

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
	At Irving Avenue .....	+280	

# Depth in feet above ground.  
 \*National Geodetic Vertical Datum.  
 +North American Vertical Datum.

**ADDRESSES**

**Township of Cedar Grove**

Maps are available for inspection at the following locations: Municipal Building, 525 Pompton Avenue, Cedar Grove, NJ 07009.

**Township of Livingston**

Maps are available for inspection at the following locations: Town Hall, 357 South Livingston Avenue, Livingston, NJ 07039.

**Township of Maplewood**

Maps are available for inspection at the following locations: Town Hall, 570 Valley Street, Maplewood, NJ 07040.

**Township of Millburn**

Maps are available for inspection at the following locations: Town Hall, 375 Millburn Avenue, Millburn, NJ 07041.

**City of Orange**

Maps are available for inspection at the following locations: City Hall, 29 North Day Street, Orange, NJ 07050.

**South Orange Village**

Maps are available for inspection at the following locations: South Orange Village Hall, 101 South Orange Avenue, South Orange, NJ 07079.

**Township of Verona**

Maps are available for inspection at the following locations: Town Hall, 600 Bloomfield Avenue, Verona, NJ 07044.

**Township of West Orange**

Maps are available for inspection at the following locations: Town Hall, 66 Main Street, West Orange, NJ 07052.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: December 13, 2006.

**David I. Maurstad,**

*Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.*

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 1 and 73**

**[MB Docket No. 05-210; FCC 06-163]**

**Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services**

**AGENCY:** Federal Communications Commission (FCC).

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission adopted a number of procedures and procedural changes designed to streamline the process of allocating new FM channels and modifying the communities of license of existing radio stations, and to reduce current backlogs in proceedings to amend the FM Table of Allotments. In the R&O, the Commission also announced that it would lift a freeze on all new petitions to amend the FM Table

of Allotments, as of the effective date of the R&O.

**DATES:** Effective January 19, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Peter Doyle, Chief, Media Bureau, Audio Division, (202) 418-2700 or [Peter.Doyle@fcc.gov](mailto:Peter.Doyle@fcc.gov); Thomas Nessinger, Attorney-Advisor, Media Bureau, Audio Division, (202) 418-2700 or [Thomas.Nessinger@fcc.gov](mailto:Thomas.Nessinger@fcc.gov).

For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams at 202-418-2918, or via the Internet at [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act of 1995 Analysis**

The Report and Order (“R&O”) contains new and modified information collection requirements, which were proposed in the NPRM and are subject to the Paperwork Reduction Act of 1995 (“PRA”).<sup>1</sup> These information collection requirements were submitted on July 19, 2005, to the Office of Management and Budget (“OMB”) for review under Section 3507(d) of the PRA. In addition, the general public and other Federal agencies were invited to comment on these information collection requirements in the NPRM. The Commission further notes that pursuant to the Small Business Paperwork Relief Act of 2002, it previously sought specific comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.” The Commission received no comments concerning these information collection requirements. On September 15, 2005, the Commission obtained OMB approval for these information collection requirements, encompassed by OMB Control No. 3060-0027. This R&O adopts the information collection requirements, as proposed.

Because, as detailed in the R&O, the Commission extends its new community of license minor modification procedures to FM NCE licensees and permittees, FCC Form 340 must be modified to accommodate the new information collection requirements of those procedures. The procedural requirements for FM NCE applicants for change of community of license will become effective after approval by OMB. The Commission published a separate **Federal Register** Notice seeking public comment on this

new information collection requirement on November 22, 2006 (see 71 FR 67581 (November 22, 2006)). Upon OMB approval, the Commission will issue a public notice announcing the effective date of this rule.

This is a synopsis of the Commission’s Report and Order (R&O), FCC 06-163, adopted November 3, 2006, and released November 29, 2006. The full text of the R&O is available for inspection and copying during regular business hours in the FCC Reference Center, 445 Twelfth Street, SW., Room CY-A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission’s copy contractor, BCPI, Inc., Portals II, 445 Twelfth Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, <http://www.bcpi.com>, or call 1-800-378-3160. This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact Brian Millin at (202) 418-7426 (voice), (202) 418-7365 (TTY), or via e-mail at [Brian.Millin@fcc.gov](mailto:Brian.Millin@fcc.gov).

**Synopsis of Order**

1. With this Report and Order (“R&O”), the Commission makes certain changes to its procedures for allotting and assigning channels, classes, and communities of license for AM and FM broadcast stations, as proposed in the original Notice of Proposed Rule Making (“NPRM”) in this proceeding. *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services, Notice of Proposed Rule Making*, 20 FCC Rcd 11169 (2005). Specifically, the Commission makes changes of community of license for commercial full-power AM standard band and commercial and noncommercial educational (“NCE”) full-power FM broadcast stations a minor modification, to be accomplished by first come-first served minor modification application, subject to certain procedural requirements described below. To accommodate this change, the FM Table of Allotments, 47 CFR 73.202, shall henceforth contain only vacant allotments, and authorized full-power non-reserved band FM facilities already occupying allotments shall be listed only in the Media Bureau’s Consolidated Data Base System (“CDBS”). As it does now, CDBS shall reflect the authorizations granted to those broadcasters operating on the listed channels and communities, and which are entitled to protection under our current rules. The Commission

further adopts the proposal that it require allocations proponents simultaneously to file Form 301 applications with their allocations proposals, to submit the designated Form 301 filing fee, and to certify on Form 301 that they intend to apply to participate in auction bidding for the allotment should their proposal be adopted. The Commission also adopts the proposal to modify its rules to allow electronic filing of allocations documents. The Commission also lifts the current freeze on the filing of new petitions to amend the FM Table of Allotments, as of the effective date of the R&O. At this time, however, the Commission does not adopt the proposal to limit the number of proposals to add additional allotments or modify vacant allotments within a single rule making proposal, although it delegates to staff the discretion to return unreasonably large proposals or counter-proposals, if warranted. The Commission also declines to change its policy disfavoring the removal of a community’s sole local transmission service to become another community’s first local service, instead reiterating the need for parties contemplating such moves to seek waiver of the policy using existing law, and to demonstrate clearly the public interest benefits of such moves that would outweigh application of the policy in particular cases.

2. The Commission adopts the proposal to allow AM and FM full-power stations to change community of license by first come-first served minor modification application. Most commenters favored this proposal, and some opponents would mute their objections if the Commission adopted certain procedural safeguards. As the Commission tentatively concluded in the NPRM, and upon examination of the record in this proceeding, the Commission finds that the public interest would be served by streamlining current city of license modification procedures and employing certain safeguards to ensure that Section 307(b) of the Communications Act of 1934, as amended (47 U.S.C. 307(b)) (“Section 307(b)”) and other concerns are accommodated. The Commission also concludes that, given the maturity of the FM service, there is no need to continue utilizing rule making procedures to modify FM stations’ communities of license merely because such procedures provide an opportunity to counter-propose allotments. The use of first come-first served procedures is consistent with the doctrine enunciated in *Ashbacker v. U.S.*, 326 U.S. 327 (1945), and the Commission believes

<sup>1</sup> The Paperwork Reduction Act of 1995 (“PRA”), Pub. L. 104-13, 109 Stat 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

that there have been ample opportunities for potential counter-proponents to propose new FM station allotments during the 43 years that the Commission has relied on the current Table of Allotments. Further, all parties will continue to have reasonable opportunities to make such proposals. Moreover, to the extent that commenters object to the lack of opportunity to file competing applications, because the Commission proposes to limit such applications to those mutually exclusive with the applicant's existing facilities, foreclosing competing applications does not, as a practical matter, deprive potential applicants of opportunities for comparative consideration. Finally, the Commission is convinced that adopting the proposed new procedure will preserve limited agency resources, reduce the time needed to process community of license changes and, accordingly, expedite the provision of enhanced broadcast service to the public.

