FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 11, 73 and 74

[MM Docket No. 99–25; FCC 00–19; RM 9208, 9242]

Creation of Low Power Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document establishes rules authorizing the operation of two new classes of low power FM (LPFM) radio stations. LP100 stations will operate at a maximum power of 100 watts and LP10 stations at a maximum power of 10 watts. The LPFM service will provide opportunities for new voices to be heard and will be implemented in a manner that best serves the public interest.

DATES: Effective April 17, 2000.

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SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (''*R&O*''), FCC 00–19, adopted January 20, 2000; released January 27, 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. With this *Report & Order*, we authorize the licensing of two new classes of FM radio stations—one operating at a maximum power of 100 watts and one at a maximum power of 10 watts. Both types of stations, known as low power FM stations (LPFM), will be authorized in a manner that protects existing FM service. They will be operated on a noncommercial educational basis by entities that do not hold an attributable interest in any other broadcast station or other media subject to our ownership rules. Initially, only entities located in the communities the stations serve will be eligible to participate in this service. Even once this eligibility criterion is relaxed, we will grant a significant selection preference to locally-based applicants. We believe that the LPFM service authorized in this proceeding will provide opportunities for new voices to be heard and will ensure that we fulfill our statutory obligation to authorize facilities in a manner that best serves the public interest.

2. In establishing this new service, we are determined to preserve the integrity and technical excellence of existing FM radio service, and not to impede its transition to a digital future. In this regard, our own technical studies and our review of the record persuade us that 100-watt LPFM stations operating without 3rd-adjacent channel separation requirements will not result in unacceptable new interference to the service of existing FM stations. Moreover, imposing 3rd-adjacent channel separation requirements on LPFM stations would unnecessarily impede the opportunities for stations in this new service, particularly in highly populated areas where there is a great demand for alternative forms of radio service. We will not, therefore, impose 3rd-adjacent channel separation requirements. To avoid any possibility of compromising existing service, given the new nature of the LPFM service, we will impose separation requirements for low power with respect to full power stations operating on co-, 1st- and 2nd-adjacent and intermediate frequency (IF) channels. We believe that the rules we are adopting will maintain the integrity of the FM band and preserve the opportunity for a transition to a digital radio service in the future, while affording significant opportunities for new radio service.

II. Issue Analysis

A. Goals

3. The *Notice of Proposed Rulemaking (NPRM)* we adopted on January 28, 1999, (64 FR 7577, February 16, 1999) responded to petitions for rule making and related comments indicating substantial interest in, and public support for, increased citizens' access to the airwaves. In the year since we issued the *NPRM,* proposing rules authorizing the operation of new low power FM radio stations, we have received comments and letters from thousands of individuals and groups seeking licenses for new radio stations. Many of these comments, which will be discussed in greater detail below, included comprehensive engineering studies and valuable suggestions for service rules. These comments—from churches or other religious organizations, students, labor unions, community organizations and activists, musicians, and other citizens—reflect a broad interest in service from highly local radio stations strongly grounded in their communities. In authorizing this new service today, we enhance locally focused community-oriented radio broadcasting.

4. Our goal in creating a new LPFM service is to create a class of radio stations designed to serve very localized communities or underrepresented groups within communities. To that end, in the *NPRM* we proposed to establish two classes of low power FM radio service: a 1000-watt primary service and a 100-watt secondary service. We also sought comment on whether to establish a secondary class of stations operating between one and 10 watts. Commenters supporting low power radio generally argued for the creation of an LPFM service consisting of 100 or 10 watt stations. Most commenters did not support the creation of 1000 watt stations, arguing that the local aspect of LPFM service could be diminished by the size of the service area of such stations. Some commenters opposing the institution of 1000 watt service argued that 1000 watt stations present a greater interference potential than 100 or 10 watt stations. We also stated in the *NPRM* a hope that the largest of the proposed LPFM stations, at 1000 watts, could serve as a proving ground and an ''entry'' opportunity for new entrants into the full-power broadcasting industry. While we continue to view this as a worthwhile goal, we are persuaded by commenters that establishment of a 1000 watt service would not best fulfill our goals at the present time. Our establishment of a low power radio service consisting of two classes operating at maximums of 100 watts and 10 watts will allow licensees to serve their local communities, and will permit a greater number of new stations to be authorized, fostering a diversity of new voices on the airwaves.

5. Another goal expressed in the *NPRM* was that any new LPFM service specifically include the voices of community based schools, churches and civic organizations. In the *NPRM,* we raised the question of whether the LPFM service should include both commercial and noncommercial licensees or whether it should be entirely noncommercial. We also proposed that any stations of one to 10 watts be exclusively noncommercial, as we did not see commercial potential in stations with such limited service areas. Many of the commenters supporting LPFM strongly supported the establishment of an entirely noncommercial service. We tentatively concluded that auctions would be

required if mutually exclusive applications for commercial LPFM facilities were filed, but noted that licenses for noncommercial educational or public broadcast stations are specifically exempted from auction by section 309(j). Given the overwhelming support for the establishment of a noncommercial service, and the tendency of auctions to skew the allocation of licenses away from noncommercial entities that are more likely to serve underrepresented sections of the community, we conclude that eligibility for LPFM licenses should be limited to noncommercial, educational entities and public safety entities.

6. Finally, in proposing the creation of a new LPFM service, we made clear that we will not compromise the integrity of the FM spectrum. We are committed to creating a low power FM radio service only if it does not cause unacceptable interference to existing radio service. The *NPRM* proposed that current restrictions on 3rd-adjacent channel operations might be eliminated in order to establish an LPFM service and also sought comment as to whether 2nd-adjacent channel separations are necessary. The modification of our existing rules concerning channel separations has generated extensive comment, as well as extensive engineering studies. Our Office of Engineering and Technology has conducted its own engineering tests, and has comprehensively reviewed the studies submitted by commenters. The rules adopted today reflect our well-considered conclusion that the elimination of 3rd-adjacent channel separation requirements for LPFM stations will not cause unacceptable levels of interference to existing radio stations. We recognize that the elimination of restrictions on both the 2nd-and 3rd-adjacent channels would create many more opportunities for community-based LPFM stations, but, given the ambiguity in the record on this issue and our commitment to ensure that the new LPFM service does not unacceptably interfere with existing radio services or impede a digital future for radio broadcasting, we must proceed cautiously. Accordingly, we will impose 2nd-adjacent channel separation requirements on LPFM stations.

B. Classes of Service

7. *Background.* In the *NPRM,* the Commission proposed to authorize two classes of LPFM stations: (1) an LP1000 class which would be for primary stations operating with an effective radiated power (ERP) of between 500 and 1,000 watts and with an antenna height above average terrain (HAAT) up to 60 meters, and (2) an LP100 class which would be for stations operating on a secondary basis with between 50 and 100 watts ERP and with antennas up to 30 meters HAAT. We also sought comment on a very low power secondary LP10 service with an ERP between one and 10 watts. For each proposal, the Commission sought comment on the power levels associated with each class, the eligibility for such stations and the effects that each class may have on the full power radio service.

8. *Comments. LP1000.* Generally speaking, the proposal to authorize LP1000 stations generated the most controversy among the commenters. The topic was one of the few areas that generated opposition by both current full service broadcasters and low power radio proponents, although for different reasons. Commenters connected to the existing broadcast industry and the Association of Federal Communications Consulting Engineers (AFCCE) expressed their concerns regarding the large potential for interference posed by such operations. Additionally, AFCCE, as well as commenters that generally support the LP1000 proposal, expressed concerns that the service could preclude other lower powered LPFM stations. Most commenters supporting the LP1000 proposal proposed to limit LP1000 stations to rural areas or areas where sufficient spectrum could be found for both LP1000 and LP100 classes of service.

9. *LP100.* The proposal for LP100 stations generated the most positive comments. Commenters generally felt that LP100 stations would provide a reasonable coverage area while remaining small enough to continue focusing on local needs. From an engineering standpoint, various commenters, stated that the LP100 proposal appears ''reasonable'' and the proposed power range would allow the use of equipment, such as exciters and simple single bay antennas, that are already available. Not all comments were favorable, however. In general most negative comments shared the view stated by Disney that ''[a] secondary LP100 service is undesirable for two reasons: first, because it would be difficult to establish a procedural and enforcement framework that would adequately protect FM broadcasters from interference; and second, because LP100 stations would create only marginal new radio listenership given the overriding levels of interference they would receive from full service stations.''

10. *LP10.* The Commission's proposal for an LP10 service operating with 10 watts or less elicited both highly favorable support and vociferous opposition. Most support for the proposal came from individuals and public interest groups. The comments in favor of LP10 generally viewed such a service as suitable for school campuses and local community organizations that wish to serve small areas and do not have the resources to construct and operate a higher-powered facility. Furthermore, given what they saw as a smaller potential for interference, these groups considered LP10 as the best option for crowded urban areas where higher-powered facilities are not likely to fit. On the other hand, most comments opposing the LP10 proposal came from broadcasters and individuals concerned that the Commission would not be able to enforce its rules against the numerous LP10 stations and that widespread interference would result.

11. *Decision.* We will not authorize 1000 watt stations. We will, however, authorize LP100 and LP10 stations, in two separate stages. First, we will license LP100 stations. These stations generally will provide coverage appropriate to community needs and interests expressed in the record in this rule making. The Mass Media Bureau is delegated authority to issue an initial and subsequent public notices inviting the filing of applications for LP100 stations on dates consistent with this Order and processing requirements. After a period of time sufficient to process the initial LP100 applications, the Mass Media Bureau is authorized to open a filing window for applications for LP10 stations, which can also serve very localized community needs. We adopt this sequential process in order to provide the larger (100 watt) stations with their greater service areas the first opportunity to become established. Given that some LP10 stations can be sited where LP100 stations cannot, we expect that opportunities will remain for LP10 after the initial demand for LP100 stations has been accommodated. Additionally, our own resources will be better spent first advancing service to relatively greater areas.

12. However, the record, including comments from both current broadcasters and public interest groups who were opposed to stations as large as 1000 watts, convinces us that licensing such a service is not in the public interest. As argued by commenters, 1000 watt stations may pose a greater interference concern for existing broadcasters and are not necessary to meet the most pressing and widespread demand for service

expressed in the record. Moreover, LP1000 stations could have a significant preclusive effect on the licensing of LP100 and LP10 stations. Yet, these lower powered stations will permit many more opportunities for community-oriented service than would 1000-watt stations.

1. LP100 Service

13. LP100 stations will be authorized to operate with maximum facilities equivalent to 100 watts ERP at 30 meters (100 feet) HAAT and minimum facilities equivalent to 50 watts at 30 meters (100 feet). This would permit a maximum 1 mV/m contour (60 dBu) with a radius of approximately 5.6 kilometers (3.5 miles), subject to the radio environment. Depending on population density, such a station could serve hundreds or thousands of listeners. This service will allow LPFM licensees to broadcast affordably to communities of moderate size and interest groups that are geographically proximate, such as ethnic, professional, industry and student groups, and retirement neighborhoods. Spectrum rights and responsibilities for this service are addressed below.

2. LP10 Service

14. LP10 stations will operate at between one and 10 watts ERP and an antenna height of up to 30 meters (100 feet) HAAT. Such stations will produce a 60 dBu signal out to about 1.6 to 3.2 kilometers (1 to 2 miles) from the antenna site. Such stations will fit in some locations where LP100 stations cannot, due to separation requirements, and will provide groups with the opportunity to operate stations that reach smaller communities or groups with a common interest. Spectrum rights and responsibilities for this service are addressed below.

C. Nature of Service and Licensees

1. Noncommercial Educational Service

15. *Background.* In proposing the creation of a new LPFM service, the Commission set forth its goals of encouraging diverse voices on the nation's airwaves and creating opportunities for new entrants in broadcasting. We raised the question of whether the service should be noncommercial in nature. We noted that while mutually exclusive commercial broadcast applications are subject to auction, certain noncommercial stations are specifically exempted from our auction authority.

16. *Comments.* Of those commenters supporting LPFM, an overwhelming majority endorsed establishing it as a noncommercial service. Commenters stressed the diversity that would be created by a noncommercial service, and argued that noncommercial radio is the best way to serve local communities. Other commenters, however, argued that low-power FM licensees should be available to both noncommercial and commercial licensees.

17. *Decision.* We will establish LPFM as a noncommercial educational service. Our goals in establishing this new service are to create opportunities for new voices on the air waves and to allow local groups, including schools, churches and other community-based organizations, to provide programming responsive to local community needs and interests. We believe that a noncommercial service is more likely to fulfill this role effectively than a commercial service. Commercial broadcast stations, by their very nature, have commercial incentives to maximize audience size in order to improve their ratings and thereby increase their advertising revenues. We are concerned that these commercial incentives could frustrate achievement of our goal in establishing this service: to foster a program service responsive to the needs and interests of small local community groups, particularly specialized community needs that have not been well served by commercial broadcast stations. We believe that noncommercial licensees, which are not subject to commercial imperatives to maximize audience size, are more likely than commercial licensees to serve small, local groups with particular shared needs and interests, such as linguistic and cultural minorities or groups with shared civic or educational interests that may now be underserved by advertiser-supported commercial radio and higher powered noncommercial radio stations. We note that commenters addressing this issue favored establishing LPFM as a noncommercial service by a substantial margin, though some have argued that a commercial service could provide ownership opportunities for new entrants. While we have considered the entrepreneurial opportunities that low power radio stations might create, we nonetheless conclude that a noncommercial service would best serve the Commission's goals of bringing additional diversity to radio broadcasting and serving local community needs in a focused manner.

18. Establishing LPFM as a noncommercial service will have the added benefit of giving us additional flexibility to assign licenses for this service in a manner that is most likely to place them in the hands of local community groups that are in the best position to serve local community needs. As a general matter, where mutually exclusive applications are filed for initial commercial licenses or construction permits, the licenses or permits must be awarded by competitive bidding pursuant to 47 U.S.C. 309(j). Licenses for noncommercial educational broadcast stations, as described in section 397(6) of the Act, however, are not subject to competitive bidding. Accordingly, having decided to establish LPFM as a noncommercial service, we will require that LPFM licensees comply with the eligibility requirements of section 397(6) of the Act.

19. Section 397(6) of the Act defines ''noncommercial educational broadcast station'' as a station which:

(A) Under the rules and regulations of the Commission in effect on the effective date of this paragraph, is eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and which is owned and operated by a public agency or nonprofit private foundation, corporation, or association; or

(B) Is owned and operated by a municipality and which transmits only noncommercial programs for education purposes. Since the statute incorporates by reference the Commission's noncommercial eligibility rules, we must look to those rules in determining noncommercial eligibility under section 397(6) of the Act. The Commission's rules limit eligibility for noncommercial radio stations to nonprofit educational organizations that show that the station will be used ''for the advancement of an educational program.'' In applying this rule, the Commission has required that applicants be (a) a government or public educational agency, board or institution, or (b) a private, nonprofit educational organization, or (c) a nonprofit entity with a demonstrated educational purpose. We require that an applicant described in (a) or (b) have an educational program and demonstrate how its programming will be used for the advancement of that program. An applicant applying as (c) must specifically show (i) that it is in fact a nonprofit educational organization, (ii) that it has an educational objective, and (iii) how its programming will further that objective.

20. The requirement that NCE licensees provide programming that advances an educational objective may be satisfied by a variety of programs, including but not limited to

''instructional programs, programming selected by students, bible study, cultural programming, in-depth news coverage, and children's programs such as Sesame Street that entertain as they teach.'' We have also stated that ''in order to qualify as an educational station, it is not necessary that the proposed programming be exclusively educational.'' Given the latitude that entities have under our rules to qualify as NCEs, we do not believe that limiting eligibility for LPFM licenses to NCEs will unduly limit the range of groups that will be eligible to apply for LPFM licenses or the services that they can provide.

2. Public Safety and Transportation

21. *Background.* One appropriate use of LPFM stations is use by public safety or transportation organizations. Although the *NPRM* did not specifically raise this issue, a number of commenters proposed it.

22. *Comments.* We received a number of comments from public safety and transportation entities arguing that they would use LPFM stations to serve communities' need for public safety and traffic information.

23. *Decision.* The public safety and transportation commenters propose important uses for low power FM stations. LPFM stations could be used by state or local governments or other not-for-profit entities to provide traffic, weather, and other public safety information to local communities. The use of LPFM stations for public safety purposes will further our goal of better serving local communities. Certain of these entities already hold TIS or other broadcast licenses. We emphasize, however, that we will not exempt these licenses from the cross-ownership restrictions, described below, and will therefore require TIS licensees or other public safety or transportation licensees, to return their existing licenses upon the initiation of LPFM service. Thus, in addition to noncommercial, educational organizations, associations or entities as described above, public safety radio services used by state or local governments or not-for-profit organizations, as defined in 47 U.S.C. 309(j)(2)(A), will be eligible for LPFM licenses.

D. Eligibility and Ownership

24. In order to further our diversity goals and foster local, community-based service, we will not allow any broadcaster or other media entity subject to our ownership rules to control or to hold an attributable ownership interest in an LPFM station or enter broadcast related operating agreements with an LPFM licensee. Additionally, to foster the local nature of LPFM service, we are limiting eligibility to local entities during the *first two years* LPFM licenses are available. We are also adopting a significant local ownership preference to be applied in resolving mutually exclusive applications. After local entities have had an opportunity to apply for construction permits, we will permit applications by qualified non-local applicants. After the first two years, we will permit multiple ownership of LPFM stations nationally, but only up to a maximum of 10 LPFM stations over a phased-in period.

25. Throughout this discussion we use the term ''community'' in a manner different from our traditional use of the term. Here, we use the term to refer to the very small area and population group that will make up the potential service area and audience of an LPFM station. Given the very small nature of LPFM service contours and prospective audiences, we do not expect LPFM service areas to be coincident with traditional political boundaries that we use to define communities in other contexts, such as our allocations process.

1. Cross-Ownership Restrictions

26. *Background.* In the *NPRM,* the Commission tentatively concluded that strict cross-ownership restrictions would be appropriate for low power radio. We proposed to prohibit any person or entity with an attributable interest in a broadcast station from having an ownership interest in any LPFM station in any market. We sought comment on whether the proposed strict cross-ownership restrictions would unnecessarily prevent individuals and entities with valuable broadcast experience from contributing to the success of the LPFM service. We also asked for comment on whether broadcasters with an attributable interest in broadcasting stations should be allowed to establish an LPFM station in a community where they do not have an attributable broadcast interest. We proposed to prohibit joint sales agreements, time brokerage agreements, local marketing or management agreements, and similar arrangements between full power broadcasters and low power radio entities. We also sought comment on whether the cross-ownership restriction should be extended to prevent common ownership of LPFM stations with cable systems, newspapers, or other mass media.

27. *Comments.* Several commercial broadcasters, educational broadcasters and individuals propose that cross ownership be allowed. Some commenters propose that current broadcasters be allowed to apply for LPFM stations, but that they should be required to give up their current station license prior to initiating operations at the LPFM station. Others propose that full service station owners not be barred, so long as the LPFM station is in another market.

28. Most commenters, however, oppose cross-ownership of full-service stations and LPFM stations. Most commenters also support the Commission's proposal to prohibit arrangements between full service broadcasters and LPFM entities, such as joint sales and time brokerage agreements.

29. *Decision.* We will prohibit common ownership of LPFM and any other broadcast station, including translators and low power television stations, as well as other media subject to our ownership rules. *See:* 47 CFR 73.3555, 76.501.) Thus, no broadcaster or other media entity, or any party with an attributable interest in them, can hold any attributable ownership interest in an LPFM licensee. One of the most important purposes of establishing this service is to afford small, community-based organizations an opportunity to communicate over the airwaves and thus expand diversity of ownership—a purpose inconsistent with common ownership of LPFM stations and existing broadcast facilities or other media interests. Moreover, many of the commenters' remarks favoring cross ownership are directed to the establishment of the proposed LP1000 service. These arguments regarding efficiencies and economies and competitive standing for stations that might compete commercially, however, are less applicable to noncommercial educational LP100 and LP10 stations. Similarly, our own expressed concern that cross-ownership limits could retard the development of low power radio by excluding entities with broadcast experience is less pressing in the absence of commercial 1000 watt stations. We conclude that our interest in providing for new voices to speak to the community, and providing a medium for new speakers to gain experience in the field, would be best served by barring cross-ownership between LPFM licensees and existing broadcast owners and other media entities. This prohibition is national and absolute in nature, unlike our existing cross-media ownership rules. Thus, for example, a newspaper cannot have an attributable interest in any LPFM station, regardless of whether the newspaper and LPFM station are co-located. We believe our interest in

promoting diversity warrants such a strict approach.

