



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

**[MB Docket No. 19-3; FCC 19-127; FRS 16411]**

**Reexamination of the Comparative Standards and Procedures for Licensing**

**Noncommercial Educational Broadcast Stations and Low Power FM Stations**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission adopts changes to its rules and procedures to select and license competing applications for new noncommercial educational (NCE) broadcast stations and low power FM (LPFM) stations. The changes are designed to improve the comparative selection procedures, reduce confusion among future applicants, expedite the initiation of new service to the public, and eliminate unnecessary applicant burdens.

**DATES:** Effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, except for rule changes to §§ 73.865, 73.872, 73.7002(c), 73.7003, and 73.7005. The Commission will publish a separate document in the *Federal Register* announcing the effective date of these rules.

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**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order (*R&O*), MB Docket No. 19-3; FCC 19-127, adopted on December 10, 2019, and released on December 11, 2019. The full text of this document is available electronically via the FCC's Electronic Document Management System (EDOCS) website at [http://fjallfoss.fcc.gov/edocs\\_public/](http://fjallfoss.fcc.gov/edocs_public/) or via the FCC's Electronic Comment Filing System (ECFS) website at <http://www.fcc.gov/ecfs>. (Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) This document is also available for public inspection and copying during regular business hours in the FCC Reference Information Center, which is located in Room CY-A257 at FCC Headquarters, 445 12th Street, SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m. The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Alternative formats are available for people with disabilities (braille, large print, electronic files, audio format), by sending an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

#### **Paperwork Reduction Act of 1995 Analysis**

This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, *see* 44 U.S.C. 3507. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document in a separate Federal Register Notice, as required by the PRA. These new or modified information collections will become effective after

the Commission publishes a document in the *Federal Register* announcing such approval and the relevant effective date.

In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

### **Congressional Review Act**

The Commission will send a copy of this *R&O* to Congress and the Government Accountability Office (GAO) pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

### **SYNOPSIS**

1. *Introduction.* In this *R&O*, the Commission adopts changes to its rules and procedures for comparatively considering competing applications for new and major modifications to noncommercial educational FM radio stations, FM translator stations, and full power television stations (collectively, NCE or NCE broadcast) and low power FM (LPFM) stations, which it proposed in the notice of proposed rulemaking, 84 FR 10275 (March 20, 2019), FCC 19-9, 34 FCC Rcd 851 (2019) (*NPRM*). Specifically, it adopts several of the proposals from the *NPRM*, including: (1) eliminating the requirement that NCE applicants amend their governing documents to pledge to maintain localism and diversity in order to receive points for being an “established local applicant” and for “diversity of ownership”; (2) expanding the scope of the divestiture policies by recognizing station divestitures for comparative purposes; (3) improving and expanding the NCE tie-breaker process and reducing the need for mandatory time-sharing; (4) establishing a mandatory time-sharing process, similar to the LPFM involuntary time-share rules, for mutually exclusive (MX) NCE applicants that are unable to

arrive at a voluntary time-share agreement; (5) clarifying aspects of the “holding period” rule by which NCE permittees must maintain the characteristics for which they received comparative preferences and points; (6) clarifying the LPFM rules to specifically permit LPFM applicants to discuss their intent to aggregate points and time-share prior to tentative selectee designations; (7) aiding NCE and LPFM permittees by eliminating certain tolling notification requirements; (8) supporting LPFM permittees and licensees by extending the construction period from 18 months to a full three years; and (9) allowing the assignment or transfer of LPFM permits after an 18-month holding period and eliminating the three-year holding period on assigning LPFM licenses. The changes are designed to improve the comparative selection procedures, reduce confusion among future applicants, expedite the initiation of new service to the public, and eliminate unnecessary applicant burdens.

2. Due to the noncommercial nature of the NCE and LPFM service, mutually exclusive (MX) applications for new station licenses are not subject to auction but are resolved by applying comparative procedures. This includes a point system, which is a simplified “paper hearing” method for selecting among MX applications. The NCE and LPFM comparative procedures used in past filing windows facilitated the grant of several thousand new station construction permits. Certain rules, however, confused applicants, drew criticism, or delayed the initiation of new service. Based on experience gained from the conduct of the prior NCE and LPFM filing windows, and the comments submitted in this proceeding, the Commission adopts changes to clarify, simplify, and otherwise improve its licensing procedures for new NCE broadcast and LPFM stations.

3. *Eliminate Governing Document Requirements for Established Local Applicants.*  
The Commission adopts the *NPRM*’s proposal to eliminate the requirement that NCE applicants

claiming points as an established local applicant amend their governing documents to require that “localism be maintained” (Localism Governing Document Requirement). Commenters support this change, and none oppose it.

4. Under the NCE point system selection process, to qualify as an “established local applicant,” as defined in 47 CFR 73.7000, a party must certify that it has been local and established in the community to be served continuously for at least two years immediately prior to the application filing. Further, to receive three localism points, the rules currently require an applicant to submit in its initial application: (1) documentation to illustrate how it qualifies as local and established; and (2) documentation demonstrating that the applicant’s governing documents have been amended to require that “such localism be maintained” (Localism Governing Document Requirement).

