



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 13-249; FCC 15-142]

Revitalization of the AM Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopted a number of procedures and procedural changes designed to assist AM broadcasters to better serve the public, thereby advancing the Commission's fundamental goals of localism, competition, and diversity in broadcast media.

DATES: Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, except for the amendment to 47 CFR 73.1560, which contains new or modified information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), and which will become effective after the Commission publishes a document in the Federal Register announcing such approval and the relevant effective date.

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SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission’s First Report and Order (First R&O), FCC 15-142, adopted October 21, 2015, and released October 23, 2015. The full text of the First R&O is available for inspection and copying during regular business hours in the FCC Reference Center, 445 Twelfth Street, SW, Room CY-A257, Portals II, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

Paperwork Reduction Act of 1995 Analysis

This First Report and Order (First R&O) adopts new or revised information collection requirements, subject to the Paperwork Reduction Act of 1995 (PRA) (Pub. L. No. 104-13, 109 Stat 163 (1995) (codified in 44 U.S.C. 3501-3520)). These information collection requirements were submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. The Commission received OMB preapproval for the information collection requirements on January 28, 2014. The information collection requirements were adopted as proposed. The Commission will activate the burden hours in OMB’s inventory. These information collection requirements are preapproved under OMB control number 3060-1194, Section 73.1560(a)(1) and FCC Form 338. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

Synopsis of Order

1. With this First R&O, the Commission addresses the proposals set forth in the Notice of Proposed Rule Making in this proceeding, FCC 13-139, 28 FCC Rcd 15221 (2013) (NPRM). The Commission proposed in the NPRM to open a one-time filing window, open to AM licensees and permittees only, to apply for and receive authorizations for one new FM translator station per AM station, for the sole and limited purpose of re-broadcasting the AM signal to provide fill-in and/or nighttime service. The Commission further proposed that such translator stations must strictly comply with the existing fill-in coverage area technical restrictions on FM translators re-broadcasting AM stations, that any translator acquired through this one-time window could be used only to re-broadcast the signal of the AM station acquiring it, and that such a translator could not be assigned or transferred except in conjunction with the commonly owned AM primary station. The Commission sought comment on this proposal and its limitations. The Commission opted to continue allowing so-called “Mattoon waivers,” which allow broadcasters to relocate FM translators intended to rebroadcast AM stations farther than would be allowed under the Commission’s rules for minor modifications of translator stations.

2. Although there was strong support for the AM-only new FM translator auction filing window proposed in the NPRM, the Commission found that there are issues that call into question whether it should limit the approach to opening such a window as proposed. Chief among its concerns was the time it would take for such a window to open. Commenters in this proceeding discuss the need for immediate relief, but given other auction commitments, the Commission determined that it is not possible at this time

to provide such relief in the short term with a new FM translator station auction filing window. However, it is possible to provide short-term relief to AM broadcasters by providing a window where AM stations would be provided greater flexibility to move FM translators. This window would take advantage of the availability of existing FM translators that can be obtained by many AM broadcasters seeking to enhance their local service. Based upon a staff analysis of applications available in the Media Bureau's Consolidated Data Base System (CDBS), since 2003 the number of FM translator stations has increased by 65 percent (from approximately 3,800 to approximately 6,300). This number is likely to grow in the next 12 to 18 months, as more FM translator permits are awarded from the Auction 83 filing window, to the point where there could be up to twice the number of translators that existed in 2003. Further, the secondary market for FM translator stations is robust: since the Commission's 2009 decision to allow AM stations to be rebroadcast over FM translators, almost 4,000 translators have changed hands, of which over 600 were sold to AM stations for use as cross-service fill-in translators. A staff review of "stand alone" FM translator assignment applications granted over the past year has determined that the vast majority of stations have sold for under \$100,000, and a substantial majority of those for less than \$50,000. Providing AM broadcasters with a greater opportunity to benefit from this secondary market will provide them with tangible and immediate relief. Accordingly, the Commission adopted a two-pronged approach to enable more AM stations to acquire FM translators. First, the Commission directed the Media Bureau to administer in 2016 a process where an AM licensee or permittee seeking to rebroadcast on an FM translator may acquire and relocate one and only one authorized non-reserved band FM translator station up to 250 miles,

and specify any rule-compliant non-reserved band FM channel, as a minor modification application. Second, the Commission directed the Media Bureau, in conjunction with the Wireless Telecommunications Bureau (Bureaus), to open new FM translator application auction windows, beginning in 2017, for AM stations that do not file a modification application in 2016. Class C and D stations will be able to take advantage of the modification window and the auction window first, prior to second windows that will be available to all classes.

3. The Commission also asked in the NPRM whether, between expanding the number of FM translators eligible to re-broadcast AM stations and opening the window proposed in this proceeding, there would continue to be a need for so-called Mattoon waivers and, if not, when the policy of granting such waivers should be eliminated. Most commenters favored retention of Mattoon waivers, adoption of the proposed Tell City waivers and, for some cases, codifying the Mattoon waiver policy in our Rules. Although there has been and will likely continue to be an expansion of the number of FM translator stations available to rebroadcast AM stations, the decision to delay opening an exclusive AM-new FM translator window in favor of opening a modification window may limit FM translator acquisition options for some AM licensees. Because of this, some flexibility in relocating such fill-in FM translators will continue to be necessary. The Mattoon waiver policy requires satisfaction of three criteria: (1) the applicant does not have a history of filing serial minor modification applications; (2) the proposed site is mutually exclusive with the licensed translator facility; and (3) the translator will rebroadcast the proposed AM primary station for a period of four years of on-air operation, exclusive of silent periods, commencing with the initiation of on-air service at

the new location. Under the circumstances, the Commission directed the Media Bureau to continue granting Mattoon waivers, including the four-year operating condition, in appropriate cases. Until and unless a different procedure is announced on review of the pending Tell City waiver case (Way Media, Inc., Letter, 29 FCC Rcd 11287, 11287 (MB 2014), review pending), however, the Mattoon waiver policy will not be extended beyond its current limits as described above, including as proposed by the Tell City applicant, except as discussed below for the limited purpose of the modification window adopted in this First R&O.