3. Community of license changes for commercial and NCE full-power AM standard band and FM broadcast licenses may be filed as minor modification applications. These minor modification applications processed on a first come-first served basis will be limited to those applications where the proposed daytime facilities are mutually exclusive with the applicant's existing daytime facilities. Related minor change applications must be submitted concurrently, and will be subject to the requirements and restrictions that apply to contingent minor modification application filings. *See* 47 CFR 73.3517(e). Required reference coordinate changes (which are not set out in the Table of Allotments) will not count against the current limit of four contingent minor modification applications that may be filed simultaneously. Parties seeking to employ this procedure must file, with their applications, a detailed exhibit demonstrating that the proposed change constitutes a preferential arrangement of allotments under Section 307(b) of the Act as compared to the existing allotment(s). The Commission will require a narrative showing that the proposed community of license change represents a net service benefit, under the Section 307(b) priorities and policies used since 1982. *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). Applicants also will be required to confirm the community status of the proposed new community of license, demonstrating that it constitutes a community suitable for allotment

purposes. Between our body of Section 307(b) precedent and the procedural safeguards discussed herein, these procedures will ensure that grant of such applications comports with the Commission's statutory mission under Section 307(b) to distribute radio service fairly, efficiently, and equitably. Additionally, as noted in the NPRM, our minimum distance separation standards and spectrum congestion will limit substantial urban migration. The new procedure will also address the concerns that led the Commission in 1999 to decline to treat such applications as minor changes as well as most commenters' Section 307(b) concerns. *See 1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, First Report and Order, 14 FCC Rcd 5272, 5278 (1999).

4. The Commission adopts certain additional safeguards to ensure that the public interest is served by the new procedures introduced herein. In performing Section 307(b) analyses under the new procedures adopted herein, the Commission will carefully consider whether an application would promote the fair, efficient, and equitable distribution of radio service. Under this analysis, a new permittee that obtained its permit after being awarded a dispositive Section 307(b) preference in an AM auction filing window should not be allowed to change communities prior to the commencement of broadcast operations in the originally authorized community unless the new community would compare equally or more favorably to the communities specified by the other mutually exclusive applicants in the auction Section 307(b) analysis. For example, an AM auction applicant that received a Priority (3) preference by proposing first local service to a larger community than that specified in a competing applicant's first local service proposal could not seek to modify the initial construction permit by later specifying a community with a smaller population than the competitor's proposed community. Otherwise, AM auction applicants could initially select their communities solely on the basis of providing the greatest Section 307(b) advantage and avoiding an auction, without actually serving those communities. Likewise, the Commission will not award rapid, successive community changes that sidestep the mutual exclusivity requirement of the new procedure. Accordingly, any application proposing a community of license change filed by a permittee that has not built its current

permitted facilities and that is not mutually exclusive with either the applicant's built and operating facilities or its original allotment shall be returned as unacceptable for filing. The analysis set forth in *Faye and Richard Tuck, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 5374 (1988), will be carefully applied in considering Section 307(b) showings submitted in support of first come-first served applications to change communities of license, and that a first local service preference will not be awarded to a community that is largely interdependent with the Urbanized Area or surrounding communities. The Commission declines to adopt a service floor requirement such as that suggested in the NPRM, believing that existing Section 307(b) priorities and policies are sufficient to safeguard existing service. The Commission finds that existing procedural requirements, along with local public notice requirements (*see* 47 CFR 73.3580(c)(3), (d)(3), and (f)), will provide reasonable notice and opportunity for interested parties to comment under the new procedures introduced in the R&O. Broadcasters and members of the public may participate in the process of evaluating the grantability of a minor modification application to change community of license by filing informal objections. Arguments, evidence, and precedent may be presented in an informal objection as readily as in a more formal petition to deny, and are subject to the same evidentiary and legal standards. Moreover, the statutory right to file a petition for reconsideration, enumerated in Section 405 of the Communications Act of 1934, as amended (47 U.S.C. 405), provides a safety net for both relevant public interest considerations and participation by interested parties. Further, with regard to notice of applications, such minor modification applications will be listed in the Media Bureau's CDBS-generated "Broadcast Applications" public notices, such as AM major change applications are listed now. Due to the importance of local broadcast service to communities, however, the Commission believes it is vital that residents are provided adequate notice to enable them to file informal objections to, or comments in support of, a particular move. Thus, the Commission adopts its proposal to require the proponent to give local public notice in connection with such applications, notwithstanding that minor modification applicants generally need not provide local public notice. *See* 47 CFR 73.3580(a). Specifically, applicants under this new procedure

shall provide local public notice as set forth in Sections 73.3580(c)(3), (d)(3), and (f) of the Commission's rules (47 CFR 73.3580(c)(3), (d)(3), and (f)), and shall certify such compliance in Form 301. The Media Bureau shall also provide notice in the **Federal Register** that an application to modify an AM or FM station's community of license has been filed. Moreover, the Bureau will not act upon such an application until at least 60 days after publication in the **Federal Register**. The combination of local public notice under 47 CFR 73.3580, publication in the **Federal Register**, and the 60-day prohibition on Commission action will provide interested parties with ample notice and opportunity to comment on proposed community of license changes under our new procedures. Applicants themselves need only comply with the local public notice procedures, which are well known to licensees and permittees. The newspaper publication requirements of 47 CFR 73.3580(c)(3) will require the applicant to publish both in the current community of license and the proposed community, so as to give maximum notice to all residents potentially affected by grant of the application.

5. This new procedure will apply both to commercial full-service broadcast stations and also to full-power NCE stations. NCE FM allotments in the reserved band are not included in the Table of Allotments (see 47 CFR 73.201, 73.202(a), and 73.501(a)), and as non-tabled facilities such licensees must undergo a process similar to that undergone by AM licensees if they wish to change their communities of license, in that they must wait for an NCE filing window before applying to change communities. However, while reserved band NCE FM stations are non-tabled, the reserved band resembles the non-reserved FM band in most other respects, including maturity of the service, application of spacing rules, and spectrum congestion near larger cities. Because of these similarities, the Commission finds that the rationales for adopting the new procedure, such as streamlining of the current two-step process and maturity of the FM service, apply equally to NCE stations, and thus the new procedure will apply to NCE stations. However, the new procedures will not apply to expanded band AM stations, as allowing community of license changes by minor modification application for such stations could jeopardize the Commission's ability to develop a comprehensive plan for additional expanded band AM licensing.

6. There are currently fewer than 25 pending community change rule making proceedings for which a *Report and Order* has not been released. These parties will not be required to dismiss their rule making petitions and refile their proposals in the form of an application. However, a rule making petitioner that has submitted a community of license change proposal that could, under the new procedures, be filed as a minor modification application will be permitted to withdraw its rule making petition and to resubmit its proposal as an application on the effective date of the new procedure. A party choosing to dismiss a rule making petition and refile as an application may adversely affect its position with respect to earlier filed petitions for rule making or earlier or simultaneously filed applications. Parties opting to dismiss and refile should carefully consider whether doing so would be advantageous to their cut-off rights.

7. In order to accommodate the new procedure, the Commission will remove the allotments of currently authorized and awarded FM facilities from the Table of Allotments (47 CFR 73.202). Currently, all vacant FM allotments as well as FM assignments (that is, channels and communities occupied by authorized facilities) are listed in the Table of Allotments. All of these represent allotments and assignments added to the Table of Allotments through notice-and-comment rule making procedures over more than 40 years of the Table of Allotments' existence. Vacant allotments, which must be protected by all subsequent filings, serve as placeholders for future facilities. The same cut-off principles will apply to implementing applications filed under our comparative commercial and NCE procedures. Once an assignment is made, i.e., upon "reservation," this record supersedes the vacant allotment. Thus, it is unnecessary for "occupied" allotments (that is, those that are licensed, permitted, or reserved) to be listed in the Table of Allotments—the authorizations and reserved assignments, reflected in CDBS, protect those facilities and govern their technical facilities and communities of license. Once a station is authorized, application procedures provide reasonable opportunities to interested parties to comment on or object to further modifications of authorized facilities. For this reason, as well as the maturity of the FM service discussed above, it is no longer necessary to change authorized non-reserved band

