

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
Revision of Procedures Governing Amendments ) MB Docket No. 05-210
To FM Table of Allotments and Changes ) RM-10960
of Community of License in the Radio Broadcast )
Services )

REPORT AND ORDER

Adopted: November 3, 2006

Released: November 29, 2006

By the Commission: Commissioners Tate and McDowell issuing separate statements.

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## I. INTRODUCTION

1. With this *Report and Order* (“*R&O*”), we make certain changes to our 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* in this proceeding.<sup>1</sup> Specifically, we make changes of community of license for commercial full-power AM standard band and commercial and noncommercial educational (“NCE”) FM broadcast stations a minor modification, to be accomplished by first come-first served minor modification application, subject to certain procedural requirements described below. We further announce that the FM Table of Allotments, Section 73.202 of our Rules,<sup>2</sup> shall henceforth contain only vacant allotments, and that 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.

2. We further adopt the proposal that we 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. At this time, however, we will not adopt our suggestion limiting the number of proposals to add additional allotments or modify vacant allotments within a single rule making proposal, although we delegate to staff the discretion to return unreasonably large proposals or counter-proposals, if warranted. We reserve the right to revisit this determination in the event that the volume of complex rule making filings impedes the staff’s ability to expeditiously dispose of FM allocation proposals.

3. We also decline to adopt the bright-line rule, proposed by First Broadcasting Investment Partners, LLC (“First Broadcasting”), for parties seeking to remove a community’s sole local transmission service to become another community’s first local service. As discussed below, the comments have not convinced us that it is appropriate at this time to abandon our policy disfavoring such moves. Moreover, recent auction window filings have demonstrated that the myriad reasons given by parties seeking such station moves do not admit of a simple, “one size fits all” process of the type propounded by First Broadcasting. We instead reiterate 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. We also modify our rules to allow electronic filing of allocations documents. Finally, we lift the current freeze on the filing of new petitions to amend the FM Table of Allotments.

## II. DISCUSSION

4. **AM and FM Station Community of License Change Applications.** In the *NPRM* we proposed a change to our procedural rules regarding changes to the communities of license of AM and FM broadcast stations. Specifically, we proposed to replace the current two-step processes for community of license changes in the FM service and the filing window process for community of license changes in the AM service with a streamlined first-come, first-served minor change application

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<sup>1</sup> *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) (“*NPRM*”).

<sup>2</sup> 47 C.F.R. § 73.202 (“Table of Allotments”).

procedure. As explained in more detail in the *NPRM*, currently an FM change of community applicant must undergo an allocations rule making process (including an analysis of its proposal under Section 307(b) of the Communications Act of 1934 as amended (the “Act”))<sup>3</sup> before filing a construction permit application to change community,<sup>4</sup> and an AM licensee wishing to change a station’s community of license must wait to file during an auction filing window, and undergo a Section 307(b) analysis and possibly an auction before being allowed to file a construction permit application to implement the change.<sup>5</sup> First Broadcasting filed a *Petition for Rule Making* proposing a streamlined, one-step minor modification process,<sup>6</sup> which received significant comment even before the Commission tentatively concluded, in the *NPRM*, to adopt an application-based procedure.<sup>7</sup> The importance of our Section 307(b) criteria is directly tied to the fact that broadcasters must provide programming that is responsive to the interests and needs of their communities of license, and the concomitant importance of local radio service to the communities served. Thus, because we are not deviating from the notion that broadcasters must serve their local communities, a primary goal in this proceeding is to ensure that any streamlining procedures we adopt do not weaken the important Section 307(b) analysis that is a part of every licensing action modifying a station’s community of license. We therefore sought comment on the proposal to streamline this process, as well as various conditions or requirements that might attend such a process in order to protect the public interest, and to ensure that we fulfill our statutory mandate to distribute licenses fairly, efficiently, and equitably pursuant to Section 307(b).

5. Most commenters supported this proposal.<sup>8</sup> As they did in response to First Broadcasting’s proposal, many commenters contended that the Commission’s proposal would eliminate

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<sup>3</sup> 47 U.S.C. § 307(b) (“Section 307(b)”).

<sup>4</sup> *NPRM*, 20 FCC Rcd at 11174.

<sup>5</sup> *Id.* at 11174-75.

<sup>6</sup> *Id.* at 11172. See *Consumer and Governmental Affairs Bureau – Reference Information Center Petition for Rulemaking Filed*, Public Notice, Report No. 2657 (CGB Apr. 22, 2004).

<sup>7</sup> *NPRM*, 20 FCC Rcd at 11178.

<sup>8</sup> Commenters supporting this proposal, in whole or in part, included: Mullaney Engineering, Inc. (“Mullaney”); Graham Brock, Inc. (“Brock”); KM Communications, Inc. (“KMC”); Arlington Capital Partners, L.P. and Arlington Capital Partners II, L.P. (“Arlington”); duTreil, Lundin & Rackley, Inc. (“DLR”); Baybridge Communications, LLC (“Baybridge”); Friendship Broadcasting, LLC (“Friendship”); Cox Radio, Inc. (“Cox”); Educational Media Foundation (“EMF”); Georgia-Carolina Radiocasting, LLC (“GCR”); Vox Communications Group LLC (“Vox”); Apex Broadcasting, Inc., Alexander Broadcasting Company, Inc., Charles M. Anderson & Associates, Cumulus Licensing LLC, Great South RFDC, LLC, Hunt Broadcasting, Inc., Marathon Media Group, LLC, Media Services Group, Multicultural Radio Broadcasting Licensing, LLC, Spanish Peaks Broadcasting, Inc., and Wagon Wheel Broadcasting, LLC (“Apex Parties”); American Media Services, LLC, Radio One, Inc., Univision Radio, Inc., Mattox Broadcasting, Inc., On-Air Family, LLC, Hunt Broadcasting, Inc., Media Services Group, Inc., Desert West Air Ranchers Corporation, Superior Broadcasting, LLC, Four Corners Broadcasting, LLC, and Western Slope Communications, LLC (“AMS Parties”); Minority Media and Telecommunications Council (“MMTC”); Sellmeyer Engineering (“Sellmeyer”); Booth, Freret, Imlay & Tepper (“BFIT”); Martin L. Hensley (“Hensley”); Starboard Media Foundation, Inc. (“Starboard”); Brantley Broadcast Associates, LLC (“Brantley”); Bustos Media, LLC (“Bustos”); and Keymarket Licenses, LLC, Forever Broadcasting, LLC, Forever Communications, Inc., Megahertz Licenses, LLC, Forever of PA, LLC (“Keymarket Parties”), Good News Radio, Inc. (“Good News”), and First Broadcasting. A list of the comments filed in response to the *NPRM* is provided in Appendix B; a list of reply comments is provided as Appendix C.

unnecessary delays and expedite the provision of enhanced broadcast service to the public.<sup>9</sup> Some focused on the advantage to AM broadcasters that lose their transmitter sites and that might be unable to locate sites that would enable them to provide required daytime and nighttime signal coverage of the current community of license. BFIT notes that the potential delay in finding a site, coupled with the long time period between AM filing windows (which are currently the only times AM licensees may file for community of license changes) can require such stations to become silent for long periods.<sup>10</sup> Starboard likewise cites the infrequency of AM filing windows in its comments supporting this proposal.<sup>11</sup> Bustos points out that this situation can be even worse for minority broadcasters, who frequently use land-intensive multi-tower AM directional facilities, “one of the few remaining points of entry into the broadcasting industry.”<sup>12</sup> MMTC states that this change will enable small and minority-owned stations to operate or acquire higher-powered stations in larger markets with audiences more inclined to seek out minority-oriented programming.<sup>13</sup>

6. In the *NPRM*, the Commission requested comment on the effect of this change on the equitable distribution of radio service, particularly as to whether the streamlined procedure would unduly encourage migration of stations from rural areas and smaller communities to large cities.<sup>14</sup> Many commenters, including Brantley,<sup>15</sup> DLR,<sup>16</sup> KMC,<sup>17</sup> and Starboard,<sup>18</sup> agreed with the Commission’s suggestion in the *NPRM* that spectrum congestion and/or our existing allotment priorities and policies interpreting Section 307(b) would suffice to prevent an increase in proposals to relocate stations to or near urban areas.<sup>19</sup> The Apex Parties argue that our retention of substantive rules to guard against undue rural-to-urban migration provides sufficient protection, and also opine that urban move-ins can create rural opportunities in the “spectrum gap” left behind,<sup>20</sup> a sentiment echoed by MMTC in its comments.<sup>21</sup>

7. Those opposing this proposal primarily object to the cutoff of counter-proponents’ rights.<sup>22</sup> Clear Channel believes the proposal threatens to “degrade the integrity of Section 307(b) by

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<sup>9</sup> See *NPRM*, 20 FCC Rcd at 11176.

