

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

In the Matter of	)	
	)	
Grandfathered Short-Spaced FM Stations	)	MM Docket No. 96-120 RM-7651
	)	

**REPORT AND ORDER**

**Adopted: August 4, 1997**

**Released: August 8, 1997**

**By the Commission:**

**TABLE OF CONTENTS**

	Subject	Paragraph No.
<b>I.</b>	<b>Introduction</b>	1
<b>II.</b>	<b>Summary of Notice Proposals</b>	3
<b>III.</b>	<b>Resolution of Individual Proposals</b>	
	A. Predicted Interference Contours and Population Considerations for Co-channel and First-adjacent Short-Spaced Grandfathered FM Stations	4
	B. Elimination of Second- and Third-adjacent Channel Spacing Requirements for Grandfathered Short-Spaced FM Stations.	20
	C. Eliminate the Need to Obtain Agreements for Grandfathered Short-Spaced FM Stations.	30
<b>IV.</b>	<b>Conclusion</b>	35
<b>V.</b>	<b>Ordering Clauses</b>	37
	A. Effective Date	38
	B. For Further Information	39
<b>Appendix A</b>	New and Revised Rules adopted by this <i>Order</i>	
<b>Appendix B</b>	List of Commenters	
<b>Appendix C</b>	<i>Regulatory Flexibility Analysis</i>	

## INTRODUCTION

1. In the *Notice of Proposed Rulemaking* ("*Notice*") in this proceeding,<sup>1</sup> we proposed clarifications and revisions to the rules for pre-1964 grandfathered short-spaced FM radio broadcast stations to streamline the current method of proposing modifications to existing facilities.<sup>2</sup> The *Notice* also responded to a "Joint Petition" for rule making filed February 1, 1991, by the firms of Hatfield and Dawson; du Treil, Lundin and Rackley, Inc.; and Cohen, Dippell and Everist, P.C., ("Joint Petitioners"), proposing similar changes. In the *Notice*, we proposed revisions to our broadcast regulations to re-examine 47 C.F.R. § 73.213(a), which currently sets forth how stations authorized prior to November 16, 1964, that did not meet the separation distances required by 47 C.F.R. § 73.207, and have remained short-spaced since that time, may modify operating facilities. The *Notice* proposed changing three specific aspects of Section 73.213(a). The rules adopted in this *Order* permit the utmost in flexibility for this class of grandfathered FM stations while maintaining the technical integrity of the FM band by preventing increased interference.

2. The proposals in the *Notice* generally received widespread support in the 29 comments and 22 reply comments received.<sup>3</sup> The Joint Petitioners generally support the rule changes for each Proposal and "applaud the Commission's proposal to consider interference areas rather than contour overlap." The Association of Federal Communications Consulting Engineers ("AFCCCE") "strongly supports the concept of replacing the awkward and difficult procedure in the present Rule..." The National Association of Broadcasters ("NAB") was generally opposed to the Joint Petitioners' original request. However, the *Notice* differed in several aspects from what the Joint Petitioners' proposed. In response to the *Notice*, NAB stated that the grandfathered short-spaced stations "deserve a long-delayed, but measured, opportunity to modify and improve their own facilities," and that "...there are new dynamics in the radio marketplace, brought about by the Commission's newly-revised ownership rules. Under this revised regulatory regime, group owners and independent licensees have new reason to review their current facilities status under FCC rules." The majority of the remaining commenters either support or otherwise address specific portions of the *Notice*.

## SUMMARY OF NOTICE PROPOSALS

3. On May 23, 1996 we initiated this proceeding through the adoption of the *Notice* setting forth the proposed rule changes, which were intended to eliminate unnecessary regulations and provide grandfathered stations with increased flexibility to change transmitter location or modify their existing facilities. Specifically, we proposed to:

- (1) replace the current Section 73.213(a) restriction on extending the 1 mV/m contour with straight-forward interference showings based on the desired to undesired signal strength ratio ("D/U ratio") method for grandfathered co-channel and first-adjacent channel short-spaced stations;

---

<sup>1</sup> See *Grandfathered Short-Spaced FM Stations* in MM Docket 96-120, 11 FCC Rcd 7245, 61 Fed. Reg. 33,474 (June 14, 1996).

<sup>2</sup> Throughout this order, the term "grandfathered stations" refers only to those FM stations at locations authorized prior to November 16, 1964, that did not meet the separation distances required by the later adopted Section 73.207 and have remained continuously short-spaced since that time.

<sup>3</sup> Appendix B contains a list of commenters and reply commenters.

- (2) eliminate both the second- and third-adjacent channel spacing requirements for grandfathered short-spaced stations; and,
- (3) eliminate the need to obtain agreements by grandfathered stations proposing increased facilities.

### RESOLUTION OF INDIVIDUAL PROPOSALS

#### *Proposal 1.*

4. *Replace the current Section 73.213(a) restriction on extending the 1 mV/m contour with interference showings based on the desired-to-undesired signal strength ratio ("D/U ratio") method for grandfathered co-channel and first-adjacent channel short-spaced stations.* The *Notice* proposed to revise Section 73.213(a) to permit co-channel and first-adjacent channel grandfathered short-spaced stations to change transmitter location or station facilities, based on a showing that meets the following three criteria:

- (1) there must be no increase in either the total predicted interference area or the associated population;<sup>4</sup>
- (2) there must be no increase in interference caused by the proposal to any individual grandfathered short-spaced station; and,
- (3) applicants must demonstrate that any new area predicted to lose service as a result of interference has adequate service remaining. Adequate service is defined as reception from at least five aural services.<sup>5</sup>

5. The areas of interference are to be determined using the desired-to-undesired (D/U) signal strength ratio analysis and the standard F(50,50) and F(50,10) propagation curves contained in Section 73.333 of our rules. The *Notice* proposed that co-channel interference would be predicted to exist at all locations within the desired station's coverage contour where the undesired (interfering) F(50,10) field strength exceeds a value 20 dB below the desired (protected) F(50,50) field strength, and that first-adjacent interference would be predicted to exist at all locations within the desired station's coverage contour where the undesired (interfering) F(50,10) field strength exceeds a value 6 dB below the desired (protected) F(50,50) field strength. The *Notice* also sought comment on an alternative proposal that would require both interference caused and interference received to be individually maintained or reduced.

---

<sup>4</sup> Total predicted interference is the sum of all interference caused and received, in terms of area and population.

