

State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one State. This action simply approves Oklahoma's proposal to be authorized for updated requirements of the hazardous waste program that the State has voluntarily chosen to operate. Further, requirements of the hazardous waste program that the State has voluntarily chosen to operate. Further, as result of this action, those newly authorized provisions of the State's program now apply in the State of Oklahoma in lieu of the equivalent Federal program provisions implemented by EPA under HSWA. Affected parties are subject only to those authorized State provisions, as opposed to being subject to both Federal and State regulatory requirements. Thus, the requirements of section 6 of the Executive Order do not apply.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: March 30, 2000.

Jerry Clifford,

Acting Regional Administrator, Region 6.
[FR Doc. 00-11560 Filed 5-9-00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 11, 73, and 74

[MM Docket No. 00-10; FCC 00-115]

Establishment of a Class A TV Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document implements the Community Broadcasters Protection Act of 1999, which directs the FCC to establish a Class A television service to provide a measure of primary status to certain low-power television stations. This document addresses a wide range of issues related to the implementation of the statute, including the protected service area of Class A stations, Class A interference protection requirements vis a vis other TV stations, eligibility criteria for Class A status, common ownership restrictions applicable to Class A stations, the treatment of modification applications filed by Class A licensees, and general operating requirements.

DATES: Effective July 10, 2000.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Policy and Rules Division, Mass Media Bureau, (202) 418-2130, or Keith Larson, Office of the Bureau Chief, Mass Media Bureau, (202) 418-2600.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order ("*R&O*"), FCC 00-115, adopted March 28, 2000; released April 4, 2000. The full text of the Commission's *R&O* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW-A306), 445 12 St. SW., Washington, DC. The complete text of this *R&O* may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857-3800, 1231 20th St., NW., Washington, DC 20036.

Synopsis of Report and Order

I. Introduction

1. In this *R&O*, we establish a Class A television service to implement the Community Broadcasters Protection Act of 1999 (CBPA), which was signed into law November 29, 1999, Pursuant to the CBPA and our implementing rules, certain qualifying low-power television (LPTV) stations will be accorded Class A status. Class A licensees will have "primary" status as television broadcasters, thereby gaining a measure of protection from full-service television stations, even as those stations convert to digital format. The LPTV stations

eligible for Class A status under the CBPA and our rules provide locally-originated programming, often to rural and certain urban communities that have either no or little access to such programming. LPTV stations are owned by a wide variety of licensees, including minorities and women, and often provide "niche" programming to residents of specific ethnic, racial, and interest communities. The actions we take today will facilitate the acquisition of capital needed by these stations to allow them to continue to provide free, over-the-air programming, including locally-originated programming, to their communities. In addition, by improving the commercial viability of LPTV stations that provide valuable programming, our action today is consistent with our fundamental goals of ensuring diversity and localism in television broadcasting.

II. Background

2. From its creation by the Commission in 1982, the low power television service has been a "secondary spectrum priority" service whose members "may not cause objectionable interference to existing full-service stations, and . . . must yield to facilities increases of existing full-service stations or to new full-service stations where interference occurs. Currently, there are approximately 2,200 licensed LPTV stations in approximately 1,000 communities operating in all 50 states. These stations serve both rural and urban audiences. Because they operate at reduced power levels, LPTV stations serve a much smaller geographic region than full-service stations and can fit into areas where a higher power station cannot be accommodated in the Table of Allotments. In many cases, LPTV stations may be the only television station in an area providing local news, weather, and public affairs programming. Even in some well-served markets, LPTV stations may provide the only local service to residents of discrete geographical communities within those markets. Many LPTV stations air "niche" programming, often locally produced, to residents of specific ethnic, racial, and interest communities within the larger area, including programming in foreign languages.

3. In the CBPA, Congress found that the future of low-power television is uncertain. Because LPTV stations have secondary spectrum status, they can be displaced by full-service TV stations that seek to expand their own service area, or by new full-service stations seeking to enter the same market. The statute finds that this regulatory status affects the ability of LPTV stations to

raise necessary capital. In addition, Congress recognized that the conversion to digital television further complicates the uncertain future of LPTV stations. To facilitate the transition from analog to digital television, the Commission has provided a second channel for each full-service television licensee in the country that will be used for digital broadcasting during the period of conversion to an all-digital broadcast service. In assigning DTV channels, the Commission maintained the secondary status of LPTV stations and TV translators and, in order to provide all full-service stations with a second channel, was compelled to establish DTV allotments that will displace a number of LPTV stations. Although the Commission has taken a number of steps to mitigate the impact of the DTV transition on stations in the LPTV service, that transition nonetheless will have significant adverse effects on many stations, particularly LPTV stations operating in urban areas where there are few, if any, available replacement channels.

4. Congress sought in the CBPA to address some of these issues by providing certain low power television stations "primary" spectrum use status. The CBPA requires the Commission, within 120 days after the date of enactment, to prescribe regulations establishing a Class A television license available to qualifying LPTV stations. The CBPA directs that Class A licensees be subject to the same license terms and renewal standards as full-power television licensees, and that Class A licensees be accorded primary status as television broadcasters as long as they continue to meet the requirements set forth in the statute for a qualifying low-power station. In addition, among other matters, the CBPA sets out certain certification and application procedures for low-power television licensees seeking Class A designation, prescribes the criteria low-power stations must meet to be eligible for a Class A license, and outlines the interference protection Class A applicants must provide to analog (or NTSC), digital (DTV), LPTV, and TV translator stations.

5. Congress also recognized, however, that, because, of the emerging DTV service, not all LPTV stations could be guaranteed a certain future. Congress recognized the importance and engineering complexity of the FCC's plan to convert full-service stations to digital format, and protected the ability of these stations to provide both digital and analog service during the transition.

III. Discussion

A. Certification and Application for License

1. Statutory Timeframes

6. Section (f)(1)(A) of the CBPA requires the Commission, within 120 days after the date of enactment (November 29, 1999), to prescribe regulations establishing a Class A television service. The CBPA establishes a two-part certification and application procedure for LPTV stations seeking Class A status. First, the CBPA directed the Commission to send a notice to all LPTV licensees describing the requirements for Class A designation. Within 60 days of the date of enactment, licensees intending to seek Class A designation were required to submit to the Commission a certification of eligibility based on the applicable qualification requirements.

7. The CBPA provides that, absent a material deficiency in a licensee's certification of eligibility, the Commission shall grant the certification of eligibility to apply for Class A status. The CBPA further provides that licensees "may" submit an application for Class A designation "within 30 days after final regulations are adopted" implementing the CBPA. We will construe the phrase "final regulations" in this context to mean the effective date of the Class A rules adopted herein. Thus, Class A applications may be filed beginning on the effective date of the rules. Within 30 days after receipt of an application that is acceptable for filing, the Commission must act on the application.

2. Ongoing Eligibility

8. *Decision.* We believe that the basic purpose of the CBPA was to afford existing LPTV stations a window of opportunity to convert to Class A stations. Therefore, we will not accept applications from LPTV stations that did not meet the statutory criteria and that did not file a certification of eligibility by the statutory deadline, absent compelling circumstances. To be eligible for a Class A license, an LPTV station must go through several steps. First, it must have filed a certification of eligibility within 60 days of the enactment of the CBPA. Second, the certification of eligibility must be approved by the Commission. Third, it must file an application for a Class A license, as we determine below, within 6 months from the effective date of the Class A rules. And fourth, that license must be granted. The first stage of this process has already ended; those potential applicants who seek Class A

status must have already filed their certifications of eligibility.

9. The statute states that applicants "may" apply for licenses within 30 days after the adoption of final implementing rules, but gives no ultimate deadline. In order to allow sufficient time to potential applicants to prepare their applications, we will allow licensees that have filed timely certifications of eligibility to file Class A applications up to 6 months after the effective date of the rules we adopt today. We believe that establishing a 6 month period in which applications may be filed is consistent with the CBPA. The statute states that applicants "may" file license applications within 30 days from the adoption of final implementing rules. In contrast, the statute states that licensees intending to seek Class A designation "shall" file a certification of eligibility within 60 days after enactment. We believe that the use of the word "may" in relation to applications indicates that the 30 day filing period is permissive only. Thus, applicants are not required to file within 30 days following the adoption of final rules, and we have authority to provide for a longer filing period.

10. We find that the 6 month deadline for filing a Class A application is a reasonable time frame that will afford all LPTV applicants, including those who must file displacement applications, adequate time to prepare and file their Class A applications consistent with the rules we adopt today. Where potential applicants face circumstances beyond their control that prevent them from filing within 6 months, we will examine those instances on a case-by-case basis to determine their eligibility for filing. We will not, however, accept license applications from LPTV licensees who did not timely file certifications of eligibility because we do not believe that Congress intended to create an open-ended class of potential Class A stations.

B. Qualifying Low-Power Television Stations

1. Statutory Eligibility Criteria

11. Section (f)(2)(A) of the CBPA provides that an LPTV station may qualify for Class A status if, during the 90 days preceding the date of enactment of the statute: (1) The station broadcast a minimum of 18 hours per day; (2) the station broadcast an average of at least 3 hours per week of programming produced within the market area served by the station, or the market area served by a group of commonly controlled low-power stations that carry common local

programming produced within the market area served by such group; and (3) the station was in compliance with the Commission's requirements for LPTV stations. In addition, from and after the date of its application for a Class A license, the station must be in compliance with the Commission's operating rules for full-power television stations. Alternatively, section (f)(2)(B) of the CBPA provides that a station may qualify for Class A status if "the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission."

2. Locally-Produced Programming

12. *Decision.* We will expand our definition of "market area" to encompass the area within the predicted Grade B contour determined by the Class A station's antenna height and power, which encloses a larger area than that of an LPTV station's protected service contour. With respect to a group of commonly controlled stations, the market area will be the area within the predicted Grade B contours of any of the stations in the commonly owned group.

13. Some commenters are concerned about the possible conflicts between the locally produced programming requirement and the existing main studio rule, arguing that we should either consider waivers of the main studio rule or not adopt so restrictive a definition of market area as to conflict with the rule. As discussed in this *R&O*, we have decided to require Class A stations to maintain a main studio located within their predicted Grade B contours. We have also decided to grandfather all main studio locations now in existence and operated by LPTV stations. To avoid any conflicts between the local market definition and our main studio rule, we will consider programming produced at the main studio of such grandfathered Class A stations to be locally produced programming even though the main studio is located outside the stations' Grade B contours.

3. Operating Requirements

14. *Decision.* We will adopt our proposal to apply to Class A applicants and licensees all part 73 regulations except for those that cannot apply for technical or other reasons. We believe that this course of action is most consistent with the language of the statute, which provides that from and after the date of an application for a Class A license, LPTV stations must

comply with the operating rules for full-power television stations to be eligible for Class A status. Most commenters that addressed this issue agree that Class A stations should be required to comply with most part 73 obligations except for those that are clearly inappropriate or inapplicable.

15. The part 73 requirements that we will apply to Class A applicants and licensees are set forth below. Among other part 73 obligations, we will require that Class A applicants and licensees comply with the following: our rules governing informational and educational children's programming and the limits on commercialization during children's programming; the requirement to identify a children's programming liaison at the station and to provide information regarding the "core" educational and informational programming aired by the station to publishers of television program guides; the requirement to place in their file the quarterly forms 398; the political programming rules; the public inspection file rule, including the requirement to prepare and place in the public inspection file on a quarterly basis an issues/programs list; and station identification requirements. We will require Class A stations to comply with the Emergency Alert System (EAS) rules applicable to full-service television stations; for example, they will be required to have and operate a digital EAS encoder and perform the weekly and monthly EAS tests required of full-service stations. As provided in section (f)(1)(A)(ii) of the CBPA, Class A licensees must also continue to meet the requirements for a qualifying low-power station in order to continue to be accorded Class A status.

16. We will require Class A applicants and licensees to maintain a main studio. As Class A stations will be low-power and thus serve a smaller area than most full-service stations, we do not believe it is appropriate to permit Class A stations to locate their main studio within the principal community contour of any station serving that market, or 25 miles from the center of its community of license, as we permit for full-service stations. Instead, we will require Class A stations to locate their main studios within the station's Grade B contour, as determined pursuant to the Commission's rules. This will ensure that newly created main studios are more accessible to the population that receives the station's programming. We will grandfather all main studios now in existence and operated by LPTV stations. We do not believe it is necessary to require these stations to change the location of their existing

studio, or build a new studio, to comply with our Class A rules. We will grandfather those main studios for purposes of our Class A main studio rule adopted in this *R&O*.

17. For purposes of our Class A rules, we will also modify a number of other requirements applicable to full-service television broadcast stations, including: (1) Minimum hours of operation of 18 hours per day, as required by the statute; (2) grandfather the use of LPTV broadcast transmitters; and (3) permit Class A stations to operate without a carrier frequency offset. We will permit qualified Class A station licensees to continue to operate their existing LPTV transmitters, provided these transmitters do not cause interference due to excessive emissions on frequencies outside of the station's assigned channel. We will require Class A stations seeking facilities increases under the more inclusive definition of "minor" changes we are adopting for these stations to specify operation on an offset frequency and to operate with a transmitter meeting the required frequency tolerance for offset operation.

18. We will not apply to Class A facilities the following provisions of part 73: (1) The NTSC and DTV Tables of Allotments (§§ 73.606 and 73.607); (2) mileage separations (§ 73.610); and (3) minimum power and antenna height requirements (§ 73.614). As qualifying LPTV stations are not governed by mileage separations, do not have allotted technical parameters, and will not have a community coverage requirement, these provisions of part 73 will not apply to Class A. LPTV stations are not subject to minimum power and antenna height requirements under part 74, and we will not impose any such requirements on Class A stations.

19. We will also exempt Class A facilities from the principal city coverage requirement of § 73.685(a) of the rules. At this time, we believe that it is unnecessary to require Class A stations to provide a requisite level of coverage over their community. Although LPTV stations are associated with a specific community on their license application, they are not subject to any requirement to provide a specified level of coverage to that community. As we indicated in the Notice of Proposed Rule Making ("*NPRM*"), (65 FR 3188, January 20, 2000), those Class A stations that are intended to serve an entire community that is otherwise unserved or underserved have ample incentive to provide service to the residents of the whole of that community without a mandatory requirement to do so. Other stations may intend to serve only a

narrow segment of their community. In view of the lower power levels at which LPTV stations now operate and at which Class A facilities will continue to operate, and the fact that in many cases these stations provide programming to areas where a higher power station could not be accommodated in the Table of Allotments, we do not believe a minimum coverage requirement is appropriate. If the circumstances regarding operation of Class A stations change in the future, including, for example, the permitted power levels of such facilities, we reserve the right to revisit the issue of minimum coverage requirements at that time.

20. As we proposed in the *NPRM*, we will also maintain for now the current LPTV maximum power levels for Class A stations. We believe that these power levels are sufficient to preserve existing service, which is consistent with Congress' objective underlying the CBPA. We believe that further power increases at this time could hinder the implementation of digital television, as well as limit the number of Class A stations that could be authorized. Moreover, we recently increased power levels for LPTV stations in our *DTV Sixth R&O* (62 FR 26684, May 14, 1997) and have not yet opened a filing window to permit stations to modify their facilities to take advantage of this power increase.

21. Several commenters propose that we require Class A licensees to certify annually their continued compliance with the Class A eligibility criteria and with applicable part 73 requirements. As we noted above, in addition to requiring Class A applicants and licensees to comply with the operating requirements for full-power television stations, the CBPA also requires that Class A licensees continue to meet the eligibility criteria established for a qualifying low-power station in order to retain Class A status. We will not adopt an annual certification or reporting requirement for Class A stations. We do not have such a general requirement for other television broadcast stations, and see no need to treat Class A stations differently. However, like other part 73 licensees, we will require Class A licensees to certify compliance with applicable FCC rules at time of renewal. In addition, as in the case of other part 73 licensees, Class A renewal applications will be subject to petitions to deny. Finally, we will require licensees seeking to assign or transfer a Class A license to certify on the application for transfer or assignment of license that the station has been operated in compliance with the rules applicable to Class A stations. We will

also require Class A assignees and transferees to certify on their portion of the transfer or assignment application that they will operate the station in accordance with these rules.

22. We will place our rules governing the new Class A television service under part 73. As Class A stations must comply with the operating rules for full-service stations, which are found in part 73, it appears most logical to group the rules for Class A service with the full-service broadcast rules. LPTV stations that are not eligible for or choose not to apply for Class A status will continue to be governed by part 74 of our rules.

4. Alternative Eligibility Criteria

23. *Decision.* Congress mandated three Class A eligibility qualifications in the CBPA. For the 90 days prior to enactment of the CBPA, an applicant must have: (1) Broadcast a minimum of 18 hours per day, (2) broadcast an average of at least 3 hours per week of programming produced within the market area served by the station, and (3) been in compliance with Commission requirements of LPTV stations. We will allow deviation from the strict statutory eligibility criteria only where such deviations are insignificant or when we determine that there are compelling circumstances, and that in light of those compelling circumstances, equity mandates such a deviation. Examples of such compelling circumstances include a natural disaster or interference conflict which forced the station off the air during the 90 day period before enactment of the CBPA.

24. We will not establish a different set of criteria for foreign language stations that do not meet the local programming criteria. We recognize the valuable service provided by foreign language stations, but conclude that Congress' intent was to preserve the service of a small class of existing LPTV stations that were providing local programming. We appreciate the comments submitted by groups with foreign language programming that encourage us to allow such programming to meet the statutory requirement. We conclude, however, that foreign language stations should have the same eligibility requirements as any other potential Class A station.

25. We will not adopt separate eligibility criteria for translator stations under the CBPA, as requested by the National Translator Association (NTA). The statute limits eligibility to LPTV stations that produce local programming and can meet the operating rules applicable to full-service stations. We recognize, however, the extremely valuable service that translators provide,

often representing the only source of free, over-the-air broadcasting in rural areas. Indeed, we expressly asked about according translators Class A status in the September 22 *NPRM*. While that proceeding has been terminated, we still believe that this is an issue that should be examined. Thus, we will institute a new proceeding seeking comment on whether translators should be permitted to qualify for some form of primary status, and what the eligibility requirements for such protection should be.