FM stations' attributes through notice-and-comment rule making. Thus, the Commission shall amend the Table of Allotments to reflect only vacant allotments that do not correspond to an authorized station or reserved assignment. Assignments for licensed, permitted, and reserved facilities (those for which applications are pending) will be reflected solely in CDBS. In CDBS, channel/frequency and community assignments for currently authorized stations are represented as "FA USE." "FA RSV" is used to designate assignments for winning auction bidders, NCE tentative selectees, and proposed assignments for stations that have filed, or have been directed to file, modification applications for authorized stations. These designations will continue to be used in CDBS to indicate the status and cut-off rights of assignments. Changes to the channel, class, or community of existing facilities will constitute changes to the individual authorizations or applications, rather than to 47 CFR 73.202, and therefore may be made through minor modification application procedures (as adjacent channel and class modifications have been made under the Commission's "one-step" procedures). However, the Commission will permit an FM non-reserved band permittee or licensee to use notice and comment procedures to modify its current assignment to specify a non-adjacent class upgrade or downgrade in the same community of license. This action is taken to preserve the facility improvement options now set forth at Section 1.420(g)(1) and (2). The Commission will retain the Table for vacant allotments and will continue to use rule making procedures to establish new channel allotments, as the procedures for new allotments allow for efficient consideration of all proposals and counterproposals in keeping with the Commission's Section 307(b) obligations. While Section 307(b) considerations enter into community of license changes to authorized facilities as well, the same detailed rule making procedures are not as essential when dealing with changes to authorized stations not subject to competing applications. Thus, new allotments and changes to vacant allotments will continue to be made via notice-and-comment rule making procedures. To the extent that a proposal or counterproposal is contingent upon one or more such changes to vacant allotments, such proposals will also continue to be made via rule making proceedings. However, as discussed below, the Media Bureau will return any rule making proposals or

counterproposals that do not propose changes to vacant allotments, except for notice and comment filings submitted pursuant to Section 1.420(g)(1) or (2).

8. A common aspect of FM allotment petitions and counterproposals, including city of license modifications, are proposed channel substitutions for both vacant allotments and authorized facilities. Rule making proponents are limited to two "involuntary" channel substitutions for authorized stations. See *Columbus, Central City, Crookston, Kearney, Lexington, McCook, and Valentine, Nebraska; and Hill City, Kansas*, Report and Order, FCC 86-59, 59 RR 2d 1184 (MMB 1984) ("*Columbus, Nebraska*"). Current procedures impose no limit on voluntary, i.e., consensual, channel substitutions. The bifurcated procedures adopted in the R&O for allotments and assignments require new procedures for these city of license application and rule making components. Channel substitutions for authorized facilities will be treated as "minor" changes. Voluntary channel changes must be proposed in the Form 301 applications as set forth below. Involuntary channel changes for authorized stations must be specified in the Form 301 application, but will continue to be limited to two under the *Columbus, Nebraska* policy. The staff will issue an order to show cause with regard to an involuntary channel change if it determines that the entire city of license modification proposal is acceptable for filing. These procedures accord with our current procedures, under which an order to show cause is issued when a rule making proponent seeks an involuntary change to another facility. Proposals to substitute channels for vacant allotments will be filed in accordance with established rule making procedures.

9. Under these revised procedures, certain FM city of license modification proposals may consist of several contingent applications. Some "hybrid" filings will consist of both applications and rule making filings. Both the "pure" and "hybrid" proposals will be subject to the requirements and restrictions that apply to contingent coordinated FM minor change filings. See 47 CFR 73.3517(c). It is not necessary to prohibit contingent city of license modification proposals. The staff currently and regularly handles rule making proposals involving several different allotments and communities. All contingent applications filed pursuant to the procedures adopted here will be subject to identical Section 307(b) analysis. The Commission is satisfied that this analysis will function

effectively in the application context, just as it does in the rule making context, to safeguard the goals and principals of Section 307(b). All related proposals must be simultaneously filed and clearly cross-reference each of the other component filings. The dismissal, denial or return of any component filing will result in the dismissal or return of all the related filings. Both "pure" application and "hybrid" filings will be subject to the four-application limit. Both voluntary and involuntary channel changes for authorized stations will count toward the four-application limit. Those components filed pursuant to rule making procedures will not count toward the four-application limit.

10. In the NPRM, the Commission showed that a small percentage of petitioners seeking new allotments in the FM Table of Allotments (also known as "drop-in" petitions) were responsible for an inordinate percentage of the drop-in petitions filed. To date, those drop-in proponents have not actively participated in the auctions process. Thus, there appears to be a fundamental disconnect between those adding new allotments and those seeking to obtain authorizations pursuant to the Commission's competitive bidding procedures. Accordingly, in the NPRM the Commission proposed a mechanism to encourage only *bona fide* proponents to seek to add channels to the Table. The mechanism proposed was to require an allocations proponent simultaneously to file a Form 301 application, and pay the appropriate fee, with its petition for rule making. The applicant would also certify in the application that, if its allotment was adopted, it intended to apply to participate in the auction for the new channel. That form would then become the proponent's application for construction permit, should the channel be allotted and the petitioner be the winning bidder. Previously, rule making proponents for new FM allotments needed only to state that they were interested in applying for the station if allotted, and paid no filing fee until and unless the allotment was made and an application filed. The Commission believes that requiring Form 301 and the concurrent filing fee with a petition for rule making, which is currently not required, would discourage insincere proponents, and further believes, as stated in the NPRM, that the public interest is best served by processing only those proposals for new allotments filed by *bona fide* potential applicants, rather than devoting scarce staff resources to processing allotment proposals that may represent less-than-

optimal choices to actual auction participants. Accordingly, the Commission adopts this proposal. A party filing a petition for rule making to add a new allotment to the Table, whether as an original proposal or as a counterproposal, must simultaneously file a Form 301 application specifying the proposed facilities. A separate Form 301 and fee must be filed for each proposed new allotment. The application shall include a certification that, if the FM channel allotment requested is adopted, petitioner/counter-proponent intends to apply to participate in the auction of the channel allotment requested and specified in this application. In the event the petitioner or counter-proponent is the high bidder for the allotment, it need only file an amendment to its Form 301 application, if necessary, and will not pay a further filing fee. However, while the Commission need not refund application filing fees paid by applicants whose applications are not granted (see *Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989*, Memorandum Opinion and Order, 6 FCC Rcd 5919, 5925 n.40 (1991), citing Conference Report, 1989 U.S. Code Cong. & Ad. News at 3036), the Commission recognizes the inequity in retaining filing fees from parties whose rule making proposals are not granted, as the unfavorable disposition of their proposals would render their Form 301 applications a nullity. See 47 CFR 1.1113(a)(4). Refunding the filing fee of a successful rule making proponent that loses at auction places the proponent in the same position as competing bidders who were not required to file Form 301 pre-auction. Accordingly, the Commission will entertain waiver requests, pursuant to 47 CFR 1.1117, filed by a petitioner for a new allotment that files a Form 301 for the allotment, and that either has its allotment proposal denied in favor of another proposal or counterproposal, or that applies for the allotment and qualifies to bid for the allotment at auction, if the allotment is awarded to another higher-bidding applicant. A rule making proponent whose proposal is rejected may file its waiver request only after the proceeding is terminated and has become final. A successful rule making proponent who is not the winning bidder for the allotment may file its waiver request only after release of a public notice announcing the winning bidders in the auction. Provided that the waiver applicant has acted in good faith and in accordance with our Rules and

statutes, the Commission will normally grant such waiver requests and issue refunds under 47 CFR 1.1113(a)(4) or 1.1113(a)(5), as applicable. However, such a waiver request will not be viewed favorably if, for example, the rule making petition for a new allotment is returned due to patent legal or engineering defects. Similarly, a successful petitioner that fails to apply to participate in the auction or qualify to bid on the new allotment will not receive a waiver, nor will a petitioner that is the high bidder but either withdraws its high bid or is found unqualified to be the permittee.

11. In the NPRM, the Commission proposed to supplement the policy announced in *Columbus, Nebraska*, which limited to two the number of proposals for involuntary channel substitution changes to the Table of Allotments. The Commission specifically proposed to limit the number of changes to the Table that a party might propose or counter-propose to five, absent waiver based on a showing of significant public interest benefits. It was noted that parties sometimes file proposals (frequently, counterproposals) involving large numbers of changes to facilities, which frequently consumed large amounts of staff resources, and the Commission tentatively concluded that the staff could more efficiently dispose of these proceedings if proponents were required to break them apart into several discrete components. After reviewing comments and upon further consideration, the Commission has determined that it should defer acting on this proposal while it determines the effects on the efficiency of our allocations procedures of the other proposals adopted in the R&O. However, due to concern about the effects of complex proposals and counterproposals on the staff's ability efficiently to process changes to the Table of Allotments, the Commission instructs the staff carefully to review all proposals of five or more changes to the Table of Allotments, including those that may contain fewer than five proposals per party but that are interrelated, such that one party's proposal is dependent on others. The staff may, in its discretion, break such proceedings into smaller ones, return those proposals or counterproposals that do not require changes to vacant allotments and may be filed as minor modification applications, or in extreme cases return proposals or counterproposals in their entirety. The Commission reserves the right to revisit this proposal if deemed necessary in the public interest and to preserve the

integrity of the FM allotment and assignment plan.