<sup>5</sup> Aural services consist of AM broadcast stations and FM broadcast stations. See Memorandum Opinion and Order, *Bay City, Brenham, Cameron, Centerville, Edna, Ganado, Giddings, Harker Heights, Hearne, LaGrange, Matagorda, New Ulm, Point Comfort, Rollingwood, Rosenberg, and Seadrift, Texas*, 10 FCC Rcd 3337, 3337 (1995).

**Comments & Discussion:**

6. *General:* Of the parties providing initial and reply comments on this proposal, most agree that the current rule is too vague and restrictive, and that it should be replaced with an equitable rule that is easily administered. The rule we adopt herein accomplishes this result. It allows maximum flexibility for grandfathered stations, while maintaining or reducing interference, and provides a minimal filing burden on applicants, accompanied by a minimal processing burden on Commission staff. Our new rule provides greater flexibility to stations now thwarted by the current "no extension of the 1 mV/m contour" rule in Section 73.213(a). The current rule in Section 73.213(a) has been proven to be overly restrictive, ineffective in controlling interference, and difficult to administer. The requirements set forth in the new rule section will potentially decrease areas of co-channel and first-adjacent channel interference, and lead to more efficient use of the FM broadcast spectrum. Several commenters suggested slight modifications to the original Proposal 1 as presented in the *Notice*. We discuss those suggestions below.

7. *Contour overlap vs. predicted interference.* AFCCE and other commenters generally support replacing the current standard in Section 73.213(a) with a requirement based on interference ratios. We concur that the ratio method is the most appropriate method of determining areas of interference for 1964 grandfathered stations. We do not agree with Mullaney Engineering, Inc.'s ("Mullaney") assertion that the grandfathered rules should be based upon contour overlap rather than interference predictions. Contour overlap is an effective method to demonstrate compliance with rules aimed at preventing interference, since lack of contour overlap is sufficient to demonstrate a lack of interference. However, it is not effective in controlling interference when prohibited overlap already exists.<sup>6</sup> We remain convinced that the practical effect on the listening public of interference between two short-spaced stations is best evaluated in terms of interference (D/U ratio) rather than overlap.<sup>7</sup> Therefore, we will require that all interference showings for Proposal 1 be analyzed using the desired-to-undesired (D/U) signal strength ratio analysis.

8. Mullaney also suggests that we protect all classes of grandfathered stations to the 1 mV/m (60 dBu) contour. The spacing requirements set forth in Section 73.207 generally provide protection to the 54 dBu contour for Class B stations, to the 57 dBu contour for Class B1 stations, and to the 60 dBu contour for all other classes of stations. In addition, the Commission reaffirmed use of the 54 dBu contour and the 57 dBu contour as the protected contours for all Class B and Class B1 commercial stations in MM Docket 87-121, respectively.<sup>8</sup> Failure to provide this protection to Class B and Class B1 commercial stations could result in a disruption of service for some Class B and B1 stations. It would also result in a grandfathered short-spaced station being protected to two different contours: the 60 dBu contour with respect to all grandfathered short-spaced stations; and the 54 dBu or 57 dBu contour with respect to all other short-spaced station. This would add unnecessary confusion and complexity with no apparent benefit. Therefore we will not implement this suggestion.

---

<sup>6</sup> By way of background, 47 C.F.R. § 73.215 is typically used by non-grandfathered commercial stations that propose short-spaced facilities. This rule section requires the complete absence of prohibited contour overlap, thereby preventing the creation of new areas of interference. However, unlike the proposed Section 73.213(a), Section 73.215 is rarely used by stations currently causing interference.

<sup>7</sup> See Memorandum Opinion and Order, *Board of Education of the City of Atlanta*, 11 FCC Rcd 7763, Footnote 1.

<sup>8</sup> See Report and Order, *Amendment of Part 73 of the Commission's Rules to Permit Short-Spaced FM Station Assignments by using Directional Antennas*, 4 FCC Rcd 1681, 1687 (1989).

9. *Interference areas.* The Joint Petitioners agree that interference areas should be the main consideration for co-channel and first-adjacent channel modifications, and that interference caused should not be increased. However, several commenters felt that the interference criteria set forth in Proposal 1 in the *Notice* should be modified. The Joint Petitioners and AFCCE agree that we should allow minor increases in received interference if it can be shown that there is no alternative to changing antenna site. Communications Technologies, Inc. ("CTI") believes that considering an area where the proposed 60 dBu contour exceeds the licensed 60 dBu contour as an area of received interference is illogical, since the station will most likely achieve an increase in service in that direction. Therefore, CTI suggests the only consideration should be that of interference caused, not interference received.

10. Our underlying presumption is that any increase in total interference, caused and received, is not in the public interest. Interference caused and interference received are opposite sides of the same coin. Both represent an inefficient use of the spectrum. Thus, we reject CTI's suggestion that we ignore interference received beyond the current service contour of a proposal. We do recognize, however, that there is a need for some flexibility. For this reason, we do not prohibit an increase in interference received, *provided it is offset by a decrease in interference caused.* In this way we maintain our public interest objective of maintaining or reducing the total amount of interference between two or more existing grandfathered short-spaced stations. There was no support for the alternative proposal set forth in the *Notice* of requiring interference caused and interference received to be individually maintained or reduced, and we reject that alternative. *See Notice*, para. 16.

11. Z Spanish Radio Network, Inc. ("Z Spanish") suggests that slight increases in interference caused should be permitted when a net reduction in interference occurs. However, subjecting other grandfathered stations to an increase in interference, without offsetting factors, would be unfair. Allowing stations to increase interference caused would result in diminished service areas, and promote perpetual degradation of the overall quality of FM service. Therefore, we will not allow for any increases in interference caused.

12. The *Notice* proposed that co-channel or first-adjacent channel grandfathered applicants must demonstrate that any areas previously receiving interference-free service that would lose service because of interference have at least five remaining AM and/or FM stations providing service. The Joint Petitioners believe that demonstration of adequate remaining service is unnecessary, stating that most interference areas are small and most grandfathered stations are in well-served areas. Although we would generally agree that it is likely that several other broadcast services would exist near grandfathered stations, we nonetheless note that the areas of co-channel and first-adjacent interference can be quite large. In the Northeastern United States and California, there are several co-channel and first-adjacent channel grandfathered short-spaced stations that are predicted to cause or receive interference in areas in excess of 100 square kilometers. A lateral move by such a station could potentially result in new interference in populated areas previously receiving interference-free service. By requiring the proposed showing, we can assure a minimal effect on service to the public when interference is shifted from one area to another. As most areas are likely to be well served, as noted by the commenters, the burden on the applicant should not be onerous. Therefore, we will require that any application causing or receiving interference in an area that previously received interference-free service must demonstrate the existence of at least five remaining aural broadcast services within that area.