5. The Commission will continue to enforce the existing requirement that an applicant submit substantiating documentation to verify that it has been local and established for at least two years immediately prior to the application filing. The Commission, however, eliminates the current 47 CFR 73.7003(b)(1) requirement that an applicant’s governing documents be amended to include a localism provision, and the corresponding requirement to submit such documents to the Commission for all categories of applicants. The Commission believes, and commenters concur, that any benefits from the Localism Governing Document Requirement have been outweighed by the harm it has engendered in the licensing process.

6. To keep the points meaningful and safeguard the localism goals, the Commission incorporates into the current holding period rule a new provision explicitly requiring *any* prevailing applicant that receives localism points during the point system analysis to maintain localism during the period from the grant of the construction permit until the station has achieved

four years of on-air operations. The Commission believes this rule clarification, along with a certification pledging to maintain localism at the time of filing the Schedule 340 application, will help protect the “established local applicant” criterion.

7. *Eliminate Governing Document Requirements for Applicants Claiming Diversity Points.* The Commission adopts the proposal in the *NPRM* to simplify its diversity of ownership requirements by eliminating both: (1) the requirement that applicants amend their governing documents, or provide an alternative demonstration to guarantee that “diversity be maintained” (the Diversity Governing Document Requirement), and (2) the requirement to submit such documents to the Commission and place the documentation in the applicant’s public inspection file. The commenters addressing this proposal unanimously endorse this change.

8. Under the point system selection process, two points are awarded for local diversity of ownership if the principal community contour of the applicant’s proposed NCE station does not overlap with those of any other station in which either the applicant or any party to the application holds an attributable interest. To qualify for diversity points, the Commission requires applicants to document both current and future diversity. In particular, to document future diversity, an applicant is required to file a copy of its pertinent corporate governance documents, showing that it properly amended its governing documents to require the maintenance of diversity in the future. The Commission has found, and commenters agree, that the requirement had the unintended effect of frustrating and confusing many applicants, sparking numerous challenges regarding whether applicants sufficiently satisfied the requirement, disqualifying legitimate applicants that failed to comprehend the requirement, and delaying or curtailing the initiation of new NCE FM service. The *R&O*, therefore, eliminates the Diversity Governing Document Requirement for all applicants seeking to qualify for diversity points.

9. To safeguard the Commission's diversity goals, the *R&O* incorporates into the current holding period rule a new provision prohibiting any prevailing applicant that receives diversity points during the point system analysis from acquiring stations which would overlap the principal community contour of its new NCE station during the period from the grant of the construction permit until the station has achieved four years of on-air operations. The restriction will apply to the applicant itself, any parties to the application, and any party that acquires an attributable interest in the permittee or licensee during this period. The *R&O* also adds an additional question to FCC Schedule 340, FCC Form 314, and FCC Form 315, requiring applicants to certify that the proposed acquisition would comply with the subject authorization's diversity condition.

10. *Establish Uniform Divestiture Pledge Policies.* The *R&O* adopts the *NPRM*'s proposal to expand the scope of the Commission's divestiture policies by recognizing full-service station divestiture pledges for comparative purposes and crediting *all* contingent divestiture pledges that are made and submitted in the application by the close of the filing window.

11. The Commission examines an applicant's qualifications for comparative points, including diversity of ownership, as of the close of the filing window. The Commission previously held that, generally, a contingent pledge to divest an attributable broadcast interest or resign from an attributable positional interest is an ineffective mechanism to avoid the attribution of broadcast interests. Although the Commission has carved out exceptions to this general policy and accepts contingent divestiture pledges for some secondary services, the Commission has never allowed applicants to utilize contingent divestiture pledges to exclude full-service stations from the diversity of ownership consideration.

12. The Commission finds no compelling reason to continue to limit acceptable divestiture pledges for NCE applicants to *only* secondary service interest holdings, and commenters agree. The Commission concludes that the public interest is better served by permitting all applicants and parties to maintain continuity of service to the public during the licensing and construction process. Accordingly, the Commission will permit an NCE applicant with any type of overlapping attributable broadcast interest to qualify for diversity of ownership points if it commits to divest the broadcast interest or resign from the attributable positional interest. The Commission explains that the divestiture pledge must be submitted by the close of the filing window. The actual divestiture or resignation must be completed by the time the new NCE station commences program test operations.

13. *Expand Tie-Breaker Criteria.* The *R&O* expands the Commission's tie-breaker criteria to add an additional tie-breaker round, and therefore, minimize the need to resort to the unpopular last-resort tie-breaker option, mandatory time-sharing. Under the NCE point system process, applicants tied with the highest number of points awarded in a MX group proceed to a tie-breaker round. If the tie is not broken, the Commission uses mandatory time-sharing as the tie-breaker of last resort for full-service NCE stations. The Commission has previously acknowledged that mandatory time-sharing "can be difficult for applicants with different missions, philosophies, or formats" as well as "confusing to audiences and potentially inefficient to listeners." The *NPRM*, therefore, sought comment on whether there are further tie-breaking measures the Commission should use, and therefore, minimize the need to resort to the final mandatory time-sharing option.