12. In the NPRM, the Commission proposed to eliminate the existing prohibition against electronic filing of petitions filed in broadcast allotment proceedings, set forth in 47 CFR 1.401(b). Electronic filing has brought substantial benefits in other application contexts, specifically by streamlining processes and enhancing the accuracy and reliability of Commission databases, and those benefits should be extended to the allocations process. Therefore, the Commission adopts the proposal to eliminate from 47 CFR 1.401(b) the prohibition against electronic submission of petitions for rule making in broadcast allocations proceedings. The Media Bureau and Consumer and Governmental Affairs Bureau will announce, by public notice, such procedures as they will devise for submission of broadcast allocations petitions and other documents. It should be noted that, as these are restricted proceedings, such procedures must provide for service on all interested parties, as defined in the Commission's Rules (*see* 47 CFR 1.1202(d)), by electronic or other appropriate means.

13. In the NPRM, the Commission sought comment on First Broadcasting Investment Partners, LLC's ("First Broadcasting") proposal to abandon the Commission's existing policy against removing the sole local transmission service at a community in order to allow it to become the first local transmission service at another community. First Broadcasting contended that this policy undermines the goal of spectrum efficiency which, in its opinion, should favor provision of first local transmission service to the greatest population. First Broadcasting proposed a presumption that it is in the public interest to permit a station providing a community's sole local service to move to another community provided that (a) at least two other stations provide principal community service to the entirety of the current community, (b) the station would be the first local transmission service in the proposed community, (c) the station moving would provide 70 dBu service to a larger population in the proposed community of license, and (d) the move would not cause any short spacing and/or would fully or partially resolve existing short spacing. First Broadcasting stated that its proposal would enable the staff to consider multiple public interest benefits of such proposed community of license changes, rather than ending its analysis at preservation of local service, and would ensure that the staff's

Section 307(b) analysis will be conducted in an objective manner. After careful consideration and review of comments, the Commission declines to adopt this proposal. The Commission rejects the suggestion that objectivity in decision making can only be achieved by application of a defined multi-part test. Moreover, the Commission's experience shows that the reasons given by applicants for wanting to move the sole local service at a community are varied, and are better suited to a case-by-case waiver analysis than to a "one size fits all" test. Thus, the Commission retains its policy disfavoring removal of the sole local transmission service at a community, subject to waiver upon a detailed showing that retention of local service at a station's current community is contrary to the public interest, convenience, and necessity. For example, a showing that circumstances have changed to the extent that the current community of license is no longer a licensable community (due, perhaps, to a precipitous decline in population or significant loss of industry), or is no longer independent of a larger urban area, in the appropriate case might support a waiver to allow move of the station to serve a larger or more independent community. An AM licensee that has lost its transmitter site, and due to terrain or lack of available land cannot find a substitute site that would provide adequate community coverage, might also be able to present a compelling case for waiver. The foregoing examples are offered by way of illustration only, and are neither meant to be exhaustive nor are they meant to imply that a bare allegation of any of these circumstances will result in automatic waiver. All waiver requests are reviewed with an eye toward the particular facts as well as the context in which those facts are presented. Applicants are reminded that the waiver standard requires a detailed recitation of facts and circumstances, including documentary or testimonial (affidavit) evidence where appropriate, demonstrating special circumstances that warrant deviation from the policy, and showing that such deviation serves the public interest. *See Northeast Cellular Telephone Co. v. F.C.C.*, 897 F.2d 1164, 1166 (D.C. Cir. 1990), citing *WAIT Radio v. F.C.C.*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969). For example, the bare assertion that a station has lost its site, absent evidence showing an exhaustive but fruitless search for sites from which a sole local transmission service could comply with our technical rules, would not suffice to justify grant of a waiver to allow the station to move

to another community. The standard for waiver of a Commission policy is high for a reason. The Commission's rules and policies impose ongoing community service obligations on broadcasters. Moreover, the Commission has concluded that Section 307(b) policies must take into account the public's legitimate expectation that existing broadcast services will be maintained. These considerations will necessarily limit the ability of licensees to move to larger or more lucrative markets. Thus, a broadcaster that sought to locate in a community is expected to serve that community, as is a broadcaster that purchased the sole local transmission service in a particular community. In the latter case, no broadcaster should invest in a station with the expectation that the Commission will routinely approve a request to move to a different community. However, in the rare but appropriate case, Commission policy permits the sole local broadcaster in a community to show that the public interest supports a move to a new community.

14. In the NPRM, the Commission announced a freeze on the filing of new petitions to amend the Table of Allotments, to enable it to complete this proceeding without adding new rule making proceedings that might better be filed under new procedures, and to help eliminate allocations backlogs. The freeze on filing new petitions to amend the Table of Allotments will be lifted on the effective date of this R&O. Because the procedural changes in this R&O will not become effective until 30 days after publication in the **Federal Register**, at that time applicants may file minor modification applications for changes to community of license of full-power FM, noncommercial educational FM, and standard-band AM stations. Similarly, applicants wishing to file coordinated, contingent minor change applications and petitions for rule making as discussed herein must wait until the new community of license application procedures become effective before filing either minor change applications or rule making petitions.

15. Final Regulatory Flexibility Analysis. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA")<sup>2</sup> an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the Notice of Proposed

Rule Making ("NPRM") to this proceeding.<sup>3</sup> The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The Commission received no comments on the IRFA. This present Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.<sup>4</sup>

16. Need for, and Objectives of, the Report and Order. This Report and Order ("R&O") adopts rule changes and procedures to streamline the Commission's procedures for adding and modifying certain broadcast station allotments, and to streamline the Commission's FM commercial allotment procedures by allowing electronic filing of rule making petitions to change the FM Table of Allotments. In particular, the rules adopted by this R&O, as required by statute, will permit broadcast permittees and licensees of all full-service AM and FM broadcast stations (except for AM stations in the expanded band) to change their stations' communities of license by filing a minor modification application rather than through rule making proceedings. The new rules also will require parties seeking to add new allotments to the FM Table of Allotments simultaneously to file Form 301 for the new facilities at the time of filing a petition for rule making, rather than after auction. Finally, the new rules eliminate a rule-based prohibition against proponents of new channels in the FM Table of Allotments filing petitions for rule making electronically.

17. Summary of Significant Issues Raised by Public Comments in Response to the IRFA. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

18. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein.<sup>5</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small government jurisdiction."<sup>6</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>7</sup> 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).<sup>8</sup>

19. The subject rules and policies potentially will apply to all AM and commercial FM radio broadcasting licensees and potential licensees. The SBA defines a radio broadcasting station that has \$6.5 million or less in annual receipts as a small business.<sup>9</sup> A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.<sup>10</sup> Included in this industry are commercial, religious, educational, and other radio stations.<sup>11</sup> Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.<sup>12</sup> However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number.<sup>13</sup> According to Commission staff review of BIA Publications, Inc. Master Access Radio Analyzer Database on November 2, 2006, about 10,449 (95%) of 10,979 commercial radio stations have revenue of \$6.5 million or less. First Broadcasting, which filed the Petition for Rule Making in this proceeding, is included in the definition of "small business." We note, however, that many radio stations are affiliated with much larger corporations having much higher revenue. Our estimate, therefore, likely overstates the number of small entities that might be affected by any ultimate changes to the allocation rules.

20. Description of Projected Reporting, Record Keeping and other Compliance Requirements. As described, certain rules and procedures will change, but at most will only minimally increase the reporting requirements on existing and potential radio licensees and permittees, insofar as some of the proposed changes require the filing of application forms rather

agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

<sup>8</sup> 15 U.S.C. 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.

<sup>9</sup> See 13 CFR 121.201, NAICS Code 515112.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>3</sup> NPRM, 20 FCC Rcd 11169, 11190, 11192.

<sup>4</sup> See 5 U.S.C. 604.

<sup>5</sup> 5 U.S.C. 603(b)(3).

<sup>6</sup> *Id.* Sec. 601(6).

