

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

In the Matter of
1998 Biennial Regulatory Review --
Streamlining of Radio Technical Rules in
Parts 73 and 74 of the Commission's Rules
MM Docket No. 98-93

SECOND REPORT AND ORDER

Adopted: October 12, 2000

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By the Commission:

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I. INTRODUCTION

1. This *Second Report and Order* continues the Commission's wide-ranging reform of the Mass Media Bureau's radio technical rules.¹ We amend the Section 73.215(e) spacing table to afford second- and third-adjacent channel stations minimum relief of six kilometers from Section 73.207(a) spacing requirements.² We also expand the types of facility changes covered by our expedited one-step licensing procedures and provide additional flexibility for service improvements by commercial FM stations in Puerto Rico and the United States Virgin Islands. In addition, we adopt several changes in our rules governing noncommercial educational FM ("NCE FM") stations, modifying the second-adjacent channel interference standard to more closely conform to the less restrictive commercial FM standard and establishing an NCE FM principal community coverage standard. With regard to our proposal to increase the minimum Class C antenna height, establish a new intermediate C0 station class, establish an intermediate Class C0 (C zero) and automatically reclassify all Class C FM stations failing to meet new Class C minimum antenna height requirements after three years, we conclude that a more tailored approach to reclassification would best serve the public interest. Under the approach we adopt, the reclassification procedure will be triggered only where a specific, conflicting demand for the spectrum is expressed. An affected Class C station then will have an opportunity to preserve its Class C status by obtaining a construction permit for facilities that meet or exceed the new Class C minimum antenna height.

2. We defer final resolution of several other issues. These include our proposal to permit FM stations to enter into negotiated interference agreements that would create small areas of new interference, provided the applicants can demonstrate significant service gains and satisfy additional public interest criteria. Some of the regulatory issues raised in the low power FM (LPFM) proceeding may be relevant to our evaluation of the NCE FM Class D rule changes proposed in the *Notice*. Accordingly, we also defer consideration of the proposed Class D rule changes until finality is achieved in the LPFM proceeding.³ In addition, commentators have identified several issues regarding the Point-to-Point ("PTP") terrain-dependent signal propagation methodology proposed in the *Notice* that require further inquiry. We intend to seek additional comments regarding possible improvements in the proposed PTP methodology after making available proposed modifications on the Commission's Web site in the near future.

II. NEGOTIATED INTERFERENCE IN THE FM SERVICE: AGREEMENTS INVOLVING APPLICATIONS THAT WOULD CAUSE NEW OR INCREASED INTERFERENCE

¹ See *1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, First Report and Order* in MM Docket No. 98-93, FCC 99-55 14 FCC Rcd 5272 (1999), 1999), and *Notice of Proposed Rule Making* in MM Docket No. 98-93, 13 FCC Rcd 14849 (1998) ("*Notice*").

² 47 C.F.R. §§ 73.207(a), 73.215(e).

³ *Creation of a Low Power Radio Service, Report and Order* in MM Docket No. 99-25, 15 FCC Rcd 2205 (2000).

3. *Background.* The *Notice* sought comment on amending the commercial and NCE FM interference rules to permit stations to enter into agreements for coordinated facility modifications that would result in limited amounts of new or increased interference.⁴ Comments were sharply divided on this issue. Several commentors assert that negotiated interference would degrade FM service.⁵ In particular, NAB argues that negotiated interference is antithetical to the Commission's statutory obligation to ensure the technical integrity of the broadcast spectrum. Fuller-Jeffrey, NAB, National Public Radio, Inc. ("NPR") and Robert G. Thomas contend that additional signal congestion and interference resulting from negotiated interference agreements could impede the development of terrestrial digital audio broadcasting ("DAB").

4. A number of commentors urge adoption of the negotiated interference proposal to help give stations additional flexibility to improve their facilities and better serve listeners.⁶ Cumulus specifically notes that a number of stations are facing digital TV ("DTV")-related relocations and that these stations would benefit from the added technical flexibility that the proposed policy would permit. Big River argues that the development of negotiated interference rules is consistent with the Commission's role as a facilitator of better broadcast service. Several commentors believe that stations will know best where interference would be acceptable and applaud the Commission's efforts to encourage private parties to expand their use of the radio broadcast spectrum.⁷

5. *Discussion.* We continue to believe that the public interest would be served by our consideration of negotiated interference agreements. The record demonstrates broad support for a careful reexamination of the Commission's long-standing prohibition to so-called negotiated interference agreements in the radio services. We also are convinced as a general policy matter that listeners' interests would be served by giving greater flexibility to licensees to identify ways to better reach their audiences. Finally, we believe that adopting specific negotiated interference rules, rather than relying on case-by-case adjudications, is a better and more efficient way to maintain the integrity of the FM service.

6. While the Commission continues to evaluate the benefits of adopting negotiated interference rules, we believe that the public interest would best be served by implementing the other technical streamlining initiatives in this docket. We anticipate addressing the negotiated interference proposal and the PTP alternative FM signal propagation prediction methodology in a subsequent order later this year.

⁴ *Notice*, 13 FCC Rcd at 14857-63.

⁵ See Comments of the Association of Federal Communications Consulting Engineers ("AFCCE"), Cosmopolitan Enterprises of Victoria, Inc. ("Cosmopolitan"), Thomas Desmond, Fuller-Jeffrey Broadcasting Companies, Inc. ("Fuller-Jeffrey"), the National Association of Broadcasters ("NAB"), South Central Communications Corporation ("SCCC") and Robert G. Thomas.

⁶ See Comments of Big River Broadcasting Corporation ("Big River"), Cumulus Media, Inc. ("Cumulus"), Delmarva Broadcasting Company ("Delmarva"), Hardy & Carey, L.L.P. ("Hardy & Carey"), Tuned In Broadcasting, Inc., V-Soft Communications ("V-Soft") and Weigle Broadcasting Corporation ("Weigle").

⁷ See Comments of Big River, Educational Information Corporation ("EIC") and Jim Lawson Communications, Inc. ("Lawson").

III. OTHER PROPOSALS TO GIVE STATIONS GREATER TECHNICAL FLEXIBILITY

A. Point-To-Point Prediction Methodology

7. In Appendix B of the *Notice* we set forth a supplemental point-to-point (“PTP”) prediction model developed to provide a more accurate prediction of interfering contours than that provided by the Commission’s standard prediction method.⁸ Unlike the standard prediction method, which takes into account only the terrain between three and 16 kilometers from the transmitter site, the PTP method considers the effects of terrain from as close as one kilometer from the transmitter site out to all critical contour distances. Additionally, the PTP method takes into account terrain obstructions, whereas the standard method does not. The computer code for the PTP program, along with a technical report and comparisons of program results with measurement data and other propagation models, was made available on the Commission’s Web site.⁹ Many of the commentators accessed this information in preparing their comments.

8. Twenty-two parties submitted comments and/or reply comments addressing the proposed PTP model.¹⁰ Twelve commentators support use of the PTP model,¹¹ six oppose its use,¹² DLR and V-Soft express conditional support,¹³ Fuller-Jeffrey recommends that the Commission “reserve judgment” and Graham Brock addresses several issues but expresses no preference. We commend these parties for their careful analysis of the PTP program and the related materials at our Web site. They have made many constructive suggestions and offered a number of useful modifications to enhance the accuracy and reliability of this signal propagation prediction model. We are persuaded that certain issues cannot be resolved on the basis of the current record. In particular, we believe that it is advisable to consider several program modifications. These include the addition of a PTP subroutine to assess secondary terrain obstacles on either side of a primary obstacle and a program modification to use a three-second, rather than

⁸ The standard prediction method refers to the use of Figures 1 and 1a of 47 C.F.R. §73.333 for predicting the location of protected service and interfering contours, respectively.

⁹ The Fortran code can be accessed at [<http://www.fcc.gov/mmb/asd/prp/>]. The report is located at [http://www.fcc.gov/Bureaus/Mass_Media/Notices/1998/fcc98117.txt]. Comparisons with data is located at [ftp://www.fcc.gov/pub/Bureaus/Engineering_Technology/Databases/mmb/fm/model/].

¹⁰ See Comments and Reply Comments of AFCCE, Big City Radio, Inc., CTI, Cumulus, DLR, Thomas Desmond, Fuller-Jeffrey, Graham Brock, Greenup County Broadcasting, Inc. (“Greenup”), Hardy & Carey, Hatfield & Dawson, Hometown Radio Corp., NAB, NPR, Redwood Empire Stereocasters, Reynolds, Silverado Broadcasting Company, Sound of Life, SCCC, V-Soft, WVRC and Wine Country Radio.

¹¹ See Comments and Reply Comments of Big City Radio, Inc., CTI, Cumulus, Thomas Desmond, Greenup, Hometown Radio Corp., Redwood Empire Stereocasters, Silverado Broadcasting Company, Sounds of Life, SCCC, WVRC and Wine Country Radio.

¹² See Comments and Reply Comments of AFCCE, Hardy & Carey, Hatfield & Dawson, NAB, NPR and Reynolds.

¹³ See Comments and Reply Comments of DLR and V-Soft.

thirty-second, terrain database. The staff also is developing terrain database-based alternatives to the proposed use of a 5 dB constant to determine clutter loss at specific points. We also are considering the addition of a different smoothing procedure to plot signal strength contours and program modifications to improve the accuracy of the PTP methodology with unusual terrain features. We plan in the near future to make available these program model revisions on the Web site and to issue simultaneously a public notice inviting further comment.

B. Commercial FM Technical Requirements: Amendments to Section 73.215

1. Reduced Minimum Separation Requirements for Second- and Third-Adjacent Channels

9. *Background.* Section 73.215 permits applicants to propose transmitter sites that do not meet the minimum distance separation requirements of Section 73.207.¹⁴ Under Section 73.215, an applicant must demonstrate that the proposal would not result in prohibited contour overlap and satisfy less restrictive spacing requirements.¹⁵ The rule was adopted to afford applicants greater flexibility in specifying transmitter sites, thus allowing the Commission to discontinue granting waivers under Section 73.207. In the *Notice*, however, we identified a particular shortcoming in Section 73.215 with regard to stations with second- and third-adjacent channel spacing problems.¹⁶ Whereas the rule uniformly affords co- and first-adjacent channel stations substantial relief from Section 73.207 spacing requirements, it generally limits the relief afforded to second- and third-adjacent channel stations to no more than 3 kilometers.¹⁷ In some cases, it provides no relief whatsoever from Section 73.207 spacing requirements. As a result, many stations with second- and third-adjacent channel spacing constraints have less flexibility to relocate facilities than under the former Section 73.207 waiver policies, which permitted the staff to grant spacing waivers of up to six kilometers. To remedy this shortcoming, we proposed to revise the Section 73.215(e) spacing table to afford all commercial FM stations minimum relief of 6 kilometers from the applicable Section 73.207(a) standards.

10. Seven of 16 commentators that responded specifically to this proposal supported it.¹⁸ NAB and Fuller-Jeffrey oppose the proposal on the ground that it would limit the development and implementation of in-band on-channel DAB systems. Press supports the proposal only as it applies to third-adjacent channel station separations, opposing a reduction in the Section 73.215 spacing requirements for second-adjacent channel stations on the grounds that some conventional receivers lack sufficient selectivity to reject undesired second-adjacent channel stations. Graham Brock recommends reinstatement of the prior eight-kilometer minimum short spacing waiver standard to give additional latitude in site locations for second- and third-adjacent stations in the commercial FM band.

¹⁴ 47 C.F.R. § 73.215.

¹⁵ *Id.* at § 73.215(a), (e).

¹⁶ *See Notice*, 13 FCC Rcd at 14865-66.

¹⁷ *See id.* at 14866 n. 60.

