

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Parts 73 and 74****[MM Docket No. 99–25; FCC 00–349]****Creation of Low Power Radio Service****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

**SUMMARY:** This document the Commission affirmed most of the *Report and Order* creating a new low power FM radio service. It affirmed the LP100 and LP10 classes created in the *Report & Order* and the 3rd adjacent channel protection for most stations. The Commission did change certain aspects of the rules created by the *Report & Order*, however, it created a procedure to resolve complaints from listeners of full power radio stations claiming unexpected interference from LPFM stations. The complaint procedures are intended to ensure that if any unexpected, significant 3rd adjacent channel interference problems are caused by the operation of a particular LPFM station, they can be resolved expeditiously. The Commission also preserved existing protection for those stations providing radio reading services for blind or low vision listeners. The Commission made other minor changes to ownership rules involving public safety and transportation organizations and schools.

**EFFECTIVE DATE:** Effective December 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Julie Barrie, (202) 418–2130, Policy and Rules Division, Mass Media Bureau.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Memorandum Opinion and Order on Reconsideration* ("MO&O"), MM 99–25; FCC 00–349, adopted September 20, 2000; released September 28, 2000. The full text of the Commission's MO&O is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW-A306), 445 12 St. S.W., Washington, D.C. The complete text of this MO&O may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20036.

**Synopsis of Memorandum Opinion and Order****I. Background**

1. In January, we adopted a *Report and Order* ("R&O"), 65 FR 7616 (February 15, 2000), establishing a low power FM radio service. We authorized

this new service to provide opportunities for new voices to be heard, while at the same time preserving the integrity and technical excellence of existing FM radio service and safeguarding its transition to a digital transmission mode. In this MO&O, we dispose of petitions for reconsideration of the R&O, make certain changes to our rules, and provide certain clarifications of our rules.

2. In the R&O, the Commission authorized two new classes of FM radio service, known collectively as low power FM (LPFM). The LP100 class will consist of stations with a maximum power of 100 watts effective radiated power (ERP) at 30 meters antenna height above average terrain (HAAT), providing a signal level equivalent to the FM "protected" service (1 mV/m or 60 dBu) within a radius of approximately 3.5 miles. After a period of time sufficient to act on LP100 applications that are filed, the Mass Media Bureau will accept applications for LP10 stations. We are accepting applications for LP100 stations on a geographically staggered basis. See filing window schedule. The initial filing window for the first region closed June 8, 2000. The initial filing window for the fifth, and last, region is expected to be opened in May 2001. These stations will have a maximum power of 10 watts ERP at 30 meters HAAT, providing the same signal strength out to approximately 1 or 2 miles from the station's antenna. To avoid compromising existing FM radio service, given the new nature of the LPFM service, we imposed separation requirements for LPFM with respect to full power stations operating on co-, 1st—and 2nd—adjacent and intermediate frequency (IF) channels. Based on our engineers' technical analysis and careful review of other analyses submitted, we determined 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. We decided, therefore, not to impose 3rd adjacent channel separation requirements because doing so would unnecessarily and substantially restrict the number of LPFM stations that could be authorized, particularly in higher population areas.

3. We restricted LPFM service to noncommercial operations by noncommercial educational entities and public safety radio services. With certain narrow exceptions, we decided to restrict ownership to entities that have no attributable interest in any other broadcast station or other media

subject to our ownership rules. We severely restricted the number of LPFM stations that a single entity can own and limited ownership to locally-based entities for the first two years. We determined not to permit the sale of an LPFM station. To resolve mutually exclusive applications, we decided to use a point system that favors local ownership and locally-originated programming, with time-sharing and successive license terms as tie-breakers. Finally, we have minimized the regulatory burdens imposed on these stations, consistent with their size and very localized operation.

4. In this MO&O, we generally affirm the decisions we reached in the R&O, although we make some changes and clarify certain aspects of our rules. As explained, we reject arguments by petitioners proposing more stringent channel separation requirements, as well as arguments in favor of relaxing those requirements. We adopt complaint and license modification procedures to ensure that if any unexpected, significant 3rd adjacent channel interference problems are caused by the operation of a particular LPFM station, it can be resolved expeditiously. We decline to modify the permissible power levels for the service. We modify the spacing standards adopted in the R&O to require that LPFM stations operating on 3rd adjacent channels protect stations operating radio reading services and, pending further study, will not authorize an LPFM station that would not be sufficiently geographically separated from any full-service FM station on a 3rd adjacent channel that operates a radio reading service as of the date of the adoption of this MO&O. We also decline to alter the noncommercial nature of the service. We affirm our decision to apply our character qualifications policy with respect to former illegal broadcasters. We increase the flexibility of the ownership rules for certain specific types of applicants: government, transportation and public safety entities, and universities. We provide clarifications on eligibility issues concerning Indian tribes, student stations, licensees in the Instructional Television Fixed Service (ITFS), and schools with multiple campuses. We affirm our tie-breaker criteria, with certain clarifications regarding the credit for programming that is locally originated. Finally, we address a number of questions and suggestions regarding individual elements of our rules.

## II. Issue Analysis

### A. Technical Rules

#### 1. Second and Third Adjacent Channel Protection

5. In the *R&O*, we determined that it was not necessary to require that LPFM stations protect other full or low power FM stations operating on 3rd adjacent channels, *i.e.*, stations  $\pm 600$  KHz apart. Our decision on this issue was based on our finding that 100-watt LPFM stations operating on 3rd adjacent channels will not result in significant new interference to the service of existing FM stations. We concluded that any small amount of interference that may occur in individual cases would be outweighed by the benefits of new low power FM service. We also determined that the risk of interference from LPFM stations on 2nd adjacent channels may be somewhat higher than that from such operations on 3rd adjacent channels and therefore chose to retain 2nd adjacent channel protection requirements for LPFM stations.

6. These decisions were based on the substantial record of information and analyses on FM receiver performance characteristics that was developed in response to the *Notice of Proposed Rulemaking*, ("NPRM"), 64 FR 07577 (February 16, 1999). The record included three technical studies of FM receivers that were filed by commenting parties.

7. *3rd Adjacent Channel Protection.* NPR disagrees with our findings that any risk of interference from 100-watt LPFM stations operating on 3rd adjacent channels is small and that any such interference that does occur is, on balance, outweighed by the benefits of the new service. It argues that neither of these premises, nor our decision to reduce the existing FM interference protections, are supported by the record.

8. *Radio Reading Services.* In its petition, NPR requests that we provide additional interference protection for FM stations that operate radio reading services. Radio reading services, which provide access to printed news and other information sources for blind or print-disabled persons, are transmitted via FM station subcarrier (SCA) facilities.

9. *2nd Adjacent Channel Operation.* J. Rodger Skinner and UCC request that we reconsider our decision to apply 2nd adjacent channel protection requirements to LPFM stations and revise the rules to allow operation of LPFM stations without regard to 2nd adjacent channel separation. Skinner submits that our recent receiver tests, and the fact that no interference has

been reported during the many years when short-spaced grandfathered full service stations were allowed to relocate without regard to 2nd or 3rd adjacent channel restrictions, are indicative that low power stations could operate on such channels without causing interference.

10. The existing FM interference protections, which are provided through spacing standards, are based on the following ratios: 20 dB co-channel D/U; 6 dB 1st adjacent channel D/U;  $-40$  dB 2nd adjacent channel D/U for commercial FM stations and  $-20$  dB for noncommercial stations operating in the reserved FM band;  $-40$  dB 3rd adjacent channel D/U. Receivers with the ability to reject interference at these ratios could be expected to provide interference free service within a station's 60 dBu contour service area. (Such radios might not, however, be able to receive service at all locations within that contour if they did not have sufficient sensitivity to receive signals at the 60 dBu level even in the absence of any interference.) Receivers with lower capabilities might experience interference within a station's service area, while those with higher capabilities might be able to reject interference at greater distances.