<sup>7</sup> *Id.* Sec. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an

<sup>2</sup> See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 ("CWAAA").

than rule making petitions. However, the forms to be filed are existing FCC application forms with which broadcasters are already familiar, so any additional burdens are minimal.

Applicants seeking to modify a station community of license will need to include, with their Form 301 applications, an exhibit detailing how the proposed community change comports with the policies underlying Section 307(b) of the Communications Act of 1934, as amended. However, current practice requires that rule making proponents demonstrate that the proposed new community of license represents a superior arrangement of allotments under Section 307(b), so any new burdens are minimal. The new rule will also require that applicants for a new community of license provide local public notice in local newspapers and on air. These will impose additional burdens upon applicants. These burdens are identical to those imposed upon applicants for new broadcast facilities and applicants seeking to assign or transfer broadcast licenses. As such, any new burdens are familiar to broadcast licensees, are already set forth in our rules, and are necessary to ensure that members of the public are notified of proposed changes and are afforded the opportunity to comment.

21. Additionally, parties seeking to add new allotments to the FM Table of Allotments must simultaneously file FCC Form 301 with their petitions to add new allotments, and pay the Form 301 filing fee at that time. This requires petitioners for new allotments to file Form 301 earlier in the process than is the case now. However, it is the same Form 301 as is currently filed by successful auction bidders. The only difference from Form 301 currently filed by applicants consists of a certification that the proponent of the new FM allotment will participate in the auction for the new channel if allotted. To the extent that the proponent/applicant is not the winning bidder for the new allotment, the applicant may apply for waiver and refund of the fee; however, the burden will be increased to the extent that such an unsuccessful bidder would not currently be required to file Form 301.

22. Steps Taken to Minimize Significant Impact of Small Entities, and Significant Alternatives Considered. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (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.<sup>14</sup>

23. The procedural changes adopted in the R&O for adding FM channel allotments and changing stations' communities of license are designed to make the process faster and more efficient, reducing delays to broadcasters in implementing new radio service. The procedure for changing a station's community of license will move from the current two-step process to a one-step minor application process, thus saving applicants time and resources. The Commission will require that petitioners for new FM channel allotments simultaneously file Form 301, and pay the prescribed filing fee for Form 301. Although this requires payment of the filing fee earlier than is the case in current practice, to the extent that petitioners ultimately obtain construction permits for these allotments, it is a fee they would be required to pay in any event, therefore this requirement should impose a minimal burden on petitioners. The Commission also eliminates the current prohibition on electronic filing of petitions to amend the FM Table of Allotments and comments on such proposals. Electronic filing, when implemented, will reduce burdens on all broadcasters, including small entities, by reducing the time and effort spent in preparing and submitting such documents in hard copy, as is the current practice.

24. Report to Congress. The Commission will send a copy of the *R&O*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.<sup>15</sup> In addition, the Commission will send a copy of the *R&O*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**.<sup>16</sup>

#### Ordering Clauses

25. Accordingly, *it is ordered*, pursuant to the authority contained in Sections 1, 2, 4(i), 303(r), and 307 of the Communications Act of 1934, 47 U.S.C

<sup>14</sup> 5 U.S.C. 603(c)(1)–(c)(4).

<sup>15</sup> See *id.* Sec. 801(a)(1)(A).

<sup>16</sup> See *id.* Sec. 604(b).

151, 152, 154(i), 303(r), and 307, this *Report and Order* is hereby adopted and the Commission's Rules are hereby amended as set forth in the Rule Changes.

26. *It is further ordered* that the rule amendments set forth in the Rule Changes will become effective 30 days after publication in the **Federal Register**.

27. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects

##### 47 CFR Part 1

Practice and procedure.

##### 47 CFR Part 73

Radio broadcast services.

Federal Communications Commission.

**William F. Caton**,  
Deputy Secretary.

#### Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1 and 73 as follows:

#### PART 1—PRACTICE AND PROCEDURE

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

**Authority:** 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

■ 2. Section 1.401 is amended by revising paragraph (b) and the last sentence of paragraph (d) to read as follows:

##### § 1.401 Petitions for rulemaking.

\* \* \* \* \*

(b) The petition for rule making shall conform to the requirements of §§ 1.49, 1.52, and 1.419(b) (or § 1.420(e), if applicable), and shall be submitted or addressed to the Secretary, Federal Communications Commission, Washington, DC 20554, or may be submitted electronically.

\* \* \* \* \*

(d) \* \* \* Petitions to amend the FM Table of Allotments must be accompanied by the appropriate construction permit application and payment of the appropriate application filing fee.

\* \* \* \* \*

■ 3. Section 1.420 is amended by revising the section heading, revising

paragraph (g) and adding new Note to § 1.420 following paragraph (j); the revisions set forth below are to read as follows:

**§ 1.420 Additional procedures in proceedings for amendment of the FM or TV Tables of Allotments, or for amendment of certain FM assignments.**

\* \* \* \* \*

(g) The Commission may modify the license or permit of a UHF TV station to a VHF channel in the same community in the course of the rule making proceeding to amend § 73.606(b), or it may modify the license or permit of an FM station to another class of channel through notice and comment procedures, if any of the following conditions are met:

- (1) There is no other timely filed expression of interest, or
- (2) If another interest in the proposed channel is timely filed, an additional equivalent class of channel is also allotted, assigned or available for application.

**Note to Paragraph (g):** In certain situations, a licensee or permittee may seek an adjacent, intermediate frequency or co-channel upgrade by application. See § 73.203(b) of this chapter.

\* \* \* \* \*

**Note to § 1.420:** The reclassification of a Class C station in accordance with the procedure set forth in Note 4 to § 73.3573 may be initiated through the filing of an original petition for amendment of the FM Table of Allotments. The Commission will notify the affected Class C station licensee of the proposed reclassification by issuing a notice of proposed rule making, except that where a triggering petition proposes an amendment or amendments to the FM Table of Allotments in addition to the proposed reclassification, the Commission will issue an order to show cause as set forth in Note 4 to § 73.3573, and a notice of proposed rule making will be issued only after the reclassification issue is resolved. Triggering petitions will be dismissed upon the filing, rather than the grant, of an acceptable construction permit application to increase antenna height to at least 451 meters HAAT by a subject Class C station.

**PART 73—RADIO BROADCAST SERVICES**

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

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

■ 5. Section 73.202 is amended by revising paragraph (a) introductory text, paragraph (a)(2) and paragraph (b), the Note following paragraph (a)(2) remains unchanged, the following revisions are to read as follows:

**§ 73.202 Table of Allotments.**

(a) *General.* The following Table of Allotments contains the channels (other than noncommercial educational Channels 201–220) designated for use in communities in the United States, its territories, and possessions, and not currently assigned to a licensee or permittee or subject to a pending application for construction permit or license. All listed channels are for Class B stations in Zones I and I–A and for Class C stations in Zone II unless otherwise specifically designated. Channels to which licensed, permitted, and “reserved” facilities have been assigned are reflected in the Media Bureau’s publicly available Consolidated Data Base System.

\* \* \* \* \*

(2) Each channel listed in the Table of Allotments reflects the class of station that is authorized to use it based on the minimum and maximum facility requirements for each class contained in § 73.211.