C. Class A Interference Protection Rights and Responsibilities

1. Class A Protected Service Area

26. *Decision.* We will adopt the proposal in the *NPRM* with respect to analog stations and define the following protected signal contour values for these stations: 62 dBu for channels 2–6, 68 dBu for channels 7–13, and 74 dBu for channels 14 and above, as calculated using the Commission's F(50,50) signal propagation curves. CBA and several LPTV station operators urge an expanded Class A protected contour, such as the TV Grade B contour. We recognize, as these commenters point out, that LPTV stations can be viewed in the areas between their protected contour and the Grade B contour of their facilities, just as the signals of NTSC stations are often viewed beyond their Grade B contours. In enacting the CBPA, Congress equated the service areas to be preserved with the LPTV signal contours, which have always been defined by the above field strength values. We agree with Fox that expanding contour protection for Class A stations would be inconsistent with the intent of the CBPA to preserve existing service. Also, as noted by the Association of Federal Communications Consulting Engineers (AFCCE), this would be likely to create new situations of prohibited contour overlap between LPTV stations where none currently exist. More than 2,000 LPTV stations have been engineered to fit into the broadcast landscape on the basis of protection to the LPTV service contours. The LPTV service is now mature, and service expectations are well established. We do not want to upset the balance that has been achieved between service and interference considerations. For these reasons, we will apply the LPTV service contour definitions to Class A stations as the basis for interference protection.

27. The above considerations are also relevant to our choice of protected signal contours for digital Class A stations. Some commenters favor use of

the DTV noise-limited signal contours for this purpose, which are comparable to NTSC Grade B contours. Use of these values would, in effect, expand protection for digital Class A stations, compared to that for analog Class A stations, whose protected contours are comparable to NTSC Grade A contours. Using these values would also create situations where Class A digital service contours would overlap with the interference-limited contours of analog LPTV and Class A stations. This "built-in" interference would occur to a lesser extent if the Class A digital protected contours were geographically smaller. Also, digital conversion opportunities for Class A and other services would be precluded to a lesser extent through the use of digital contour values more comparable to the Class A analog values. We will adopt the protected contour values suggested by the AFCCE, du Treil, Lundin & Rackley (du Treil), and the Society of Broadcast Engineers (SBE): 43 dBu for channels 2-6, 48 dBu for channels 7-13 and 51 dBu for channels 14-51. These values reflect the differences between analog LPTV protected contours and NTSC Grade B contours. For example, the analog LPTV and Grade B values for UHF stations are 74 dBu and 64 dBu, respectively—a 10 dB difference. This difference (or scaling factor) is added to the 41 dBu DTV noise-limited field strength value to obtain a protected contour of 51 dBu for UHF digital Class A stations. In a future proceeding, we will consider rules for permitting on-channel digital conversion for TV translator and non-Class A LPTV stations. We may wish to revisit the issue of Class A digital protected contour values at that time.

2. Time Protection Begins

28. *Decision.* We will adopt our proposal to commence preservation of the service area of LPTV stations from the date of receipt of an acceptable certification of eligibility filed pursuant to section (f)(1)(B) of the CBPA. As we stated in the *NPRM*, this timing appears most consistent with the CBPA's dual certification and application scheme for Class A status, despite the reference in the statute to the pendency of an application, as opposed to a certification, to trigger contour protection. Senator Conrad Burns, a sponsor of the CBPA in the Senate, introduced a statement on the Senate floor clarifying the issue of when an LPTV station's contour should be preserved. He stated in part: "It is clearly our intent that as soon as the Commission is in receipt of an acceptable certification notice, it should

protect the contours of this station until final resolution of that application."

29. We disagree with MSTV/NAB that protection should begin from the time a Class A application is filed, rather than the date of filing of a certification of eligibility. This reading of the statute would render the separate certification of eligibility requirement meaningless. MSTV/NAB argue that protecting the more than 1700 eligibility certifications filed by the January 28, 2000 deadline would "paralyze" the Commission. However, more than a third of these certifications, on their face, do not comply with the eligibility criteria established in the CBPA and our rules adopted herein. Included in this group are certifications submitted by translator station licensees and permittees of unbuilt LPTV stations. Such licensees and permittees do not meet the eligibility standards of the CBPA and our rules. Accordingly, their certifications are not acceptable and will be dismissed. Similarly deficient are those certifications filed after the January 28, 2000 deadline and those certifications submitted by LPTV licensees whose stations aired no locally produced programming during the entire 90-day period preceding enactment of the CBPA. They too will be dismissed.

30. As discussed above, the CBPA permits the Commission to establish alternative criteria for Class A eligibility if it determines that the public interest, convenience and necessity would be served thereby, or for other reasons. Thus, there may be instances in which a certification of eligibility is filed but the corresponding Class A application may not be granted because the alternative eligibility showing cannot be approved. We also note that a Class A application could be denied if a certification of eligibility were later determined to be incorrect. In situations where the Commission determines that a Class A certification of eligibility or Class A application may not be granted, protection of the service contour of that facility will cease from the date the Commission determination is made.

3. Protection of Pending NTSC TV Applications and Facilities

31. *Decision.* Upon further reflection, and after careful consideration of the comments, we have reconsidered our proposal regarding interpretation of the interference protection that must be accorded by Class A to pending NTSC applications. Instead, we will adopt the proposal similar to that advanced by CBA in its comments to require Class A stations to protect both existing analog stations and full-service applicants that

have completed all processing short of grant necessary to provide a reasonably ascertainable Grade B contour. We believe this proposal is both equitable and consistent with the CBPA. Specifically, we will require Class A applicants to protect the predicted Grade B contour (as of November 29, 1999, or as proposed in a change application filed on or before that date) of full-power analog stations licensed on or before November 29, 1999. We will also require Class A applicants to protect the Grade B contour of full-power analog facilities for which a construction permit was authorized on or before November 29, 1999. Finally, we will require Class A applicants to protect the facilities proposed in any application for full-power analog facilities that was pending on November 29, 1999, that had completed all processing short of grant as of that date, and for which the identity of the successful applicant is known. The applications in this latter category are post-auction applications, applications proposed for grant in pending settlements, and any singleton applications cut off from further filings. We will not require Class A applicants for initial Class A authorization to protect pending rule making petitions for new or modified NTSC channel allotments or full-service applications that were not accepted for filing by November 29, including most pending television freeze waiver applications.

32. We believe that protecting these categories of pending NTSC applications is consistent with both the language of the CBPA and the underlying intent of Congress. Section (f)(7)(A)(i) requires Class A applicants to show that they "will not cause" interference within "the predicted Grade B contour (as of the date of the enactment of [CBPA] * * *) of any television station[s] transmitting in analog format." It is not immediately clear from the statutory language whether the station entitled to interference protection must have been "transmitting in analog format" as of the date of enactment of the CBPA in 1999, or as of the date it would experience the interference. We believe that a sound interpretation of the statutory language, in light of the considerations that follow, is that it refers to the nature of the service entitled to protection (*i.e.*, analog) rather than to its operational status on the date of enactment of the CBPA. Therefore, the analog station could be licensed, one for which an application is currently pending, or one for which a construction permit has been granted but which is not yet built.

The statute does require that analog stations entitled to protection must have had a "predicted Grade B contour (as of the date of the enactment of the [CBPA], or November 1, 1999, whichever is later, or as proposed in a change application filed on or before such date)." A station does not have to be operating, however, to have a "predicted grade B contour" as described in section (f)(7)(A)(i). A station proposed in a pending application or an unbuilt station with an outstanding construction permit may also have a predicted Grade B contour. Indeed, the clause referring to the predicted Grade B contour specifically includes predicted Grade B contours proposed in change applications filed before the specified date. Thus, this section explicitly contemplates that interference protection by Class A stations may extend to at least some analog stations that are not yet operating, but nonetheless had predicted Grade B contours as of the date specified in the statute. It would make no sense to protect pending change applications and licensed stations but not outstanding construction permits, which are closer to operational status. We believe that Congress included the reference to change applications to make it clear that those are entitled to protection, rather than to suggest that other applications or construction permits are not similarly protected.

33. Under this reading of the statute, section (f)(7)(A)(i) requires Class A applicants and licensees to protect "the predicted Grade B contour (as of * * * [November 29, 1999], or as proposed in a change application filed on or before such date)" of analog facilities. Thus, Class A stations must protect the predicted Grade B contour of analog stations licensed or granted a construction permit as of November 29, 1999, as well as of facilities proposed in certain pending analog applications. We note that the phrase "predicted Grade B contour" is singular. We believe that the best interpretation of this phrase, as modified by the parenthetical in section (f)(7)(A)(i), is that it limits the facilities proposed in applications pending as of November 29, 1999 that must be protected by Class A stations to those for which there is a single, reasonably ascertainable predicted Grade B contour as of that date. These applications consist of post-auction applications, applications proposed for grant in pending settlements, and any singleton applications cut off from further filing. The applications in each of these categories have progressed through the cut off stage and the identity of the

successful applicant in each case has been determined. Class A applicants thus can identify a single predicted Grade B contour with respect to these applications for which protection must be afforded and are not required to show that they will not interfere with multiple, hypothetical contours that may not turn out to be actual contours, if the applicant in question does not ultimately receive the station license.

34. Moreover, we believe that this interpretation of the statute best reflects the intent of Congress as expressed in the overall statutory scheme. Under the interpretation we proposed in the *NPRM*, Class A applicants and licensees would not have been required to protect post-auction applications for which a construction permit had not been issued as of the date of enactment of the CBPA. There is no language in the statute or the legislative history that suggests that Congress intended a result so dramatically inconsistent with its grant of auction authority to the Commission in the Balanced Budget Act of 1997. As the Supreme Court recently noted, it is a "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." The Court further stated that "the meaning of one statute may be affected by other Acts . . ." We agree with CBA that, in securing the future of qualified LPTV stations, Congress did not intend to disrupt the rights and long-settled expectations of applicants for pending NTSC facilities that have prosecuted their applications past the cut off stage and to the point that a final successful applicant has been identified. Instead, Congress intended to place Class A licensees on roughly even footing with full-service licensees, while protecting the DTV transition. These pending cut-off NTSC applications are protected against new full-service analog applicants, and therefore should be protected by Class A applicants.

35. We believe making these distinctions is consistent with Congress' intent because requiring Class A applicants to protect applications that have progressed through the cut-off stage strikes an appropriate balance between the rights of pending applicants versus the interests of LPTV stations seeking primary status. Applicants that have prosecuted their applications through the cut off stage and to the point that the identity of the successful applicant is known have in most cases invested substantial resources in filing and prosecuting their applications. Most of these applications have been pending for some time, and

LPTV stations affected by the facilities proposed in these applications have long been on notice that they would ultimately be displaced or be required to reduce their facilities. Requiring Class A applicants to protect applications that had progressed through this stage by November 29, 1999 is both equitable and a reasonable reading of the CBPA.

4. New DTV Service

36. *Decision.* Upon further reflection, we have decided we should treat new DTV station applications in the same manner as we are treating new NTSC station applications. That is, we would require Class A applicants to protect pending applications for a new DTV station that were on file November 29, 1999 and that had completed all processing short of grant as of that date. However, there are no new DTV station applications that were pending November 29, 1999 or that are currently pending. Before such an application will be accepted, a rule making proceeding must be completed to allot a new DTV channel to a community. At this time, we have not completed any such rule making proceeding. In a new DTV allotment rule making, we will require protection of Class A stations. We will not require Class A applicants to protect pending allotment proposals from new DTV entrants, that is, petitioners who do not already have a DTV authorization.

5. DTV Maximization

a. Definition of Maximization—
37. *Decision.* We believe that the best interpretation of the term "maximization," as used in the statute, refers both to power and antenna height increases above the values allotted in the DTV Table, and to site changes that extend the service area of DTV facilities beyond the NTSC replication facilities. A broad interpretation of the term maximization is consistent with the CBPA's emphasis on protecting the digital transition. Permitting changes to technical parameters and sites gives broadcasters wider flexibility to maximize coverage and maximize service to the public. In addition, by construing the term maximization to include site changes sought by full-service DTV stations, we allow such stations greater flexibility to seek engineering solutions that provide for efficient spectrum use. In this regard, we have historically encouraged applicants to employ coordination and interference agreements, including collocation of facilities, as a means of resolving interference conflicts. Site changes are often integral to such agreements.

38. We indicated in the *NPRM* that the statutory language is ambiguous regarding the protection to be accorded by Class A applicants to DTV stations seeking to replicate or maximize power. Section (f)(1)(D), entitled "Resolution of Technical Problems," directs the Commission to preserve the service areas of LPTV licensees pending final resolution of a Class A application. That section further provides that if, after certification of eligibility for a Class A license, "technical problems arise requiring an engineering solution to a full-power station's allotted parameters or channel assignment in the digital television Table of Allotments, the Commission shall make such modifications as necessary (1) to ensure replication of the full-power digital television applicant's service area * * *; and (2) to permit maximization of a full-power digital television applicant's service area * * * " (if the applicant has complied with the notification and application requirements established by that section). Although section (f)(1)(D) appears to tie replication and maximization to resolution of technical problems, section (f)(7) appears to require all applicants for a Class A license or modification of license to demonstrate protection to stations seeking to replicate or maximize power, as long as the station seeking to maximize has complied with the notification and application requirements of section (f)(1)(D), without reference to any need to resolve technical problems on the part of the DTV station. Despite the reference in section (f)(1)(D) to technical problems, we continue to believe it is more consistent with the statutory schemes both for Class A LPTV service and for digital full-service broadcasting to require Class A applicants to protect all stations seeking to replicate or maximize DTV power, as provided in section (f)(7)(ii), regardless of the existence of "technical problems." The large majority of commenters that addressed this issue concur with this view. Stations seeking to maximize must comply with the notification requirements in section (f)(1)(D). This interpretation seems most consistent with the intent of Congress to protect the ability of DTV stations to replicate and maximize service areas.

b. Preserving the Right to Maximize—
39. *Decision.* As a preliminary matter, we believe that all DTV licensees are entitled, at a minimum, to replicate the service area of their analog station. As we stated in the *Sixth R&O* in the DTV proceeding, we believe that service

replication is important to ensure that digital broadcasters can continue to reach the audiences to which they provide analog service and that viewers continue to have access to the stations they can receive over-the-air. In enacting the CBPA, Congress made clear that Class A service would not interfere with this service replication principle. As Congress stated, "recognizing the importance of, and the engineering complexity in, the FCC's plan to convert full-service television stations to digital format, [the CBPA] protects the ability of these stations to provide both digital and analog service *throughout their existing service areas.*"

40. The CBPA also recognizes and preserves the right of full-service television broadcasters to maximize their digital television service area, but balances this right against the provision of stability to Class A applicants and licensees. Sections (f)(1)(D) and (f)(7)(A) of the CBPA require Class A applicants to protect stations seeking to maximize power, if such stations have filed an application for maximization or a notice of intent to seek maximization by December 31, 1999, and filed a bona fide application for maximization by May 1, 2000.

41. There are 17 full-service television stations that have been allotted both NTSC and DTV channels that lie outside the DTV core spectrum. The Commission has stated that stations with both NTSC and DTV channels outside the core spectrum will be assigned new channels within the core from spectrum recovered after the transition. As a number of commenters in this proceeding point out, the deadlines established in the CBPA for filing an application for maximization create a dilemma for these stations. These stations are required to file a maximization application to preserve their rights; however, they either cannot or do not want to maximize facilities on an out-of-core channel. Several commenters argue that these stations should not be required to file a maximization plan based on their temporary out-of-core DTV assignment, as maximization is expensive and these stations will not be operating on those channels after the transition. Moreover, these commenters argue that requiring maximization on an out-of-core channel does not provide certainty to Class A stations because the required interference protection will ultimately involve a different in-core channel.

42. The problem of preserving the rights of full-service stations in this situation, and balancing those rights against the provision of certainty to Class A stations, is extremely complex.

After careful consideration, we will adopt the following compromise. To preserve their ability to maximize once assigned a channel within the core, we will require stations with both NTSC and DTV channels outside the core to nonetheless maximize their DTV service area on their temporary out-of-core DTV channel. These stations must have filed a notice of intent to maximize and must file an application to maximize within the deadlines mandated by the CBPA. Once these stations are assigned a permanent in-core DTV channel, we will allow these stations to carry over to their in-core channel the maximized digital service area achieved on the out-of-core channel, to the extent that the in-core channel facilities for maintaining the maximized service area provide required interference protection to other DTV stations. Section (f)(1)(D) of the statute gives us broad authority to resolve problems arising with respect to replication and maximization, including problems involving the assignment of channels such as those faced by stations with out-of-core channel assignments. Thus, stations seeking to carry over their maximized service areas to their newly assigned in-core DTV channels will have priority over conflicting Class A facilities.

43. We believe this approach strikes a reasonable balance between the rights of full-service stations and Class A facilities. While we recognize that there may be inefficiencies involved in requiring maximization on an out-of-core channel to preserve the right to maximize later on an in-core channel, allowing all full-service stations outside the core to "reserve" the right to maximize on unidentified channels within the core reduces substantially the certainty that can be accorded to Class A facilities. As we recognized in our DTV biennial review, core spectrum is becoming increasingly crowded and it will become increasingly difficult to locate channels for all parties seeking DTV spectrum in the core after the transition. In view of the difficulty in establishing priorities among the numerous parties seeking in-core spectrum, we believe it is reasonable to require stations with both NTSC and DTV assignments outside the core to first maximize DTV service on an out-of-core channel in order to retain the right to replicate that maximized service area on an in-core channel.