<sup>10</sup> BFIT Comments at 1-3.

<sup>11</sup> Starboard Comments at 2.

<sup>12</sup> Bustos Comments at 2.

<sup>13</sup> MMTC Comments at 9-11.

<sup>14</sup> *NPRM*, 20 FCC Rcd at 11179.

<sup>15</sup> Brantley Comments at 9.

<sup>16</sup> DLR Comments at 2.

<sup>17</sup> KMC Comments at 2-3.

<sup>18</sup> Starboard Comments at 4.

<sup>19</sup> *NPRM*, 20 FCC Rcd at 11179.

<sup>20</sup> Apex Parties Comments at 16-17.

<sup>21</sup> MMTC Comments at 11.

<sup>22</sup> Commenters opposing this proposal, in whole or in part, included: Cohen, Dippell and Everist, P.C. (“CDE”); Entercom Communications Corp. (“Entercom”); New World Radio, Inc. (“New World”); Robert Casserd (continued)

cutting off the rights of competing proponents who may propose superior arrangements of allotments.”<sup>23</sup> Entercom believes our statutory mission under Section 307(b) would be undermined by allowing a process that lacks the notice safeguards in rule making proceedings. Entercom also argues that community of license changes are fundamentally different from “one step” upgrade proceedings in that the former implicate Section 307(b) while the latter do not.<sup>24</sup> Like Clear Channel, Entercom observes that the new procedure potentially lacks the level of public notice present in major change applications and allocations proceedings.<sup>25</sup> However, both state that this concern can be partially ameliorated by local public notice requirements<sup>26</sup> or detailed Section 307(b) showings by the parties.<sup>27</sup> New World contends that existing policy better promotes both the fair treatment of competing parties and equitable distribution of radio service, while the proposed procedure would be susceptible to “gamesmanship.”<sup>28</sup> Prettyman opposes the proposal primarily because it perceives that the new procedures could accelerate moves by long-established stations from smaller communities to larger population centers in nearby metropolitan areas.<sup>29</sup> Casserd argues that relocation of stations is “rarely in congruence with broadcast localism policies,” although he would allow a city of license modification to relocate from a town with a “small diminishing population with few commercial opportunities for the broadcaster.” He proposes a 50 kilometer limit for station moves.<sup>30</sup>

8. The record on this issue establishes that most commenters favor this proposal, and that some opponents would mute their objections if the Commission adopted certain procedural safeguards. In fact, both proponents and opponents of this proposal discussed possible conditions and safeguards to be built into the new procedures. For example, as noted above, Entercom supports local public notice requirements if we adopt this proposal.<sup>31</sup> Others supporting local public notice include Starboard and Hensley.<sup>32</sup> Hensley suggests that local public notice include certified letters sent to officials of the city

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(“Casserd”); Prettyman Broadcasting Co. (“Prettyman”); Charles Crawford (“Crawford”); REC Networks (“REC”); Clear Channel Communications, Inc. (“Clear Channel”); William B. Clay (“Clay”), and Prometheus Radio Project / Media Access Project (“Prometheus/MAP”) in reply comments. *See also NPRM*, 20 FCC Rcd at 11177 and nn.34-38.

<sup>23</sup> Clear Channel Comments at 3.

<sup>24</sup> A “one-step” upgrade is a procedure under which an FM licensee may propose to change the channel and class of its station without being subjected to competing applications, as long as certain conditions are met. *See* 47 C.F.R. § 1.420(g). *See also NPRM*, 20 FCC Rcd at 11175 and n.23.

<sup>25</sup> Entercom Comments at 4, 6.

<sup>26</sup> *Id.* at 6.

<sup>27</sup> Clear Channel Comments at 3.

<sup>28</sup> New World Comments at 3-4.

<sup>29</sup> Prettyman Comments at 2.

<sup>30</sup> Casserd Comments at 2-3.

<sup>31</sup> *See supra* note 26.

<sup>32</sup> *See* Starboard Comments at 3; Hensley Comments at 3.

losing service, and letters sent to a specified percentage of the population of the city losing service.<sup>33</sup> Brantley, on the other hand, objects to any form of local public notice, fearing this will “invite potential competitors to entice residents of the community being vacated to flood the Commission with objections to the proposed move.”<sup>34</sup> Vox also opposes local public notice as unnecessary, especially since petitions to deny and counterproposals could not be filed against a minor change application proposing a city of license modification.<sup>35</sup> Two commenters discussed possible holding periods before a station would be allowed to change community of license: KMC suggests that AM permittees and licensees that received dispositive Section 307(b) preferences should be required to remain in that community for some reasonable period of time,<sup>36</sup> and Mullaney contends that no community change should be permitted until any prior community change proposals have been granted, implemented, and operated for at least three years. Mullaney contends this is necessary to prevent permittees from proposing successive community of license changes in order to facilitate moves to distant locations far removed from the original community of license.<sup>37</sup>

9. As we tentatively concluded in the *NPRM*, and based upon examination of the record in this proceeding, we find 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) and other concerns are accommodated. We also conclude 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. As discussed in the *NPRM*,<sup>38</sup> the use of first come-first served procedures is consistent with the *Ashbacker* doctrine,<sup>39</sup> and we believe 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. Further, all parties will continue to have reasonable opportunities to make such proposals. Any licensee or permittee believing there is a preferential arrangement of allotments may propose it in the first instance proactively, rather than in reaction to another party’s filing. Moreover, to the extent that commenters object to the lack of opportunity to file competing applications, because we propose to limit such applications to those mutually exclusive with the applicant’s existing facilities, “foreclosing competing applications does not,

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<sup>33</sup> *Id.*

<sup>34</sup> Brantley Comments at 10.

<sup>35</sup> Vox Comments at 6.

<sup>36</sup> KMC Comments at 4. KMC refers to AM auction applicants who are determined to have proposed an arrangement of station allotments superior to those of mutually exclusive applicants, pursuant to the principles underlying Section 307(b). A Section 307(b) analysis is undertaken prior to auction. Thus, if the Section 307(b) determination is dispositive, the sole applicant proposing to serve the community with the greater need does not proceed to auction, but is instead directed to file a construction permit application. *See Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, First Report and Order, 13 FCC Rcd 15920, 15963-65 (1998), *recon. denied*, 14 FCC Rcd 8724, *modified*, 14 FCC Rcd 12541 (1999).

<sup>37</sup> Mullaney Comments at 4-5.

<sup>38</sup> *NPRM*, 20 FCC Rcd at 11177-78.

<sup>39</sup> *Ashbacker v. U.S.*, 326 U.S. 327 (1945).

as a practical matter, deprive potential applicants of opportunities for comparative consideration.”<sup>40</sup> Finally, we remain 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.<sup>41</sup> We therefore adopt this proposal. Community of license changes for commercial and NCE full-power AM standard band and FM broadcast licensees 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.<sup>42</sup> As set forth in greater detail below, 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.<sup>43</sup> We will not count required reference coordinate changes (which are not set out in the Table of Allotments) against the current limit of four contingent minor modification applications that may be filed simultaneously.<sup>44</sup>

10. As we proposed in the *NPRM*, 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).<sup>45</sup> We 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 we have used since 1982.<sup>46</sup> As noted in the *NPRM*, 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.<sup>47</sup> Between our body of Section 307(b) precedent and the procedural safeguards discussed herein, we will ensure that grant of such applications comports with our 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.<sup>48</sup> The new

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<sup>40</sup> See *Amendment of the Commission’s Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870, 4873 (1989) (“*New Community R&O*”), *recon. granted in part*, 5 FCC Rcd 7094 (1990) (“*New Community MO&O*”).

<sup>41</sup> See *NPRM*, 20 FCC Rcd at 11171, 11175-77.

<sup>42</sup> Because nighttime AM signal propagation can result in interference between distant stations, potentially enabling community of license moves of hundreds of miles under this proposal, we limit the definition of “mutually exclusive” to daytime facilities. FM daytime and nighttime facilities and coverage areas are uniform for all dayparts.

<sup>43</sup> 47 C.F.R. § 73.3517(e).

<sup>44</sup> See, e.g., Friendship Comments at 1 (suggesting number of contingent applications be increased from four to five; not counting certain changes against the four-application limit should provide some relief). The four-application limit is set forth in 47 C.F.R. § 73.3517(e).

<sup>45</sup> *NPRM*, 20 FCC Rcd at 11178.

<sup>46</sup> *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982) (“*FM Assignment Policies*”).

<sup>47</sup> See *NPRM*, 20 FCC Rcd at 11174. See also, e.g., *Beacon Broadcasting and New South Broadcasting Corporation*, Memorandum Opinion and Order, 2 FCC Rcd 7562 (1987), *aff’d sub nom New South Broadcasting Corp. v. F.C.C.*, 879 F.2d 867 (D.C. Cir. 1989) (discussing the indicia needed to find that a proposed community of license constitutes a community for Commission licensing purposes).