14. The *R&O* adopts Discount Legal's proposal that an applicant be granted a dispositive tie-breaker preference if it can demonstrate that: (1) it applied in a previous filing

window, and had its application accepted for filing and processed, but subsequently dismissed in favor of an applicant possessing superior points or a tie-breaker showing; and (2) it was in continuous existence as a legal entity at all times from the date of the previous NCE window filing until the present. The Commission concludes that Discount Legal's proposal is a practical, fair, and effective way to improve and apply the current tie-breaker process, award new permits to deserving legitimate applicants, and minimize resorting to the mandatory time-share option. Accordingly, the *R&O* incorporates Discount Legal's proposal into the Commission's rules as the third and final tie-breaker criterion. The tie-breaker is limited to applicants that were unsuccessful in all previous NCE windows in which they participated and have no NCE permits or licenses. In the event a tie is still not resolved after this new third tie-breaker criterion, the Commission will impose mandatory time-sharing on the remaining applicants

15. *Revise Procedures for Allocating Time in NCE Mandatory Time-Sharing Situations.* The *R&O* adopts mandatory time-share rules and procedures for mutually exclusive NCE applicants, modeled after the current LPFM rules, including a rule to delineate an explicit deadline for submitting voluntary time-share agreements and detailed steps to allocate time to NCE tentative selectees that are unable to arrive at a voluntary time-share agreement within the allotted deadline. The new rules are designed to expedite new NCE service to the public and expand the diversity of voices available to radio audiences.

16. The *NPRM* proposed rules and procedures for mutually exclusive NCE tentative selectees that are unable to reach a voluntary time-share agreement, modeled after the LPFM service rules. Commenters agree with the proposed changes. The *R&O*, therefore, adopts an explicit 90-day deadline and requires tied NCE applicants to file voluntary time-share agreements within 90 days of the release of the public notice or order announcing the tie. If

mutually exclusive tied NCE applicants are unable to reach a voluntary time-share agreement within the designated 90-day period, the applicants will now proceed to mandatory time-sharing, modeled after the LPFM involuntary time-share rules, which have worked effectively to resolve mutual exclusivities and expedite new service to the public. Pursuant to the new mandatory time-share rules, NCE applicants with tied, grantable applications will be eligible for equal, concurrent, non-renewable license terms. The number of mandatory time-share applicants is limited to three. Although some commenters suggested no limit, the Commission explains that mandatory time-shares with more than three applicants may be cumbersome, may result in the licensees obtaining too few hours for programming and prove difficult to allocate time-slots and assign the applicants an equal number of hours per week. If there are more than three tied, grantable applicants in an MX group, the Commission will use the date of established presence in the local community as the cut-off mechanism, and therefore, dismiss all but the applications of the three applicants that have been local for the longest uninterrupted periods of time.

17. To effectuate this process, the Commission will require each applicant to provide, as part of its initial application, its date of established presence in the local community. The *R&O* also adopts time slots and selection procedures modeled after the LPFM service. Specifically, when there are three remaining tied NCE applicants in an MX group, the Commission will assign each applicant one of the following time slots: 2 a.m.-9:59 a.m., 10 a.m.-5:59 p.m., and 6 p.m.-1:59 a.m. If there are only two applicants, the Commission will assign each one of the following time slots: 3 a.m.-2:59 p.m., or 3 p.m.-2:59 a.m. The Bureau staff will allow the NCE applicants to confidentially select their preferred time slots, giving preference to the applicant that has been local for the longest uninterrupted period of time. In the event an applicant neglects to designate its preferred time slot, the Bureau staff will select a time

slot for the applicant. Finally, to ensure that there is no gamesmanship, the Commission will require the applicants to certify that they have not colluded with any other applicants in the selection of time slots.

18. *Clarify and Modify the “Holding Period” Rule.* The *R&O* adopts both stylistic and substantive changes to 47 CFR 73.7005 (the Holding Period Rule) to (1) better promote the goal of ensuring that the comparative selection process is meaningful and the public receives the benefit of the best proposal, and (2) aid permittees and licensees by eliminating the current absolute bar on any section 307(b) preference-related service downgrade. The commenters who addressed this issue generally agree with the changes, with some suggested modifications.

19. First, the Commission renames § 73.7005 of the rules “Maintenance of comparative qualifications.” Second, the Commission adopts a new provision to § 73.7005 to establish, for the first time, specific timing requirements for maintaining comparative qualifications. Specifically, NCE permittees and licensees issued authorizations under comparative procedures must maintain their comparative qualifications from the grant of the construction permit until the station has achieved at least four years of on-air operations. Although Prometheus contends that a four-year maintenance period is not sufficient and suggests a ten-year maintenance period, the Commission explains that a four-year period strikes the correct balance and is sufficient to establish meaningful service for the community and deter license speculators, while not unduly burdening the licensee.