44. We will apply a similar requirement to stations with an analog channel within the core and a DTV channel outside the core, as well as to those stations with both channels inside the core that intend to convert their DTV operations to their analog channel

at the end of the transition. These stations will also be required to maximize on their DTV channel in order to preserve their right to carry over that maximized service area to their analog in-core channel. We also believe that the CBPA requires that these stations must have filed a notice of intent to maximize and must file an application to maximize within the deadlines established in the statute. In addition, the maximized facilities they ultimately propose for DTV operation on their analog channel must provide required interference protection to other DTV stations. The election of a post-transition DTV channel by stations with both the analog and DTV allotments within the core is an issue discussed in our DTV biennial review.

c. Allotment Adjustments.—

45. *Decision.* As we indicated in the *NPRM*, we recognize that it may be necessary to permit DTV stations to change channels and make adjustments to station facilities in order to correct unforeseen technical problems. For example, it was necessary in some cases to make DTV Table allotments on adjacent channels at noncollocated antenna sites in the same markets, which raised concerns among broadcasters over possible adjacent channel interference. In addition to changing some of those allotments, we stated that we would address these concerns by tightening the DTV emission mask and by “allowing flexibility in our licensing process and for modification of individual allotments to encourage adjacent channel co-locations * * *” We also provided broadcasters with flexibility to deal with allotment problems, for example, by permitting allotment

exchanges among licensees in the same or adjacent markets.

46. Section (f)(1)(D) of the CBPA gives full-service stations the flexibility to make these kinds of necessary adjustments to DTV allotment parameters, including channel changes, even after certification of an LPTV station’s eligibility for Class A status. That section provides for an exception to protection of Class A facilities to resolve “technical problems” associated with DTV replication and maximization, and provides for such modifications when necessary to “a full-power station’s allotted parameters or channel assignment in the digital television Table of Allotments.” This language indicates that maximization encompasses channel changes as well as site changes and changes to technical parameters. Thus, stations that have filed an application for maximization or a notice of intent to maximize by December 31, 1999 and an application for maximization by May 1, 2000 have flexibility to make adjustments to the facilities proposed in these maximization applications where necessary to resolve technical problems that prevent implementation of the facilities proposed in these applications.

47. We will not require full-service stations requesting an adjustment to the DTV Table that will cause interference to the protected service contour of a Class A station to demonstrate that the adjustment can *only* be made in this fashion. We have outlined above the replication and maximization rights of full-service DTV licensees vis-a-vis Class A facilities, and do not believe that imposing additional obligations on DTV licensees to justify a modification request is warranted. However, we note

that in the interest of ensuring efficient spectrum utilization we may question modification requests that unnecessarily impinge on Class A service. In addition, while we will not give Class A stations affected by allotment adjustments made to accommodate DTV stations the automatic right to exchange channels with the DTV station, we will consider such allotment exchanges on a case-by-case basis where both parties consent and where the parties meet all applicable interference requirements on the new channel. Where we determine such swaps meet interference and other criteria, we will not consider competing applications for these channels.

D. Methods of Interference Protection to Class A Facilities

48. *Decision.* We will adopt the protection methods proposed in the *NPRM*. We first present the standard methods for protecting Class A service and then discuss alternative methods that may be used on a waiver basis.

1. Analog Full-Service TV Protection to Analog Class A

49. We will require full-service analog TV stations to protect Class A stations by using the criteria in § 74.705, a position supported by the CBA, MSTV/ NAB and other commenters. We agree with CBA that protection requirements generally based on distance separations would be impractical and spectrally inefficient because LPTV stations have been authorized at different antenna heights and powers on the basis of a contour protection methodology. Table 1 below gives the D/U ratios that must be met or exceeded at the Class A protected signal contours.

TABLE 1

Service band	Protected Class A contour (dBU)	Co-channel D/U ratio (dB)	1st upper adjacent channel D/U ratio (dB)	1st lower adjacent channel D/U ratio (dB)	14th upper adjacent channel D/U ratio (dB)	15th upper adjacent channel D/U ratio (dB)
Low VHF (channel 2–6)	62	+28/45	– 12	– 6	n/a	n/a
High VHF (channels 7–13)	68	+28/45	– 12	– 6	n/a	n/a
UHF (channels 14–69)	74	+28/45	– 15	– 15	– 23	– 6

The Class A protected signal contours are to be determined by using the Commission F(50,50) signal propagation model. Potentially interfering signal levels at the protected contour are to be determined by using the F(50,10) propagation model for co-channel signals and the F(50,50) model for the 1st, 14th and 15th adjacent channel signals. Interference predictions will be based on the facilities proposed in the

NTSC application. Parties with pending petitions for new NTSC channel allotments or those requesting modified channel allotments must identify reference facilities (site coordinates and elevation above mean sea level), effective radiated power, antenna radiation center height above msl, and, if desired, antenna radiation pattern and orientation) for the purpose of showing the necessary contour protection.

50. We will adopt a 45 dB D/U ratio for co-channel interference protection for situations where a Class A station proposal does not specify a carrier frequency offset or where the proposed and protected co-channel stations specify the same offset. Where different offsets are specified between the proposed and protected stations, a 28 dB D/U ratio will apply. The TV Table of Allotments is constructed on the

basis of frequency offsets; that is, all full-service TV stations operate on different offset frequencies with respect to their nearby co-channel stations. Offset operation permits significantly more efficient utilization of the broadcast spectrum; there is a difference of 17 dB between the co-channel D/U ratios for offset and nonoffset operations. The LPTV rules permit, but do not require offset operation. As a means of facilitating a "minimization of interference and maximization of service" we agree with du Triel, Lundin & Rackley, Inc. (du Triel) that analog Class A stations should operate with a carrier frequency offset and realize the advantages of offset operation wherever possible. Many LPTV stations already operate on this basis. Nevertheless, we will not make operation with a carrier offset a condition for an initial Class A license. However, we will require Class A licensees seeking facilities increases to specify an offset in their modification applications unless they can demonstrate it would not be possible to realize the efficiencies of offset operation. For example, a Class A station could be situated between three or more neighboring co-channel NTSC, LPTV or translator stations that use all available carrier offsets: plus, minus and zero. Any offset chosen by the Class A station would be the same as that of one of the neighboring stations, rendering the 28 dB co-channel D/U ratio inapplicable. In that event, use of the 28 dB ratio could result in interference to the Class A station, and, therefore, the 45 dB co-channel D/U ratio will be applied.

51. Section 74.705 (a) of the LPTV rules generally requires the site of a proposed UHF LPTV station to be located at least 100 kilometers from the site of a protected full-service station operating on the 7th adjacent channel above the proposed channel. It also requires LPTV proposals for stations with more than 50 kilowatts of effective radiated power to be separated by at least 32 kilometers from full-service stations operating on the 2nd, 3rd, and 4th adjacent channel above or below the requested channel. We disagree with du Triel's proposal that we eliminate the 14th adjacent channel protection requirements in Table 1 above and the 32-kilometers spacing requirements for protection of Class A stations. Du Triel states that the potential for interference to a Class A station from stations operating on these "UHF taboo channels" is limited to the immediate vicinity of the "taboo channel" station's transmitter site. It also notes that because of their secondary status, LPTV

stations have been authorized without consideration of interference that would be caused to them by "taboo channel" stations and that it is unaware of any instances of significant interference to LPTV stations by "taboo channel" full-service stations. Du Triel concludes that, with declining spectrum availability, it is "unreasonable" to require other NTSC stations (full-service, Class A and LPTV) to protect Class A stations operating on any "taboo" channel other than the upper 15th adjacent channel, which has a greater potential for interference. DLR does not propose eliminating the "taboo" interference requirements for Class A, LPTV and TV translator protection of full-service NTSC stations. If the operation of a full-service "taboo channel" TV station, with 1 megawatt or more of power, would pose a minimal interference risk to Class A service, the much lower power levels of Class A stations would pose even less risk to the service of full-power stations. Thus, if we were to eliminate requirements to protect Class A stations from interference on the "taboo channels," we would also eliminate all remaining requirements that Class A stations protect full-service stations operating on these channels. In the recently concluded DTV proceeding, the Commission relaxed several interference protection requirements for LPTV stations. While we understand du Triel's reasoning, it would not be appropriate to adopt further relaxation on the basis of the scant record on this issue in this proceeding. However, we believe du Triel's suggestions may warrant further consideration in a subsequent proceeding. We will also adopt our proposal in the *NPRM* to accept applications for NTSC facilities modifications that would not create new interference to Class A stations, beyond the interference already predicted by the authorized facilities of such NTSC stations; these would include, for example, facilities modifications that would not further decrease the D/U ratios at the Class A protected contour.

2. Analog LPTV, TV Translator, and Class A Protection to Analog Class A

52. We are adopting the proposal in the *NPRM* to apply the protection requirements in § 74.707 to protect Class A stations from LPTV, TV translators, and other Class A stations. Commenters supported this proposal to use the protection methods by which LPTV stations protect each other. This method is well-established and has been well-tested.

3. Full-Service DTV Protection to Analog Class A

53. Where interference protection to Class A stations is required, full-service DTV proposals must protect the Class A service contours in accordance with the D/U ratios in § 73.623(c)(2) of the DTV rules for "DTV into analog TV" protection. We will not eliminate protection requirements from DTV stations proposing operation on the "taboo" channels, as suggested by du Triel. The potential for interference to Class A stations, du Triel contends, would be limited to the immediate vicinity of the "taboo" channel DTV station's transmitter site. However, neither du Triel nor any other commenter analyzes the extent of such interference. Moreover, digital Class A stations, with significantly lower power levels, will be required to protect NTSC stations on the taboo channels. Parties filing petitions to amend the DTV Table, where required to protect Class A stations, must specify reference facilities that meet the above criteria. Several commenters favor basing protection on the provisions in § 73.622 of the DTV rules and OET Bulletin 69 ("OET 69") or, alternatively, allowing use of this methodology where contour protection requirements cannot be met. We agree that use of the methods by which DTV stations protect full-service NTSC stations would permit flexibility and could provide more accurate predictions of interference. However, at this time we will not adopt Class A protection standards centered around these methods. To do so would require extensive revisions to the computer interference model (FLR) used by the Commission and outside engineers to include the effects of LPTV, TV translator, and Class A stations. For now, the contour protection approach is straight forward and can be readily implemented without unduly affecting the preparation and processing of DTV applications. We will, however, permit use of the Longley-Rice terrain dependent propagation model and OET Bulletin 69 to support waivers of the Class A interference protection requirements. We will also permit Class A station and full-service station parties to negotiate interference agreements.

4. Full-Service NTSC and DTV Protection to Digital Class A

54. We will require full-service NTSC and DTV proposals to protect digital Class A service contours based on the protection ratios (D/U) in § 73.623(c)(2) of the DTV rules for "Analog TV into DTV" and "DTV into DTV." These ratios must be met or exceeded at the

protected digital signal contours of Class A stations. Where protection to a Class A station is required, parties filing petitions to amend the TV or DTV allotment tables must specify reference facilities that meet the applicable requirements. We will permit the use of OET 69 type showings in support of requests to waive these requirements, and we will permit interference agreements among the affected parties.

5. LPTV, TV Translator, and Class A Modification Protection to Digital Class A

55. We will adopt the requirements in § 74.706 of the LPTV rules for the contour protection of digital Class A stations. Application proposals for analog LPTV, TV translator and those of Class A facilities modifications must protect the service contours of digital Class A stations to the extent provided by the D/U ratios in this rule. Application proposals for digital Class A stations must protect the service contours of other digital Class A stations to the extent provided by the "DTV into DTV" D/U ratios of § 73.623(c) of the Commission's Rules. For both analog and digital applicants, we will permit terrain shielding, OET 69-type analysis, or interference agreements in support of requests to waive the protection requirements.

6. Alternative Means of Interference Protection

56. LPTV and TV translator applicants currently are permitted to support requests for waiver of certain interference protection rules on the basis of D/U ratio protection for co-located stations on 1st and 14th adjacent channels, terrain shielding and Longley-Rice terrain dependent propagation and OET 69-type methods. We are not adopting protection standards for Class A service based on these methods. However, we agree with AFCCE and other commenters that we should permit use of available means of interference analysis to support requests to waive the Class A contour protection requirements. We will permit waiver requests to be supported by interference analysis based on OET Bulletin 69, D/U ratios, terrain shielding and other considerations. With regard to OET Bulletin 69 studies, we will not permit a *de minimis* interference allowance. Interference among full-service stations that is *de minimis* usually occurs in the outer reaches of a station's service area between the NTSC Grade A and Grade B contours. Analog and digital Class A stations will not receive interference protection to the Grade B contour. Their protected service contours will be

similar in extent to an NTSC station's Grade A contour, which is not nearly as vulnerable to *de minimis* service population reductions. Class A service areas will be smaller and to a greater extent more interference-limited than those of full-service stations. The viewing audience beyond the Class A LPTV service contour is unprotected, and we believe it would be unfair to subject Class A stations to additional reductions in service population. For these reasons we will not at this time apply a *de minimis* interference allowance to the protection of Class A stations. Where analysis is based on OET Bulletin 69 methods, we will allow a "service population" rounding tolerance of 0.5%, which is also allowed for NTSC applicants protecting DTV service. We will permit OET 69-type studies to take into account reductions in a Class A service population due to predicted interference from existing full-service, LPTV and TV translator stations (the "masking" of service) and, on this basis, applicants may demonstrate that their proposed facilities would not result in additional interference within the protected contours of Class A stations.

57. We concur with commenters who favor permitting Class A stations to enter into interference or relocation agreements with full-service, LPTV, TV translator and other Class A licensees, permittees or applicants. Paxson notes that full-service stations may now enter into voluntary channel coordination and interference agreements and believes that Class A stations with "quasi-primary" status should similarly be permitted to enter into agreements to resolve interference concerns. Our rules permit DTV stations to negotiate interference agreements with other analog and DTV stations, including the exchange of money or other compensation. Agreements will be approved if the Commission finds them to be consistent with the public interest. LPTV and TV translator licensees, permittees and applicants are also permitted to enter into interference agreements, such as those involving terrain shielding. We are persuaded that Class A stations should also be permitted to negotiate interference agreements or relocation arrangements with full-service, low power service and other Class A licensees, permittees or applicants. Agreements may include monetary compensation or other considerations from one station to another. Agreements must be submitted with the related applications for initial or modified broadcast facilities. The Commission will grant applications

submitted pursuant to agreements if it finds the public interest would be served.

E. Methods of Interference Protection by Class A to Other Facilities

1. Class A Protection of NTSC

58. *Decision.* We are adopting the proposal from the *NPRM* that Class A stations protect the NTSC Grade B contour in the manner given in § 74.705 of the LPTV rules. It is supported by most of the commenters that addressed this issue. However, SBE suggests a different analysis based on the Longley-Rice propagation model with an NTSC TV station allowed to object if a Class A station would be the source of unique (not masked) interference to any viewers. SBE also indicates that this interference analysis should be based on the proposed main beam effective radiated power (ERP) and not on the ERP toward the radio horizon that LPTV and TV translator applicants are now permitted to use. We believe the SBE proposals would add unnecessary complexity to a well-established and well-tested process. Class A stations can be established without undue risk of excessive interference to NTSC TV stations if the Class A facilities conform to the LPTV protection standards contained in § 74.705 of our rules. Moreover, where a requested Class A station does not provide the protection required by that rule, § 74.705(e) specifies that a waiver can be requested based on terrain shielding and use of the Longley-Rice model to demonstrate that actual interference would not be predicted to occur.

2. Class A Protection of DTV

59. *Decision.* We are adopting the proposal from the *NPRM* regarding Class A protection of DTV service. Analog and digital Class A station proposals generally will be subject to the protection criteria in §§ 73.622 and 73.623 of our rules and in OET Bulletin 69. Commenters generally supported this proposal. Some commenters question allowing interference to 0.5% of the DTV service population as a rounding tolerance. NAB/MSTV are concerned about the cumulative effect of several Class A stations. SBE suggests that a DTV station should be allowed to object if a Class A station would be the source of unique (not masked) interference to any viewers in its authorized service area, although it agrees with use of the 0.5% criteria for interference to allotted DTV facilities. Media-Com Television, Inc. (Media-Com) supports the DTV interference analysis procedure, but suggests that we

should allow interference to 2% of the population served by the DTV station to be considered *de minimis*, as we generally allow that amount of interference to be caused by other DTV stations. We are not persuaded that more than 0.5% interference should be allowed. Full-service NTSC stations are limited to that amount and the statute does not require higher status for Class A stations in this regard. Neither are we convinced that any one DTV station will be subject to interference from so many Class A stations that the cumulative loss of DTV service would be significant. Finally, we note that the statute provides that Class A applicants also must protect the DTV service areas provided in the DTV Table of Allotments and the DTV Table includes approximately 40 vacant noncommercial educational DTV allotments that must be protected.

3. Protection of LPTV and TV Translators

60. *Decision.* We are adopting the proposal from the *NPRM* that Class A stations protect the LPTV and TV translator protected contours on the basis of the standards given in § 74.707 of the LPTV rules, *i.e.*, on the basis of compliance with certain desired-to-undesired signal strength ratios. Commenters generally supported this proposal. SBE did request that we clarify that the specified LPTV and TV translator protection rule involves contour overlap prohibitions and not simply application of desired-to-undesired signal strength ratios. We will require protection pursuant to all provisions in § 74.707 of the rules, which are based on prohibited contour overlap. For purposes of implementing section (f)(7)(B) of the CBPA, we agree with K Licensee, Inc. (K Licensee) that interference caused within the protected contour of a licensed LPTV or TV translator station or that of a construction permit or pending application should not be counted against an applicant for a Class A authorization if that interference is permitted by the LPTV rules, taking into account the manner in which LPTV and TV translator stations are authorized. The rules require new LPTV stations to protect existing LPTV and TV translator stations within their defined protected contours. However, the rules do not prohibit new stations from receiving interference from existing stations. LPTV and TV translator stations may also enter into written agreements to accept interference from other LPTV or TV translator stations. As a result of these provisions, many LPTV stations or proposed stations may be predicted to

receive interference within their protected contours from earlier-authorized stations. We believe it would be inconsistent with the objectives of the CBPA to count such permissible interference against applicants for Class A stations, nor should interference resulting from a negotiated agreement be counted. We are not permitting LPTV licensees to request facilities modifications in their applications for initial Class A authorizations. Therefore, any interference from existing LPTV facilities within the protected contours of later authorized and proposed LPTV and TV translator facilities is permitted by the LPTV rules and will be grandfathered for the purposes of section (f)(7)(B) of the CBPA.