30. We have also decided to prohibit operating agreements in any form, including time brokerage agreements, local marketing or management agreements, and similar arrangements, between full power broadcasters and LPFM broadcasters, or between two or more low power licensees. Many commenters strongly oppose allowing any form of operating agreement that would dilute new ownership in the low power service. We are concerned that such agreements too readily could undermine the strict cross-ownership restriction adopted by allowing an ineligible entity to program or manage an LPFM station. We see no harm, however, in permitting any existing licensee to apply for an LPFM station on the condition that it is otherwise qualified and it represents that it will divest its interest prior to commencement of LPFM operations.

2. Requirement That Applicant Be Community-Based

31. *Background.* In the *NPRM,* we sought comment on whether to establish a local residency requirement, although we were not inclined, at that time, to do so. We were concerned that a residency requirement would limit the pool of potential owners of low power stations and would deny opportunity to individuals and entities who resided in a location where no frequency is available, as there will not be low power frequencies available in every community. We also noted that we expected in the case of LP100s and LP10 stations, in particular, that the very nature of the stations would attract primarily local or nearby residents. We note that given our decision to restrict eligibility to noncommercial educational entities, the term ''residency'' is somewhat misleading. The issue now is whether we should limit applicants to entities based within the local community they wish to serve and, if so, how we should define whether or not they are community-based. Nonetheless, given that the *NPRM* and comments are cast in terms of residency, we will continue to use the term, but do so in the organizational or institutional sense noted here.

32. *Comments.* Most commenters support a requirement that LPFM licensees be locally based. They argue that local residents are more likely to be aware of issues of importance to the local community, and to gear their programming accordingly. On the other hand, many commenters oppose the imposition of a residency requirement. Some argue that a local residency requirement would be struck down under the standards set forth by *Bechtel v. FCC.* Some point out that a residency requirement is incompatible with a five- to ten-station national ownership cap.

33. *Decision.* We continue to be concerned about the potentially preclusive effect of a strict local ''residency'' requirement and do not believe that local sources are the only valuable sources of information and service. Nonetheless, this service is intended to respond to the highly local interests that are not necessarily being met by full-power stations. Furthermore, since LPFM will be a noncommercial educational service, we cannot rely on commercial market forces and business incentives to ensure that local needs are fulfilled. Given the small coverage of LPFM stations, and our intention that the particular needs and interests of these small areas be served, local familiarity is more significant than it might be for a station serving a larger area and population. We thus conclude, after consideration of the comments and on further reflection, that the disadvantages of imposing a requirement that applicants be community-based are outweighed by the benefits to be gained by maximizing the likelihood that LPFM stations are operated by entities grounded in the communities they serve. Accordingly, for the initial and subsequent windows opened within two years after the first filing window for LPFM service has been opened, all LPFM applicants must be based within 10 miles of the station they seek to operate. This means that the applicant must be able to certify that it or its local chapter or branch is physically headquartered, has a campus, or has 75 percent of its board members residing within 10 miles of the reference coordinates of the proposed transmitting antenna. We chose the 10-mile distance as proportionate to most stations' likely effective reach. We are concerned that a larger distance, in many areas of the country, could lead to ownership outside the bounds of the station's real community and the people they will actually serve. We are concerned that a smaller area would too severely and unduly restrict the opportunities presented by LPFM. An organization providing public safety radio services will be considered community-based in the area over which it has jurisdiction. Beginning two years after the first window for LPFM service has been opened, non-local applicants will be eligible to apply in subsequent windows for those classes of stations pursuant to public notices issued by the Mass Media Bureau. By this approach, we intend to make it more likely that local entities will operate this service. If no local entities come forward, however, we do not want the available spectrum to go unused.

34. We do not find convincing the argument made by some commenters that imposition of a local residency eligibility requirement here would pose the same legal problems as the ''integration of ownership and management'' factor formerly employed as a comparative criterion in the commercial broadcast service. While that comparative criterion was overturned as arbitrary and capricious in the *Bechtel* case, that case did not invalidate a preference for locally based applicants *per se.* Rather, it rejected a preference for a particular form of business organization—in which station owners worked more than a certain number of hours per week at their station—that had not been shown to provide superior service even though the preference had been used for many years. The preference for local licensees here, in contrast, rests on our predictive judgment that local entities with their roots in the community will be more attuned and responsive to the needs of that community, which have heretofore been underserved by commercial broadcasters. We believe that local residence should carry particular weight here because we envision LPFM as a uniquely local service designed to serve local community needs. We note that while the court invalidated the integration criterion in the Bechtel decision, it recognized that an applicant who is familiar with the community is likely to be aware of its special needs.

35. Furthermore, we believe that local roots are particularly important in a noncommercial educational service like LPFM. As noted above, we cannot rely on commercial market forces to ensure that LPFM licensees are responsive to local needs because they will be noncommercial entities providing noncommercial program services. Indeed, Congress and the Commission have long recognized the unique role played by local entities in providing noncommercial educational programming, and we have favored local entities in providing other noncommercial educational services.

36. Finally, we do not believe that our preference for local applicants here raises the concerns voiced by the court in *Bechtel.* The court was concerned in Bechtel that the integration preference elevated quantitative factors—the number of hours the station owners promised to work at the station—over arguably more important qualitative factors such as broadcast experience and

established local residence. In contrast, the community-based requirement that we adopt today does not rest on quantitative factors and is not based on promises of future conduct. Rather, we are adopting a simple, straightforward requirement that applicants be based in the local community. In addition, a primary concern underlying the court's decision was that there was no obligation for a successful applicant in the commercial broadcast service to adhere to its integration proposal, and there was no evidence indicating the extent to which licensees had done so in the past. In contrast, LPFM licenses will not be transferable, so we can be assured that a local entity that is awarded the license will continue to operate the station. For these reasons, we do not believe that the community-based requirement that we adopt today suffers from the problems identified by the court in the *Bechtel* decision.

3. National Ownership Limits

37. *Background.* In the *NPRM,* we also sought comment on the issue of a national multiple ownership cap. In particular, we asked whether a limit of five or ten stations nationally would provide a reasonable opportunity to attain efficiencies of operation while preserving the availability of the stations to a wide range of applicants and their essentially local character.

38. *Comments.* Comments on this issue are wide-ranging in their opinions. Some groups favor an absolute nationwide one-station-per-owner limit, arguing that a one-station-per-entity cap would distribute the low power stations as widely as possible and create the opportunity for the most diverse ownership. Some commenters support a less strict national cap, arguing that some national cap will promote greater diversity in the service, but that a one-per-owner limit is excessively restrictive. Several commenters agree with the Commission's suggested range of five to ten stations, nationally. Finally, some groups oppose any type of national cap.

39. *Decision.* We are adopting a staged rule, which will initially foster diversity by disallowing any common ownership of LPFM stations, but eventually permit the accumulation of additional stations where local applicants fail to come forward. This will increase the service available to the public and permit the efficiencies that can be achieved by multiple ownership where there is not an immediate local interest in operating a station. To achieve this, we will require that for the first two years of LPFM service, any one entity may own only one LPFM station. The two year-long period will begin on the day that the first LP100 filing window opens for applications. After the first two years, to bring into use whatever low power stations remain available but unapplied for, we will allow one entity to own up to five stations nationally, and after the first three years of this service, we will allow an entity to own up to ten stations nationwide.

40. In addition to ensuring the fullest use of LPFM spectrum in the long term, we believe that this tiered system will balance the interests of local entities, which we expect to be the first entrants in this service, and national noncommercial educational entities, which may be interested in additional local outlets to increase their reach and to achieve certain efficiencies of operation. We note the attribution exception for national or other large entities with local community-based chapters, discussed below in the attribution section, which will allow the local chapters to apply as individual entities and thus not be constrained by this national ownership provision.

41. In the *NPRM,* we tentatively concluded that Section 202 of the Telecommunications Act of 1996 (the 1996 Act) eliminating national multiple ownership restrictions for existing full power commercial stations does not apply to a new broadcast service. Given our decision to limit LPFM to noncommercial educational broadcasters, section 202 clearly does not apply to LPFM and we need not discuss this issue further.

4. Local Ownership Limits

42. *Background.* In the *NPRM,* we proposed to prohibit entities from owning more than one LPFM station in the same community. We were concerned that it would be difficult to achieve wide new entry into the broadcasting market and enhance diversity if more than one low power station in an area were under common control. At the same time, we sought comment on whether such a restriction would inappropriately deny to LPFM licensees the efficiencies achievable through multiple ownership, and on what cooperative arrangements might facilitate the development of LPFM service without unduly diluting its benefits. We also sought comment on the appropriate definition of ''market'' or ''community'' for the purposes of LPFM service.

43. *Comments.* Many commenters agree strongly with the Commission's proposal that LPFM ownership should be limited to one station per community. They argue that allowing multiple ownership in a local area would reduce the number and diminish the diversity of new entrants. Most contend that the demand for stations from local owners will be plentiful and that there will be no need to allow outside owners to own low power stations. A few commenters address the issue of the definition of ''community'' for the purpose of determining the limitations of local ownership but none offered specific alternative definitions. Some commenters expressed concern that the current Commission definition of a ''community'' is ambiguous and therefore subject to inequitable application.

44. *Decision.* We will restrict local ownership and allow one entity to own only one LPFM station in a ''community.'' We concur with those commenters who expressed concern over the potential for diminution of diversity in ownership if one entity were allowed to control more than one station in their community. The comments opposing the restriction seem directed to and more appropriate in the context of the proposed 1000 watt service, which could have operated commercially. The primary benefit of local multiple ownership, increased efficiency, is less compelling with respect to LP100 and LP10 noncommercial educational stations, particularly as compared to the benefit to a community of multiple community-based voices. As noted, we use the term community in this *Report and Order* to refer to the very small population group that makes up a station's potential audience. For purposes of the local ownership limits, we will require that no entity own or have an attributable interest in two or more LPFM stations located within 7 miles of each other. That is, to comply with our local ownership limits, the antennas of commonly-owned stations must be separated by at least seven miles. We believe seven miles is appropriate given the approximately 3.5 mile signal reach of LP100 stations. Although the signal reach of LP10 stations is smaller, for the sake of simplicity we will apply the seven-mile ownership separation to both classes of service.

45. In the *NPRM* we noted that section 202 of the 1996 Act permitted significant local multiple ownership of full power commercial radio stations but questioned whether this standard would apply to a new low power service. Our decision here, however, to limit LPFM stations to noncommercial educational service renders this question moot. As discussed above regarding the national multiple ownership issue, section 202, by its

terms, does not apply to noncommercial stations.

46. We note that the attribution exception for local chapters of national entities, discussed in the next section, will allow local chapters to apply as individual entities and thus avoid the bar that the national ownership rules would otherwise impose.

5. Attribution

47. *Background.* Given the significance we have accorded the ownership of LPFM stations, the strict cross-and multiple-ownership rules and the community-based eligibility and selection criteria we are adopting, determining who ''owns'' or constitutes a low power radio applicant or licensee is critically important. In the *NPRM*, we sought comment on what interests or relationships should be attributable in this regard.

48. *Comments.* Comments on attribution vary widely. Some commenters express concern that if the existing attribution rules were applied to these stations, some entities with large national organizations and small chapters would be unable to hold multiple licenses even though they maintain a local presence and would provide community-oriented programming. Other commenters propose that attribution rules be waived in the case of accredited educational institutions, so that they can hold a full power station and also an LPFM station.

49. *Decision.* We will apply rules similar to the existing commercial attribution rules to determine a licensee's compliance with the ownership limits set forth above. Because many of the entities that will hold LPFM licenses will be non-stock corporations (or other non-stock entities), we will attribute the interests of the applicant, its parents, its subsidiaries, their officers and members of their governing boards. If an entity that holds an LPFM license does have stock, then the existing attribution rules will apply and voting stock interest of 5% or more will be attributable unless the investor is passive in nature, in which case voting stock interests of 20% or more will be attributable. Partners and non-insulated limited partners are attributable, as are officers and directors. Non-voting stock and debt are not attributable unless they satisfy the ''equity-debt-plus'' standards set forth in our recent attribution order. Thus, for example, if a full-power broadcaster in a community were to invest in an LPFM licensee in that same community and the investment accounted for more than 33% of the LPFM's total capitalization, the investment would be attributable and would violate the cross-ownership ban discussed above. Similarly, if a director of the same full power broadcaster were to act as an officer of the LPFM, the director would be attributed with both stations and would violate the ban. Consistent with the existing commercial attribution rules, however, an exception will apply to certain officers and directors of the parent of an LPFM applicant or licensee. Such an officer or director may hold otherwise attributable interests in a broadcast licensee or other media entity subject to our ownership rules without making the LPFM applicant ineligible, provided the duties and responsibilities of the officer or director are wholly unrelated to the LPFM station and the officer or director recuses himself or herself from consideration of any matters affecting the LPFM station. This exception will avoid making ineligible entities that will serve the purposes of this service well, such as universities or schools, which may have large and diverse board membership, while protecting against control of an LPFM licensee by ineligible media owners. For the same reason, in the LPFM context we will extend the exception to officers and directors of the LPFM applicant or licensee itself, if that entity is a multifaceted organization, such as a university, and the duties and responsibilities of the officer or director are wholly unrelated to the LPFM station and the officer or director recuses himself or herself from consideration of any matters affecting the LPFM station. We emphasize that these exceptions are narrow in scope. An individual holding an attributable media interest may not act as an officer of the LPFM station, nor function in any other attributable role.

50. We will, moreover, include an attribution exception for local chapters of national or other large organizations. In the event that a local chapter can demonstrate that it: (1) Is separately incorporated, and (2) has a distinct local presence and mission, the local chapter can apply for a license in its own right and the national entity's ''ownership'' will not be attributed to it. In order to meet this standard, the local entity must be able to show a significant membership within the community, as well as a local purpose that can be distinguished from its national purpose. For example, the general purpose of raising awareness of the toxic waste problem in the United States would not suffice, but raising awareness of the toxic waste problem in particular local areas would meet the local purpose standard.

6. General Character Qualifications and Unlicensed Broadcasters

51. *Background.* In the *NPRM*, we generally proposed to apply the same standards for character qualification requirements to all LPFM broadcasters as we do to full power broadcasters. The Commission asked if commenters saw any reason to distinguish between full and low power radio licensees for this purpose. In addition, we sought comment on whether to disqualify unlicensed broadcasters who once violated or who still are violating Commission rules. We sought comment on whether the Commission should adopt a middle ground and accept applications from parties who have broadcast illegally, but who either (1) promptly ceased operation when advised by the Commission to do so, or (2) voluntarily ceased operation within ten days of the publication of the *NPRM* in the **Federal Register**.

52. *Comments.* Many individuals insist that without radio ''pirates,'' LPFM would not have been created. Others, such as Amherst and UCC, et al., support the middle ground set forth in the *NPRM,* saying that it is most fair to the interests of future low power broadcasters and to the public. Many commenters believe that anyone who has operated illegally should not be eligible for a license. Some object to restricting parties with an interest in a broadcast station from owning an LPFM station, but allowing ''pirates'' to own them.

53. *Decision.* We have decided, as we proposed, to apply the same character qualification requirements to low power station licensees as we currently apply to full power licensees. The Commission's character policy is underpinned by our interest in a licensee's truthfulness and reliability. We have a critical need to ascertain whether a licensee will in the future be forthright in its dealings with the Commission and operate its station in a manner consistent with the requirements of the Communications Act and the Commission's rules and policies. No commenter showed a reason to distinguish between full and low power broadcasters on this basis, and we do not believe one exists.

54. The most significant specific question that character concerns raise in the context of this proceeding, as discussed in the *NPRM,* is how past illegal broadcast operations reflect on that entity's proclivity ''to deal truthfully with the Commission and to comply with our rules and policies,'' and thus on its basic qualifications to hold a license. We are persuaded to

adopt our original proposal and accept a low power applicant who, if it at some time broadcast illegally, certifies, under penalty of perjury, that: (1) It voluntarily ceased engaging in the unlicensed operation of any station no later than February 26, 1999, without specific direction to terminate by the FCC; or (2) it ceased engaging in the unlicensed operation of any facility within 24 hours of being advised by the Commission to do so. Applicants will be required to make such certifications as part of their applications for an LPFM station. Such certifications will be made with respect to the applicant as well as all parties to the application (*i.e.,* any party with an attributable interest in the applicant). Submission of false or misleading certifications will subject the applicant to enforcement action including fines, revocation of license and criminal penalties.

55. Contrary to some commenters arguments, this rule does not unconstitutionally infringe on the First Amendment rights of unlicensed broadcasters. Disqualification under this rule is based solely on lack of compliance with statutory and regulatory requirements. All parties should note, however, that as licensed broadcasters, ignorance, whatever its cause, is not considered an excuse for violation, and full compliance with our rules will be required. Moreover, as implied by the provisions of the *NPRM*, the illegality of unauthorized broadcasting must now be presumed to be well-known, and any unlicensed broadcast operation occurring more than 10 days after the *NPRM* was issued will make the applicant ineligible for low power, full power, or any other kind of license and will be subject to fines, seizure of their equipment, and criminal penalties.

E. Technical Rules

1. Spectrum for Low Power Radio

56. *Background.* In the *NPRM*, the Commission stated that it did not intend to allocate new spectrum for a low power radio broadcasting service. The utilization of new spectrum would require listeners to purchase new equipment to receive the service, which would significantly delay the benefits of the service to the public. We proposed to authorize low power radio stations within the FM band only. This determination was based partly on the extent of congestion within the AM band, with numerous existing stations experiencing significant interference. Furthermore, we recognized that low power AM stations were capable of causing significantly higher levels of interference as a result of AM signal propagation characteristics. With regard to the use of the FM band, we concluded that the large number of existing FM stations precluded us from designating any specific frequencies for LPFM service, as no such channels are available throughout the country. Thus we sought comment on whether we should allow LPFM stations to operate throughout the entire band or restrict the reserved portion of the FM band (Channels 201–220) for noncommercial educational (NCE) stations. We also contemplated that low power radio stations would desire to use auxiliary broadcast frequencies, where available—for example, for studio-to-transmitter links and transmissions of remote broadcasts—and sought comment in this regard.

57. *Comments.* No commenters specifically supported the allocation of new spectrum for the proposed service. Many commenters agreed that existing interference within the AM band and the relative complexity of AM facilities should preclude consideration of a low power AM service. Some commenters, however, argue that an AM low power station should be an option in areas where the FM spectrum is too crowded to permit new stations. With regard to the FM band, most commenters support the view that the reserved band should continue to be reserved for NCE use only. However, several other commenters are particularly concerned that the introduction of numerous new stations in the reserved band would potentially increase interference to existing stations, especially in areas beyond their protected contours. At the same time, other commenters expressed the desire to allow NCE low power stations throughout the FM band.

58. *Decision.* We will authorize low power radio stations throughout the FM band, where the stations will fit, but not in the AM band. Although FM band crowding may preclude or limit LPFM opportunities in certain markets, we are not persuaded that the creation of an AM low power radio service is warranted. We note that we are adopting minimum distance separations between LPFM and full-service stations based upon the assumption that full service stations operate with maximum height and power for their class. Therefore, an LPFM station would generally provide greater protection to stations operating in the reserved band than that afforded to them by other full service stations, for which station facilities are spaced more closely on the basis of the contour protection methodology. Because LPFM stations will be licensed throughout the FM band, they will not be concentrated in the reserved portion of the FM spectrum. We note, however, that LPFM stations, regardless of their location in the FM band, are reserved to qualified NCEs. We will apply the same interference protection and other technical standards for LPFM operations in the reserved and nonreserved bands. This will facilitate application processing and uniform LPFM technical operating requirements.