20. Third, the Commission relaxes § 73.7005(b) and the parallel provision in § 73.7002(c) (Fair distribution of service on reserved band FM channels) to eliminate the current absolute bar on any preference-related service downgrade. The Commission explains that it will allow minor modifications, provided that any potential loss of first and/or second NCE FM

service is offset by first and, separately, combined first and/or second NCE FM service population gain(s). This rule change is designed to aid permittees and licensees by allowing them reasonable flexibility to implement facility modifications while also benefiting the public by limiting service losses to areas in which the NCE FM station is providing section 307(b)-preferred service.

21. *Prohibit Amendments to Cure Section 301 Violations by Application Parties.* The Commission amends its rules to preclude an LPFM applicant dismissed due to unauthorized broadcasting from seeking *nunc pro tunc* reinstatement of its application and to disallow any change in directors as a means of resolving the applicant's basic qualifications under 47 CFR 73.854. Section 632(a)(1)(B) of the Making Appropriations for the Government of the District of Columbia for Fiscal Year 2001 Act "prohibit[s] any applicant from obtaining a low power FM license if the applicant has engaged in any manner in the unlicensed operation of any station in violation of section 301 of the Communications Act of 1934." Section 73.854 of the rules and FCC Schedule 318 implement this mandate by requiring an LPFM applicant to certify under penalty of perjury that neither the applicant, nor any party to the application, has engaged in any manner in unlicensed operation of any station. There is currently no explicit rule, however, precluding an LPFM applicant dismissed for violations of the Appropriations Act and § 73.854 from seeking *nunc pro tunc* reinstatement by amending its application to remove board members that have engaged in unauthorized broadcasting, and no rule barring an LPFM applicant from making a minor board of directors change to cure an "unauthorized broadcasting" ownership defect. The *R&O* incorporates these restrictions, which are consistent with Bureau policy, into the rules.

22. Although commenters disagree on the breadth of the changes, the Commission

declines to adopt suggestions to make the rule more encompassing, or less harsh. The Commission explains that the rule was implemented to specifically address Congress's direct mandate to treat unlicensed broadcasting as disqualifying, not to address a myriad of additional application defects. The Commission also explains that it continues to believe that a restriction on corrective amendments to resolve basic qualification issues under § 73.854 is not too harsh, but rather, is in keeping with the intent of the Appropriations Act and reflects the seriousness with which the Commission treats unauthorized broadcasting.

23. *Permit Time-Sharing Agreements Prior to Tentative Selectee Designations.* The *R&O* modifies 47 CFR 73.872(c) to specifically permit LPFM point aggregation discussions and agreements at any point before the Bureau implements the involuntary time-share procedures, including prior to tentative selectee designations, if any such agreement is conditioned on each of the parties subsequently achieving tentative selectee status. The Commission also modifies its rules to limit the number of applicants that can enter into a time-sharing arrangement to three.

24. The Commission explains that although its procedures for voluntary time-share agreements have generally been an efficient and effective means for resolving mutual exclusivity among tied LPFM applicants, there has been confusion as to whether LPFM applicants can communicate and collaborate with each other, either pre- or post-application filing, with the goal of potentially aggregating points. Accordingly, in the *NPRM* the Commission sought comment on amending its rules to explicitly allow applicants to communicate and collaborate on time sharing arrangements, and what, if any, safeguards are needed to limit the potential for gamesmanship. The commenters generally agree on allowing communication and collaboration during the LPFM application process. The Commission explains that it continues to believe this type of cooperation can help ensure increased service to the public, and accordingly, amends its

rules to explicitly allow LPFM point aggregation discussions and agreements, provided that the agreement is conditioned on each application becoming a tentative selectee.

25. The commenters disagree widely on what safeguards, if any, are necessary to prevent gamesmanship, and whether to limit the number of organizations that can enter into a time-sharing agreement. Several commenters urge the Commission to place no limit on the number of applicants that can enter into a time-sharing agreement. REC recommends limiting time-share agreements to no more than three proponents and adopting safeguard provisions to create “viable time-share agreements.”

26. The Commission recognizes that there are indeed benefits, as many commenters note, of placing no explicit limit on the number of applicants that can enter into a point aggregation agreement. The Commission, however, also recognizes that it encourages LPFM stations to originate programming locally by awarding one point to each MX applicant that pledges to provide at least eight hours per day of local programming. The Commission explains that if it continues to place no limit on point aggregation, each applicant in a group with more than three applicants will not be able to fulfill this local origination commitment. The *R&O*, therefore, caps the number of applicants that can aggregate points at three to better align with the eight hours of local programming pledge and ensure that the pledge is enforceable. The Commission declines, however, to adopt REC’s other “safeguard” proposals, including the proposal to require time share applicants to specify different transmitter sites with a minimum separation from the other proponents. The Commission explains that this suggested safeguard would unnecessarily penalize future LPFM applicants and hamper the cost efficiencies of timesharing.