11. We believe that the principal issue is receiver performance, *i.e.* the ability of modern FM radios to reject unwanted 3rd adjacent channel signals. Laboratory tests allow examination of individual receiver performance under controlled conditions. This permits precise control of both desired and interfering signals so that the interference performance of individual receivers can be accurately determined. Field testing, on the other hand, is generally used to confirm models or estimates of how both desired and interfering signals propagate to individual locations. For example, in the case of FM radio, estimates of desired field strength are based on the F(50, 50) field strength chart contained in 47 CFR 73.333, while estimates of interference are based on the F(50, 10) field strength chart in that Section. These charts show the distances from their respective transmitters at which the desired signal strength is predicted to exceed a given level at 50 percent of the locations 50 percent of the time and at which the interfering signal strength is predicted to exceed a given level at 50 percent of the locations 10 percent of the time. In simple terms, this approach assumes that the desired signal is at an average level while the interfering signal is at a much stronger level, *i.e.*, a "worse case" interference situation. These propagation and interference models have been used for many years for the

FM radio and other services, and are independent of receiver performance. No questions have been raised by any of the parties in this proceeding regarding the propagation and interference models used for FM radio. Further, it is unclear as to what additional information, if any, field tests, would reveal about receiver performance, which is the principal technical issue in this matter affecting 3rd adjacent channel interference. Field test data, in our opinion, would merely assess the accuracy of our propagation predictions, rather than reveal information on receiver performance.

12. Stations on noncommercial reserved FM channels (channels 201–220, in the band 88–92 MHz) are authorized based on contour overlap, rather than the minimum spacing standards used for commercial stations. The contour overlap standards for noncommercial stations are the same as the D/U ratios on which the spacing standards for commercial stations are based, with one exception. The exception is that the D/U ratio for 2nd adjacent channel protection for noncommercial stations is  $-20$  dB, whereas the 2nd adjacent channel spacing standard for commercial stations is based on the less stringent D/U ratio of  $-40$  dB.

#### 2. Regulatory Status of LPFM Stations

13. We decided in the *R&O* to require LPFM stations to protect existing full-power FM stations, translator, boosters, and vacant allotments, according to the separation requirements adopted, and not to protect LPFM stations from interference introduced by new or modified FM stations. We also decided that LPFM stations will be required to cease operation if they cause interference within the 3.16 mV/m contour of a subsequently authorized or modified FM station. One of our paramount goals in introducing LPFM service was that it not interfere with existing service. We believe that the rules we adopted strike a reasonable balance between the need to foster new service and our responsibility both to maintain the integrity of existing FM service and to allow for its expansion to better serve the public.

14. *Translators.* FM translator stations may not continue to operate if any interference occurs in areas where a full service FM station has a "regularly used" signal, including locations beyond the full service station's applicable protected contour. However, LPFM stations are only required to protect subsequently authorized full service FM stations if interference is created within the full service station's

70 dBu principal community contour. The Commission's decision permitting LPFM stations to continue operation if overlap occurs in an FM station's service area outside its 70 dBu contour was an attempt to balance the service needs of full service stations with the need for stability in the LPFM service. FM translators provide full service FM stations with a means of supplementing signal coverage made deficient due to terrain or other transmission issues, while LPFM stations will provide a new program origination service. Given the differing purposes of the LPFM and FM translator services we do not feel that it is necessary for both services to have identical interference protection requirements.

### 3. Modulation

15. In order to minimize the potential for interference from LPFM stations, the Commission concluded that LPFM stations would be required to meet current FM transmission standards. Additionally, in order to ensure that these standards are met, the *R&O* restricted LPFM stations to the use of FCC "type certified" transmitters.

16. In most cases, these standards will be met through the use of 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 [via reference in § 73.508], 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 this regard, we note that one of the rules modified in the *R&O*, inadvertently specified verification rather than certification procedures for LPFM stations. We are correcting the rules accordingly to correspond to our decisions in the *R&O*.

### 4. Cut-Off Date for Protection of Full Service Stations

17. The *R&O* adopted a nationwide filing window for LP100 applications and tentatively set the first window for May, 2000. The Commission directed the Mass Media Bureau to announce by Public Notice, (DA 00-621, released March 17, 2000) the opening of the first national window and to release this notice at least 30 days in advance. Subsequently, the Mass Media Bureau decided to accept LPFM applications in five separate filing windows to "ensure the expeditious implementation of the LPFM service and to promote the efficient use of Commission resources." The *R&O* also established protection

rights for both full service and low power stations. LPFM applications must protect all full service FM station applications on file as of the date of the public notice in accordance with the minimum distance separation requirements adopted in the *R&O*. Full service FM applications filed on or after the public notice date would be protected only to the extent that the applicant's 3.16 mV/m contour is affected by an LPFM facility.

18. In light of our decision to use multiple filing windows to implement the LPFM service, we clarify our LPFM cut-off rules. We will use the release date of each public notice announcing the opening of the next LP100 window as the "cut-off" date for protection of pending full service FM applications. Thus, LPFM applicants in subsequent filing windows will be required to protect all full service applications on file as of the date of the public notice for their particular window. This includes applications that may not have been protected in previous windows.

### 5. Protection of Cable Television Headend

19. In the *R&O*, the Commission made LPFM stations subject to the existing full service station requirements regarding the amelioration of blanketing interference. Cable headends are among the facilities covered by this rule.

### 6. Translators

20. As part of its overall plan to protect FM stations from interference, the Commission adopted FM translator/booster-LPFM station minimum distance separation requirements. Because FM translator and booster stations generally do not have specific class limitations, the separation requirements were determined by analyzing the 60 dBu contours of authorized stations and grouping them into three cohorts based on station power and height. Additionally, we also amended part 74 rules to require that FM translator and booster stations protect the 1 mV/m contour of LP100 stations.

21. *Protection of Class A TV, Low Power Television and Television Translator Stations Operating on TV Channel 6.* In order to protect TV Channel 6 stations from LPFM station interference, we adopted a rule (47 CFR 73.825) requiring LPFM stations proposing operation in the NCE portion of the FM Band (Channels 201-220) to meet minimum distance separation requirements with respect to TV Channel 6 stations. Section 73.825 does not specifically address Class A TV, low power television (LPTV) and television

translator stations operating on TV Channel 6. Accordingly, we will amend § 73.825 to include additional minimum distance separation requirements which we believe will be adequate to protect the service provided by the Class A TV, LPTV and television translator facilities.

### 7. Spacing Table

22. An anomaly in the minimum distance separation requirements of 47 CFR 73.807(g) has come to our attention. Specifically, the tables specify greater 2nd adjacent channel spacing requirements to Canadian stations from LP10 stations than from LP100 stations. When considering low-powered facilities at very high signal strengths, the Commission's F(50,50) curves often must be used instead of its F(50,10) curves. However, in some cases the staff must utilize the "free space equation" formula to determine contour distances. "In those cases where the distance calculated from the free space equation is greater than 5280 feet [one mile], but the F(50,50) curves show a distance of less than one mile, we use a distance of one mile." Although the staff properly used the treaty-required +20 dBu undesired-to-desired signal ratio to determine 2nd adjacent channel interfering contours near the Canadian border area, the staff failed to account for the fact that, in cases where the free space equation yields a result greater than 1.6 kilometers (one mile), 1.6 kilometers must be used as the contour distance. We have recalculated the minimum separation distances for 2nd adjacent channel LP10 stations near the Canadian border and are amending § 73.807 accordingly. For the same reason, we are also amending the IF frequency separation requirements for Class LP100 stations with respect to Class A and Class D stations, and Class B stations in Puerto Rico and the U.S. Virgin Islands.

23. In addition to the anomaly in 47 CFR 73.807(g), we have determined that low power FM stations within Canada and Mexico had not been specifically protected from new domestic LPFM stations in the *R&O*. While these stations are protected by treaty, the *R&O* failed to include spacing tables explicitly protecting Canadian and Mexican low power FM Stations. To eliminate any uncertainty with respect to Canadian and Mexican stations, we are supplementing the international spacing tables specified in 47 CFR 73.807 to include specific distance separation requirements. To determine the spacings, we took the maximum facilities allowed for Canadian and Mexican FM translator stations, calculated the distance to the F(50,50)

protected contour, and added the distance to the F(50,10) interfering curve from the domestic LPFM station required to protect those stations. In doing so, we determined that Canadian low power FM stations should receive the same protections provided to Canadian Class A1 facilities. Therefore, the Class A1 spacings in 47 CFR 73.807(g)(1) and (g)(3) will also be used for protecting Canadian low power FM Stations. However, due to the differences in treaty requirements, Mexican low power FM stations require unique spacing distances, and 47 CFR 73.807(g)(2) and 73.807(g)(4) are amended accordingly.