¹⁸ *See Comments of AFCCE, CTI, DLR, Hardy & Carey, Carlos J. Colon Ventura (“Ventura”), V-Soft and WVRG.*

11. *Discussion.* After careful consideration of the comments filed in this proceeding, we conclude that adoption of the proposal as set forth in the *Notice* would serve the public interest. Accordingly, the Section 73.215(e) spacing table will be revised to afford all commercial FM stations minimum relief of 6 kilometers from the applicable Section 73.207(a) standards. This remedial amendment addresses a shortcoming in the Section 73.215(e) spacing table by providing second- and third-adjacent channel stations the same flexibility to relocate facilities that existed under the former waiver policy. With regard to the concerns expressed by NAB and Fuller-Jeffrey Broadcasting, the *Notice* did not propose any changes in the contour overlap methodology or to subsections (a), (b) and (d) of Section 73.215. Thus, the revisions we adopt in this *Order* will not permit applicants to propose contour overlap currently prohibited by the Commission's rules. Consequently, we do not believe that adoption of this proposal will have any impact on the development or implementation of in-band on-channel DAB systems or on current levels of second-adjacent channel interference.

12. The limited rationale underpinning this rule change does not support most of the modifications suggested in the comments, in particular the substantial changes suggested by Mullaney and Harvey.¹⁹ Mullaney notes that Section 73.215 can be unnecessarily restrictive in protecting reserved band Class B and B1 stations, *e.g.*, a non-reserved band Channel 221 station application that is short-spaced to a NCE FM Class B Channel 220 station. This results from the fact that all NCE FM stations, including Class B and B1 stations, are protected to their 60 dBu contours and the Section 73.215(e) spacing requirements are based on the non-reserved band Class B and B1 protected contours, 54 and 57 dBu, respectively. In order to rectify any inequities arising for this very limited class of Section 73.215 applications, we will permit the staff grant waivers of Section 73.215(e) on a case-by-case basis. With regard to Graham Brock's comment regarding eight-kilometer short-spacings, Graham Brock mischaracterizes the Commission's prior policy. The eight-kilometer standard was instituted temporarily to limit the number of Section 73.215 applications received by the staff and discontinued in 1992.²⁰ Eight kilometers was a *maximum* amount by which applicants could be short-spaced when compared to the spacing requirements of Section 73.207. Therefore, we decline to adopt Graham Brock's suggestion.

2. Additional Flexibility for Stations in Puerto Rico and the U.S. Virgin Islands

¹⁹ Mullaney comments that the Section 73.215(e) spacing table should be eliminated altogether because the city grade contour coverage requirement and the Commission's limits on directional antennas are sufficient to preclude interference. Mullaney further suggests that the proposal is unnecessary in light of the Commission's proposal to allow negotiated interference. Harvey asserts that the changes as proposed would not solve his particular transmitter site relocation problems and that most stations would not receive the intended relief. Harvey suggests that the proposal be amended to: 1) allow stations to locate closer to their cities of license without regard to second- and third-adjacent channel spacing; 2) allow applications to be processed under the prior Section 73.207 waiver policy; 3) permit stations to use a higher signal strength, and thus less restrictive, protected contour; 4) eliminate second- and third-adjacent channel spacing restrictions; and 5) protect 1989 grandfathered Class A stations, which now must comply with Section 73.213(c), to only the 3 kW power level.

We recognize the restrictions on permissible short spacing for NCE FM Class B and B1 facilities as set forth by Mullaney, and note that we will entertain waiver requests for these facilities.

²⁰ See *Amendment of Part 73 of the Commission's Rules to Permit Short-Spaced FM Station Assignments Using Directional Antennas, Report and Order* in MM Docket No. 87-121, 7 FCC Rcd 6473 (1992).

13. *Background.* The Commission adopted Section 73.215(a)(4) in 1991 to provide non-reserved band stations in Puerto Rico and the U.S. Virgin Islands with site location flexibility concomitant with that enjoyed by mainland U.S. stations.²¹ A station proposing a facility modification pursuant to this rule must demonstrate, in lieu of the traditional Section 73.215(a) contour overlap showing, that its proposal would not extend the station's 60 dBu contour toward any short-spaced station. We observed in the *Notice*, however, that in many cases, particularly where a proposed facility change is from a low coastal to a higher inland location, Section 73.215(a)(4) provides no relief because stations find it impossible to comply with the provision. The staff in 1993 waived Section 72.215(a)(4) and permitted use of a method that recognized the actual protected and interfering contours of stations operating in these areas.²² We proposed in the *Notice* to revise Section 73.215 to codify the actual protected and interfering contour distances for Class A, B1 and B stations set forth in *St. Croix Wireless Co.*²³

14. *Discussion:* We received two favorable comments regarding this proposal.²⁴ After careful consideration of the comments, we conclude that adoption of this proposal would serve the public interest. Accordingly, we shall amend Section 73.215 to codify the actual protected and interfering contours of Class A, B1 and B stations operating in Puerto Rico and the U.S. Virgin Islands set forth in *St. Croix Wireless Co.* The modified table we are adopting takes into account both the distance separation requirements of Section 73.207 and the higher HAAT limits specified for stations in Puerto Rico and the U.S. Virgin Islands. We anticipate that this measure will help provide stations in Puerto Rico and the U.S. Virgin Islands with the same flexibility to relocate facilities as is enjoyed by mainland stations under Section 73.215.

C. New Intermediate C0 Station Class and Class C Height Above Average Terrain Minimum

15. *Background.* Currently, 519 of the 863 commercial FM Class C stations in the non-reserved band operate with antenna heights above average terrain ("HAAT") of between 300 and 450 meters, far less than the class maximum of 600 meters.²⁵ The Commission's minimum distance separation requirements, however, protect all Class C stations from interference as if they were operating at the class

²¹ Such a measure was necessary because stations operating in Puerto Rico and the Virgin Islands are permitted under Section 73.211(b)(3) to operate with antenna HAATs greater than their mainland counterparts, but need only meet normal Section 73.207 spacing requirements. 47 C.F.R. § 73.211(b)(3); see *Permitting Increased Antenna Height of Class B1 Commercial FM Broadcast Stations in Puerto Rico and the Virgin Islands*, 49 Fed.Reg. 22088 (May 25, 1984); *Amendment of Section 73.211(b)(3) of the Rules Concerning Maximum Power and Antenna Height for FM Broadcast Stations*, 13 Rad.Reg. 1536 (1968) (Class A stations in Puerto Rico and the Virgin Islands); *Revision of FM Broadcast Rules*, 40 FCC 868 (1964) (addressing Class B stations in Puerto Rico and the Virgin Islands); see also *Notice*, 13 FCC Rcd at 14866-67 ("This exception was initiated by the Commission in 1964 to help these stations overcome the effects of rugged island topography and to promote the distribution of radio facilities in these areas."). As a result, it is possible for such stations to comply with Section 73.207 but have prohibited contour overlap under Section 73.215.

²² See *St. Croix Wireless Co.*, 8 FCC Rcd 7329 (M.M. Bur. 1993).

²³ These contour distances were set forth in Appendix C to the *Notice*.

²⁴ See Comments of Ventura and Graham Brock.

²⁵ *Notice*, 13 FCC Rcd at 14868.

maximum. Thus, interference protection for a majority of Class C stations is greater than necessary to protect the stations' actual "primary" 60 dBu service contours. In order to remedy this situation, which we stated may unnecessarily preclude the introduction of new and improved FM service, we proposed in the *Notice* a reclassification modeled on the Commission's 1983 action in the Docket 80-90 proceeding.²⁶ Specifically, we proposed to create an intermediate Class C0 (C zero) between Classes C and C1 with a maximum antenna HAAT of 450 meters and a minimum requirement of 300 meters, as well as a power level of 100 kW (the present value for Class C stations) and spacing requirements reduced from Class C requirements. We also proposed a three-year transition period to give affected Class C stations a reasonable opportunity to maintain Class C status by upgrading facilities to the new Class C antenna HAAT minimum of 451 meters. We expressed our belief that these changes would "increase the efficiency of FM broadcast band licensing while permitting existing Class C stations to provide service equivalent to that embodied in the present allotment rules."²⁷

16. Twenty-four commentators responded to the Class C0 proposal, with ten opposing it,²⁸ eight supporting it,²⁹ and six taking no position but suggesting modifications should we adopt the proposal.³⁰ Generally, proponents agreed with the description of the public interest benefits in the *Notice*, whereas opponents argued that the benefits are speculative and are outweighed by the disruptive effect that the potential involuntary downgrade may have on affected Class C stations. We have reviewed the Class C0 proposal carefully in light of the various comments received. As discussed below, we believe that reducing the "overprotection" of lesser facility Class C stations is a reasonable and appropriate means to recover valuable FM spectrum and thereby create opportunities for new and/or improved FM service. On balance, however, we cannot conclude that the measurable benefits of reclassification warrant the sweeping measure proposed in the *Notice*. Instead, we have determined that a more tailored approach would better serve the public interest. Under the approach we are adopting, the reclassification procedure will be triggered only where a specific, conflicting demand for the spectrum is expressed, *i.e.*, an application for construction permit or petition for rule making to amend the FM Table of Allotments is filed that requires the downgrading of a subject commercial Class C station but satisfies the less restrictive Class C0 spacing requirements. The affected Class C station then will have an opportunity to preserve its Class C status by obtaining a construction permit to increase its antenna HAAT above 450 meters and constructing such a facility. We believe that this tailored approach will enable broadcasters to bring more and better service to

²⁶ *Id.* at 14869; see *Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments, Report and Order* in BC Docket 80-90, 94 FCC 2d 152, 155-56, 183-84 (1983) ("*Docket 80-90 R&O*"), modified, *Memorandum Opinion and Order*, 97 FCC 2d 279 (1984) ("*Docket 80-90 MO&O*"), recon. den., *Order*, 1 FCC Rcd 1079 (1986). Among other things, the Commission in the Docket 80-90 proceeding downgraded certain Class B and Class C FM stations to newly-established intermediate station classes B1, C1 and C2. See *id.*

²⁷ *Notice*, 13 FCC Rcd at 14869.

²⁸ See Comments and Reply Comments of Cosmopolitan, Cumulus, Fuller-Jeffrey, Heritage Communications, Inc. ("Heritage"), NAB, NPR, Northwestern College, SCCC, Robert G. Thomas and United Audio Corp.

²⁹ See Comments and Reply Comments of AFCCE, CTI, Thomas Desmond, Graham Brock, Mullaney, Reynolds, Thunderbolt Broadcasting Company ("Thunderbolt") and V-Soft.

³⁰ See comments and reply comments filed by DLR, East Arkansas Broadcasters, Inc. ("East Arkansas"), Hardy & Carey, Hatfield & Dawson and Karl D. Lahm, P.E.

listeners without unnecessary disruption to existing Class C stations.

17. *Discussion-- overprotection.* The present overprotection of a majority of Class C stations constitutes an inefficient use of FM spectrum and is inconsistent with the technical assumptions underlying the Commission's rules. The FM allotment and non-reserved band assignment rules do not protect fully-spaced stations based on their individual service ranges or contours. Rather, they protect all stations to the same extent as a station operating at the maximum facilities for its particular class, based on the assumption "that each station is currently, or at some future time will be, operating with maximum facilities."³¹ Thus, the 519 commercial FM Class C stations operating with antenna heights above average terrain of less than 451 meters receive interference protection in excess of their actual 60 dBu service contours.³²

18. Opponents of the instant proposal argue that overprotection does not waste spectrum because Class C FM stations operating with antennas of less than 451 meters HAAT provide useful service to areas beyond their individual 60 dBu contours in the absence of interference, especially in rural or "fringe" areas with fewer aural services.³³ For example, NAB argues that at 92 kilometers (the predicted 60 dBu service range of a maximum facility Class C station), the predicted signal strength of a minimum facility Class C station is 52 dBu, "a very useable signal."³⁴ NAB also maintains that because the interfering contours of lesser facility Class C stations do not extend as far, they allow nearby stations operating on co- and adjacent channels to provide wider interference-free service than otherwise would be possible. On the other hand, V-Soft argues that "a large amount of spectrum is wasted by protecting minimum facilities[.]" AFCCE asserts that the subject stations "in reality never served these areas [beyond their individual 60 dBu contours,]" and Graham Brock maintains that even in the absence of interference stations operating with antennas at 300 to 350 meters HAAT do not cover their protected service areas.³⁵

19. The Commission considered and rejected in the Docket 80-90 proceeding similar arguments

³¹ *Docket 80-90 R&O*, 94 FCC 2d at 153; *id.* at 176 ("the minimum separation requirements assume maximum facilities."); *see* 47 C.F.R. §§ 73.207, 73.213, 73.215(e).