59. In view of their relatively smaller service areas, we believe that most LPFM stations will co-locate program origination and transmission facilities. As a result, these stations would not require studio-to-transmitter links (STL) between these facilities. However, we will not foreclose LPFM operators the use of broadcast auxiliary frequencies used by full-service radio stations for this purpose. LPFM stations may also desire to air programming relayed from a remote location, such as an athletic event, or in connection with news gathering. Generally, we will permit entities authorized to operate LPFM stations to use remote pickup frequencies and radio broadcast auxiliary frequencies in the manner in which full-service stations use these frequencies, pursuant to the technical rules and procedures given in subparts D and E of part 74 of our rules. However, we will require that LPFM operations on auxiliary frequencies be secondary to that of full-service broadcast stations and other primary users, given the congestion of frequency use in some locales. We note that TV auxiliary frequencies are licensed to low power TV stations on this basis. An entity seeking to operate an LPFM station may apply for broadcast auxiliary license only after it has been authorized to construct the LPFM station.

2. LPFM Spectrum Rights and Responsibilities

60. *Background.* In the *NPRM*, we raised issues regarding the spectrum priority of the contemplated classes of LPFM service. We recognized that our resolution of these issues would affect where LPFM stations could locate and the stability of their operations. Additionally, LPFM interference protection rights and responsibilities could affect existing and future FM radio service. The *NPRM* proposed a 1000-watt primary service and a 100-watt secondary service. It sought comment on a 10-watt class of LPFM station that would be secondary to all other FM radio services. As proposed, LP100 and LP10 stations would not be permitted to interfere within the protected service contours of existing

and future primary stations and would not be protected against interference from these stations. We sought comment on whether LP100 stations should be permitted to select channels without regard to interference received and on the extent to which LP100 stations should protect FM translator and booster stations.

61. *Comments:* Given our decision not to create a 1000-watt LPFM station class, this summary is limited to the issue of spectrum priorities for LP100 and LP10 stations. The comments were divided on whether LPFM stations should have a primary or secondary regulatory status. Several commenters supported primary status for all LPFM stations, mainly to help ensure their survival. Some commenters supported a modified form of primary status for LPFM. Other commenters, including some broadcast licensees, supported a secondary status for LPFM stations.

62. *Decision.* In crafting interference protection rights and responsibilities for an LPFM service, we seek to balance our vital interest in maintaining the technical integrity of existing radio services with our desire to create a supple and viable community-oriented radio service. First and foremost, we must require that new LPFM stations protect radio reception within the service areas of existing full-service stations, as well as the existing services of FM translator and booster stations. Second, LPFM stations, with their much smaller service areas and fewer service regulations, should not prevent FM stations from modifying or upgrading their facilities, nor should they preclude opportunities for new full-service stations. Additionally, LPFM applications will be required to protect vacant FM allotments. Subject to these constraints, however, we want to foster a stable and enduring LPFM service. Once an LPFM station is built and operating, we wish to permit it to continue operating on its channel, wherever possible, as the radio environment changes around it. We want to minimize, to the extent possible, the situations in which we would require an LPFM station to change its channel or cease operating. This measure of stability, we believe, would assist LPFM station applicants or operators in obtaining financing to construct and operate stations and to better serve their communities. It may also create an incentive for the operation of a first local radio station in many communities or radio service that would be responsive to other unmet needs. We believe the approach set forth below appropriately balances the above objectives.

63. *Protection to existing FM radio services:* Applicants for new or modified LP100 or LP10 facilities will be required to meet minimum station separation distances to protect the service contours of authorized commercial and noncommercial FM stations of all classes, including Class D. In the same manner, they will be required to protect the existing service of FM translator and booster stations and LP100 stations. We will also require LPFM applicants to protect full-service FM, FM translator and LP100 facilities proposed in applications (for example, FM minor change applications) filed before a public notice announcing an LPFM application filing window. Applications filed after the release date of an LPFM window notice will not be protected against LPFM applications filed in that window. However, full-service applicants will not be required to protect the facilities proposed in LPFM applications. We believe this approach fairly balances the interests of full-service and LPFM applicants. LPFM station proposals to operate on channels 201–220 will also be required to protect television stations operating on TV Channel 6. Applicants for LP100 stations will not be required to protect authorized LP10 stations or LP10 application proposals, given the relatively smaller service areas of LP10 stations.

64. The extent of interference protection from LPFM stations to existing FM, LPFM and FM translator and booster service generally will be that afforded by minimum station separation requirements. These were designed to provide the same degree of interference protection that full-service stations provide each other. We have added a 20-kilometer buffer to the separations for protecting co-channel and first adjacent channel full-service stations. This buffer will help to protect FM radio facilities that were modified or upgraded in a manner that would create a short-spacing with an operating LPFM station. LPFM stations will not be required to eliminate interference caused to FM stations by their lawful operations. They will, however, be required to eliminate interference caused by operations that violate the terms of the station's authorization or the Commission's Rules; for example, radiation of excessive emissions outside of the station's authorized channel. LPFM station operators will also be required to respond to complaints of ''blanketing'' interference. They will also be subject to international agreements regarding the elimination of interference to primary Canadian or Mexican broadcast stations. Until these agreements are modified, we believe it is appropriate to apply to LPFM stations the international provisions applicable to FM translators, which operate at comparable power levels.

65. *LPFM rights and responsibilities with respect to subsequently modified, upgraded or new full-service FM stations.* We are not adopting for the LPFM service many of the regulations applicable to full-service stations; for example LPFM stations will not be required to have a main studio. LPFM stations also will service much smaller areas than full-service stations. For these reasons, we do not believe that an LPFM station should be given an interference protection right that would prevent a full-service station from seeking to modify its transmission facilities or upgrade to a higher service class. Nor should LPFM stations foreclose opportunities to seek new full-service radio stations. Accordingly, operating LPFM stations will not be protected against interference from subsequently authorized full-service facility modifications, upgrades, or new FM stations. Because we will not protect LPFM from future FM facilities, we will not require LPFM applicants to meet minimum distance separation requirements to protect their service areas against interference received. However, as a guide to LPFM applicants, the attached rules includes minimum station separation distances necessary to protect an LPFM station's 60 dBu contour.

66. We expressed our desire to provide a measure of stability to operating LPFM stations. For this purpose, we will permit LPFM stations to continue operating even though they would cause interference within the protected service contours of a subsequent authorized FM service, including new stations and facilities modifications or upgrades of existing stations. In such situations, the LPFM operator would decide whether interference received to its service would permit the station to continue operating on its channel. However, we must make one exception to this policy. FM stations have a core responsibility to service their principal communities. Therefore, we will not permit an operating LPFM station to cause interference within a commercial or NCE FM station's 3.16 mV/m (70 dB) contour. This issue can only arise in connection with a subsequently filed full-service new station or modification application. If grant of such an application would result in predicted interference within the 3.16 mV/m (70 dBu) contour of the proposed station,

the affected LPFM station will be provided an opportunity to demonstrate that interference is unlikely to occur within this contour due to, for example, terrain shielding. If the LPFM station fails to make a sufficient showing, it will be directed to cease operations upon the commencement of program tests by the commercial or NCE FM station.

67. We recognize that actual interference within the 3.16 mV/m contour might still be possible where the LPFM station has demonstrated that it is unlikely. In these circumstances, a complaint of actual interference must be served on the LPFM station and filed with the Commission, attention Audio Services Division. The LPFM station must suspend operations within twenty-four hours of the receipt of a complaint unless the interference has been eliminated by the application of suitable techniques and to the satisfaction of the complainant. An LPFM station may resume operations only at the direction of the Commission. If the Commission determines that a complainant has refused to permit the LPFM station to apply remedial techniques that demonstrably will eliminate the interference without impairment of the original reception of the full-service station, the licensee of the LPFM station will be absolved of further responsibility. As a practical matter we believe that in many cases involving FM station modifications or upgrades, interference to new or expanded areas will be offset by the conservative separation distances met by the LPFM station when it was initially authorized, particularly because of the 20-kilometer interference protection buffer.

3. Minimum Distance Separation Requirements

68. *Background.* The *NPRM* tentatively concluded that minimum distance separation requirements for LPFM stations would provide the most efficient means to process a large number of applications while ensuring the overall technical integrity of the FM service. We proposed minimum spacings to protect full-service station operation on the same channel, first-adjacent channel and intermediate frequency (IF) channels. We proposed to exclude third-adjacent channel protection and questioned the need for second-adjacent channel spacing requirements. We noted that the use of a contour overlap methodology could significantly delay the implementation of the LPFM service because it would require substantial preparation on the part of applicants and the Commission and would increase the processing burden on the staff. The *NPRM* included spacing tables for the proposed LPFM classes based on the interference protection ratios that underlie full-service radio separations and the assumption that stations operate at the maximum height and power for their station class. We sought comment on the accuracy of the specific values listed in these tables. In addition, we requested comment as to whether alternate approaches, including contour overlap methodology and/or more sophisticated terrain modeling programs, should be used at a later time, based on our initial experience in authorizing LPFM service.

69. *Comments.* No comments challenge any of the specific values listed in our proposed minimum distance separation tables. However, one suggests an alternate methodology based upon a full service station's 44 dBu F(50,50) protected service contour, instead of the 60 dBu contour that defines the protected service contours for all NCE and many commercial stations. Although it does not calculate distance separations, some commenters argue that our separation requirements should protect actual service areas beyond protected contours. Several commenters urged either the use of a contour overlap methodology or a combination of contour overlap and separation requirements in order to accommodate the licensing of additional LPFM stations.

70. *Decision.* We recognize that a distance separation methodology will preclude new LPFM stations in some areas. However, we are not persuaded that the potential benefit of some additional stations is substantial enough to warrant the preparation of more complex and costly engineering exhibits based on contour protection and the resulting delays in the authorization of LPFM service. Therefore, we are adopting minimum separation requirements for the LPFM service as the means of protecting full service commercial and noncommercial educational stations. We also adopt spacing rules to protect FM translator stations and other LPFM stations, as well as a spacing table for LPFM stations operating on Channels 201 through 220 with respect to protection of TV Channel 6. As we proposed in the *NPRM,* we will not establish minimum separations between LPFM stations that operate two or three channels apart. Special case spacing tables are also being adopted for Puerto Rico and the U.S. Virgin Islands. Additionally, appropriate spacings will be used for the approximately 20 ''grandfathered superpowered'' stations operating in the reserved band. Superpowered stations will be protected under the distance separations for the class of station that most closely approximates its facilities. This determination will be made based upon the stations 1 m V/m reference contour and the procedures for determining class listed in § 73.211. LPFM applicants should be mindful of the fact that the minimum separation distances being adopted will not protect LPFM stations against interference from the full service stations, but are designed to prevent the LPFM station from causing interference to the protected service areas of full-service FM and other protected stations. However, as a guide to LPFM applicants, we are including in the rules a table giving the minimum separations necessary to avoid interference within the LPFM station service areas.

71. The minimum distance separation requirements that we adopt here for LPFM stations do not apply to full-service stations and FM translators. To prevent subsequently filed FM translator stations from causing interference to existing LPFM stations, we will expand the current FM translator interference protection rules to include a requirement that previously authorized LPFM stations be protected. As noted, we will permit a full service station to modify its facility in a manner that reduces these separations to LPFM stations. However, in such cases we generally will not require the LPFM station to cease operation. Instead, the affected stations will have to bear any interference caused by facilities changes, such as an FM transmitter site move. However, so as to reduce the potential impact on the affected stations, the spacing rules we adopt today include a 20 km ''buffer'' for co-channel and first-adjacent channel LPFM-to-full-service-FM stations. This additional separation is included for two reasons. First of all, we recognize that the FM band is not static. For example, broadcast stations often change transmitter sites to provide better service to their communities and service areas. Same-station-class transmitter site moves are generally less than 20 km from the original site. Therefore, inclusion of the 20 km buffer spacing allows full-service stations room to move while also reducing the potential impact on existing LPFM stations. Second, and equally important, the additional separation affords the LPFM station an increased likelihood that its operation would not cause interference within a full service station's community of license. This additional 20 km separation will apply

only to the initial establishment of the LPFM station. Subsequent site moves by the LPFM station would either need to meet this distance separation requirement, or if the existing spacing were already less than this amount due to a prior site move by a full service station, the spacing could not be less than the currently existing separation.

72. *International Coordination Provisions.* We are also adopting provisions for LP10 and LP100 stations which lie within 320 km of the Canadian or Mexican borders, consonant with existing international agreements between the respective countries. We will apply the existing FM translator rule, 47 CFR 74.1235, and current international coordination procedures to LPFM stations in these areas. In the rules, we include distance separation tables that were intended to ensure compliance with the appropriate international agreements. We will adopt these tables to the extent that foreign stations are provided the appropriate protection. We have also derived similar tables for LP10 stations. We will only accept LPFM proposals that meet these distances. Such proposals will be coordinated as required by the pertinent agreements. In addition, LP10 and LP100 applicants in the U.S. Virgin Islands should be aware that international coordination may be required with the British Virgin Islands in some instances.

4. Second and Third Adjacent Channel Protection

73. *Background.* In the *NPRM* we sought comment on the interference protection criteria to be used to govern the authorization of low power radio services. We stated that low power stations would be subject to existing co-channel and 1st-adjacent channel protections but that to the extent possible we were inclined to authorize low power service without any 2nd- and 3rd-adjacent channel protection standards. We stated our belief that a strong case could be made for not requiring 3rd-adjacent channel protection to or from any of the contemplated classes of LPFM stations. We indicated that such an approach would entail little risk of interference to existing radio service. We noted that areas of potential interference to a full power station would be very small and occur only in the immediate vicinity of the low power transmission facility. We further indicated that such interference would generally only occur if the low power station were located at, or very near, the outer edge of the full power station's service contour where the full power station's signal is the weakest. We noted that 3rd-adjacent channel protection was eliminated for certain grandfathered and short-spaced full power stations in 1997. On balance, we stated that creating opportunities for a new LPFM service should outweigh any small risks of interference to and from LP1000 and LP100 stations.

74. With regard to 2nd-adjacent channel protection, we noted that ''grandfathered'' short-spaced FM facilities were permitted to modify their facilities without regard to 2nd- and 3rd-adjacent channel spacings during the period from 1964 to 1987, and from 1997 to the present. We indicated that no interference complaints were received as a result of those modifications and found that the small risk of interference was outweighed by improved service. Similarly, we noted that we have been willing in the past to accept small amounts of potential 2nd- and 3rd-adjacent channel interference in the noncommercial FM service where such interference is counterbalanced by substantial service gains. We sought comment on the state of receiver technology and the ability of receivers to operate satisfactorily in the absence of 2nd-adjacent channel protection. We also sought comment on the impact of eliminating 2nd-adjacent channel protection on the possible conversion of existing analog radio services to a digital mode, in particular with regard to in-band-on-channel (IBOC) technology. In this regard, we noted that one IBOC proponent, suggested that 2nd-adjacent channel signals from analog FM stations in the existing radio environment would not pose an interference threat to its digital IBOC signal.

75. *Comments.* Technical studies of FM receivers were filed in response to the *NPRM* by Consumer Electronics Manufacturers Association; by National Association of Broadcasters; and by National Lawyers' Guild, Committee on Democratic Communications. In addition, the Commission's Office of Engineering and Technology conducted a receiver study and placed it in the record of this proceeding. Supplementary findings and critiques were filed with reply comments.

76. *Decision.* We find that the record in this proceeding, including the technical data and other studies submitted, supports a conclusion that any risk of interference from LPFM stations of 100 watts or less is small and, on balance, is outweighed by the benefits of this new service. We conclude that it is not necessary to apply 3rd-adjacent channel protection requirements to or from such stations. We believe that 100-watt or lower LPFM stations operating on 3rd-adjacent channels will not result in significant new interference to the service of existing FM stations. Nor do we believe such operations are likely to have an adverse effect on digital IBOC signals.

77. With regard to 2nd-adjacent channel protection requirements, it appears that the risk of interference from LPFM signals on 2nd-adjacent channels may be somewhat higher. We find that this would also be true with regard to LPFM stations at power levels higher than 100 watts and antenna heights higher than 30 meters. Therefore, we will retain 2nd-adjacent channel protection requirements.

5. Other Technical Standards and Provisions

78. *Background.* In the *NPRM,* we sought comment on which part 73 technical operating requirements for full-service stations should be applied to LPFM stations. In general, most commenters stated that, although some requirements must remain to ensure a quality service, the LP100 and LP10 stations should be held to less stringent requirements than full service stations. While we do not want to overly burden LPFM operators, we nevertheless believe that the technical rules set forth below should apply to the LPFM stations. By doing so, we will not only facilitate technically sound LPFM operations and the use of available equipment, but will permit LPFM stations to engage in services such as those obtained through the multiplexing of FM subcarriers. There are some requirements applicable to full-service stations which we believe can be relaxed or not applied. Accordingly, we will apply certain rules to LP10 stations that apply to existing stations that operate with ten watts transmitter power output (TPO) or less. The following paragraphs set forth the principal technical requirements and provisions for LPFM stations. These technical matters were generally non-controversial to parties who filed comments in this proceeding. Other technical requirements for LPFM stations are given in the rules.

79. *Power/Height restrictions.* Several commenters expressed the desire to operate facilities at heights in excess of those specified as the maximum/minimum facilities for the class. This would enable stations to use existing structures at sites where the localized elevation is such that the 30 meter HAAT would be exceeded regardless of the height of the structure. One commenter, believes we should impose strict maximum height restrictions on LPFM stations since, due to the nature of the Commission's F(50,10)

interference prediction curves, equivalent 1 mV/m (60 dBu) reference contours do not always guarantee proportionally sized interfering contours. We will allow LPFM stations to exceed the class-defined upper height restrictions as long as there is an offsetting decrease in the station's effective radiated power. For this purpose, we will authorize equivalent height and power combinations to produce the 60 dBu contour generated by the maximum and minimum permitted facilities for the LP100 and LP10 stations; e.g., the maximum LP100 facilities of 100 watts and 30 meters produce a 60 dBu contour at a distance of 5.6 km.

80. We recognize that computing a station's HAAT requires access to terrain database and numerous calculations. Therefore, in order to streamline the application process, the staff will utilize a computer program to calculate the antenna HAAT based upon information provided by the LPFM applicant (the coordinates of the proposed antenna, the site elevation above mean sea level, and the antenna height above ground level (AGL)). If the calculated HAAT is less than or equal to 30 meters, the LPFM station will be authorized to operate with any ERP within the maximum and minimum limits for its class. If the HAAT is calculated to exceed 30 meters, the permit will specify maximum and minimum ERP values that would produce the reference 60 dBu contours.

81. *Directional antennas.* Under our current rules, full service FM stations may specify directional antennas to avoid interference to other stations. Such facilities are subject to several strict installation and pattern requirements (*see* 47 CFR 73.316). Processing these applications is staff intensive. Construction permits for directional facilities generally contain numerous conditions. Since we are relying on a minimum distance separation methodology—rather than a contour-based approach—to provide interference protection, we see no need for stations to employ directional antennas. Accordingly, to simplify applicant requirements and facilitate application processing and ensure that service can be implemented as expeditiously as possible, we will not authorize directional antennas for LPFM stations.

82. *Transmission standards.* The *NPRM* asked whether different transmission standards should be employed for an LPFM service; for example, whether the bandwidth could be reduced from 200 kHz to some smaller value as a means of reducing the potential interference from LPFM stations. To ensure technically sound station operations, we have decided to apply to LPFM several transmission standards presently in use for commercial and noncommercial educational FM stations. In most cases, these standards will be met through the use of type certified equipment without need for further adjustment by the LPFM licensee. LPFM stations will be required to adhere to the 200 kHz channel bandwidth applicable to full service stations, as well as the out-of-channel signal attenuation requirements in 47 CFR 73.317, the center frequency drift limits in 47 CFR 73.1545(b), and the limits on modulation in 47 CFR 73.1570(a) and (b). In addition, LPFM stations may, at their option, engage in monophonic or stereophonic broadcasting. LPFM stations may also transmit additional information via inaudible subcarriers during those periods when the audible FM signal is on the air.