#### 8. Directional Antennas

24. In the *R&O*, we determined not to authorize directional antennas for LPFM stations. We concluded that directional antennas are unnecessary due to our reliance on a minimum distance separation methodology for interference protection, which assumes the use of a non-directional antenna. We also reasoned that authorizing only nondirectional antennas would simplify the preparation and processing of applications, thereby facilitating the expeditious implementation of the service.

25. As we stated in the *R&O*, there are compelling needs for the services that will be provided by LPFM stations. As part of a streamlined application process to expedite the authorization and implementation of the service, we prohibited the use of directional antennas by LPFM stations. We continue to believe that given the low power levels in the LPFM service, authorizing stations to limit power in particular directions would not generally yield benefits sufficient to offset our concerns about the complexities of directional antenna authorizations. Authorization of directional antennas entails the submission and staff evaluation of radiation patterns and related information. Applicants for directional FM station licenses are required to submit measurement data to verify the radiation characteristics of directional antennas, as installed. Station proposals involving non-directional antennas can be authorized more quickly and with much less information from applicants. Such antennas will also facilitate uniform signal coverage within an LPFM station's service contour. Moreover, the conservative distance separation requirements established for LPFM stations will ensure that other stations are adequately protected against interference without the use of directional antennas. For these reasons,

we generally affirm our determination not to authorize directional antennas for LPFM stations.

26. As noted by the petitioners, however, we recognize that there could be tangible benefits to allowing the use of directional antennas, particularly for licensees whose service is generally tailored to directional signal paths.

27. We will make a limited exception to the prohibition of LPFM directional antennas and permit such antennas to be used only by public safety and transportation entities in connection with the operation of TIS services. However, under no circumstances will a specific antenna pattern be considered when determining compliance with our LPFM interference requirements with respect to other stations. Thus, we affirm that all such applicants must propose LPFM locations that comply with the LPFM distance separation requirements; requirements which assume use of a nondirectional antenna. Additionally, the use of a directional antenna will not affect a licensee's obligation to operate at its authorized ERP and will therefore not result in any extension of predicted coverage. Use of a high gain directional antenna will require a corresponding transmitter output power and transmission line loss that produces the authorized ERP.

28. TIS applicants wishing to utilize directional antennas will be limited to the use of a single "off-the-shelf" antenna with pattern characteristics preset by the manufacturer. A composite antenna consisting of more than one antenna mounted together may not be utilized. Nor will we permit multiple directional antennas and transmitters to be used from a single licensed facility. When filing an application for license to cover a construction permit (FCC Form 319), permittees will be required to certify that the gain of the specified antenna and transmitter power output (TPO), coupled with the necessary transmission line, produces the licensed ERP. For the purposes of station authorizations and our engineering database, all LPFM stations, including those of TIS stations, will be considered "non-directional." Thus, we will not require applicants for station licenses to submit any data beyond antenna make and model. We will expect all licensees to install their antennas in accordance with the manufacturer's specifications.

#### 8. Service Area Issues

29. In order to avoid the creation of interference to existing FM broadcast stations, the *R&O* adopted minimum distance separation requirements that were premised on the lack of prohibited overlap to each station class' maximum

protected contour. In addition, in an effort to account for modifications to existing full service stations, and minimize interference, an additional 20 kilometer "buffer" was added to the co- and 1st adjacent channel separation requirements. Greater protection still was given to several superpowered stations operating within the reserved portion of the FM band. Finally, although a full service station proposing a facility modification could potentially be required to accept some interference from an operating LPFM station, the rules require that LPFM stations fully protect FM station modifications to their principal community (70 dBu) contours.

30. We wish to clarify 47 CFR 73.809 as it relates to determining interference caused by LPFM stations to full service stations operating on IF frequency channels. That section states that interference will be shown by demonstrating contour overlap based upon the interference ratios of 47 CFR 73.215. However, § 73.215 does not apply to IF frequency channel stations. Accordingly, we are amending § 73.809 to state that IF frequency channel interference will be determined via overlap of the 91 dBu F(50,50) (36 mV/m) contours. This contour was utilized to calculate the LPFM IF frequency channel spacing requirements.

31. All full service stations operating in the non-reserved band, regardless of facilities, must be protected under the provisions of 47 CFR 73.207 (distance separations based upon maximum class facilities) or § 73.215 (lesser separation requirements based upon the lack of contour overlap with maximum class facilities).

#### 9. Digital Audio Broadcasting

32. The Commission's decision to retain 2nd adjacent channel LPFM protection requirements but eliminate 3rd adjacent channel standards was designed, in part, to ensure that the introduction of the LPFM service did not impede the development of in-band on-channel (IBOC) digital audio broadcasting (DAB) technologies.

#### *B. Third Adjacent Channel Complaint and License Modification Procedure*

33. Based on the Commission's technical analyses and its review of several independent studies submitted in this proceeding we decided not to require LPFM stations to provide 3rd adjacent channel protection to full power stations. As discussed above, no issues have been raised on reconsideration that have persuaded us to reconsider our findings and conclusions on this matter. We continue to believe that the risk of interference

from LPFM stations is small, and that the interference that may occur in individual cases would be vastly outweighed by the benefits of initiating a new service that will create new outlets for locally based community-oriented voices.

34. We concluded in the *R&O* that the licensing of LPFM stations on 3rd adjacent channels would not result in significant new interference to existing FM stations, *i.e.* that very few listeners would be able to detect additional interference as a result of commencement of LPFM service on a 3rd adjacent channel. Although we expect it to be the rare case where an LPFM station operating on a 3rd adjacent channel causes more than a *de minimis* level of interference within the service area of a full power station protected by the distance separation requirements for other channel relationships, such a result would be unacceptable if it were to occur. Accordingly, we conclude on reconsideration that it would be prudent to establish procedures that would encourage cooperation between the parties and permit the Commission to take prompt remedial action where a significant level of interference can be traced to the commencement of broadcasts by a new LPFM station. As a result of these new procedures, there may be circumstances where, contrary to what we said in the *R&O*, an LPFM station will be required to take steps to resolve complaints that its signal is interfering with the reception of a full power FM station even though the LPFM station is operating in accordance with the relevant rules.

35. This marks the first time that the Commission has departed from a purely "predicted interference" approach for an aural service that has program origination authority and that enjoys certain protections generally thought of as "primary" stations rights. Our willingness to do so is based on a unique combination of factors. Most importantly, we are confident about the technical conclusions we have reached in the proceeding. Specifically, we continue to believe that it is unlikely that more than a few listeners will detect any additional interference to the reception of an existing FM station at locations that would be entitled to protection under our full power third adjacent channel interference methodology. Thus, the post-construction "actual interference" complaint procedure we are establishing should not pose a significant threat to the viability or stability of the LPFM service.

36. Moreover, an efficient complaint procedure will promote the fullest interference-free use of the FM broadcast spectrum. At this time there are few, if any, full power FM station opportunities in most of the highly populated areas of the country. In fact, staff studies in this proceeding establish that there are no available FM channels for LP100 stations in a number of major markets. In many communities broadcasters have fully taken advantage of the Commission's policy of licensing efficient high-power stations that serve wide areas with limited technical preclusiveness. As a result, most Americans enjoy abundant radio service. LPFM is not, as some argue, in conflict with these principles. Rather it is a complementary way to serve the needs of communities within a mature broadcast service. It is grounded on the success of the Commission's licensing policies and is designed to efficiently match the little spectrum that remains with the demonstrable demand for locally based programming. We conclude that an efficient, limited complaint procedure fairly balances the interests of incumbent broadcasters against the benefits of fostering a new and different kind of radio service.

37. For purposes of the complaint process we will consider interference to occur whenever reception of a full power station is impaired by the operation of an LPFM station operating on a third adjacent channel station. We believe that it is unnecessary to adopt a more technically objective standard for determining whether a listener is experiencing "actual" interference. The "any impairment" standard has worked successfully over the past decade in the FM translator context. A particular listener's perception of signal impairment is dependent on many factors, including the receiver used, the programming, listener sound quality expectations, and listener auditory discrimination capabilities. As a result, we are reluctant to adopt a single "objectionable interference" standard. We are also concerned that this approach could add a level of factual complexity to the complaint process set forth below without any clear public interest justification.