13. Barnstable Broadcasting, Inc. ("Barnstable") suggests that any grandfathered station proposing a modification that would potentially extend interference toward another station must make "special, formal notice of the proposed modification..." to the effected station. We do not believe this is necessary. There is no such requirement for applicants filing under our current rules. We do not believe that participation by additional parties is necessary to reach a decision on whether proposals filed pursuant to

the proposed rules should be granted. Modification applications are all given file numbers, entered into our databases, and released on public notice indicating the receipt of the application. This provides sufficient notice of the filing of an application. Generally there will be sufficient time between the date of the public notice and the grant of the application to permit the filing of informal objections. Therefore, we will not require stations to provide notification to a potentially affected station.

14. *Population considerations.* Mullaney suggests that less emphasis should be placed on areas of interference and more emphasis placed on the population affected by the interference. He asserts that in many instances, the areas of concern may include swamps, marshes, or national forest. In opposition to this view, AFCCE does not favor including a population consideration into the rule. AFCCE states that the present rule does not require any such consideration, and believes its inclusion in any adopted rule would be an "additional complication." However, as stated above, our primary concern in the proceeding is providing flexibility while maintaining the technical integrity of the FM band. Failure to consider the effect of proposals on area and population would be imprudent. Each year, we receive numerous applications proposing transmitter site changes by stations adjusting to population migrations in areas around their service contours. By maintaining or reducing areas and populations receiving interference, we can continue to promote an efficient broadcast service. Therefore, we will require applicants under Proposal 1 to include exhibits based on interference areas and the associated populations.

15. CTI recommends that we suggest a specific methodology to be followed when calculating the population affected by interference. We will continue to accept the widely used uniform distribution methodology set forth in 47 C.F.R. § 73.525(e) for calculating population.<sup>9</sup> In addition, because the Census Bureau recognizes the Block Centroid Method as a more accurate calculation method, we will also accept this method.<sup>10</sup> In resolving disputes, we will rely on the most accurate method presented.

16. *Additional suggestions.* CTI suggests that any grandfathered applicant proposing to modify its facilities or change transmitter site within 500 feet of its authorized site, should not be required to submit an interference analysis, assuming the average contour distance does not exceed that of its licensed facility. CTI believes that this would provide latitude for site corrections anticipated from the new tower registration procedures. We do not believe that such a rule would be appropriate. First, CTI's proposal would contradict our conclusion in Appendix C of the *Report and Order, In the Matter of Streamlining the Commission's Antenna Structure Clearance Procedure*, 11 FCC Rcd 4272 (1996), 61 FR 4359 (1996). Appendix C stated that any modification of coordinates necessary as a result of the antenna structure registration procedures would require the filing of a construction permit application, regardless of the minimal nature of the change. The appendix also noted that situations requiring a change in operating parameters will be handled on a case-by-case basis. We did not make special exceptions for any group of stations correcting authorized parameters. Additionally, our experience in dealing with grandfathered applicants shows that modifications usually entail changes in several technical parameters and seldom

---

<sup>9</sup> Section 73.525(e) specifically states that "the number of persons contained within the predicted interference area will be based on data contained in the most recently published U.S. Census of Population and will be determined by plotting the predicted interference area on a County Subdivision Map of the state published for the Census, and totalling the number of persons in each County Subdivision ... contained within the predicted interference area."

<sup>10</sup> Section 73.525(e)(2)(iv) states that "[a]t the option of either the NCE-FM applicant or an affected TV Channel station which provides the appropriate analysis, more detailed population data may be used." We note that the U.S. Census Bureau has verified that the block centroid retrieval methodology is a more accurate means of determining population within a given area than the uniform distribution method. See the October 9, 1992 *Letter from Chief, Audio Services Division to Larry H. Will*, reference No. 1800B3-ESR.

involve only a relocation within 500 ft. of the previously licensed site. Thus, we are concerned that the rule CTI proposes would cause confusion and unduly complicate the rule we are attempting to simplify. We will, however, routinely grant requests for waiver of the interference analysis requirements specified in Sections 73.213(a)(1) and 73.213(a)(2) on a case-by-case basis for applications specifying a site within 500 ft (152 meters) of the previously licensed site where no unusual circumstances are present.

17. Z Spanish generally supports Proposal 1, adding that "some non-controversial alternative" to the standard contour prediction methods should be available when certain proposals require more accurate evaluation. We do not characterize alternative contour prediction methods as non-controversial, nor do we agree that alternative contour prediction methods should be used in calculating interference. Currently, the Commission allows the use of alternate prediction methods provided for by 47 C.F.R. § 73.313(e) to demonstrate adequate coverage of the community of license, or to establish that the main studio location would be within the principal community contour (70 dBu). However, such methods are not accepted from full-service stations for the purpose of demonstrating a lack of interference. Doing so could complicate the rule that we are attempting to simplify, with little benefit. The analysis of alternate prediction method calculations is resource-intensive and requires extensive expertise. The use of supplemental studies often leads to disputes involving the use of competing methods or assumptions, along with significant processing delays. Therefore, we will not permit alternate methods of contour prediction for interference showings.

18. Finally, several commenters suggest that one or more of the proposals in this proceeding be extended to other groups of short-spaced stations, such as stations that became short-spaced by the revision of Section 73.207 in Docket 80-90 (1983), or stations short-spaced pursuant to Sections 73.213(b) & (c),<sup>11</sup> or stations short-spaced pursuant to Section 73.215,<sup>12</sup> or even "short-spaced" non-commercial educational stations.<sup>13</sup> However, these comments are clearly beyond the scope of the proposed rule revisions. In developing the proposals set forth in the *Notice*, we identified a particular problem area where the rules were defective and difficult to administer. The *Notice* was specifically tailored to meet the needs of this narrowly defined group of grandfathered stations. We did not address particular issues applying to other short-spacing circumstances. Therefore, we decline to enlarge the scope of this proceeding to include non-pre-1964 grandfathered short-spaced stations.

19. *Conclusion.* We believe that the current rules should be changed to allow for sufficient flexibility when co-channel and first-adjacent channel grandfathered stations seek to relocate. However, providing this flexibility should not jeopardize another station's ability to serve its listeners. Accordingly, we will adopt Proposal 1 as set forth in the *Notice*. All grandfathered stations will be permitted to change transmitter location and increase or decrease facilities, subject to the rules adopted herein and the maximum power and height requirements set forth in 47 C.F.R. § 73.211. We note that any applicant

---

<sup>11</sup> Stations covered under rule Sections 73.213(b) & (c) became short-spaced by grant of spacing waivers or rule changes after 1964.