83. *Antenna polarization.* We will permit LP10 and LP100 stations throughout the FM band to use horizontally polarized, vertically polarized, or circularly or elliptically polarized antennas, as desired by the applicant. We note that vertical-only polarized antennas have been used in the noncommercial educational FM service to protect reception of TV Channel 6 for nearly 15 years now, without adverse impact. This will afford LPFM stations a wider selection of antennas for use at LPFM stations.

84. *Protection of AM radio radiation patterns.* LPFM applicants should also be aware that antenna structure construction within 3.2 km (2 miles) of a directional AM station or 0.8 km (0.5 miles) of a nondirectional AM station will subject the LPFM station to the requirements of 47 CFR 73.1692. This section requires the affected AM station to make before and after measurements of its installation to insure that the new antenna structure does not aversely affect the signal pattern through reflections of the AM signal produced by the new structure. The LPFM applicant is financially responsible for conducting the measurements and any corrective measures that may need to be undertaken. The measurements can be quite expensive to conduct, and correction even more so. Therefore, we encourage LPFM applicants to locate the antenna more than 3.2 km from any directional AM station, or more than 0.8 km from any AM nondirectional station.

85. *Tower Height/FAA Coordination Requirements.* Any proposal before the Commission that specifies an antenna supporting structure in excess of 61 meters above ground level is subject to the Commission's requirements for antenna structure registration requirements. Certain lower structures located close to air facilities are also subject to these requirements. All structures subject to registration requirements must obtain an FAA Determination of No Air Hazard for the structure before the tower may be registered. In a letter dated June 1, 1999, the FAA expressed some concern regarding the impact LP1000 stations may have upon nearby air facilities. No specific questions were raised regarding the lower powered facilities. Since we are not authorizing an LP1000 service at this time, we will continue determining compliance with our tower registration requirements in the manner set forth.

86. *Blanketing Interference.* For one year after the commencement of transmissions with new or modified facilities, all FM stations are required to take remedial action to resolve blanketing interference complaints occurring within the immediate vicinity of the antenna site. A station's specific blanketing interference radius is defined by our rules. The blanketing contour for an LP100 station would extend approximately 125 meters from the transmitter site and a 10-watt LP10 blanketing contour would extend 39 meters. Thus, the blanketing area of either type of station is very small. We conclude that LPFM stations should be required to resolve blanketing interference complaints in the same manner applicable to full power stations. Although the potential for blanketing interference from LPFM stations may be quite limited, affected parties are entitled to relief from such interference caused by a new source of radiation, whether it is a full-power commercial station or a new low power community broadcaster. Accordingly, we will apply the requirements in § 73.318 to all LPFM stations, in accordance with established precedents.

87. *Potential Television Channel 6 Interference.* Presently, noncommercial educational FM applicants are required to consider the impact of their operations on reception of television Channel 6, which operates on a frequency band (82 to 88 MHz) just below the FM band (88 to 108 MHz) in accordance with the provisions of 47 CFR 73.525. Determining the affected interference area pursuant to this section usually requires complex calculations and detailed contour studies. Given the very limited potential for interference caused by LPFM stations, in order to simplify processing and lessen the filing burden on applicants, we will utilize a spacing

table to protect TV Channel 6 stations. The values given in the table utilize the protection ratios of § 73.525 and worst case facilities for the TV Channel 6 and the LP10 and LP100 stations. On this basis, we do not anticipate that interference will occur. However, we will require LPFM applicants to correct any complaints of interference caused to Channel 6 reception in accordance with our blanketing interference requirements (as are Channel 6 complaints regarding full service stations). In most cases, this will require the installation of simple filters on affected television sets. LPFM applicants will not be required to coordinate their proposals with any potentially affected Channel 6 television station.

88. *Radio Reading Services.* Several radio reading services have expressed concerns about interference from LPFM stations to their service to persons who are blind or who have low vision. Programming provided by radio reading services is transmitted on subcarrier frequencies of a broadcast station, which are not audible on a standard radio. As the subcarrier frequencies are transmitted within the 200 kHz bandwidth of the broadcast station, they receive the same protection from interference as does the main broadcast programming. Thus, insofar as the transmitted subcarrier signal is concerned, there will be no increase in interference. With respect to subcarrier receivers used by the radio reading service audience, the Commission does not set technical standards for radio receivers. Thus, we cannot consider whether additional interference might affect SCA reception in the vicinity of an LPFM station, or whether different receiver construction could reduce possible interference. However, we note that the 20 km buffer between LPFM stations and co-channel or 1st adjacent channel full service FM stations adopted in this *document* should afford additional protection to subcarrier reception than was proposed in the *NPRM.*

89. *Transmitter Certification.* In the *NPRM,* we tentatively concluded LPFM stations should utilize only transmitters deemed ''type certified'' by the Commission's Office of Engineering and Technology (OET) to ensure the integrity of the FM radio spectrum. Type certification would prevent the use of transmitters with excessive bandwidth or modulation, spurious emissions, excessive power output, or insufficient frequency stability, which could cause interference to other existing stations. A large majority of commenters concurred with this conclusion. A few licensed amateur radio operators felt that they should be exempt from this requirement, asserting that many amateurs were capable of creating suitable equipment. However, we remain concerned about the significant potential for interference caused by non-type certified transmitters, particularly given the interference-protection standards we are adopting. Nor do we believe that type certification of equipment by the manufacturer will add appreciably to the cost of equipment for a low power broadcast radio station. Accordingly, we will adopt the certification requirement as proposed in the *NPRM.* We emphasize that the use of non-type certified transmitters will not be tolerated. Use of non-type certified transmitters will subject the licensee to enforcement action including, but not limited to, fines.

90. *Unattended Operation.* We anticipate that many LPFM stations will be run as ''attended operations,'' since the transmitter sites will be located at the source of program origination. However, LPFM stations may also be operated in ''unattended'' mode. During these times, there may be no personnel at the studio or transmitter site to monitor operation. LPFM stations that will operate unattended will be required to advise the Commission by simple letter of the unattended operation, and provide an address and telephone number where a responsible party can be reached during such times. The responsible party must be able at all times to turn off the transmitter within 3 hours of receiving notice from the FCC that the equipment is not functioning properly. In addition, we encourage the use of monitoring equipment that can automatically shut off the transmitter within 3 hours if a fault (such as operation at excessive power operation or center frequency drift) occurs. Finally, during periods when the LPFM station is not transmitting programming on its regular channel, the transmitter must be turned off.

91. *Station Logs.* Station logs provide a mechanism for verifying proper operation of a station, as they require the licensee to examine the operation before making a log entry. Logging requirements for LPFM stations will be minimal. The station log for LPFM will contain only the following entries: (1) Daily observation of proper function of tower obstruction lighting (if required by section 17.47 of the Commission's Rules); (2) dates and a brief explanation regarding station outages due to equipment malfunctioning, servicing or replacement; (3) any operation not in accordance with the station license; (4) receipt of weekly EAS (Emergency Alert System) test; (5) name of person making the entry.

92. These minimal requirements will not impose any significant burden on LPFM licensees. Except for any required daily tower lighting checks, entries need only be made when necessary. Logs must be retained for two years from the date of the last entry, and station logs must be made available to FCC personnel upon request.

93. *Environmental Requirements.* As with any applicant for a Commission license, an LPFM proponent will have to certify compliance with the environmental requirements of section 1.1307 of our rules. In order to facilitate the preparation and processing of LPFM applications, we will simplify the environmental compliance worksheets included in the current FCC Form 301 to account for the low operating power of LPFM stations.

94. *Radio Astronomy Installation Notifications.* Low power FM broadcast stations will be required to coordinate with and provide protection to the radio quiet zones at Green, West Virginia and at Boulder Colorado, as is required for full service FM stations by § 73.1030. In addition, low power FM applicants in Puerto Rico will need to coordinate with Cornell University regarding the radio coordination zone on that island. This requirement is necessary to ensure that research work at these installations will not be disrupted. Because of the low power and antenna height of LPFM stations, we anticipate that this requirement will affect very few applicants.

F. Application Processing

1. Electronic Filing

95. *Background.* The Commission recently mandated the electronic filing of broadcast applications after a transition period of six months from the date that each form becomes available for filing electronically. Likewise, we proposed in the *NPRM* to require that LPFM applications be filed electronically. We stated that mandatory electronic filing could speed the introduction of LPFM service by enabling the staff to process more quickly and efficiently the large number of LPFM applications that we expect to receive. In addition, we indicated that electronic filing software could be designed to assist applicants with technical issues related to their applications, such as determining what frequencies are available based on current information in the Commission's database. We requested comment as to whether Internet access

is sufficiently universal to warrant mandatory electronic filing of LPFM applications.

96. *Comments.* Commenters that addressed the matter generally support the use of electronic filing, but are divided as to whether it should be mandatory. Several commenters express concern that electronic filing is untried and may delay the introduction of LPFM service. Several commenters urge that, regardless of whether electronic filing is required, LPFM filing procedures should be as simple and inexpensive as possible.

97. *Decision.* We anticipate that electronic forms will be made available via the Commission's World Wide Web site prior to the opening of the first LPFM filing window. Based on our consideration of the record, however, we will not adopt a mandatory electronic filing system for LPFM application forms at this time. Rather, assuming availability of the forms, we will make electronic filing permissive for the first LPFM filing window, which we intend to open for LP100 stations shortly after the effective date of this *document.* Whether electronic filing is permissive for the second window that we anticipate opening for LP10 stations, as well as for any subsequent LPFM filing windows, will be resolved at a later date and will depend on several factors, including our experience with both electronic and paper filing during the first LPFM window and the time that elapses between the first and second windows.

98. We recognize that, as some commenters point out, there may be disparities among potential LPFM applicants in terms of Internet access and/or computer skills. We believe that making electronic filing permissive at this time will accommodate applicants that might be disadvantaged by mandatory electronic filing. We previously have discussed the significant advantages of a mandatory electronic filing system in terms of realizing savings and efficiencies. We do not believe that electronic filing would necessarily constitute an undue burden or expense for potential LPFM applicants, as the costs of computer and modem equipment continue to fall, and Internet access increasingly is becoming available at minimal cost commercially and at public institutions such as libraries. In addition, the Commission has made, and will continue to make, great efforts to create a simple, user-friendly electronic filing system. However, at present we are determined to be cautious with the first applications for a new service filed by applicants whose resources and familiarity with Commission processes may be very limited. We will reassess our electronic filing decision after our experience during the first filing window. We can better determine at that time whether the first filing window has provided a reasonable opportunity for interested parties to understand and arrange for Internet access and familiarize themselves with our Web site and electronic filing system. We can then determine whether the public interest benefits of mandatory electronic filing will outweigh any difficulties encountered or inequities expected, and decide whether electronic filing will remain voluntary or be mandated for use by all.

99. Although electronic filing will be permissive, we strongly encourage applicants to take advantage of electronic filing, and expect that many will do so. The forms will be accessible to anyone with a computer and a modem, without the need to purchase any special computer software. The Commission's software will make filing more certain for applicants by automatically notifying them of critical errors or omissions in their applications, and allowing them to correct the applications prior to submission. This software also will provide applicants with immediate verification that their applications have been received by the Commission. In addition, it will allow applicants to submit amendments, make corrections to their previously-filed applications, and submit narrative, explanatory exhibits. Furthermore, we intend to design additional software that will be available on the Commission's Web site to assist interested parties in making a preliminary determination as to which frequencies are available for LPFM use, based on current information in the Commission's database. Thus, LPFM applicants using the electronic filing system also will have access to a form of automated technical assistance in preparing their applications.

2. Window Filing Process

100. *Background.* We proposed in the *NPRM* to adopt a window filing approach for LPFM applications, with short filing windows of a few days each to ''lessen the occurrence of mutually exclusive applications and speed service to the public.'' The Commission recently substituted a uniform window filing procedure for the various application procedures for new commercial broadcast stations, and for major changes to existing stations. Under this procedure, the Commission announces by public notice a ''window'' or specific time period during which applications may be filed. When the window closes, the staff reviews the applications filed to determine whether any request mutually exclusive authorizations and, therefore, are subject to competitive bidding. Non-mutually exclusive applications are processed in accordance with our general procedures. Groups of mutually exclusive applications are identified by public notice and proceed to auction. The Commission also is considering substituting a window procedure for the two-step, cut-off list procedures now in place for full-service NCE broadcast applications.

101. In the *NPRM,* we also asked for comment as to whether a first come-first served process might serve the public interest better than a window process by more effectively avoiding mutual exclusivity among LPFM applications. We speculated that electronic filing ''might give us the capacity to ascertain the precise sequence in which applications are submitted by different parties.'' Thus, applications conflicting with ones filed ''even a moment earlier'' might be rejected as unacceptable for filing, avoiding mutual exclusivity in many cases. We noted a number of drawbacks to this approach, however, including the possibility that applicants might lose filing rights based solely on the quality of their Internet connections.

102. *Comments.* Many commenters support a window filing approach, and offer various suggestions as to the appropriate duration of filing windows. Some commenters favor a first come-first served filing system, generally contending that it would be a better means of avoiding mutual exclusivity than a window approach. Several commenters suggest hybrid approaches combining elements of window and first come-first served systems.

103. *Decision.* Based on our consideration of the record, we will adopt a window filing process for LPFM applications. We previously stated that a window process ''provides the staff with a mechanism to control effectively the filing and processing of broadcast applications.'' We believe that such a mechanism is important here because of the large number of LPFM applications that we expect to receive. In addition, the first-come first-served approach envisioned in the *NPRM,* which would determine filing priority based on the exact time that applications are filed, is feasible only if electronic filing is required, which will not be the case, at least initially. Moreover, we are concerned that such an approach, by placing a premium on filing at the earliest possible moment, might unfairly disadvantage certain applicants based solely on the quality of their Internet

connections. The filing of hundreds or thousands of applications at once also might place unbearable strains on the LPFM electronic filing system. A window filing process avoids these pitfalls, as applicants will be able to file at any time over a period of several days without losing filing rights.

104. Once this *document* becomes effective, the Mass Media Bureau, pursuant to delegated authority, will promptly release a public notice announcing a national filing window for LP100 applications. We anticipate that this window will open in May. The notice will be issued at least thirty days in advance of the opening of the filing window. Full power broadcast applications filed on or after the date of release of a public notice announcing the opening of an LPFM window will not preclude the filing of conflicting LPFM applications filed during that window. However, where the conflict ultimately is determined to relate to service inside the city grade contours of the full power station, the LPFM application will be dismissed. The window itself will be open for a period of five business days. We believe that five days, combined with thirty days' specific advance notice and the additional time between the release of this *document* and the public notice announcing the window, should give interested parties sufficient time to prepare and file their LPFM applications, while minimizing the number of mutually exclusive LPFM applications. We emphasize that applications filed before or after the dates specified in the public notice will not be accepted.

105. In accordance with our window filing procedure for commercial broadcast applications, after the LPFM window closes, the staff initially will screen applications for the purpose of identifying those that are mutually exclusive and those that fail to protect existing broadcast stations in accordance with the standards adopted herein. Applications that fail to properly protect these existing stations will be dismissed without the applicant being afforded an opportunity to amend. This will increase the speed and efficiency with which LPFM applications can be processed by the staff. Technically acceptable non-mutually exclusive applications will be further reviewed for acceptability and processed by the staff in accordance with the Commission's general procedures. Groups of mutually exclusive applications will be identified in a subsequent public notice, and will be subject to the selection procedures set forth. After an application is tentatively selected from a mutually exclusive group, it will be reviewed for acceptability, and a public notice will be released announcing the finding that the application has been tentatively selected and is acceptable for filing. Petitions to deny the application will be due within 30 days of the release of the public notice of its acceptability for filing. Petitions and informal objections will not be considered unless and until the application has been tentatively selected for processing and found acceptable for filing. A tentative selectee whose application is found unacceptable for filing will be given a single opportunity to submit a curative amendment, provided that the amendment is minor and the amended application has the same number of points as originally claimed, or more than the points claimed by the next highest applicant. Tentative selectees whose applications remain unacceptable for filing after this opportunity will be removed from their mutually exclusive groups, and will not be provided with an additional opportunity to amend.

106. As stated, we are developing software to assist interested parties in determining whether specific frequencies may be available at specific locations for LPFM use. This software will not be able to determine conclusively whether a particular frequency will be available for an applicant, as frequency availability also will depend, among other things, on whether competing applications are filed during the LPFM filing window. Nevertheless, we anticipate that the software will help interested parties focus on potentially-available facilities, and will provide technical assistance for interested parties with limited financial resources. We anticipate that this software will be ready for use by the time we announce the first filing window for LPFM applications. The Mass Media Bureau will issue a public notice with information regarding how to access the software and the technical assistance it can provide. Such information also will be posted on the Commission's Web site.

3. Selection Among Mutually Exclusive Applications

107. *Background.* In the *NPRM,* we requested comment as to whether the proposed LPFM service should be restricted to NCE applicants or open to both commercial and NCE applicants. We tentatively concluded that, pursuant to statutory requirements, mutually exclusive applications for commercial LPFM facilities would be subject to auction. We asked for comment on alternative methods for resolving mutual exclusivity among NCE LPFM applicants. We specifically referred commenters to our proceeding reexamining full-service NCE comparative standards, where we sought comment on three possible methods for selecting among mutually exclusive applicants: (1) Comparative hearings; (2) a lottery process weighted in favor of certain applicants based on statutory requirements and other factors; and (3) a system assigning points to applicants based on various selection criteria.

108. *Comments.* Most commenters that address the matter oppose the use of competitive bidding, arguing that it would undermine the Commission's stated goals in establishing the LPFM service. Few commenters support the use of comparative hearings to resolve mutually exclusive NCE applications. There was support among commenters for the use of a lottery process, although most of these commenters argued the merits of lotteries over auctions, rather than over an alternative selection method. A number of commenters also favored the use of a point system. In addition, several commenters suggest that we impose arbitration to resolve mutual exclusivity, and one advocates the use of ''conflict reduction methods'' such as allowing ''liberal channel and coverage changes.'' Commenters also propose various selection factors for use within a comparative selection process.

109. *Decision.* Based on our consideration of the record, we shall adopt a point system for resolving mutual exclusivity among LPFM applicants. The point system will include three selection criteria: (1) Established community presence; (2) proposed operating hours; and (3) local program origination. The system will employ voluntary time-sharing as a tie-breaker, that is, tied applicants will have an opportunity to aggregate points by submitting time-share proposals. As a last resort, where a tie is not resolved through time-sharing or settlement, we shall award successive equal license terms totaling eight years (the normal license term), without renewal expectancy for any of the licensees.

110. We conclude that the point system we are adopting is superior to alternative selection methods. As discussed above, the LPFM service will be reserved for noncommercial, educational service, and we are precluded by statute from using auctions to award station licenses on channels reserved for NCE use. Accordingly, we need not discuss an auction-based selection mechanism. In our proceeding reexamining full-service NCE comparative standards, we

tentatively rejected comparative hearings because they tend to be lengthy, cumbersome, and resource-intensive, without substantial offsetting benefits. These disadvantages make comparative hearings particularly ill-suited for selecting LPFM applicants. Like comparative hearings, mandatory arbitration and engineering solutions could impose significant delays on the LPFM authorization process and impose additional expenses on applicants. Moreover, although we will encourage individual settlements as a means of resolving mutual exclusivity among LPFM applicants, the Commission lacks the resources to administer a system that would require arbitration or the imposition of engineering solutions in every instance of mutual exclusivity. Finally, we conclude that a lottery system is comparatively inferior to a point system as an LPFM selection method. The primary benefits of a lottery system are the speed and ease with which it may be applied. As discussed, however, a point system offers like benefits. Moreover, there are unresolved legal and policy issues surrounding the use of a lottery system that pose a risk of delaying the introduction of LPFM service to the public. A point system does not entail similar risks. A lottery process is also inherently inferior to a point system in its ability to further the Commission's policy goals due its random nature. This randomness may be mitigated, but not eliminated, by weighting in favor of certain types of applicants. For these reasons, in the case of LPFM service, we reject all of these approaches in favor of a point system.