27. Finally, the Commission declines to reconsider the current process for

reapportioning time following the surrender or expiration of a construction permit or license of a time-share party. Currently, following the award of voluntary time-share construction permits, if one of the participants in a voluntary time-sharing arrangement does not construct, or surrenders its station license after commencing operations, the remaining time-share participants are free to apportion the vacant air-time as they see fit. Although two commenters expressed support for requiring abandoned air-time to instead be made available in a mini-window, the Commission explains that mini-windows are a complicated solution that would likely pose a great administrative burden while providing only minimal benefits. Moreover, the Commission explains that its elimination of the absolute prohibition on the assignment and transfer of LPFM construction permits and the three-year holding period for LPFM licenses is a necessary change that will help to ensure viable community groups build LPFM stations. Accordingly, the *R&O* does not adopt a mini-window approach. Rather, if one of the participants in a voluntary time-sharing arrangement does not construct, or chooses to surrender its station license after commencing operations, the particular permittee or licensee may either (1) seek Commission consent to assign or transfer its existing permit or license to another qualified party; or (2) surrender the existing permit or license to the Commission, and the remaining time-share participants can apportion the vacant air-time as they see fit pursuant to 47 CFR 73.872(c)(3).

28. *Establish Procedures for Remaining Tentative Selectees Following Dismissal of Accepted Point Aggregation Time Share Agreements.* The Commission amends its rules to codify a procedure that when a tentatively accepted time-share agreement is dismissed, the Bureau will resume the processing of any remaining tentative selectees. As proposed in the *NPRM*, the Commission will announce a second 90-day period, affording all remaining applicants tied for the highest point total within the affected MX group a further opportunity to

enter into either a universal settlement or a voluntary time-share arrangement.

29. The Commission declines to shorten the time-period for filing voluntary time-sharing arrangements, as one commenter suggests. The Commission explains that it believes a 90-day period is necessary to allow applicants sufficient time to negotiate and reach viable agreements. The Commission also declines to amend its rules to allow for a third 90-day period, explaining that such a change would have minimal benefit, but rather, would create an administrative burden and delay the initiation of new LPFM service.

30. The Commission codifies the following procedural changes. Following the dismissal of a tentatively-accepted time-share agreement, the Commission will direct the Bureau to release a public notice to initiate a second 90-day period, affording *all* remaining tentative selectees within the affected MX group a further opportunity to enter into either a universal settlement or a voluntary point-aggregating time-share arrangement in accordance with § 73.872(c) and (e). The Commission directs the Bureau to dismiss all pending point aggregation amendments/agreements when it releases the public notice commencing the new settlement period. If applicants are unable to reach voluntary agreements during this subsequent 90-day period, the Commission will assign involuntary time-sharing arrangements to no more than three of the tied applicants in each MX Group.

31. *NCE and LPFM Board Changes.* To decrease regulatory burdens and provide certainty, the Commission amends its rules to classify as “minor” most board changes for nonstock and membership NCE and LPFM applicants. The Commission will also treat all board changes in a governmental applicant as minor.

32. The NCE and LPFM new station application processes are governed by §§ 73.3572, 73.3573, and 73.871, respectively, each of which define as a “major change” any

amendment to an application where the original party or parties to the application do not retain more than 50 percent ownership interest in the application as originally filed. The Commission's current practice is to consider waivers for gradual (although not sudden) majority board changes occurring while a new station application is pending. Because the current waiver approach has led to uncertainty for NCE and LPFM applicants undergoing board changes as a regular or natural part of their organizational function, the *NPRM* proposed to amend the rules to classify as "minor" any gradual board changes in nonstock and membership NCE and LPFM applicants, even when they result in a change in the majority of such organization's governing board.

33. The Commission declines to adopt Public Broadcasting and Joint NCE Licensee's approach of considering any change in an NCE or LPFM applicant governing board, regardless of the timing and regardless of whether it changes the majority of the governing board, as minor. The Commission explains that it is not feasible or appropriate in light of the wide, diverse range of NCE and LPFM applicants and its experience with previous application filing windows when it identified problematic board changes. The Commission recognizes that although a change in the composition of the board generally does not alter the nature of the NCE or LPFM applicant itself, there are nevertheless instances where a majority board change is indicative of gamesmanship or takeover issues. The commenters' suggested approach would not allow the Commission to detect such issues and respond to such circumstances, which is inconsistent with its processing regime.

34. The Commission, however, concurs with Public Broadcasting and the Joint NCE Licensees that all changes to governing boards of governmental applicants should be treated as minor and adopts this proposal from the *NPRM*. The Commission also agrees that it is unnecessary to make a finding that changes in governmental applicants have no effect on the

applicant's mission and will omit this requirement from its rules. For non-governmental applicants, the Commission will continue to treat gradual board changes as minor. The Commission recognizes that nonprofit organizations often have routine or mandated changes in board members that do not impact the organization or its operations, and accordingly, will treat all routine board turnover changes due to term expirations, resignations, etc. as minor. For sudden board changes that take place over the course of less than six months, the Commission will treat those changes as minor unless there is evidence that the change in the board is the result of a conflict within the organization, an attempted takeover or some other change that would change the essence or mission of the organization. To the extent that an ownership change is not solely board-related, the Commission is not modifying the existing standard for what constitutes a major change. The rule changes will allow the Commission to avoid micromanaging the composition of nonprofit boards and discontinue the current potentially subjective and time-consuming waiver process, while deterring abuses. Finally, the Commission emphasizes that any applicant undergoing a change of its governing board, even if considered minor under the new rules, is required to notify the Bureau of the changes via an amendment to its application, in accordance with 47 CFR 1.65.