<sup>48</sup> *NPRM*, 20 FCC Rcd at 11179; *New Community R&O*, 4 FCC Rcd at 4873.

procedure will also address the concerns that led the Commission in 1999 to decline to treat such applications as minor changes<sup>49</sup> as well as most commenters' Section 307(b) concerns.

11. We also adopt certain additional safeguards to ensure that the public interest is served by the new procedures we introduce herein. In performing Section 307(b) analyses under the new procedures that we adopt herein, we will carefully consider whether an application would promote the fair, efficient, and equitable distribution of radio service. Under this analysis, as KMC suggests, 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.<sup>50</sup> 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, as Mullaney suggests, we 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. However, we reject Mullaney's proposed three-year holding period as unnecessary; the requirement that a broadcaster build its facilities should suffice to discourage applicants from using the new procedure to "hopscotch" across the country. On the whole, there is nothing in the record to suggest that broadcasters will attempt to use this new procedure to thwart existing policies, and thus we do not adopt other specific prohibitions at this time. We believe it more appropriate to address, on a case-by-case basis, any applications filed under our new procedures with the evident intent of undermining our allotment or other policies. We decline, however, despite some commenters' requests,<sup>51</sup> to modify or eliminate the *Tuck* analysis, which is employed when an applicant seeks a Priority (3) (first local transmission service) preference for a community that is part of, or located near to, an Urbanized Area.<sup>52</sup> We find that the *Tuck* criteria are familiar to broadcasters, and that changes to those criteria on top of the changes we now make would create needless uncertainty. We emphasize that *Tuck* 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.<sup>53</sup> We also decline to adopt a service floor requirement such as that suggested in the

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<sup>49</sup> 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).

<sup>50</sup> 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.

<sup>51</sup> See, e.g., Casserd Comments at 3-4; Crawford Comments at 9-13; REC Comments at 4-8.

<sup>52</sup> See *Faye & Richard Tuck, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 5374 (1988).

<sup>53</sup> See, e.g., *Romar Communications, Inc. and KM Communications, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 23128 (2004) (Commission found that, under *Tuck*, proposed communities for two new AM stations, both suburbs of Ithaca, New York, were interdependent with Ithaca, thus both applicants essentially proposed new stations at Ithaca and competing applications proceeded to competitive bidding).



*NPRM*, as we believe our existing Section 307(b) priorities and policies are sufficient to safeguard existing service.<sup>54</sup>

12. We find that existing procedural requirements, along with our local public notice requirements,<sup>55</sup> will provide reasonable notice and opportunity for interested parties to comment under the new procedures introduced in this *Report and Order*. We recognize that minor modification applications are not subject to petitions to deny. However, this does not prevent other broadcasters and members of the public from participating in the process of evaluating the grantability of a minor modification application to change community of license. 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, as the Commission noted in another proceeding,<sup>56</sup> the statutory right to file a petition for reconsideration, enumerated in Section 405 of the Act,<sup>57</sup> 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, much as AM major change applications are listed now. Due to the importance of local broadcast service to communities, however, we believe 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, we adopt our 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.<sup>58</sup> Specifically, applicants under this new procedure shall provide local public notice as set forth in Sections 73.3580(c)(3),<sup>59</sup> (d)(3),<sup>60</sup> and (f)<sup>61</sup> of our Rules, and shall certify such compliance in Form 301. We also direct the Media Bureau to 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*. We believe that the combination of local public notice under Section 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. We note that the newspaper publication requirements of Section 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.

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<sup>54</sup> See *supra* note 46. See also *infra* paras. 28 *et seq.*

<sup>55</sup> 47 C.F.R. §§ 73.3580(c)(3), (d)(3), and (f).

<sup>56</sup> See *Revision of Sections 73.3571, 73.3572, and 73.3573 of the Commission's Rules*, First Report and Order, FCC 84-298, 56 RR 2d 941, 943-44 (1984).

<sup>57</sup> 47 U.S.C. § 405.

<sup>58</sup> 47 C.F.R. § 73.3580(a). See *NPRM*, 20 FCC Rcd at 11179.

<sup>59</sup> 47 C.F.R. § 73.3580(c)(3).

<sup>60</sup> *Id.* § 73.3580(d)(3).

<sup>61</sup> *Id.* § 73.3580(f).

13. As we stated above, the 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,<sup>62</sup> and as non-tabled facilities such licensees must undergo a process similar to that of AM licensees if they wish to change their communities of license. Specifically, NCE FM licensees in the reserved band 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, we find 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 we will apply the new procedure to NCE stations.<sup>63</sup> Some commenters also requested that we apply the new procedure to AM expanded band stations. We will not do so. We have set forth procedures giving priority to certain stations to migrate to the expanded band, based on our overarching goal of reducing interference in the standard AM broadcast band. To that end, the Media Bureau has frozen major changes to expanded band facilities.<sup>64</sup> Allowing community of license changes by minor modification application could jeopardize the Commission's ability to develop a comprehensive plan for additional expanded band AM licensing. Therefore, we will not extend the minor modification procedure for community of license changes to expanded band AM stations.

14. There are currently fewer than 25 pending community change rule making proceedings for which a *Report and Order* has not been released. We will not require any of these parties 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 (30 days after publication of this *Report and Order* in the Federal Register). We note that 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.

15. In order to accommodate the new procedure, we will remove the allotments of currently authorized and awarded FM facilities from the Table of Allotments. 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 –

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<sup>62</sup> *Id.* §§ 73.201, 73.202(a), 73.501(a).

<sup>63</sup> Some commenters urged us to include NCE stations in the new procedure. See Brantley Comments at 6, DLR Comments at 1, Educational Media Foundation Comments at 2-6, Brock Comments at 2, Starboard Comments at 3-4, Sister Sherry Lynn Foundation Reply Comments at 1.

<sup>64</sup> *Freeze Announced on the Filing of AM Expanded Band Major Change Applications*, Public Notice, 17 FCC Rcd 1806 (MMB 2002).

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, we find it is no longer necessary to change authorized non-reserved band FM stations' attributes through notice-and-comment rule making.<sup>65</sup> Thus, we 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.<sup>66</sup> Changes to the channel, class, or community of existing facilities will constitute changes to the individual authorizations or applications, rather than to Section 73.202, and therefore may be made through minor modification application procedures (as, indeed, adjacent channel and class modifications have been made under our "one-step" procedures). However, we 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. We take this action to preserve the facility improvement options now set forth at Section 1.420(g)(1) and (2). We 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 our Section 307(b) obligations.<sup>67</sup> 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 will be discussed below, we emphasize that 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).

16. 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.<sup>68</sup> Current procedures impose no limit on voluntary, *i.e.*, consensual, channel substitutions. The bifurcated procedures we adopt today for allotments and assignments require us to establish 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*,

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<sup>65</sup> See *NPRM*, 20 FCC Rcd at 11179-80.

<sup>66</sup> 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.

<sup>67</sup> See *NPRM*, 20 FCC Rcd at 11179-80.

<sup>68</sup> *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*").

*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.

17. 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.<sup>69</sup> 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.

18. **Filing of Form 301 and Fee with Allocations Rule Making Petitions.** In the *NPRM*, we presented statistics indicating that a small percentage of petitioners seeking new allotments in the Table of Allotments (also known as “drop-in” petitions) were responsible for an inordinate percentage of the drop-in petitions filed.<sup>70</sup> We further noted that, to date, those drop-in proponents have not actively participated in the auctions process.<sup>71</sup> Thus, there appears to be a fundamental disconnect between those adding new allotments and those seeking to obtain authorizations pursuant to our competitive bidding procedures. Accordingly, we proposed a mechanism to encourage only *bona fide* proponents to seek to add channels to the Table. The mechanism we proposed was to require an allocations proponent simultaneously to file a Form 301 application with its petition for rule making and the appropriate fee. 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. Currently, rule making proponents for new FM allotments need only state that they are interested in applying for the station if allotted, and pay no filing fee until and unless the allotment is made and an application filed. In the *NPRM* we stated our belief that requiring Form 301 and the concurrent filing fee with a petition for rule making, which is currently not required, would discourage insincere proponents.<sup>72</sup>

19. Those commenters addressing this proposal were overwhelmingly in favor of it. The only objection came from Crawford, who states that this proposal “further widens the gap between rural and city interests; persons desiring to pursue a more lucrative city allotment are less burdened by such a

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<sup>69</sup> See 47 C.F.R. § 73.3517(c). We believe it unnecessary 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. We are 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).

<sup>70</sup> *NPRM*, 20 FCC Red at 11180-81.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

requirement than persons residing in small rural communities.”<sup>73</sup> We fail to see, however, how such a differential burden would occur: all proponents of new allotments are required to express an interest in applying for the channel if allotted, and the application fee is the same regardless of station location.