4. Land Mobile Radio Services and TV Channel 16

61. *Decision.* With respect to general land mobile protection, we are adopting our proposal to use the criteria in § 74.709 of the rules. This proposal was supported by the NY Police and no commenters opposed it. With respect to the Channel 16 New York City situation, the NY Police object to the premise that there is no obligation for WEBR-LP, due to the waiver, to protect land mobile operations, indicating that the *NPRM* ignores the current practice between the member public safety agencies and WEBR-LP to coordinate actions and ensure that neither party interferes with the other's transmission. K Licensee argues that the Commission must implement specific interference requirements in a manner consistent with congressional intent and with sensitivity to the impact such implementation will have on deserving stations such as WEBR-LP, the only free Korean-language licensee serving New York City metropolitan area. We believe that it is most consistent with the statutory scheme and with the waiver granted for public safety land mobile use of Channel 16 in New York City that WEBR-LP and the NY Police continue to cooperate to ensure that neither party interferes with the other's transmission on Channel 16. The parties have entered into a written agreement pursuant to which they will advise each other at least 60 days in advance of any change, alteration, or modification in its transmission facilities that may adversely affect or cause interference to the other party's communications system(s). As requested by both parties, we have included a copy of this agreement in the record of this proceeding, and will include it in the record of any application filed by WEBR-LP to become a Class A television station. We believe that the

current situation is satisfactory and that continued cooperation between the parties will permit maximal use of the spectrum in New York City.

F. Change Applications

62. *Decision.* In the event that a DTV station that has been granted a construction permit to maximize or significantly enhance its digital television service area later files an application to reduce its digital television service area, the protected contour of that station will be the reduced digital service area as long as that area is not less than the area resulting from the "replication" facilities provided in the DTV Table of Allotments. Where a DTV station chooses to operate with technical parameters less than those allotted in DTV Table, we will require Class A stations to nonetheless protect the service area produced by the "replication" facilities established in the Table. We agree with MSTV/NAB that the service areas in the DTV Table represent the minimum degree of interference protection that must be accorded by Class A stations to full-service stations. Section (f)(7)(A)(ii)(I) of the CBPA requires that Class A stations cause no interference to the digital service areas provided in the Table.

G. Common Ownership

63. *Decision.* After review of the record, we will adopt our initial tentative conclusion and will not impose any common ownership limitations on holders of the new Class A licenses. We agree with the commenters who argue that Congress intended that Class A stations be exempt from existing common ownership requirements and that this exemption should apply when a license is subsequently transferred to a buyer with other media interests. As noted above, Congress directed that common ownership with any other medium of mass communication will not disqualify a potential Class A licensee. We believe that the only logical outgrowth of Congress' language here is that the lack of common ownership rules would also apply to transferred ownership.

H. Issuance of DTV Licenses to Class A, TV Translator, and LPTV Stations

64. *Decision.* As an initial matter, we note that Class A stations may convert their existing channel to digital broadcasting at any time. However, we conclude that the plain reading of the CBPA, as well as the legislative history of the Act, does not require us to issue an additional license for DTV services to Class A or TV translator licensees, but

does require us to accept DTV applications from licensees of Class A or TV translator stations that meet the interference protection requirements that are identified in the statute.

65. As we stated in the *NPRM*, there currently are a number of full-service permittees and licensees who do not have a paired DTV channel because they received their construction permits after the cut-off date for eligibility for the initial paired DTV licenses. Some commenters contend that, if we decide to award additional channels for DTV, we should give priority to such full-service licensees and permittees who are currently precluded from applying for a paired DTV channel. WB, for example, suggests that any additional channels should first be awarded to full-service licensees, and that we should apply to Class A licensees the same technical and service rules as are applied to full-service licensees.

66. Although the statute requires us to accept Class A applications for additional DTV licenses, it does not direct us to issue such licenses to Class A licensees. We agree with MSTV and NAB that we should exercise restraint with respect to issuing additional DTV licenses in order to preserve spectrum to accommodate needs associated with the transition of full-service stations to digital service. Moreover, we find that the various issues concerning the means of issuing additional DTV licenses for Class A stations to be outside the scope of this rulemaking. We note that the transition to DTV is scheduled to end in 2006, and that a number of issues regarding the transition are yet to be resolved in future DTV proceedings. We therefore defer matters regarding the issuance of additional DTV licenses for Class A stations to a future rulemaking.

I. Interim Qualifications

1. Stations Operating Between 698 and 806 MHz

67. *Decision.* We will extend the presumption of displacement to LPTV stations and TV translators authorized on channels 52–59. We will permit these stations to file displacement applications immediately if they can locate a replacement channel within the core spectrum. The majority of the commenters that addressed this issue supported extending the presumption of displacement to these stations. Many of these stations would be barred from becoming Class A stations if they cannot secure a replacement channel below channel 52. We believe it is most consistent with Congress' intent to provide qualified LPTV stations the opportunity to obtain Class A status to

permit such stations on channels 52–59 to seek a replacement channel now on which they may apply for a Class A license. Any displacement applications filed by LPTV (Class A or non-Class A) or TV translators will receive equal treatment for processing purposes.

68. We recognize that full-service NTSC broadcasters on channels 52–59 may also seek to relocate to an in-core channel and such a proposal may conflict with a displacement application filed by an LPTV station seeking to move from channels 52–59. For the time being, these full-service stations may continue to operate on their present channel and most of them have an in-core paired DTV channel allotment. Nevertheless, we do not want to grant a displacement application that might preclude a move to an in-core channel without giving these broadcasters an opportunity to seek such a channel change. The process for the full-service station moving to an in-core channel involves filing a petition for rule making seeking to amend the TV Table of Allotments. The Commission invites comments on the proposal in a *NPRM* and based on the record, decides whether or not to make the proposed change in a *R&O*. Conflicting proposals, referred to as counterproposals, must be filed during the time period for initial comments, so that an opportunity exists for comments on the counterproposal to be filed during the time period allowed for reply comments. In order to be considered in a channel-change rulemaking proceeding, a conflicting displacement application from an LPTV station that has been determined to be eligible for Class A status must be filed by the end of the initial comment filing period. Conflicting displacement applications filed after that date will be dismissed.

69. Where such a preclusive displacement application seeking to move from channels 52–59 to an in-core channel is filed by an LPTV station eligible for Class A status before a full-service rulemaking petition, we believe it is appropriate to allow a similar, limited opportunity for a conflicting proposal to be filed. Complete and acceptable displacement applications are announced in a Commission Public Notice called a "Proposed Grant List." We will identify any displacement applications filed by Class A eligible stations in future Proposed Grant Lists. Petitions for a channel change filed by a full-service NTSC licensee or permittee must be filed not later than 30 days from the release of the Public Notice proposing grant of a conflicting displacement application. Conflicting TV rulemaking petitions filed after that

date must protect the Class A eligible LPTV station's displacement application. Similarly, we will apply the same procedures and time periods to other displacement applications filed by LPTV stations eligible for Class A status, seeking to move from channels 60–69, or from one in-core channel to another to avoid DTV or new NTSC interference.

70. We will require LPTV stations on channels 52–59 that are seeking Class A status to have filed a certification of eligibility within the time frame established in the statute (*i.e.*, by January 28, 2000). When a qualified LPTV station outside the core seeking Class A status locates an in-core channel, we will require the station to file a Class A application simultaneously with its application for modification of license to move to the in-core channel. We will provide interference protection to such stations on the in-core channel from the date of grant of a construction permit for the in-core channel. As the CBPA prohibits the award of Class A status to stations outside the core, we believe it would be inconsistent with the statute to provide interference protection on a channel outside the core. We believe it is appropriate to commence contour protection with the award of a construction permit on the in-core channel, rather than a license to cover construction, as these permittees will have already certified their eligibility for Class A status. Unlike other Class A applicants, we will not require LPTV licensees on out-of-core channels seeking Class A status to file a Class A application within 6 months of the date of adoption of this order. The CBPA provides that, if a qualified applicant for a Class A license operating on an out-of-core channel locates an in-core channel, the Commission "shall issue a Class A license simultaneously with the assignment of such channel." The statute does not impose a time limit on the filing of such applications. Accordingly, we will not impose any time limit on the filing of a Class A application by LPTV licensees operating on channels outside the core. However, we believe that, in most cases, it would be in the best interest of qualified LPTV stations operating outside the core to try to locate an in-core channel now, as the core spectrum is becoming increasingly crowded and it is likely to become increasingly difficult to locate an in-core channel in the future.

2. Channels Off-Limits

71. *Decision.* We continue to believe that the requirement of section (f)(6)(B) of the CBPA that we protect the 175 channel allotments referenced in the

Commission's *Sixth R&O* in the DTV proceeding from Class A stations is effectively accomplished now because these channels are occupied by existing NTSC or DTV allotments. These channels will become available for other parties once full-power stations discontinue operation on one of their paired channels at the end of the DTV transition. Commenters that addressed this issue agreed with this view. Accordingly, we need not take further steps at this time to protect these channels from Class A service, and need not adopt our alternative proposal of prohibiting the authorization of Class A service on television channels 2-6.

J. Class A Applications

1. Application Forms

72. *Decision.* We are required, under the terms of the CBPA, to award Class A licenses within 30 days after receipt of acceptable applications. We have created a streamlined license application form to be used by LPTV stations that seek to convert to Class A status. That form, Form 302-CA, requires a series of certifications by the Class A applicant and is attached to this *R&O*. Where a construction permit to modify licensed facilities has been issued, a licensee may choose whether to file its Class A application on its license or on its authorized construction permit. Until that choice is made, we will protect the facilities reflected in the construction permit. We will not require a letter perfect application, but will accept applications on a "substantially complete" basis and will process them, as required by the statute, within 30 days unless the applications contain omissions or face challenges. For subsequent modification applications, Class A stations will be required to submit modified versions of Forms 301 and 302, to be released at a later date.

73. Normally, license applicants are not required to provide local public notice of their applications. However, since the nature of the underlying service is changing from secondary to primary service, Class A license applicants will be required to provide local public notice of their applications. Two weeks before and after submission of their applications, Class A applicants must provide weekly announcements to their listeners informing them that the applicant has applied for a Class A license, and announcing the public's ability to comment on the application prior to Commission action.

2. Class A Facilities Changes

74. *Decision.* We will adopt our proposal to define Class A facilities

modifications in a manner that permits greater flexibility and does not require window application filings for most changes. Channel change requests, other than changes in frequency offset, will be considered major changes. All other proposed facilities changes will be considered "minor", including changes in station power, antenna height and antenna horizontal radiation pattern and orientation of directional antenna. Proposed changes in transmitting antenna site location will also be classified as minor, provided the protected signal contour resulting from the relocated site would overlap some portion of the protected contour based on the Class A station's authorized facilities. This approach will permit flexibility, while preventing Class A stations from relocating completely away from the viewing audiences they presently serve. Proposed site relocations that do meet this requirement will be considered major changes. Proposed changes in Class A facilities must meet applicable interference protection requirements with respect to DTV allotments, authorized DTV and NTSC TV service and must protect those pending station proposals that full-service NTSC TV applicants are required to protect. In addition, the CBPA requires proposals for Class A facilities changes to protect licensed LPTV and TV translator facilities, those authorized by construction permit, and those proposed in pending applications filed with the Commission prior to the filing of the Class A application.

75. Commenters are divided on whether proposed Class A facilities changes should be required to protect NTSC TV service based on authorized or maximum permissible facilities. Several commenters favor protection of maximum facilities. MSTV and NAB contend that this is necessary so as not to threaten the ability of DTV stations to return to their analog channels at the end of the DTV transition without incurring a loss of service area. However, we agree with du Treil and other commenters that this approach is not spectrally efficient because it would require protection of facilities that could never be authorized due to interference constraints. As a result, Class A licensees could be unnecessarily hindered in seeking facilities changes or locating replacement channels in the event of channel displacement. Therefore, Class A facilities modification proposals will be required to protect full-service TV Grade B contours based on authorized facilities. We will, however, permit full-service

NTSC and Class A station licensees and permittees to file mutually exclusive minor change applications until grant of the pending NTSC and Class A minor change applications. Mutually exclusive applications will be resolved through the auction process in the event the parties do not eliminate the mutual exclusivity through "minor" engineering amendments to their applications. We will give notice of Class A facilities minor change applications in the manner notice is given for such NTSC TV applications. We will not establish a petition to deny period for Class A minor change applications; however, these applications will be subject to the filing of informal objections. We will also adopt the above provisions for digital Class A stations. Class A stations may file minor change applications for the purpose of converting to digital operations on their analog channels.

76. As contemplated in the *NPRM*, we will apply the more inclusive definition of minor facilities changes to TV translator and non-Class A LPTV stations in order to provide additional flexibility to these stations. NTA indicates that translators and non Class A LPTV stations would also benefit from the ability to file most facilities changes outside of application filing windows. We will continue authorizing in the normal manner those LPTV and TV translator applications that are filed pursuant to the current minor change definition in the LPTV rules. Minor change application proposals of non Class A LPTV and TV translator stations, filed under the more inclusive definition, must meet all applicable interference protection requirements to authorized stations. These applications must also protect the facilities proposed in full-service NTSC TV minor change applications, regardless of which applications are earlier filed. The CBPA requires Class A facilities modification proposals to protect earlier-filed LPTV and TV translator applications. Therefore, we are adopting a first-come, first-served policy with respect to the minor change applications of LPTV, TV translator, and Class A stations. We do not want minor change application proposals, under the more inclusive definition, to complicate the authorization of initial Class A licenses, nor displacement relief applications that may be filed shortly after adoption of this *R&O*. We note that displacement applications would have a higher priority than non-displacement minor change applications, regardless of which are filed earlier. For this reason, we will not permit the filing of Class A, LPTV

and TV translator facilities change applications, pursuant to the more inclusive minor change definition, until October 1, 2000. However, minor change applications under the less inclusive definition in the LPTV rules may continue to be filed by LPTV, TV translator, and Class A permittees and licensees.

3. Class A Channel Displacement Relief

77. *Decision.* The Commission will adopt its proposal and allow displaced Class A station licensees and permittees to apply for replacement channels on a first-come, first-served basis, not subject to mutually exclusive applications. We will adopt generally the displacement relief policies and procedures that apply in the low power television service. Class A stations causing or receiving interference with full-service NTSC TV, DTV or any other service or predicted to cause prohibited interference or to receive interference may apply at any time for a replacement channel, together with any technical changes that are necessary to eliminate or avoid interference or continue serving the area within the station's protected signal contour. Site relocation proposals will be permitted in displacement applications, provided the protected signal contour resulting from the relocated site would overlap some portion of the protected contour based on the Class A station's authorized facilities. Class A displacement relief applications will be filed as major change applications, given their protected status. Applications will not be mutually exclusive with other displacement applications unless filed on the same day and, in that event, will be subject to the auction procedures. These applications will be placed on public notice for a period not less than 30 days and will be subject to the filing of petitions to deny. Class A displacement relief applications will be afforded a higher priority than nondisplacement Class A, LPTV and TV translator applications, to the exclusion of those applications that are mutually exclusive with a Class A displacement application. We will not prioritize among Class A displacement applications, nor will these be afforded a higher priority than LPTV and TV translator displacement applications. Displacement applications filed on the same day by Class A, non-Class A LPTV or TV translator stations will be mutually exclusive and subject to the auction procedures. In such cases, we encourage engineering solutions to remove the mutual exclusivity wherever possible.

K. Remaining Issues

1. Call Signs

78. *Decision.* We will allow Class A stations to use standard television call signs with the suffix “-CA” to distinguish the stations from “-LP” stations. We agree with CBA, National Minority T.V., Inc. (NMTV) and others that use of the suffix “-LP” would create confusion between LPTV, LPFM and Class A stations. Upon grant of its initial Class A application, the qualifying LPTV licensee can change its station's existing numerical or four-letter low power call sign to a four-letter call sign with the “CA” suffix. Class A licensees should use the Mass Media Bureau's automated call sign reservation and authorization system to effectuate this change by accessing the call sign change request screen and providing the required information. While there is no fee payment required for the initial change to a four-letter “-CA” call sign, a subsequent change from one four-letter “-CA” call sign to another will require payment of a fee.

2. Certification of Class A Transmitters

79. *Decision.* We have decided to use the part 73 verification scheme for new Class A transmitters. Existing LPTV transmitters will eventually be replaced by digital equipment, so we will “grandfather” use of these analog transmitters, except where these transmitters cause interference due to spurious emissions on frequencies outside of the assigned channel. As noted above, Class A stations proposing facilities increases, such as increased power, must specify a frequency offset. Upon authorization to operate with a frequency offset, station licensees must use a transmitter capable of meeting a frequency tolerance of $\pm 1/ - 1$ kHz.

3. Fees

80. *Decision.* Consistent with the use of a part 73 license application form (302-A), we will apply the existing full-service television license fee to initial Class A applications. This fee is lower than the minor modification fee. However, we will apply the low power regulatory fees to Class A stations going forward. Class A stations, while having greater rights than the preceding LPTV stations, will still be greatly limited in their power and height restrictions. To require the same regulatory fees as are required for full-power stations would be onerous to these small, local operations. We agree with the CBA that these lower regulatory fees are more appropriate in the Class A context, unless Congress legislates otherwise at some future time.

4. International Coordination Provisions

81. In establishing rules for Class A stations, the Commission is mindful of its obligations under its existing bilateral agreements with Canada and Mexico regarding the authorization of LPTV service in the common border areas. These agreements do not contain provisions for analog or digital Class A TV stations. Under the agreements, LPTV stations have a secondary status with respect to Canadian and Mexican primary television stations and allotments and must not cause interference to the reception of these stations, nor are LPTV stations protected against interference from these stations. The agreements also include provisions for notifying and coordinating LPTV station proposals in the border areas. We agree with Grupo Televisa, S.A. (Grupo) that any authorization of Class A stations must be consistent with international agreements. We will continue to apply the LPTV provisions in our existing agreements with Canada and Mexico to LPTV stations, including those that seek Class A status. Grupo believes we should not allow primary status for any LPTV station “that is required under the U.S.-Mexican TV agreements to be operated on a secondary basis or to be coordinated between the two governments.” We will not grant an analog or digital Class A license to any LPTV station affected by the U.S.-Mexican or U.S. Canadian agreements without the expressed concurrence of Canada or Mexico. We will work over time to update the current bilateral agreements to recognize when possible Class A assignments. In the interim we will attempt to obtain temporary approval of Class A stations in the border area or on a case by case basis. However, any Class A stations authorized on this basis would be subject to any conditions resulting from the coordination process or any final bilateral agreement reached with Canada and Mexico.