<sup>12</sup> Stations that are authorized as "contour protection stations" pursuant to Section 73.215 became short-spaced after October 2, 1989, and did so of their own volition. These stations were authorized only if no new contour overlap would be created with the short-spaced station. See *Amendment of Part 73 of the Commission's Rules to Permit Short-Spaced FM Station Assignments by Using Directional Antennas*, 6 FCC Rcd 5356 (1989).

<sup>13</sup> Section 73.509 does not set forth required spacings for co-channel and adjacent channel non-commercial educational stations. Rather, it prohibits the overlap of certain pairs of signal strength contours. However, applicants sometimes refer to stations in violation of this rule as "short-spaced."

proposing modifications under the Section 73.213(a) rules adopted herein must document its pre-1964 grandfathered status.

## Proposal 2.

20. *Eliminate both the second- and third-adjacent channel spacing requirements for grandfathered short-spaced stations.* The *Notice* proposed to revise Section 73.213(a) to remove all spacing requirements for grandfathered second- and third-adjacent channel stations. This proposal would restore the previous Section 73.213 rule used between 1964 and 1987, and would permit second and third-adjacent channel grandfathered stations to implement maximum class facilities, and/or change transmitter site with complete flexibility on second-adjacent channel and third-adjacent channel short-spacings.<sup>14</sup> The *Notice* also proposed, as an alternative, a more restrictive standard that allowed limited flexibility for second and third-adjacent grandfathered short-spaced stations proposing a new transmitter site. The more restrictive standard would not permit prohibited contour overlap if prohibited contour overlap did not already exist.

## Comments & Discussion:

21. *General support.* Of the parties providing initial and reply comments on this proposal, most agree that we should completely eliminate second- and third-adjacent spacing requirements for grandfathered stations. The Joint Petitioners fully support the original Proposal 2, and specifically reject the alternative proposal put forth in Paragraph 26 of the *Notice*. AFCCE supports the original Proposal 2, and states that it is "the most essential part of the simplified procedure." Mullaney supports the original Proposal 2. CTI fully supports Proposal 2, stating that today's receivers are seldom affected by second- and third-adjacent channel interference.

22. Media-Com, Inc. and Group M Communications, Inc. both support Proposal 2 and state that current second- and third-adjacent channel restrictions have prevented grandfathered stations from improving, or even maintaining existing service areas. Compass Radio of San Diego, Inc. ("Compass") fully supports Proposal 2, stating that adoption would facilitate improvement of station facilities, along with eliminating a significant amount of unnecessary workload on the Commission's staff. Compass' comments include specific examples of stations that have operated with second- or third-adjacent overlap, without receiving interference complaints. NAB submitted comments supporting new requirements that would allow for the relaxation, but not elimination, of second and third-adjacent channel spacing requirements for grandfathered stations. NAB states that "[w]ith full recognition of the generally negative position taken by NAB in our 1991 comments...and in light of the historical, technical foundation of these earlier comments, NAB believes there *may* be ways that *some* grandfathered FM stations could be allowed to modify facilities in a fashion that would not result in significant new interference nor would be at odds with related FCC policies applicable to such changes."

23. *Scope.* The scope of this item is specifically limited to FM stations at locations authorized prior to November 16, 1964, that did not meet the separation distances required by Section 73.207 and have remained continuously short-spaced since that time. The *Notice* specifically invited any parties to assist the Commission in identifying how many grandfathered stations exist so that they could be classified in the Commission's engineering database. NAB performed an analysis and submitted extensive

---

<sup>14</sup> See Fourth Report and Order in *Revision of FM Broadcast Rules, Particularly as to Allocation and Technical Standards*, 40 FCC 868 (1964).

documentation with regard to the number of second- and third-adjacent channel grandfathered stations. NAB's comments state that the number of possible grandfathered second- and third-adjacent channel stations is 312, out of a total of 5,429 authorized FM stations (5.7%). As several commenters point out, that number is too high, since many of these stations became short-spaced because of other reasons, such as BC Docket 80-90, MM Docket 88-375, the contour protection standards in Section 73.215, or spacing waiver grants. The number of grandfathered second and third-adjacent channel stations that may be able to change site will be further limited as a result of other co-channel or first-adjacent channel grandfathered short-spacings. Therefore, the number of grandfathered stations able to move with respect to a second- and third-adjacent channel station is extremely limited.

24. One of NAB's primary concerns is that the proposed rule not be applied beyond this limited group of stations. NAB contracted engineering consultant Thomas Keller ("Keller") to report on the general potential impact that second-adjacent channel short-spacings may have on the listening public. Keller's study included test results of two automotive receivers, two component receivers designed for stationary operation, and one portable "boom box" receiver. Keller's study concludes that two of the five receivers tested did not meet the "...interference-rejection assumptions embodied in the Commission's current FM separation requirements." NAB states that "...refinements to radio receiver design do provide, in some cases, better rejection of second and third-adjacent channel interference that should be considered here. These developments might form the basis for granting some relief for some grandfathered short-spaced stations. However, and this must be emphasized, NAB believes that examination of such receiver characteristics should be limited *only* to the possibility of a revised regulatory approach to *some* grandfathered, short-spaced FM stations, not to the FM medium as a whole."

25. As stated in the *Notice*, we have "no intention of relaxing second-adjacent-channel and third-adjacent channel spacing requirements as allotment and application criteria." Proposal 2 only suggests returning to the exact standard that was used between 1964 and 1987 for this very limited group of stations. Thus, our proposal remains aimed exclusively at this small universe of grandfathered stations.

26. *Additional Criteria.* NAB agrees that second- and third-adjacent channel grandfathered stations are in need of relief from the current Section 73.213 rules. However, NAB believes that "... the technical integrity of the broadcast media must be preserved and enhanced." Both NAB and Eleven-Fifty Corp. ("Eleven-Fifty") believe that second- and third-adjacent grandfathered short-spaced applicants should be required to submit supplemental documentation demonstrating why a proposal should be approved by the Commission. NAB proposed four criteria that grandfathered stations submitting modification applications would be required to satisfy:

- (1) the modification would result in a net decrease in the number of listeners experiencing interference caused by the applicant to other FM stations;
- (2) the modification would result in a net decrease in the land area of interference caused by the applicant to other FM stations;
- (3) any site change would not be to a location near a major thoroughfare; and/or
- (4) any site change would be within a "buffer zone" around the current transmitter site.