20. We continue to believe, 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.<sup>74</sup> Accordingly, we adopt 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.

21. We agree with some commenters that Form 301 application filing fees paid by certain unsuccessful allotment proponents should not be retained. Keymarket believes that a proponent losing at auction should have its filing fee refunded, but should forfeit its refund if it does not participate in the auction of its proposed allotment.<sup>75</sup> KMC likewise argues that a successful proponent that is unsuccessful at auction should receive a refund of its application fee.<sup>76</sup> While we need not refund application filing fees paid by applicants whose applications are not granted,<sup>77</sup> we nonetheless recognize 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.<sup>78</sup> 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, we will entertain waiver requests, pursuant to Section 1.1117 of our Rules,<sup>79</sup> 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

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<sup>73</sup> Crawford Comments at 18.

<sup>74</sup> *NPRM*, 20 FCC Rcd at 11180-81.

<sup>75</sup> Keymarket Comments at 6.

<sup>76</sup> However, KMC also proposes that we require a rule making petitioner not only to apply to participate in the auction of its proposed allotment, but also to qualify to bid for that allotment. In cases where such a petitioner fails to so qualify, KMC urges us to adopt a policy requiring the dismissal of all pending allotment petitions and imposing a bar on future filings. We believe KMC's last suggestion to be overly draconian.

<sup>77</sup> 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) (“The Commission has previously indicated that it would retain fees irrespective of the substantive disposition of the underlying application, and Congress specifically approved of that practice. See Conference Report, 1989 U.S. Code Cong. & Ad. News at 3036.”).

<sup>78</sup> See 47 C.F.R. § 1.1113(a)(4).

<sup>79</sup> *Id.* § 1.1117.

auction, if the allotment is awarded to another higher-bidding applicant.<sup>80</sup> Provided that the waiver applicant has acted in good faith and in accordance with our Rules and statutes, we will normally grant such waiver requests and issue refunds under Section 1.1113(a)(4) or 1.1113(a)(5) of our Rules, as applicable.<sup>81</sup> 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.<sup>82</sup>

22. **Limiting the Number of Channel Changes that May be Proposed in One Proceeding to Amend the Table of Allotments.** We proposed, in the *NPRM*, 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.<sup>83</sup> Specifically, we 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. We noted that parties sometimes file proposals (frequently, counterproposals) involving large numbers of changes to facilities, and that such proceedings consumed enormous amounts of staff resources. We tentatively concluded that the staff could more efficiently dispose of these proceedings if proponents were required to break them apart into several discrete components.<sup>84</sup>

23. There were a number of objections to this proposal.<sup>85</sup> The specific objections, however, tended to fall into categories: (1) that the savings in staff resources and time to be realized by adoption of the proposal to allow community of license changes by minor modification application will free up sufficient staff time to allow processing of complex rule making proceedings;<sup>86</sup> (2) that such large proposals are often necessary and result in significant public interest benefits, such as more efficient and

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<sup>80</sup> 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.

<sup>81</sup> *Id.* §§ 1.1113(a)(4), 1.1113(a)(5).

<sup>82</sup> We disagree with the Apex Parties, which contend that we have not only the right but the statutory obligation to collect a rule making fee from petitioners for drop-in allotments, rendering the proposal we adopt herein unnecessary. Our statutory authority to collect fees for rule making petitions is expressly limited to petitions for a “new community of license or higher class channel,” language that the Commission has long interpreted as being limited to existing licensees and petitioners. 47 U.S.C. § 158(g). *See Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989*, Memorandum Opinion and Order, 5 FCC Rcd 3558, 3659 (1990) (“Each petition for rule making for a new community of license or a higher class channel filed by an existing FM permittee or licensee will require a fee of \$1,565, payable upon approval of a petition . . . .”) (emphasis added), *recon. granted in part*, 6 FCC Rcd 5919 (1991).

<sup>83</sup> *NPRM*, 20 FCC Rcd at 11182. *See supra* note 68.

<sup>84</sup> *NPRM*, 20 FCC Rcd at 11182-83.

<sup>85</sup> Commenters objecting to this proposal include Mullaney, Brock, DLR, Friendship, Cox, AMS Parties, NAB, MMTTC, Apex Parties, Reynolds, Brantley, and Keymarket.

<sup>86</sup> *See, e.g.*, Brantley Comments at 16, Keymarket Comments at 7-8, Cox Comments at 6.

innovative spectrum use and opening of new service;<sup>87</sup> (3) that such proposals are rarely filed;<sup>88</sup> (4) that we ignored the availability of alternate opportunities to supplement Commission resources, such as third-party mediation and arbitration;<sup>89</sup> and (5) that the Commission may not turn away “beneficial” proposals just because they are too complex, as this elevates the Commission’s interest over the public interest.<sup>90</sup>

24. Opposition to this proposal was not universal.<sup>91</sup> Entercom supports an even more stringent limit on proposals and counterproposals, to match the limit of four contingent applications that may be filed.<sup>92</sup> Starboard supports the five-proposal limit, also suggesting that proponents or counterproponents be precluded from involving or requiring changes in prior-filed rule making proceedings to amend the Table of Allotments.<sup>93</sup> Crawford states that a hard and fast limit of five proposals is preferable to a limit with an exception for showings of significant public interest benefits.<sup>94</sup> Clear Channel asserts that proposals for more than five changes are overly complex and time-consuming for the Commission to consider, and that limiting the number of changes that can be proposed is consistent with the general goal of streamlining allocations procedures.<sup>95</sup>

25. Ultimately, we are persuaded that, for the moment, we should defer acting on this proposal while we determine the effects of our other proposals on the efficiency of our allocations procedures. However, we remain concerned about the effects of complex proposals and counterproposals on the staff’s ability efficiently to process changes to the Table of Allotments. Thus, we instruct 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. We reserve, as always, the right to revisit this proposal if we deem it necessary in the public interest and to preserve the integrity of the FM allotment and assignment plan.

26. **Eliminating the Rule Prohibiting Electronic Filing of Petitions to Amend the Table of Allotments.** In the *NPRM*, we proposed to eliminate the existing prohibition against electronic filing of petitions filed in broadcast allotment proceedings. We noted the substantial benefits that electronic filing has brought in other application contexts, specifically by streamlining processes and enhancing the

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<sup>87</sup> See, e.g., AMS Parties Comments at 4, Brantley Comments at 15, Cox Comments at 3-4, NAB Comments at 4.

<sup>88</sup> See, e.g., Apex Parties Comments at 6-7, Cox Comments at 5, Keymarket Comments at 7-8.

<sup>89</sup> See AMS Parties Comments at 4, 12. See also Cox Comments at 4 (Commission should “enable and encourage” voluntary agreements among station owners to modify allotments).

<sup>90</sup> See, e.g., AMS Parties Comments at 4, 11, Apex Parties Comments at 6.

<sup>91</sup> Parties supporting this proposal include Arlington, Entercom, REC Networks, Crawford, Starboard, and Clear Channel.

<sup>92</sup> Entercom Comments at 3.

<sup>93</sup> Starboard Comments at 5.

<sup>94</sup> Crawford Comments at 19.

<sup>95</sup> Clear Channel Comments at 2.

accuracy and reliability of our databases, and expressed our desire to extend those benefits to the allocations process.<sup>96</sup>

27. None of the commenters that addressed this proposal opposed it. We remain convinced that electronic filing of allocations submissions will streamline the amendment process, enhance the accuracy and reliability of the FM database, and enable us to serve the public more efficiently.<sup>97</sup> Therefore, we will adopt our proposal to eliminate from Section 1.401(b) of our Rules 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. We note only that, as these are restricted proceedings, such procedures must provide for service on all interested parties, as defined in our Rules,<sup>98</sup> by electronic or other appropriate means.

28. **Relocating Sole Local Transmission Service to Become Another Community's First Local Transmission Service.** In the *NPRM*, we sought comment on First Broadcasting's proposal that we abandon our 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.<sup>99</sup> 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,<sup>100</sup> (b) the station would be the first local transmission service in the proposed community, (c) the station moving would provide 70 dB $\mu$  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.<sup>101</sup> According to First Broadcasting, its proposal would provide two "significant benefits." First, such an approach 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.<sup>102</sup> Second, it urged that establishing such a presumption based on enumerated factors ensures that the staff's Section 307(b) analysis will be conducted in an objective manner.<sup>103</sup>

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<sup>96</sup> *NPRM*, 20 FCC Rcd at 11183.

<sup>97</sup> *Id.*

<sup>98</sup> See 47 C.F.R. § 1.1202(d).

<sup>99</sup> *NPRM*, 20 FCC Rcd at 11183-87.