38. The complaint process may be invoked where an LPFM station's transmission facilities are located inside the predicted 60 dBu contour of an existing full power FM station operating on a 3rd adjacent channel; that is, the 60 dBu contour corresponding to the station facilities that existed at the time construction of the LPFM station was authorized. That contour, which encompasses the area that would have

been protected had a 3rd adjacent channel distance separation requirement been applied to LPFM stations, will bound the complaint area. With regard to LPFM protection of subsequently modified, upgraded, or new full-service FM stations, we will conform 3rd adjacent channel protection responsibilities to the generally applicable provisions in paragraph 66 of the *R&O* and as codified in 47 CFR 73.809. In this manner, operating LPFM stations will be permitted to interfere within the 60 dBu contour of a new or subsequently modified FM station, but not within such a station's 70 dBu "city grade" signal contour or principal community of license, as applicable (*see* discussion of service area issues). Complaints will be limited to receivers located at fixed, identifiable locations within the full power station's 60 dBu contour that are not more than one kilometer from the LPFM transmitter site. This geographic limitation is intended to address broadcasters' specific concern about the lack of LPFM station 3rd adjacent channel interference protection requirements. An LPFM station's interfering contour would extend slightly less than one kilometer from the LPFM transmitter site. Under the Commission's interference methodology for FM stations, 3rd adjacent channel interference is predicted where the undesired signal is more than 40 dB stronger than the desired signal level, *e.g.*, where the 3rd adjacent channel station's 100 dBu contour overlaps the desired signal level. The predicted 100 dBu contour of an LPFM station operating at maximum facilities would extend slightly less than one kilometer from the LPFM's transmitter site. The fixed receiver requirement is based on our desire to put in place a manageable and efficient complaint procedure. Mobile receiver complaints are generally much more difficult to identify and resolve. A mobile receiver, such as a car or portable radio, will encounter constantly varying signal strengths from various stations, resulting in a continuously variable potential for interference. The complaint must be received by either the LPFM or full power station within one year of the date on which the LPFM station commenced operation. This time frame is necessary to limit uncertainty regarding the potential modification or cancellation of an LPFM station's license and such station's financial obligation to resolve interference complaints. Any interference caused by the LPFM station should be detectable within one year after it commences

operation. The one-year cure period is similar to the technical requirement that each FM permittee resolve at its sole expense all blanketing interference complaints for a one-year period beginning with the commencement of program tests. The Commission will consider the modification of a station's license, including its cancellation, where as a result of the process described below, *bona fide* complaints from at least one percent of the households or thirty households, whichever is less, within the specified complaint area remain unresolved. The exact number of complaints necessary to satisfy this one-percent threshold can only be calculated on the basis of a specific antenna location of an allegedly interfering LPFM station. Assuming uniform population distribution within a community of license, the number of complaints necessary to reach this threshold would be, for example, approximately 19 in Charlottesville, Virginia, 29 in Minneapolis, Minnesota, and 12 in Frederick, Maryland. As noted, in no event would this procedure require more than 30 *bona fide* complaints. We do not anticipate this level of interference as a result of licensing LPFM stations on 3rd adjacent channels and will not consider it *de minimis*.

39. The first stage of the complaint process is designed to facilitate cooperative efforts between LPFM and full power FM licensees to identify and resolve *bona fide* interference complaints. A listener who believes that an LPFM station signal is interfering with the reception of a full power station may initiate the complaint procedure by providing the full power station an affidavit that describes the nature and location of the alleged interference. LPFM stations receiving complaints directly from listeners will be required to forward promptly such complaints to the affected full power FM stations. The full power FM station will be required to identify those complainants who reside at locations covered by these procedures, and provide copies of all such *bona fide* complaints to the LPFM station. Initially, an LPFM station will have the opportunity to resolve individual interference complaints. For example, an LPFM station may agree to provide new receivers to impacted listeners or to install filters at the receiver site. The LPFM station also may wish to consider a power reduction or other facility modification to alleviate the interference. We expect the LPFM station to make serious and diligent

efforts to resolve each *bona fide* complaint received.

40. In the event that the LPFM station concludes that it is not the source of the interference and the number of unresolved complaints equals at least one percent of households or 30 households—whichever is less—in the complaint area, the LPFM and full power stations must cooperate in an “on-off test” to determine whether the interference is traceable to the LPFM station. To the extent necessary and where practical, we instruct our Enforcement Bureau field personnel to assist the parties in determining the source of the interference and identifying possible solutions. The Commission will consider a complaint resolved if the complainant does not reasonably cooperate with the LPFM station's investigatory and remedial efforts. If the licensees fail to reach agreement and the requisite number of complaints remain unresolved, the full power FM station licensee may request that the Commission initiate a proceeding to consider whether the LPFM station's license should be modified or cancelled. To expedite this process, LPFM licenses will include a condition permitting the Commission to modify or cancel such licenses where the Commission determines that the LPFM station is causing more than *de minimis* levels of 3rd adjacent channel interference to the reception of a full power FM station in the complaint area, *i.e.*, where the number of *bona fide* complaints meets or exceeds the one-percent-of-households or thirty-households threshold set forth above. This modification procedure will be conducted pursuant to 47 U.S.C. 316 and any such modification proceeding will be completed within 90 days of the filing of the complaint with the Commission, provided that the parties may seek extensions of this deadline consistent with our procedural rules. An LPFM station may stay this procedure by voluntarily ceasing operations and filing a “displacement” application on Form 318 within twenty days of the commencement of this modification procedure. A displacement application may propose a station relocation and/or channel change to any available channel. It will be treated as a “minor” change that is not subject to competing applications, provided that a requested LP100 station site change is not greater than 2 kilometers or, in the case of an LP10 station, 1 kilometer.

#### C. Classes of Service

41. The *R&O* established two classes of LPFM stations. LP100 stations will be authorized to operate with maximum

facilities of 100 watts effective radiated power (ERP) at 30 meters (100 feet) antenna height above average terrain (HAAT). LP10 stations will be licensed with the equivalent of 10 watts ERP at 30 meters HAAT. The Commission declined to create a 1000 watt class of low power stations because of potential interference concerns, and because it determined that LP100 and LP10 stations would create more opportunities for community-oriented service.

42. Our conclusion that licensing these two classes of service at this time would serve the public interest is warranted by changes in the radio industry. In the past we have struck the balance in favor of licensing higher powered stations to ensure that large audiences were served. Now, when radio service is widely available throughout the country and very little spectrum remains available for new full-powered stations, we conclude that licensing very low powered stations will fill in the gaps in the spectrum that would otherwise go unused. This will maximize the use of the available spectrum, rather than create the inefficiencies we sought to avoid. In the past, we have declined to authorize low power FM radio broadcast stations because of our concern that they would “preclude the establishment of more efficient, stable, full powered stations.” At this time, however, we are creating an LPFM service that is designed to allow small stations to operate where full powered stations cannot. Moreover, we have adopted rules to ensure that the operation of LPFM stations does not undermine the technical integrity of the existing FM radio service. Consistent with this approach, we are licensing LP100 stations before LP10 stations. As we stated in the *R&O*, [w]e 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 stations after the initial demand for LP100 stations has been accommodated. Additionally, our own resources will be better spent *first* advancing services to relatively greater areas.” Our decision to begin licensing low power FM radio stations at this time is also in response to the dramatic changes in the radio industry during the last four years since our radio multiple ownership limits were relaxed pursuant to the 1996 Act. Given the substantial consolidation of radio station ownership in recent years, the need for adding

diverse voices to the airwaves has grown. Because we have concluded that taking this step will not undermine our spectrum efficiency goals, we affirm our decision to create these two new classes of FM radio service.

#### *D. Noncommercial Nature of LPFM Service*

43. In the *R&O*, we determined that only noncommercial educational entities would be eligible to hold LPFM licenses.

44. Our goals in establishing the LPFM service were to create opportunities for new voices on the airwaves and to allow local groups, including schools, churches, and other community-based organizations, to provide programming responsive to local community needs and interests. As discussed extensively in the *R&O*, although we considered the entrepreneurial opportunities a commercial LPFM service would create, we concluded that a noncommercial service would best serve the Commission's goals in this proceeding.