These criteria are designed to provide "tailored relief to grandfathered, short-spaced FM stations", and to assure that any proposal would not adversely affect the short-spaced station's service area. NAB believes that these requirements would qualify an applicant for a "rebuttable presumption that grant of relief should be provided," shifting the burden onto the potentially affected station to show why certain applications should not be granted, thereby preserving the technical integrity of the broadcast media. NAB further

states that the rights of the potentially affected grandfathered stations would be preserved by adhering to these criteria.

27. NAB's proposed criteria are designed to prevent increases in "...the number of listeners experiencing interference..." and "...the land area of interference caused by the applicant to other stations." We recognize there is a minimal risk of interference between second and third-adjacent channel grandfathered stations. However, such interference is in the immediate area of the transmitter and it is actually a substitution of service in that area. In the period between 1964 and 1987, when second- and third-adjacent channel grandfathered stations were able to modify facilities without spacing requirements, we did not receive interference complaints resulting from such modifications. We believe that the small potential for interference is outweighed by facilitating the ability of this small group of stations to change transmitter site or modify facilities.

28. NAB's proposal also included a requirement that a transmitter site change "would not be to a location near a major traffic thoroughfare -- a site move that could create massive interference to the mobile radio audience." However, as stated above, Keller's limited test results on a small number of receivers would imply mobile receivers are typically able to reject unwanted second-adjacent channel interference. In addition, Compass, Mt. Wilson, Infinity, and Odyssey all agree that NAB's proposed criteria would hinder the result we are trying to achieve by promoting unnecessary appeals and litigation. Compass believes that NAB's proposed criteria have no reasonable technical basis. Infinity reasserts that the FCC is simply proposing a previously used and tested rule. We believe that requiring a station to document its proximity to a "major thoroughfare" would increase the burden on applicants and the Commission, and increase the processing time for each application. It is also unnecessary due to the relatively small areas of interference caused by second- and third-adjacent channel stations. It would also require the staff to establish rules to define what constitutes a major thoroughfare. Therefore, we decline to impose on this limited universe of stations the additional burdens suggested by NAB .

29. *Conclusion.* As the majority of the commenters in this proceeding agree, we believe that reinstatement of the pre-1987 rules regarding second and third-adjacent channel grandfathered stations would best serve the public interest. We see little advantage to require additional exhibits from grandfathered stations proposing site changes or facility modifications. The small risk of interference is far outweighed by the improvement in flexibility and improved service. In addition, as stated in Paragraph 25 of the *Notice*, we have no intention of relaxing second-adjacent-channel and third-adjacent-channel spacing requirements as allotment and assignment criteria for any group except pre-1964 grandfathered stations. Therefore, we are adopting Proposal 2, as originally set forth in the *Notice*, only for this limited universe of stations.

### Proposal 3.

30. *Eliminate the need to obtain agreements between grandfathered short-spaced stations proposing increased facilities.* The *Notice* proposed to revise Section 73.213(a) to eliminate the need for grandfathered stations to obtain agreements to modify facilities pursuant to 47 C.F.R. § 73.4235. The *Notice* stated that the 1975 Public Notice ("*Agreement Notice*") is rarely used today for its original purpose of allowing mutual increases.<sup>15</sup> The *Agreement Notice* is now typically used to justify unilateral modifications.

---

<sup>15</sup> Agreement Public Notice, *Commission Reaffirms Policy With Respect to Agreements Between Short-Spaced FM Stations*, 35 RR 2d 1063, 57 FCC 2d 1263, [47 C.F.R. § 73.4235](1975).

**Comments & Discussion:**

31. Of the initial and reply comments on this proposal, several parties agree that agreements should be eliminated, while a few parties disagree with the adoption of this proposal. The Joint Petitioners "agree that such agreements are unnecessary and would simply frustrate the intent of these proposed rules." AFCCE also supports the elimination of agreements. Compass "enthusiastically supports the Commission's Proposal 3 to eliminate the need to obtain agreements by grandfathered short-spaced stations...." John J. Davis and Chagal Communications support adoption of Proposal 3, while several parties are generally supportive of all three Proposals, without specific mention of Proposal 3.

32. In opposition to Proposal 3, Mullaney suggests that we should retain the agreement policy and require a "higher level" of public interest to justify grant of an application. Kelsho Radio Group ("Kelsho") suggests that the Commission has "no good reasons to discard the entire mutual agreement policy." Odyssey Communications, Inc. ("Odyssey") opposes eliminating the Agreement Policy and believes it will have a harmful effect on stations and the public interest. Odyssey suggests retention of the policy for its intended purposes of promoting mutual increases. Finally, Z Spanish Radio Network, Inc. ("Spanish") avers that agreements that "improve service and reduce interference should be permitted and encouraged by the Commission."

33. *Conclusion.* The provisions set forth in the *Agreement Notice* required all grandfathered stations increasing facilities pursuant to an agreement to submit a detailed public interest showing. The *Agreement Notice* stated that the public interest showing must include areas and populations which would receive new service, along with those receiving interference, assuming both stations fully implemented the mutual increase agreement. This is very similar to what we are adopting in Proposal 1 for co-channel and first-adjacent channel stations. The *Agreement Notice* also stated that the agreement provisions did not apply to changes in transmitter location. Furthermore, the *Agreement Notice* is rarely used today for its original purpose of providing for mutual increases by grandfathered stations.

34. Under the rules adopted herein, most applicants will be able to achieve the same facilities using Proposals 1 and 2 above, that in the past required a written agreement from another grandfathered station. Second and third-adjacent channel grandfathered stations will be exempt from spacing requirements and co-channel and first-adjacent stations will be able to implement transmitter site changes that weren't previously permitted under the *Agreement Notice*. The exhibits we are requiring under these Proposals are aimed at establishing that each proposal would serve the public interest. However, in the past, affected parties were notified of another applicant's proposed modification by way of an agreement. Since we are eliminating the requirement for agreements, certain potentially affected parties would no longer be involved in the modification process for proposals that may have an effect on their service area. Therefore, we will require that a copy of any application for co-channel or first-adjacent channel stations proposing predicted interference caused in any areas where interference is not currently predicted to be caused must be served upon the licensee(s) of the affected short-spaced station(s). This will enable potentially affected parties to examine the proposal and provide them an opportunity to file informal objections against such applications. The proposed rules will allow more flexibility than if we were to continue to require agreements along with public interest showings. Often times, requiring an applicant to obtain an agreement from another short-spaced station is tantamount to holding its application hostage by another broadcaster. As stated in the *Notice*, we find that the requirement for agreements no longer serves its original purpose and can be eliminated without any harmful effect on applicants, other stations, or the public. Therefore, we will eliminate the requirement for these applicants to obtain agreements.