³² For example, whereas the predicted 60 dBu service range of a maximum facility Class C station (600 meters antenna HAAT and 100 kW) is 92 kilometers, the predicted 60 dBu service range of a minimum facility Class C station (300 meters HAAT and 100 kW) is only 72 kilometers.

³³ *See, e.g.*, comments filed by SCCC at 8-9. SCCC argues that such existing, interference-free service may be lost as a result of this proposal, a result it views as contrary to the public interest.

³⁴ NAB reply comments at 13. Similarly, SCCC argues that the protection of Class B FM stations to their 54 dBu contours demonstrates the Commission's recognition that adequate reception at this signal strength is possible.

³⁵ Hardy & Carey, while noting that coverage often extends beyond a station's actual 60 dBu contour in the absence of interference, especially in rural areas with less overall service, states that a significant amount of spectrum could be recovered for other uses as a result of the Class C0 proposal. Mullaney and Thomas Desmond both argue that the Class C0 proposal does not go far enough: Desmond supports eliminating station classes altogether and protecting stations on the basis of existing coverage, and Mullaney argues that Section 73.215 of the Commission's rules should be revised to protect stations only 50 to 100 meters beyond their existing coverage. 47 C.F.R. § 73.215

opposed to involuntary downgrades.³⁶ We recognize that all stations, including Class C stations, may provide useful service beyond their individual protected contours in the absence of interference. It does not follow, however, that the Commission's rules should protect such extended service. Protected service ranges as defined pursuant to the Commission's rules are not simply a function of the distance at which adequate reception is possible. Rather, they reflect a balance between providing adequate service areas and permitting a sufficient number of FM assignments.³⁷ An allotment scheme based on protecting existing stations' "useable signal[s]" would effectively close the FM spectrum to further assignments; indeed, such a scheme would have prevented the authorization of a large portion of existing FM stations. We see no reason now to move away from our core allocation standards, which have safeguarded the technical integrity of the FM band since 1962 while permitting the full development of the FM band. Overprotection of Class C stations is inconsistent with those standards and constitutes an inefficient use of spectrum.³⁸ Of course, the fact that existing, interference-free service is likely to be lost as a result of reclassification is entitled to some weight in our public interest determination. In our 1983 action downgrading certain Class B and Class C stations, the Commission concluded that "the provision of new primary service and first and/or second local service is *a higher priority* than the preservation of service beyond the normally protected service area of existing stations."³⁹ As discussed below, we find that a comparable balance of interests obtains here.

20. NAB and other opponents of reclassification also argue that Class C stations subject to reclassification may face significant obstacles to upgrading their facilities, and that overprotection provides needed flexibility. According to these commentators, valid reasons for operating at substantially less than maximum facilities include lack of available funding to carry out facility upgrades, FAA or zoning restrictions, and population factors (*e.g.*, sparse population outside their current 60 dBu contours). They maintain that such obstacles, as well as lack of available tower space and construction crews, would prevent many of the affected stations from preserving their Class C status. In addition, they argue that the flexibility provided by overprotection to respond to potential changes in circumstances is an important part of the FM service's identity. On the other hand, *AFCCCE* cites the above-stated obstacles in favor of the Class C0 proposal, reasoning that there is little likelihood that these stations would maximize their facilities. The Commission found unpersuasive similar arguments against reclassification in the Docket 80-90 proceeding.

The Commission realizes that many stations are operating at less than 'full' facilities because of other Commission regulations, other government agencies' limitations, or restrictions of local jurisdictions. It is exactly this inconsistency, between the Commission providing for expansion when the possibility is virtually non-existent, that we wish to rectify. Rather than viewing reclassification as discriminatory, the Commission believes that recognizing actual facility limitations is a realistic means of allowing for additional

³⁶ See *Docket 80-90 R&O*, 94 FCC 2d at 161-163.

³⁷ See *id.* at 162 ("the Commission recognized in 1963 that certain amounts of potential interference-free service had to be discounted if a sufficient number of assignments were to be made."); .

³⁸ See *Docket 80-90 MO&O*, 97 FCC 2d at 282-83 (characterizing overprotection as a "waste of valuable spectrum resources which could be used to provide much needed service" elsewhere).

³⁹ *Docket 80-90 R&O*, 94 FCC 2d at 164 (italics added).

outlets.⁴⁰

The same reasoning applies here. “[A] station's classification should reflect its potential, either by spacing requirements, economics, or government limitations[.]”⁴¹ Whatever the cause, a Class C station operating near the class minimum antenna height does not provide actual service commensurate with the interference protection that it receives under the Commission’s rules. Thus, we conclude that the public interest would be served by adopting procedures to promote more efficient use of FM spectrum by making available this underutilized spectrum on a demand basis for competing broadcast uses.

21. Several commentators also argue that the Class C0 proposal is unfair to broadcasters that may have invested large sums of money to upgrade and preserve Class C status following the Commission’s 1983 action downgrading certain Class B and Class C stations, in particular small broadcasters for whom the cost of upgrade may be prohibitive. Northwestern College states that it spent over \$1 million to regain a Class C allotment for KFNB(FM), Fargo, North Dakota, after the station was downgraded following the Docket 80-90 proceeding. Robert G. Thomas, General Manager of KEXL(FM), Norfolk, Nebraska, states that over \$250,000 was invested to preserve KEXL as a Class C station after that proceeding. They maintain that the costs of upgrading again would be prohibitive for them and for other small broadcasters. NAB (in reply comments) argues that “[i]t is simply inappropriate for the Commission to continually 'move the bar' for these stations, forcing them to spend large sums of money in order to comply with new rules every few years.”⁴² However, we cannot conclude that the effect of the instant proposal would be unfair, either in general or in the case of particular broadcasters, based on the fact that the Commission undertook a similar action in the Docket 80-90 proceeding. The *Report and Order* in that proceeding was released in 1983, over 15 years ago. In the instant proceeding, we proposed to provide stations subject to reclassification with an additional three-year transition period to upgrade their facilities and, as discussed below, we adopt with modifications these procedures in this *Order*.

22. *Creating additional FM service opportunities through reclassification.* We next address the potential for enhanced FM service resulting from the reclassification of Class C stations that fail to satisfy the proposed 451 meter HAAT requirement. Opponents of reclassification argue that it is not warranted by evidence of either a present demand for additional FM service or of the proposal’s likely efficacy in addressing such a demand. SCCC argues that the proposal lacks the detailed study and compelling public interest basis that underpinned the Commission's actions in the Docket 80-90 proceeding. A substantial demand for new FM service supported the Commission’s actions in that proceeding, SCCC asserts, whereas the *Notice* in the instant proceeding describes a congested FM band environment with little opportunity for new or improved services. SCCC, Heritage and Cosmopolitan are concerned that such congestion would be exacerbated by the creation of an additional class of FM stations. In addition, Cumulus, Fuller-Jeffrey and NAB stress that the Commission did not quantify in the *Notice* the potential of the Class C0 proposal to create opportunities for additional FM service.⁴³ Cumulus argues that

⁴⁰ *Id.* at 176; see *Docket 80-90 MO&O*, 97 FCC 2d at 282.

⁴¹ *Docket 80-90 R&O*, 94 FCC 2d.at 176-77.

⁴² Reply Comments of NAB at 11.

⁴³ Fuller-Jeffrey and NPR (in reply comments) also argue that the proposal is premature given the uncertainty of how it may affect implementation of digital or in-band/on-channel radio, and that we should defer action pending

reclassification would produce few benefits in light of current FM band congestion and the previous Docket 80-90 proceeding, stating that "the juice has already been largely if not entirely squeezed from the lemon."⁴⁴

On the other hand, CTI argues that it would allow a number of Class A and C3 FM stations to upgrade facilities without creating interference to the actual 60 dBu service areas of downgraded Class C stations. Graham Brock contends that the proposal would enable some Class A stations to increase from three to six kilowatts and possibly allow class upgrades. Neither proponents nor opponents of the proposal offer data in support of their arguments regarding the Class C0 proposal's potential to create opportunities for new and improved full power FM service.

23. As SCCC's comments indicate, the Commission's adoption of various measures in the Docket 80-90 proceeding was founded in part on evidence of a substantial demand for new FM service and studies demonstrating the potential efficacy of proposed changes in FM licensing procedures.⁴⁵ The FM service obviously is more developed now than at the time of the Docket 80-90 proceeding. We recognized in the *Notice* that radio is a mature service, and that virtually all major and mid-sized radio markets receive service from five or more radio stations.⁴⁶ Nevertheless, there is evidence of a continuing demand for additional FM service, both in the largest markets and elsewhere. For example, the Commission received a total of 241 petitions to amend the FM Table of Assignments in fiscal year 1998, and 96 petitions in the first quarter of fiscal year 1999 alone. Competing expressions of interest have been filed with regard to approximately 35 percent of these petitions. In addition, approximately 200 one-step upgrade applications currently are on file with the Mass Media Bureau. The Commission previously has treated such evidence of demand "as a fair basis on which to examine the public interest aspects of new proposals. As a practical matter, if a community really has little potential for establishing an additional station, we believe it unlikely

further analysis of this issue.

⁴⁴ See Comments of Cumulus at 10.

⁴⁵ The Commission cited the following evidence of demand: (1) the magnitude of the number of communities identified as underserved in the Station Requirement List ("List"), an inventory of potential interest or demand for additional full-time radio stations prepared two years earlier for international negotiations regarding the United States' future radio needs, and compiled from lists of communities without local AM or FM assignments, without local nighttime service, and in need of additional minority-owned or public radio service; (2) the number of new channel allotments requested every year and the instances of competing applications; and (3) the fact that approximately half of the 35 commentators supporting the proposed new rules in the Docket 80-90 proceeding indicated that additional FM stations needed in their communities were not available without the changes proposed. See *Docket 80-90 R&O*, 94 FCC 2d at 159-61. Evidence of the new measures' potential efficacy was provided by a staff computer analysis of 200 locations from the List, indicating that whereas the existing rules would allow at least one new FM allotment in only 7 percent of the locations studied, at least one new outlet would be available in 41 to 61 percent of the locations studied under the proposed new rules. *Id.* With regard to reclassification, the Commission found that the measure could increase the availability of new FM station assignments in the locations studied from 43 to 57 percent. *Id.* at 176.

⁴⁶ *Notice*, 13 FCC Rcd at 14857 ("Opportunities for new full service or substantial facility improvements in these markets are extremely limited."). Most major and mid-sized markets already were well-served at the time of the Docket 80-90 proceeding. *Docket 80-90 R&O*, 94 FCC 2d at 157. The Commission's primary goal then was the provision of new primary service and first or second local service to underserved communities, rather than additional service to top markets. See *id.* at 160, 164.

that applicants or investors would be willing to extend the effort or financial backing that is required.”⁴⁷ Based on this evidence, we find that as a general matter there is an unsatisfied demand for additional FM service opportunities. The substantial increase in the number of licensed stations since 1983 magnifies the need for measures to increase the efficiency of FM spectrum use. We find unpersuasive the concerns expressed by some commentators regarding spectrum overcrowding as a result of the Class C0 proposal. As discussed above, the instant proposal is entirely consistent with the principles underlying the FM allotment and assignment rules, by which the Commission has safeguarded the technical integrity of the FM band since 1962.