45. Specific questions were raised as to whether Indian tribes may apply for LPFM stations, or whether only their educational institutions may apply. As long as they meet the NCE criteria and other eligibility rules applicable to all applicants, Indian tribes may apply for LPFM construction permits. We have granted NCE radio station licenses to Indian tribes and to educational institutions operated by Indian tribes and thus, this LPFM eligibility rule follows current policy. We will apply the NCE criteria to Indian tribe applicants—and all applicants—in the same manner in LPFM as we have in the existing FM radio service.

#### *E. Ownership and Eligibility*

##### 1. Local Ownership Restrictions

46. In the *R&O* we prohibited common ownership of more than one LPFM station in the same area and cross-ownership of any LPFM by any other broadcast station, including translator and low power television stations, as well as other media subject to our ownership rules. As discussed extensively in the *R&O*, we believe that strict ownership rules are an important mechanism for assuring the diversity of ownership that is so critical to this service. We concluded that the interest in bringing new voices to the airwaves would be best served by barring cross-ownership between LPFM licensees and existing broadcast owners and other media entities. We believe that the rules we have adopted for the LPFM service—including the strict cross ownership

ban—will lead to more access by all segments of the population to the airwaves. We will, therefore, maintain the cross-ownership restrictions set forth in the *R&O*. As noted in the *R&O*, if a licensee of an AM station (or any other station) agrees to divest its interest in its license upon grant of the LPFM license, it may apply for an LPFM license.

##### 2. National Ownership Limit

47. The Commission established a staged national ownership rule. For the first two years after a filing window opens, an entity may own only one LPFM station. After the first two years we will allow one entity to own up to five stations nationwide; after three years, we will allow an entity to own up to ten stations nationwide. The purpose of this staged approach is to foster diversity by initially disallowing common ownership of LPFM stations, but eventually permitting common ownership where local applicants fail to come forward. As noted, since adoption of the *R&O* we adopted staggered filing windows based on geographic regions. We clarify that this two year limitation—as well as other time periods tied to the opening of a filing window—will begin to run in a geographic region based on the opening of that region's filing window.

48. *Public Safety and Transportation.* In addition to NCEs, state or local governments or not-for-profit organizations that operate public safety or emergency services are also eligible owners for LPFM licenses.

49. We will allow government, public safety and transportation organizations to apply for more than one license, but they must designate a “priority” application among those applications. The “priority” application will undergo the usual selection process as outlined in the *R&O* whether or not it encounters mutually exclusive applicants. The other applications they submit will be dismissed if they are mutually exclusive with any other applications but will be eligible for grant in the absence of competing applications.

50. Thus, we will allow government, public safety and transportation organizations to apply for more than one license, but they must designate a “priority” application among those applications. The “priority” application will undergo the usual selection process as outlined in the *R&O* whether or not it encounters mutually exclusive applicants. The other applications they submit will be dismissed if they are mutually exclusive with any other applications but will be eligible for

grant in the absence of competing applications.

51. *Schools with Multiple Campuses.* Several schools with multiple campuses sought clarification of the national ownership rules to permit the separate licensing of LPFM stations at several campuses. We believe the LPFM attribution exception should be expanded to cover separate school campuses in most cases, allowing schools to have LPFM stations on separate campuses notwithstanding our national ownership rule. This LPFM exception is inapplicable to full service NCE stations, for which there are no national ownership limits. Schools with multiple campuses applying for full service NCE stations are directed to the definition of attribution and the selection standards in 47 CFR 73.7000 and 73.7003. For example, if several high schools in an area seek LPFM licenses but are all governed by a local school board, the high schools can assert that they are local chapters of a large organization and can apply for their own licenses. If multiple campuses of the same university apply for LPFM licenses, they too would be considered separate local entities under that exception. The same principle will apply to charter schools that are a part of a larger school system but seek their own licenses.

##### 3. University-Licensed Student-Run LPFM Stations

52. As noted, in the *R&O*, we determined that no broadcaster or other media entity subject to our ownership rules, or any party with an attributable interest in a broadcaster or media entity subject to our ownership rules, could hold an attributable ownership interest in an LPFM licensee. Moreover, we restricted local ownership, allowing an entity to own only one LPFM station in a community. We use the term “community” to refer to the very small area and population group that makes up a station's potential service area and audience. For purposes of the LPFM local ownership rules, we require that no entity own or have an attributable interest in two or more LPFM stations located within seven miles of each other. Finally, for purposes of our national ownership limits, an entity may own only one LPFM station during the first two years of LPFM service. While we will disallow common ownership of LPFM stations for the first two years of LPFM service, we will permit multiple ownership of LPFM stations nationally, up to a maximum of 10 LPFM stations over a phased-in period, to bring into use whatever low



power stations remain available but unapplied for.

53. Two petitioners ask us to create an exception to these LPFM multiple and cross-ownership rules to allow universities that hold full-power FM radio licenses to obtain LPFM licenses for student-run stations. Specifically, petitioners contend that our LPFM ownership rules preclude students from operating a university-licensed LPFM station where the university already holds licenses for radio broadcast stations, including NPR affiliated stations. Petitioners argue that students are not permitted to participate in the operation of these full-power stations and that our LPFM ownership rules deny students the opportunity to operate LPFM stations.

54. We will allow universities that hold licenses for full-power broadcast stations that are not student-run to apply for LPFM licenses for stations that would be managed and operated on a day-to-day basis by students, provided that they do not face any competing applications. We find that allowing this limited exception to our LPFM ownership rules will promote our goals of maximizing diversity of ownership in a community and providing a medium for new speakers, including students, to gain experience in the broadcast field. Accordingly, if a university's full-power station does not provide the university's students with a meaningful opportunity to participate in the management and operation of that station, we will allow the university to apply for a license for a student-run LPFM station on that campus. If a license is granted, the station must be managed and operated by students of the university, although as the licensee, the University must retain ultimate control of the station's operations. However, in those cases where a university already holds an attributable interest in a broadcast station, its LPFM application will be eligible for grant only if it does not face competing applications. If the university is a licensee and its LPFM application faces a competing application, the university's LPFM application will be dismissed. We believe this exception properly balances the interests of local groups in acquiring a first broadcast facility and of university licensees that desire to provide a distinct media outlet for students.

#### 4. Time Periods for the Community-Based Requirement and for the National Ownership Cap

55. In the *R&O*, the Commission established a two-year time period during which only local, community-based applicants are eligible, and an

entity can only own one station nationwide.

56. When deciding on the two-year time period for the community-based requirement, we weighed our interest in putting LPFM stations into the hands of local and diverse entities against our interest in ensuring that available spectrum does not go unused. As noted, we have adopted a staggered filing window approach for accepting LPFM applications based on geographic region. We clarify that the two-year period for the community-based requirement for each jurisdiction starts on the date of the filing window for that jurisdiction. Therefore, in Alaska, California, District of Columbia, Georgia, Indiana, Louisiana, Maine, Mariana Islands, Maryland, Oklahoma, Rhode Island and Utah, for which we opened a filing window on May 30, 2000, the two-year period began running on that date. In the remainder of the jurisdictions, in which LPFM filing windows have not yet opened, the two-year period has not yet begun to run. Thus, applicants in these jurisdictions that have not yet had a filing window will have additional time to organize and prepare their applications.

#### 5. Foreign Ownership and Non-Stock Entities

57. Questions have arisen with respect to the application of statutory foreign ownership requirements to LPFM applicants and licensees. As we explained in the *NPRM*, all low-power facilities will be subject to the statutory requirements of Section 310(b) of the Act, which limits foreign ownership and voting interests in radio station licenses, including broadcast licenses. Sections 310 (b)(1) and (b)(2) prohibit the grant of a license to a foreign government or a representative of a foreign government; an alien or representative of an alien; or a corporation organized under the laws of a foreign government. While foreign parties may act as officers or directors of corporate licensees, Section 310(b)(3) prohibits foreign entities from owning or voting more than 20 percent of the capital stock of a broadcast licensee. If either the foreign ownership or voting interest in an applicant or licensee exceeds the 20 percent benchmark, we are required by law to revoke the license or refuse to grant the license application. In the Matter of Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310 (b)(3) and (4) of the Communications Act of 1934, as amended, *Declaratory Ruling*. Section 310(b)(4), which limits foreign ownership in parent corporations, allows us to deny a license application,

upon a determination that denial is in the public interest, where more than 25 percent of the parent corporation's capital stock is owned or voted by foreign entities. The Commission has determined that Section 310(b) applies not only to corporate interests, but also to partnership and other non-corporate interests. Thus, we will apply our foreign ownership rules and policies on a case-by-case basis to all entities that are LPFM applicants and licensees, guided by Commission precedent.