<sup>100</sup> See *id.* §§ 73.24(i) (principal community contour of 5 mV/m daytime for AM broadcast stations must encompass entire community of license, with 80 percent of community of license in non-expanded band being covered by 5 mV/m nighttime contour or nighttime interference-free contour, whichever value is higher), 73.315(a) (FM broadcast station must provide principal community service of 70 dB $\mu$  to entire community of license).

<sup>101</sup> *NPRM*, 20 FCC Rcd at 11184.

<sup>102</sup> First Broadcasting Petition at 18.

<sup>103</sup> *Id.*



29. Only some commenters chose to address this issue. Many that did supported First Broadcasting's proposal, either as stated or with modifications,<sup>104</sup> while others either opposed outright or would limit the circumstances under which such moves would be allowed.<sup>105</sup> First Broadcasting, reiterating and supporting its plan, labels it a "well-defined balancing test" and an "ideal balance" of considerations.<sup>106</sup> DLR argues that most of the country is well-served with equitable distribution of radio service, and that we need not concern ourselves with determining minimum numbers of reception or transmission services remaining in vacated communities, because minimum distance separation allotment requirements "preclude wholesale changes to the number of reception services available in any one area."<sup>107</sup> Keymarket supports First Broadcasting's proposal, but would replace the 70 dB $\mu$  contour for local coverage with the 60 dB $\mu$  contour, and would require only that the station moving not exacerbate existing short-spacing rather than ameliorating such short-spacing.<sup>108</sup> KMC supports a service floor of at least two, but no more than five reception services, and believes that moves should be allowed based on community population rather than reception population, but opposes any specified percentage increase in population as a prerequisite to such a move.<sup>109</sup> Others contend that such moves should be allowed if the station fails to receive economic support from the community,<sup>110</sup> or if after sufficient public notice there is no significant and serious objection and the move would comport with Section 307(b)'s requirements.<sup>111</sup> Entercom, in opposing the proposal, states that allowing relocation of sole local services would "inevitably encourage the migration of stations from more rural, sparsely populated areas to more densely populated urban areas."<sup>112</sup> New World also opposes the proposal, stating that local transmission services play an "important role in the life of a community," and that every current allotment is the result of a "careful, deliberative, and well-established" Commission determination.<sup>113</sup> New Star would allow relocation of sole local service only in the rare circumstance that a community, and all areas in a station's service contour, cannot support a radio station.<sup>114</sup>

30. After careful consideration, we do not adopt this proposal. First, we reject First Broadcasting's suggestion that the staff "end[s] its analysis at preservation of local service." In the *New Community MO&O*<sup>115</sup> the Commission specifically stated that while such moves are strongly disfavored,

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<sup>104</sup> Commenters supporting this proposal included First Broadcasting, Mullaney, KMC, Arlington, Cox, AMS Parties, New Star Broadcasting ("New Star"), Clear Channel, Brantley, Hensley, and Keymarket.

<sup>105</sup> Those opposing this proposal included Entercom, DLR, New World, Clay, and Sellmeyer.

<sup>106</sup> First Broadcasting Comments at 11-12.

<sup>107</sup> DLR Comments at 4.

<sup>108</sup> Keymarket Comments at 8-9.

<sup>109</sup> KMC Comments at 5-7.

<sup>110</sup> Mullaney Comments at 5.

<sup>111</sup> Sellmeyer Comments at 4.

<sup>112</sup> Entercom Comments at 8.

<sup>113</sup> New World Comments at 2.

<sup>114</sup> New Star Comments at 1-2.

<sup>115</sup> See *supra* note 40, 5 FCC Rcd at 7094.

proponents can overcome this policy presumption upon a proper showing. In fact, at that time the Commission stated by way of example that waiver was appropriate under the “rare circumstances” in which removal of local service might serve the public interest, for example, if the removal would result in providing first reception service to a significantly sized population.<sup>116</sup> In other words, while the bar for removal of sole local service is high, and purposely so, it is not insurmountable.

31. We also reject the suggestion that the Commission can only achieve “objectivity” in decision-making through a fixed, multi-part test such as that which First Broadcasting sets forth. There is, admittedly, a certain allure, for both decision makers and applicants, in a simply stated and easily applied set of rules. However, such fixed rules are not always appropriate, especially in a context where the circumstances vary greatly. This is the case with removals of sole local service. Our recent experience with the AM Auction No. 84 filing window, in which AM licensees and permittees were allowed to submit applications to change their communities of license, has only reinforced this view. Several of these applications involved proposals to remove a sole local service. Some of these applicants gave no reason for the relocation other than a bare observation that the proposed new community was larger than the current one. Others presented a variety of different reasons. For example, one applicant sought to change its community of license in order to make room to move a co-owned station to a nearby community, and another (which subsequently withdrew its application) expressed an interest in changing its community of license to enable it to increase reception under its nighttime interference-free contour, which would not cover the current community of license. Still another argued that its current community of license is not, and perhaps has never been, a community for allotment purposes, while another stated that the proposed community move would eliminate prohibited contour overlap. While we take no position at this time as to the merits of any of these arguments, we note only that the reasons given for changing a community of license are many and varied, and we cannot anticipate all possible fact situations that may come before us. As we noted in the *NPRM*, while the four-part test proposed by First Broadcasting might in some circumstances militate in favor of allowing a sole local service move, in other instances the same test could result in even greater service imbalances.<sup>117</sup>

32. We remain unconvinced that the concept of retaining local service is obsolete or irrelevant. We agree with commenter New World that local radio transmission service retains an important role in the lives of many communities, especially smaller and more isolated communities. Thus, we stand by our traditional insistence that the sole operating local transmission service in a community should not be removed absent a compelling public interest showing. Moreover, as discussed above our experience with proposed removals of sole local transmission service shows that many of them involve unique fact scenarios, and by definition waiver requests also involve unique fact situations that cannot ordinarily be anticipated by rule or procedure. Such applications, then, are better suited to case-by-case analysis than to any “one size fits all” test. We find that the better course is to continue our policy disfavoring removal of sole local transmission service, subject to waiver of the policy 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

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<sup>116</sup> *Id.* at 7096-97.

<sup>117</sup> *See, e.g., NPRM*, 20 FCC Rcd at 11186 n.91.

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.

33. 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. We also remind applicants that our 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.<sup>118</sup> 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.<sup>119</sup>

34. It bears repeating that, while the standard for waiver of a Commission policy is high, it is high for a reason. Our rules and policies impose ongoing community service obligations on broadcasters. Moreover, we have concluded that our 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 our policy permits the sole local broadcaster in a community to show that the public interest supports a move to a new community.

### III. PROCEDURAL MATTERS

35. **Lifting of Freeze on New Petitions to Amend the Table of Allotments.** In the *NPRM*, we announced a freeze on the filing of new petitions to amend the Table of Allotments, to enable us to complete this proceeding without adding new rule making proceedings that might better be filed under new procedures, and to help eliminate allocations backlogs. We announce that the freeze on filing new petitions to amend the Table of Allotments shall be lifted on the effective date of this *Report and Order*. Because the procedural changes in this *Report and Order* 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 at paragraph 17 herein must wait until the new community of license application procedures become effective before filing either minor change applications or rule making petitions.

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<sup>118</sup> See *Northeast Cellular Telephone Co. v. F.C.C.*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”) (“[A] waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest,” citing *WAIT Radio v. F.C.C.*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969) (“*WAIT Radio*”).

<sup>119</sup> See, e.g., *Pacific Broadcasting of Missouri, LLC*, Memorandum Opinion and Order, 18 FCC Rcd 2291 (2003) (Applicant sought removal of condition requiring replacement service at original community before commencing operations at new community; Commission found that applicant failed “to demonstrate that it has exhausted all possibilities for temporary operation” at current community).

36. **Final Regulatory Flexibility Analysis.** The Final Regulatory Flexibility Analysis is attached to this *Report and Order* as Appendix D.

37. **Final Paperwork Reduction Act of 1995 Analysis.** This Report and Order 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>120</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*.<sup>121</sup> We further note that pursuant to the Small Business Paperwork Relief Act of 2002,<sup>122</sup> we previously sought specific comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.” We 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.<sup>123</sup> This *Report and Order* adopts the information collection requirements, as proposed.

38. Because, as detailed in paragraphs 9 and 13 of this *Report and Order*, we extend our 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 will publish a separate Federal Register Notice seeking public comment on this new information collection requirement at a later date. Upon OMB approval, we will issue a Public Notice announcing the effective date of this rule.

39. *Further Information.* For additional information concerning the information collection requirements contained in this Report and Order, contact Cathy Williams at 202-418-2918, or via the Internet to [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

40. **Congressional Review Act.** The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office, pursuant to the Congressional Review Act.<sup>124</sup>

#### IV. ORDERING CLAUSES

41. 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 §§ 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 Appendix A.