\* \* \* \* \*

(b) *Table of FM Allotments.*

	Channel No.
<b>ALABAMA</b>	
Anniston .....	*261C3
Boligee .....	297A
Coosada .....	226A
Frisco City .....	278A
Livingston .....	242A
Maplesville .....	292A
New Hope .....	278A
Pine Level .....	248A
Rockford .....	286A
Saint Florian .....	274A
<b>ALASKA</b>	
Palmer .....	238C1
<b>ARIZONA</b>	
Aguila .....	297C3
Ajo .....	295A
Ash Fork .....	267A
Bagdad .....	269C3
Chino Valley .....	223A
Ehrenberg .....	286C2
First Mesa .....	247C
Fredonia .....	278C1
Grand Canyon Village .....	273C1
Heber .....	288C2
Huachuca City .....	232A
Leupp .....	255C2
Overgaard .....	232C3
Parker .....	247C3
Patagonia .....	251A
Paulden .....	263C3
Peach Springs .....	285C3
Pima .....	*296A
Pinetop .....	294C1
Quartzsite .....	275C3, 290C2
Rio Rico .....	300A
Sells .....	285A
Snowflake .....	258C2

	Channel No.
Somerton .....	*260C3
Taylor .....	278C3
Wickenburg .....	229C3
Willcox .....	*223C3
<b>ARKANSAS</b>	
Altheimer .....	251C3
Arkadelphia .....	228A
Bearden .....	224A
Clarendon .....	281A
Cove .....	232A
Daisy .....	293C3
Gassville .....	224A
Greenwood .....	268A
Hermitage .....	300A
Paragould .....	257A
Rison .....	255A
Sparkman .....	259A
Strong .....	296C3
<b>CALIFORNIA</b>	
Alturas .....	268C1, 277C
Amboy .....	237A
Barstow .....	267A
Big Sur .....	240A
Blythe .....	239B
Burney .....	225A
Buttonwillow .....	265A
Cambria .....	287A, 293A
Cedarville .....	260A
Cloverdale .....	274A
Coachella .....	278A
Covelo .....	245A
Desert Center .....	288A
Essex .....	280B
Greenfield .....	254A
Hemet .....	273A
Kerman .....	224A
Kernville .....	289A
King City .....	275A
Lake Isabella .....	239A
Lamont .....	247A
McKinleyville .....	236C3, 277C3
Mecca .....	274A
Mojave .....	255A
Murrieta .....	281A
Nevada City .....	297A
Portola .....	269A
Randsburg .....	271A
Ridgecrest .....	229A, 252A
San Joaquin .....	299A
Susanville .....	262A
Sutter Creek .....	*298A
Tecopa .....	291A
Trona .....	247A
Twentynine Palms .....	270A
Wasco .....	224A
Waterford .....	294A
Westley .....	*238A
Willow Creek .....	253A
<b>COLORADO</b>	
Arriba .....	240A
Aspen .....	228A
Cheyenne Wells .....	224C1
Crawford .....	274C3
Crested Butte .....	246C3
De Beque .....	275C3
Durango .....	287A
Flagler .....	283C3
Fruita .....	255C3

	Channel No.		Channel No.		Channel No.
		<b>ILLINOIS</b>		<b>MARYLAND</b>	
Genoa .....	291C3	Abingdon .....	252A	<b>MASSACHUSETTS</b>	
Gunnison .....	265C2, 299C3	Altamont .....	288A	Adams .....	255A
Hotchkiss .....	258C3	Augusta .....	253A	East Harwich .....	254A
Hugo .....	222A	Canton .....	*277A	Nantucket .....	249A
Lake City .....	247A	Cedarville .....	*258A	West Tisbury .....	*282A
Olathe .....	*270C2, *293C	Clifton .....	*297A	<b>MICHIGAN</b>	
Orchard Mesa .....	249C3	Cuba .....	292A	Alpena .....	289A
Steamboat Springs .....	255A, 289A	Freeport .....	*295A	Crystal Falls .....	280C2
Strasburg .....	249C3	Grayville .....	229A	Custer .....	263A
Stratton .....	246C1	Pinckneyville .....	*282A	Ferrysburg .....	226A
<b>CONNECTICUT</b>		West Salem .....	266A	Fife Lake .....	240C2
<b>DELAWARE</b>		<b>INDIANA</b>		Frederic .....	237A
<b>DISTRICT OF COLUMBIA</b>		Bloomfield .....	266A	Glen Arbor .....	227A
<b>FLORIDA</b>		Farmersburg .....	*242A	Harrison .....	280A
Big Pine Key .....	*239A	Fowler .....	291A	Hubbardston .....	*279A
Cedar Key .....	261A	Madison .....	*265A	Houghton .....	242C1
Cross City .....	249C3	Terre Haute .....	298B	Ludington .....	242A
Daytona Beach Shores ..	258A	<b>IOWA</b>		McBain .....	300A
Eastpoint .....	283A	Asbury .....	*238A	Onaway .....	292C2
Horseshoe Beach .....	*234C3	Keosauqua .....	*271C3	Paradise .....	234A
Islamorada .....	283C2	Moivre .....	*246A	Pentwater .....	280A
Jasper .....	298A	North English .....	246A	Traverse City .....	283A
Key Largo .....	237C3	Rudd .....	*268A	<b>MINNESOTA</b>	
Key West .....	244A	<b>KANSAS</b>		Baudette .....	233C1
Lake Park .....	262A	Americus .....	240A	Grand Portage .....	224C, 245C0, 274C
Live Oak .....	*259A	Atwood .....	292C0	Red Lake .....	231C1
Okeechobee .....	291A	Council Grove .....	*281C3	<b>MISSISSIPPI</b>	
Otter Creek .....	*240A	<b>KENTUCKY</b>		Calhoun City .....	272A
Palm Coast .....	254A	Burgin .....	290A	Greenwood .....	277A
Perry .....	228A	Morgantown .....	256A	Holly Springs .....	243A
Port St. Joe .....	270C3	Science Hill .....	291A	Marietta .....	250A
Silver Springs Shore .....	259A	Smith Mills .....	*233A	Oxford .....	286A
Sugarloaf Key .....	289A	<b>LOUISIANA</b>		Vaiden .....	271A
<b>GEORGIA</b>		Anacoco .....	276C3	Vardaman .....	258A
Alamo .....	287C3	Bordelonville .....	280A	Walnut Grove .....	244C2
Americus .....	295A	Cameron .....	296C3	<b>MISSOURI</b>	
Calhoun .....	233A	Clayton .....	266A	Alton .....	290A
Crawfordville .....	234A	Colfax .....	267A	Bourbon .....	231A
Cusseta .....	279A	Dulac .....	242A	Columbia .....	252C2
Dexter .....	276A	Florien .....	242A	Doolittle .....	283A
Homerville .....	246A	Franklin .....	295C3	Eminence .....	281A
Lincolnton .....	254A	Golden Meadow .....	*289C2	Grandin .....	283A
Milner .....	290A	Harrisonburg .....	232A	Huntsville .....	*278C2
Morgan .....	228A	Haynesville .....	288A	Laurie .....	*265C3
Patterson .....	296A	Homer .....	*272A	Lowry City .....	285A
Pineview .....	226A	Hornbeck .....	269A	Madison .....	247C3
Plains .....	290A	Lake Providence .....	224A	Marceline .....	256A
Plainville .....	285A	Leesville .....	224A	Marquand .....	295A
Reynolds .....	*245A	New Llano .....	252C3	Moberly .....	223A
St. Simons Island .....	229C3	Oak Grove .....	289A	<b>MONTANA</b>	
Tallapoosa .....	255A	Oil City .....	285A	Bozeman .....	*240C3
Tignall .....	244A	Opelousas .....	279A	Cut Bank .....	274C1
Ty Ty .....	249A	Ringgold .....	*253C3	Lewistown .....	300C1
Wadley .....	227A	Rosepine .....	281A	Montana City .....	293A
Woodbury .....	233A	St. Joseph .....	257C3	Outlook .....	289C
Young Harris .....	236A	Wisner .....	300C3	Roundup .....	248A
<b>HAWAII</b>		<b>MAINE</b>		Whitehall .....	274A
Kailua-Kona .....	244A	Monticello .....	234A	<b>NEBRASKA</b>	
Kihei .....	298C2	<b>MICHIGAN</b>		Arthur .....	300C1
<b>IDAHO</b>		<b>MARYLAND</b>		<b>MASSACHUSETTS</b>	
McCall .....	228C3, 238C3, 275C3, 293C3	<b>MICHIGAN</b>		Adams .....	255A
Weiser .....	*280C1	<b>MAINE</b>		East Harwich .....	254A