35. *LPFM-specific transferability issues for permittees and licensees.* The Commission clarifies how board changes impact LPFM licensees and permittees under rule 73.865. The modification is intended to provide clarity to LPFM permittees and licensees that a sudden change of control of more than 50 percent of an LPFM board is permitted at any time, provided that the affected permittee or licensee files a *pro forma* FCC Schedule 316 for a sudden majority board change. The Commission also clarifies that the 316 application must be filed within 30 days of the final event that caused the LPFM permittee or licensee to exceed the 50

percent threshold (for example, within 30 days of the election of a third new board member out of five within a year).

36. *Clarify Reasonable Site Assurance Requirements.* To promote compliance with the reasonable site assurance requirement and the efficient processing of NCE and LPFM applications, the Commission implements FCC Schedule 318 and Schedule 340 instruction and application form changes, including adding a reasonable assurance of site certification to these applications. When an applicant files an application, it must have reasonable assurance that its specified site will be available for the construction and operation of its proposed facilities. Despite this obligation, NCE and LPFM station applicants have never been required to certify the availability of proposed transmitter sites in the NCE and LPFM construction permit applications, and the Instructions to the NCE and LPFM construction permit applications do not explain the Commission's site availability requirements. This lack of clarity led to speculative applications, numerous site availability challenges, and processing delays. The commenters agree that application form changes are necessary to address these issues.

37. Although some commenters argue that requiring site assurance documentation could be burdensome, the Commission explains that any purported burden of a combined site certification and the minimal documentation requirement is offset by the resulting benefits of reducing frivolous and speculative applications, deterring site availability challenges, and promoting the expeditious processing of applications and initiation of service to the public. The Commission, therefore, directs the Bureau to take the following steps. First, it will update the FCC Schedule 318 and Schedule 340 Instructions to explain the requirement of obtaining reasonable site availability prior to the application filing. Second, it will amend the FCC Schedule 318 and Schedule 340 to add a question requiring an applicant to certify that it has

obtained reasonable assurance from the tower owner, its agent, or authorized representative that its specified site will be available. The certification will require the applicant to list the name and telephone number of the person contacted, and specify whether the contact is a tower owner, agent, or authorized representative.

38. *Streamline Tolling Procedures and Notification Requirements.* The Commission adopts the *NPRM*'s proposal to simplify the tolling procedures for NCE and LPFM permittees, including the current tolling notification requirements for these services. Broadcast construction permits terminate and, thus, are forfeited, if the permittee does not complete construction and file a covering license application prior to expiration. Although the Commission will "toll" the broadcast construction period when an original construction permit is encumbered by certain circumstances beyond the permittee's control, tolling treatment is not automatic but rather requires notification from the permittee.

39. Because the Commission has characterized tolling notification requirements as an unnecessary bureaucratic hurdle for LPFM permittees with limited resources, the *NPRM* proposed to shift the onus of identifying a tolling event from the permittee to the Commission staff in certain situations. The *R&O* streamlines the tolling procedures for both NCE and LPFM permittees as follows. The Commission will identify and place into a tolling posture any NCE or LPFM construction permit: (1) that includes a condition on the commencement of operations and the Commission has a direct licensing role in the satisfaction of this condition; (2) that is subject to administrative or judicial review of the permit grant; or (3) that is subject to international coordination. In such situations, the Commission directs the Bureau staff to add appropriate tolling codes to the broadcast database. Permits tolled by staff under these revised procedures will not be subject to the six-month update requirement. Rather, the Commission will be

responsible for ending tolling treatment and notifying the permittee of such termination upon the resolution of the pertinent encumbrance. These changes are limited to NCE and LPFM stations, services which have more commonly encountered challenges with the current tolling procedures.

40. *Lengthen LPFM Construction Period.* The Commission adopts the *NPRM's* proposal to lengthen the construction period for LPFM permittees from 18-months to a full three-years. Commenters agree that lengthening the construction period will have the dual benefit of aiding LPFM permittees struggling to complete construction and eliminating the administrative burdens associated with filing and processing waiver requests. The Commission amends 47 CFR 73.3598(a) to extend the LPFM construction period to three years. The extended construction period will apply to both existing LPFM permits, which have not yet expired as of the effective date of the new rule and will now expire three years from the original grant of the permit, and prospectively to new permits granted after the new rule takes effect.

41. *Modify Restrictions on the Transfer and Assignment of LPFM Authorizations.* The Commission adopts the *NPRM's* proposal, which was initiated by REC, to eliminate both the absolute prohibition on the assignment and transfer of LPFM construction permits and the three-year holding period for LPFM licenses. The Commission also adopts an 18-month holding period on the assignment and transfer of original LPFM construction permits and requires the assignee or transferee of the authorization to satisfy certain ownership and eligibility criteria including compliance with the Holding Period rule. No commenter objects to these changes.