---

## CONCLUSION

35. We believe that the modified procedures and related rule revisions adopted herein will provide this group of grandfathered stations with significantly greater flexibility in making transmitter site changes and other facility modifications, while preserving or improving the overall technical integrity of the FM band. Our experience working with the current rule guides us to adopt these changes in our grandfathered short-spacing rules. Co-channel and first-adjacent channel grandfathered stations will be able to make modifications and improvements using straight-forward interference calculations. This will enable us to more accurately predict and control interference. Eligible grandfathered stations will be able to propose facility modifications without regard to existing grandfathered second- and third-adjacent channel short-spacings. Finally, grandfathered stations will no longer need to obtain agreements from other grandfathered stations before proposing modifications.

36. Accordingly, to the extent provided herein, we amend Section 73.213(a) of our Rules and delete Section 73.4235. As set forth in the *Notice*, the Commission will process any such waiver requests which remain pending as of the effective date of this *Order* in accordance with the revised rule.<sup>16</sup>

## ORDERING CLAUSES

37. Accordingly, IT IS ORDERED that pursuant to the authority contained in Sections 4(i), 303(r), and 307(c) of the Communications Act of 1934, as amended, 47 C.F.R. Part 73 IS AMENDED as set forth in Appendix A below.

38. IT IS FURTHER ORDERED that the requirements and regulations established in this *Report and Order* WILL BECOME EFFECTIVE 60 days from the date of publication in the Federal Register, or upon receipt by Congress of a report in compliance with the *Contract with America Advancement Act of 1996*, Pub. L. No. 104-121, whichever date is later.

39. For further information contact Jim Bradshaw of the Audio Services Division, Mass Media Bureau at (202)-418-2740, or by e-mail at [jbradsha@fcc.gov](mailto:jbradsha@fcc.gov).

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton  
Secretary

---

<sup>16</sup> The Mass Media Bureau has identified several pending applications which seek waivers of the current rule but which may comply with Section 73.213(a) as modified in this *Order*. We direct the staff to reconsider these applications under the revised standards adopted herein and delegate to the Chief of the Mass Media Bureau authority to waive Section 73.213 prior to the effective date of this *Order* where the public interest would be served. Any Section 73.213 waiver granted by staff prior to the effective date of the *Order* shall be subject to the final outcome in this proceeding. We also are aware that there is now one application before the Commission which requests a Section 73.213 waiver and remand this application to the Mass Media Bureau for reconsideration consistent with this delegation. See File No. BPH-910612ID, Oceanside, CA. We remind all parties that all contested applications retain their restricted status following adoption of the *Order*.

## APPENDIX A

47 C.F.R. Part 73 is revised as follows:

## PART 73 - RADIO BROADCAST SERVICES

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

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

2. Section 73.213 is revised to read as follows:

**§73.213 Grandfathered short-spaced stations.**

(a) Stations at locations authorized prior to November 16, 1964 that did not meet the separation distances required by §73.207 and have remained continuously short-spaced since that time may be modified or relocated with respect to such short-spaced stations, provided that (i) no area previously receiving interference-free service would receive co-channel or first-adjacent channel interference as predicted in accordance with paragraph (a)(1) of this section, or that (ii) a showing is provided pursuant to paragraph (a)(2) of this section that demonstrates that the public interest would be served by the proposed changes.

(1) The F(50,50) curves in Figure 1 of §73.333 of this part are to be used in conjunction with the proposed effective radiated power and antenna height above average terrain, as calculated pursuant to §73.313(c), (d)(2) and (d)(3), using data for as many radials as necessary, to determine the location of the desired (service) field strength. The F(50,10) curves in Figure 1a of §73.333 of this part are to be used in conjunction with the proposed effective radiated power and antenna height above average terrain, as calculated pursuant to §73.313(c), (d)(2) and (d)(3), using data for as many radials as necessary, to determine the location of the undesired (interfering) field strength. Predicted interference is defined to exist only for locations where the desired (service) field strength exceeds 0.5 mV/m (54 dBu) for a Class B station, 0.7 mV/m (57 dBu) for a Class B1 station, and 1 mV/m (60 dBu) for any other class of station.

(i) Co-channel interference is predicted to exist, for the purpose of this section, at all locations where the undesired (interfering station) F(50,10) field strength exceeds a value 20 dB below the desired (service) F(50,50) field strength of the station being considered (e.g., where the protected field strength is 60 dBu, the interfering field strength must be 40 dBu or more for predicted interference to exist).

(ii) First-adjacent channel interference is predicted to exist, for the purpose of this section, at all locations where the undesired (interfering station) F(50,10) field strength exceeds a value 6 dB below the desired (service) F(50,50) field strength of the station being considered (e.g., where the protected field strength is 60 dBu, the interfering field strength must be 54 dBu or more for predicted interference to exist).

(2) For co-channel and first-adjacent channel stations, a showing that the public interest would be served by the changes proposed in an application must include exhibits demonstrating that the total area and population subject to co-channel or first-adjacent channel interference, caused and

received, would be maintained or decreased. In addition, the showing must include exhibits demonstrating that the area and the population subject to co-channel or first-adjacent channel interference caused by the proposed facility to each short-spaced station individually is not increased. In all cases, the applicant must also show that any area predicted to lose service as a result of new co-channel or first-adjacent-channel interference has adequate aural service remaining. For the purpose of this Section, adequate service is defined as 5 or more aural services (AM or FM).

(3) For co-channel and first-adjacent-channel stations, a copy of any application proposing interference caused in any areas where interference is not currently caused must be served upon the licensee(s) of the affected short-spaced station(s).

(4) For stations covered by this rule, there are no distance separation or interference protection requirements with respect to second-adjacent and third-adjacent channel short-spacings that have existed continuously since November 16, 1964.