24. Despite the continuing demand for additional FM service opportunities, examination of the record before us indicates that the Class C0 proposal has limited potential for creating opportunities for additional FM service. First, as several commentators point out, the number of FM outlets has increased significantly since the Docket 80-90 proceeding. Second, whereas the Docket 80-90 proceeding involved the reclassification of both Class B and Class C FM stations, the instant proposal involves only the reclassification of Class C stations, which are not permitted to operate in most parts of the Northeast and in California under the Commission’s rules.⁴⁸ Thus, the proposal would not create any additional FM service opportunities in these areas. Finally, a staff computer study assessing the potential for new station assignments and existing station upgrades as a result of reclassification of the 519 Class C stations operating with HAATs of 300 to 450 meters suggests that the proposal has limited potential for creating additional FM service opportunities elsewhere. The study identified 94 cases in which reclassification would permit new Class A FM station assignments to communities of at least 1,000 persons that are currently without local FM or AM assignments. In most of these predominantly rural communities, however, the staff found that at least one other commercial frequency also was available for a new Class A FM station. In addition, the study identified 42 cases in which one-step upgrades in class by existing stations at their licensed sites would be possible as a result of reclassification, and an additional 42 cases in which reclassification could make possible one-step upgrades in class by existing stations at their licensed sites under the contour protection provisions of Section 73.215(e).⁴⁹ The potential for service improvements involving site changes would be greater, but is not subject to certain predictive analysis due to many factors, including: site availability; the interest of potential upgrade applicants in making facility improvements, possibly at new sites; intervening application filings; etc. Thus, we recognize that the

⁴⁷ *Docket 80-90 R&O*, 94 FCC 2d at 159, 161 (citing number of petitions filed annually and competing expressions of interest as evidence of unsatisfied demand for additional FM service); *cf. Creation of a Low Power Radio Service, Notice of Proposed Rule Making* in MM Docket No. 99-25, FCC 99-6 at ¶ 11 (released February 3, 1999) (“the Commission received over 13,000 inquiries in the last year from individuals and groups showing an interest in starting a low power radio station.”).

⁴⁸ See 47 C.F.R. §§ 73.205, 73.210.

⁴⁹ The ability of existing stations to upgrade under the less restrictive spacing requirements of Section 73.215 would be contingent on demonstration of the existence of allotment sites that are fully-spaced in accordance with Section 73.207. 47 C.F.R. §§ 73.207, 73.215(e); see 47 C.F.R. § 73.203. In this regard, we note that the Commission recently denied an application for review involving a proposal to modify and upgrade a Class A FM station to Class C3 where the proposal satisfied the spacing requirements of Section 73.215(e) but failed to demonstrate the existence of a reference site for the proposed allotment that was fully-spaced to a Class C station. *Thunderbolt Broadcasting Company*, 13 FCC Rcd 6959 (1998). The staff’s analysis indicates that a fully-spaced reference site could be identified if the Class C station in question were reclassified.

staff's computer study is of limited utility. Nevertheless, taken together with the other factors stated above, it is sufficient to conclude that the C0 proposal is unlikely to significantly promote opportunities for new and improved full power FM service on a nationwide basis.

25. *Balance of interests.* In light of the Class C0 proposal's limited potential for creating opportunities for additional FM service, we must consider whether the disruption entailed in the possible downgrade of approximately 60 percent of all present Class C FM stations is warranted. In this regard, opponents of reclassification argue that an automatic downgrade would force affected Class C stations to expend resources in evaluating site options, zoning, FAA issues, etc., and in many cases to choose between an expensive tower relocation or modification and the potential loss of existing service. Cumulus asserts that the reclassification measures in the Docket 80-90 proceeding set off a costly and time-consuming scramble for tower space that would be repeated if we were to adopt the instant proposal. In some cases, there is no reason to put stations through this process because alternative spectrum is available for additional FM service or because there is relatively little feasible use for the spectrum that would be made available by downgrade. On balance, therefore, we cannot conclude that the measurable potential benefits of the Class C0 proposal warrant the sweeping reclassification proposed in the *Notice*. However, where there is a *bona fide* interest in such spectrum, however, we do not believe that the public interest is served by continued overprotection of stations that have failed to construct facilities in accordance with the expectations underlying their original Class C station assignments. Under these circumstances, reclassification would serve the public interest by recovering valuable FM spectrum.

26. *Reclassification procedure.* Based on the foregoing, we have determined that a reclassification procedure tied to a specific demand for underutilized spectrum would best serve the public interest. Under the approach we are adopting, the reclassification procedure will be triggered only where a specific, *bona fide* demand for the spectrum is expressed, *i.e.*, an application for construction permit is filed that is short-spaced to the Class C station but would be fully spaced to a Class C0 assignment. Triggering applicants may utilize the contour protection provisions of Section 73.215 of the Commission's rules.⁵⁰ The Section 73.207 and 73.215(e) spacing tables will be modified to accommodate the new Class C0.⁵¹ The triggering application must certify that no alternative channel is available for the proposed service.⁵² Copies of the triggering application and related pleadings must be served on the licensee whose

⁵⁰ 47 C.F.R. § 73.215.

⁵¹ New Class C0 FM minimum distance separation requirements under Section 73.207(b)(1) of the Commission's rules are set forth in Appendix C. As is the case for other classes of commercial FM stations, the new Class C0 spacings generally are derived by computing predicted interfering and protected service contours for stations operating at class maximums. To avoid incongruities in the spacing table, the required spacing between second- and third-adjacent channel Class C and Class C0 stations under Section 73.207(b)(1) is 105 kilometers, the same as that for second- and third-adjacent channel Class C and C1/C2 stations and one kilometer more than the 104 kilometers that would be necessary to avoid prohibited contour overlap. In addition, the spacing between co-channel Class B and C0 stations under Section 73.207(b)(1) is 272 kilometers, midway between the co-channel Class B/C spacing of 274 kilometers and Class B/C1 spacing of 270 kilometers, rather than the 285 kilometers that would be necessary to avoid prohibited contour overlap.

⁵² For purposes of the reclassification procedure, available alternative frequencies are limited to frequencies upon which the proposed service could operate at the specified antenna location in full compliance with the distance separation requirements of 47 C.F.R. § 73.207, without any other changes to the FM Table of Allotments.

authorization the triggering application seeks to modify. If the staff concludes that a triggering application is acceptable for filing, the staff will notify the affected licensee of the proposed reclassification by issuing an order to show cause via certified mail, return receipt requested.⁵³ The order to show cause will provide the licensee 30 days to express in writing an intention to seek authority to upgrade the subject station's technical facilities to preserve Class C status, or to otherwise challenge the proposed action. If no such intention is expressed and the proposed action is not challenged, the staff will reclassify the subject station as a Class C0 station, and complete its processing of the triggering application.⁵⁴ If an intention to modify is expressed, an additional 180-day period will be provided during which the Class C station licensee must file an acceptable construction permit application to increase the station's antenna HAAT above 450 meters.⁵⁵ The current three-year construction period will be applicable to Class C stations that obtain permits under this procedure. Upon grant of such a construction permit application, the triggering application will be dismissed. If the construction is not completed as authorized, the subject Class C station will be reclassified automatically as a Class C0 station, and the triggering applicant will be free to refile.⁵⁶

27. Stations seeking to upgrade to Class C0 status will be able to do so in accordance with the Commission's existing policies.⁵⁷ Class C stations subject to reclassification may elect to be downgraded as part of a package of related, contingent facility modification applications filed under the contingent application rule.⁵⁸ Vacant Class C allotments will not be subject to reclassification. Consistent with our existing procedures, however, if a construction permit application is filed for a vacant Class C allotment

⁵³ See 47 U.S.C. § 316; 47 C.F.R. § 1.87.

⁵⁴ Reclassification of Class C stations to Class C0 will be followed by amendment of the FM Table of Allotments. Such amendments will be treated as minor and non-controversial as they simply reflect authorized station operations. Thus, there is good cause for proceeding without notice and comment and for making the rule change effective upon publication in the Federal Register. See 5 U.S.C. § 553(b)(B)(d); see also *Amendment of the Commission's Rules to Permit FM Channel and Class Modifications by Application, Report and Order* in MM Docket No. 92-159, 8 FCC Rcd 4735, 4737 n. 18 (1993) (amendments to the FM Table of Allotments to reflect one-step upgrades in class treated as minor and non-controversial).

⁵⁵ Pursuant to the Commission's processing procedures for commercial FM broadcast applications, construction permit applicants will be given one opportunity to correct any acceptability defects. See 47 C.F.R. § 73.3564(a); *Amendment of Part 73 of the Commission's Rules to Modify Processing Procedures for Commercial FM Broadcast Applications, Report and Order* in MM Docket No. 91-347 (1992).

⁵⁶ We recognize that, under the Commission's first-come, first-served filing procedures, triggering applicants may lose priority rights to spectrum made available by automatic reclassification as a result of dismissal of their applications. Nevertheless, we believe that this procedure is necessary in order to prevent a backlog of triggering proposals that must be protected yet cannot be granted unless a Class C station fails to carry out authorized facility upgrades.

⁵⁷ Until the relevant international agreements can be modified to reflect the new Class C0, Class C0 station allotments and assignments in the Canadian and Mexican border areas will be treated as Class C for the purpose of complying with such agreements.

⁵⁸ 47 C.F.R. § 73.3517; see *First Report and Order* in MM Docket No. 98-93, FCC 99-55 at ¶¶ 11-18 (amending the contingent application rule to permit commercial FM broadcasters to undertake certain mutual facility modifications without being subject to competing applications).

proposing Class C0 station facilities, *i.e.*, antenna HAAT between 300 and 450 meters, then the station will be automatically downgraded to Class C0.

28. The reclassification procedure also may be initiated through the filing of an original rule making petition to amend the FM Table of Allotments. In such cases, the Commission will notify the affected Class C station licensee of the proposed reclassification by issuing a notice of proposed rule making in accordance with the Commission's rules.⁵⁹ However, where a triggering petition proposes an amendment or amendments to the FM Table of Allotments in addition to the proposed reclassification, such as a channel substitution, the staff will issue an order to show cause as described *supra*, and a notice of proposed rule making will be issued only after the reclassification issue is resolved. We believe that this procedure is necessary to avoid disrupting the efficient and orderly processing of petitions for rule making and imposing unnecessary burdens on the parties to such proceedings. For the same reasons, reclassification may be initiated only through an original petition for rule making to amend the FM Table of Allotments, and not through comments or counterproposals. Furthermore, to prevent a backlog of petitions contingent on matters in addition to reclassification, such petitions will be dismissed upon the filing, rather than the grant, of an acceptable construction permit application by the subject Class C station.

29. We shall amend Section 73.3584 to permit the filing of a petition to deny a reclassification application in connection with the staff's issuance of an order to show cause.⁶⁰ Arguments opposing reclassification because the station provides useful extended service beyond its actual primary contour or because of obstacles to upgrading facilities will not be deemed to raise a substantial and material question of fact warranting hearing. Our above-stated findings establish that reclassification serves the public interest where there is a specific demand for spectrum and the Class C station licensee does not intend to upgrade. Affected Class C station licensees may successfully challenge reclassification by demonstrating that the triggering application violates the Commission's technical rules or that there is another frequency available for the proposed new or improved service. We do not believe that the costs entailed in the potential downgrade of an existing Class C station are warranted where an alternative frequency is available for the proposed service. As indicated above, available alternative frequencies are limited to frequencies upon which the proposed service could operate at its specified antenna location in full compliance with the distance separation requirements of Section 73.207, without any other changes to the FM Table of Allotments.⁶¹ Petitioners may not rely on frequencies that are available only as a result of the lesser spacing requirements of Section 73.215.⁶² Although triggering applicants may seek authorizations under Section 73.215, we do not believe that they should be forced to accept a Section 73.215 condition on their authorizations and the more limited interference protection afforded such stations.⁶³ In addition, an "alternative" site showing must use the triggering applicant's specified site. Given the complicated nature of site selection, we do not believe that the Commission should be engaged in determining whether an alternative site is available and feasible for a proposed service. Therefore, a challenge to a proposed

⁵⁹ 47 C.F.R. §§ 1.87(b), 1.411, *et seq.* (Rule Making Proceedings).