58. We recognize that many entities that will hold LPFM licenses will be non-stock corporations or other non-stock entities, and that non-stock entities do not have "owners" in the traditional sense. As the Commission has explained, the specific citizenship requirements of Section 310(b) reflect a deliberate judgment on the part of Congress to prevent undue foreign influence in broadcasting. Thus, for the purpose of determining whether a non-stock LPFM applicant or licensee complies with the statutory foreign ownership requirements, we will first consider the citizenship of those individuals who would have the ability, comparable to that of a traditional owner, to influence or control the licensee. In making these determinations we will be guided by Commission precedent.

59. An applicant or licensee must directly inform us that an ownership structure may or does in fact exceed the foreign ownership benchmarks in Section 310(b) of the Act.

#### 6. Minority Broadcast Training Institutions

60. We agree that providing minority broadcast education would be a valuable use of the LPFM service, it is not the only valuable use. We believe our current eligibility rules will lead to the ownership of LPFM stations by a wide variety of groups, which will best promote our goals in this proceeding.

61. As we stated in the *R&O* in response to requests for preferences for entities controlled by minorities, the Commission is conducting fact-finding studies as to whether such preferences may be justified consistent with *Adarand*. Depending on the outcome of these studies, as well as our experience with LPFM, we will consider in the future whether to adjust our rules to facilitate participation of more minority-oriented organizations in the service.

#### 7. Unlicensed Broadcasters

62. In the *R&O*, we determined that unauthorized broadcasters would not be eligible for LPFM licenses unless they could certify that they (1) promptly



ceased operation when directed by the Commission to do so if that direction was received prior to February 26, 1999, or (2) voluntarily ceased operation by February 26, 1999. In no event will an unlicensed broadcaster be eligible for an LPFM license if it continued illegally broadcasting after February 26, 1999. We have modified § 73.854 to make clear that no unlicensed broadcaster that continued to broadcast after February 26, 1999 will be eligible for an LPFM license. As discussed in the *R&O*, our rule on unlicensed broadcasters was based on our concern that past illegal broadcast operations reflect on the entity's proclivity to deal truthfully with the Commission and to comply with our rules and policies. We continue to believe that a party that continued to operate in contravention of an FCC direction to cease operations should not be eligible to apply for an LPFM license. Such a party should have ceased its illegal broadcast while pursuing any legal challenge to a Commission order. Any party ignoring our order has demonstrated an unwillingness to comply with the Commission's rules and thus should not be rewarded with an LPFM license.

#### *F. Point System For Resolving Mutually Exclusive Applications*

63. In the *R&O*, the Commission created a point system to determine selection among mutually exclusive applications. The point system includes three selection criteria: (1) Established community presence; (2) proposed operating hours; and (3) local program origination. The system will employ voluntary time-sharing as an initial tie-breaker; that is, tied applicants will have an opportunity to aggregate points by submitting time-share proposals. Successive license terms will be used as a final tie-breaker.

#### *G. Other Issues*

64. *Low Power Advisory Committee.* LPFM broadcasters and other interested parties are free, of course, to form a private organization to promote LPFM, support and assist its members and their operations, and address technical issues with each other and, where appropriate, raise them with the Commission.

65. *Automatic Program Review.* We are open to proposing, or considering proposals, to revise our rules after we have had experience with the service, we do not find it necessary to commit now to a review in the future.

66. *Transfers of Control—Nonstock Entities.* In the *R&O*, we established that LPFM licenses (and licensees) cannot be sold or transferred to another entity.

### III. Conclusion

67. In this *MO&O*, we generally affirm the decisions we reached in the *R&O*. We do clarify certain rules to provide better guidance to the public, and make minor revisions to improve our procedures and the quality of the LPFM service, and to protect stations operating radio reading services, while at the same time preserving the quality of full power FM service. We also establish a process to ensure prompt resolution of certain interference problems in the unlikely event they occur.

### IV. Procedural Matters and Ordering Clauses

68. Authority for issuance of this *MO&O* is contained in Sections 4(i), 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 403, and 405.

69. The actions taken in this *MO&O* have been analyzed with respect to the Paperwork Reduction Act of 1995, and found to impose no new or modified reporting and record-keeping requirements or burdens on the public.

70. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *MO&O* including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

71. Accordingly, the petitions for reconsideration or clarification listed below are granted to the extent provided herein and otherwise are denied pursuant to Sections 4(i), 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 403, and 405, and § 1.429(i) of the Commission's rules, 47 CFR 1.429(i).

72. The Motion of The Amherst Alliance *et al.* for a Decision on the Motion for Reconsideration of the Amherst Alliance filed June 5, 2000, and the Motion of Don Schellhardt *et al.* for a Decision on the Motion for Reconsideration of Don Schellhardt filed June 5, 2000, are to the extent provided herein dismissed as untimely and moot pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 403, and 405, and §§ 1.429(d) and (i) of the Commission's rules, 47 CFR 1.429(d) and (i).

73. The Commission's rules are amended as set forth. The provisions of this *MO&O* and the Commission's rules, as amended, shall become effective 30 days after publication in the **Federal Register**.

### V. Supplemental Final Regulatory flexibility analysis

74. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM* and a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *R&O*. The Commission sought written public comment on the proposals in the *NPRM* and the *R&O*, including comment on the IRFA and FRFA. No comments were received in response to the IRFA and the one comment received in response to the FRFA is addressed below. This present Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) conforms to the RFA.

#### *Need for, and Objectives of, the MO&O*

75. In the *R&O*, the Commission adopted a 100-watt class (LP100) and a 10-watt class (LP10) of small radio stations. Because of the predicted lower construction and operational costs of LPFM stations as opposed to full power facilities, the Commission expects that small entities would be expected to have few economic obstacles to becoming LPFM licensees. Therefore, as discussed in the *R&O* and the FRFA, 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. The Commission received petitions for reconsideration of the *R&O* that requested reconsideration of a variety of issues. This *MO&O* resolves those issues.

76. We do not change most of the determinations made in the *R&O*. We do, however, adopt the following few changes. We adopt complaint and license modification procedures to ensure that if any unexpected, significant 3rd adjacent channel interference problems are caused by the operation of a particular LPFM station, it can be resolved expeditiously. We modify the spacing standards adopted in the *R&O* to require that LPFM stations operating on 3rd adjacent channels protect stations operating radio reading services and we increase the flexibility of the ownership rules for certain specific types of applicants.

#### *Summary of Significant Issues Raised by Public Comments in Response to the FRFA*

77. J. Rodger Skinner (Skinner), who submitted one of the original Petitions for Rulemaking regarding LPFM on February 5, 1998, contends in his Comments that the *R&O*'s FRFA

analysis was flawed in claiming that the institution of LPFM service would "create significant opportunities for new small businesses." Skinner argues that the rejection of commercial service, the imposition of 3rd adjacent channel separations and the refusal to include 1000 watt stations undercut the Commission's expectation of new stations in the LPFM service. His argument, however, that the alternative resolutions he proposes were not considered and their rejection explained is mistaken. Both the *R&O* and the *MO&O* address each issue that he raises. In instituting this new LPFM service and in determining the rules that will govern it, we were concerned with the impact of our rules on small businesses, and took many steps to ensure the availability of this service to new entities. For instance, we adopted strict ownership limitations, made electronic filing voluntary, and refrained from main studio requirements for LPFM stations. At the same time, we explicitly weighed the best manner in which to achieve our goals in protecting existing service and creating this service against the benefits of commercial service, less stringent interference protection and higher power limits. Skinner's argument that small local businesses will be deprived of a potential economical advertising outlet also is insufficient to outweigh the reasons for our determination to make LPFM a strictly noncommercial service.

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

78. 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.

79. The SBA 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 September 30, 1999, Commission records indicate that 12,615 radio stations were operating, of which 7,832 were FM stations.