5. Broadcast Auxiliary Frequencies

82. LPTV stations may be authorized to operate remote pickup stations and various TV broadcast auxiliary stations (BAS). Some LPTV stations use studio-to-transmitter links and other fixed microwave links. LPTV stations may also conduct electronic newsgathering operations on BAS frequencies. Licenses for television pickup, studio-transmitter link and point-to-point TV relay stations are issued to LPTV stations on a secondary basis, such that full-service stations may displace LPTV station use of broadcast auxiliary channels. We agree with SBE that once an LPTV

station is authorized as a Class A station, all of that station's BAS licenses should automatically be upgraded to primary status; that is, upon receiving its initial Class A authorization, the station licensee will not be required separately to seek upgraded BAS licenses. Class A stations may also file applications under existing procedures, requesting authority to operate BAS stations on a primary basis. As SBE also points out, we remind Class A licensees of their responsibility to avoid interference with other users of a BAS channel, including the requirement to consult with a local frequency coordinating committee, if one exists.

IV. Conclusion

83. In this *R&O*, we adopt regulations establishing a Class A television license for qualifying low power television stations in accordance with the Community Broadcasters Protection Act of 1999. The measure of primary Class A status afforded to qualifying low power television stations will provide stability and a brighter future to these stations that provide valuable local programming services in their communities, while protecting the transition to digital television.

V. Administrative Matters

84. *Paperwork Reduction Act Analysis*. This *R&O* has been analyzed with respect to the Paperwork Reduction Act of 1995, and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act.

85. *Regulatory Flexibility Analysis*. Pursuant to the Regulatory Flexibility Act of 1980, as amended, see 5 U.S.C. 604, the Commission's Final Regulatory Flexibility Analysis for this *R&O* is amended.

VI. Ordering Clauses

86. Pursuant to authority contained in sections 1, 4(i), 303, and 336(f) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303, and 336(f), part 73 of the Commission's rules, 47 CFR part 73, and part 74 of the Commission's rules, 47 CFR part 74, are amended as set forth below.

87. The amendments set forth shall be July 10, 2000. Class A applications may be filed beginning on the date the rules are effective.

88. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of

this *R&O*, including the Final Regulatory Flexibility Act Analysis, to the Chief Counsel for the Small Business Administration.

This proceeding is terminated.

IV. Final Regulatory Flexibility Analysis

89. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM*. The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. No comments were received in response to the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Adopted Rules

90. The Community Broadcasters Protection Act of 1999 (CBPA) directed the Commission, within 120 days after the date of enactment, to prescribe regulations establishing a Class A television license available to licensees of qualifying low-power television (LPTV) stations. The CBPA directs that Class A licensees be subject to the same license terms and renewal standards as full-power television licensees, and that Class A licensees be accorded primary status as a television broadcaster as long as the station continues to meet the requirements set forth in the statute for a qualifying low-power station. In addition to other matters, the CBPA sets out certain certification and application procedures for low-power television licensees seeking to obtain Class A status, prescribes the criteria low-power stations must meet to be eligible for a Class A license, and outlines the interference protection Class A applicants must provide to analog (or "NTSC"), digital ("DTV"), LPTV, and TV translator stations. The Commission is adopting the *R&O* to implement the CBPA.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

91. No comments were received in response to the IRFA.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Apply

92. The RFA directs agencies 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 having the same meaning as the terms "small business," "small organization," and "small

business concern" under section 3 of 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.

93. *Small TV Broadcast Stations*. The SBA defines small television broadcasting stations as television broadcasting stations with \$10.5 million or less in annual receipts.

94. As directed by the CBPA, the *R&O* establishes a Class A television license available to licensees of qualifying LPTV stations. According to the Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database, virtually all LPTV broadcast stations have revenues of less than \$10.5 million. Currently, there are approximately 2,200 licensed LPTV stations. The Commission notes, however, that under SBA's definition, revenues of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. The Commission's estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

95. As directed by the CBPA, the *R&O* requires LPTV stations seeking Class A status to file certifications of eligibility and applications to convert to Class A. In addition, as directed by the CBPA, Class A stations must comply with the operating requirements for full-service television broadcast stations, including the requirements for informational and educational children's programming and the limits on commercialization during children's programming, the political programming rules, and the public inspection file rule. These rules contain a number of recordkeeping requirements that will apply to Class A stations.

Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

96. *Creating New Opportunities for Small Businesses*. Pursuant to the CBPA and the Commission's implementing rules, certain qualifying low-power television ("LPTV") stations will be accorded Class A status. Class A licensees will have "primary" status as television broadcasters, thereby gaining a measure of protection against full-service television stations, even as those

stations convert to digital format. The LPTV stations eligible for Class A status under the CBPA and the Commission's rules provide locally-originated programming, often to rural and certain urban communities that have either no or little access to local programming. LPTV stations are owned by a wide variety of licensees, including minorities and women, and often provide "niche" programming to residents of specific ethnic, racial, and interest communities. The provisions adopted in the *R&O* will facilitate the acquisition of capital needed by these stations to allow them to continue to provide free, over-the-air programming, including locally-originated programming, to their communities. In addition, by improving the commercial viability of LPTV stations that provide valuable programming, the *R&O* is consistent with the Commission's fundamental goals of ensuring diversity and localism in television broadcasting.

97. *Minimizing Impact on Existing Small Business Broadcast Stations.* The CBPA directs that Class A licensees be subject to the same license terms and renewal standards as full-power television licensees. However, the *R&O* adopts a number of rules designed to help LPTV stations seeking to convert to Class A status and exempts Class A licensees from part 73 rules that clearly cannot apply, either due to technical differences in the operation of low-power and full-power stations, or for other reasons. For example, although the *R&O* applies the Main Studio rule for the first time to LPTV stations who qualify as Class A stations, requiring them to locate their main studios within the station's Grade B contour, as determined pursuant to the Commission's rules, it grandfathers their main studios at the site in use as of November 28, 1999. The *R&O* also modifies a number of other requirements applicable to full-service television broadcast stations, including: (1) Requiring a minimum hours of operation of 18 hours per day, as required by the Statute; (2) grandfathering the use of LPTV broadcast transmitters and (3) permitting full-service NTSC stations to protect Class A stations on the basis of carrier frequency offsets.

98. In response to comments, the Commission will not apply to Class A facilities the following provisions of part 73: (1) the NTSC and DTV Tables of Allotments (§§ 73.606 and 73.607); (2)

mileage separations (§ 73.610); and (3) minimum power and antenna height requirements (§ 73.614). The *R&O* also exempts Class A facilities from the principal city coverage requirement of § 73.685(a) of the rules. As proposed in the *NPRM*, the *R&O* maintains for now the current LPTV maximum power levels for Class A stations. In addition, the *R&O* does not adopt an annual certification or reporting requirement for Class A stations, but it does require licensees seeking to assign or transfer a Class A license to certify on the application for transfer or assignment of license that the station has been operated in compliance with the rules applicable to Class A stations. The *R&O* also requires that Class A renewal applications be subject to petitions to deny.

99. *Alternative eligibility criteria.* The CBPA grants the Commission authority to establish alternative eligibility criteria for LPTV stations seeking Class A designation if "the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission."

100. Congress mandated three qualifications in the CBPA. For the 90 days prior to enactment of the CBPA, an applicant must have: (1) Broadcast a minimum of 18 hours per day, (2) broadcast an average of at least 3 hours per week of programming produced within the market area served by the station, and (3) been in compliance with Commission requirements of LPTV stations. The *R&O* allows deviation from the strict statutory eligibility criteria only where such deviations are insignificant or when the Commission determines that there are compelling circumstances, such as a natural disaster or interference forcing a station off the air, and that in light of those compelling circumstances, the interest of equity mandates such a deviation.

101. The *R&O* does not establish a different set of criteria for foreign language stations that do not meet the local programming criteria for a Class A license. Although the *R&O* recognizes the valuable service provided by foreign language stations, it concludes that congressional intent was to keep the class of stations granted this special status as a small class and that locally originated programming was an integral

part of the specifics of the class. Finally, the *R&O* does not adopt separate eligibility criteria for translator stations, concluding that the statute limits eligibility to LPTV stations that produce local programming and can meet the operating rules applicable to full-service stations.

Report to Congress

102. The Commission will send a copy of the *R&O*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *R&O*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 11

Emergency alert system.

47 CFR Part 73 and 74

Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

For the reasons set forth in the preamble parts 1, 11, 73 and 74 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 1, 154(i), 154(j), 208, and 255.

* * * * *

2. Section 1.1104 is amended by adding an entry for the Class A Television Service to the table to read as follows:

§ 1.1104 Schedule of charges for applications and other filings for the mass media services.

* * * * *

8. Class A Television Service

Action	FCC form No.	Fee amount	Payment type code	Address
a. New or major change construction permit.	301-CA	\$3,245	MVT	FCC, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251-5165.
b. New license	302-CA	220	MJT	FCC, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251-5165.
c. License renewal	303-S	130	MGT	FCC, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251-5165.
d. Special Temporary Authority	Corres. and 159	130		FCC, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251-5165.
e. License assignment	314 and 159 or	725	MPT	FCC, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251-5350.
	316 and 159	105	MDT	
f. Transfer of control	315 and 159 or	725	MPT	FCC, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251-5350.
	316 and 159	105	MDT	
g. Main studio request	Corres. and 159	725	MPT	FCC, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251-5165.
h. Call sign	Corres. and 159	75	MBT	FCC, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251-5165.

3. Section 1.1153 is amended by adding an entry for Class A TV (47 CFR, part 73) to the table to read, as follows:

VIII. Class A TV 290 FCC, Class A, P.O. Box 358835, Pittsburgh, PA, 15251-5835.

Authority: 47 U.S.C. 151, 154(i) and (o), 303(r), 544(g) and 606.

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

* * * * *

PART 11—EMERGENCY ALERT SYSTEM (EAS)

4. The authority citation for part 11 continues to read as follows:

5. Section 11.11(a) is amended by adding the words "Class A television (CA) stations;" in the first sentence after the words "TV broadcast stations;" and revising the table "Timetable Broadcast Stations" to read as follows:

§ 11.11 The Emergency Alert System (EAS).

* * * * *

TIMETABLE BROADCAST STATIONS

Requirement	AM and FM	TV	FM Class D	LPTV ¹	Class A TV
Two-tone encoder ^{2,3}	Y	Y	N	N	Y
Two-tone encoder ^{4,5}	Y	Y	Y	Y	Y
EAS decoder	Y 1/1/97	Y 1/1/97	Y 1/1/97	Y 1/1/97	Y
EAS encoder	Y 1/1/97	Y 1/1/97	N	N	Y
Audio message	Y 1/1/97	Y 1/1/97	Y 1/1/97	Y 1/1/97	Y
Video message	N/A	Y 1/1/97	N/A	Y 1/1/97	Y

¹ LPTV stations that operate as television broadcast translator stations are exempt from the requirement to have EAS equipment.

² Effective July 1, 1995, the two-tone signal must be 8-25 seconds.

³ Effective January 1, 1998, the two-tone signal may only be used to provide audio alerts to audiences before EAS emergency messages and the required monthly tests.

⁴ Effective July 1, 1995, the two-tone decoder must respond to two-tone signals of 3-4 seconds duration.

⁵ Effective January 1, 1998, the two-tone decoder will no longer be used.

* * * * *

6. Section 11.53 is amended by revising paragraph (a)(4) to read as follows:

§ 11.53 Dissemination of Emergency Action Notification.

(a) * * *

(4) Wire service to all subscribers (AM, FM, low power FM (LPFM), TV, LPTV, Class A television (CA) and other stations).

* * * * *

PART 73—RADIO BROADCAST SERVICES

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

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

* * * * *

8. Subpart E is amended by adding § 73.613 to read as follows:

§ 73.613 Protection of Class A TV stations.

(a) An application for a new TV broadcast station or for changes in the operating facilities of an existing TV broadcast station will not be accepted for filing if it fails to comply with the requirements specified in this section.

Note to § 73.613 (a): Licensees and permittees of TV broadcast stations that were authorized on November 29, 1999 (and applicants for new TV stations that had been cut-off without competing applications or that were the winning bidder in a TV broadcast station auction as of that date, or that were the proposed remaining applicant

in a group of mutually exclusive applications for which a settlement agreement was on file as of that date) may continue to operate with facilities that do not protect Class A TV stations. Applications filed on or before November 29, 1999 for a change in the operating facilities of such stations also are not required to protect Class A TV stations under the provisions of this section.

(b) Due to the frequency spacing which exists between TV channels 4 and 5, between channels 6 and 7, and between channels 13 and 14, first-adjacent channel protection standards shall not be applicable to these pairs of channels. Some interference protection requirements of this section only apply to stations transmitting on the UHF TV channels 14 through 51 (See § 73.603(a) of this part).

(c) A UHF TV broadcast station application will not be accepted if it specifies a site less than 100 kilometers from the transmitter site of a UHF Class A TV station operating on a channel which is the seventh channel above the requested channel. Compliance with this requirement shall be determined based on a distance computation rounded to the nearest kilometer.

(d) A UHF TV broadcast station application will not be accepted if it specifies a site less than 32 kilometers from the transmitter site of a UHF Class A TV station that is authorized an effective radiated power of more than 50 kilowatts and operating on a channel which is the second, third, or fourth channel above or below the requested channel. Compliance with this requirement shall be determined based on a distance computation rounded to the nearest kilometer.

(e) In cases where a TV broadcast station has been authorized facilities that do not meet the distance separation requirements of this section, an application to modify such a station's facilities will not be accepted if it decreases that separation.

(f) New interference must not be caused to Class A TV stations authorized pursuant to Subpart J of this part, within the protected contour defined in § 73.6010 of this part. For this prediction, the TV broadcast station field strength is calculated from the proposed effective radiated power and the antenna height above average terrain in pertinent directions using the methods in § 73.684 of this part.

(1) For co-channel protection, the field strength is calculated using the appropriate F(50,10) chart from Figure 9a, 10a, or 10c of § 73.699 of this part.

(2) For TV broadcast stations that do not specify the same channel as the Class A TV station to be protected, the field strength is calculated using the appropriate F(50,50) chart from Figure 9, 10, or 10b of § 73.699 of this part.

(g) A TV broadcast station application will not be accepted if the ratio in dB of its field strength to that of the Class A TV station at the Class A TV station's protected contour fails to meet the following:

(1) -45 dB for co-channel operations where the Class A TV station does not specify an offset carrier frequency or where the TV broadcast and Class A TV stations do not specify different offset carrier frequencies (zero, plus or minus) or -28 dB for offset carrier frequency operation where the TV broadcast and Class A TV stations specify different offset carrier frequencies.

(2) 6 dB when the protected Class A TV station operates on a VHF channel

that is one channel above the requested channel.

(3) 12 dB when the protected Class A TV station operates on a VHF channel that is one channel below the requested channel.

(4) 15 dB when the protected Class A TV station operates on a UHF channel that is one channel above or below the requested channel.

(5) 23 dB when the protected Class A TV station operates on a UHF channel that is fourteen channels below the requested channel.

(6) 6 dB when the protected Class A TV station operates on a UHF channel that is fifteen channels below the requested channel.

(h) New interference must not be caused to digital Class A TV stations authorized pursuant to Subpart J of this part, within the protected contour defined in § 73.6010 of this part. A TV broadcast station application will not be accepted if the ratio in dB of the field strength of the digital Class A TV station at the digital Class A TV station's protected contour to the field strength resulting from the facilities proposed in the TV broadcast station application fails to meet the D/U signal ratios for "analog TV-into-DTV" specified in §§ 73.623(c)(2) and 73.623(c)(3) of this part. For digital Class A TV station protection, the TV broadcast station field strength is calculated from the proposed effective radiated power and the antenna height above average terrain in pertinent directions using the methods in § 73.684 of this part and using the appropriate F(50,10) chart from Figure 9a, 10a, or 10c of § 73.699 of this part.

(i) In cases where a TV broadcast station has been authorized facilities that do not meet the interference protection requirements of this section, an application to modify such a station's facilities will not be accepted if it is predicted to cause new interference within the protected contour of the Class A TV or digital Class A TV station.

(j) In support of a request for waiver of the interference protection requirements of this section, an applicant for a TV broadcast station may make full use of terrain shielding and Longley-Rice terrain dependent propagation methods to demonstrate that the proposed facility would not be likely to cause interference to Class A TV stations. Guidance on using the Longley-Rice methodology is provided in *OET Bulletin No. 69*, which is available through the Internet at <http://www.fcc.gov/oet/info/documents/bulletins/#69>.

9. Section 73.623 is amended by adding paragraph (c)(5) to read as follows:

§ 73.623 DTV applications and changes to DTV allotments.

* * * * *

(c) * * *

(5) A DTV station application that proposes to expand the DTV station's allotted or authorized coverage area in any direction will not be accepted if it is predicted to cause interference to a Class A TV station or to a digital Class A TV station authorized pursuant to Subpart J of this part, within the protected contour defined in § 73.6010 of this part. This paragraph applies to all DTV applications filed after May 1, 2000, and to DTV applications filed between December 31, 1999 and April 30, 2000 unless the DTV station licensee or permittee notified the Commission of its intent to "maximize" by December 31, 1999.

(i) Interference is predicted to occur if the ratio in dB of the field strength of a Class A TV station at its protected contour to the field strength resulting from the facilities proposed in the DTV application (calculated using the appropriate F(50,10) chart from Figure 9a, 10a, or 10c of § 73.699 of this part) fails to meet the D/U signal ratios for "DTV-into-analog TV" specified in paragraph (c)(2) of this section.