⁶⁰ 47 C.F.R. § 73.3584 (Procedure for filing petitions to deny); *see* 47 U.S.C. § 309(d); 47 C.F.R. § 1.87(d).

⁶¹ 47 C.F.R. § 73.207; *see supra*, n. 66.

⁶² 47 C.F.R. § 73.215.

⁶³ *Id.* at § 73.215(b)(2)(iv).

reclassification on the ground that another site is available at which the proposed service could be provided at full Class C spacing will not be deemed to raise a substantial and material question of fact warranting hearing.

30. Under this tailored approach, opportunities for new FM service and for substantial service improvements by existing stations will be facilitated without the disruption entailed in a blanket downgrade of Class C FM stations. Affected Class C stations will have a reasonable opportunity to preserve Class C status by upgrading facilities, but need not engage in expensive tower modification or relocation efforts in the absence of specific, *bona fide* demand for the spectrum that reclassification would make available. Because the procedures we are adopting hinge on the simple filing of construction permit applications or rule making petitions by interested parties, substantial staff resources will not be required to administer it. Furthermore, new and improved FM service may be made available to the public in a more expeditious manner than under the original C0 proposal, which involved a universal and inflexible three-year transition period. A station will be downgraded automatically after 30 days if it does not express an intention to upgrade facilities or otherwise challenge a proposed reclassification, and after 180 days if it fails to file an acceptable construction permit application. In addition, no wait will be necessary if interested parties can reach agreement on the reclassification of a Class C station to Class C0 status, in which case the licensees may seek authority for coordinated station modifications under our recently-modified contingent application rule.

31. A number of commentators argue variously that the originally proposed three-year transition period is too short, too long, or that exceptions should be granted under some circumstances. As set forth above, under the modified approach we are adopting, Class C stations subject to reclassification will have at least 30 days to determine whether to seek authority to upgrade, and an additional 180 days to file an acceptable construction permit application. The Commission recently lengthened the authorized time period for construction of radio facilities from 18 months to three years, eliminated the practice of providing additional construction time after a permit has been modified or assigned, and imposed strict criteria for tolling the new extended construction period.⁶⁴ Application of these policies will provide affected Class C station licensees an additional, unencumbered three years to complete construction of upgraded facilities once their permit application is granted. Based on our review of the record in this proceeding, we find no reason for departure from these policies in the context of these reclassification procedures. They will provide affected Class C stations with a reasonable opportunity to preserve their Class C status, while ensuring that new and improved FM service may be brought to the public as expeditiously as possible.⁶⁵

⁶⁴ 1998 Biennial Regulatory Review—Streamlining of Mass Media Applications, Rules, and Processes, Report and Order in MM Docket No. 98-43, FCC 98-281 (released November 25, 1998), at ¶ 83-89 (reconsideration petitions filed).

⁶⁵ Two commentators supported, and four opposed, the creation of a “temporary buffer zone” to protect the ability of affected Class C stations to upgrade facilities during the originally-proposed three-year transition period. Notice, 13 FCC Rcd at 14869; see Docket 80-90 MO&O, 97 FCC 2d at 283-85. We are inclined to agree with Graham Brock, DLR and Reynolds (in reply comments) that such a measure, adopted by the Commission in the Docket 80-90 proceeding, would not be necessary now due to the flexibility afforded by Section 73.215 of the Commission’s rules, which went into effect in 1989. See 47 C.F.R. § 73.215 (Contour protection for short-spaced assignments). In any event, we do not believe that such a measure would be appropriate under the tailored reclassification procedure we are adopting.

32. In this regard, we are mindful of the potential for abuse of our general broadcast construction policies in the context of this reclassification procedure. Although an affected Class C station must file an acceptable construction permit application within 180 days of expressing an intent to modify facilities, the three-year construction period will not commence until grant of the application, which requires a valid FAA determination that the proposed antenna structure poses “no hazard” to air navigation.⁶⁶ Whereas most permit applicants have an incentive to obtain FAA approval as quickly as possible in order to commence the authorized construction period, a Class C station subject to reclassification may wish to delay obtaining such approval, thereby increasing the period of time a triggering applicant ultimately must wait for a Class C0 spacing. We caution Class C station licensees against such tactics. We believe that the current staff practice of regularly monitoring the status of pending construction permit applications will be sufficient to guard against dilatory prosecution of applications. Furthermore, just as copies of triggering applications, petitions and related pleadings must be served on the licensee whose authorization may be modified,⁶⁷ we will require that Class C station licensees serve on triggering applicants or petitioners copies of any FAA submissions related to the construction permit application process. Class C station licensees subject to reclassification that fail to prosecute construction permit applications by foot dragging in the FAA approval process will be subject to dismissal of their applications.⁶⁸

33. Finally, we address two suggested modifications to the original C0 proposal made by commentators. First, KNXR and Karl D. Lahm, P.E. (in reply comments) proposed that we allow stations to retain Class C status by increasing power to attain equivalence with Class C stations operating with minimum facilities of 451 meters HAAT and 100 kW. We reject this alternative based on the Commission’s reasoning in the Docket 80-90 proceeding. As we noted there, “an increase in power increases interference more than it does service. Therefore, we should obviously encourage improvement in service through greater antenna height rather than greater power[.]”⁶⁹ In addition, *Hatfield & Dawson* proposed that affected Class C stations in mountainous areas be allowed to retain Class C status where their antennas operate at more than 450 meters HAAT on at least four of the eight terrain radials required to compute antenna HAAT, pointing out that in such areas terrain may be substantially more elevated in certain directions than in others.⁷⁰ We decline to adopt this proposal. Section 73.313(d) of the Commission’s rules provides for the exclusion of terrain radials or portions thereof from antenna HAAT computation only where the radials extend over large bodies of water or foreign territories.⁷¹ In the “Denver cases,” the Mass Media Bureau waived this rule to allow radials extending primarily over the Rocky Mountains to be excluded for the sole purpose of calculating HAAT, based on showings that the

⁶⁶ 47 C.F.R. § 17.4.

⁶⁷ See *supra*, ¶ 43.

⁶⁸ See 47 C.F.R. § 73.3568(b).

⁶⁹ *Docket 80-90 R&O*, 94 FCC 2d at 177 (citations omitted); see also *Crain Broadcasting, Inc.*, 8 FCC Rcd 4406, 4407 (1993) (“the Commission historically has refused to authorize excessive power levels in order to compensate for insufficient antenna heights.”).

⁷⁰ See 47 C.F.R. § 73.313(d).

⁷¹ *Id.* at § 73.313(d)(2).

radials would improperly skew the antenna HAAT value of the stations in question.⁷² These waivers enabled the stations in question to avoid reclassification pursuant to the Docket 80-90 proceeding. The staff will give careful consideration to any requests for waiver of Section 73.313(d) submitted by Class C stations subject to reclassification that are located in mountainous areas, on a case-by-case basis.⁷³

D. Streamlined Application Processing Changes

1. Licensed Station Coordinate Corrections by Single Application

34. *Background.* Under our present rules, a broadcast station seeking to correct coordinates must complete a two-step process, first by filing an application to modify its outstanding authorization, and second, after grant of the construction permit application, an application for license to cover the permit.⁷⁴ In the *Notice* we proposed, pursuant to Section 319(d) of the Communications Act,⁷⁵ to revise our rules to allow licensees to correct coordinates of a broadcast facility via a single license application in instances where no other licensed parameters are changed.⁷⁶ We tentatively concluded that applicants could use this procedure where the correction would be less than three seconds latitude and three seconds longitude, provided the applicant has obtained FAA clearance and antenna structure registration. Under this proposal, a public notice would be issued announcing receipt of a qualifying minor change application and its processing as a routine minor change application.

35. Parties commenting on this proposal had no objections, but most made comments or suggestions regarding coordinate corrections that would result in short spacings under Section 73.207 of the Commission's rule.⁷⁷ For instance, WVRC states that where coordinate corrections result in a new short spacing, the Commission must determine whether to "grandfather" the station and make the appropriate change in the engineering database. Radio Property Ventures, however, "assumes" that where a one-second change would create a short spacing, the Commission would waive Section 73.207 and grandfather the short spacing. AFCCE recommends that, if a facility becomes short spaced as a result of

⁷² See *Crain Broadcasting, Inc.*, 8 FCC Rcd at 4407, n. 4 and accompanying text (citing *Letter to Ramsey L. Woodworth, Esq. and to John Wells King, Esq.*, Reference No. 8920-MA (Chief, Audio Services Div., January 14, 1986), and *Letter to Malrite Radio & Television, Inc.*, Reference No. 8920-AED (Chief, Audio Services Div., June 11, 1987)). For example, in the *Ramsey L. Woodworth* letter decision, involving Denver stations KOSI(FM) and KPKE(FM), the stations effectively operated with maximum Class C facilities to the east, where the terrain was flat and where the vast majority of their service populations resided. However, the calculated value of the stations' antenna HAATs based on all eight terrain radials was less than 300 meters because of the Rocky Mountains rising abruptly to the west. Increasing the stations' antenna HAAT value would have required contour protection of the nearby Table Mountain Receiving Zone in Boulder County and was likely to degrade overall service to the public.

⁷³ Such requests would be appropriately submitted in response to a Commission order to show cause. See *supra*, ¶ 43.

⁷⁴ See 47 C.F.R. §§ 73.1690(b)(2), 73.3536.

⁷⁵ 47 U.S.C. § 319(d).

⁷⁶ See *Notice*, 13 FCC Rcd at 14872-73.

⁷⁷ 47 C.F.R. § 73.207; see Comments of AFCCE, CTI, Radio Property Ventures and WVRC.

the correction, the facility file a FCC Form 301 (application for construction permit for a commercial broadcast station) accompanied by an exhibit addressing the short spacing issue.

36. *Discussion.* After careful consideration of the comments filed in this proceeding, we shall adopt without modification the one-step licensing proposal set forth in the *Notice*. We will not grant automatic waivers of Section 73.207 and “grandfather” short-spacings resulting from coordinate corrections. Rather, where a coordinate correction creates a short spacing or aggravates an existing short spacing, the station must follow the regular two-step application process.⁷⁸ Although a corrected tower location may involve a *de minimis* short-spacing, such a proposal may raise technical or international treaty issues more appropriately considered in the context of an application for construction permit. Therefore, only coordinate corrections that do not result in short-spacings or aggravate existing short-spacings may use this streamlined procedure. License applications proposing short-spacings will be dismissed.

2. FM Translator and Booster Station Power Reductions by Single Application

37. *Background.* Under our current rules, an FM translator or booster station seeking authorization to operate at reduced effective radiated power (“ERP”) must go through a two-step process of filing a construction permit application and, second, an application for license to cover the modified facilities.⁷⁹ Many translator and booster stations are currently operating at a power less than that specified in their license and must complete this two-step process to bring the station operations into compliance with the Commission’s rules. In the *Notice* we proposed, pursuant to the 1996 amendment of Section 319 of the Communications Act of 1934, to permit FM translator and booster licensees to obtain authorizations specifying lower ERPs by single application.⁸⁰ Initial construction permit applications are reviewed for compliance with international agreements, and minimum protection requirements for radio and TV Channel 6 stations. A decrease in power will not require further review of these issues. We sought comment on this proposal and on whether the Commission has the authority to implement a one-step process under Section 319(f) of the Telecommunications Act of 1996.⁸¹

38. *Discussion.* Although several commentators supported proposals to streamline application processing in general, none commented on this specific proposal or questioned our authority under the Act to waive construction permit requirements.⁸² We shall adopt our proposal as set forth in the *Notice*. We shall revise our rules to expand one-step-licensing procedures to allow FM translator and booster stations to decrease power only by filing a license application.