4. Although the availability of existing and to-be-authorized FM translator stations and the use of Mattoon waivers should provide an ample supply of translators for fill-in use by many AM stations, the Commission recognized that the availability of such translator stations may not, in many cases, completely satisfy demand. Some AM broadcasters might enjoy a sufficient supply of translators that conform with Commission siting rules, while others may have more difficulty in locating potentially rule-compliant translators. Still other AM broadcasters, particularly those whose stations have limited power (Class C) or lack protected nighttime service (Class D), might need additional time to arrange the financing necessary to enter the market for an FM translator station. For this reason, the Commission directed the Media Bureau to announce, by Public Notice, two modification windows during which an AM licensee or permittee seeking to rebroadcast on an FM translator may, on a first-come, first-served basis, acquire and relocate one and only one authorized non-reserved band FM translator station up to 250 miles, and specify any rule-compliant non-reserved band FM channel, as a minor modification application, notwithstanding 47 CFR 74.1233(a)(1), which defines major

and minor modifications of FM translator facilities. This distance limitation is designed to substantially expand purchase options for AM stations, particularly those serving smaller markets and rural areas. It is also designed to not disrupt the current secondary market for translator authorizations.¹ In this regard the Commission noted that spectrum congestion in the largest markets will significantly limit opportunities for translator station relocations. The Commission will accept applications to modify authorized FM translator stations that the AM station licensee or permittee either owns, for which it is the proposed assignee or transferee in a pending application (a proposed assignee or transferee may file in its own name an application to modify the subject translator authorization. See 47 CFR 73.3517(a)), or for which it has a rebroadcasting agreement. The Commission further directed the Bureau to open the first modification window for six months, and to make the first window available only to applications to modify and/or relocate FM translator stations rebroadcasting Class C and D AM stations, on a one translator per AM station basis. Class C and D stations, because of their limited power or lack of protected nighttime service, will benefit most from the acquisition of a cross-service translator, and thus should be afforded the first opportunity to obtain one. The second window, to open at the end of the initial six-month window, would be open for an additional three-month period, and would be available to applications to modify and/or

¹ A substantial majority of the approximately 1300 outstanding Auction 83 construction permits are scheduled to expire in 2016. Modification applicants in one of these two modification windows may seek waivers of these construction deadlines. See 47 CFR 1.3. Waivers can expand cross-service broadcasting opportunities for AM stations, will allow AM licensees to realize service improvements quickly, will incentivize FM translator permittee participation in the modification window process, and will provide a means to avoid the delays and administrative burdens of re-auctioning this spectrum. Accordingly, the Commission found that a waiver of an Auction 83 FM translator construction deadline is presumptively in the public interest for applicants participating in one of the modification windows, provided that the AM station licensee proposing to use the FM translator for rebroadcasting its AM station commits to prompt FM translator station construction and initiation of broadcast operations.

relocate FM translator stations rebroadcasting any AM station of any class, including Class C and D stations that did not file an application in the initial window, also on a one translator per AM station basis. In return for this one-time rule waiver, the Media Bureau was directed to impose on translators relocated and/or modified using the waiver the same four-year operating condition currently attached to FM translators relocated using Mattoon waivers. Thus, the modified FM translator must rebroadcast the FM translator modification applicant's specified AM primary station for a period of four years of on-air operation, exclusive of silent periods, commencing with the initiation of on-air service at the new location. The Commission also directed the Media Bureau to expeditiously initiate a three-month outreach effort to promote Class C and Class D participation in this modification window filing process; to develop, as practicable, technical tools similar to those created for the LPFM window to assess spectrum availability and potential FM translator acquisition options; and to establish streamlined procedures for handling inquiries from the AM and FM translator broadcast community. The modification windows are to be opened upon completion of this outreach.²

5. The modification windows, as noted above, can provide near-term relief to AM broadcasters. However, some AM stations may not be successful in locating translators, notwithstanding the availability of rule-compliant FM translator channels in their communities. Therefore, to further promote the long-term viability of the AM service, the Commission also directed the Bureaus to open two new FM translator

² The pending Tell City waiver request could likely qualify for processing under the waiver procedures announced herein. However, in order to promote a fair process for all AM stations in reallocating FM translator spectrum, including to spectrum limited markets, the Commission will not afford that proposal cut-off rights over other filings. The Commission also directed the Media Bureau to dismiss, without further consideration, waiver requests filed prior to and in anticipation of the opening of the modification application filing windows.

application auction windows, beginning in 2017,³ for those AM licensees and permittees that do not participate, i.e., file an application, in one of the modification windows.⁴ The first FM translator auction window, as with the initial modification window, shall be limited to Class C and D AM permittees and licensees that have not participated in either modification window. The second FM translator auction window, to be opened as soon as possible after the first window has closed and applicants in the first window have had an opportunity to resolve mutual exclusivity through settlement or technical resolution, will be open to all AM permittees and licensees that have not participated in any of the prior modification or auction windows. The Commission believed that the threshold qualification of affording relief first to Class C and D stations, with limited power or no protected nighttime service, represented the best approach among the many proposed by commenters. The FM translator auction windows will otherwise follow the NPRM proposal, insofar as participation will be limited to AM permittees and licensees, each applicant may apply for one and only one translator station that must comply with Commission siting rules for FM fill-in translators rebroadcasting AM stations, and any translator acquired through the FM translator auction windows will be permanently linked to the AM primary station acquiring it. See NPRM, 28 FCC Rcd at 15227. Just as

³ In order to ensure the efficient processing of these auction applications, the Commission directed the Bureaus to undertake and complete all revisions to Form 175 necessary to collect the FM translator technical specifications, and also directed the Bureaus to hold an auction for all remaining mutually exclusive commercial Auction 83 applications following the completion of the Incentive Auction, Auction 1000, and prior to the first FM translator auction window.