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<sup>120</sup> The Paperwork Reduction Act of 1995 (“PRA”), Pub. L. No. 104-13, 109 Stat 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

<sup>121</sup> *NPRM*, 20 FCC Rcd at 11190; 71 Fed. Reg. 44537-38 (Aug. 3, 2005).

<sup>122</sup> The Small Business Paperwork Relief Act of 2002 (“SBPRA”), Pub. L. No. 107-198, 116 Stat 729 (2002) (codified in Chapter 35 of title 44 U.S.C.); see 44 U.S.C. 3506(c)(4).

<sup>123</sup> See generally 71 Fed. Reg. 10442-43 (Mar. 1, 2006).

<sup>124</sup> See 5 U.S.C. § 801(a)(1)(A).

42. IT IS FURTHER ORDERED that the rule amendments set forth in Appendix A WILL BECOME EFFECTIVE 30 days after publication in the Federal Register.

43. 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.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## Rule Changes

Part 1 of Title 47 of the Code of Federal Regulations is amended to read as follows:

1. Section 1.401 is amended by revising paragraphs (b) and (d) to read as follows:

**§ 1.401 Petitions for rule making.**

\*\*\*\*\*

(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.

2. Section 1.420 is amended by revising the title and paragraph (g), and by moving Note 2 to the end of the section, 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 Sec. 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: The reclassification of a Class C station in accordance with the procedure set forth in Note 4 to Sec. 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 Sec. 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 of Title 47 of the Code of Federal Regulations is amended to read as follows:

3. Section 73.202 is amended by revising paragraphs (a), (a)(2), and (b) 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 Sec. 73.211.

\*\*\*\*\*

(b) *Table of FM Allotments.*

ALABAMA

	Channel No.
Anniston.....	*261C3
Boligee.....	297A
Coosada.....	226A
Frisco City.....	278A
Livingston.....	242A
Maplesville.....	292A
New Hope.....	278A
Pine Level.....	248A
Rockford.....	286A
Saint Florian.....	274A

ALASKA

	Channel No.
Palmer.....	238C1

ARIZONA

	Channel No.
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
Somerton.....	*260C3
Taylor.....	278C3
Wickenburg.....	229C3
Willcox.....	*223C3

ARKANSAS

	Channel No.
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

CALIFORNIA

	Channel No.
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

## COLORADO

	Channel No.
Arriba.....	240A
Aspen.....	228A
Cheyenne Wells.....	224C1
Crawford.....	274C3
Crested Butte.....	246C3
De Beque.....	275C3
Durango.....	287A
Flagler.....	283C3
Fruita.....	255C3
Genoa.....	291C3
Gunnison.....	265C2,299C3
Hotchkiss.....	258C3
Hugo.....	222A
Lake City.....	247A
Olathe.....	*270C2,*293C
Orchard Mesa.....	249C3
Steamboat Springs.....	255A, 289A
Strasburg.....	249C3
Stratton.....	246C1

## CONNECTICUT

## DELAWARE

## FLORIDA

	Channel No.
Big Pine Key.....	*239A
Cedar Key.....	261A
Cross City.....	249C3
Daytona Beach Shores.....	258A
Eastpoint.....	283A
Horseshoe Beach.....	*234C3
Islamorada.....	283C2
Jasper.....	298A
Key Largo.....	237C3
Key West.....	244A
Lake Park.....	262A
Live Oak.....	*259A
Okeechobee.....	291A
Otter Creek.....	*240A
Palm Coast.....	254A
Perry.....	228A
Port St. Joe.....	270C3
Silver Springs Shore.....	259A
Sugarloaf Key.....	289A

## GEORGIA

	Channel No.
Alamo.....	287C3
Americus.....	295A
Calhoun.....	233A
Crawfordville.....	234A
Cusseta.....	279A
Dexter.....	276A
Homerville.....	246A
Lincolnton.....	254A
Milner.....	290A
Morgan.....	228A
Patterson.....	296A
Pineview.....	226A
Plains.....	290A
Plainville.....	285A
Reynolds.....	*245A
St. Simons Island.....	229C3
Tallapoosa.....	255A
Tignall.....	244A
Ty Ty.....	249A
Wadley.....	227A
Woodbury.....	233A
Young Harris.....	236A

## HAWAII

	Channel No.
Kailua-Kona.....	244A
Kihei.....	298C2

IDAHO

	Channel No.
McCall.....	228C3,238C3,275C3,293C3
Weiser.....	*280C1

ILLINOIS

	Channel No.
Abingdon.....	252A
Altamont.....	288A
Augusta.....	253A
Canton.....	*277A
Cedarville.....	*258A
Clifton.....	*297A
Cuba.....	292A
Freeport.....	*295A
Grayville.....	229A
Pinckneyville.....	*282A
West Salem.....	266A

INDIANA

	Channel No.
Bloomfield.....	266A
Farmersburg.....	*242A
Fowler.....	291A
Madison.....	*265A
Terre Haute.....	298B

IOWA

	Channel No.
Asbury.....	*238A
Keosauqua.....	*271C3
Moville.....	*246A
North English.....	246A
Rudd.....	*268A

KANSAS

	Channel No.
Americus.....	240A
Atwood.....	292C0
Council Grove.....	*281C3

KENTUCKY

	Channel No.
Burgin.....	290A
Morgantown.....	256A

Science Hill.....	291A
Smith Mills.....	*233A

LOUISIANA

	Channel No.
Anacoco.....	276C3
Bordelonville.....	280A
Cameron.....	296C3
Clayton.....	266A
Colfax.....	267A
Dulac.....	242A
Florien.....	242A
Franklin.....	295C3
Golden Meadow.....	*289C2
Harrisonburg.....	232A
Haynesville.....	288A
Homer.....	*272A
Hornbeck.....	269A
Lake Providence.....	224A
Leesville.....	224A
New Llano.....	252C3
Oak Grove.....	289A
Oil City.....	285A
Opelousas.....	279A
Ringgold.....	*253C3
Rosepine.....	281A
St. Joseph.....	257C3
Wisner.....	300C3

MAINE

	Channel No.
Monticello.....	234A

MARYLAND

MASSACHUSETTS

	Channel No.
Adams.....	255A
East Harwich.....	254A
Nantucket.....	249A
West Tisbury.....	*282A

MICHIGAN

	Channel No.
Alpena.....	289A
Crystal Falls.....	280C2
Custer.....	263A
Ferrysburg.....	226A
Fife Lake.....	240C2

Frederic.....	237A
Glen Arbor.....	227A
Harrison.....	280A
Hubbardston.....	*279A
Houghton.....	242C1
Ludington.....	242A
McBain.....	300A
Onaway.....	292C2
Paradise.....	234A
Pentwater.....	280A
Traverse City.....	283A

## MINNESOTA

	Channel No.
Baudette.....	233C1
Grand Portage.....	224C,245C0,274C
Red Lake.....	231C1

## MISSISSIPPI

	Channel No.
Calhoun City.....	272A
Greenwood.....	277A
Holly Springs.....	243A
Marietta.....	250A
Oxford.....	286A
Vaiden.....	271A
Vardaman.....	258A
Walnut Grove.....	244C2

## MISSOURI

	Channel No.
Alton.....	290A
Bourbon.....	231A
Columbia.....	252C2
Doolittle.....	283A
Eminence.....	281A
Grandin.....	283A
Huntsville.....	*278C2
Laurie.....	*265C3
Lowry City.....	285A
Madison.....	247C3
Marceline.....	256A
Marquand.....	295A
Moberly.....	223A

## MONTANA

	Channel No.
Bozeman.....	*240C3
Cut Bank.....	274C1

Lewistown.....	300C1
Montana City.....	293A
Outlook.....	289C
Roundup.....	248A
Whitehall.....	274A

NEBRASKA

	Channel No.
Arthur.....	300C1
Firth.....	229A
Hartington.....	232C2
Hyannis.....	250C1
Pierce.....	248C2

NEVADA

	Channel No.
Battle Mountain.....	253A
Fallon Station.....	287C
Fernley.....	231C3
Pahrump.....	272C3
Silver Springs.....	273C

NEW HAMPSHIRE

	Channel No.
Enfield.....	282A
Groveton.....	268A
Pittsburg.....	246A

NEW JERSEY

NEW MEXICO

	Channel No.
Alamo Community.....	*298A
Alamogordo.....	240C2
Carrizozo.....	261C2
Clayton.....	248C1
Grants.....	244C3
Las Vegas.....	283C2,296A
Milan.....	270A
Roswell.....	237C0
Taos.....	228A,288A
Taos Pueblo.....	292C3

NEW YORK

	Channel No.
Amherst.....	221A
Celoron.....	237A
Indian Lake.....	290A

Keeseville.....	231A
Montauk.....	235A
Morrisonville.....	231A
Rhinebeck.....	*273A
Rosendale.....	255A, 273A