	Channel No.		Channel No.		Channel No.
Firth .....	229A	Erick .....	259C2	Lynchburg .....	296A
Hartington .....	232C2	Haileyville .....	290A	Oliver Springs .....	291A
Hyannis .....	250C1	Haworth .....	294A	Pigeon Forge .....	292A
Pierce .....	248C2	Holdenville .....	265A		
<b>NEVADA</b>		Hollis .....	274C2	<b>TEXAS</b>	
Battle Mountain .....	253A	Kiowa .....	254A	Annona .....	263A
Fallon Station .....	287C	Leedey .....	297A	Asherton .....	284A
Fernley .....	231C3	Lone Wolf .....	224A	Aspermont .....	226C2
Pahrump .....	272C3	Mooreland .....	254A, 300C2	Austwell .....	290A
Silver Springs .....	273C	Muldraw .....	286A	Baird .....	243C3
<b>NEW HAMPSHIRE</b>		Okeene .....	268C3	Ballinger .....	238A
Enfield .....	282A	Pawhuska .....	233A	Balmorhea .....	283C
Groveton .....	268A	Pittsburg .....	232A	Bangs .....	250C3
Pittsburg .....	246A	Red Oak .....	227A	Benavides .....	282A
<b>NEW JERSEY</b>		Reydon .....	264C2	Benjamin .....	237C3
<b>NEW MEXICO</b>		Ringwood .....	285A	Big Lake .....	246A, 296C2
Alamo Community .....	*298A	Savanna .....	275A	Big Spring .....	265C3
Alamogordo .....	240C2	Sayre .....	269C2	Big Wells .....	271A
Carrizozo .....	261C2	Stuart .....	228A	Blanket .....	284A
Clayton .....	248C1	Taloga .....	226A	Blossom .....	224C2
Grants .....	244C3	Thomas .....	288A	Brackettville .....	234A
Las Vegas .....	283C2, 296A	Tipton .....	233C3	Bruni .....	293A
Milan .....	270A	Tishomingo .....	259C3	Buffalo Gap .....	227A
Roswell .....	237C0	Valliant .....	234C3	Burnet .....	*240A
Taos .....	228A, 288A	Vici .....	249A	Camp Wood .....	271A
Taos Pueblo .....	292C3	Wapanucka .....	298A	Canadian .....	235C1
<b>NEW YORK</b>		Waynoka .....	*231C2	Carbon .....	238A
Amherst .....	221A	Weatherford .....	*286A	Carrizo Springs .....	295A
Celoron .....	237A	Wright City .....	226A	Centerville .....	274A
Indian Lake .....	290A	Wynnewood .....	*283A	Channing .....	284C
Keeseville .....	231A	<b>OREGON</b>		Childress .....	281C2
Montauk .....	235A	Clatskanie .....	225C3	Colorado City .....	257A
Morrisonville .....	231A	Dallas .....	*252C3	Comanche .....	280A
Rhinebeck .....	*273A	Diamond Lake .....	299A	Cotulla .....	242A, 264A, 289A
Rosendale .....	255A, 273A	lone .....	258A	Crosbyton .....	264C3
<b>NORTH CAROLINA</b>		Keno .....	253A	Crowell .....	293C3
Dillsboro .....	237A	Madras .....	*251C1	Cuney .....	259A
Garysburg .....	276A	Merrill .....	289A	Dalhart .....	261C
Ocracoke .....	224C1	Monument .....	280C1	Denver City .....	*248C2
<b>NORTH DAKOTA</b>		Powers .....	293C2	Detroit .....	282C2
Berthold .....	264C	Prairie City .....	260C	Dickens .....	240A, 294A
Tioga .....	281C1	Prineville .....	267C1	Dilley .....	229A
Williston .....	253C1	Terrebonne .....	293C2	Eagle Lake .....	237C3
<b>OHIO</b>		The Dalles .....	*268C3	El Indio .....	236A
Ashtabula .....	241A	<b>PENNSYLVANIA</b>		Eldorado .....	258C1, 285A, 293A
Cridersville .....	257A	Erie .....	240A	Elkhart .....	265A
McConnelsville .....	279A	Lawrence Park .....	224A	Encinal .....	259A, 273A, 286A
North Madison .....	229A	Liberty .....	*298A	Encino .....	250A, 283A
<b>OKLAHOMA</b>		Meyersdale .....	253A	Estelline .....	263C3
Arnett .....	285C2	Sheffield .....	286A	Floydada .....	255A
Boswell .....	282C3	Susquehanna .....	227A	Fort Stockton .....	263C
Broken Bow .....	285A	Sykesville .....	240A	Freer .....	288A
Buffalo .....	224C2	<b>RHODE ISLAND</b>		Garwood .....	247A
Cheyenne .....	247C3	<b>SOUTH CAROLINA</b>		George West .....	250A, 292A
Clayton .....	241A	Pendleton .....	240A	Goliad .....	282A
Coalgate .....	242A	Quinby .....	237A	Goree .....	275A
Cordell .....	*229A	<b>SOUTH DAKOTA</b>		Grapeland .....	232C3
Covington .....	290A	Edgemont .....	289C1	Groom .....	223A
<b>OREGON</b>		Lead .....	232C	Guthrie .....	252A
Clatskanie .....	225C3	Rosebud .....	257C	Hamilton .....	299A
Dallas .....	*252C3	Sisseton .....	258C2	Hamlin .....	283C2
Diamond Lake .....	299A	Wall .....	299C	Hawley .....	269A
lone .....	258A	<b>TENNESSEE</b>		Hebbronville .....	232A, 254A
Keno .....	253A	Linden .....	267A	Hewitt .....	294A
Madras .....	*251C1	<b>TEXAS</b>		Hico .....	285A
Merrill .....	289A	Annona .....	263A	Hooks .....	231A
Monument .....	280C1	Asherton .....	284A	Idalou .....	299A
Powers .....	293C2	Aspermont .....	226C2	Iraan .....	269C2
Prairie City .....	260C	Austwell .....	290A	Jacksonville .....	236A
Prineville .....	267C1	Baird .....	243C3	Jayton .....	231C2
Terrebonne .....	293C2	Ballinger .....	238A	Junction .....	277C3, 284A, 292A, 297A
The Dalles .....	*268C3	Balmorhea .....	283C		

	Channel No.		Channel No.		Channel No.
Kermit .....	229A	<b>UTAH</b>		<b>AMERICAN SAMOA</b>	
Knox City .....	291A			<b>CENTRAL MARIANAS</b>	
La Pryor .....	278A	Beaver .....	259A	<b>GARAPAN</b>	
Leakey .....	257A, 275A, 299A	Fountain Green .....	*260A	<b>GUAM</b>	
Llano .....	293C3	Manila .....	228A	<b>PUERTO RICO</b>	
Lockney .....	271C3	Mona .....	225A	Santa Isabel .....	251A
Lometa .....	253A	Parowan .....	300C2	<b>VIRGIN ISLANDS</b>	
Longview .....	300C2	Salina .....	233C	Charlotte Amalie .....	257A
Lovelady .....	288A	Toquerville .....	280C	Frederiksted .....	258A
Marathon .....	278C	<b>VERMONT</b>			
Mason .....	269C3, 281C2	Albany .....	233A		
Matador .....	221C2, 227C3	Canaan .....	231C3		
Matagorda .....	252A	Poultney .....	223A		
McCamey .....	233C3	<b>VIRGINIA</b>			
McLean .....	267C3	Alberta .....	299A		
Memphis .....	283A, 292A	Belle Haven .....	252A		
Menard .....	242A, 265C2, 287C3	Iron Gate .....	270A		
Mertzson .....	278C2	Lynchburg .....	229A		
Meyersville .....	261A	Shawsville .....	273A		
Moody .....	256A	Shenandoah .....	*296A		
Mount Enterprise .....	231A	<b>WASHINGTON</b>			
Muleshoe .....	227C1	Chewelah .....	*274C3		
Mullin .....	224C3	Coupeville .....	266A		
Munday .....	270C1	Goldendale .....	240A		
Newcastle .....	263A	Oak Harbor .....	*233A, 277A		
O'Brien .....	261A	Port Angeles .....	229A		
Ozona .....	275C3, 289C1	Sedro-Woolley .....	289A		
Paducah .....	234C3	Sequim .....	237A		
Paint Rock .....	296C3	Union Gap .....	285A		
Palacios .....	264A	Waitsburg .....	272A		
Pampa .....	277C2	<b>WEST VIRGINIA</b>			
Panhandle .....	291C3	Glennville .....	299A		
Pearsall .....	227A	Marlinton .....	292A		
Pineland .....	256A	St Marys .....	*287A		
Port Isabel .....	288A	White Sulphur Springs .....	227A		
Premont .....	287A	<b>WISCONSIN</b>			
Presidio .....	292C1	Ashland .....	*275A		
Quanah .....	255C3	Augusta .....	*268C3		
Rankin .....	229C3	Boscobel .....	244C3		
Richland Springs .....	235A, 299A	Crandon .....	276C3		
Rising Star .....	290C3	Ephraim .....	295A		
Roaring Springs .....	276C3	Hayward .....	*232C2		
Robert Lee .....	289A	Laona .....	272C3		
Roby .....	249A	New Holstein .....	225A		
Rocksprings .....	235C3	Owen .....	242C3		
Rotan .....	290A	Rhineland .....	243C3		
Rule .....	239C2, 253A	Rosholt .....	263A		
Sabinal .....	296A	Tigerton .....	295A		
San Diego .....	273A	Tomahawk .....	265C3		
San Isidro .....	247A	Two Rivers .....	255A		
Sanderson .....	274C1, 286C2	Washburn .....	*284A		
Santa Anna .....	282A	<b>WYOMING</b>			
Savoy .....	297A	Bairoil .....	235A		
Shamrock .....	271A	Centennial .....	248A		
Sheffield .....	224C2	Meeteetse .....	273C		
Silverton .....	252A	Pine Bluffs .....	238C3		
Smiley .....	280A	Reliance .....	254C3		
Snyder .....	235C3	Sinclair .....	267C		
Sonora .....	237C3, 272A				
Spur .....	254A, 260C3				
Stamford .....	233A				
Sweetwater .....	221C3				
Teague .....	237C3				
Turkey .....	244C2, 269A				
Van Alstyne .....	*260A				
Weinert .....	266C3				
Wellington .....	248A				
Wells .....	254A				
Westbrook .....	272A				
Wheeler .....	280C2				
Zapata .....	292A				