⁴ The NPRM proposed a “one-to-a-customer” FM translator window to provide limited, targeted relief to AM stations. See NPRM, 28 FCC Rcd at 15228. Thus, the Commission declined to permit one class of eligible applicants to double the number of FM translator authorizations that they could acquire under these window procedures. Given the supply of translator authorizations, the palpable demand for FM translator licensees by other stakeholders, and the relief afforded by the modification windows, AM licensees and permittees will be eligible to participate in either one modification or one auction window, but not both. AM station assignments or transfers during the multi-window process will not create an opportunity for new owners to participate in an auction window when the former licensee participated in a modification window.

in FM Translator Auction 83, these new FM translator auction windows will include opportunities for mutually exclusive applicants to resolve their mutual exclusivity through settlements or technical resolutions. See FM Translator Auction 83 Mutually Exclusive Applications Subject to Auction, Public Notice, 28 FCC Rcd 9716 (MB 2013); 47 CFR 73.5002(c), (d).

6. The Commission also adopted the NPRM proposal to modify the daytime community coverage requirement contained in 47 CFR 73.24(i), for existing licensed AM facilities only, to require that the daytime 5 mV/m contour encompasses either 50 percent of the area, or 50 percent of the population of the principal community to be served. This rule modification is intended to provide relief to existing broadcasters – some of which have held AM licenses for many decades – that may find themselves lacking the flexibility to relocate their transmission facilities in order to meet the rule’s community coverage requirements, due to expansion of community boundaries and/or lack of available land to which to relocate antennas. However, in order to preserve the limited intent of this rule modification, the Commission authorized the Media Bureau to inquire into the facts justifying any modification that would reduce the percentage of community population or area coverage within the first four years of licensed on-air operation of the applicant station, exclusive of any periods of reduced operations or silence pursuant to special temporary authorizations. Should the Bureau find there is no compelling reason warranting reduced community coverage during this period, it may dismiss the modification application.

7. Likewise, the Commission adopted the NPRM proposal to eliminate the nighttime community coverage requirement for existing licensed AM stations, and

modify the nighttime community coverage requirement in 47 CFR 73.24(i) to require that applicants for new AM stations and those AM stations seeking a change to their communities of license cover either 50 percent of the population or 50 percent of the area of the communities of license with a nighttime 5 mV/m signal or a nighttime interference-free contour, whichever value is higher. It declined to eliminate completely nighttime community of license coverage requirements for new AM stations and those changing community of license, as well as for permittees of unbuilt stations seeking to modify their authorizations, in the interest of striking the appropriate balance between the need to provide relief to AM broadcasters with few siting options (amplified by the added complexity of AM nighttime skywave signal propagation and concomitant signal restrictions), and the need to provide the community of license with some kind of service at night. As with the change to daytime community coverage requirements, the Commission instructed the Media Bureau to examine closely any request by a station to reduce nighttime community coverage during its first four years of licensed on-air operation, and granted the Bureau discretion to dismiss any such application absent a compelling reason warranting reduced nighttime service.

8. The Commission proposed in the NPRM to delete the so-called “ratchet rule,” which effectively requires that a Class A or B AM broadcaster, seeking to make facility changes that modify its AM signal, demonstrate that the improvements will result in an overall reduction in the amount of skywave interference that it causes to certain other AM stations (primarily by “ratcheting back” radiation in the direction of certain other AM stations). 47 CFR 73.182(q) n.1. Two engineering firms filed a 2009 petition to eliminate the ratchet rule, contending that the rule’s practical effect was to discourage

station improvements, because compliance with the rule more often than not required the modifying station to reduce power to the point that net nighttime interference-free (NIF) service was reduced. Most commenters supported this proposal. Accordingly, the Commission deleted the ratchet rule, as proposed in the NPRM, agreeing with the commenters that confirmed the rule's negative consequences recited in the NPRM, as well as with long- and short-term benefits identified by commenters, including cost reduction to AM broadcasters making station improvements, economic benefits to local AM stations and their communities served through expanded nighttime broadcasting and consequent expansion to local advertising platforms, and the ability of communities served by AM stations affected by the ratchet rule to receive information concerning local events, or emergencies at night, among others.

9. In the NPRM, the Commission also proposed modifications to the rules affecting AM stations using Modulation Dependent Carrier Level (MDCL) control technologies. MDCL control technologies vary either the carrier or the carrier and sideband power levels as a function of the modulation level, thus allowing the licensee to reduce transmitter power consumption while maintaining audio quality and signal coverage. Both basic types of MDCL control technologies and various systems reduce the station's antenna input power to levels not permitted by 47 CFR 73.1560(a). The Commission proposed to: (1) amend 47 CFR 73.1560(a) of the Rules to provide that an AM station may commence MDCL control operation without prior Commission authority, provided that the AM station licensee notifies the Commission of the station's MDCL control operation within 10 days after commencement of such operation using the Media Bureau's Consolidated Database System (CDBS) Electronic Filing System; (2)