(ii) Interference is predicted to occur if the ratio in dB of the field strength of a digital Class A TV station at its protected contour to the field strength resulting from the facilities proposed in the DTV application (calculated using the appropriate F(50,10) chart from Figure 9a, 10a, or 10c of § 73.699 of this part) fails to meet the D/U signal ratios for "DTV-into-DTV" specified in paragraphs (c)(2) and (c)(3) of this section.

(iii) In support of a request for waiver of the interference protection requirements of this section, an applicant for a DTV broadcast station may make full use of terrain shielding and Longley-Rice terrain dependent propagation methods to demonstrate that the proposed facility would not be likely to cause interference to Class A TV stations. Guidance on using the Longley-Rice methodology is provided in *OET Bulletin No. 69*, which is available through the Internet at <http://www.fcc.gov/oet/info/documents/bulletins/#69>.

* * * * *

10. Section 73.1001 is amended by revising paragraphs (a) and (b) to read as follows:

§ 73.1001 Scope.

(a) The rules in this subpart are common to all AM, FM, TV and Class A TV broadcast services, commercial and noncommercial.

(b) Rules in part 73 applying exclusively to a particular broadcast service are contained in the following: AM, subpart A; FM, subpart B; Noncommercial Educational FM, subpart C; TV, subpart E; LPFM, subpart G; and Class A TV, subpart J.

* * * * *

11. Section 73.1120 is revised to read as follows:

§ 73.1120 Station location.

Each AM, FM, TV and Class A TV broadcast station will be licensed to the principal community or other political subdivision which it primarily serves. This principal community (city, town or other political subdivision) will be considered to be the geographical station location.

12. Section 73.1125 is amended by revising paragraphs (c), (d) and adding paragraph (e) to read as follows:

§ 73.1125 Station main studio location.

* * * * *

(c) Each Class A television station shall maintain a main studio at the site used by the station as of November 29, 1999 or a location within the station's Grade B contour, as defined in § 73.683 and calculated using the method specified in § 73.684 of this part.

(d) Relocation of the main studio may be made:

(1) From one point to another within the locations described in paragraph (a) or (c) of this section, or from a point outside the locations specified in paragraph (a) or (c) to one within those locations, without specific FCC authority, but notification to the FCC in Washington shall be made promptly.

(2) Written authority to locate a main studio outside the locations specified in paragraphs (a) or (c) of this section for the first time must be obtained from the Audio Services Division, Mass Media Bureau for AM and FM stations, or the Television Branch, Video Services Division for TV and Class A television stations before the studio may be moved to that location. Where the main studio is already authorized at a location outside those specified in paragraphs (a) or (c), and the licensee or permittee desires to specify a new location also located outside those locations, written authority must also be received from the Commission prior to the relocation of the main studio. Authority for these changes may be requested by filing a letter with an explanation of the proposed changes with the appropriate

division. Licensees or permittees should also be aware that the filing of such a letter request does not imply approval of the relocation request, because each request is addressed on a case-by-case basis. A filing fee is required for commercial AM, FM, TV or Class A TV licensees or permittees filing a letter request under the section (see § 1.1104).

(e) Each AM, FM, TV and Class A TV broadcast station shall maintain a local telephone number in its community of license or a toll-free number.

13. Section 73.1201 is amended by revising paragraph (a) to read as follows:

§ 73.1201 Station identification.

(a) *When regularly required.* Broadcast station identification announcements shall be made: (1) at the beginning and ending of each time of operation, and (2) hourly, as close to the hour as feasible, at a natural break in program offerings. Television and Class A television broadcast stations may make these announcements visually or aurally.

* * * * *

14. Section 73.1202 is revised to read as follows:

§ 73.1202 Retention of letters received from the public.

All written comments and suggestions received from the public by licensees of commercial AM, FM, TV and Class A TV broadcast stations regarding operation of their station shall be maintained in the local public inspection file, unless the letter writer has requested that the letter not be made public or when the licensee feels that it should be excluded from the public inspection file because of the nature of its content, such as a defamatory or obscene letter.

(a) Letters shall be retained in the local public inspection file for three years from the date on which they are received by the licensee.

(b) Letters received by TV and Class A TV licensees shall be placed in one of the following separated subject categories: programming or non-programming. If comments in a letter relate to both categories, the licensee shall file it under the category to which the writer has given greater attention.

15. Section 73.1210 is amended by revising paragraphs (b) introductory text and (b)(3) to read as follows:

§ 73.1210 TV/FM dual-language broadcasting in Puerto Rico.

* * * * *

(b) Television and Class A television licensees in Puerto Rico may enter into dual-language time purchase agreements

with FM broadcast licensees, subject to the following conditions:

* * * * *

(3) No television, Class A television, or FM broadcast station may devote more than 15 hours per week to dual-language broadcasting, nor may more than three (3) hours of such programming be presented on any given day.

* * * * *

16. Section 73.1211 is amended by revising paragraph (a) to read as follows:

§ 73.1211 Broadcast of lottery information.

(a) No licensee of an AM, FM, television, or Class A television broadcast station, except as in paragraph (c) of this section, shall broadcast any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise or scheme, whether said list contains any part or all of such prizes. (18 U.S.C. 1304, 62 Stat. 763).

* * * * *

17. Section 73.1250 is amended by revising paragraph (h) to read as follows:

§ 73.1250 Broadcasting emergency information.

* * * * *

(h) Any emergency information transmitted by a TV or Class A TV station in accordance with this section shall be transmitted both aurally and visually or only visually. TV and Class A TV stations may use any method of visual presentation which results in a legible message conveying the essential emergency information. Methods which may be used include, but are not necessarily limited to, slides, electronic captioning, manual methods (e.g., hand printing) or mechanical printing processes. However, when an emergency operation is being conducted under a national, State or Local Area Emergency Alert System (EAS) plan, emergency information shall be transmitted both aurally and visually unless only the EAS codes are transmitted as specified in § 11.51(b) of this chapter.

18. Section 73.1400 is amended by revising the introductory text to read as follows:

§ 73.1400 Transmission system monitoring and control.

The licensee of an AM, FM, TV or Class A TV station is responsible for assuring that at all times the station operates within tolerances specified by

applicable technical rules contained in this part and in accordance with the terms of the station authorization. Any method of complying with applicable tolerances is permissible. The following are typical methods of transmission system operation:

* * * * *

19. Section 73.1540 is amended by revising paragraph (a) to read as follows:

§ 73.1540 Carrier frequency measurements.

(a) The carrier frequency of each AM and FM station and the visual carrier frequency and the difference between the visual carrier and the aural carrier or center frequency of each TV and Class A TV station shall be measured or determined as often as necessary to ensure that they are maintained within the prescribed tolerances.

* * * * *

20. Section 73.1545 is amended by adding paragraph (e) to read as follows:

§ 73.1545 Carrier frequency departure tolerances.

* * * * *

(e) *Class A TV stations.* The departure of the carrier frequency of Class A TV stations may not exceed the values specified in § 74.761 of this chapter. Provided, however, Class A TV stations licensed to operate with a maximum effective radiated power greater than the value specified in their initial Class A TV station authorization must comply with paragraph (c) of this section.

21. Section 73.1560 is amended by revising paragraph (c)(1) to read as follows:

§ 73.1560 Operating power and mode tolerances.

* * * * *

(c) *TV stations.* (1) Except as provided in paragraph (d) of this section, the visual output power of a TV or Class A TV transmitter, as determined by the procedures specified in Sec. 73.664, must be maintained as near as is practicable to the authorized transmitter output power and may not be less than 80% nor more than 110% of the authorized power.

* * * * *

22. Section 73.1570 is amended by revising the heading and paragraph (b)(3) to read as follows:

§ 73.1570 Modulation levels: AM, FM, TV and Class A TV aural.

* * * * *

(b) * * *

(3) *TV and Class A TV stations.* In no case shall the total modulation of the aural carrier exceed 100% on peaks of frequent recurrence, unless some other

peak modulation level is specified in an instrument of authorization. For monophonic transmissions, 100% modulation is defined as +/- 25 kHz.

* * * * *

23. Section 73.1580 is revised to read as follows:

§ 73.1580 Transmission system inspections.

Each AM, FM, TV and Class A TV station licensee or permittee must conduct periodic complete inspections of the transmitting system and all required monitors to ensure proper station operation.

24. Section 73.1590 is amended by revising paragraph (a) to read as follows:

§ 73.1590 Equipment performance measurements.

(a) The licensee of each AM, FM, TV and Class A TV station, except licensees of Class D non-commercial educational FM stations authorized to operate with 10 watts or less output power, must make equipment performance measurements for each main transmitter as follows:

* * * * *

25. Section 73.1615 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 73.1615 Operation during modification of facilities.

When the licensee of an existing AM, FM, TV or Class A TV station is in the process of modifying existing facilities as authorized by a construction permit and determines it is necessary to either discontinue operation or to operate with temporary facilities to continue program service, the following procedures apply:

(a) Licensees holding a construction permit for modification of directional or nondirectional FM, TV or Class A TV or nondirectional AM station facilities may, without specific FCC authority, for a period not exceeding 30 days:

* * * * *

26. Section 73.1620 is amended by revising paragraphs (a) and (a)(1) to read as follows:

§ 73.1620 Program tests.

(a) Upon completion of construction of an AM, FM, TV or Class A TV station in accordance with the terms of the construction permit, the technical provisions of the application, the rules and regulations and the applicable engineering standards, program tests may be conducted in accordance with the following:

(1) The permittee of a nondirectional AM or FM station, or a nondirectional or directional TV or Class A TV station, may begin program tests upon

notification to the FCC in Washington, DC provided that within 10 days thereafter, an application for a license is filed with the FCC in Washington, DC.

* * * * *

27. Section 73.1635 is amended by revising paragraph (a)(5) to read as follows:

§ 73.1635 Special temporary authorizations (STA).

(a) * * *

(5) Certain rules specify special considerations and procedures in situations requiring an STA or permit temporary operation at variance without prior authorization from the FCC when notification is filed as prescribed in the particular rules. See § 73.62, Directional antenna system tolerances; § 73.157, Antenna testing during daytime; § 73.158, Directional antenna monitoring points; § 73.691, Visual modulation monitoring; § 73.1250, Broadcasting emergency information; § 73.1350, Transmission system operation; § 73.1560, Operating power and mode tolerances; § 73.1570, Modulation levels: AM, FM, TV and Class A TV aural; § 73.1615, Operation during modification of facilities; § 73.1680, Emergency antennas; and § 73.1740, Minimum operating schedule.

* * * * *

28. Section 73.1660 is amended by revising paragraph (a) to read as follows:

§ 73.1660 Acceptability of broadcast transmitters.

(a) An AM, FM, LPFM, TV or Class A TV transmitter shall be verified for compliance with the requirements of this part following the procedures described in part 2 of the FCC rules.

* * * * *

29. Section 73.1665 is amended by revising paragraphs (a) and (b) to read as follows:

§ 73.1665 Main transmitters.

(a) Each AM, FM, TV and Class A TV broadcast station must have at least one main transmitter which complies with the provisions of the transmitter technical requirements for the type and class of station. A main transmitter is one which is used for regular program service having power ratings appropriate for the authorized operating power(s).

(b) There is no maximum power rating limit for FM, TV or Class A TV station transmitters, however, the maximum rated transmitter power of a main transmitter stalled at an AM station shall be as follows:

Authorized power	Maximum rated transmitter power (kW)
0.25, 0.5, or 1 kW	1
2.5 kW	5
5 or 10 kW	10
25 or 50 kW	50

* * * * *

30. Section 73.1675 is amended by revising paragraphs (a)(1) and (c)(1) to read as follows:

§ 73.1675 Auxiliary antennas.

(a)(1) An auxiliary antenna is one that is permanently installed and available for use when the main antenna is out of service for repairs or replacement. An auxiliary antenna may be located at the same transmitter site as the station's main antenna or at a separate site. The service contour of the auxiliary antenna may not extend beyond the following corresponding contour for the main facility:

- (i) AM stations: The 0.5 mV/m field strength contours.
- (ii) FM stations: The 1.0 mV/m field strength contours.
- (iii) TV stations: The Grade B coverage contours.
- (iv) Class A TV stations: The protected contours defined in § 73.6010.

* * * * *

(c)(1) Where an FM, TV or Class A TV licensee proposes to use a formerly licensed main facility as an auxiliary facility, or proposes to modify a presently authorized auxiliary facility, and no changes in the height of the antenna radiation center are required in excess of the limits in § 73.1690(c)(1), the FM, TV or Class A TV licensee may apply for the proposed auxiliary facility by filing a modification of license application. The modified auxiliary facility must operate on the same channel as the licensed main facility. An exhibit must be provided with this license application to demonstrate compliance with § 73.1675(a). All FM, TV and Class A TV licensees may request a decrease from the authorized facility's ERP in the license application. An FM, TV or Class A TV licensee may also increase the ERP of the auxiliary facility in a license modification application, provided the application contains an analysis demonstrating compliance with the Commission's radiofrequency radiation guidelines, and an analysis showing that the auxiliary facility will comply with § 73.1675(a). Auxiliary facilities mounted on an AM antenna tower must also demonstrate compliance with § 73.1692 in the license application.

* * * * *

31. Section 73.1680 is amended by revising paragraph (b)(2) to read as follows:

§ 73.1680 Emergency antennas.

* * * * *

(b) * * *
 (2) *FM, TV and Class A TV stations.* FM, TV and Class A TV stations may erect any suitable radiator, or use operable sections of the authorized antenna(s) as an emergency antenna.

* * * * *

32. Section 73.1690 is amended by revising paragraphs (a)(2), (b)(2), (b)(3), (b)(5), (b)(7), (b)(8), (c) introductory text, (c)(3), and (c)(4) to read as follows:

§ 73.1690 Modification of transmission systems.

* * * * *

(a) * * *
 (2) Those that would cause the transmission system to exceed the equipment performance measurements prescribed for the class of service (AM, § 73.44; FM, §§ 73.317, 73.319, and 73.322; TV and Class A TV, §§ 73.682 and 73.687).

(b) * * *
 (2) Any change in station geographic coordinates, including coordinate corrections. FM, TV and Class A TV directional stations must also file a construction permit application for any move of the antenna to another tower structure located at the same coordinates. Any change which would require an increase along any azimuth in the composite directional antenna pattern of an FM station from the composite directional antenna pattern authorized (see § 73.316), or any increase from the authorized directional antenna pattern for a TV broadcast (see § 73.685) or Class A TV station (see § 73.6025).

(3) Any change which would require an increase along any azimuth in the composite directional antenna pattern of an FM station from the composite directional antenna pattern authorized (see § 73.316), or any increase from the authorized directional antenna pattern for a TV broadcast (see § 73.685) or Class A TV station (see § 73.6025).

* * * * *

(5) Any decrease in the authorized power of an AM station or the ERP of a TV or Class A TV station, or any decrease or increase in the ERP of an FM commercial station, which is intended for compliance with the multiple ownership rules in § 73.3555.

* * * * *

(7) Any increase in the authorized ERP of a television station, Class A television station, FM commercial station, or noncommercial educational

FM station, except as provided for in §§ 73.1690(c)(4), (c)(5), or (c)(7), or in § 73.1675(c)(1) in the case of auxiliary facilities.

(8) A commercial TV or noncommercial educational TV station operating on Channels 14 or Channel 69 or a Class A TV station on Channel 14 may increase its horizontally or vertically polarized ERP only after the grant of a construction permit. A television or Class A television station on Channels 15 through 21 within 341 km of a cochannel land mobile operation, or 225 km of a first-adjacent channel land mobile operation, must also obtain a construction permit before increasing the horizontally or vertically polarized ERP (see part 74, § 74.709(a) and (b) for tables of urban areas and corresponding reference coordinates of potentially affected land mobile operations).

(c) The following FM, TV and Class A TV station modifications may be made without prior authorization from the Commission. A modification of license application must be submitted to the Commission within 10 days of commencing program test operations pursuant to § 73.1620. With the exception of applications filed solely pursuant to paragraphs (c)(6), (c)(9), or (c)(10) of this section, the modification of license application must contain an exhibit demonstrating compliance with the Commission's radio frequency radiation guidelines. In addition, except for applications solely filed pursuant to paragraphs (c)(6) or (c)(9) of this section, where the installation is located within 3.2 km of an AM tower or is located on an AM tower, an exhibit demonstrating compliance with § 73.1692 is also required.

* * * * *

(4) Commercial and noncommercial educational FM stations operating on Channels 221 through 300 (except Class D), NTSC TV stations operating on Channels 2 through 13 and 22 through 68, Class A TV stations operating on Channels 2 through 13 and 22 through 51, and TV and Class A TV stations operating on Channels 15 through 21 that are in excess of 341 km (212 miles) from a cochannel land mobile operation or in excess of 225 km (140 miles) from a first-adjacent channel land mobile operation (see part 74, § 74.709(a) and (b) for tables of urban areas and reference coordinates of potentially affected land mobile operations), which operate omnidirectionally, may increase the vertically polarized effective radiated power up to the authorized horizontally polarized effective radiated power in a license modification

application. Noncommercial educational FM licensees and permittees on Channels 201 through 220, that do not use separate antennas mounted at different heights for the horizontally polarized ERP and the vertically polarized ERP, and are located in excess of the separations from a Channel 6 television station listed in Table A of § 73.525(a)(1), may also increase the vertical ERP, up to (but not exceeding) the authorized horizontally polarized ERP via a license modification application. Program test operations may commence at full power pursuant to § 73.1620(a)(1).

* * * *

33. Section 73.1740 is amended by adding paragraph (a)(5) to read as follows:

§ 73.1740 Minimum operating schedule.

(a) * * *

(5) *Class A TV stations.* Not less than 18 hours in each day of the week.

* * * *

34. Section 73.1870 is amended by revising paragraph (a) to read as follows:

§ 73.1870 Chief operators.

(a) The licensee of each AM, FM, TV or Class A TV broadcast station must designate a person to serve as the station's chief operator. At times when the chief operator is unavailable or unable to act (e.g., vacations, sickness), the licensee shall designate another person as the acting chief operator on a temporary basis.