■ 6. Section 73.203 is revised to read as follows:

**§ 73.203 Availability of channels.**

(a) Except as provided for in paragraph (b) of this section and § 1.401(d) of this chapter and 73.3573(a)(1), applications may be filed to construct new FM broadcast stations only at the communities and on the channels contained in the Table of Allotments (§ 73.202(b)).

(b) Applications filed on a first come, first served basis for the minor modification of an existing FM broadcast station may propose any change in channel and/or class and/or community not defined as major in § 73.3573(a). Applications for a change in community of license must comply with the requirements set forth in § 73.3573(g).

**Note to § 73.203:** This section is limited to non-reserved band changes in channel and/or class and/or community. Applications requesting such changes must meet either the minimum spacing requirements of § 73.207 at the site specified in the application, without resort to the provisions of the Commission's rules permitting short spaced stations as set forth in §§ 73.213 through 73.215, or demonstrate by a separate exhibit attached to the application the existence of a suitable allotment site that fully complies with §§ 73.207 and 73.315 without resort to §§ 73.213 through 73.215.

■ 7. Section 73.1690 is amended by adding paragraph (b)(9) to read as follows:

**§ 73.1690 Modification of transmission systems.**

\* \* \* \* \*

(b) \* \* \*

(9) Any change in the community of license, where the proposed new facilities are the same as, or would be mutually exclusive with, the licensee's or permittee's present assignment.

\* \* \* \* \*

■ 8. Section 73.3571 is amended by revising paragraph (a)(1), and adding new paragraph (j) to read as follows:

**§ 73.3571 Processing of AM broadcast station applications.**

(a) \* \* \*

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. A major change for an AM station authorized under this part is any change in frequency, except frequency changes to non-expanded band first, second or third adjacent channels. A major change in ownership is a situation where the original party or parties to the application do not retain more than 50% ownership interest in the application as originally filed. A major change in community of license is one in which the applicant's daytime facilities at the proposed community are not mutually exclusive, as defined in § 73.37, with the applicant's current daytime facilities, or any change in community of license of an AM station in the 1605–1705 kHz band. All other changes will be considered minor.

\* \* \* \* \*

(j) Applications proposing to change the community of license of an AM station, except for an AM station in the 1605–1705 kHz band, are considered to be minor modifications under paragraphs (a)(2) and (f) of this section, and are subject to the following requirements:

(1) The applicant must attach an exhibit to its application containing information demonstrating that the proposed community of license change constitutes a preferential arrangement of assignments under Section 307(b) of the Communications Act of 1934, as amended (47 U.S.C. 307(b));

(2) The daytime facilities specified by the applicant at the proposed community of license must be mutually exclusive, as defined in § 73.37, with the applicant's current daytime facilities; and

(3) Notwithstanding the provisions of § 73.3580(a), the applicant must comply with the local public notice provisions of §§ 73.3580(c)(3), 73.3580(d)(3), and 73.3580(f). The exception contained in § 73.3580(e) shall not apply to an application proposing to change the community of license of an AM station.

■ 9. Section 73.3573 is amended by revising paragraph (a)(1), adding new paragraph (g), and revising Note 1 to § 73.3573 (Notes 2, 3, and 4 to § 73.3573 remain unchanged), the revisions are to read as follows:

**§ 73.3573 Processing of FM broadcast station applications.**

(a) \* \* \*

(1) In the first group are applications for new stations or for major changes of authorized stations. A major change in

ownership is any change where the original party or parties to the application do not retain more than 50 percent ownership interest in the application as originally filed. In the case of a Class D or an NCE FM reserved band channel station, a major facility change is any change in antenna location which would not continue to provide a 1 mV/m service to some portion of its previously authorized 1 mV/m service area. In the case of a Class D station, a major facility change is any change in community of license or any change in frequency other than to a first-, second-, or third-adjacent channel. A major facility change for a commercial or a noncommercial educational full service FM station, a winning auction bidder, or a tentative selectee authorized or determined under this part is any change in frequency or community of license which is not in accord with its current assignment, except for the following:

(i) A change in community of license which complies with the requirements of paragraph (g) of this section;

(ii) A change to a higher or lower class co-channel, first-, second-, or third-adjacent channel, or intermediate frequency;

(iii) A change to a same-class first-, second-, or third-adjacent channel, or intermediate frequency;

(iv) A channel substitution, subject to the provisions of Section 316 of the Communications Act for involuntary channel substitutions.

\* \* \* \* \*

(g) Applications proposing to change the community of license of an FM station or assignment are considered to be minor modifications under paragraphs (a)(2), (e)(1), and (f)(1) of this section, and are subject to the following requirements:

(1) The applicant must attach an exhibit to its application containing information demonstrating that the proposed community of license change constitutes a preferential arrangement of allotments or assignments under Section 307(b) of the Communications Act of 1934, as amended (47 U.S.C. 307(b));

(2) The facilities specified by the applicant at the proposed community of license must be mutually exclusive, as defined in § 73.207 or 73.509, with the applicant's current facilities or its current assignment, in the case of a winning auction bidder or tentative selectee; and

(3) Notwithstanding the provisions of § 73.3580(a), the applicant must comply with the local public notice provisions of §§ 73.3580(c)(3), 73.3580(d)(3), and 73.3580(f). The exception contained in

§ 73.3580(e) shall not apply to an application proposing to change the community of license of an FM station.

(4) Non-reserved band applications must demonstrate the existence of a suitable assignment or allotment site that fully complies with §§ 73.207 and 73.315 without resort to § 73.213 or 73.215.

**Note 1 to § 73.3573:** Applications to modify the channel and/or class to an adjacent channel, intermediate frequency (IF) channel, or co-channel may utilize the provisions of the Commission's Rules permitting short spaced stations as set forth in § 73.215 as long as the applicant shows by separate exhibit attached to the application the existence of an allotment reference site which meets the allotment standards, the minimum spacing requirements of § 73.207 and the city grade coverage requirements of § 73.315. This exhibit must include a site map or, in the alternative, a statement that the transmitter will be located on an existing tower. Examples of unsuitable allotment reference sites include those which are offshore, in a national or state park in which tower construction is prohibited, on an airport, or otherwise in an area which would necessarily present a hazard to air navigation.

\* \* \* \* \*

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 11**

[EB Docket No. 04–296, FCC 05–191]

**Review of the Emergency Alert System**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** The Commission adopted rules that expanded the reach of the Emergency Alert System (EAS), as currently constituted, to cover digital communications technologies that are increasingly being used by the American public to receive news and entertainment. This document announces the effective date of these published rules.

**DATES:** The amendments to §§ 11.15, 11.21, 11.35, 11.51, 11.52, 11.55, and 11.61 published at 70 FR 71023, November 25, 2005 became effective on February 21, 2006.

**FOR FURTHER INFORMATION CONTACT:** Jean Ann Collins, Public Safety and Homeland Security Bureau, (202) 418–2792.

**SUPPLEMENTARY INFORMATION:** On February 21, 2006, the Office of