require, regardless of the MDCL control technology employed, that the AM station's transmitter must achieve full licensed power at some audio input level, or when the MDCL control technology is disabled; and (3) require an AM station using MDCL control technology to disable it before field strength measurements on the station are taken by the licensee or others. Most commenters supported these proposals, although some noted that MDCL control technologies generally benefit only those AM stations using newer transmitters, which are the only ones with which MDCL control technologies are compatible. The Commission adopted the proposals as set forth in the NPRM. AM stations must electronically notify the Media Bureau of the station's MDCL control operation within 10 days after commencement of such operation using FCC Form 338 – AM Station MDCL Notification, available in the CDBS Electronic Filing System. The Commission declined to impose additional requirements regarding certification of third-party MDCL products, or any other rule changes with regard to MDCL operation. The Commission continues to hold broadcasters responsible for their signals, and for any interference resulting from those signals (interference that has not to this point been reported from those broadcasters currently employing MDCL control technologies). The Commission stated it would revisit this position if interference from third-party MDCL products were to become a problem, but noted that it would be up to the broadcaster employing such a product to remedy the situation should interference arise.

10. In the NPRM the Commission discussed a proposal by the Multicultural Media, Telecom, and Internet Council (MMTC), in which MMTC argued for the elimination of the Commission's minimum efficiency standards for AM transmission systems (found in 47 CFR 73.182 and 73.189), replacing them with a "minimum

radiation” standard. In MMTC’s view, the minimum efficiency standards hindered AM broadcasters, because they require a certain height antenna and length of ground radials for a station at a given frequency, causing difficulties in finding compliant sites for towers and ground systems. MMTC argued that an AM broadcaster should be able to use a less efficient – but also less space-intensive – transmission system, driving the system with more power to offset the lack of efficiency. The Commission observed in the NPRM that MMTC’s proposal lacked specifics as to the appropriate replacement “minimum radiation” standard, noting that the Rules contained similar provisions for applicants seeking to avoid the minimum antenna efficiency standards. The Commission also stated that it did not believe the record was sufficiently developed to propose wholesale rule changes to the minimum antenna efficiency standards. In order to provide some relief to AM broadcasters finding it increasingly difficult to locate rule-compliant antenna sites, however, the Commission proposed to reduce the AM antenna efficiency standards by 25 percent. The Commission also encouraged commenters to provide specifics as to any proposed replacement or alternative standard for AM transmission systems. Commenters, for the most part, expressed support for relaxing the AM efficiency standards, but did not provide the specificity requested in the NPRM. Additionally, several commenters offered cautions regarding potential problems with shorter, less efficient radiators, including decreased signal stability and increased skywave interference. The Commission therefore adopted the proposal as set forth in the NPRM, reducing the existing AM antenna efficiency standards by 25 percent as a means to provide relief to AM broadcasters. The Commission did, however, agree with some commenters who suggested that it should collect more real-world data on alternative and

less-efficient AM transmission systems. Accordingly, the Commission also directed the Media Bureau to entertain requests by existing AM broadcasters for experimental authorizations to operate with antenna systems that do not meet the modified antenna efficiency rules, provided that they can establish that such operation will not increase interference to other domestic or international AM stations and can demonstrate the stability of such systems. Such applications may be made by informal application pursuant to 47 CFR 5.203, and shall be subject to the monitoring and reporting requirements in that section and such other conditions as the Media Bureau may require.

Final Regulatory Flexibility Analysis.

11. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM to this proceeding (24 FCC Rcd 5239 (2009)). The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The Commission received no comments on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA (5 U.S.C. 604).

Need for, and Objectives of, the First Report and Order.

12. This First Report and Order (First R&O) adopts changes to certain technical rules and processes relating to the AM broadcast radio service. In the First R&O, the Commission modified daytime and nighttime community coverage requirements for certain AM stations; eliminated the so-called AM Ratchet Rule; adopted a new form notification procedure for stations implementing Modulation Dependent Carrier Level Control Technologies; and modified the rules relating to AM antenna system efficiency.

13. In the First R&O, the Commission addressed issues raised in the NPRM. The Commission, in the NPRM, explained that it had not done a comprehensive review of the AM service in almost 25 years. Moreover, in the years since the last comprehensive review of the AM service, listenership had declined due to several factors, including: the introduction of new media with higher audio fidelity, such as CDs, digital media players, and FM digital radio; increased interference among AM stations; and increased interference from non-broadcast sources, such as computers, LED light bulbs, power supplies, and utility lines. Based in part on separate pleadings and petitions for rule making filed by stakeholders, the Commission in the NPRM outlined six proposals designed to offer assistance to AM broadcasters in light of the various difficulties surrounding the AM service.

14. After considering the comments filed in response to the NPRM, the Commission determined that there were impediments to the immediate opening of a filing window limited to AM licensees and permittees wishing to obtain FM translator stations, including the time it would take to open such a window, and the wide availability of FM translator stations including the number expected to be authorized in the near future. It concluded that the correct approach, to offer near-term relief to AM broadcasters, was to open two windows allowing the modification and/or relocation of FM translators to rebroadcast AM stations. These windows would be preceded by a three-month period of outreach by the Media Bureau to AM stations with limited power and/or no protected nighttime service (Class C and D stations). Following this period of outreach, the Media Bureau will open a six-month window in which an AM station seeking to rebroadcast on an FM translator may, on a first-come, first-served basis, apply

to acquire and relocate one and only one authorized non-reserved band FM translator station up to 250 miles, and specify any rule-compliant non-reserved band FM channel, as a minor modification application notwithstanding 47 CFR 74.1233(a)(1), which defines major and minor modifications of FM translators. This first modification window will be available only to applications to modify and/or relocate an FM translator station rebroadcasting a Class C or D AM station, on a one translator per AM station basis. The first modification window will be followed by a second, three-month modification window, open for applications to modify and/or relocate an FM translator rebroadcasting any AM station of any class, including a Class C or D station that did not participate (i.e., file an application) in the initial modification window, also on a one translator per AM station basis. FM translator stations modified and/or relocated during these modification windows will be subject to the same four-year operating condition currently attached to FM translators relocated using Mattoon waivers.