* * * *

34. Section 73.2080 is amended by revising paragraph (a) to read as follows:

§ 73.2080 Equal employment opportunities.

(a) *General EEO Policy.* Equal opportunity in employment shall be afforded by all licensees or permittees of commercially or noncommercially operated AM, FM, TV, Class A TV, or international broadcast station (as defined in this part) to all qualified persons, and no person shall be discriminated against in employment by such stations because of race, color, religion, national origin, or sex.

* * * *

35. The table in § 73.3500 (a) is amended by adding the entry "302-CA, Application for Class A Television Broadcasting Station Construction Permit or License," in numerical order to read as follows:

§ 73.3500 Application and report forms.

* * * *

302-CA Application for Class A Television Broadcasting Station Construction Permit or License

* * * *

36. Section 73.3516 is amended by revising paragraph (a) to read as follows:

§ 73.3516 Specification of facilities.

(a) An application for facilities in the AM, FM, TV or Class A TV broadcast services, or low power TV service shall be limited to one frequency, or channel, and no application will be accepted for filing if it requests an alternate frequency or channel. Applications specifying split frequency AM operations using one frequency during daytime hours complemented by a different frequency during nighttime hours will not be accepted for filing.

* * * *

37. Section 73.3526 is amended by revising paragraphs (a)(2), (e)(11)(i) through (e)(11)(iii), and (e)(15), and by adding a paragraph (e)(17) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

(a) * * *

(2) Every permittee or licensee of an AM, FM, TV or Class A TV station in the commercial broadcast services shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(10) and paragraph (e)(13) of this section. In addition, every permittee or licensee of a commercial TV or Class A TV station shall maintain for public inspection a file containing material, relating to that station, described in paragraphs (e)(11) and (e)(15) of this section, and every permittee or licensee of a commercial AM or FM station shall maintain for public inspection a file containing the material, relating to that station, described in paragraphs (e)(12) and (e)(14) of this section. A separate file shall be maintained for each station for which an authorization is outstanding, and the file shall be maintained so long as an authorization to operate the station is outstanding.

* * * *

(e) * * *

(11)(i) *TV issues/programs lists.* For commercial TV and Class A TV broadcast stations, every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period. The list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October-December, April 10 for the quarter January-March, etc.) The list shall include a brief narrative describing

what issues were given significant treatment and the programming that provided this treatment. The description of the programs shall include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated. The lists described in this paragraph shall be retained in the public inspection file until final action has been taken on the station's next license renewal application.

(ii) *Records concerning commercial limits.* For commercial TV and Class A TV broadcast stations, records sufficient to permit substantiation of the station's certification, in its license renewal application, of compliance with the commercial limits on children's programming established in 47 U.S.C. 303a and 47 CFR 73.670. The records for each calendar quarter must be filed by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October-December, April 10 for the quarter January-March, etc.). These records shall be retained until final action has been taken on the station's next license renewal application.

(iii) *Children's television programming reports.* For commercial TV and Class A TV broadcast stations, on a quarterly basis, a completed Children's Television Programming Report ("Report"), on FCC Form 398, reflecting efforts made by the licensee during the preceding quarter, and efforts planned for the next quarter, to serve the educational and informational needs of children. The Report for each quarter is to be filed by the tenth day of the succeeding calendar quarter. The Report shall identify the licensee's educational and informational programming efforts, including programs aired by the station that are specifically designed to serve the educational and informational needs of children, and it shall explain how programs identified as Core Programming meet the definition set forth in § 73.671(c). The Report shall include the name of the individual at the station responsible for collecting comments on the station's compliance with the Children's Television Act, and it shall be separated from other materials in the public inspection file. These Reports shall be retained in the public inspection file until final action has been taken on the station's next license renewal application. Licensees shall publicized in an appropriate manner the existence and location of these Reports. For an experimental period of three years, licensees shall file these Reports with the Commission on an annual basis, i.e., four quarterly reports filed jointly each year, in electronic form as of January 10, 1999.

These reports shall be filed with the Commission on January 10, 1998, January 10, 1999, and January 10, 2000.

* * * * *

(15) *Must-carry or retransmission consent election.* Statements of a commercial television or Class A television station's election with respect to either must-carry or re-transmission consent, as defined in § 76.64 of this chapter. These records shall be retained for the duration of the three year election period to which the statement applies.

* * * * *

(17) *Class A TV continuing eligibility.* Documentation sufficient to demonstrate that the Class A television station is continuing to meet the eligibility requirements set forth at § 73.6001.

38. Section 73.3536 is amended by adding a paragraph (c) to read as follows:

§ 73.3536 Application for license to cover construction permit.

* * * * *

(c) Eligible low power television stations which have been granted a certificate of eligibility may file FCC Form 302-CA, "Application for Class A Television Broadcast Station Construction Permit Or License."

39. Section 73.3550 is amended by revising paragraph (f) and (m) to read as follows:

§ 73.3550 Requests for new or modified call sign assignments.

* * * * *

(f) Only four-letter call signs (plus an LP, FM, TV or CA suffix, if used) will be assigned. The four letter call sign for LPFM stations will be followed by the suffix "-LP." However, subject to the other provisions of this section, a call sign of a station may be conformed to a commonly owned station holding a three-letter call assignment (plus FM, TV, CA or LP suffixes, if used).

* * * * *

(m) Where a requested call sign, without the "-FM," "-TV," "-CA" or "-LP" suffix, would conform to the call sign of any other non-commonly owned station(s) operating in a different service, an applicant utilizing the on-line reservation and authorization system will be required to certify that consent to use the secondary call sign has been obtained from the holder of the primary call sign.

* * * * *

40. Section 73.3572 is amended by revising the section heading and paragraphs (a)(1) through (c) and paragraphs (e)(1) through (g) to read as follows:

§ 73.3572 Processing of TV Broadcast, Class A TV Broadcast, low power TV, TV translator and TV booster station applications.

(a) * * *

(1) In the first group are applications for new stations or major changes in the facilities of authorized stations. A major change for TV broadcast stations authorized under this part is any change in frequency or community of license which is in accord with a present allotment contained in the Table of Allotments (§ 73.606). Other requests for change in frequency or community of license for TV broadcast stations must first be submitted in the form of a petition for rulemaking to amend the Table of Allotments.

(2) In the case of Class A TV stations authorized under subpart J of this part and low power TV, TV translator, and TV booster stations authorized under part 74 of this chapter, a major change is any change in:

- (i) Frequency (output channel), except a change in offset carrier frequency; or
- (ii) Transmitting antenna location where the protected contour resulting from the change is not predicted to overlap any portion of the protected contour based on the station's authorized facilities.

(3) Other changes will be considered minor; provided, until October 1, 2000, proposed changes to the facilities of Class A TV, low power TV, TV translator and TV booster stations, other than a change in frequency, will be considered minor only if the change(s) will not increase the signal range of the Class A TV, low power TV or TV booster in any horizontal direction.

(4) The following provisions apply to displaced Class A TV, low power TV, TV translator and TV booster stations:

(i) In the case of an authorized low power TV, TV translator or TV booster which is predicted to cause or receive interference to or from an authorized TV broadcast station pursuant to § 74.705 of this chapter or interference with broadcast or other services under § 74.703 or § 74.709 of this chapter, an application for a change in output channel, together with technical modifications which are necessary to avoid interference (including a change in antenna location of less than 16.1km), will not be considered as an application for a major change in those facilities.

(ii) Provided further, that a low power TV, TV translator or TV booster station authorized on a channel from channel 52 to 69, or which is causing or receiving interference or is predicted to cause or receive interference to or from an authorized DTV station pursuant to § 74.706 of this chapter, or which is

located within the distances specified in paragraph (4)(iv) of this section to the coordinates of co-channel DTV authorizations (or allotment table coordinates if there are no authorized facilities at different coordinates), may at any time file a displacement relief application for a change in output channel, together with any technical modifications which are necessary to avoid interference or continue serving the station's protected service area. Such an application will not be considered as an application for a major change in those facilities. Where such an application is mutually exclusive with applications for new low power TV, TV translator or TV booster stations, or with other nondisplacement relief applications for facilities modifications of Class A TV, low power TV, TV translator or TV booster stations, priority will be afforded to the displacement application(s) to the exclusion of the other applications.

(iii) A Class A TV station which is causing or receiving interference or is predicted to cause or receive interference to or from an authorized TV broadcast station pursuant to §§ 73.6011 or 73.613; a DTV station or allotment pursuant to §§ 73.6013 or 73.623, or which is located within the distances specified below in paragraph (iv) of this section to the coordinates of co-channel DTV authorizations (or allotment table coordinates if there are no authorized facilities at different coordinates); or other service that protects and/or is protected by Class A TV stations, may at any time file a displacement relief application for a change in channel, together with technical modifications that are necessary to avoid interference or continue serving the station's protected service area, provided the station's protected contour resulting from a relocation of the transmitting antenna is predicted to overlap some portion of the protected contour based on its authorized facilities. A Class A TV station displacement relief applications will be considered major change applications, and will be placed on public notice for a period of not less than 30 days to permit the filing of petitions to deny. However, these applications will not be subject to the filing of competing applications. Where a Class A displacement relief application becomes mutually exclusive with applications for new low power TV, TV translator or TV booster stations, or with other non-displacement relief applications for facilities modifications of Class A TV, low power TV, TV translator or TV booster stations, priority will be afforded to the Class A

TV displacement relief application(s) to the exclusion of other applications. Mutually exclusive displacement relief applications of Class A TV, low power TV, TV translators or TV booster stations filed on the same day will be subject to competitive bidding procedures if the mutual exclusivity is not resolved by an engineering solution.

(iv)(A) The geographic separations to co-channel DTV facilities or allotment reference coordinates, as applicable, within which to qualify for displacement relief are the following:

- (1) Stations on UHF channels: 265 km (162 miles)
- (2) Stations on VHF channels 2–6: 280 km (171 miles)
- (3) Stations on VHF channels 7–13: 260 km (159 miles)

(B) Engineering showings of predicted interference may also be submitted to justify the need for displacement relief.

(v) Provided further, that the FCC may, within 15 days after acceptance of any other application for modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore subject to the provisions of §§ 73.3522, 73.3580, and 1.1111 of this chapter pertaining to major changes. Such major modification applications filed for Class A TV, low power TV, TV translator, TV booster stations, and for a non-reserved television allotment, are subject to competitive bidding procedures and will be dismissed if filed outside a specified filing period. See 47 CFR 73.5002(a).

(b) A new file number will be assigned to an application for a new station or for major changes in the facilities of an authorized station, when it is amended so as to effect a major change, as defined in paragraphs (a)(1) or (a)(2) of this section, or result in a situation where the original party or parties to the application do not retain more than 50% ownership interest in the application as originally filed and § 73.3580 will apply to such amended application. An application for change in the facilities of any existing station will continue to carry the same file number even though (pursuant to FCC approval) an assignment of license or transfer of control of such licensee or permittee has taken place if, upon consummation, the application is amended to reflect the new ownership.

(c) Amendments to Class A TV, low power TV, TV translator, TV booster stations, or non-reserved television applications, which would require a new file number pursuant to paragraph (b) of this section, are subject to competitive bidding procedures and

will be dismissed if filed outside a specified filing period. See 47 CFR 73.5002(a). When an amendment to an application for a reserved television allotment would require a new file number pursuant to paragraph (b) of this section, the applicant will have the opportunity to withdraw the amendment at any time prior to designation for a hearing if applicable; and may be afforded, subject to the discretion of the Administrative Law Judge, an opportunity to withdraw the amendment after designation for a hearing.

(e)(1) The FCC will specify by Public Notice, pursuant to § 73.5002, a period for filing applications for a new non-reserved television, low power TV and TV translator stations or for major modifications in the facilities of such authorized stations and major modifications in the facilities of Class A TV stations.

(2) Such applicants shall be subject to the provisions of §§ 1.2105 of this chapter and competitive bidding procedures. See 47 CFR 73.5000 et seq.

(f) Applications for minor modification of Class A TV, low power TV, TV translator and TV booster stations may be filed at any time, unless restricted by the FCC, and will be processed on a “first-come/first-served” basis, with the first acceptable application cutting off the filing rights of subsequent, competing applicants. Provided, however, that applications for minor modifications of Class A TV and those of TV broadcast stations may become mutually exclusive until grant of a pending Class A TV or TV broadcast minor modification application and will be subject to competitive bidding procedures.

(g) TV booster station applications may be filed at any time. Subsequent to filing, the FCC will release a Public Notice accepting for filing and proposing for grant those applications which are not mutually exclusive with any other TV translator, low power TV, TV booster, or Class A TV application, and providing for the filing of Petitions To Deny pursuant to § 73.3584.

41. Section 73.3580 is amended by revising the first and second sentence of paragraph (c) and adding paragraph (d)(5) to read as follows:

§ 73.3580 Local public notice of filing of broadcast applications.

* * * * *

(c) An applicant who files an application or amendment thereto which is subject to the provisions of this section, must give notice of this filing in a newspaper. Exceptions to this

requirement are applications for renewal of AM, FM, TV, Class A TV and international broadcasting stations; low power TV stations; TV and FM translator stations; TV booster stations; FM booster stations; and applications subject to paragraph (e) of this section.

* * * * *

(d) * * *

(5) An applicant who files for a Class A television license must give notice of this filing by broadcasting announcements on applicant's station. (Sample and schedule of announcements follow.) Newspaper publication is not required.

(i) The broadcast notice requirement for those filing for Class A television license applications and amendment thereto are as follows:

(A) *Pre-filing announcements.* Two weeks prior to the filing of the license application, the following announcement shall be broadcast on the 5th and 10th days of the two week period. The required announcements shall be made between 6 p.m. and 11 p.m. (5 p.m. and 10 p.m. Central and Mountain Time) Stations broadcasting primarily in a foreign language should broadcast the announcements in that language.

(B) *On (date), the Federal Communications Commission granted (Station's call letters) a certification of eligibility to apply for Class A television status.* To become eligible for a Class A certificate of eligibility, a low power television licensee was required to certify that during the 90-day period ending November 28, 1999, the station:

(1) Broadcast a minimum of 18 hours per day;

(2) Broadcast an average of at least three hours per week of programming produced within the market area served by the station or by a group of commonly-owned low power television stations; and

(3) Had been in compliance with the Commission's regulations applicable to the low power television service. The Commission may also issue a certificate of eligibility to a licensee unable to satisfy the foregoing criteria, if it determines that the public interest, convenience and necessity would be served thereby.

(4) (Station's call letters) intends to file an application (FCC Form 302-CA) for a Class A television license in the near future. When filed, a copy of this application will be available at (address of location of the station's public inspection file) for public inspection during our regular business hours. Individuals who wish to advise the FCC of facts relating to the station's

eligibility for Class A status should file comments and petitions with the FCC prior to Commission action on this application.

(C) *Post-filing announcements.* The following announcement shall be broadcast on the 1st and 10th days following the filing of an application for a Class A television license. The required announcements shall be made between 6 p.m. and 11 p.m. (5 p.m. and 10 p.m. Central and Mountain Time). Stations broadcasting primarily in a foreign language should broadcast the announcements in that language.

(D) On (date of filing license application) (Station's call letters) filed an application, FCC Form 302-CA, for a Class A television license. Such stations are required to broadcast a minimum of 18 hours per day, and to average at least 3 hours of locally produced programming each week, and to comply with certain full-service television station operating requirements. A copy of this application is available for public inspection during our regular business hours at (address of location of the station's public inspection file). Individuals who wish to advise the FCC of facts relating to the station's eligibility for Class A status should file comments and petitions with the FCC prior to Commission action on this application.

* * * * *

42. Section 73.3612 is revised to read as follows:

§ 73.3612 Annual employment report.

Each licensee of permittee of a commercially or noncommercially operated AM, FM, TV, Class A TV or International Broadcast station with five or more employees shall file an annual employment report with the FCC on or before September 30 of each year on FCC Form 395.

43. Subpart J is added to read as follows.

Subpart J—Class A Television Broadcast Stations

Sec.

- 73.6000 Definitions.
- 73.6001 Eligibility and service requirements.
- 73.6002 Licensing requirements.
- 73.6003—73.6005 [Reserved]
- 73.6006 Channel assignments.
- 73.6007 Power limitations.
- 73.6008 Distance computations.
- 73.6010 Class A TV station protected contour.
- 73.6011 Protection of TV broadcast stations.
- 73.6012 Protection of Class A TV, low power TV and TV translator stations.
- 73.6013 Protection of DTV stations.
- 73.6014 Protection of digital Class A TV stations.

- 73.6016 Digital Class A TV station protection of TV broadcast stations.
- 73.6017 Digital Class A TV station protection of Class A TV, low power TV and TV translator stations.
- 73.6018 Digital Class A TV station protection of DTV stations.
- 73.6019 Digital Class A TV station protection of digital Class A TV stations.
- 73.6020 Protection of stations in the land mobile radio service.
- 73.6022 Negotiated interference and relocation agreements.
- 73.6024 Transmission standards and system requirements.
- 73.6026 Broadcast regulations applicable to Class A television stations.

§ 73.6000 Definitions.

Locally produced programming. For the purpose of this subpart, locally produced programming is programming:

(1) Produced within the predicted Grade B contour of the station or within the predicted Grade B contours of any of the stations in a commonly owned group; or

(2) Programming produced at the station's main studio. See *Report and Order*, In the Matter of Establishment of a Class A Television Service, MM Docket No. 00-10, released April 4, 2000.

§ 73.6001 Eligibility and service requirements.

(a) Qualified low power television licensees which, during the 90-day period ending November 28, 1999, operated their stations in a manner consistent with the programming and operational standards set forth in the Community Broadcasters Protection Act of 1999, may be accorded primary status as Class A television licensees.

(b) Class A television broadcast stations are required to:

(1) Broadcast a minimum of 18 hours per day; and

(2) Broadcast an average of at least three hours per week of locally produced programming each quarter.

(c) Licensed Class A television broadcast stations shall be accorded primary status as a television broadcaster as long as the station continues to meet the minimum operating requirements for Class A status.