111. *Point System.* We believe that a point system is the best-suited selection methodology for promoting the Commission's policy goals for the LPFM service and speeding its introduction to the public. The Commission has used a point system procedure with success in the Instructional Television Fixed Service (ITFS). Like lotteries, point systems have the potential to be fast, inexpensive, and administratively efficient. Unlike lotteries, however, point systems make possible the selection of applicants based on objective criteria designed to best advance the public interest in the particular service at issue. Finally, the fact that LPFM licenses are non-transferable eliminates a major potential disadvantage of any system based on selection criteria; it prevents the integrity of the system from being undermined by the rapid assignment or transfer of station licenses by an entity that was awarded the license over other applicants on some merit basis that is not necessarily found in the buyer.

112. *Point System Operation—Selection Criteria.* Our point system will include three selection criteria for mutually exclusive applicants: (1) Established community presence; (2) proposed operating hours; and (3) local program origination. These criteria are directly related to the advancement of the public interest that the Commission has found warrants the introduction of this new service. To protect the integrity of the selection process and ensure that its full benefits may be realized, we have chosen clear-cut selection factors that are objective in nature and do not require burdensome documentation.

113. *Established Community Presence.* For the reasons set forth, first, applicants that have an established community presence of at least two years' duration will be awarded one point. An applicant will be deemed to have an established community presence where, for a period of at least two years prior to application, the applicant is able to certify that it has been physically headquartered, has had a campus, or has had 75 percent of its board members residing within 10 miles of the reference coordinates of the proposed transmitting antenna. This criterion will favor organizations that have been operating in the communities where they propose to construct an LPFM station and thus have ''track records'' of community service and established constituencies within their communities. We believe that such applicants, because of their longstanding organizational ties to their communities, are likely to be more attuned to, and have organizational experience addressing, the needs and interests of their communities. In this regard, a number of commenters suggest preferences based on prior community service and/or community support. These suggested factors could be subjective in nature, however, and could be burdensome to demonstrate and verify. In addition, we believe that preferring organizations that have been in existence and physically present in the community for two years will help prevent maneuvering of the point system by those who might otherwise establish multiple organizations to file LPFM applications.

114. As we stated in our discussion of the community-based eligibility requirement, we do not believe this preference for established local entities contravenes the court's concerns in *Bechtel.* In adopting such a comparative factor, we further note that the *Bechtel* court was concerned that quantitative integration factors worked to the virtual exclusion of other factors the court deemed potentially relevant in determining the relative quality of service that would be provided by an applicant. For LPFM, we are including other selection factors and giving them equivalent weight in the selection process. Moreover, while the two-year presence factor has a quantitative aspect, it is objectively verifiable and does not depend on promises of future performance, as the integration preference did.

115. Applicants claiming points for established community presence will be required to certify in their applications that they meet the above-stated conditions. The application form will identify appropriate documentation that must be made available for the point claimed. Applicants will be required to submit this information at the time of filing and it will be available in our public reference room. As with other broadcast applications, the Commission will rely on certifications but will use random audits to verify the accuracy of the certifications. This information also will enable applicants to verify that competing applicants qualify for the points they claim.

116. *Proposed Operating Hours.* Second, applicants that pledge to operate at least 12 hours per day will be assigned one point. As set forth below, the minimum operating hours for LPFM stations will be five hours per day. This criterion does not impose any additional requirement, but awards points to applicants that pledge longer hours of operation. Applicants that propose more intensive use of the broadcast frequencies they seek will advance the Commission's general policy objective of ensuring efficient spectrum use and providing more programming to serve their communities.

117. *Local Program Origination.* Finally, applicants that pledge to originate locally at least eight hours of programming per day will be assigned one point. For purposes of this criterion, local origination will be defined as the production of programming within 10 miles of the reference coordinates of the proposed transmitting antenna. This criterion derives from the service requirements for full-service broadcast stations, which are required to maintain the capacity to originate programming from their main studios. LPFM licensees will not be subject to main studio requirements, and will have discretion to determine the origination point of their programming. As a comparative selection factor, local program origination can advance the Commission's policy goal of addressing unmet needs for community-oriented

radio broadcasting. In this regard, we believe that an applicant's intent to provide locally-originated programming is a reasonable gauge of whether the LPFM station will function as an outlet for community self-expression.

118. With regard to both the second and the third selection criteria, applicants will be required to certify in their applications that they will meet the qualifying conditions for the points claimed. We will require successful applicants to adhere to their operating hours and local program origination pledges. As these criteria are prospective in nature, they will not be subject to verification at the application stage. The Commission will use random audits to verify the accuracy of the certifications, and will consider written complaints regarding actual performance. Consistent with our current practice, the staff may issue letters of inquiry requiring submission of documentation in connection with such audits. Where analysis of the requested information indicates that licensees have not fulfilled their pledges, appropriate action will be taken, including the possibility of monetary forfeitures and revocation proceedings.

119. In choosing selection criteria, we have carefully considered the comments we received advocating various selection factors, as well as the point system elements under consideration in our proceeding reexamining full-service NCE comparative standards. We believe that the factors we have chosen best balance our interest in furthering the specific localized objectives of the LPFM service and avoiding cumbersome, subjective and manipulable criteria. We note that a number of commenters advocate preferences for entities controlled by minorities. We shall defer consideration of this matter. The Commission is conducting fact-finding studies as to whether such preferences may be justified consistent with the Supreme Court's decision in *Adarand Constructors* v. *Pena.* Depending on the outcome of these studies, we will consider in the future whether to adopt minority control as a point system factor.

120. *1st Tiebreaker—Voluntary Time-Sharing.* In the event that the point system results in a tie among two or more mutually exclusive applicants, applicants will have the opportunity, within 30 days of the release of a public notice announcing the tie, to submit amendments to their applications incorporating voluntary time-share proposals. Each time-share proponent must propose to operate at least 10 hours per week. Time-share proposals may function as tie-breakers in two different ways. First, all of the tied applicants in a mutually exclusive group may propose a time-share proposal, in which case the staff will review and process all of the tied applications. Second, some of the tied applicants in a mutually exclusive group may submit a time-share proposal, in which case the time-sharers' points will be aggregated. Time-sharers may aggregate points under each of the three selection criteria. The purpose of allowing point aggregation is to encourage time-share arrangements as a means of resolving mutual exclusivity among tied LPFM applicants. In addition, we believe that time-sharing arrangements will serve the public interest by increasing participation by a variety of local community organizations in the operation of LPFM stations.

121. Our decision to incorporate voluntary time-sharing into the point system as a tie-breaker is based on our judgment that voluntary time-share arrangements have the potential to advance the Commission's goals for the new service. We noted in our proceeding reexamining full-service NCE comparative standards that ''[a] number of commenters dislike mandatory share-time arrangements, finding them confusing to audiences, and potentially inefficient for licensees.'' On a voluntary basis, however, time-sharing has significant potential advantages for LPFM applicants. From a practical standpoint, the localized nature of the LPFM service is likely to enhance applicants' ability to time-share. In many cases, the small scale of LPFM operations also may make time-sharing more efficient for LPFM licensees. Furthermore, by increasing the number of new broadcast voices, time-sharing can advance our interest in promoting additional diversity in radio voices and program services through the LPFM service.

122. *Final Tiebreaker—Successive License Terms.* As a last resort, in cases where a tie is not resolved through settlement or time-sharing, the staff will review tied applications for acceptability. Applicants whose applications are grantable will be eligible for equal, successive license terms of no less than one year each, spanning a total of eight years. Successive license terms will not be granted for groups of more than eight tied, grantable applications. In the event of such a situation, the staff will dismiss all but the applications of the eight entities with the longest established community presences, as demonstrated by the documentation submitted with their applications. If this does not limit the group of applications to eight, the entire group will be deemed ungrantable and will be dismissed if, after a final opportunity to submit settlement proposals within 30 days of the release of a public notice, the situation is not resolved. Where successive license terms are granted, there will be no renewal expectancy for any of the licensees. If for some reason a successive term licensee becomes unable to operate the station during its portion of the license term, that licensee's time will be divided equally among the remaining licensees for that station. If none of the tied, grantable applications proposes same-site facilities, then all will be granted at the same time. The sequence of the applicants' license terms will be determined by the sequence in which they file their applications for licenses to cover their construction permits, based on the day of filing. However, if any of the tied, grantable construction permit applications propose same-site facilities, the applicants proposing such facilities will be required, within an additional 30 days, to submit a settlement agreement proposing the sequence of the license terms for such applicants. If they fail to do so, they will be removed from the mutually exclusive group and the remaining applications will be granted.

123. *Settlements.* Applicants may propose a full settlement at any time during the selection process after the release of the public notice announcing the mutually exclusive group. Such settlements must be universal—that is, they must involve all of the mutually exclusive applicants within a group—and must comply with the Commission's general rules for settlements, including the requirement that the settling parties certify that they have not received consideration for the dismissal of their applications in excess of their legitimate and prudent expenses. Settlements may incorporate voluntary time-share proposals.

124. *Delegated Authority.* As we explained in our proceeding reexamining full-service NCE comparative standards, the Commission currently may delegate authority for applying point systems only to administrative law judges or to individual Commissioners. This statutory restriction is based on the fact that point systems technically are considered a type of simplified hearing. We believe that the staff would be able to administer the LPFM point system in a more streamlined manner than administrative law judges or individual

Commissioners. Therefore, we will seek authority from Congress, through specific legislation, to delegate responsibility to the staff for applying the point system. Until we receive such authority, the staff will refer point system proceedings to the Commission for disposition.

125. *Minor Modification of Authorized LPFM Stations.* We will adopt one exception to the window filing process to permit the filing at any time of certain ''minor change'' applications. For LP100 stations, a minor change may involve a transmitter site relocation of less than two kilometers. For LP10 stations, a minor change may involve a transmitter site relocation of less than one kilometer. Minor change applications may also propose a change to an adjacent or IF frequency or, upon a technical showing of reduced predicted interference, to any other frequency. Similarly, we will consider as minor any change in frequency necessary to resolve actual interference. All other changes will be classified as ''major'' and subject to our window filing procedures. Minor change applications also must satisfy the technical and legal requirements applicable to LPFM stations generally.

4. License Terms and Renewals

126. *Background.* In the *NPRM,* we asked how often and how closely we should actively monitor, within the parameters of our statutory responsibility, the performance of LP100 stations in connection with the license renewal process. We asked whether a *pro forma* process would satisfy any statutory requirement, in the absence of specific public complaint. We also asked for comment on whether stations other than LP1000 stations should be authorized for finite, nonrenewable periods, such as five or eight years, to create additional opportunities for new entrants in the LPFM service. We explained that making broadcast outlets available to more speakers is a fundamental premise of this rulemaking effort, and that we did not expect that such a limitation would discourage the very modest investment required to build such a station. We sought comment on whether the disruption of service to the public that non-renewability would involve outweighed the potential benefits of making this service available to more speakers on a consecutive basis.

127. *Comments.* Commenters propose a variety of LPFM license terms and the majority argue that LPFM licenses should be renewable. Commenters suggest license terms of one, two, four, five, and seven years. Other commenters contend that LPFM stations should have the same eight year license periods granted to full power stations.

128. Most commenters argue that all LPFM licenses should be renewable. Commenters also contend that LPFM licensees should have the same renewal expectancy as existing broadcasters.

129. *Decision.* We will provide LP100 and LP10 licensees with the same license terms and renewal expectancy as full-power FM radio stations. Accordingly, licenses will be renewed for a term not to exceed eight years from the date of expiration of the preceding license and LPFM licenses will be renewed, without consideration of competing applicants, if they have met the renewal standard of section 309(k)(1) of the Act. Upon considering the comments filed in this proceeding, we find that granting renewable licenses is consistent with the goals we are seeking to advance with this service. Moreover, we believe that nonrenewable licenses would discourage licensees from developing facilities and audiences to the fullest extent possible. We therefore will grant, with one exception described in paragraph 132 below, renewable licenses for LPFM stations.

130. Section 73.1020(a) divides the country into 18 different regions containing one or more states for purposes of establishing synchronized schedules for radio and television licenses. Radio station licenses expired under this rule in intervals between October 1, 1995, and August 1, 1998, and those licenses, renewed for eight years, will expire again between September 30, 2003, and July 31, 2006. We consistently grant initial terms for all new broadcast authorizations to fit into this synchronized schedule, although it means initial terms are usually for a period of less than eight years.

131. We adopt these synchronized schedules for LPFM licenses because maintaining the predictability, administrative efficiencies, public awareness, and fairness inherent in the existing synchronized schedule of license cycles serves the public interest. Accordingly, an initial LPFM license granted within any renewal period set forth in § 73.1020 of our rules will be assigned the expiration date assigned to those full-power FM stations licensed in the same region during the same licensing cycle. Because of the cyclical nature of this process, granting initial full eight-year license terms in the middle of a licensing cycle could undermine the synchronization of the whole process. Like full-power licenses, LPFM licenses may then be renewed for a term not to exceed eight years from the expiration date of the preceding license. This approach will reduce the regulatory burden on LPFM broadcasters by affording them the same maximum license terms now granted other broadcasters, and will correspondingly reduce the associated burdens on the Commission. We see no compelling reason to vary from the term set by Congress for full-power stations. We further note that, while we will authorize eight-year license terms, the public may scrutinize station performance and file complaints with the Commission at any time during the term of an LPFM license.

132. The one exception to this rule pertains to situations where we grant successive license terms under the final tiebreaker procedures. These tiebreaker licenses will not be based on the synchronized licensing cycle of § 73.1020. If applicants were granted last resort tiebreaker licenses conformed to the synchronized schedule, each licensee, depending on where in the renewal cycle we were, might receive authorizations to operate for a very short period of time, *e.g.,* a few months, with no opportunity to renew their license.

133. We will also extend the renewal expectancy provisions of section 309(k)(1) of the Act to LPFM licensees. Providing incumbents with the likelihood of renewal encourages licensees to make investments to ensure quality service. Upon receiving an application for renewal of an LPFM license, we will determine whether the licensee has served the public interest, convenience, and necessity; whether there have been any serious violations of the Act or Commission rules; and whether there have been any serious violations that, taken together, would constitute a pattern of abuse. Only if incumbent LPFM licensees fail to meet these requirements will other applicants be eligible to apply for the same license. As noted, an exception is where the license is held for successive terms as a result of the final tiebreaker procedure. Such licenses will be nonrenewable.

5. Transferability

134. *Background.* In the *NPRM,* we noted that some commenters urged us to restrict the sale of LPFM stations to deter the filing of speculative applications and trafficking in construction permits. We stated our belief that, in light of the limits we proposed on ownership of LPFM stations, we did not believe that it was necessary to restrict the sale of any class of LPFM station. We invited commenters to address this issue, including whether restrictions on sales would be advisable if the Commission

adopts ownership rules other than those proposed in the *NPRM.*

135. *Comments.* While comments on the transferability of LPFM stations were mixed, the majority of commenters that addressed this issue supported either prohibiting transfers altogether or severely restricting them. A few commenters were in favor of permitting transferability of LPFM stations, arguing generally that owners who have invested in such stations should be able to realize the fair market value of such stations.

136. *Decision.* After careful review of the comments, we have decided to prohibit the transfer of construction permits and licenses for LPFM stations. Contrary to our initial view stated in the *NPRM,* we are persuaded that a prohibition on transfers will best promote the Commission's interest in ensuring that spectrum is used for low power operations as soon as possible, without the delay associated with license speculation. We are also persuaded that the goals of this new service, to foster opportunities for new radio broadcast ownership and to promote additional diversity in radio voices and program services, will best be met if unused permits and licenses are returned to the Commission. Given the modest facilities and noncommercial nature of LPFM stations, we do not believe non-transferability will discourage LPFM licensees from serving their listeners.

G. Programming and Service Rules

1. Public Interest Requirements

137. *Background.* In the *NPRM,* we proposed to require LP1000 licensees to adhere to the same part 73 requirements regarding public interest programming as apply to full-power FM licensees. We noted that this meant that each LP1000 licensee would be required to air programming serving the needs and interests of its community, using its discretion as to how to meet that obligation. We also listed several other rules, such as those regarding the broadcasting of taped, filmed, or recorded material, sponsorship identification, personal attacks, and periodic call sign announcements and sought comment on whether they should apply to LPFM stations. We stated a disinclination, however, to impose public interest programming requirements on LP100 and LP10 licensees, given the size of operations we envisioned and the simplicity we were striving to achieve in this service. We expected that the very nature of LP100 and LP10 would ensure that they served the needs and interests of their communities.

138. *Comments.* We received few comments on public interest requirements. Some commenters contend that we must apply all of the same basic public interest requirements to LPFM licensees that are applied to full-power broadcasters. Other commenters oppose any requirements for LP100 and LP10 stations, arguing that it would place an unreasonable burden on those stations.

139. *Decision.* Every broadcast licensee is required to operate its station in the public interest. Given the nature of the LPFM service, however, we conclude that certain obligations imposed on full-power radio licensees would be unnecessary if applied to LPFM licensees. We expect that the local nature of this service, coupled with the eligibility and selection criteria we are adopting, will ensure that LPFM licensees will meet the needs and interests of their communities. Thus, for example, consistent with our rules for low power television, we will not adopt a rule requiring LPFM licensees to provide programming responsive to community issues or to maintain a list of issues addressed or specific programs aired.

140. We will, however, apply certain specific rules applicable to all broadcasters to LPFM licensees. First, LPFM operators must, of course, comply with those rules required by statute. Thus, for example, like all broadcasters, LPFM licensees will be expressly prohibited from airing programming that is obscene, and restricted from airing programming that is ''indecent'' during certain times of the day. They must also comply with our sponsorship identification and political programming rules. In addition, we will require LPFM licensees to comply with our rules regarding taped, filmed, or recorded material, personal attacks, and periodic call sign announcements. Violation of any of these rules by an LPFM licensee would be as detrimental to its audience as violation by a full-power broadcaster, and widespread disregard for these rules could outweigh the benefits to the public this service is intended to bring.

2. Locally Originated Programming

141. *Background.* In the *NPRM,* we sought comment on whether to impose a minimum local origination programming requirement on any of the three proposed classes of LPFM service. We opined that listeners benefit from local programming, because it often reflects needs, interests, circumstances, or perspectives that may be unique to that community. We also noted that many of LPFM's initial supporters argued that the Commission's rules should actively promote locally oriented programming by, for instance, limiting the amount of network programming a station could air. We expressed an expectation, however, that a significant amount of programming for LPFM stations would be locally produced as a matter of course. We also asserted that programming does not have to be locally produced to have interest or value to the listeners in a particular locale. Accordingly, we stated that we were inclined to give LP100 and LP10 licensees the same discretion as full-power licensees to determine what mix of local and non-local programming would best serve the community. To promote new broadcast voices, however, we proposed that an LPFM station not be permitted to operate as a translator, retransmitting the programming of a full-power station.

142. *Comments.* Many commenters favor the adoption of a locally originated programming obligation. A number of commenters oppose any specific obligations on LPFM licensees regarding locally originated programming. Commenters generally agree that LFPM stations should not be used as translators for retransmitting full-power station programming.

143. *Decision.* We continue to believe that LPFM licensees' provision of a significant amount of locally originated programming will enhance the success of this service. This is why we are encouraging the provision of locally originated programming by means of a licensing preference. However, we also believe that in certain cases, programming need not be locally originated to be responsive to local needs. Therefore, we do not believe it is necessary to impose specific requirements for locally originated programming on LPFM licensees. We believe that the nature of the service, combined with the eligibility criteria and preferences we are adopting, will ensure that LPFM licensees provide locally originated programming or programming that is otherwise responsive to local needs.

144. We do, however, agree with commenters that LPFM stations should not be used for retransmitting, either terrestrially or via satellite, the programming of full-power stations. This would significantly undercut a fundamental basis for the establishment of this service. This prohibition against LPFM stations operating as translators also promotes locally originated programming by eliminating a

significant avenue for obtaining non-locally originated programming.

3. Political Programming Rules

145. *Background.* In the *NPRM,* we sought comment on the applicability of political programming rules to each class of low power radio service that we might adopt. We explained that sections 312(a)(7) and 315 of the Communications Act, as amended, underlie some of these rules, and each is explicitly applicable to ''broadcast stations.'' Thus, we lack the discretion not to apply these provisions to any class of LPFM station, regardless of size. We specifically sought comment on how each of these political broadcasting rules should be applied to low-power stations, taking into consideration our statutory mandate.

