. Alternatively, should the Commission adopt a show cause procedure similar to that currently in use for Class C0, whereby a Class C3 station operating below the proposed revised minimum facility requirements for Class C3 stations would be reclassified only after the filing of a “triggering” application that requires it to be reclassified to Class C4? Should the affected Class C3 station have the opportunity to preserve its Class C3 status by filing a construction permit application to upgrade its facility to meet Class C3 minimums? The Commission notes that the Commission’s licensing staff has found that the Class C0 show cause procedure appears to incentivize delay and contention between the parties. Have licensees experienced delay or other difficulties using the Class C0 show cause procedure? Is the blanket reclassification process described in the preceding paragraph preferable for that reason? Are there other implementation approaches the Commission should consider that might address or avoid problems identified with this show cause procedure?

8. Other issues. To what extent, if any, does the LCRA impact the Commission’s creation of a new class of FM stations or reclassification of existing FM stations; in particular, the provision that the Commission “shall not amend its rules to reduce the minimum co-channel and first- and second-adjacent channel distance separation

requirements in effect on [January 4, 2011] between--(A) low-power FM stations; and (B) full-service FM stations”? Are there specific rule changes that would be necessary or advisable to implement any of the foregoing proposals? The Commission also invites commenters to make suggestions as to how the Commission’s forms and databases should be modified to implement the above proposals.

9. Section 73.215 proposal. SSR argues that, by providing interference protection to a station’s contours based on maximum class facilities, as opposed to the actual facilities, the Commission’s rules overprotect stations operating with facilities below their class maximum. Accordingly, SSR proposes an amendment to Section 73.3573 of the Rules that would require such “sub-maximum” stations to be designated as Section 73.215 facilities using a procedure similar to the existing Class C0 show cause and reclassification procedure. Designation as a Section 73.215 facility would result in the sub-maximum station receiving interference protection based on its actual authorized operating parameters rather than the maximum permitted parameters for its station class. Under SSR’s proposed procedure, stations not already authorized under Section 73.215 that, for ten years prior to the filing of a triggering application, have continuously operated with a HAAT or ERP below that of the class maximum (or equivalent class maximum HAAT and ERP combination in the case of station operating with a HAAT exceeding its reference HAAT) would be given an opportunity to upgrade to maximum class facilities or be subject to designation as a Section 73.215 facility.

10. SSR recommends a show cause procedure to implement its Section 73.215 proposal. Specifically, the procedure would be initiated by the filing of a “triggering” application that specifies facilities that require the designation of the affected sub-

maximum station as a Section 73.215 facility. Triggering applications may utilize Section 73.215 and must certify that no alternative channel is available for the proposed service. Copies of a triggering application and related pleadings would be required to be served on the licensee of the affected sub-maximum station. If the staff concludes that a triggering application is acceptable for filing, it would issue an order to show cause why the affected sub-maximum station should not be designated as a Section 73.215 station. The order to show cause would provide the licensee of the sub-maximum station 30 days to express in writing an intention to seek authority to modify its technical facilities to its maximum class HAAT and ERP (or equivalent combination thereof) or to otherwise challenge the triggering application. If no such intention is expressed and the triggering application is not challenged, the affected sub-maximum station would be designated as a Section 73.215 station and processing of the triggering application would be completed. If such intention is expressed within the 30-day period, an additional 180-day period would be provided during which the licensee of the sub-maximum station would be required to file an acceptable construction permit application to increase HAAT and/or ERP to its class maximum values (or equivalent combination thereof). Upon grant of such a construction permit application, the triggering application would be dismissed. As with Class C0 reclassifications, the licensee of the sub-maximum station would be required to serve on triggering applicants copies of any FAA submissions related to the application grant process. If the construction is not completed as authorized, the affected sub-maximum station would be automatically designated as a Section 73.215 facility. SSR's proposal raises issues similar to those posed by the Class C4 proposal, and the Commission seeks comment generally on the costs and benefits of the proposal.