E. Relaxed NCE FM and FM Translator Technical Requirements

⁷⁸ Where coordinate corrections would result in a rule violation, we expect the licensee to take prompt remedial action to bring its station into compliance with the Commission’s rules.

⁷⁹ See 47 C.F.R. §§ 73.1690(b)(2), 73.3536.

⁸⁰ 47 U.S.C. § 319(d), as amended. Section 319(d) was modified to eliminate the prohibition against waiving the permit requirements for applicants to make minor changes to broadcast facilities.

⁸¹ 47 U.S.C. § 319(f).

⁸² See Comments of AFCCE, Graham Brock, Hardy & Carey, NPR, Sound of Life and V-Soft.

1. Second-Adjacent Channel Interference Ratios for Predicting Prohibited Overlap in the Reserved Band

39. We proposed in the *Notice* to conform commercial and NCE FM interference standards by modifying Sections 73.509 and 74.1204(a) of the Commission's rules to specify a 100 dBu interfering contour for second-adjacent channel NCE FM and FM translator stations.⁸³ Commercial and NCE FM interference standards are derived from a common methodology.⁸⁴ Despite this, second-adjacent channel protection requirements use a 100 dBu interfering contour in the non-reserved band and an 80 dBu interfering contour in the reserved band. We stated in the *Notice* that, based on our experience, the commercial FM 100 dBu standard is a better gauge of potential second-adjacent channel interference than the 80 dBu standard, and that we were aware of no reason for continuing to impose more stringent standards on NCE FM and FM translator stations.⁸⁵ We also observed that adoption of a less preclusive 100 dBu standard would create opportunities for NCE FM and FM translator stations to increase power and coverage, and provide them with greater site selection flexibility.⁸⁶

40. The eight commentators that responded specifically to this proposal unanimously support it.⁸⁷ After careful consideration of the comments filed in this proceeding, we conclude that adoption of 100 dBu second-adjacent channel interference standard for NCE FM and FM translator stations is warranted. Accordingly, Section 73.509 and 74.1204(a) of the Commission's rules shall be modified to specify a 100 dBu interfering contour for second-adjacent channel NCE FM and FM translator stations.⁸⁸ As proposed in the *Notice*, 97 and 94 dBu interfering contours will be specified for second-adjacent channel FM translator stations protecting non-reserved band Class B1 and B stations, respectively.⁸⁹

2. Minimum Community of License Coverage

⁸³ *Notice*, 13 FCC Rcd at 14875.

⁸⁴ Commercial FM stations are required to meet minimum distance separation requirements generally derived by computing predicted interfering and protected service contours of stations operating at class maximums. *See* 47 C.F.R. §§ 73.207, 73.213, 73.215. Rather than spacing requirements, NCE FM and FM translator stations are governed by restrictions on overlap of predicted interfering and protected contours, which are calculated based on actual station facilities. *See id.* at §§ 73.509, 74.1204(a). In each case, the same method is used to predict interfering and protected contours.

⁸⁵ *See Notice*, 13 FCC Rcd at 14875.

⁸⁶ *Id.*

⁸⁷ *See* Comments and Reply Comments of AFCCE, CTI, DLR, Graham Brock, Hardy & Carey, NPR, Press and V-Soft. V-Soft suggested that we “confirm the impact on NCE broadcasters of new second adjacent interference [standards] through the application of a scientific study using an appropriate sampling of modern receivers.” V-Soft comments at 7. In light of our longstanding experience with the 100 dBu standard in commercial FM station licensing, we are not persuaded of the need for further study of the instant proposal's likely effect on NCE FM stations.

⁸⁸ 47 C.F.R. §§ 73.509, 74.1204(a).

⁸⁹ *See Notice*, 13 FCC Rcd at 14875 n. 103. The *Notice* erroneously referred to second-adjacent channel FM translator stations protecting Class B1 and B stations in the “reserved band,” rather than the non-reserved band.

41. *Background.* Unlike their commercial counterparts, NCE FM stations are not required under our rules to provide a minimum field strength signal over their principal community.⁹⁰ In the *Notice*, we proposed to revise our rules to delete the Note in Section 73.315(a) and require each NCE FM station to provide 60 dBu (1 mV/m) service to at least a portion of its community of license.⁹¹ We requested comment on minimum population and coverage area requirements. This proposal reflects our determination that a radio station cannot adequately serve its community of license unless it places a listenable and protected signal over at least a portion of such community. With one exception, commentators supported the proposal to require NCE FM stations to cover a portion of its community of license. However, none of the comments suggested any specific population or coverage minimum. NPR states that any required portion of coverage should be based on site options, target audience and “other relevant” factors. Hardy & Carey comments there was no reason to establish a new, more restrictive rule.

42. *Discussion.* After careful consideration of the comments filed in this proceeding, we conclude that the public interest would be served by adopting the proposal as set forth in the *Notice*. We disagree with Hardy & Carey because public interest concerns are raised when no portion of a community of license is covered by an NCE FM station’s service contour. Accordingly, we shall delete the Section 73.315 Note. We shall also revise the rules to require NCE FM stations operating on reserved channels to provide a predicted 60 dBu signal to at least 50 percent of its community of license or reach 50 percent of the population within the community. We have chosen to measure an NCE FM station’s service to its community of license on the basis of 60 dBu signal strength for several reasons. First, a substantial portion of the population located within this contour is more likely to receive a listenable signal. Second, the Commission’s technical rules protect all NCE FM stations to their 60 dBu contour. Thus, this rule will help ensure that at least half of the community receives protected service on a permanent basis. Further, we recognize that many NCE FM stations operate at lower power levels and may not be able to comply with the 70 dBu commercial FM station principal community coverage requirement. As suggested by NPR, this 60 dBu coverage standard should ensure sufficient flexibility in siting facilities and reaching target audiences. We believe this modification balances the Commission’s mandate under Section 307(b) of the Act with the service, technical, and financial realities of operating NCE FM stations.⁹²

43. We proposed in the *Notice* to apply the new rule only to applications filed after the effective date of the new rule. On further reflection, however, we now believe that licensing of NCE FM stations that do not meet this coverage minimum is contrary to the public interest. Accordingly, the coverage requirements set forth herein will apply to all applications pending as of the release date of this *Order* or filed thereafter. Applicants will be permitted to file curative amendments within thirty days of the *Order*’s effective date to bring their applications into compliance with the new rules.

3. Revisions to Class D Rules

44. Low power NCE FM Class D stations are currently required to file applications to migrate to the non-reserved band or channel 200 as part of the license renewal process. We proposed in the *Notice* to

⁹⁰ 47 C.F.R. § 73.315(a), Note a.

⁹¹ See *Notice*, 13 FCC Rcd at 14876.

⁹² 47 U.S.C. § 307(b).

replace this requirement with a more flexible approach based on the availability of interference-free channels. We also sought comment on eliminating the 10 watt maximum TPO restriction, and proposed instead to permit Class D stations to operate with power levels that limit predicted 60 dBu contour distances to five kilometers.⁹³ Most of the comments on these issues supported efforts to simplify and expedite Class D station licensing and renewal procedures.⁹⁴ Notwithstanding the *Notice's* explicit statement that these proposals solely concerned the approximately 135 currently licensed Class D stations, several commentators, including NAB, opposed changes to such stations' technical and interference characteristics based on the concern that such changes "might be used as a blue print for low power FM."⁹⁵ We reiterate that our limited objectives in proposing Class D rule changes are to preserve a valuable and longstanding service, consistent with our interest in efficient spectrum management, and to streamline Class D renewal and licensing procedures. Importantly, the *Notice* proposed no change to the Commission's permanent freeze policy regarding new Class D station applications.⁹⁶

45. After the close of the public comment period in this docket the Commission initiated a proceeding to establish a new low power FM (LPFM) broadcast service.⁹⁷ We believe that the new LPFM service may create new facility options for a number of Class D stations. However, the LPFM proceeding is not yet final. Thus, we cannot with certainty assess the practical impact of LPFM licensing opportunities for Class D stations. Accordingly, we conclude that deferral of the instant Class D proposals until the LPFM proceeding is final is warranted.

IV. ADMINISTRATIVE MATTERS

46. *Paperwork Reduction Act of 1995 Analysis.* The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act.

47. The Commission has determined that the rules adopted in this *Second Report and Order* will not have a significant economic impact on a substantial number of small entities. Therefore, the Commission has attached a copy of the Final Certification to this *Second Report and Order* as Appendix A.

⁹³ See *Notice* at 14876-80.

⁹⁴ See Comments and Reply Comments of CTI, Thomas Desmond, DLR, EIC, Fuller-Jeffrey, Hardy & Carey, Hatfield & Dawson, Mullaney, NAB, NPR, Northeastern University, Press, V-Soft and Washington University. Of the fourteen commentators, only Fuller-Jeffrey and Hardy & Carey opposed the overall proposal.

⁹⁵ Comments of NAB at 35.

⁹⁶ See *Notice* at 14876 n. 109.

⁹⁷ See *Notice of Proposed Rule Making*, MM Docket No. 99-25, 14 FCC Rcd 2471 (1999).

48. Accordingly, IT IS ORDERED, that pursuant to the authority contained in Sections 4(i), 4(j), 303, 308 and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 4(i), 4(j), 303, 308 and 309, the Commission's rules ARE AMENDED as set forth in Appendix D.

49. IT IS FURTHER ORDERED, that the rule amendments set forth in Appendix D WILL BECOME EFFECTIVE 30 days after their publication in the *Federal Register*, and the information collection contained in these rules will become effective 30 days after publication in the *Federal Register*, following Office of Management and Budget approval, unless a notice is published in the *Federal Register* stating otherwise.

50. IT IS FURTHER ORDERED, that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *Second Report and Order*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

Appendix A
FINAL REGULATORY FLEXIBILITY CERTIFICATION

The Regulatory Flexibility Act of 1980, as amended (RFA)⁹⁸ requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."⁹⁹ The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹⁰⁰ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹⁰¹ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹⁰²

In this *Second Report and Order*, the Commission continues its wide-ranging radio technical streamlining initiative. The *Order* amends the commercial FM station spacing table for short-spaced assignments, 47 C.F.R. § 73.215(e), to provide all stations with minimum relief of six kilometers from basic spacing requirements, 47 C.F.R. § 73.207, with respect to second and third adjacent channel stations. (See Section III.B.1.) The *Order* also provides special spacing relief for FM commercial stations in Puerto Rico and the Virgin Islands that operate at greater than class maximums. (See Section III.B.2.) These changes will give certain existing stations, including small entities, additional flexibility in the siting of their technical facilities and may facilitate station relocations to preferred sites. These rule changes impose no costs or reporting burdens on existing stations. Although impossible to predict, the Commission anticipates approximately 20 – 30 stations per year of the more than 5,000 existing commercial FM stations will take advantage of these changes and file applications to improve their technical facilities.

The *Order* divides the current FM Class C into two separate classes based on antenna height. (See Section III.C.) The Commission rejected an across-the-board downgrading of existing Class C stations that do not meet the new minimum antenna height. Instead, it adopted a procedure for limited downgrading only where there is a competing demand for the radio spectrum and the Class C station fails to modify its facilities to the new Class C minimum antenna height. This modification of the rule imposes no cost or

⁹⁸ The RFA, see 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

⁹⁹ 5 U.S.C. § 605(b).