\* \* \* \* \*

3. Section 73.4235 is deleted.

## APPENDIX B

## List of Commenters

## Initial Comments

Association of Federal Communications Consulting Engineers	("AFCCE")
Barnstable Broadcasting, Inc.	("Barnstable")
Brown Broadcasting Service, Inc.	("Brown")
Chagal Communications	("Chagal")
Communications Technologies, Inc.	("CTI")
Compass Radio of San Diego, Inc.	("Compass")
John J. Davis	("Davis")
Eleven-Fifty Corp.	("Eleven-Fifty")
Gallagher & Associates	("Gallagher")
Group M Communications, Inc.	("Group M")
Harvard Radio Broadcasting Co., Inc.	("Harvard")
Hatfield & Dawson; duTreil, Lundin & Rackley; Cohen, Dippell & Everist	("Joint Petitioners")
Jarad Broadcasting	("Jarad")
KALI-FM, Inc.	("KALI")
Kelsho Radio Group, Inc.	("Kelsho")
Lieberman Broadcasting, Inc.	("Lieberman")
Livingston Radio Company	("Livingston")
Media-Com, Inc.	("Media-Com")
Mullaney Engineering, Inc.	("Mullaney")
E. Harold Munn, Jr.	("Munn")
National Association of Broadcasters	("NAB")
Odyssey Communications, Inc.	("Odyssey")
Renard Communications Corp.	("Renard")
Taxi Productions, Inc.	("Taxi")
WPNT, Inc.	("WPNT")
WTBO-WKGO Corporation	("WTBO")
WTUC, Richard L. Harvey	("WTUC")
WYCQ, Inc.	("WYCQ")
Z Spanish Radio Network, Inc.	("Z Spanish")

## Reply Comments

Alpeak Broadcasting Corporation	("Alpeak")
Barden Broadcasting, Inc.	("Barden")
Barry Broadcasting Company	("Barry")
Berkshire Broadcasting Corporation	("Berkshire")
Compass Radio of San Diego, Inc.	("Compass")
Educational Information Corporation	("EIC")
Greater Media Radio Company	("Greater")
Infinity Broadcasting Corporation	("Infinity")
Kelsho Radio Group, Inc.	("Kelsho")
Livingston Radio Company	("Livingston")
Media-Com, Inc.	("Media-Com")
Metro TV, Inc.	("Metro")
Mt. Wilson FM Broadcasters, Inc.	("Mt. Wilson")
National Association of Black Owned Broadcasters	("NABOB")
National Association of Broadcasters	("NAB")
Odyssey Communications, Inc.	("Odyssey")
Paxson Communications Corporation	("Paxson")
Pinnacle Southeast, Inc.	("Pinnacle")
Carl E. Smith	("Smith")
WTBO-WKGO Corporation	("WTBO")
WTUC, Richard L. Harvey	("WTUC")
WYCQ, Inc.	("WYCQ")

## APPENDIX C

## PAPERWORK REDUCTION ACT STATEMENT

This *Report and Order* contains new or modified information collections subject to the Paperwork Reduction Act of 1995 ("PRA"). It has been submitted to the Office of Management and Budget ("OMB") for review under the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collections contained in this proceeding.

## FINAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act<sup>17</sup> (RFA), the Commission considered regulatory flexibility issues in the Notice of Proposed Rulemaking in this proceeding, *Grandfathered Short-Spaced FM Stations*.<sup>18</sup> The Commission sought written public comments on the proposals in the *Notice*. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this *Report and Order* conforms to the RFA as amended.<sup>19</sup>

**A. Need For and Objectives of the Rules:**

The Commission's Rules currently require pre-1964 grandfathered short-spaced stations proposing transmitter site changes or facility modifications to demonstrate that the proposed 1 mV/m field strength contour is not extended toward the 1 mV/m field strength contour of any station to which it is short-spaced. This rule was found to be overly restrictive, and open to multiple interpretations. The Commission therefore proposed revisions to its broadcast regulations to replace the current rule with a simple rule based on straight-forward interference prediction methods, and to eliminate spacing requirements for second and third-adjacent channel grandfathered stations.

By making these changes, grandfathered stations will have the maximum flexibility when changing transmitter site or proposing facility modifications. Any such changes must be made by filing a minor change application. The new regulations should expedite new and improved service to the public, with minimal impact on existing stations. The specified changes require prior authorization from the Commission. The exact circumstances in which the Commission will modifications are listed in 47 C.F.R. § 73.213(a) (*see* Appendix A of this *Report and Order*).

**B. Summary of Significant Issues Raised by Public Comments in Response to the Regulatory Flexibility Analysis:**

No comments were received specifically in response to the regulatory flexibility issues contained in the *Notice of Proposed Rulemaking*. However, commenters generally addressed the effects of the proposed rule changes on FM licensees, including small businesses. Generally,

---

<sup>17</sup> See 5 U.S.C. § 603.

<sup>18</sup> *Notice of Proposed Rulemaking* in MM Docket No. 96-120, 61 Fed. Reg. 33,474 (1996).

<sup>19</sup> See 5 U.S.C. § 604. The Regulatory Flexibility Act, *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). We note that the *Notice* was issued prior to enactment of the amendments to the RFA in the SBREFA.

commenters favored the rule changes proposed, with minor changes, some of which have been incorporated into the rules specified in Appendix A of this *Report and Order*.

### C. Description and Estimate of the Number of Small Entities To Which the Rule Will Apply:

The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction" and the same meaning as the term "small business concern" under the Small Business Act unless the Commission has developed one or more definitions that are appropriate for its activities.<sup>20</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>21</sup> According to the SBA's regulations, entities engaged in radio broadcasting (Standard Industrial Classification ("SIC") Code 4832 for radio) may have a maximum of \$10.5 million in annual receipts in order to qualify as a small business concern. 13 C.F.R. §§ 121.201. This standard also applies in determining whether an entity is a small business for purposes of the Regulatory Flexibility Act.

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 SBA 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."<sup>22</sup> While we tentatively believe that the foregoing definition of "small business" greatly overstates the number of radio broadcast

---

<sup>20</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes 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.

<sup>21</sup> Small Business Act, 15 U.S.C. § 632 (1996).

<sup>22</sup> We tentatively conclude that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small radio and television stations. However, for purposes of this *Report and Order*, we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to the rules adopted in this *Report and Order* and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities in the future. See *Report and Order* in MM Docket 93-48 (*Children's Television Programming*), 11 FCC Rcd 10660, 10737-38 (1996), citing 5 U.S.C. 601 (3). In our *Notice of Inquiry* in GN Docket No. 96-113B, *In the matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses*, 11 FCC Rcd 6280 (1996), we requested commenters to provide profile data about small telecommunications businesses in particular services, including television and radio, and the market entry barriers they encounter, and we also sought comment as to how to define small businesses for purposes of implementing Section 257 of the Telecommunications Act of 1996, which requires us to identify market entry barriers and to prescribe regulations to eliminate those barriers. Additionally, in our *Order and Notice of Proposed Rulemaking* in MM Docket 96-16, *In the Matter of Streamlining Broadcast EEO Rules and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines*, 11 FCC Rcd 5154 (1996), we invited comment as to whether relief should be afforded to stations: (1) based on small staff and what size staff would be considered sufficient for relief, e.g., 10 or fewer full-time employees; (2) based on operation in a small market; or (3) based on operation in a market with a small minority work force.

stations that are small businesses and is not suitable for purposes of determining the impact of the new rules on small business, we did not propose an alternative definition in the Regulatory Flexibility Analysis. Accordingly, for purposes of this *Report and Order*, we utilize the SBA's definition in determining the number of small businesses to which the rules apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to radio broadcast stations and to consider further the issue of the number of small entities that are radio broadcasters in the future. Further, in this FRFA, we will identify the different classes of small radio stations that may be impacted by the rules adopted in this *Report and Order*.