15. To further promote the long-term viability of the AM service, the Commission also directed the Bureaus to open, in 2017 after completion of the Incentive Auction, Auction 1000, two auction windows for new FM translator stations to rebroadcast AM stations, open to AM licensees and permittees that did not file applications in either of the modification windows. As with the modification windows, the first new FM translator auction window will be limited to applications filed by licensees or permittees of Class C and D AM stations, on a one translator per station basis, that did not file applications in the modification windows. After close of the first new FM translator auction window, and after applicants in that window have had the opportunity to resolve mutual exclusivity through settlement or technical resolution, the

Bureaus will open a second new FM translator auction window, which will be open to all AM licensees and permittees, of any class, that did not participate in either of the modification windows or the first auction window. The new FM translator auction windows will otherwise follow the proposal in the NPRM: participation will be limited to AM licensees and permittees, each applicant may apply for one and only one translator station that must comply with our siting rules for FM fill-in translators rebroadcasting AM stations, and any translator acquired through the FM translator auction windows will be permanently linked to the AM primary station acquiring it. Both new FM translator auction windows will include opportunities for mutually exclusive applicants to resolve their mutual exclusivity through settlements or technical resolutions.

16. In the NPRM, the Commission also proposed to change the daytime and nighttime community coverage requirements for AM stations. It noted that MMTC had filed a 2009 petition for rule making, which it styled a “Radio Rescue Petition,” in which among other things it sought some flexibility in transmitter siting for AM stations. MMTC’s reasoning was that some existing stations were unable to comply with the requirements that an AM station place a 5 mV/m daytime signal over at least 80 percent of its community of license, and that at least 80 percent of the community of license be encompassed by either a 5 mV/m nighttime signal or an NIF signal (except in the case of Class D stations, which have no protected nighttime service). MMTC argued that, as communities grow and boundaries expand farther from an AM transmitter site, it becomes impossible for the station to comply with the community coverage rules, and further argued that scarcity of land suitable for AM transmission systems makes it difficult or impossible for such stations to find rule-compliant transmitter sites. MMTC

thus suggested, and the Commission proposed, that the rule be changed to allow an existing AM station to cover only 50 percent of either the population or the area of its community of license with a 5 mV/m signal during the day, and to eliminate the community of license coverage requirement at night. Additionally, the Commission proposed to allow a new AM station or one changing its community of license to encompass only 50 percent of either the population or area of the community of license within its nighttime 5 mV/m contour or its NIF contour, whichever value is higher. Based on substantially favorable commenter support, the Commission adopted these proposals, adding the proviso that any request to utilize the new community coverage standards within the first four years of on-air operations, exclusive of any periods of reduced operation or silence, would be met with increased scrutiny and granted only upon a compelling showing.

17. The Commission also proposed, in the NPRM, to eliminate the so-called “ratchet rule.” This rule required a Class A or B AM station proposing signal modifications to demonstrate an overall reduction in the amount of skywave interference it caused to other AM stations; in other words, the modifying station was required to “ratchet back” radiation in the direction of certain other AM stations. Two engineering firms filed a 2009 petition for rulemaking to eliminate the ratchet rule, claiming that the rule’s practical effect was not, as intended, to reduce nighttime skywave interference, but rather to discourage station improvements and NIF service by the modifying station. The Commission adopted this proposal after near-universal approval by commenters. Likewise, there was little opposition in the comments to the NPRM proposal to allow AM stations to initiate MDCL control technologies by simply notifying the Commission,

rather than seeking authorization to do so, as had been the procedure. MDCL control technologies vary a station's radiated power with carrier modulation, enabling power savings. The Commission adopted this proposal.

18. The last of the proposals set forth in the NPRM was to modify the AM antenna efficiency standards set forth in the Commission's Rules. MMTC had, in its 2009 Radio Rescue Petition, argued that the Commission's long-standing rules mandating minimum lengths for AM radiators and ground systems, to assure efficient transmission, were outdated and limited AM stations' flexibility in choosing transmission system sites in an era of diminished property availability for such sites. MMTC suggested replacing the minimum efficiency standards with a "minimum radiation" standard, its contention being that a station should be allowed to choose to operate a less efficient, less space-intensive transmission system, making up for the lack of system efficiency by using more input power to the system to yield the same amount of radiated power. The Commission questioned some of the assumptions underlying MMTC's proposal, but agreed that some reduction in the antenna efficiency standards might provide some relief to AM broadcasters. Accordingly, the Commission proposed a 25 percent reduction in the antenna efficiency standards, and requested comment on the technical underpinnings to any further reduction in, or elimination of, those standards.

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

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

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

20. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein. 5 U.S.C. 603(b)(3). The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.” 5 U.S.C. 601(6). In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. 632). 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). 15 U.S.C. 632.

21. The subject rules and policies potentially will apply to all AM radio broadcasting licensees and potential licensees. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. 15 U.S.C. 632. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number. The SBA has established a small business size standard for this category, which is: firms having \$38.5 million or less in annual receipts. 13 CFR 121.201, NAICS code 515112 (updated

for inflation in 2008). According to the BIA/Kelsey, MEDIA Access Pro Database on October 15, 2015, 4,691 (99.94%) of 4,694 AM radio stations have revenue of \$38.5 million or less. Therefore, the majority of such entities are small entities. The Commission noted, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. 13 CFR 121.103(a)(1). Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

22. The proposed policies could affect licensees of FM translator stations, as well as potential licensees in this radio service. The same SBA definition that applies to radio broadcast licensees would apply to these stations. The SBA defines a radio broadcast station as a small business if such station has no more than \$38.5 million in annual receipts. Currently, there are approximately 6,312 licensed FM translator and booster stations. In addition, there are approximately 225 applicants with pending applications filed in the 2003 translator filing window. Given the nature of these services, the Commission will presume that all of these licensees and applicants qualify as small entities under the SBA definition.