146. *Comments.* The few comments that we received on this issue support our tentative conclusion to adopt political programming rules for LPFM stations.

147. *Decision.* We conclude that we are required by statute to apply the same political programming rules to low-power stations that we apply to full-power stations. There is ample precedent for how the political programming rules apply to noncommercial stations and thus how the rules will apply to LPFM. For example, section 312(a)(7) of the Communications Act, as amended, requires broadcasters to allow legally qualified candidates for federal office reasonable access to their facilities, but because LPFM stations are noncommercial educational facilities, they must provide such access on a free basis. Section 315(a) of the Communications Act, as amended, requiring equal opportunities for candidates, will also apply.

148. In conformance with the statutory mandate, we will apply the reasonable access and equal opportunities provisions of the statute and the Commission's rules, as well as related policies delineated in prior Commission orders, to LPFM licensees. With respect to reasonable access, the Commission's policy has generally been to defer to the reasonable, good faith judgment of licensees as to what constitutes ''reasonable access'' under all the circumstances present in a particular case. Noncommercial educational stations, including LPFM stations, however, may not support or oppose any candidate for political office. LPFM licensees cannot charge legally qualified candidates for the time used on their stations and no LPFM licensee may discriminate among candidates ''in practices, regulations, facilities, or services'' or ''make or give any preference to any candidate for public office.'' In addition, we will require LPFM licensees to maintain a political file, if needed, to record the requisite particulars. The political file shall be maintained for public inspection at an accessible place in the station's community. Finally, we will resolve any issues involving LPFM licensees on a case-by-case basis to determine whether the licensee is acting within the spirit of the statute and Commission rules and policies on political programming.

4. Station Identification

149. Background. In the *NPRM,* we sought comment on whether to adopt a call sign system that would identify a low power radio station as such. We noted in the *NPRM* that a nonstandard (five letter) identifying call sign system was used for the first several years of licensing low power television (LPTV) stations, but that the Commission later allowed LPTV stations to adopt call signs that were like those of full power stations, but were appended with the suffix ''–LP.''

150. *Comments.* Commenters are divided over whether it would be in the public interest to employ special call signs that would help identify LPFM stations as low power. Some commenters argue that the use of call signs would help to identify legitimate from illegal stations, or help with the identification of malfunctioning or interfering stations. Other commenters feel that a new system of call signs for LPFM would be confusing to the public, with little or no compensating public benefit, and suggest that ordinary FM call signs be issued to new LPFM stations. Some commenters also argue that the use of call signs for low power broadcasters would not be burdensome to these broadcasters.

151. *Decision.* The question raised by the *NPRM* was not whether to have call signs for LPFM stations, as apparently misunderstood by some commenters, but whether to include a special designation in the call signs identifying LPFM stations as low power stations. It is imperative for a variety of reasons, including enforcement, convenience to the public, and conformance with international agreements, that all broadcasters, including low power broadcasters, use unique identifiers on the air. We also conclude that it will be extremely beneficial for LPFM operators to build an ''identity'' and do so in a radio-familiar manner. We were guided on this issue by our experience with low power television. In that service, we require stations' call signs to indicate that they are low power stations, by appending the suffix ''–LP'' to their four-letter call signs. We thus will require low power stations to positively identify themselves. To avoid confusion for the public and to inform the public of the reasonable expectations they may have for service, the suffix ''–LP'' will be appended to LPFM station call signs (*e.g.,* ''WXYZ–LP''). Such identification will inform the public that a station is a low power station. An LPFM four-letter call sign cannot exactly duplicate the call sign of any other broadcast station and cannot contain the same first four letters as another station's call sign without that station's written consent. The Commission's current call sign system will be modified to accommodate low power stations in the manner four letter call signs are provided to low power TV stations.

5. Operating Hours

152. *Background.* In the *NPRM,* we said we were not inclined to adopt minimum operating hours for LP100 or LP10 stations. However, we expressed our concern that spectrum might be underutilized if low power stations were licensed but unused or underused, and asked for comments on this issue.

153. *Comments.* For LP100 and LP10 services, commenters either argue for: (1) low or no minimum operating hours, because of the cost burden involved in requiring extended hours of operations, or (2) a time sharing arrangement among local broadcasters. This latter group of commenters argue that time sharing arrangements would reduce the part-time warehousing of spectrum that would occur by a single non full-time licensee, and would permit the entry of additional new voices into the local radio market.

154. *Decision.* In order to ensure an effective utilization of channels, we will impose the same minimum operating hour requirements on LP100 and LP10 FM stations that we currently apply to full-power noncommercial educational FM stations. Under our rules, ''[a]ll noncommercial educational FM stations are required to operate at least 36 hours per week, consisting of at least 5 hours of operation per day on at least 6 days of the week; however, stations licensed to educational institutions are not required to operate on Saturday or Sunday * * *'' These requirements are not extensive and should not impose an inordinate burden on LPFM licensees. In cases where individual parties are interested in applying for LP100 and LP10 stations but do not have sufficient programming to meet the minimum operating hour requirements, we encourage those parties to find other

applicants with whom they could share the license. To accommodate those situations in which the demand for airtime does not exceed the spectrum availability, however, we will not automatically delete a station that is operating at less than the minimum hours. When another applicant comes forward that wants to utilize the underused channel, that applicant can notify the Commission of the incumbent's failure to meet minimum hours and demand that the incumbent return its license or agree to a time-sharing arrangement that will accommodate both parties.

6. Main Studio Rule, Public File Rule and Ownership Reporting Requirements

155. *Background.* In the *NPRM,* we invited comment on whether LPFM stations of each class should be subject to the variety of other rules in part 73 with which full power stations must comply, including, for example, the main studio rule (47 CFR 73.1125(a)), public file rule (47 CFR 73.3526 and 73.3527), and the periodic ownership reporting requirements (47 CFR 73.3615). Given the purposes and power levels of LP1000 stations, we tentatively concluded that LP1000 licensees should generally meet the part 73 rules applicable to full power FM stations. However, the *NPRM* sought comment on whether sufficient useful purpose would be served in applying each rule to these licensees. We were disinclined to apply these service rules to LP10 stations, and sought comment with regard to the rules appropriate for LP100 stations.

156. We also proposed to treat low power radio stations like full power stations for the purposes of our environmental rules and responsibilities under the National Environmental Protection Act. With respect to protection against exposure to radio frequency radiation, we noted that LP1000 and LP100 stations would operate at the power levels of some Class A FM stations and thus the same safety and environmental concerns would seem to apply. We therefore proposed to apply to these stations the maximum permissible exposure limits and related regulatory provisions that apply to FM radio stations. We invited comment on this matter, and specifically on whether and how we should treat LP100 stations differently from LP1000 stations and, if so, why. We also sought comment on how our environmental rules should apply to LP10 stations, if this low power radio class were adopted.

157. *Comments.* Comments were divided on this issue. Most broadcasters who commented on this issue agree that LPFM stations should generally follow existing regulations for full-power stations, but some note that they should only have minimal day-to-day regulatory requirements because of the difficulty of survival if such stations had to follow the exact rules that full-power stations are required to follow. Many other commenters state that the Commission should not require LPFM stations to comply with a main studio, public file or ownership reporting requirement, because of the burdens they would impose.

158. *Decision.* We conclude that we should not impose the main studio, public file, or ownership reporting requirements on LPFM stations. We believe these requirements would place an undue burden on such small noncommercial educational stations. In addition, we believe that the nature of this service will ensure that LPFM stations are responsive to their communities. This approach is consistent with our treatment of low power television stations.

159. As to equal employment opportunity (EEO) rules, we conclude that all LPFM licensees must comply with the Commission's long-standing prohibition against employment discrimination. We believe that a finding that any broadcaster has engaged in employment discrimination raises a serious question as to its character qualifications to be a Commission licensee. In addition to the prohibition against discrimination, the broadcast EEO Rule also includes EEO program requirements. These requirements are not currently in force. In any event, we did not enforce compliance with the EEO program requirements by broadcast stations with fewer than five full-time employees. Because we anticipate that the vast majority of this class of licensees will employ very few (if any) full-time, paid employees, we do not intend to require LPFM licensees to comply with any EEO program requirements we adopt in our pending rulemaking proceeding.

7. Construction Permits

160. *Background.* In the *NPRM,* the Commission proposed an 18-month construction period for LP100 stations and a twelve-month limit for LP10 stations. The shorter construction time limits for LP100 and LP10 stations (relative to the three-year construction period that is allowed to full-power FM stations) were meant to reflect the simpler construction requirements for these facilities. The 18- and 12-month periods also assumed that difficulties with obtaining the requisite construction permits would be minimal.

161. *Comments.* Many commenters state that the proposed construction periods for LP100 and LP10 stations are reasonable, given the relatively smaller facilities and simpler construction involved with these stations. Other commenters argue for even shorter construction periods for LP100 and micro-radio services. Some commenters thought that imposing strict construction time limits would help to prevent spectrum hoarding and help encourage the rapid deployment of the spectrum resources.

162. *Decision.* We will adopt an 18-month construction period for both LP10 and LP100 services, and it will be strictly enforced. While we believe that most permittees will be able to and will have ample incentive to construct their low power stations in far less than 18 months, given the relative technical simplicity of LP100 and LP10 stations, we do not wish to burden applicants who may encounter unforeseen difficulties with a shorter construction period. We recognize that while the facilities themselves will be relatively easy to construct, zoning and permitting processes may, in some cases, delay construction. However, we expect that applicants will have well-considered proposals in this regard and we do not intend to grant extensions to the construction permits. Therefore, to avoid the complications and delays of extension rulings, as well as to encourage well-planned and executed proposals, we have allowed what we consider to be more than ample time for permittees to complete construction and begin operation, and we expect to see many stations in operation long before the allowed 18 months.

8. Emergency Alert System

163. *Background.* In the *NPRM*, we proposed to treat LP1000 facilities like full-power FM stations for the purposes of the Emergency Alert System (EAS). We explained that, in this way, we would expect to avoid having significant numbers of people deprived of this critical information resource. By contrast, because of their extremely small coverage areas and correspondingly sized audiences, as well as their limited resources, we proposed that LP10 stations, if authorized, not be required to participate in the EAS. We sought comment on these proposals and also on how LP100 stations, with their intermediate size and audience reach, should fit into the EAS structure.

164. *Comments.* Some commenters argue that compliance should not be

required for LP100 or LP10 stations because small operations and coverage areas make compliance unnecessary and too expensive; stations other than LP100 and LP10 stations can take on the role of alerting the community to emergencies; the short range and secondary status of LP100 stations make them unsuitable for emergency message propagation; and removing LP100 stations from the air during national emergencies would help prevent interference during such crisis times. Other commenters suggest that EAS be required only under certain circumstances. A few commenters provide suggestions on how to overcome the expense involved in EAS participation. Other commenters stress the importance of participation in EAS by all broadcast stations.

165. *Decision*. We conclude that LPFM stations should be required to participate in the EAS structure, but in a modified way. Our requirements will balance the cost of compliance, the ability of stations to meet that cost, and the needs of the listening public to be alerted in emergency situations. LPFM licensees will be able to satisfy our EAS requirements if they install and operate Commission-certified decoding equipment, which will alert station personnel to emergency alerts. Once that decoding equipment is installed, station personnel must pass any national emergency audio message on to listeners as prescribed in our rules. As is the case for full service broadcasters, LPFM participation at the state and local levels will be on a voluntary basis.

166. The EAS is composed of several entities, including FM broadcast stations, LPTV stations, and cable systems operating on an organized basis at the national, state, and local levels. The EAS alert is designed to make viewers and listeners aware of emergencies that may affect them so that they may take appropriate protective action or seek additional information. Though the arguments of financial hardship for LPFM licensees to implement the EAS are well taken, alert messages are potentially important to all listeners and viewers, and commenters do not persuade us that the LPFM stations should, as a class, be exempted from this important public safety function. We will, however, minimize the cost of effective participation for LPFM licensees. Accordingly, we amend § 11.11(a) to include LPFM stations in the list of the EAS entities. We also amend the Broadcast Station Timetable of § 11.11(a) to set out the requirements for LPFM.

167. While we will require EAS participation, we will exempt LPFM stations from purchasing some of the EAS equipment required for other participants under our rules. In general, EAS equipment must be able to perform the functions described in all of our rules regulating EAS. However, we relaxed some of these requirements for Class D noncommercial educational FM and LPTV stations. Because LPFM stations will also provide service to small audiences, we exempt LPFM stations from the requirement to install and operate encoders. We believe that the cost to LPFM licensees of installing and operating both encoding and decoding equipment outweighs the benefits that these small stations could provide to the public.

168. While we are not requiring LPFM stations to install encoding equipment, all LPFM stations are required to use decoding equipment that notifies the station in case of any emergency. We recognize that there will be costs associated with EAS decoders, but believe the costs are justified. Current Commission-certified integrated encoder/decoder equipment costs $1,500 or more depending on the options a station wants to install. We note that today's manufacturers only produce certified encoders and decoders as integrated units, as that is the only demand that exists. Noncertified decoding equipment, however, is currently available and is advertised in some places for as little as $650. Thus, it appears that Commission-certified decoding equipment should be available for well under $1000 and should be able to reach the market in the near future. Accordingly, we will require the use of Commission-certified EAS decoders or decoder/encoders by all LPFM stations when they commence operations. It will be several months before the first LPFM stations are on the air. Given that decoders are already on the market, this should be ample time to obtain Commission certification and make certified units available for purchase. If certified decoder equipment is not available at that time, we can grant a temporary exemption for LPFM stations until such time as it is reasonably available. Once the licensee has installed decoding equipment, if the station is on the air at the time it receives a national emergency alert message, station personnel must pass the information along to listeners.

169. Finally, we will continue to grant waivers of EAS requirements to broadcasters, including LPFM licensees, on a case-by-case basis in appropriate circumstances upon a sufficient showing of need. As we outlined in the *EAS First Report and Order*, the waiver request must contain at least the following: (1) Justification for waiver, with reference to the particular rule sections for which a waiver is sought; (2) information about the financial status of the entity, such as a balance sheet and income statement for up to the previous two years (audited, if possible); (3) the number of other entities that serve the requesting entity's coverage area and that have or are expected to install EAS equipment; and (4) the likelihood (such as proximity or frequency) of hazardous risks to the requesting entity's audience.

III. Conclusion

170. In this final rule, we set the stage for a new dimension in radio broadcasting, creating additional, affordable outlets for the expression of views and the provision of information and entertainment to local communities. By limiting participants in this service to noncommercial, educational organizations, we hope to ensure that this service will meet needs unmet by the commercial radio service. Through eligibility requirements, selection preference factors, and the relatively small range of LPFM stations, we hope to create a service that will serve the distinct needs of small local communities. Mindful of the need to protect the technical integrity of the existing radio service and to preserve its potential transition to digital service, however, we are proceeding cautiously. Accordingly, we are limiting radio stations in the LPFM service to a maximum of 100 watts. We are also maintaining 2nd-adjacent channel protection. Based on our engineers' careful review of the technical data submitted to the Commission, as well as their own studies, we are confident that any risk of interference is small and, on balance, outweighed by the benefits this new service will bring.

IV. Administrative Matters

171. *Paperwork Reduction Act Analysis*. This *Report and Order* 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.

V. Final Regulatory Flexibility Act Analysis

172. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of*

Proposed Rulemaking (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 Report and Order

173. The Commission received petitions for rulemaking asking for the creation of a low power radio service. Because they raised similar or identical issues, the Commission coordinated its responses to them. The Commission released public notices of its receipt of three of the proposals and invited public comment on them. In response to significant public support, the Commission released the *NPRM* to propose a new, low power FM service.

174. In the *Report and Order*, the Commission is adopting a 100-watt class (LP100) and a 10-watt class (LP10). Because of the predicted lower construction and operational costs of LPFM stations as opposed to full power facilities, we expect that small entities would be expected to have few economic obstacles to becoming LPFM licensees. Therefore, this new service may serve as a vehicle for small entities and under-represented groups (including women and minorities) to gain valuable broadcast experience and to add their voices to their local communities.

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

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

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

176. 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 governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 per cent) are small entities.

177. The Small Business Administration defines a radio broadcasting station that has $5 million or less in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992. Official Commission records indicate that 11,334 individual radio stations were operating in 1992. As of December 31, 1998, Commission records indicate that 12,615 radio stations were operating, of which 7,832 were FM stations.

178. The rules will apply to a new category of FM radio broadcasting service. It is not known how many entities that may seek to obtain a low power radio license. Nor do we know how many of these entities will be small entities. We note, however, that in the year since we issued the *NPRM,* the Commission's LPFM website has received approximately 100,000 hits, demonstrating the interest of individuals and groups in operating such a facility. In addition, we expect that, due to the small size of low power FM stations, small entities would generally have a greater interest than large ones in acquiring them.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

179. The Commission is creating a new broadcasting service that may allow hundreds or thousands of small entities to become broadcast licensees for the first time. This endeavor will require the collection of information for the purposes of processing applications for (among other things) initial construction permits, assignments and transfers, and renewals. We will also require lower power radio stations to comply with some of the reporting, recordkeeping, and other compliance requirements as full power radio broadcasters.

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

180. The RFA requires agencies to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

181. The LP100 and LP10 services are likely to create significant opportunities for new small businesses. In addition, the Commission has taken steps to minimize the impact on existing small broadcasters.

182. *Creating New Opportunities for Small Businesses.* The *Report and Order* adopts a number of rules designed to help small businesses obtain and retain LP100 and LP10 licenses. These include ownership rules, and exemptions from mandatory electronic filing and main studio requirements.

183. The *Report and Order* adopts ownership rules to assist small entities acquire or construct LPFM stations. Parties with attributable interests in any full power broadcast facilities are not eligible to have any ownership interest in any low power radio stations; this prevents large group owners (or even large single-station owners) from constructing and operating LPFM facilities that might otherwise be available to small entities. The local and national ownership restrictions of one station per community and, initially, one station, and ultimately, 10 stations, nationwide are intended to ensure that ample LPFM stations are available for small entities. However, the ownership rules also prohibit small entity full power broadcasters from acquiring LPFM licenses.

184. The *Report and Order* also modifies the application of some of our programming and service requirements for LPFM stations. Full power and LPFM stations alike are required to maintain a public file that includes their authorizations, issues and programming lists, and political files. However, unlike full power stations which must create quarterly issues and programming lists and maintain a main studio with a staff

presence, LPFM stations must generate only annual issues and programming lists, and need not maintain a main studio, and so may operate out of even a private residence. In addition, while full power and LPFM stations both must participate in the Emergency Alert System (EAS) and have decoding equipment, LPFM stations need not purchase encoding equipment. These exemptions from and modifications of the application of the Commission's programming and service requirements to LPFM stations will reduce administrative burdens and costs for small business licensees.

185. The *Report and Order* also adopts filing requirements that should help small businesses. Although the *NPRM* proposed to mandate electronic filing for LPFM stations, the *Report and Order* declined to do so for the first round of LP100 applications. The Commission made this decision because it recognized that there might be a disparity between applicants for LP100 licenses in terms of computer resources and skills. This result should help small businesses without more advanced technological resources still participation in the LP100 application process. *The Report and Order* adopts a window filing process, as opposed to a first-come, first-served process; some commenters claimed that the latter process would favor applicants with superior financial and technical resources.

186. *Minimizing Impact on Existing Small Business Broadcast Stations.* The *Report and Order* has also adopted an alternative that will minimize the impact on existing small business broadcast stations. LP100 and LP10 stations will be noncommercial, educational stations, and so will not compete with small business commercial broadcasters for advertising revenue.

Report to Congress

187. The Commission will send a copy of the *Report and Order,* 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 *Report and Order,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

VI. Ordering Clauses

188. Accordingly, pursuant to authority contained in sections 1, 4(i), 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303, part 73 of the Commission's rules, 47 CFR part 73, is amended.

189. The amendments shall be effective April 17, 2000.

190. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Act Analysis, to the Chief Counsel for the Small Business Administration.

191. This proceeding is terminated.

List of Subjects

47 CFR Part 11

Emergency alert system.