11. Affected stations and their listeners. Would the proposed Section 73.215 mechanism materially benefit stations seeking to upgrade and their listeners? What is the demand for such upgrades? Would there be a corresponding detrimental effect on listeners regarding loss of existing interference-free service provided by sub-maximum stations? The Commission has explained that its policy of protecting all stations as if they are operating at maximum permitted height or power for their class, even if they are in fact operating at or near the minimum permitted height and power for their class, “permits stations to improve technical facilities over time and provides a certain degree of flexibility for transmitter relocations.” To what extent would adoption of the Section 73.215 proposal undermine this policy? Is this policy still desirable in the mature FM service? What are the relevant factors that might affect the sub-maximum station’s ability to upgrade to the class maximums, and have those factors changed due to technological or other developments? If a station has operated below maximum facilities for a sufficient period of time, can the Commission conclude that the station is either unwilling or unable to operate at maximum facilities, thereby justifying protecting such station based on actual operating parameters and allowing for more efficient utilization of FM spectrum? Is ten years of continuous “sub-maximum” operation the appropriate period of time before a station would be subject to involuntary Section 73.215 designation, as suggested by SSR, or is another period of time appropriate? To what extent should transfers of control or assignments of licensees impact the relevant time period? That is, should the time period apply per station or per licensee? For example, if the relevant time period is ten years and a station that has operated below class maximums for nine years is transferred or assigned to a third-party, should the new

licensee have ten additional years to upgrade to class maximums free from potential designation as a Section 73.215 facility?

12. Secondary services. The Commission seeks comment on the likely impact of full service station upgrades using the proposed Section 73.215 procedure on nearby secondary services or AM primary stations that rebroadcast on FM translator stations. Are there lawful ways to mitigate or eliminate the impact of this proposal on secondary services, and, if so, what measures would be effective or appropriate?

13. Allocation goals. Would SSR's Section 73.215 proposal, if adopted, result in increased interference levels in the FM band? In particular, would the increased density of signals resulting from upgraded stations provide improved FM service coverage, or merely contribute to a higher "noise floor" overall while only modestly benefiting individual stations? Is this proposal in tension with the original purpose of Section 73.215 to afford applicants greater flexibility in the selection of transmitter sites? Should the Commission significantly expand the applicability of Section 73.215 as proposed by SSR, and what would be the policy and legal justifications for doing so? Does the Commission's long history of licensing thousands of stations in the reserved band—using a contour methodology based on stations' authorized facilities—show that expanding eligibility for Section 73.215 processing would result in increased or decreased services for listeners?

14. Implementation procedures. If the Section 73.215 proposal is adopted, should the Commission follow SSR's suggested procedures, which are based on those currently in use for Class C0? Should the triggering applicant be required to certify that no

alternative channel is available for the proposed service? Should the Commission use a show cause procedure, and if so, what deadlines would be appropriate?

15. Alternatively, should the Commission adopt a more streamlined procedure whereby all sub-maximum stations would be provided a date certain by which they must file an upgrade application or automatically become subject to immediate designation as a Section 73.215 facility upon the filing of an acceptable application from another licensee seeking to upgrade its facilities? What would be a reasonable amount of time to allow sub-maximum stations to file upgrade applications before becoming subject to automatic designation as a Section 73.215 facility? Would such a procedure avoid unnecessary delays in providing new FM service and incentivize more stations to upgrade to their class maximums? Would there be any disadvantages with this approach? Are there other streamlined implementation approaches the Commission should consider?

16. Other issues. The Commission invites comment on other details of SSR's Section 73.215 proposal. Which applicants should be permitted to use the proposed Section 73.215 procedure? Does "sub-maximum" include all stations operating at less than class maximums, or should the Commission establish a cutoff whereby a station would not be subject to designation as a Section 73.215 facility if it operates at a minimal distance below its class maximum contour distance, such as two kilometers? How would the proposal affect stations that are short-spaced under Section 73.213 of the Rules? Are there specific rule changes that would be necessary to implement the proposal? The Commission also invites commenters to make suggestions as to how its forms and databases should be modified to implement the Section 73.215 proposal.

17. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule. None.

Ex Parte Rules

18. Permit But Disclose. The proceeding this NOI initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. Memoranda must contain a summary of the substance of the ex parte presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written

ex parte presentations and must be filed consistent with § 1.1206(b) of the rules. In proceedings governed by § 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

Filing Procedures

19. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.

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- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
 - Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
- People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Ordering Clause

20. **IT IS FURTHER ORDERED** that, pursuant to the authority contained in Sections 1, 4(i), 4(j), 301, 303, 307, 308, 309, 316, and 319 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 301, 303, 307, 308, 309, 316, and 319, this Notice of Inquiry **IS ADOPTED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch,

Secretary

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