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

23. As described, certain rules and procedures will change, although the changes will not result in substantial increases in burdens on applicants. The Commission has added a new form, FCC Form 338, which an AM station must use to notify the Commission that it is initiating operation using MDCL control technologies. Use of FCC

Form 338, however, replaces the current procedure whereby an AM station makes a request to use MDCL control technologies. Use of the form is not only less burdensome than the previous request process, but enables the applicant to initiate MDCL operation immediately, rather than waiting for Commission approval. The remaining rule changes adopted in the First R&O are substantive and do not involve application changes, reporting requirements, or record keeping requirements beyond what is already required. For example, currently applicants for AM construction permits or modifications are required only to certify that they comply with the community coverage requirements of 47 CFR 73.24(i). Such applicants will continue to do so, but under a less stringent rule standard in some cases.

Steps Taken to Minimize Significant Impact of Small Entities, and Significant Alternatives Considered.

24. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c)(1)-(c)(4).

25. With regard to the proposals in the NPRM, the Commission received many comments proposing different plans for an FM translator window limited to applicants that hold AM station authorizations. Most of these comments centered around whether

the window could be limited to certain AM broadcasters, and to whom it should be limited. Ultimately, while recognizing that an exclusive window limited to some or all AM station licensees and permittees would assist those entities, the Commission concluded that immediately opening such a window would be impractical, and could disrupt the robust secondary market in FM translators. It decided instead to implement, first, a period of outreach to Class C and D AM station licensees and permittees, which have lower power and/or no protected nighttime service, to assist them in locating existing translators that could meet their needs. Immediately following a three-month outreach period, the Commission will open two windows in which applicants may propose to relocate an existing FM translator up to 250 miles, and/or modify a translator to specify any rule-compliant non-reserved FM channel. This procedure is expected to lower prices for FM fill-in translators for AM stations by opening up the available market, thus benefiting AM station owners, and would also benefit small businesses owning FM translator stations. The first, six-month modification window would be open only to applicants proposing to modify FM translators rebroadcasting Class C and D AM stations, followed by a second, three-month window open to applicants to modify translators to rebroadcast any class of AM station, including for Class C and D stations for which there were no applications in the first window. All modification applications filed in the windows will be on a one translator-per-AM station basis, and any translator stations modified pursuant to modification window applications will be subject to the same four-year operating condition currently attached to translators modified pursuant to Mattoon waivers. The modification windows will provide short-term relief to AM broadcasters. They will be followed, upon completion of the Commission's Incentive

Auction proceeding, by two auction windows for AM licensees and permittees seeking to obtain new FM translator stations. The two new FM translator auction windows will follow a similar pattern to the modification windows: the first will be open only to Class C and D AM licensees and permittees whose stations were not participants in either modification window, while the second will be open to all AM licensees and permittees whose stations were not participants in either modification window or the first auction window. The new FM translator auction windows will otherwise be subject to the same conditions set forth in the NPRM, including the limitation of one and only one application per applicant, for an FM translator station that must comply with our siting rules for FM fill-in translators rebroadcasting AM stations, which will be permanently linked to the AM primary station acquiring it. Both new FM translator auction windows will include opportunities for mutually exclusive applicants to resolve their mutual exclusivity through settlements or technical resolutions. In adopting this process of modification windows followed by new translator auction windows, the Commission intends to provide immediate relief through a modified secondary translator market for AM broadcasters that are small businesses, while providing some of those businesses an opportunity to acquire a new fill-in FM translator at a later time, if that better comports with their situation.

26. With regard to the other, more technical proposals in the NPRM, the Commission's proposals were in most cases supported by a majority of commenters, giving little reason to consider alternatives. The proposals to reduce community coverage requirements for existing AM broadcasters were grounded in the idea that such broadcasters, small businesses that in some cases had occupied their transmitter sites for

decades, could not easily change transmitter sites because their communities of license had grown, and land had become increasingly expensive, thus making it difficult or impossible to locate new, rule-compliant sites. Relaxing the community coverage standards for existing AM stations reduces burdens on such businesses by relieving them of the obligation to locate other, more expensive transmitter sites or upgrading their equipment to meet those standards. Some commenters suggested that the Commission abandon community coverage rules altogether, or re-define “community” to mean something other than geographic boundaries. While such re-definitions would provide further relief to AM broadcasters, the Commission rejected them in part because 47 U.S.C. 307(b) requires that radio stations be assigned fairly and equitably among the several States and communities, and that any re-definition of “community” would run counter to the Commission’s historic expectation that a radio station meet its local service obligations, that is, provide service to the designated community, and adapt its programming to the shifting needs of that community. The principle of broadcast localism, which derives from Section 307(b), requires that there be certain minimum service requirements. Additionally, it is not necessarily a burden on radio stations to require that they cover as much population as possible, because increased listenership typically translates into increased advertising revenue. Thus, while the Commission considered these alternatives, it concluded that the proposals as adopted provided the most relief to AM broadcasters while still adhering to the requirements of the Communications Act and the expectation that a station will provide local service.