(d) Licensees unable to continue to meet the minimum operating requirements for Class A television stations, or which elect to revert to low power television status, shall promptly notify the Commission, in writing, and request a change in status.

§ 73.6002 Licensing requirements.

(a) A Class A television broadcast license will only be issued to a qualified low power television licensee that:

(1) Filed a Statement of Eligibility for Class A Low Power Television Station Status on or before January 28, 2000, which was granted by the Commission; and

(2) Files an acceptable application for a Class A Television license (FCC Form 302-CA).

§§ 73.6003—73.6005 [Reserved]

§ 73.6006 Channel assignments.

Class A TV stations will not be authorized on UHF TV channels 52 through 69, or on channels unavailable for TV broadcast station use pursuant to § 73.603 of this part.

§ 73.6007 Power limitations.

An application to change the facilities of an existing Class A TV station will not be accepted if it requests an effective radiated power that exceeds the power limitation specified in § 74.735 of this chapter.

§ 73.6008 Distance computations.

The distance between two reference points must be calculated in accordance with § 73.208(c) of this part.

§ 73.6010 Class A TV station protected contour.

(a) A Class A TV station will be protected from interference within the following predicted signal contours:

(1) 62 dBu for stations on Channels 2 through 6;

(2) 68 dBu for stations on Channels 7 through 13; and

(3) 74 dBu for stations on Channels 14 through 51.

(b) The Class A TV station protected contour is calculated from the effective radiated power and antenna height above average terrain, using the F(50,50) charts of Figure 9, 10 or 10b of § 73.699 of this part.

(c) A digital Class A TV station will be protected from interference within the following predicted signal contours:

(1) 43 dBu for stations on Channels 2 through 6;

(2) 48 dBu for stations on Channels 7 through 13; and

(3) 51 dBu for stations on Channels 14 through 51.

(d) The digital Class A TV station protected contour is calculated from the effective radiated power and antenna height above average terrain, using the F(50,90) signal propagation method specified in § 73.625(b)(1) of this part.

§ 73.6011 Protection of TV broadcast stations.

Class A TV stations must protect authorized TV broadcast stations, applications for minor changes in authorized TV broadcast stations filed

on or before November 29, 1999, and applications for new TV broadcast stations that had been cut-off without competing applications or that were the winning bidder in a TV broadcast station auction as of that date, or that were the proposed remaining applicant in a group of mutually-exclusive applications for which a settlement agreement was on file as of that date. Protection of these stations and applications must be based on the requirements specified in § 74.705 of this chapter. An application to change the facilities of an existing Class A TV station will not be accepted if it fails to protect these TV broadcast stations and applications pursuant to the requirements specified in § 74.705 of this chapter.

§ 73.6012 Protection of Class A TV, low power TV and TV translator stations.

An application to change the facilities of an existing Class A TV station will not be accepted if it fails to protect other authorized Class A TV, low power TV and TV translator stations and applications for changes in such stations filed prior to the date the Class A application is filed, pursuant to the requirements specified in § 74.707 of this chapter.

§ 73.6013 Protection of DTV stations.

Class A TV stations must protect the DTV service that would be provided by the facilities specified in the DTV Table of Allotments in § 73.622 of this part, by authorized DTV stations and by applications that propose to expand DTV stations' allotted or authorized coverage contour in any direction, if such applications either were filed before December 31, 1999 or were filed between December 31, 1999 and May 1, 2000 by a DTV station licensee or permittee that had notified the Commission of its intent to "maximize" by December 31, 1999. Protection of these allotments, stations and applications must be based on not causing predicted interference within the service area described in § 73.622(e) of this part. The interference analysis is based on the methods described in §§ 73.623(c)(2) through (c)(4) of this part, except that a Class A TV station must not cause a loss of service to 0.5 percent or more of the population predicted to receive service from the DTV allotment, station or application. An application to change the facilities of an existing Class A TV station will not be accepted if it fails to protect these DTV allotments, stations and applications in accordance with this section.

§ 73.6014 Protection of digital Class A TV stations.

An application to change the facilities of an existing Class A TV station will not be accepted if it fails to protect authorized digital Class A TV stations and applications for changes in such stations filed prior to the date the Class A application is filed, pursuant to the requirements specified in § 74.706 of this chapter.

§ 73.6016 Digital Class A TV station protection of TV broadcast stations.

Digital Class A TV stations must protect authorized TV broadcast stations, applications for minor changes in authorized TV broadcast stations filed on or before November 29, 1999, and applications for new TV broadcast stations that had been cut-off without competing applications or that were the winning bidder in a TV broadcast station auction as of that date, or that were the proposed remaining applicant in a group of mutually-exclusive applications for which a settlement agreement was on file as of that date. This protection must be based on meeting the D/U ratios for "DTV-into-analog TV" specified in § 73.623(c)(2) of this part at the Grade B contour of the TV broadcast station or application. An application for DTV operation of an existing Class A TV station or to change the facilities of a digital Class A TV station will not be accepted if it fails to protect these TV broadcast stations and applications pursuant to these requirements.

§ 73.6017 Digital Class A TV station protection of Class A TV, low power TV, and TV translator stations.

An application for digital operation of an existing Class A TV station or to change the facilities of a digital Class A TV station will not be accepted if it fails to meet the D/U ratios for "DTV-into-analog TV" specified in § 73.623(c)(2) of this part at the protected contours as defined in § 73.6010 of this part for other authorized Class A TV stations and § 74.707 of this chapter for low power TV and TV translator stations. This protection also must be afforded to applications for changes in other authorized Class A TV, low power TV and TV translator stations filed prior to the date the digital Class A application is filed.

§ 73.6018 Digital Class A TV station protection of DTV stations.

Digital Class A TV stations must protect the DTV service that would be provided by the facilities specified in the DTV Table of Allotments in § 73.622 of this part, by authorized DTV stations and by applications that propose to

expand DTV stations' allotted or authorized coverage contour in any direction, if such applications either were filed before December 31, 1999 or were filed between December 31, 1999 and May 1, 2000 by a DTV station licensee or permittee that had notified the Commission of its intent to "maximize" by December 31, 1999. Protection of these allotments, stations and applications must be based on not causing predicted interference within the service area described in § 73.622(e) of this part. The interference analysis is based on the methods described in §§ 73.623(c)(2) through (c)(4) of this part, except that a digital Class A TV station must not cause a loss of service to 0.5 percent or more of the population predicted to receive service from the DTV allotment, station or application. An application for digital operation of an existing Class A TV station or to change the facilities of a digital Class A TV station will not be accepted if it fails to protect these DTV allotments, stations and applications in accordance with this section.

§ 73.6019 Digital Class A TV station protection of digital Class A TV stations.

An application for digital operation of an existing Class A TV station or to change the facilities of a digital Class A TV station will not be accepted if it fails to meet the D/U ratios for "DTV-into-DTV" specified in § 73.623(c)(2) through (c)(4) of this part at the protected contours as defined in § 73.6010 of this part for other authorized Class A TV stations and applications for changes filed prior to the date the digital Class A application is filed.

§ 73.6020 Protection of stations in the land mobile radio service.

An application to change the facilities of an existing Class A TV station will not be accepted if it fails to protect stations in the land mobile radio service pursuant to the requirements specified in § 74.709 of this chapter. In addition to the protection requirements specified in § 74.709(a) of this chapter, Class A TV stations must not cause interference to land mobile stations operating on channel 16 in New York, NY.

§ 73.6022 Negotiated interference and relocation agreements.

(a) Notwithstanding the technical criteria in this subpart, Subpart E of this part, and Subpart G of part 74 of this chapter regarding interference protection to and from Class A TV stations, Class A TV stations may negotiate agreements with parties of authorized and proposed analog TV, DTV, LPTV, TV translator, Class A TV stations or other affected parties to

resolve interference concerns; *provided*, however, other relevant requirements are met with respect to the parties to the agreement. A written and signed agreement must be submitted with each application or other request for action by the Commission. Negotiated agreements under this paragraph can include the exchange of money or other considerations from one entity to another. Applications submitted pursuant to the provisions of this paragraph will be granted only if the Commission finds that such action is consistent with the public interest.

(b) A Class A TV station displaced in channel by a channel allotment change for a DTV station may seek to exchange channels with the DTV station, provided both parties consent in writing to the change and that the Class A station meets all applicable interference protection requirements on the new channel. Such requests will be treated on a case-by-case basis and, if approved, will not subject the Class A station to the filing of competing applications for the exchanged channel.

§ 73.6024 Transmission standards and system requirements.

(a) A Class A TV station must meet the requirements of §§ 73.682 and 73.687, except as provided in paragraph (b) of this section.

(b) A Class A TV station may continue to operate with the transmitter operated under its previous LPTV license, provided such operation does not cause any condition of uncorrectable interference due to radiation of radio frequency energy outside of the assigned channel. Such operation must continue to meet the requirements of §§ 74.736 and 74.750 of this chapter.

(c) A Class A TV station is not required to operate on an offset carrier frequency and must meet the frequency tolerance requirements of § 73.1545 of this part.

§ 73.6025 Antenna system and station location.

(a) Applications for modified Class A TV facilities proposing the use of directional antenna systems must be accompanied by the following:

(1) Complete description of the proposed antenna system, including the manufacturer and model number of the proposed directional antenna. In the case of a composite antenna composed of two or more individual antennas, the antenna should be described as a "composite" antenna. A full description of the design of the antenna should also be submitted.

(2) Relative field horizontal plane pattern (horizontal polarization only) of

the proposed directional antenna. A value of 1.0 should be used for the maximum radiation. The plot of the pattern should be oriented so that 0 degrees (True North) corresponds to the maximum radiation of the directional antenna or, alternatively in the case of a symmetrical pattern, the line of symmetry. Where mechanical beam tilt is intended, the amount of tilt in degrees of the antenna vertical axis and the orientation of the downward tilt with respect to true North must be specified, and the horizontal plane pattern must reflect the use of mechanical beam tilt.

(3) A tabulation of the relative field pattern required in paragraph (a)(2), of this section. The tabulation should use the same zero degree reference as the plotted pattern, and be tabulated at least every 10 degrees. In addition, tabulated values of all maxima and minima, with their corresponding azimuths, should be submitted.

(4) Horizontal and vertical plane radiation patterns showing the effective radiated power, in dBk, for each direction. Sufficient vertical plane patterns must be included to indicate clearly the radiation characteristics of the antenna above and below the horizontal plane. In cases where the angles at which the maximum vertical radiation varies with azimuth, a separate vertical radiation pattern must be provided for each pertinent radial direction.

(5) The horizontal and vertical plane patterns that are required are the patterns for the complete directional antenna system. In the case of a composite antenna composed of two or more individual antennas, this means that the patterns for the composite antenna, not the patterns for each of the individual antennas, must be submitted.

(b) Applications for modified Class A TV facilities proposing to locate antennas within 61.0 meters (200 feet) of other Class A TV or TV broadcast antennas operating on a channel within 20 percent in frequency of the proposed channel, or proposing the use of antennas on Channels 5 or 6 within 61.0 meters (200 feet) of FM broadcast antennas, must include a showing as to the expected effect, if any, of such proximate operation.

(c) Where a Class A TV licensee or permittee proposes to mount an antenna on an AM antenna tower, or locate within 3.2 km of an AM directional station, the TV licensee or permittee must comply with Sec. 73.1692.

(d) Class A TV stations are subject to the provisions in § 73.685(d) regarding blanketing interference.

§ 73.6026 Broadcast regulations applicable to Class A television stations.

The following sections are applicable to Class A television stations:

- § 73.603 Numerical designation of television channels.
- § 73.635 Use of common antenna site.
- § 73.642 Subscription TV service.
- § 73.643 Subscription TV operating requirements.
- § 73.644 Subscription TV transmission systems.
- § 73.646 Telecommunications Service on the Vertical Blanking Interval and in the Visual Signal.
- § 73.653 Operation of TV aural and visual transmitters.
- § 73.658 Affiliation agreements and network program practice; territorial exclusivity in non-network program arrangements.
- § 73.664 Determining operating power.
- § 73.665 Use of TV aural baseband subcarriers.
- § 73.667 TV subsidiary communications services.
- § 73.669 TV stereophonic aural and multiplex subcarrier operation.
- § 73.670 Commercial limits in children's programs.
- § 73.671 Educational and informational programming for children.
- § 73.673 Public information initiatives regarding educational and informational programming for children.
- § 73.688 Indicating instruments.
- § 73.691 Visual modulation monitoring.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES.

44. The authority citation for part 74 is revised to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f) and 554.

45. Section 74.432 is amended by revising paragraph (a) to read as follows:

§ 74.432 Licensing requirements and procedures.

(a) A license for a remote pickup station will be issued to: the licensee of an AM, FM, noncommercial FM, low power FM, TV, Class A TV, international broadcast or low power TV station; broadcast network-entity; or cable network-entity.

* * * * *

46. Section 74.600 is revised to read as follows:

§ 74.600 Eligibility for license.

A license for a station in this subpart will be issued only to a television broadcast station, a Class A TV station,

a television broadcast network-entity, a low power TV station, or a TV translator station.

47. Section 74.601 is revised to read as follows:

§ 74.601 Classes of TV broadcast auxiliary stations.

(a) *TV pickup stations.* A land mobile station used for the transmission of TV program material and related communications from scenes of events occurring at points removed from TV station studios to a TV broadcast, Class A TV or low power TV station or other purposes as authorized in § 74.631.

(b) *TV STL station (studio-transmitter link).* A fixed station used for the transmission of TV program material and related communications from the studio to the transmitter of a TV broadcast, Class A TV or low power TV station or other purposes as authorized in § 74.631.

(c) *TV relay station.* A fixed station used for transmission of TV program material and related communications for use by TV broadcast, Class A TV and low power TV stations or other purposes as authorized in § 74.631.

(d) *TV translator relay station.* A fixed station used for relaying programs and signals of TV broadcast or Class A TV stations to Class A TV, LPTV, TV translator, and to other communications facilities that the Commission may authorize or for other purposes as permitted by § 74.631.

(e) *TV broadcast licensee.* Licensees and permittees of TV broadcast, Class A TV and low power TV stations, unless specifically otherwise indicated.

(f) *TV microwave booster station.* A fixed station in the TV broadcast auxiliary service that receives and amplifies signals of a TV pickup, TV STL, TV relay, or TV translator relay station and retransmits them on the same frequency.

48. Section 74.602 is amended by revising paragraphs (f) and (h) to read as follows:

§ 74.602 Frequency assignment.

* * * * *

(f) TV auxiliary stations licensed to low power TV stations and translator relay stations will be assigned on a secondary basis, *i.e.*, subject to the condition that no harmful interference is caused to other TV auxiliary stations assigned to TV broadcast and Class A TV stations, or to community antenna relay stations (CARS) operating between 12,700 and 13,200 MHz. Auxiliary stations licensed to low power TV stations and translator relay stations must accept any interference caused by

stations having primary use of TV auxiliary frequencies.

* * * * *

(h) TV STL and TV relay stations may be authorized, on a secondary basis and subject to the provisions of Subpart G of this chapter, to operate fixed point-to-point service on the UHF-TV channels 14–69. These stations must not interfere with and must accept interference from current and future full-power UHF-TV stations, Class A TV stations, LPTV stations, and TV translator stations. They will also be secondary to current land mobile stations (in areas where land mobile sharing is currently permitted and contingent on the decision reached in the pending Dockets No. 85–172 and No. 84–902).

* * * * *

49. Section 74.703 is amended by revising paragraph (a) to read as follows:

§ 74.703 Interference.

(a) An application for a new low power TV, TV translator, or TV booster station or for a change in the facilities of such an authorized station will not be granted when it is apparent that interference will be caused. Except where there is a written agreement between the affected parties to accept interference, or where it can be shown that interference will not occur due to terrain shielding and/or Longley-Rice terrain dependent propagation methods, the licensee of a new low power TV, TV translator, or TV booster shall protect existing low power TV and TV translator stations from interference within the protected contour defined in § 74.707 and shall protect existing Class A TV and digital Class A TV stations within the protected contours defined in § 73.6010 of this chapter. Such written agreement shall accompany the application. Guidance on using the Longley-Rice methodology is provided in OET Bulletin No. 69. Copies of OET Bulletin No. 69 may be inspected during normal business hours at the: Federal Communications Commission, 445 12th Street, S.W., Reference Information Center (Room CY-A257), Washington, DC 20554. This document is also available through the Internet on the FCC Home Page at <http://www.fcc.gov/oet/info/documents/bulletins/#69>.

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50. Subpart G is amended by adding a new § 74.708 to read as follows:

§ 74.708 Class A TV and digital Class A TV station protection.

(a) The Class A TV and digital Class A TV station protected contours are specified in § 73.6010 of this chapter.

(b) An application to construct a new low power TV, TV translator, or TV

booster station or change the facilities of an existing station will not be accepted if it fails to protect an authorized Class A TV or digital Class A TV station or an application for such a station filed prior to the date the low power TV, TV translator, or TV booster application is filed.

(c) Applications for low power TV, TV translator and TV booster stations shall protect Class A TV stations pursuant to the requirements specified in paragraphs (b) through (e) of § 74.707.

(d) Applications for low power TV, TV translator and TV booster stations shall protect digital Class A TV stations pursuant to the following requirements:

(i) An application must not specify an antenna site within the protected contour of a co-channel digital Class A TV station.

(ii) The ratio in dB of the field strength of the low power TV, TV translator or TV booster station to that of the digital Class A TV station must meet the requirements specified in paragraph (d) of § 74.706, calculated using the propagation methods specified in paragraph (c) of that section.

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1815, 1819, and 1852

Elimination of Elements as a Category in Evaluations

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final Rule.

SUMMARY: This final rule amends the NASA FAR Supplement (NFS) by eliminating the term “elements” as a category in evaluations. NASA does not numerically weight and score “elements” and therefore they have ceased to have significance in the evaluation and award of NASA’s contracts.

EFFECTIVE DATE: May 10, 2000.

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SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the **Federal Register** on December 16, 1999 (64 FR 70208–70209). No comments were received. This final rule adopts the proposed rule without change.