¹⁰⁰ 5 U.S.C. § 601(6).

¹⁰¹ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 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 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."

¹⁰² Small Business Act, 15 U.S.C. § 632.

reporting burden on existing stations. Although impossible to predict, the Commission anticipates that not more than 10 stations per year will seek facility changes that require the downgrading of one of the approximately 500 Class C stations operating with antenna heights below the new class minimum.

The *Order* expands the types of facility changes covered by the Mass Media Bureau's expedited one-step licensing procedure to include radio tower coordinate corrections of less than three degrees and FM translator and booster power reduction proposals. (*See* Section III.D.1 and 2.) These rule changes impose no cost or reporting burdens on existing stations. Although impossible to predict, the Commission anticipates that approximately 40 radio broadcast stations – out of approximately 12,600 radio stations and 4,000 FM translator stations will benefit from the expansion of the one-step licensing procedure.

Finally, the *Order* gives additional facility siting flexibility to noncommercial educational (NCE) FM stations by modifying the second-adjacent channel interference standard to more closely conform to the less restrictive commercial FM standard. (*See* Section III.E.1.) It also establishes, on a going forward basis, an NCE principal community coverage standard. These rule changes impose no cost or reporting burdens on existing stations. The change in the second adjacent channel interference protection standard will give certain NCE stations additional flexibility in locating their technical facilities. Although impossible to predict, the Commission anticipates that it will receive approximately 10-20 facility modification applications, from a total of over 2,500 NCE FM stations that take advantage of this increased technical flexibility. The establishment of an NCE FM community of license signal coverage requirement may restrict siting options for certain stations. Although impossible to predict, the Commission anticipates that this new requirement will impact fewer than five stations per year.

In sum, the changes we are adopting are small and will generally have minor but positive effects on radio licensees, including small entities, that can take advantage of these streamlining rule changes. In addition, the number of small entities affected by these modifications is not substantial. As noted above, there is no economic effect on the vast majority of radio stations as a result of most of the rule changes adopted by the Commission in this *Order*. Only two changes could have an adverse economic effect on radio stations: the costs associated with a facility modification to preserve full Class C status; and the potential costs associated with restricting the location of NCE FM station technical facilities to those sites that would ensure adequate signal coverage of the station's community of license. As stated above, however, none of these potential economic impacts are expected to be significant.

Therefore, we certify that the requirements of this *Second Report and Order* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *Second Report and Order*, including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.¹⁰³ In addition, the *Second Report and Order* and this certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.¹⁰⁴

¹⁰³ *See* 5 U.S.C. § 801(a)(1)(A).

¹⁰⁴ *See* 5 U.S.C. § 605(b).

APPENDIX B

LIST OF COMMENTS AND REPLY COMMENTS

Comments:

Association of Federal Communications Consulting Engineers
Big River Broadcasting Corporation
Central Virginia Educational Telecommunications Corporation
Communications Technologies, Inc.
Cosmopolitan Enterprises of Victoria, Inc.
Cumulus Media, Inc.
Delmarva Broadcasting Company
Thomas Desmond
du Treil Lundin & Rackley, Inc.
East Arkansas Broadcasters, Inc.
Educational Information Corporation
Fuller-Jeffrey Broadcasting Companies, Inc.
Graham Brock, Inc.
Greater Media Radio Co.
Greenup County Broadcasting, Inc.
Hardy & Carey, L.L.P.
Richard L. Harvey
Hatfield & Dawson Consulting Engineers, LLC
Heritage Communications, Inc.
Hometown Broadcasting Company, Inc.
Hometown Radio Corporation
Jim Lawson Communications, Inc.
Mullaney Engineering, Inc.
National Association of Broadcasters
National Public Radio, Inc.
Northeastern University
Northwestern College
Piedmont Broadcasting Corporation
Press Communications, LLC
Radio Property Ventures
Redwood Empire Stereocasters
Reynolds Technical Associates
The Rutherford Group, Inc.
Silverado Broadcasting Company
Sound of Life, Inc.
South Central Communications Corporation
Student Educational Broadcasting, Inc.
Robert G. Thomas, General Manager, KEXL(FM), Norfolk, Nebraska
Thunderbolt Broadcasting Company
Tuned In Broadcasting, Inc.

United Audio Corporation
V-Soft Communications
Carlos J. Colon Ventura
WCPE (Deborah S. Proctor, General Manager)
WGUL-FM, Inc.
Bart Walker
Weigle Broadcasting Corporation
West Virginia Radio Corporation

Reply Comments:

American Community Oriented Radio Network
Big City Radio, Inc.
Communications Technologies, Inc.
Creative Educational Media Corporation, Inc.
Delmarva Broadcasting Company
du Treil, Lundin & Rackley, Inc.
Educational Information Corporation
Greater Media Radio Co.
Hampton Roads Educational Telecommunications Association, Inc.
Charles E. Harder
Heritage Communications, Inc.
Karl D. Lahm, P.E.
National Association of Broadcasters
National Public Radio, Inc.
Northeastern University
Press Communications, LLC
Reynolds Technical Associates
D. Michael Self Broadcasting, Inc.
Thunderbolt Broadcasting Company
Carlos J. Colon Ventura
The Washington University
Wine Country Radio

APPENDIX C

NEW CLASS C0 FM MINIMUM DISTANCE SEPARATION REQUIREMENTS

47 C.F.R. § 73.207 C0 minimum distance separation requirements, in kilometers (miles)

Relation	Co-channel	200 kHz	400/600 kHz	10.6/10.8 MHz
A to C0	215 (134)	152 (94)	86 (53)	25 (16)
B1 to C0	248 (154)	180 (112)	87 (54)	27 (17)
B to C0	272 (169)	214 (133)	89 (55)	31 (19)
C3 to C0	226 (140)	163 (101)	87 (54)	27 (17)
C2 to C0	239 (148)	176 (109)	89 (55)	31 (19)
C1 to C0	259 (161)	196 (122)	94 (58)	37 (23)
C0 to C0	270 (168)	207 (129)	96 (60)	41 (25)
C to C0	281 (175)	220 (137)	105 (65)	45 (28)

APPENDIX D

I. Part 1 of Title 47 of the United States Code of Federal Regulations is amended as follows:

Section 1.420 is amended by changing Note 2 to subsection (h) to Note 3 and adding Note 2 to subsection (g) to read as follows:

Note 2: The reclassification of a Class C station in accordance with the procedure set forth in Note 4 to Section 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 Section 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.

II. Part 73 of Title 47 of the United States Code of Federal Regulations is amended as follows:

Section 73.207 is amended by revising Table A of subsection (b) to read as follows:

(b) * * * * *

Table A--Minimum Distance Separation Requirements In Kilometers (Miles)

Relation	Co-channel	200 kHz	400/600 kHz	10.6/10.8 MHz
A to A.....	115 (71)	72 (45)	31 (19)	10 (6)
A to B1.....	143 (89)	96 (60)	48 (30)	12 (7)
A to B.....	178 (111)	113 (70)	69 (43)	15 (9)
A to C3.....	142 (88)	89 (55)	42 (26)	12 (7)
A to C2.....	166 (103)	106 (66)	55 (34)	15 (9)
A to C1.....	200 (124)	133 (83)	75 (47)	22 (14)
A to C0.....	215 (134)	152 (94)	86 (53)	25 (16)
A to C.....	226 (140)	165 (103)	95 (59)	29 (18)
B1 to B1.....	175 (109)	114 (71)	50 (31)	14 (9)
B1 to B.....	211 (131)	145 (90)	71 (44)	17 (11)
B1 to C3.....	175 (109)	114 (71)	50 (31)	14 (9)
B1 to C2.....	200 (124)	134 (83)	56 (35)	17 (11)
B1 to C1.....	233 (145)	161 (100)	77 (48)	24 (15)
B1 to C0.....	248 (154)	180 (112)	87 (54)	27 (17)
B1 to C.....	259 (161)	193 (120)	105 (65)	31 (19)

B to B.....	241 (150)	169 (105)	74 (46)	20 (12)
B to C3.....	211 (131)	145 (90)	71 (44)	17 (11)
B to C2.....	241 (150)	169 (105)	74 (46)	20 (12)
B to C1.....	270 (168)	195 (121)	79 (49)	27 (17)
B to C0.....	272 (169)	214 (133)	89 (55)	31 (19)
B to C.....	274 (170)	217 (135)	105 (65)	35 (22)
C3 to C3.....	153 (95)	99 (62)	43 (27)	14 (9)
C3 to C2.....	177 (110)	117 (73)	56 (35)	17 (11)
C3 to C1.....	211 (131)	144 (90)	76 (47)	24 (15)
C3 to C0.....	226 (140)	163 (101)	87 (54)	27 (17)
C3 to C.....	237 (147)	176 (109)	96 (60)	31 (19)
C2 to C2.....	190 (118)	130 (81)	58 (36)	20 (12)
C2 to C1.....	224 (139)	158 (98)	79 (49)	27 (17)
C2 to C0.....	239 (148)	176 (109)	89 (55)	31 (19)
C2 to C.....	249 (155)	188 (117)	105 (65)	35 (22)
C1 to C1.....	245 (152)	177 (110)	82 (51)	34 (21)
C1 to C0.....	259 (161)	196 (122)	94 (58)	37 (23)
C1 to C.....	270 (168)	209 (130)	105 (65)	41 (25)
C0 to C0.....	270 (168)	207 (129)	96 (60)	41 (25)
C0 to C.....	281 (175)	220 (137)	105 (65)	45 (28)
C to C.....	290 (180)	241 (150)	105 (65)	48 (30)

Section 73.210 is amended by revising subsections (a) and (b)(3) to read as follows:

(a) The rules applicable to a particular station, including minimum and maximum facilities requirements, are determined by its class. Possible class designations depend upon the zone in which the station's transmitter is located, or proposed to be located. The zones are defined in Sec. 73.205. Allotted station classes are indicated in the Table of Allotments, Sec. 73.202. Class A, B1 and B stations may be authorized in Zones I and I-A, Class A, C3, C2, C1, C0 and C stations may be authorized in Zone II.

(b) * * * * *

(3) * * * * *

(iv) If this distance is greater than 72 km and less than or equal to 83 km, the station is Class C0.

(v) If this distance is greater than 83 km and less than or equal to 92 km, the station is Class C.

Section 73.211 is amended by revising subsections (a), (b)(1) and adding subsection (d) as follows:

(a) *Minimum requirements.*

(1) * * * * *

(vii) The minimum ERP for Class C and C0 stations is 100 kW.

(2) Class C0 stations must have an antenna height above average terrain (HAAT) of at least 300 meters (984 feet). Class C stations must have an antenna height above average terrain (HAAT) of at least 451 meters (1480 feet).

(b) *Maximum limits.* (1) Except for stations located in Puerto Rico or the Virgin Islands, the maximum ERP in any direction, reference HAAT, and distance to the class contour for each FM station class are listed below:

Station class	Maximum ERP	Reference HAAT in meters (ft.)	Class contour distance in kilometers
A.....	6kW (7.8 dBk).....	100 (328).....	28
B1.....	25kW (14.0 dBk).....	100 (328).....	39
B.....	50kW (17.0 dBk).....	150 (492).....	52
C3.....	25kW (14.0 dBk).....	100 (328).....	39
C2.....	50kW (17.0 dBk).....	150 (492).....	52
C1.....	100kW (20.0 dBk).....	299 (981).....	72
C0.....	100kW (20.0 dBk).....	450 (1476).....	83
C.....	100kW (20.0 dBk).....	600 (1968).....	92

* * * * *

(d) *Existing Class C stations below minimum antenna HAAT.* Class C stations authorized prior to [the effective date of the Second Report and Order in MM Docket No. 98-93] that do not meet the minimum antenna HAAT specified in paragraph (a)(2) of this section for Class C stations may continue to operate as authorized subject to the reclassification procedures set forth in Note 4 to Section 73.3573.