27. As for the proposed repeal of the ratchet rule, the vast majority of commenters favored that repeal because of the burdens the rule placed on broadcasters

seeking to improve their facilities and, thus, their signal coverage. There were no significant alternatives to consider other than leaving the rule in effect, which was only favored by a few commenters. Those favoring retention of the rule did so in order to retain the interference reduction benefits for which it was designed. The Commission, however, agreed with those commenters, including many broadcasters, who argued that the benefits of increased flexibility in facility improvement outweighed the minimal interference reduction resulting from the ratchet rule's application.

28. The Commission's proposal regarding notification procedures for MDCL control technology use by AM broadcasters did not involve a substantive change in the rules, merely a procedural change whereby AM broadcasters wishing to use such technologies would no longer have to seek leave to do so, but would notify the Commission of the fact. Those commenters opposed to the proposal did not oppose it as much as question the benefits of MDCL control technologies, observing that they are only available to stations with newer transmitters, that in some cases the power savings are minimal, and that the fluctuations in signal power could result in decreased listenability. These objections, however, do not go to the Commission's proposal, which merely makes it easier for those AM stations opting to use MDCL control technologies to do so. Although the proposal does introduce a new notification form, this form replaces the former system of requesting leave to use MDCL control technologies, and should result in an overall decrease in the burden on AM stations electing to use the technologies. The Commission thus decided that adoption of the proposal should be favored over retention of the prior procedure.

29. The Commission also received many comments on its proposal to relax, but not eliminate, AM antenna system efficiency rules. The Commission proposed a 25 percent reduction in the minimum standards for radiators. The most significant alternative to this proposal, put forward by many commenters, was to eliminate the efficiency standards for AM transmission systems altogether, leaving it to the individual broadcaster to decide how much power to feed into the system in order to achieve the level of signal radiation needed to provide rule-compliant coverage. Such a proposal, while power-intensive, would allow AM broadcasters to install less-efficient transmission systems in smaller plots of land, using radiators (towers) short enough to avoid zoning or FAA strictures. In considering this alternative, however, the Commission was also informed by those commenters pointing out that inefficient AM transmission systems, with short towers and/or ground systems, tend to be unstable, and might also result in greater levels of high-angle skywave interference to other stations. The Commission seeks to reduce burdens on AM broadcasters, but must also protect the integrity of the service, including minimizing inter-station interference. After considering the alternatives, the Commission concluded that adopting its proposed 25 percent reduction of AM antenna system efficiency standards represented the best accommodation between those considerations. It also decided, however, that more real-world data on inefficient AM transmission systems was called for, and therefore indicated that it would be willing to allow the installation of alternative or inefficient systems on an experimental basis, upon a showing that such systems are stable and will not cause excessive interference to other AM stations, and subject to the monitoring and reporting requirements in Part 5 of the Commission's Rules. Data gleaned from such experimental operations, it is hoped,

will allow the Commission to consider, in the future, whether the AM antenna system efficiency rules could be relaxed further or eliminated.

Report to Congress.

30. The Commission will send a copy of the First R&O, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the First R&O, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the First R&O and FRFA (or summaries thereof) will also be published in the Federal Register. (See 5 U.S.C. 604(b)).

Ordering Clauses.

31. Accordingly, **IT IS ORDERED** that pursuant to the authority contained in Sections 1, 2, 4(i), 303, 307, and 309(j) of the Communications Act of 1934, 47 U.S.C. §§ 151, 152, 154(i), 303, 307, and 309(j), that this First Report and Order **IS ADOPTED**.

32. **IT IS FURTHER ORDERED** that, pursuant to the authority found in Sections 1, 2, 4(i), 303, 307, and 309(j) of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 303, 307, and 309(j), the Commission's Rules **ARE HEREBY AMENDED** as set forth herein and in Appendix A to the First R&O.

33. **IT IS FURTHER ORDERED** that the rules adopted herein **WILL BECOME EFFECTIVE [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, except for 47 CFR 73.1560, which contains new or modified information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), and which

WILL BECOME EFFECTIVE after the Commission publishes a document in the Federal Register announcing such approval and the relevant effective date.

List of Subjects in 47 CFR Part 73

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Gloria J. Miles,
Federal Register Liaison Officer.
Office of the Secretary.

RULE CHANGES

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

2. Section 73.14 is amended by adding in alphabetical order the definition for “Modulation dependent carrier level (MDCL) control technologies” to read as follows:

§ 73.14 AM broadcast definitions.

* * * * *

Modulation dependent carrier level (MDCL) control technologies. Transmitter control techniques that vary either the carrier power level or both the carrier and sideband power levels as a function of the modulation level.

* * * * *

3. In §73.21 revise paragraphs (a)(2) and (3) to read as follows:

§ 73.21 Classes of AM broadcast channels and stations.

(a) * * *

(2) Class B station. Class B stations are authorized to operate with a minimum power of 0.25 kW (or, if less than 0.25 kW, an equivalent RMS antenna field of at least 107.5 mV/m at 1 kilometer) and a maximum power of 50 kW, or 10 kW for stations that are authorized to operate in the 1605-1705 kHz band.

(3) Class D station. A Class D station operates either daytime, limited time or unlimited time with nighttime power less than 0.25 kW and an equivalent RMS antenna field of less than 107.5 mV/m at 1 kilometer. Class D stations shall operate with daytime powers not less than 0.25 kW nor more than 50 kW. Nighttime operations of Class D stations are not afforded protection and must protect all Class A and Class B operations during nighttime hours. New Class D stations that had not been previously licensed as Class B will not be authorized.

* * * * *

4. In §73.24 revise paragraph (i) to read as follows:

§ 73.24 Broadcast facilities; showing required.