42. Some commenters, however, disagree on whether and how to limit consideration for the sale of the authorization. The Commission declines to adopt a proposal to remove the requirement that all sales be capped at fair market value. As the Commission has previously emphasized, the for-profit sale of LPFM authorizations is inconsistent with the goal of promoting

local, community-based use and ownership of LPFM stations. The Commission explains that it believes that allowing the for-profit sale could have the adverse effect of enabling gamesmanship and the trafficking in licenses by those with no genuine interest in providing LPFM service. The Commission, therefore, retains the prohibition on the for-profit sale of LPFM authorizations, uses the same consideration standard that it applies to full-service NCE FM stations, and restricts consideration received or promised to the assignor's or transferor's "legitimate and prudent expenses." "Legitimate and prudent expenses" are those expenses reasonably incurred by the assignor or transferor in obtaining and constructing the station (e.g., expenses in preparing an application, in obtaining and installing broadcast equipment to be assigned or transferred, etc.), but do not include costs incurred in operating the station (e.g. rent, salaries, utilities, music licensing fees, etc.).

43. The Commission modifies its rules to permit parties to assign or transfer LPFM permits and station licenses, provided that the following safeguards are satisfied: (1) the assignment or transfer does not occur prior to 18 months from the date of issue of the initial construction permit; (2) consideration promised or received does not exceed the legitimate and prudent expenses of the assignor or transferor; (3) the assignee or transferee satisfies all eligibility criteria that apply to a LPFM license; and (4) for a period of time commencing with the grant of any permit awarded on the basis of the comparative point system provisions of 47 CFR 73.872, and continuing until the station has achieved at least four years of on-air operations, (a) the assignee or transferee must meet or exceed those points awarded to the LPFM tentative selectee, and (b) for LPFM stations selected in accordance with the involuntary time-sharing provisions of 47 CFR 73.872(d), the date the assignee or transferee was "locally established" must be the same as or earlier than the date of the most recently established local applicant in the

tied MX group.

## PROCEDURAL MATTERS

44. **Regulatory Flexibility Analysis.** As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, an Initial Regulatory Flexibility Certification was incorporated into the *NPRM*. The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. Because the Commission amended the rules in this *R&O*, it included this Final Regulatory Flexibility Analysis (FRFA) which conforms to the RFA. 45.

*Need for, and Objectives of, the R&O.* The *R&O* adopts several rule changes that are intended to clarify and simplify the point systems used to evaluate competing applications for both NCE full-service FM, full power television, and FM translator broadcast stations and LPFM broadcast stations, and related NCE and LPFM application processing rules. Specifically, in the *R&O* the Commission adopts new rules and procedures to: (1) eliminate the current requirement that NCE applicants amend their governing documents, pledging that localism/diversity be “maintained in the future,” in order to receive comparative points as an “established local applicant” and or “diversity of ownership”; (2) expand the scope of the current divestiture policy by awarding points based on a contingent pledge to divest an interest in an existing full-service station, therefore allowing applicants to maintain continuity of service during the licensing and construction process; (3) expand the current two tie-breaker criteria to add an additional tie-breaker round and thus reduce the need for mandatory time-sharing; (4) clarify aspects of the “holding period” to better promote the goal of ensuring that the comparative selection process is meaningful and the public receives the benefit of the best proposal; (5) disallow any LPFM post-filing window change in directors as a means of resolving an alleged history of unauthorized operations by a party to the application; (6) adopt new rules authorizing early time-sharing

discussions among LPFM applicants and limit the number of applicants that can enter into a time-sharing arrangement to three; (7) establish a process pursuant to which the Media Bureau will resume the processing of any remaining tentative selectees following the dismissal of a tentatively accepted time-share agreement; (8) modify the NCE and LPFM application forms to clarify the existing requirement for applicants to obtain reasonable assurance of site availability and add a reasonable assurance of site certification to these forms; (9) toll, meaning temporarily stop the construction clock, NCE and LPFM broadcast construction deadlines without notification from the permittee, based on certain pleadings pending before, or actions taken by, the agency; (10) lengthen the LPFM construction period from 18 months to three years; (11) allow the assignment and transfer of LPFM construction permits after an 18-month holding period; and (12) eliminate the three-year holding period for the assignment and transfer of LPFM licenses. The new rules and procedures are designed to clarify the comparative requirements, minimize confusion among applicants, deter speculative applications, reduce burdens upon NCE and LPFM broadcasters, and initiate service to the public quickly and efficiently.

46. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* No comments were filed to the IRFA.

47. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

48. *Description and Estimate of the Number of Small Entities to Which the Proposed*

*Rules Will Apply.* RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. 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 SBA.