80. The rules will apply to a new category of FM radio broadcasting service. It is not known how many entities 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 eighteen months 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*

81. Most of the provisions of the *R&O* are unchanged by the *MO&O*. As noted in the *R&O*, the new service 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 of full power radio broadcasters.

82. The portions of the *R&O* that were altered by the *MO&O* follow: (1) Radio reading services will be protected on the 3rd adjacent channel, (2) corrections were made to the spacing table, (3) a complaint procedure was added, (4) transportation entities will be permitted to hold multiple stations in certain

instances, and (5) an ownership exception was created for university-licensees of low power radio stations. We do not anticipate that these changes will result in any changes to the reporting and recordkeeping requirements of LPFM licensees.

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

83. 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.

84. The Commission believes that the LPFM service is likely to create significant opportunities for new small businesses. None of the changes made by the *MO&O* alter that belief. This *MO&O* alters the LPFM rules by allowing an expedited complaint process, creating additional interference protection for radio reading services, and increasing flexibility for specific licensees (university and public safety entities). The Commission believes that none of these revisions will have a significant economic impact on a substantial number of small entities. However, in an abundance of caution we will examine any potential impact to potential LPFM licensees.

85. The Commission does not anticipate that LPFM service will cause interference to existing stations. Due to concern expressed by parties about potential interference, however, the Commission has adopted complaint and license modification procedures to ensure that if any unexpected, significant 3rd adjacent channel interference problems are caused by the operation of a particular LPFM station, they can be resolved expeditiously. We believe this process will assist small entities by providing resolution to problems without delays and the potential for incurring legal and consulting expenses.

86. The Commission offered additional protection to the radio reading services, pending its analysis of a Commission study conducted to assess radio reading service's performance as compared with other receivers. While

awaiting the results of the study, the Commission will not license LPFM stations on 3rd adjacent channels to existing stations with radio reading services. Because radio reading services provide such a valuable service, we have modified the rules to assure that interference to radio reading services does not occur. The only other alternative considered would have been to leave the rules as originally drafted in the *R&O*. We decided against that alternative until such a time as the Commission can confirm that no unacceptable interference would occur.

87. The Commission makes a few other changes to the *R&O*. We allow transportation and public safety entities to hold multiple LPFM stations in certain instances and create an ownership exception for university-licensees of low power radio stations. Petitioners showed the Commission that these exceptions were merited based on the specific circumstances of these potential licensees. The only other alternative was to leave the rules as adopted in the *R&O*; to do so would not have accounted for the beneficial service, and unique circumstances, of particular applicants.

#### Report to Congress

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

#### VI. Filing Schedule

89. The country has been divided into five groups of states accepting LPFM applications. The FCC has accepted applications from the first and second groups of states:

90. 1st: Alaska, California, District of Columbia, Georgia, Indiana, Louisiana, Maine, Mariana Islands, Maryland, Oklahoma, Rhode Island, Utah.

91. 2nd: Connecticut, Illinois, Kansas, Michigan, Minnesota, Mississippi,

Nevada, New Hampshire, Puerto Rico, Virginia, Wyoming.

92. The remaining three groups of states' LPFM applications are anticipated to be accepted as follows:

93. 3rd: American Samoa, Colorado, Delaware, Hawaii, Idaho, Missouri, New York, Ohio, South Carolina, South Dakota, Wisconsin (Public Notice October 2000; filing window: November 2000).

94. 4th: Arizona, Florida, Iowa, New Jersey, North Dakota, Oregon, Tennessee, Texas, U.S. Virgin Islands, Vermont, West Virginia (Public Notice January 2001; filing window: February 2001).

95. 5th: Alabama, Arkansas, Guam, Kentucky, Massachusetts, Montana, Nebraska, New Mexico, North Carolina, Pennsylvania, Washington (Public Notice April 2001; filing window: May 2001).

#### List of Subjects in 47 CFR Part 73 and 74

Radio broadcasting.

Federal Communications Commission.

**Magalie Roman Salas,**  
*Secretary.*

#### Low Power FM Service Rule Modifications

Part 73 of title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

#### PART 73—RADIO BROADCAST SERVICES

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

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

2. Section 73.209(c) is revised to read as follows:

#### § 73.209 Protection from interference.

\* \* \* \* \*

(c) Permittees and licensees of FM stations are not protected from interference which may be caused by the grant of a new LPFM station or of authority to modify an existing LPFM station, except as provided in subpart G of this part.

3. Section 73.514 is revised to read as follows:

#### § 73.514 Protection from interference.

Permittees and licensees of NCE FM stations are not protected from interference which may be caused by the grant of a new LPFM station or of authority to modify an existing LPFM station, except as provided in subpart G of this part.

4. In § 73.807, the undesignated text, paragraphs (a), (b), (c), (c)(1), (c)(2), the note to paragraphs (a), (b), and (c), paragraphs (g)(1) through (g)(4) and (g)(6) are revised to read follows:

#### § 73.807 Minimum distance separation between stations.

Minimum separation requirements for LP100 and LP10 stations, as defined in §§ 73.811 and 73.853, 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 assumed to be operating at the maximum permitted facilities for the station class. For second-adjacent channels and IF channels, the required minimum distance separation is sufficient to avoid interference received from other stations.

(a)(1) 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, applications for new and existing FM stations filed prior to the release of the public notice announcing an LPFM window period for LP100 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. LPFM modification applications must either meet the distance separations in the following table or, if short-spaced, not lessen the spacing to subsequently authorized stations.

Station class protected by 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 from max. class facility	Required	For no interference received from max. class facility		
LP100 .....	24	24	14	14	0	0
D .....	24	24	13	13	6	3

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 from max. class facility	Required	For no interference received from max. class facility		
A .....	67	92	56	56	29	6
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

(a)(2) LP100 stations must satisfy the second-adjacent channel minimum distance separation requirements of paragraph (a)(1) of this section with respect to any third-adjacent channel FM station that, as of September 20,

2000 (the adoption date of this *MO&O*) broadcasts a radio reading service via a subcarrier frequency.

(b)(1) An LP10 station will not be authorized unless the minimum distance separations in the following table are met with respect to authorized

FM stations, applications for new and existing FM stations filed prior to the release of the public notice announcing an LPFM window period for LP10 stations, vacant FM allotments, or LPFM 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 from max. class facility	Required	For no interference received from max. class facility		
LP100 .....	16	22	10	11	0	0
LP10 .....	13	13	8	8	0	0
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
C2 .....	82	141	77	81	52	11
C1 .....	103	175	97	108	73	18
C .....	122	201	116	140	92	26

(b)(2) LP10 stations must satisfy the second-adjacent channel minimum distance separation requirements of paragraph (b)(1) of this section with respect to any third-adjacent channel FM station that, as of September 20, 2000 (the adoption date of this *MO&O*)

broadcasts a radio reading service via a subcarrier frequency.

(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 in the following tables 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 from max. class facility	Required	For no interference received from max. class facility		
A .....	80	111	70	70	42	9
B1 .....	95	128	82	82	53	11
B .....	138	179	123	123	92	19

(2) LP10 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 from max. class facility	Required	For no interference received from max. class facility		
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.

\* \* \* \* \*

(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 & Low Power .....	45	30	21	20	4
A .....	66	50	41	40	7
B1 .....	78	62	53	52	9
B .....	92	76	68	66	12
C1 .....	113	98	89	88	19
C .....	124	108	99	98	28

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

Mexican station class	Co-channel (km)	First-adjacent channel (km)	Second-adjacent channel (km)	Intermediate frequency (IF) channel (km)
Low Power .....	27	17	9	3
A .....	43	32	25	5
AA .....	47	36	29	6
B1 .....	67	54	45	8
B .....	91	76	66	11
C1 .....	91	80	73	19
C .....	110	100	92	27

(3) 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 & Low Power .....	33	25	20	19	3
A .....	53	45	40	39	5
B1 .....	65	57	52	51	8
B .....	79	71	67	66	11
C1 .....	101	93	88	87	18
C .....	111	103	98	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)
Low Power .....	19	13	9	2
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

\* \* \* \* \*

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

5. Section 73.809 paragraphs (a), (b) and (c) are revised to read as follows:

**§ 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:

(1) The 3.16 mV/m (70 dBu) contour of such stations;

(2) The community of license of a commercial FM station; or

(3) Any area of the community of license of an NCE FM station that is predicted to receive at least a 1 mV/m (60 dBu) signal. Predicted interference shall be calculated in accordance with the ratios set forth in §§ 73.215(a)(1) and 73.215(a)(2). Intermediate Frequency (IF) channel interference overlap will be determined based upon overlap of the 91 dBu F(50,50) contours of the FM and LPFM stations. 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 processing of the commercial or NCE FM application that interference as described in paragraph (a) of this section 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 of NCE FM station.