* * * * *

(i) That, for all proposals for new stations, applications to modify a construction permit for an unlicensed station, and all applications to change a station's community of license, the daytime 5 mV/m contour encompasses the entire principal community to be served. That, for all other applications for modification of licensed stations, the daytime 5 mV/m contour encompasses either 50 percent of the area, or 50 percent of the population, of the principal community to be served. That, for all proposals for new stations in the 535-1605 kHz band, applications to modify a construction permit for an unlicensed station, or applications to change a station's community of license, either 50 percent of the area, or 50 percent of the population of the principal community is encompassed by the nighttime 5 mV/m contour or the nighttime interference-free contour, whichever value is higher. That, for stations in the 1605-1705 kHz band, 50 percent of the principal community is encompassed by the nighttime 5 mV/m contour or the nighttime interference-free contour, whichever value is higher. That Class D stations with nighttime authorizations need not demonstrate such coverage during nighttime operation.

* * * * *

5. In §73.182 revise the first sentence in paragraph (a)(1)(ii) introductory text; revise paragraph (a)(4); revise the second sentence in paragraph (m), the table, and Note (2) to paragraph (m); and revise paragraph (q) to read as follows:

§ 73.182 Engineering standards of allocation.

(a) * * *

(1) * * *

(ii) Class A stations in Alaska operate on the channels allocated by § 73.25 with a minimum power of 10 kW, a maximum power of 50 kW and an antenna efficiency of 215 mV/m/kW at 1 kilometer. * * *

* * * * *

(4) Class D stations operate on clear and regional channels with daytime powers of not less than 0.25 kW (or equivalent RMS field of 107.5 mV/m at 1 kilometer if less than 0.25 kW) and not more than 50 kW. Class D stations that have previously received nighttime authority to operate with powers of less 0.25 kW (or equivalent RMS fields of less than 107.5 mV/m at 1 kilometer) are not required to provide nighttime coverage in accordance with § 73.24(i) and are not protected from interference during nighttime hours. Such nighttime authority is permitted on the basis of full nighttime protection being afforded to all Class A and Class B stations.

* * * * *

(m) * * * Certain approximations, based on the curve or other appropriate theory, may be made when other than such antennas and ground systems are employed, but in any event the effective field to be employed shall not be less than the following:

Class of station	Effective field (at 1 km)
All Class A (except Alaskan)	275 mV/m.
Class A (Alaskan), B and D	215 mV/m.
Class C	180 mV/m.

* * * * *

Note (2): For Class B stations in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands, 180 mV/m shall be used.

* * * * *

(q) Normally protected service contours and permissible interference signals for broadcast stations are as follows (for Class A stations, see also paragraph (a) of this section):

Class of station	Class of channel used	Signal strength contour of area protected from objectionable interference <small>[remove footnote reference]</small> ($\mu\text{V/m}$)		Permissible interfering signal ($\mu\text{V/m}$)	
		Day ¹	Night	Day ¹	Night ²
A	Clear	SC 100 AC 500	SC 500 50% SW AC 500 GW	SC 5 AC 250	SC 25 AC 250
A (Alaskan)do	SC 100 AC 500	SC 100 50% SW AC 500 GW	SC 5 AC 250	SC 5 AC 250
B	Clear	500	2000 ¹	25	25
	Regional			AC 250	250
C	Local	500	No presc. ³	SC 25	Not presc.
D	Clear	500	Not presc.	SC 25	Not presc.
	Regional			AC 250	

¹ Groundwave.

² Skywave field strength for 10 percent or more of the time.

³ During nighttime hours, Class C stations in the contiguous 48 States may treat all Class B stations assigned to 1230, 1240, 1340, 1400, 1450, and 1490 kHz in

Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands as if they were Class C stations.

Note: SC = Same channel; AC = Adjacent channel; SW = Skywave; GW = Groundwave

* * * * *

6. In §73.189 revise paragraph (b)(2) to read as follows:

§ 73.189 Minimum antenna heights or field strength requirements.

* * * * *

(b) * * *

(2) These minimum actual physical vertical heights of antennas permitted to be installed are shown by curves A, B, and C of Figure 7 of § 73.190 as follows:

(i) Class C stations, and stations in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands on 1230, 1240, 1340, 1400, 1450 and 1490 kHz that were formerly Class C and were redesignated as Class B pursuant to § 73.26(b), 45 meters or a minimum effective field strength of 180 mV/m for 1 kW at 1 kilometer (90 mV/m for 0.25 kW at 1 kilometer). (This height applies to a Class C station on a local channel only. Curve A shall apply to any Class C stations in the 48 conterminous States that are assigned to Regional channels.)

(ii) Class A (Alaska), Class B and Class D stations other than those covered in § 73.189(b)(2)(i), a minimum effective field strength of 215 mV/m for 1 kW at 1 kilometer.

(iii) Class A stations, a minimum effective field strength of 275 mV/m for 1 kW at 1 kilometer.

* * * * *

5. In §73.1560 revise paragraph (a)(1) to read as follows:

§ 73.1560 Operating power and mode tolerances.

(a) AM stations. (1) Except for AM stations using modulation dependent carrier level (MDCL) control technology, or as provided for in paragraph (d) of this section, the antenna input power of an AM station, as determined by the procedures specified in § 73.51, must be maintained as near as practicable to the authorized antenna input power and may not be less than 90 percent nor greater than 105 percent of the authorized power. AM stations may, without prior Commission authority, commence MDCL control technology use, provided that within 10 days after commencing such operation, the licensee submits an electronic notification of commencement of MDCL control operation using FCC Form 338. The transmitter of an AM station operating using MDCL control technology, regardless of the MDCL control technology employed, must achieve full licensed power at some audio input level or when the MDCL control technology is disabled. MDCL control operation must be disabled before field strength measurements on the station are taken.

* * * * *