## NORTH CAROLINA

	Channel No.
Dillsboro.....	237A
Garysburg.....	276A
Ocracoke.....	224C1

## NORTH DAKOTA

	Channel No.
Berthold.....	264C
Tioga.....	281C1
Williston.....	253C1

## OHIO

	Channel No.
Ashtabula.....	241A
Cridersville.....	257A
McConnelsville.....	279A
North Madison.....	229A

## OKLAHOMA

	Channel No.
Arnett.....	285C2
Boswell.....	282C3
Broken Bow.....	285A
Buffalo.....	224C2
Cheyenne.....	247C3
Clayton.....	241A
Coalgate.....	242A
Cordell.....	*229A
Covington.....	290A
Erick.....	259C2
Haileyville.....	290A
Haworth.....	294A
Holdenville.....	265A
Hollis.....	274C2
Kiowa.....	254A
Leedey.....	297A
Lone Wolf.....	224A
Mooreland.....	254A,300C2
Muldrow.....	286A
Okeene.....	268C3
Pawhuska.....	233A
Pittsburg.....	232A

Red Oak.....	227A
Reydon.....	264C2
Ringwood.....	285A
Savanna.....	275A
Sayre.....	269C2
Stuart.....	228A
Taloga.....	226A
Thomas.....	288A
Tipton.....	233C3
Tishomingo.....	259C3
Valliant.....	234C3
Vici.....	249A
Wapanucka.....	298A
Waynoka.....	231C2
Weatherford.....	*286A
Wright City.....	226A
Wynnewood.....	*283A

OREGON

	Channel No.
Clatskanie.....	225C3
Dallas.....	*252C3
Diamond Lake.....	299A
Ione.....	258A
Keno.....	253A
Madras.....	*251C1
Merrill.....	289A
Monument.....	280C1
Powers.....	293C2
Prairie City.....	260C
Prineville.....	267C1
Terrebonne.....	293C2
The Dalles.....	*268C3

PENNSYLVANIA

	Channel No.
Erie.....	240A
Lawrence Park.....	224A
Liberty.....	*298A
Meyersdale.....	253A
Sheffield.....	286A
Susquehanna.....	227A
Sykesville.....	240A

RHODE ISLAND

SOUTH CAROLINA

	Channel No.
Pendleton.....	240A
Quinby.....	237A



## SOUTH DAKOTA

	Channel No.
Edgemont.....	289C1
Lead.....	232C
Rosebud.....	257C
Sisseton.....	258C2
Wall.....	299C

## TENNESSEE

	Channel No.
Linden.....	267A
Lynchburg.....	296A
Oliver Springs.....	291A
Pigeon Forge.....	292A

## TEXAS

	Channel No.
Annona.....	263A
Asherton.....	284A
Aspermont.....	226C2
Austwell.....	290A
Baird.....	243C3
Ballinger.....	238A
Balmorhea.....	283C
Bangs.....	250C3
Benavides.....	282A
Benjamin.....	237C3
Big Lake.....	246A,296C2
Big Spring.....	265C3
Big Wells.....	271A
Blanket.....	284A
Blossom.....	224C2
Brackettville.....	234A
Bruni.....	293A
Buffalo Gap.....	227A
Burnet.....	*240A
Camp Wood.....	271A
Canadian.....	235C1
Carbon.....	238A
Carrizo Springs.....	295A
Centerville.....	274A
Channing.....	284C
Childress.....	281C2
Colorado City.....	257A
Comanche.....	280A
Cotulla.....	242A,264A,289A
Crosbyton.....	264C3
Crowell.....	293C3
Cuney.....	259A
Dalhart.....	261C
Denver City.....	*248C2

Detroit.....	282C2
Dickens.....	240A,294A
Dilley.....	229A
Eagle Lake.....	237C3
El Indio.....	236A
Eldorado.....	258C1,285A,293A
Elkhart.....	265A
Encinal.....	259A,273A,286A
Encino.....	250A,283A
Estelline.....	263C3
Floydada.....	255A
Fort Stockton.....	263C
Freer.....	288A
Garwood.....	247A
George West.....	250A,292A
Goliad.....	282A
Goree.....	275A
Grapeland.....	232C3
Groom.....	223A
Guthrie.....	252A
Hamilton.....	299A
Hamlin.....	283C2
Hawley.....	269A
Hebbronville.....	232A,254A
Hewitt.....	294A
Hico.....	285A
Hooks.....	231A
Idalou.....	299A
Iraan.....	269C2
Jacksonville.....	236A
Jayton.....	231C2
Junction.....	277C3,284A,292A,297A
Kermit.....	229A
Knox City.....	291A
La Pryor.....	278A
Leakey.....	257A,275A,299A
Llano.....	293C3
Lockney.....	271C3
Lometa.....	253A
Longview.....	300C2
Lovelady.....	288A
Marathon.....	278C
Mason.....	269C3,281C2
Matador.....	221C2,227C3
Matagorda.....	252A
McCamey.....	233C3
McLean.....	267C3
Memphis.....	283A,292A
Menard.....	242A,265C2,287C3
Mertzon.....	278C2
Meyersville.....	261A
Moody.....	256A
Mount Enterprise.....	231A
Muleshoe.....	227C1
Mullin.....	224C3
Munday.....	270C1

Newcastle.....	263A
O'Brien.....	261A
Ozona.....	275C3,289C1
Paducah.....	234C3
Paint Rock.....	296C3
Palacios.....	264A
Pampa.....	277C2
Panhandle.....	291C3
Pearsall.....	227A
Pineland.....	256A
Port Isabel.....	288A
Premont.....	287A
Presidio.....	292C1
Quanah.....	255C3
Rankin.....	229C3
Richland Springs.....	235A,299A
Rising Star.....	290C3
Roaring Springs.....	276C3
Robert Lee.....	289A
Roby.....	249A
Rocksprings.....	235C3
Rotan.....	290A
Rule.....	239C2,253A
Sabinal.....	296A
San Diego.....	273A
San Isidro.....	247A
Sanderson.....	274C1,286C2
Santa Anna.....	282A
Savoy.....	297A
Shamrock.....	271A
Sheffield.....	224C2
Silverton.....	252A
Smiley.....	280A
Snyder.....	235C3
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

UTAH

	Channel No.
Beaver.....	259A
Fountain Green.....	*260A
Manila.....	228A
Mona.....	225A

Parowan.....	300C2
Salina.....	233C
Toquerville.....	280C

## VERMONT

	Channel No.
Albany.....	233A
Canaan.....	231C3
Poultney.....	223A

## VIRGINIA

	Channel No.
Alberta.....	299A
Belle Haven.....	252A
Iron Gate.....	270A
Lynchburg.....	229A
Shawsville.....	273A
Shenandoah.....	*296A

## WASHINGTON

	Channel No.
Chewelah.....	*274C3
Coupeville.....	266A
Goldendale.....	240A
Oak Harbor.....	*233A,277A
Port Angeles.....	229A
Sedro-Woolley.....	289A
Sequim.....	237A
Union Gap.....	285A
Waitsburg.....	272A

## WEST VIRGINIA

	Channel No.
Glennville.....	299A
Marlinton.....	292A
St. Marys.....	*287A
White Sulphur Springs.....	227A

## WISCONSIN

	Channel No.
Ashland.....	*275A
Augusta.....	*268C3
Boscobel.....	244C3
Crandon.....	276C3
Ephraim.....	295A
Hayward.....	*232C2
Laona.....	272C3
New Holstein.....	225A

Owen.....	242C3
Rhineland.....	243C3
Rosholt.....	263A
Tigerton.....	295A
Tomahawk.....	265C3
Two Rivers.....	255A
Washburn.....	*284A

WYOMING

	Channel No.
Bairoil.....	235A
Centennial.....	248A
Meeteetse.....	273C
Pine Bluffs.....	238C3
Reliance.....	254C3
Sinclair.....	267C

AMERICAN SAMOA

CENTRAL MARIANAS

GARAPAN

GUAM

PUERTO RICO

	Channel No.
Santa Isabel.....	251A

VIRGIN ISLANDS

	Channel No.
Charlotte Amalie.....	257A
Frederiksted.....	258A

4. Section 73.203 is amended by revising paragraphs (a) and (b) and the Note to read as follows:

**§ 73.203 Availability of channels**

(a) Except as provided for in paragraph (b) of this section and Sections 1.401(d) and 73.3573(a)(1) of this part, 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 Section 73.3573(a) of this part. Applications for a change in community of license must comply with the requirements set forth in Section 73.3573(g) of this part.

Note: 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.

5. Section 73.1690 is amended by revising paragraph (b) and adding sub-paragraph (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.

6. 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) Applications for AM broadcast facilities are divided into three groups.