(c) Complaints of actual interference by an LPFM station subject to paragraphs (a) and (b) of this section 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 for the complaint.

\* \* \* \* \*

12. Section 73.810 is added to read as follows:

**§ 73.810. Third adjacent channel complaint and license modification procedure.**

(a) An LPFM station is required to provide copies of all complaints alleging that the signal of such LPFM station is interfering with or impairing the reception of the signal of a full power station to such affected full power station.

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

(i) Is a complaint alleging third adjacent channel interference caused by an LPFM station that has its transmitter site located within the predicted 60 dBu contour of the affected full power station as such contour existed as of the date the LPFM station construction permit was granted;

(ii) Must be in the form of an affidavit, and state the nature and location of the alleged interference;

(iii) Must involve a fixed receiver located within the 60 dBu contour of the affected full power station and not more than one kilometer from the LPFM transmitter site; and

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

(c) An LPFM station will be given a reasonable opportunity to resolve all interference complaints. A complaint will be considered resolved where the complainant does not reasonably cooperate with an LPFM station's remedial efforts.

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

(e) If the number of unresolved and disputed complaints exceeds the numeric threshold specified in subsection (d) following an "on-off" test, the full power station may request that the Commission initiate a proceeding to consider whether the LPFM station license should be modified or cancelled, which will be completed by the Commission within 90 days. Parties may seek extensions of the 90 day deadline consistent with Commission rules.

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

5. Section 73.816 is revised to read as follows:

**§ 73.816 Antennas.**

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

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

(c) Public safety and transportation permittees and licensees, eligible pursuant to § 73.853(a)(ii), may utilize directional antennas in connection with the operation of a Travelers' Information Service (TIS) provided each LPFM TIS station utilizes only a single antenna with standard pattern characteristics that are predetermined by the manufacturer. In no event may composite antennas (i.e. antennas that consist of multiple stacked and/or phased discrete transmitting antennas) and/or transmitters be employed.

(d) LPFM TIS stations will be authorized as nondirectional stations. The use of a directional antenna as provided for in paragraph (c) of this section will not be considered in the determination of compliance with any requirements of this part.

6. Section 73.825 is revised to read as follows:

**§ 73.825 Protection to reception of TV channel 6.**

(a) LPFM stations will be authorized on Channels 201 through 220 only if the pertinent minimum separation distances in the following table are met with respect to all full power TV Channel 6 stations.

FM channel number	Class LP100 LP100 to TV channel 6 (km)	Class LP10 to TV channel 6 (km)
201	140	136
202	138	134
203	137	133
204	136	133
205	135	132
206	133	131
207	133	131
208	133	131
209	133	131
210	133	131
211	133	131
212	132	131
213	132	131
214	132	130
215	131	130
216	131	130
217	131	130
218	131	130
219	130	130
220	130	130

(b) LPFM stations will be authorized on Channels 201 through 220 only if the pertinent minimum separation distances

in the following table are met with respect to all low power TV, TV translator, and Class A TV stations authorized on TV Channel 6.

FM channel number	Class LP100 to LPTV channel 6 (km)	Class PL10 to LPTV channel 6 (km)
201	98	93
202	97	92
203	95	91
204	94	91
205	93	90
206	91	90
207	91	89
208	91	89
209	91	89
210	91	89
211	91	89
212	90	89
213	90	89
214	90	89
215	90	89
216	89	89
217	89	89
218	89	89
219	89	89
220	89	88

7. Section 73.827 is added to read as follows:

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

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

(b) Complaints of actual interference by an LPFM station subject to paragraph (a) of this section must be served on the LPFM licensee and the Federal Communications Commission, attention Audio Services Division. The LPFM station must suspend operations upon the receipt of such complaint unless the interference has been resolved to the satisfaction of the complainant on the basis of suitable techniques. Short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures. An LPFM station may only resume full operation at the direction of the Federal Communications Commission. If the Commission determines that the complainant has refused to permit the LPFM station to apply remedial techniques that demonstrably will eliminate the interference without impairment of the original reception, the licensee of the LPFM station is absolved of further responsibility for the complaint.

8. Section 73.854 is revised to read as follows:

**§ 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, if not previously directed by the FCC to cease operation; or

(2) Ceased operation within 24 hours of being directed by the FCC to terminate unlicensed operation of any station but in no event later than February 26, 1999.

9. In § 73.855, paragraph (b) introductory text is revised and paragraph (b)(4) is added to read as follows:

**§ 73.855 Ownership limits.**

\* \* \* \* \*

(b) Except as provided in paragraph (b)(4) of this section, nationwide ownership limits will be phased in according to the following schedule:

\* \* \* \* \*

(4) Not-for-profit organizations and governmental entities with a public safety purpose may be granted multiple licenses only if:

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

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

10. Section 73.860 paragraphs (a) and (b) are revised to read as follows:

**§ 73.860 Cross ownership.**

(a) Except as provided in paragraph (b) of this section, 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 our 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 unless such party is a college or university that can certify that the existing broadcast radio station is not student run. This exception applies only to parties that;

(i) Are accredited educational institutions, and;

(ii) Own attributable interest in non-student run broadcast stations;

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

(iv) Do not face competing applications for the LPFM authorization.

\* \* \* \* \*

11. Section 73.870 paragraph (c) is revised to read as follows:

**§ 73.870 Processing of LPFM broadcast station applications.**

\* \* \* \* \*

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

\* \* \* \* \*

12. Section 73.872 is revised to read as follows:

**§ 73.872(b)(3) Selection procedure for mutually exclusive application.**

\* \* \* \* \*

(b) \* \* \*

(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, by the licensee, within ten miles of the coordinates of the proposed transmitting antenna.

\* \* \* \* \*

13. Section 73.877 is revised to read as follows:

**§ 73.877 Station logs for LPFM stations.**

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:

(a) 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 §§ 17.48 and 73.49 of this chapter.

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

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

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

14. In § 73.1660, paragraph (a) is revised to read as follows:

**§ 73.1660 Acceptability of broadcast transmitters.**

(a)(1) An AM, FM, or TV transmitter shall be verified for compliance with the requirements of this part following the procedures described in part 2 of this chapter.

(a)(2) An LPFM transmitter shall be certified for compliance with the requirements of this part following the procedures described in part 2 of the this chapter.

\* \* \* \* \*

**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, and 336.

2. In § 74.1204, paragraphs (a) introductory text and (a)(4) are revised 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:

\* \* \* \* \*

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

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

**Note to paragraph (a)(4):** LP100 stations, to the purposes of determining overlap pursuant to this paragraph, LPFM applications and permits that have not yet been licensed must be considered as operating with the maximum permitted facilities. All LPFM TIS stations must be protected on the basis of a nondirectional antenna.

\* \* \* \* \*

[FR Doc. 00-28613 Filed 11-8-00; 8:45 am]

BILLING CODE 6712-01-P

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 18**

**RIN 1018-AF54**

**Marine Mammals; Incidental Take During Specified Activities; Correction**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule; correction.

**SUMMARY:** U.S. Fish and Wildlife Service regulations to authorize the incidental, unintentional take of small numbers of polar bears and Pacific walrus during year-round oil and gas industry exploration, development, and production operations in the Beaufort Sea and adjacent coast of Alaska expired on December 15, 1998. Subsequent regulations that we issued should have been characterized as “adding” rather than “revising” these regulations. This correction makes clear that our intent was to add the regulations.

**DATES:** This correction is effective March 30, 2000, and remains effective through March 31, 2003.

**ADDRESSES:** Comments and materials received in response to our most recent final rule action, published in the **Federal Register** on March 30, 2000, are available for public inspection during normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey L. Horwath, Division of Fish and