#### Commercial Radio Services:

The rules and policies adopted in this Order will apply to radio broadcasting licensees and potential licensees. The SBA defines a radio broadcasting station that has no more than \$5 million in annual receipts as a small business.<sup>23</sup> A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.<sup>24</sup> Included in this industry are commercial religious, educational, and other radio stations.<sup>25</sup> Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.<sup>26</sup> However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.<sup>27</sup> The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than \$5 million in revenue in 1992.<sup>28</sup> Official Commission records indicate that 11,334 individual radio stations were operating in 1992.<sup>29</sup> As of March, 1997, official Commission records indicate that 12,128 radio stations were operating.<sup>30</sup>

It is estimated that the proposed rules will affect about 450 radio stations, approximately 432 of which are small businesses.<sup>31</sup> These estimates are based on cursory studies performed by the staff and may overstate the number of small entities since the revenue figures on which they are based do not include aggregate revenues from non-radio affiliated companies.

---

<sup>23</sup> 13 C.F.R. § 121.201, SIC 4832.

<sup>24</sup> Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 78, Appendix A-9.

<sup>25</sup> *Id.*

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

<sup>27</sup> *Id.*

<sup>28</sup> The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

<sup>29</sup> FCC News Release No. 31327, Jan. 13, 1993.

<sup>30</sup> FCC News Release No. 64958, Sept. 6, 1996.

<sup>31</sup> We use the 96% figure of radio station establishments with less than \$5 million revenue from the Census data and apply it to the 12,088 individual station count to arrive at 11,605 individual stations as small businesses.

## Alternative Classification of Small Stations

An alternative way to classify small radio stations is the number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity Rule (EEO) for broadcasting.<sup>32</sup> Thus, radio stations with fewer than five full-time employees are exempted from certain EEO reporting and record keeping requirements.<sup>33</sup> We estimate that the total number of grandfathered broadcast stations with 4 or fewer employees is approximately 120.<sup>34</sup>

### D. Projected Compliance Requirements of the Rule:

Applicants filing a modification application will be required to provide similar exhibits to those currently required for a construction permit. This information may consist of an interference analysis showing that no area previously receiving interference-free service would receive co-channel or first-adjacent channel interference using the desired to undesired signal strength ratio interference calculation method.

Alternatively, for co-channel and first-adjacent channel applicants, a showing that the public interest would be served by the changes proposed in an application must include exhibits demonstrating that the total area and population subject to co-channel or first-adjacent channel interference, caused and received, would be maintained or decreased. In addition, the showing must include exhibits demonstrating that the area and the population subject to co-channel or first-adjacent channel interference caused by the proposed facility to each short-spaced station individually is not increased. In all cases, the applicant must also show that any area predicted to lose service as a result of new co-channel or first-adjacent-channel interference has adequate aural service remaining. For these purposes, adequate service is defined as 5 or more aural services (AM or FM). Finally, any applicant proposing interference caused in an area where interference is not caused must serve its application upon the licensee(s) of the affected short-spaced station(s). The above-listed requirements

---

<sup>32</sup> The Commission's definition of a small broadcast station for purposes of applying its EEO rules was adopted prior to the requirement of approval by the SBA pursuant to Section 3(a) of the Small Business Act, 15 U.S.C. § 632(a), as amended by Section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Public Law 102-366, § 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Public Law 103-403, § 301, 108 Stat. 4187 (1994). However, this definition was adopted after the public notice and the opportunity for comment. *See Report and Order* in Docket No. 18244, 23 FCC 2d 430 (1970), 35 FR 8925 (June 6, 1970).

<sup>33</sup> *See, e.g.*, 47 C.F.R. § 73.3612 (Requirement to file annual employment reports on Form 395 applies to licensees with five or more full-time employees); First Report and Order in Docket No. 21474 (*Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395*), 70 FCC 2d 1466 (1979), 50 FR 50329 (December 10, 1985). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. *Order and Notice of Proposed Rule Making in MM Docket 96-16 (Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines)*, 11 FCC Rcd 5154 (1996), 61 FR 9964 (March 12, 1996). One option under consideration is whether to define a small station for purposes of affording such relief as on with ten or fewer employees.

<sup>34</sup> Compilation of 1994 Broadcast Station Annual Employment Reports (FCC Form 395B), Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

are similar to the interference exhibits required by the previous rule section.

Second-adjacent and third-adjacent channel grandfathered stations will no longer be required to submit interference exhibits, therefore reducing the filing burden.

The information required with a modification application generally is the minimum necessary for the Commission to verify compliance with its rules and regulations. In most instances, the new procedures will reduce the time and expense required to implement certain modifications to grandfathered broadcast stations. Most permittees and licensees retain professional consulting engineers or legal counsel, or both in preparing construction permit applications. We do not expect this to change significantly by the adoption of the new rules and procedures. However, the time needed for the preparation of the simplified applications will be reduced as a result of fewer necessary waiver requests, translating into time and money savings for the broadcast applicant.

#### **E. Significant Alternatives Considered Minimizing the Economic Impact on Small Entities and Consistent with the Stated Objectives:**

The burdens on co-channel and first-adjacent-channel grandfathered applicants will be similar to the requirements under the previous rule section. The burden on second-adjacent and third-adjacent grandfathered applicants will be reduced. Modification applications will typically require that lesser amounts of information be submitted to the Commission as compared to an application submitted under the previous rules. The rule and policy changes will have a positive economic impact, as eligible entities, including small entities, will be able to increase their service or make transmitter site changes that were previously inhibited by the rules. All entities will still be able to file informal objections against a modification application, just as they may do now. In addition, any applicant proposing to cause interference in an area previously receiving interference must serve its application on the licensee(s) of the affected station(s).

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

The Secretary shall send a copy of this Final Regulatory Flexibility Analysis along with this *Report and Order* in a report to Congress pursuant to Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, codified at 5 U.S.C. § 801(a)(1)(A). A copy of this RFA will also be published in the *Federal Register*.