(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 Section 73.37 of this part, 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. Section 307(b));

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

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

7. Section 73.3573 is amended by revising subsection (a), adding new paragraph (g), and modifying Note 1, as follows:

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

(a) Applications for FM broadcast stations are divided into two groups:

(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. 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.

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.

\*\*\*\*\*

(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. Section 307(b));

(2) The facilities specified by the applicant at the proposed community of license must be mutually exclusive, as defined in Section 73.207 or 73.509 of this part, 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 Section 73.3580(a) of this part, the applicant must comply with the local public notice provisions of Sections 73.3580(c)(3), 73.3580(d)(3), and 73.3580(f) of this part. The exception contained in Section 73.3580(e) of this part 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 Sections 73.207 and 73.315 without resort to Sections 73.213 or 73.215.

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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.



## APPENDIX B

## Comments Filed in Response to NPRM

Martin L. Hensley  
Joseph D' Alessandro  
James W. Anderson  
Sellmeyer Engineering  
REC Networks  
Booth, Freret, Imlay & Tepper  
Hammond Broadcasting, Inc.  
Charles Crawford  
William B. Clay  
New Star Broadcasting  
Clear Channel Communications, Inc.  
Starboard Media Foundation, Inc.  
Bustos Media, LLC  
Prettyman Broadcasting Co.  
New World Radio, Inc.  
National Association of Broadcasters  
American Media Services, LLC, Radio One, Inc., Univision Radio, Inc., Mattox Broadcasting, Inc.,  
On-Air Family, LLC, Hunt Broadcasting, Inc., Media Services Group, Inc., Desert West Air  
Ranchers Corporation, Superior Broadcasting, LLC, Four Corners Broadcasting, LLC, and  
Western Slope Communications, LLC  
Arlington Capital Partners, L.P. and Arlington Capital Partners II, L.P.  
Cohen, Dippell and Everist, P.C.  
Entercom Communications Corp.  
duTreil, Lundin & Rackley, Inc.  
Friendship Broadcasting, LLC  
Baybridge Communications, LLC  
Cox Radio, Inc.  
Apex Broadcasting, Inc., Alexander Broadcasting Company, Inc., Charles M. Anderson &  
Associates, Cumulus Licensing LLC, Great South RFDC, LLC, Hunt Broadcasting, Inc.,  
Marathon Media Group, LLC, Media Services Group, Multicultural Radio Broadcasting  
Licensing, LLC, Spanish Peaks Broadcasting, Inc., and Wagon Wheel Broadcasting, LLC  
Educational Media Foundation  
Robert Casserd  
First Broadcasting Investment Partners, LLC  
Georgia-Carolina Radiocasting, LLC  
Minority Media and Telecommunications Council  
Vox Communications Group LLC  
KM Communications, Inc.  
Mullaney Engineering, Inc.  
Brantley Broadcast Associates, LLC  
Reynolds Technical Associates, LLC  
Graham Brock, Inc.  
Keymarket Licenses, LLC, Forever Broadcasting, LLC, Forever Communications, Inc.,  
Megahertz Licenses, LLC and Forever of PA, LLC  
Laramie B. Guest and Frank G. McCoy  
Michael R. Birdsill

## APPENDIX C

## Reply Comments Filed in Response to NPRM

William B. Clay

REC Networks

First Broadcasting Investment Partners, LLC

Cohen, Dippell and Everist, P.C.

Prometheus Radio Project – Media Access Project

Apex Broadcasting, Inc., Alexander Broadcasting Company, Inc., Charles M. Anderson &

Associates, Cumulus Licensing LLC, Great South RFDC, LLC, Hunt Broadcasting, Inc.,

Marathon Media Group, LLC, Media Services Group, Multicultural Radio Broadcasting

Licensing, LLC, Spanish Peaks Broadcasting, Inc., and Wagon Wheel Broadcasting, LLC

American Media Services, LLC, Radio One, Inc., Univision Radio, Inc., Mattox Broadcasting, Inc.,

On-Air Family, LLC, Hunt Broadcasting, Inc., Media Services Group, Inc., Desert West Air

Ranchers Corporation, Superior Broadcasting, LLC, Four Corners Broadcasting, LLC, and

Western Slope Communications, LLC

Reynolds Technical Associates, LLC and Brantley Broadcast Associates, LLC

Good News Radio, Inc.

Charles Crawford

Joseph D'Alessandro

Klein Broadcast Engineering, LLC

Starcom, LLC and Milestone Radio, LLC

The Sister Sherry Lynn Foundation, Inc.

## APPENDIX D

## Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”)<sup>1</sup> an Initial Regulatory Flexibility Analysis (“IRFA”) was incorporated in the *Notice of Proposed Rule Making* (“NPRM”) to this proceeding.<sup>2</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>3</sup>

**A. Need for, and Objectives of, the Report and Order**

2. 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.

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

3. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

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

4. 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>4</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>5</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>6</sup> A small business concern

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<sup>1</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. No. 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”).

<sup>2</sup> NPRM, 20 FCC Rcd 11169, 11190, 11192.

<sup>3</sup> See 5 U.S.C. § 604.

<sup>4</sup> 5 U.S.C. § 603(b)(3).

<sup>5</sup> *Id.* § 601(6).

<sup>6</sup> *Id.* § 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 agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes (continued)

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>7</sup>

5. 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>8</sup> A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.<sup>9</sup> Included in this industry are commercial, religious, educational, and other radio stations.<sup>10</sup> Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.<sup>11</sup> However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number.<sup>12</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.

#### **D. Description of Projected Reporting, Record Keeping and other Compliance Requirements**

6. 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 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

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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>7</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>8</sup> See 13 C.F.R. § 121.201, NAICS Code 515112.

<sup>9</sup> *Id.*

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

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

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

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.

7. 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.

#### **E. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered**

8. 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>13</sup>

9. 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.

#### **F. Report to Congress**

10. 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>14</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>15</sup>

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<sup>13</sup> 5 U.S.C. § 603(c)(1)-(c)(4)

<sup>14</sup> *See id.* § 801(a)(1)(A).

<sup>15</sup> *See id.* § 604(b).

**STATEMENT OF  
COMMISSIONER DEBORAH TAYLOR TATE**

*Re: Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services (MB Docket No. 05-210)*

One of our most important jobs is to continually review our rules and procedures, with an eye toward reducing regulatory burdens whenever possible. Today we do just that. The revisions to our allocations procedures that we adopt in this item – most notably allowing AM and FM stations to propose community of license changes in a minor modification application and permitting the electronic filing of allocations proposals – promise to ease administrative burdens on Commission staff, substantially reduce regulatory delays experienced by licensees, and, most importantly, benefit the public by expediting improved radio service. This truly is a “win-win-win” scenario.

**STATEMENT OF  
COMMISSIONER ROBERT M. MCDOWELL**

*Re: Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services (MB Docket No. 05-210)*

Overall, I support this Report and Order, which streamlines our procedures for changing AM and FM broadcast stations' communities of license and amending the FM Table of Allotments. Treating community of license changes as minor modification applications will eliminate unnecessary delays and ease the administrative burden on the Commission, reducing what was a multi-year process to a few months. Implementing the Order will result in greater regulatory certainty for the industry, particularly for small entrepreneurs – especially minority broadcasters – whom I hope will take the opportunity to upgrade their stations to better serve their target audiences. I look forward to enacting similar de-regulatory measures so that the Commission may better serve licensees and the public with the lightest regulatory touch possible.

However, I am disappointed that the Order is not more de-regulatory with respect to notice issues. While all of us agree that notice to the public of community of license change applications filed with the FCC is important, some of the additional steps required by the Order are unnecessary. The Commission's Consolidated Database System (CDBS) and other website advances have dramatically increased the transparency and accessibility of Media Bureau licensing actions.

Federal Register publication is currently not required for minor modifications, yet this Order adds that requirement and then prohibits Commission action for 60 days after publication. In my view, Federal Register publication is far more cumbersome for the agency than are the other avenues we have outlined to ensure adequate public notice, including notices in the Daily Digest, on CDBS and in local newspapers. The local public notice requirement we impose in the Order already goes above and beyond the notice usually mandated for minor modification applications and, combined with the Daily Digest and CDBS notices, is more than sufficient to make certain that notice reaches the local communities potentially affected by a proposed change. Moreover, the Commission ties its own hands by requiring that it take no action on these applications for another 60 days. The Federal Register publication requirement and 60-day prohibition on Commission action are contrary to the overall spirit of de-regulation and streamlining that this Order is supposed to embody. However, because this item will greatly accelerate the needlessly long process for community of license changes, I am voting for it.

I thank the Media Bureau staff, particularly those in the Audio Division, for their creative ideas and hard work on this item. I support the Order and commend the Chairman for his leadership in streamlining Commission processes.