Section 73.215 is amended by revising subsections (a) and (e) to read as follows:

(a) * * * * *

(4) Protected and interfering contours (in dBu) for stations in Puerto Rico and the U.S. Virgin Islands are as follows:

STATION WITH PROTECTED CONTOUR

STATION WITH INTERFERING CONTOUR	Class A		Class B1		Class B		
	Interfering	Protected	Interfering	Protected	Interfering	Protected	
Co-Channel	Class A	46	66	41	61	40	60
	Class B1	43	63	39	59	38	58
	Class B	45	65	41	61	41	61
1st Adj. Channel	Class A	61	87	56	62	59	65
	Class B1	57	63	54	60	54	60
	Class B	62	68	56	62	57	63
2nd-3rd Adj. Ch.	Class A	107	67	100	60	104	64
	Class B1	99	59	100	60	104	64
	Class B	94	54	94	54	104	64

Maximum permitted facilities assumed for each station pursuant to 47 C.F.R. Section 73.211(b)(3):

- 6 kW ERP/240 meters HAAT – Class A
- 25 kW ERP/150 meters HAAT – Class B1
- 50 kW ERP/472 meters HAAT – Class B

(e) * * * * *

Relation	Co-Channel	200 kHz	400/600 kHz
A to A.....	92 (57)	49 (30)	25 (16)
A to B1.....	119 (74)	72 (45)	42 (26)
A to B.....	143 (89)	96 (60)	63 (39)
A to C3.....	119 (74)	72 (45)	36 (22)
A to C2.....	143 (89)	89 (55)	49 (30)
A to C1.....	178 (111)	111 (69)	69 (43)
A to C0.....	193 (120)	130 (81)	80 (50)
A to C.....	203 (126)	142 (88)	89 (55)
B1 to B1.....	143 (89)	96 (60)	44 (27)
B1 to B.....	178 (111)	114 (71)	65 (40)
B1 to C3.....	143 (89)	96 (60)	44 (27)
B1 to C2.....	175 (109)	114 (71)	50 (31)
B1 to C1.....	200 (124)	134 (83)	71 (44)
B1 to C0.....	215 (134)	153 (95)	81 (50)
B1 to C.....	233 (145)	165 (103)	99 (61)
B to B.....	211 (131)	145 (90)	68 (42)
B to C3.....	178 (111)	114 (70)	65 (40)
B to C2.....	211 (131)	145 (90)	68 (42)

B to C1.....	241 (150)	169 (105)	73 (45)
B to C0.....	266 (165)	195 (121)	83 (52)
B to C.....	268 (163)	195 (121)	99 (61)
C3 to C3.....	142 (88)	89 (55)	37 (23)
C3 to C2.....	166 (103)	106 (66)	50 (31)
C3 to C1.....	200 (124)	133 (83)	70 (43)
C3to C0	215 (134)	152 (94)	81 (50)
C3 to C.....	226 (140)	165 (103)	90 (56)
C2 to C2.....	177 (110)	117 (73)	52 (32)
C2 to C1.....	211 (131)	144 (90)	73 (45)
C2 to C0.....	227 (141)	163 (101)	83 (52)
C2 to C.....	237 (147)	176 (109)	96 (61)
C1 to C1.....	224 (139)	158 (98)	76 (47)
C1 to C0.....	239 (148)	176 (109)	88 (55)
C1 to C.....	249 (155)	188 (117)	99 (61)
C0 to C0	259 (161)	196 (122)	90 (56)
C0 to C	270 (168)	207 (129)	99 (61)
C to C.....	270 (168)	209 (130)	99 (61)

Section 73.315 is amended by deleting the Note.

Section 73.509 is amended by revising subsection (a) to read as follows:

(a) * * * * *

Frequency separation	Contour of proposed station	Contour of other station
Co-channel.....	0.1mV/m (40 dBu)..	1 mV/m (60 dBu).
	1 mV/m (60 dBu)...	0.1 mV/m (40 dBu).
200 kHz.....	0.5 mV/m (54 dBu)..	1 mV/m (60 dBu).
	1 mV/m (60 dBu)...	0.5 mV/m (54 dBu).
400 kHz/600 kHz	100 mV/m (100 dBu)	1 mV/m (60 dBu).
	1 mV/m (60 dBu)...	100 mV/m (100 dBu).

A new Section 73.515 is added as follows:

§ 73.515 NCE FM Transmitter Location

The transmitter location shall be chosen so that, on the basis of effective radiated power and antenna height above average terrain employed, a minimum field strength of 1 mV/m (60 dBu) will be provided over at least 50 percent of its community of license or reach 50 percent of the population within the community.

§73.807 Minimum distance separation between stations, is amended as follows

* * * * *

(a)(1) An LP100 station will not be authorized initially unless the minimum distance separations in the following table are met with respect to authorized FM stations, timely-filed applications for new and existing FM stations, authorized LP100 stations, LP100 station applications that were timely-filed within a previous window, and vacant FM allotments. LP100 stations are not required to protect LP10 stations. LPFM modification applications must either meet the distance separations in the following table or, if short-spaced, not lessen the spacing to subsequently authorized stations.

Station Class Protected by LP100	Co-channel Minimum Separation (km)		First-adjacent Channel Minimum Separation (km)		Second-adjacent Channel Minimum Separation (km)	I.F . Channel minimum separations
	Max. Required	For No Interference Received From Class Facility	Required	For No Interference Received From Max. Class Facility	Required	
LP100	24	24	14	14	None	None
D	24	24	13	13	6	3
A	67	92	56	56	29	6
B1	87	119	74	74	46	9
B	112	143	97	97	67	12
C3	78	119	67	67	40	9
C2	91	143	80	84	53	12
C1	111	178	100	111	73	20
C0	122	193	111	130	84	22
C	130	203	120	142	93	28

(a)(2) * * * * *

(b)(1) An LP10 station will not be authorized unless the minimum distance separations in the following table are met with respect to authorized FM stations, timely-filed applications for new and existing FM stations, vacant FM allotments, or LPFM stations.

Station Class Protected by LP10	Co-channel Minimum Separation (km)		First-adjacent Channel Minimum Separation (km)		Second-adjacent Channel Minimum Separation (km)	I.F . Channel minimum separations 10.6 or 10.8 MHz
	Required	For No Interference Received From Max. Class Facility	Required	For No Interference Received From Max. Class Facility	Required	
LP100	16	22	10	11	None	None
LP10	13	13	8	8	None	None
D	16	21	10	11	6	2
A	59	90	53	53	29	5
B1	77	117	70	70	45	8
B	99	141	91	91	66	11
C3	69	117	64	64	39	8
C2	82	141	77	81	52	11
C1	103	175	97	108	73	18
C0	114	190	99	127	84	21
C	122	201	116	140	92	26

Section 73.1690 is amended by revising subsection (b)(2) and adding subsection (c)(11) as follows:

(b) *****

(2) Any change in station geographic coordinates, including coordinate corrections of more than 3 seconds latitude and/or 3 seconds longitude. FM and TV directional stations must also file a construction permit application for any move of the antenna to another tower structure located at the same coordinates.

(c) *****

(11) Correction of geographic coordinates where the change is less than 3 seconds latitude and 3 seconds longitude provided no there is no physical change in location and no other licensed parameters are changed. The correction of coordinates may not result in any short-spacings or increases in existing short-spacings.

Section 73.3573 is amended by adding Note 4 to read as follows:

NOTE 4: A Class C station operating with antenna height above average terrain (“HAAT”) of less than 451 meters is subject to reclassification as a Class C0 station upon the filing of a triggering application for construction permit that is short-spaced to such a Class C station under Section 73.207 but would be fully spaced to such a station considered as a Class C0 assignment. Triggering applications may utilize Section 73.215. Triggering applications must certify that no alternative channel is available for the proposed service. Available alternative frequencies are limited to frequencies that the proposed service could use at the specified antenna location in full compliance with the distance separation requirements of Section 73.207, without any other changes to the FM Table of Allotments. Copies of a triggering application and related pleadings must be served on the licensee of the affected Class C station. If the staff concludes that a triggering application is acceptable for filing, it will issue an order to show cause why the affected station should not be reclassified as a Class C0 station. The order to show cause will provide the licensee 30 days to express in writing an intention to seek authority to modify the subject station’s technical facilities to minimum Class C HAAT or to otherwise challenge the triggering application. If no such intention is expressed and the triggering application is not challenged, the subject station will be reclassified as a Class C0 station, and processing of the triggering application will be completed. If an intention to modify is expressed, an additional 180-day period will be provided during which the Class C station licensee must file an acceptable construction permit application to increase antenna height to at least 451 meters HAAT. Upon grant of such a construction permit application, the triggering application will be dismissed. Class C station licensees must serve on triggering applicants copies of any FAA submissions related to the application grant process. If the construction is not completed as authorized, the subject Class C station will be reclassified automatically as a Class C0 station. The reclassification procedure also may be initiated through the filing of an original petition for rule making to amend the FM Table of Allotments as set forth in Note 2 to Section 1.420(g).

Section 73.3584 is amended by adding subsection (a)(1) to read as follows:

(a)(1) A party in interest may file a Petition to Deny any application that proposes reclassification of a Class C authorization to Class C0 not later than 30 days after issuance of an order to show cause by the Commission notifying the affected licensee of the proposed reclassification.

III. Part 74 of Title 47 of the United States Code of Federal Regulations is amended as follows:**Section 74.1204 is amended by revising subsection (a) to read as follows:**

(a) * * * * *

(1) Commercial Class B FM Stations (Protected Contour: 0.5 mV/m)

Frequency Separation	Interference contour of proposed translator station	Protected contour of commercial Class B station
Co-channel	0.05 mV/m (34 dBu)	0.5 mV/m (54 dBu)
200 kHz	0.25 mV/m (48 dBu)	0.5 mV/m (54 dBu)
400 kHz/ 600 kHz	50.0 mV/m (94 dBu)	0.5 mV/m (54 dBu)

(2) Commercial Class B1 FM Stations (Protected Contour: 0.7 mV/m)

Frequency separation	Interference contour of proposed translator station	Protected contour of commercial Class B1 station
Co-channel	0.07 mV/m (37 dBu)	0.7 mV/m (57 dBu)
200 kHz	0.35 mV/m (51 dBu)	0.7 mV/m (57 dBu)
400 kHz/ 600 kHz	70.0 mV/m (97 dBu)	0.7 mV/m (57 dBu)

(3) All Other Classes of FM Stations (Protected Contour: 1 mV/m)

Frequency separation	Interference contour of proposed translator	Protected contour of any other station
Co-channel	0.1 mV/m (40 dBu)	1 mV/m (60 dBu)
200 kHz	0.5 mV/m (54 dBu)	1 mV/m (60 dBu)
400 kHz	100 mV/m (100 dBu)	1 mV/m (60 dBu)
600 kHz	100 mV/m (100 dBu)	1 mV/m (60 dBu)

Section 74.1251 is amended to revised subsection (b)(7) to read as follows:

(b) * * * * *

(7) Any increase of authorized effective radiated power. FM translator and booster stations may decrease ERP on a modification of license application provided that exhibits are included to demonstrate that the following requirements are met:

(i) The license application may not propose to eliminate the authorized horizontally polarized ERP, if a horizontally polarized ERP is currently authorized;

(ii) The installed height of the antenna radiation center is not increased by more than two meters nor decreased by more than four meters from the authorized height for the antenna radiation center; and

(iii) The station is not presently authorized with separate horizontal and vertical antennas mounted at different heights. Use of separate horizontal and vertical antennas requires a construction permit before implementation or changes.