47 CFR Part 73 and Part 74

Radio broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

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

PART 11—EMERGENCY ALERT SYSTEM (EAS)

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

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

2. Section 11.11 is amended by:

(1) Adding in paragraph (a) the words ''Low Power FM (LPFM)'' in the first sentence after the word ''FM''.

(2) Revising the table ''Timetable Broadcast Stations''.

(3) Revising the first sentence of paragraph (b).

3. The amendments are to read as follows:

§ 11.11 The Emergency Alert System (EAS).

* * * * *

TIMETABLE—BROADCAST STATIONS

Requirement	AM&FM	TV	FM Class D	LPTV	LPFM [1]
Two-tone encoder [2 3]	Y	Y	N	N	N
Two-tone decoder [4 5]	Y	Y	Y	Y	N
EAS decoder	Y 1/1/97	Y 1/1/97	Y 1/1/97	Y 1/197	Y
EAS encoder	Y 1/1/97	Y 1/1/97	N	N	N
Audio message	Y 1/1/97	Y 1/1/97	Y 1/1/97	Y 1/1/97	Y
Video message	NA	Y 1/1/97	N/A	Y 1/1/97	N/A

[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.

* * * * *

(b) Class D noncommercial educational FM stations as defined in § 73.506, LPFM stations as defined in §§ 73.811 and 73.853, and LPTV stations as defined in § 74.701(f) are not required to comply with § 11.32. * * *

* * * * *

4. Section 11.51 (e) is revised to read as follows:

§ 11.51 EAS code and Attention Signal Transmission requirements.

* * * * *

(e) Class D non-commercial educational FM stations as defined in § 73.506 of this chapter, Low Power FM (LPFM) stations as defined in §§ 73.811 and 73.853 of this chapter, and low power TV (LPTV) stations as defined in § 74.701(f) of this chapter are not required to have equipment capable of generating the EAS codes and Attention Signal specified in § 11.31.

* * * * *

5. Section 11.53(a)(3) is revised to read as follows:

§ 11.53 Dissemination of Emergency Action Notification.

(a) * * *

(3) Wire services to all subscribers (AM, FM, low power FM (LPFM), TV, LPTV and other stations).

* * * * *

6. Section 11.61 is amended by revising the last sentence of paragraph (a)(1)(v) and revising paragraph (a)(2)(iii) to read as follows:

§ 11.61 Tests of EAS procedures.

(a) * * *

(1) * * *

(v) * * * Class D non-commercial educational FM, LPFM and LPTV stations are required to transmit only the test script.

(2) * * *

(iii) Class D non-commercial educational FM, LPFM and LPTV stations are not required to transmit this test but must log receipt.

* * * * *

PART 73—RADIO BROADCAST SERVICES

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

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

2. Section 73.209 is amended by adding paragraph (c) to read, as follows:

§ 73.209 Protection from interference.

* * * * *

(c) Permittees and licensees of FM stations are not protected from interference which may be created by the grant of a new LPFM station or of authority to modify an existing LPFM station, except in instances where the FM station would receive predicted interference from an LPFM station within the FM station's 3.16 mV/m (70 dBu) contour.

3. Section 73.508 is revised to read as follows:

§ 73.508 Standards of good engineering practice.

(a) All noncommercial educational stations and LPFM stations operating with more than 10 watts transmitter power output shall be subject to all of the provisions of the FM Technical Standards contained in subpart B of this part. Class D educational stations and LPFM stations operating with 10 watts or less transmitter output power shall be subject to the definitions contained in § 73.310, and also to those other provisions of the FM Technical Standards which are specifically made applicable to them by the provisions of this subpart.

(b) The transmitter and associated transmitting equipment of each noncommercial educational FM station and LPFM station licensed for transmitter power output above 10 watts must be designed, constructed and operated in accordance with § 73.317.

(c) The transmitter and associated transmitting equipment of each noncommercial educational FM station licensed for transmitter power output of 10 watts or less, although not required to meet all requirements of § 73.317, must be constructed with the safety provisions of the current national electrical code as approved by the American National Standards Institute. These stations must be operated, tuned, and adjusted so that emissions are not radiated outside the authorized band causing or which are capable of causing interference to the communications of other stations. The audio distortion, audio frequency range, carrier hum, noise level, and other essential phases of the operation which control the external effects, must be at all times capable of providing satisfactory broadcast service. Studio equipment properly covered by an underwriter's certificate will be considered as satisfying safety requirements.

4. Section 73.514 is added to read as follows:

§ 73.514 Protection from interference.

Permittees and licensees of NCE FM stations are not protected from interference which may be created by the grant of a new LPFM station or of authority to modify an existing LPFM station, except in instances where the NCE FM station would receive interference from an LPFM station within the 3.16 mV/m (70 dBu) contour.

5. Subpart G of part 73 is revised to read as follows:

Subpart G—Low Power FM Broadcast Stations (LPFM)

Sec.

73.801 Broadcast regulations applicable to LPFM stations.
73.805 Availability of channels.
73.807 Minimum distance separation between stations.
73.808 Distance computations.
73.809 Interference protection to full service FM stations.
73.811 LPFM power and antenna height requirements.
73.812 Rounding of power and antenna heights.
73.813 Determination of antenna height above average terrain (HAAT).
73.816 Antennas.
73.825 Protection to Reception of TV Channel 6.
73.840 Operating power and mode tolerances.
73.845 Transmission system operation.
73.850 Operating schedule.
73.853 Licensing requirements and service.
73.854 Unlicensed operations.
73.855 Ownership limits.
73.858 Attribution of LPFM station interests.
73.860 Cross-ownership.
73.865 Assignment and transfer of LPFM authorizations.
73.870 Processing of LPFM broadcast station applications.
73.872 Selection procedure for mutually exclusive LPFM applications.
73.873 LPFM license period.
73.875 Modification of transmission systems.
73.877 Station logs for LPFM stations.
73.878 Station inspections by FCC; availability to FCC of station logs and records.
73.879 Signal retransmission.
73.881 Equal employment opportunities.

§ 73.801 Broadcast regulations applicable to LPFM stations.

The following rules are applicable to LPFM stations:

Section 73.201 Numerical definition of FM broadcast channels.
Section 73.220 Restrictions on use of channels.
Section 73.267 Determining operating power.
Section 73.277 Permissible transmissions.
Section 73.297 FM stereophonic sound broadcasting.
Section 73.310 FM technical definitions.
Section 73.312 Topographic data.
Section 73.318 FM blanketing interference.
Section 73.322 FM stereophonic sound transmission standards.
Section 73.333 Engineering charts.
Section 73.503 Licensing requirements and service.
Section 73.508 Standards of good engineering practice.
Section 73.593 Subsidiary communications services.
Section 73.1015 Truthful written statements and responses to Commission inquiries and correspondence.
Section 73.1030 Notifications concerning interference to radio astronomy, research and receiving installations.
Section 73.1201 Station identification.
Section 73.1206 Broadcast of telephone conversations.
Section 73.1207 Rebroadcasts.
Section 73.1208 Broadcast of taped, filmed, or recorded material.
Section 73.1210 TV/FM dual-language broadcasting in Puerto Rico.
Section 73.1211 Broadcast of lottery information.
Section 73.1212 Sponsorship identification; list retention; related requirements.
Section 73.1213 Antenna structure, marking and lighting.
Section 73.1216 Licensee-conducted contests.
Section 73.1217 Broadcast hoaxes.
Section 73.1230 Posting of station license.
Section 73.1250 Broadcasting emergency information.
Section 73.1300 Unattended station operation.

Section 73.1400 Transmission system monitoring and control.
Section 73.1520 Operation for tests and maintenance.
Section 73.1540 Carrier frequency measurements.
Section 73.1545 Carrier frequency departure tolerances.
Section 73.1570 Modulation levels: AM, FM, and TV aural.
Section 73.1580 Transmission system inspections.
Section 73.1610 Equipment tests.
Section 73.1620 Program tests.
Section 73.1650 International agreements.
Section 73.1660 Acceptability of broadcast transmitters.
Section 73.1665 Main transmitters.
Section 73.1692 Broadcast station construction near or installation on an AM broadcast tower.
Section 73.1745 Unauthorized operation.
Section 73.1750 Discontinuance of operation.
Section 73.1920 Personal attacks.
Section 73.1940 Legally qualified candidates for public office.
Section 73.1941 Equal opportunities.
Section 73.1943 Political file.
Section 73.1944 Reasonable access.
Section 73.3511 Applications required.
Section 73.3512 Where to file; number of copies.
Section 73.3513 Signing of applications.
Section 73.3514 Content of applications.
Section 73.3516 Specification of facilities.
Section 73.3517 Contingent applications.
Section 73.3518 Inconsistent or conflicting applications.
Section 73.3519 Repetitious applications.
Section 73.3520 Multiple applications.
Section 73.3525 Agreements for removing application conflicts.
Section 73.3539 Application for renewal of license.
Section 73.3542 Application for emergency authorization.
Section 73.3545 Application for permit to deliver programs to foreign stations.
Section 73.3550 Requests for new or modified call sign assignments.
Section 73.3561 Staff consideration of applications requiring Commission consideration.
Section 73.3562 Staff consideration of applications not requiring action by the Commission.
Section 73.3566 Defective applications.
Section 73.3568 Dismissal of applications.
Section 73.3584 Procedure for filing petitions to deny.
Section 73.3587 Procedure for filing informal objections.
Section 73.3588 Dismissal of petitions to deny or withdrawal of informal objections.
Section 73.3589 Threats to file petitions to deny or informal objections.
Section 73.3591 Grants without hearing.
Section 73.3593 Designation for hearing.
Section 73.3598 Period of construction.
Section 73.3599 Forfeiture of construction permit.
Section 73.3999 Enforcement of 18 U.S.C. 1464—restrictions on the transmission of obscene and indecent material.

§ 73.805 Availability of channels.

Except as provided in § 73.220 of this chapter, all of the frequencies listed in § 73.201 of this chapter are available for LPFM stations.

§ 73.807 Minimum distance separation between stations.

Minimum separation requirements for LP100 and LP10 stations, as defined in § 73.811 and § 73.853 of this part, are listed in the following paragraphs. An LPFM station will not be authorized unless these separations are met. Minimum distances for co-channel and first-adjacent channel are separated into two columns. The left-hand column lists the required minimum separation to protect other stations and the right-hand column lists (for informational purposes only) the minimum distance necessary for the LPFM station to receive no interference from other stations. For second-adjacent channels and IF channels, the required minimum distance separation is sufficient to avoid interference received from other stations.

(a) An LP100 station will not be authorized initially unless the minimum distance separations in the following table are met with respect to authorized FM stations, timely filed applications for new and existing FM stations, authorized LP100 stations, LP100 station applications that were timely-filed within a previous window, and vacant FM allotments. LP100 stations are not required to protect LP10 stations.

Station class protected by LP100	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second-adjacent channel minimum separation (km) required	I.F . Channel minimum separations 10.6 or 10.8 MHz
	Required	For no interference received	Required	For no interference received		
LP100	24	24	14	14	(1)	(1)
D	24	24	13	13	6	4
A	67	92	56	56	29	7
B1	87	119	74	74	46	9
B	112	143	97	97	67	12
C3	78	119	67	67	40	9
C2	91	143	80	84	53	12
C1	111	178	100	111	73	20
C	130	203	120	142	93	28

[1] None.

(b) An LP10 station will not be authorized unless the minimum distance separations are met with respect to authorized FM stations, timely-filed applications for new and existing FM stations, vacant FM allotments, or LPFM stations.

Station class protected by LP10	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second-adjacent channel minimum separation (km) required	I.F . Channel minimum separations 10.6 or 10.8 MHz
	Required	For no interference received	required	for no interference received		
LP100	16	22	10	11	(1)	(1)
LP10	13	13	8	8	(1)	(1)
D	16	21	10	11	6	2
A	59	90	53	53	29	5
B1	77	117	70	70	45	8
B	99	141	91	91	66	11
C3	69	117	64	64	39	8

Station class protected by LP10	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second-adjacent channel minimum separation (km) required	I.F . Channel minimum separations 10.6 or 10.8 MHz
	Required	For no interference received	required	for no interference received		
C2	82	141	77	81	52	11
C1	103	175	97	108	73	18
C	122	201	116	140	92	26

[1] None.

(c) In addition to meeting or exceeding the minimum separations for Class LP100 and Class LP10 stations in paragraphs (a) and (b) of this section, new LP100 and LP10 stations will not be authorized in Puerto Rico or the Virgin Islands unless the minimum distance separations are met with respect to authorized or proposed FM stations:

(1) LP100 STATIONS IN PUERTO RICO AND THE VIRGIN ISLANDS

Station class protected by LP100	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second-adjacent channel minimum separation (km) Required	I.F . Channel minimum separations 10.6 or 10.8 MHz
	Required	For no interference received	required	For no interference received		
A	80	111	70	70	42	9
B1	95	128	82	82	53	11
B	138	179	123	123	92	20

(2) LP10 Stations in Puerto Rico and the Virgin Islands:

Station class protected by LP10	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second-adjacent channel minimum separation (km) required	I.F . Channel minimum separations 10.6 or 10.8 MHz
	Required	For no interference received	Required	For no interference received		
A	72	108	66	66	42	8
B1	84	125	78	78	53	9
B	126	177	118	118	92	18

Note to paragraphs (a), (b), and (c): Minimum distance separations towards ''grandfathered'' superpowered Reserved Band stations, are as specified. Full service FM stations operating within the reserved band (Channels 201–220) with facilities in excess of those permitted in § 73.211(b)(1) or § 73.211(b)(3) shall be protected by LPFM stations in accordance with the minimum distance separations for the nearest class as determined under § 73.211. For example, a Class B1 station operating with facilities that result in a 60 dBu contour that exceeds 39 kilometers but is less than 52 kilometers would be protected by the Class B minimum distance separations. Class D stations with 60 dBu contours that exceed 5 kilometers will be protected by the Class A minimum distance separations. Class B stations with 60 dBu contours that exceed 52 kilometers will be protected as Class C1 or Class C stations depending upon the distance to the 60 dBu contour. No stations will be protected beyond Class C separations.

(d) In addition to meeting the separations (a) through (c), LPFM applications must meet the minimum separation requirements with respect to authorized FM translator stations, cutoff FM translator applications, and FM translator applications filed prior to the release of the Public Notice announcing the LPFM window period:

(1) LP100 stations:

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

(2) LP10 Stations:

Distance to FM translator 60 dBu contour	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second-adjacent channel minimum separation (km) required	I.F . Channel minimum separation (km) 10.6 or 10.8 MHz
	Required	For no interference received	required	For no interference received		
13.3 km or greater	30	65	25	33	20	3
Greater than 7.3 km, but less than 13.3 km	24	49	18	23	14	3
7.3 km or less	18	28	12	14	8	3

(e) Existing Class LP100 and LP10 stations which do not meet the separations in paragraphs (a) through (e) of this section may be relocated provided that the separation to any short-spaced station is not reduced.

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

(g) *International considerations within the border zones.* (1) Within 320 km of the Canadian border, LP100 stations must meet the following minimum separations with respect to any Canadian stations:

Canadian station class	Co-channel (km)	First-adjacent channel (km)	Second-adjacent channel (km)	Third-adjacent channel (km)	Intermediate frequency (IF) channel (km)
A1	45	30	21	20	4
A	66	50	41	40	7
B1	78	62	53	52	9
B	92	76	68	66	12
C1	113	98	89	88	19
C	118	106	99	98	28

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

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

(3) Within 320 km of the Canadian border, LP10 stations must meet the following minimum separations with respect to any Canadian stations:

Canadian station class	Co-channel (km)	First-adjacent channel (km)	Second-adjacent channel (km)	Third-adjacent channel (km)	Intermediate frequency (IF) channel (km)
A1	33	25	23	19	3
A	53	45	43	39	5
B1	65	57	55	51	8
B	79	71	70	66	11
C1	101	93	91	87	18
C	108	102	100	97	26

(4) Within 320 km of the Mexican border, LP10 stations must meet the following separations with respect to any Mexican stations:

Mexican station class	Co-channel (km)	First-adjacent channel (km)	Second-/third-adjacent channel (km)	Intermediate frequency (IF) channel (km)
A	34	29	24	5
AA	39	33	29	5
B1	57	50	45	8
B	79	71	66	11
C1	83	77	73	18
C	102	96	92	26

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

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

§ 73.808 Distance computations.

For the purposes of determining compliance with any LPFM distance requirements, distances shall be calculated in accordance with § 73.208(c) of this part.

§ 73.809 Interference protection to full service FM stations.

(a) It shall be the responsibility of the licensee of an LPFM station to correct at its expense any condition of interference to the direct reception of the signal of any subsequently authorized commercial or NCE FM station that operates on the same channel, first-adjacent channel, second-adjacent channel or intermediate frequency (IF) channels as the LPFM station, where interference is predicted to occur and actually occurs within the 3.16 mV/m (70 dBu) contour of such stations. Predicted interference within this contour shall be calculated in accordance with the ratios set forth in § 73.215(a)(1) and (2) of this part. Actual interference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by the LPFM station.

(b) An LPFM station will be provided an opportunity to demonstrate in connection with the procession of the commercial or NCE FM application that interference with the 3.16 mV/m contour of such station is unlikely. If the LPFM station fails to so demonstrate, it will be required to cease operations upon the commencement of program tests by the commercial or NCE FM station.

(c) Complaints of actual interference by an LPFM station subject to paragraph (b) within the 3.16 mV/m contour of a commercial or NCE FM station must be served on the LPFM licensee and the Federal Communications Commission, attention Audio Services Division. The LPFM station must suspend operations within twenty-four hours of the receipt of such complaint unless the interference has been resolved to the satisfaction of the complainant on the basis of suitable techniques. An LPFM station may only resume operations at the direction of the Federal Communications Commission. If the Commission determines that the complainant has refused to permit the LPFM station to apply remedial techniques that demonstrably will eliminate the interference without impairment of the original reception, the licensee of the LPFM station is absolved of further responsibility.

(d) It shall be the responsibility of the licensee of an LPFM station to correct any condition of interference that results from the radiation of radio frequency energy outside its assigned channel. Upon notice by the FCC to the station licensee or operator that such interference is caused by spurious emissions of the station, operation of the station shall be immediately suspended and not resumed until the interference has been eliminated. However, short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures.

(e) In each instance where suspension of operation is required, the licensee shall submit a full report to the FCC in Washington, DC, after operation is resumed, containing details of the nature of the interference, the source of the interfering signals, and the remedial steps taken to eliminate the interference.

§ 73.811 LPFM power and antenna height requirements.

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

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

(b) LP10 stations: (1) *Maximum Facilities.* LP10 stations will be authorized to operate with maximum facilities of 10 watts ERP at 30 meters HAAT. An LP10 station with a HAAT that exceeds 30 meters will not be permitted to operate with an ERP greater than that which would result in a 60 dBu contour of 3.2 kilometers. In no event will an ERP less than one watt be authorized. No facility will be authorized in excess of one watt ERP at 100 meters HAAT.

(2) *Minimum Facilities.* LP10 stations may not operate with less than one watt ERP.

§ 73.812 Rounding of power and antenna heights.

(a) Effective radiated power (ERP) will be rounded to the nearest watt on LPFM authorizations.

(b) Antenna radiation center, antenna height above average terrain (HAAT), and antenna supporting structure height will all be rounded to the nearest meter on LPFM authorizations.

§ 73.813 Determination of antenna height above average terrain (HAAT).

HAAT determinations for LPFM stations will be made in accordance with the procedure detailed in § 73.313(d) of this part.

§ 73.816 Antennas.

(a) Directional antennas will not be authorized in the LPFM service.

(b) Permittees and licensees may employ nondirectional antennas with horizontal only polarization, vertical only polarization, circular polarization or elliptical polarization.

§ 73.825 Protection to Reception of TV Channel 6.

LPFM stations will be authorized on Channels 201 through 220 only if the pertinent minimum separation distances are met with respect to all TV Channel 6 stations.

FM Channel No.	Class LP100 to TV Channel 6 (km)	Class LP10 to TV Channel 6 (km)
201	219	171
202	204	162
203	188	156

FM Channel No.	Class LP100 to TV Channel 6 (km)	Class LP10 to TV Channel 6 (km)
204	179	153
205	167	149
206	156	143
207	151	141
208	151	141
209	151	141
210	151	141
211	151	141
212	149	140
213	147	139
214	145	138
215	143	137
216	142	136
217	142	136
218	139	134
219	137	134
220	136	133

§ 73.840 Operating power and mode tolerances.

The transmitter power output (TPO) of an LPFM station must be determined by the procedures set forth in § 73.267 of this part. The operating TPO of an LPFM station with an authorized TPO of more than ten watts must be maintained as near as practicable to its authorized TPO and may not be less than 90% of the minimum TPO nor greater than 105% of the maximum authorized TPO. An LPFM station with an authorized TPO of ten watts or less may operate with less than the authorized power, but not more than 105% of the authorized power.

§ 73.845 Transmission system operation.

Each LPFM licensee is responsible for maintaining and operating its broadcast station in a manner that complies with the technical rules set forth elsewhere in this part and in accordance with the terms of the station authorization. In the event that an LPFM station is operating in a manner that is not in compliance with the technical rules set forth elsewhere in this part or the terms of the station authorization, broadcast operation must be terminated within three hours.

§ 73.850 Operating schedule.

(a) All LPFM stations will be licensed for unlimited time operation, except those stations operating under a time sharing agreement pursuant to § 73.872.

(b) All LPFM stations are required to operate at least 36 hours per week, consisting of at least 5 hours of operation per day on at least 6 days of the week; however, stations licensed to educational institutions are not required to operate on Saturday or Sunday or to observe the minimum operating requirements during those days designated on the official school calendar as vacation or recess periods.

§ 73.853 Licensing requirements and service.

(a) An LPFM station may be licensed only to:

(1) Nonprofit educational organizations and upon a showing that the proposed station will be used for the advancement of an educational program; and

(2) State and local governments and non-government entities that will provide non-commercial public safety radio services.

(b) Only local applicants will be permitted to submit applications for a period of two years from the date that LP100 and LP10 stations, respectively, are first made available for application. For the purposes of this paragraph, an applicant will be deemed local if it can certify that:

(1) The applicant, its local chapter or branch is physically headquartered or has a campus within 16.1 km (10 miles) of the proposed site for the transmitting antenna;

(2) It has 75% of its board members residing within 16.1 km (10 miles) of the proposed site for the transmitting antenna; or

(3) In the case of any applicant proposing a public safety radio service, the applicant has jurisdiction within the service area of the proposed LPFM station.

§ 73.854 Unlicensed operations.

No application for an LPFM station may be granted unless the applicant certifies, under penalty of perjury, to one of the following statements:

(a) Neither the applicant, nor any party to the application, has engaged in any manner including individually or with persons, groups, organizations or other entities, in the unlicensed operation of any station in violation of section 301 of the Communications Act of 1934, as amended, 47 U.S.C. 301.

(b) To the extent the applicant or any party to the application has engaged in any manner, individually or with other persons, groups, organizations or other entities, in the unlicensed operation of a station in violation of section 301 of the Communications Act of 1934, as amended, 47 U.S.C. 301, such an engagement:

(1) Ceased voluntarily no later than February 26, 1999, without direction from the FCC to do so; or

(2) Ceased operation within 24 hours of being directed by the FCC to terminate unlicensed operation of any station.

§ 73.855 Ownership limits.

(a) No authorization for an LPFM station shall be granted to any party if the grant of that authorization will result in any such party holding an attributable interest in two LPFM stations separated by less than 12 km (7 miles).

(b) Nationwide ownership limits will be phased in according to the following schedule:

(1) For a period of two years from the date that the LPFM stations are first made available for application, a party may hold an attributable interest in no more than one LPFM station.

(2) For the period between two and three years from the date that the initial filing window opens for LPFM applications, a party may hold an attributable interest in no more than five LPFM stations.

(3) After three years from the date that the initial filing window opens for LPFM stations, a party may hold an attributable interest in no more than ten stations.

§ 73.858 Attribution of LPFM station interests.

Ownership and other interests in LPFM station permittees and licensees will be attributed to their holders and deemed cognizable for the purposes of §§ 73.855 and 73.860, in accordance with the provisions of § 73.3555, subject to the following exceptions:

(a) A director of an entity that holds an LPFM license will not have such interest treated as attributable if such director also holds an attributable interest in a broadcast licensee or other media entity but recuses himself or herself from any matters affecting the LPFM station.

(b) A local chapter of a national or other large organization shall not have the attributable interests of the national organization attributed to it provided that the local chapter is separately incorporated and has a distinct local presence and mission.

(c) A parent or subsidiary of a LPFM licensee or permittee that is a non-stock corporation will be treated as having an attributable interest in such corporation. The officers, directors, and members of a non-stock corporation's governing body and of any parent or subsidiary entity will have such positional interests attributed to them.

§ 73.860 Cross-ownership.

(a) No license for an LPFM station shall be granted to any party if the grant of such authorization will result in the same party holding an attributable interest in any other non-LPFM broadcast station, including any FM translator or low power television station, or any other media subject to broadcast ownership restrictions.

(b) A party with an attributable interest in a broadcast radio station must divest such interest prior to the commencement of operations of an LPFM station in which the party also holds an interest.

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

§ 73.865 Assignment and transfer of LPFM authorizations.

(a) An LPFM authorization may not be transferred or assigned except for a transfer or assignment that involves:

(1) Less than a substantial change in ownership and control; or

(2) An involuntary assignment of license or transfer of control.

(b) A change in the name of an LPFM licensee where no change in ownership or control is involved may be accomplished by written notification by the licensee to the Commission.

§ 73.870 Processing of LPFM broadcast station applications.

(a) A minor change for an LP100 station authorized under this subpart is limited to transmitter relocations of less than two kilometers. A minor change for an LP10 station authorized under this subpart cannot is limited to transmitter site relocations of less than one kilometer. Minor changes of LPFM stations may include changes in frequency to adjacent or IF frequencies, or, upon a technical showing of reduced interference, to any frequency.

(b) The Commission will specify by Public Notice a window filing period for applications for new LPFM stations and major modifications in the facilities of authorized LPFM stations. LPFM applications for new facilities and for major modifications in authorized LPFM stations will be accepted only during the appropriate window. Applications submitted prior to the window opening date identified in the Public Notice will be returned as premature. Applications submitted after the deadline will be dismissed with prejudice as untimely.

(c) Applications subject to paragraph (b) of this section that fail to meet the § 73.807 minimum distance separations, other than to LPFM station facilities proposed in applications filed in the same window, will be dismissed without any opportunity to amend such applications.

(d) Following the close of the window, the Commission will issue a Public Notice of acceptance for filing of applications submitted pursuant to paragraph (b) of this section that meet technical and legal requirements and that are not in conflict with any other application filed during the window. Following the close of the window, the Commission also will issue a Public Notice of the acceptance for filing of all applications tentatively selected pursuant to the procedures for mutually exclusive LPFM applications set forth at § 73.872. Petitions to deny such applications may be filed within 30 days of such public notice and in accordance with the procedures set forth at § 73.3584. A copy of any petition to deny must be served on the applicant.

(e) Minor change LPFM applications may be filed at any time, unless restricted by the staff, and generally, will be processed in the order in which they are tendered. Such applications must meet all technical and legal requirements applicable to new LPFM station applications.

§ 73.872 Selection procedure for mutually exclusive LPFM applications.

(a) Following the close of each window for new LPFM stations and for modifications in the facilities of authorized LPFM stations, the Commission will issue a public notice identifying all groups of mutually exclusive applications. Such applications will be awarded points to determine the tentative selectee. Unless resolved by settlement pursuant to paragraph (e) of this section, the tentative selectee will be the applicant within each group with the highest point total under the procedure set forth in this section, except as provided in paragraphs (c) and (d) of this section .

(b) Each mutually exclusive application will be awarded one point for each of the following criteria, based on application certification that the qualifying conditions are met:

(1) *Established community presence.* An applicant must, for a period of at least two years prior to application, have been physically headquartered, have had a campus, or have had seventy-five percent of its board members residing within 10 miles of the coordinates of the proposed transmitting antenna. Applicants claiming a point for this criterion must submit the documentation set forth in the application form at the time of filing their applications.

(2) *Proposed operating hours.* The applicant must pledge to operate at least 12 hours per day.

(3) *Local program origination.* The applicant must pledge to originate locally at least eight hours of programming per day. For purposes of this criterion, local origination is the production of programming within 10 miles of the coordinates of the proposed transmitting antenna.

(c) *Voluntary time-sharing.* If mutually exclusive applications have the same point total, any two or more of the tied applicants may propose to share use of the frequency by submitting, within 30 days of the release of a public notice announcing the tie, a time-share proposal. Such proposals shall be treated as amendments to the time-share proponents' applications, and shall become part of the terms of the station license. Where such proposals include all of the tied applications, all of the tied applications will be treated as tentative selectees; otherwise, time-share proponents' points will be aggregated to determine the tentative selectees.

(1) Time-share proposals shall be in writing and signed by each time-share proponent, and shall satisfy the following requirements:

(i) The proposal must specify the proposed hours of operation of each time-share proponent;

(ii) The proposal must not include simultaneous operation of the time-share proponents; and (iii) Each time-share proponent must propose to operate for at least 10 hours per week.

(2) Where a station is licensed pursuant to a time-sharing proposal, a change of the regular schedule set forth therein will be permitted only where an written agreement signed by each time-sharing licensee and complying with requirements (i) through (iii) of paragraph (c)(1) of this section is filed with the Commission, Attention: Audio Services Division, Mass Media Bureau, prior to the date of the change.

(d) *Successive license terms.* (1) If a tie among mutually exclusive applications is not resolved through time-sharing in accordance with paragraph (c) of this section, the tied applications will be reviewed for acceptability and applicants with tied, grantable applications will be eligible for equal, successive, non-renewable license terms of no less than one year each for a total combined term of eight years, in accordance with § 73.873. Eligible applications will be granted simultaneously, and the sequence of the applicants' license terms will be determined by the sequence in which they file applications for licenses to cover their construction permits based on the day of filing, except that eligible applicants proposing same-site facilities will be required, within 30 days of written notification by the Commission staff, to submit a written settlement agreement as to construction and license term sequence. Failure to submit such an agreement will result in the dismissal of the applications proposing same-site facilities and the grant of the remaining, eligible applications.

(2) Groups of more than eight tied, grantable applications will not be eligible for successive license terms under this section. Where such groups exist, the staff will dismiss all but the applications of the eight entities with the longest established community presences, as provided in paragraph (b)(1) of this section. If more than eight tied, grantable applications remain, the applicants must submit, within 30 days of written notification by the Commission staff, a written settlement agreement limiting the group to eight. Failure to do so will result in dismissal of the entire application group.

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

§ 73.873 LPFM license period.

(a) Initial licenses for LPFM stations not subject to successive license terms will be issued for a period running until the date specified in § 73.1020 for full service stations operating in the LPFM station's state or territory, or if issued after such date, determined in accordance with § 73.1020.

(b) The station license period issued under the successive license term tiebreaker procedures will be determined pursuant to § 73.872(d) and shall be for the period specified in the station license.

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

§ 73.875 Modification of transmission systems.

The following procedures and restrictions apply to licensee modifications of authorized broadcast transmission system facilities.

(a) The following changes are prohibited:

(1) Those that would result in the emission of signals outside of the authorized channel exceeding limits prescribed for the class of service.

(2) Those that would cause the transmission system to exceed the equipment performance measurements prescribed in § 73.508.

(b) The following changes may be made only after the grant of a construction permit application on FCC Form 318.

(1) Any construction of a new tower structure for broadcast purposes, except for replacement of an existing tower with a new tower of identical height and geographic coordinates.

(2) Any change in station geographic coordinates, including coordinate corrections and any move of the antenna to another tower structure located at the same coordinates.

(3) Any change in antenna height more than 2 meters above or 4 meters below the authorized value.

(4) Any change in channel.

(c) The following LPFM modifications may be made without prior authorization from the Commission. A modification of license application (FCC Form 319) must be submitted to the Commission within 10 days of commencing program test operations pursuant to § 73.1620. For applications filed pursuant to paragraph (c)(1) of this section, the modification of license application must contain an exhibit demonstrating compliance with the Commission's radiofrequency radiation guidelines. In addition, applications solely filed pursuant to paragraphs (c)(1) or (c)(2) 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.

(1) Replacement of an antenna with one of the same or different number of antenna bays, provided that the height of the antenna radiation center is not more than 2 meters above or 4 meters below the authorized values. Program test operations at the full authorized ERP may commence immediately upon installation pursuant to § 73.1620(a)(1).

(2) Replacement of a transmission line with one of a different type or length which changes the transmitter operating power (TPO) from the authorized value, but not the ERP, must be reported in a license modification application to the Commission.

(3) Changes in the hours of operation of stations authorized pursuant to time-share agreements in accordance with § 73.872.

§ 73.877 Station logs for LPFM stations.

(a) The licensee of each LPFM station must maintain a station log. Each log entry must include the time and date of observation and the name of the person making the entry. The following information must be entered in the station log:

(1) Any extinguishment or malfunction of the antenna structure obstruction lighting, adjustments, repairs, or replacement to the lighting system, or related notification to the FAA. See sections 17.48 and 73.49 of this chapter.

(2) Brief explanation of station outages due to equipment malfunction, servicing, or replacement;

(3) Operations not in accordance with the station license; and

(4) EAS weekly log requirements set forth in § 11.61(a)(1)(v) of this chapter.

(b) [Reserved]

§ 73.878 Station inspections by FCC; availability to FCC of station logs and records.

(a) The licensee of a broadcast station shall make the station available for inspection by representatives of the FCC during the station's business hours, and at any time it is in operation. In the course of an inspection or investigation, an FCC representative may require special equipment or program tests.

(b) Station records and logs shall be made available for inspection or duplication at the request of the FCC or its representatives. Such logs or records may be removed from the licensee's possession by an FCC representative or, upon request, shall be mailed by the licensee to the FCC by either registered mail, return receipt requested, or certified mail, return receipt requested. The return receipt shall be retained by the licensee as part of the station records until such records or logs are returned to the licensee. A receipt shall be furnished when the logs or records are removed from the licensee's possession by an FCC representative and this receipt shall be retained by the licensee as part of the station records until such records or logs are returned to the licensee. When the FCC has no further need for such records or logs, they shall be returned to the licensee. The provisions of this rule shall apply solely to those station logs and records that are required to be maintained by the provisions of this part.

(1) Where records or logs are maintained as the official records of a recognized law enforcement agency and the removal of the records from the possession of the law enforcement agency will hinder its law enforcement activities, such records will not be removed pursuant to this section if the chief of the law enforcement agency promptly certifies in writing to the FCC that removal of the logs or records will hinder law enforcement activities of the agency, stating insofar as feasible the basis for his decision and the date when it can reasonably be expected that such records will be released to the FCC.

§ 73.879 Signal retransmission.

An LPFM licensee may not retransmit, either terrestrially or via satellite, the signal of a full-power radio broadcast station.

§ 73.881 Equal employment opportunities.

General EEO policy. Equal employment opportunity shall be afforded by all LPFM licensees and permittees to all qualified persons, and no person shall be discriminated against because of race, color , religion, national origin, or sex.

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

§ 73.1001 Scope.

* * * * *

(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; and LPFM, subpart G.

(c) Certain provisions of this subpart apply to International Broadcast Stations (subpart F, part 73), LPFM (subpart G, part 73), and Low Power TV, TV Translator and TV Booster Stations (subpart G, part 74) where the rules for those services so provide.

* * * * *

7. Section 73.1620 is amended by revising paragraph (a) and adding paragraph (a)(5) to read as follows:

§ 73.1620 Program tests.

(a) Upon the completion of construction of an AM, FM, LPFM, or 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:

* * * * *

(5) Except for permits subject to successive license terms, the permittee of an LPFM station may begin program tests upon notification to the FCC in Washington, DC, provided that within 10 days thereafter, an application for license is filed. Program tests may be conducted by a licensee subject to mandatory license terms only during the term specified on such licensee's authorization.

* * * * *

8. Section 73.1660(a) is revised to read as follows:

§ 73.1660 Acceptability of broadcast transmitters.

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

* * * * *

9. Section 73.3533 is amended by adding paragraph (a)(8) to read as follows:

§ 73.3533 Application for construction permit or modification of construction permit.

* * * * *

(a)(8) FCC Form 318, ''Application for Construction Permit for a Low Power FM Broadcast Station.''

* * * * *

10. Section 73.3536 is amended by adding paragraph (b)(7) to read as follows:

§ 73.3536 Application for license to cover construction permit.

* * * * *

(b)(7) FCC Form 319, ''Application for a Low Power FM Broadcast Station License.''

* * * * *

11. Section 73.3550(f) is revised to read as follows:

§ 73.3550 Requirements for new or modified call sign assignments.

* * * * *

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

* * * * *

12. Section 73.3598(a) is revised to read as follows:

§ 73.3598 Period of construction.

(a) Each original construction permit for the construction of a new TV, AM, FM or International Broadcast; low power TV; TV translator; TV booster; FM translator; FM booster; or broadcast auxiliary station, or to make changes in such existing stations, shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed. Each original construction permit for the construction of a new LPFM station shall specify a period of eighteen months from the date of issuance of the construction permit within which construction shall be completed and application for license filed.

* * * * *

13. Section 73.3617 is revised to read as follows:

§ 73.3617 Broadcast information available on the Internet.

The Mass Media Bureau and each of its Divisions provide information on the Internet regarding broadcast rules and policies, pending and completed rulemakings, and pending applications. These sites also include copies of public notices and texts of recent decisions.

The Mass Media Bureau's address is http://www.fcc.gov/mmb/; the Audio Services Division address is http://www.fcc.gov/mmb/asd/; the Video Services Division is located at http://www.fcc.gov/mmb/vsd/; and the Policy and Rules Division's address is http://www.fcc.gov/mmb/prd/.

Part 74—Experimental Radio, Auxiliary, Special Broadcast and Other Program Distributional Services

1. The authority citation for part 74 continues to read as follows:

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

2. Section 74.432(a) is revised 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, international broadcast or low power TV station; broadcast network-entity; or cable network-entity.

* * * * *

3. Section 73.532(a) is revised to read as follows:

§ 74.532 Licensing requirements.

(a) An aural broadcast STL or an aural broadcast intercity relay station will be licensed only to the licensee or licensees of broadcast stations, including low power FM stations, other than international broadcast stations, and for use with broadcast stations owned entirely by or under common control of the licensee or licensees. An aural broadcast intercity relay station also will be licensed for use by low power FM stations, noncommercial educational FM translator stations assigned to reserved channels (Channels 201–220) and owned and operated by their primary station, by FM translator stations operating within the coverage contour of their primary stations, and by FM booster stations. Aural auxiliary stations licensed to low power FM stations will be assigned on a secondary basis; *i.e.,* subject to the condition that no harmful interference is caused to other aural auxiliary stations assigned to radio broadcast stations. Auxiliary stations licensed to low power FM stations must accept any interference caused by stations having primary use of aural auxiliary frequencies.

* * * * *

4. The heading for § 74.1204 and paragraph (a) are revised, and paragraph (a)(4) is added to read as follows:

§ 74.1204 Protection of FM broadcast, FM Translator and LP100 stations.

(a) An application for an FM translator station will not be accepted for filing if the proposed operation would involve overlap of predicted field contours with any other authorized commercial or noncommercial educational FM broadcast stations, FM translators, and Class D (secondary) noncommercial educational FM stations; or if it would result in new or increased overlap with an LP100 station, as set forth below:

* * * * *

(4) LP100 stations (Protected Contour: 1mV/m)

Frequency separation	Interference contour of proposed translator station	Protected contour of LP100 LPFM station
Cochannel 200 kHz	0.1 mV/m (40 dBu) 0.5 mV/m (54 dBu)	1.1 mV/m (60 dBu) 1 mV/m (60 dBu)

* * * * *

[FR Doc. 00–2718 Filed 2–14–00; 8:45 am]

BILLING CODE 6712–01–P