49. The new rules will apply to applicants, permittees, and licensees within the LPFM service, NCE full power television service, and to radio stations licensed to operate on channels reserved as “noncommercial educational,” either within the reserved band of the FM spectrum or designated solely for noncommercial educational FM use through the Commission’s allocations process. Most affected entities will be applicants for which a “point system” process is used to compare their qualifications with those of competing applicants. However, the rule changes concerning reasonable site assurance and tolling of broadcast construction deadlines will also affect applications granted outside of the comparative process, such as those that are “singletons” or resolved by settlement among originally conflicting parties. Below is a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

50. NCE FM Radio Stations. The new rules and policies will apply to NCE FM radio broadcast licensees, and potential licensees of NCE FM radio service. This Economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public.” The SBA has created the following small business size standard for this category: those having \$41.5 million or less in annual receipts. Census data for 2012 show that

2,849 firms in this category operated in that year. Of this number, 2,806 firms had annual receipts of less than \$25 million, and 43 firms had annual receipts of \$25 million or more. Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded \$41.5 million in that year, the Commission concludes that the majority of radio broadcast stations were small entities under the applicable SBA size standard. In addition, the Commission has estimated the number of noncommercial educational FM radio stations to be 4,122. NCE stations are non-profit, and therefore considered to be small entities.

51. The changes adopted herein will primarily impact potential licensees. The Commission accepts applications for new NCE FM radio broadcast stations in filing windows. There are no pending applications remaining from previous NCE FM filing windows. The Commission anticipates that in future filing windows it will receive a number of applications similar to past filing windows and that all such applicants will qualify as small entities. The last filing window for reserved band FM spectrum occurred in 2007 and generated approximately 3,600 applications, of which approximately 2,700 were mutually exclusive. The last filing window for channels reserved for NCE use through the allotment process was held in 2010, and generated 323 applications, virtually all of which were mutually exclusive. This estimate may overstate the number of potentially affected applicants because filing windows typically include some proposals that need not be resolved by a point system, such as those resolved through settlement agreements.

52. FM Translator Stations and Low Power FM Stations. The changes adopted herein will affect licensees of FM translator stations and LPFM stations, as well as potential licensees in these radio services. The same SBA definition that applies to radio stations applies to low power

FM stations. As noted, the SBA has created the following small business size standard for this category: those having \$41.5 million or less in annual receipts. While the U.S. Census provides no specific data for these stations, the Commission has estimated the number of licensed low power FM stations to be 2,186. In addition, as of September 30, 2019, there were a total of 8,177 FM translator and FM booster stations. Given the fact that low power FM stations may only be licensed to not-for-profit organizations or institutions that must be based in their community and are typically small, volunteer-run groups, the Commission will presume that these licensees qualify as small entities under the SBA definition.

53. The new rules will primarily affect applicants in future FM translator and LPFM windows. The Commission anticipates that in future filing windows it will receive a number of applications similar to past filing windows and that all applicants will qualify as small entities. The last LPFM filing window in 2013 generated approximately 2,827 applications. The 2003 FM translator filing window generated approximately several hundred applications from NCE applicants, of which approximately 69 were mutually exclusive.

54. NCE Television Stations. This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.” These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$41.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of this

number, 656 had annual receipts of \$25 million or less, 25 had annual receipts between \$25 million and \$49,999,999, and 70 had annual receipts of \$50 million or more. Based on this data the Commission therefore estimates that the majority of noncommercial television broadcasters are small entities under the applicable SBA size standard. Specifically, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 380. The Commission, however, does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

55. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* The rule changes adopted in the *R&O* will, in a few cases, impose different reporting requirements on potential NCE full-service stations, NCE FM Translators, and LPFM licensees and permittees. Specifically, the *R&O* creates a new submission of information verifying that the applicant obtained reasonable assurance of site availability. The applicant will be required to list the name and telephone number of the person contacted to obtain site assurance, and specify whether the contact is a tower owner, agent, or authorized representative. Any additional burden, however, will be minimal because the underlying requirement to obtain such assurance is currently a prerequisite to the application filing. Likewise, NCE applicants seeking points as “established local applicants” or for “diversity of ownership” will be required to provide information that is different from that currently required. The Commission believes that the new information will be simpler for applicants to produce because applicants will no longer be required to amend their governing documents. The elimination of certain tolling notification requirements, and shifting the onus of identifying a tolling event from the permittee to Commission staff in certain situations, will decrease burdens on applicants that experience

encumbrances preventing construction. An NCE or LPFM permittee will receive additional construction time for which it qualifies without initiating a process to notify the Commission of actions taken by or pending within the Commission. By lengthening the LPFM construction period to three years, LPFM permittees needing more than the current 18-month construction period will no longer need to file and justify requests for an 18-month extension. Finally, by adopting the proposals to clarify and/or modify application requirements that applicants have found confusing, the burdens on applicants to file and/or respond to petitions challenging point claims will be reduced.

56. *Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

57. The rules adopted herein are intended to assist NCE full-service broadcast stations, NCE FM Translator, and LPFM broadcast applicants by clarifying and simplifying requirements for claiming and maintaining qualifications that are used to compare competing applications. The new rules and procedures will enable such applicants: (1) to claim comparative points without the burdensome process of amending their governing documents; and (2) to maintain existing full-service broadcast operations by allowing contingent pledges that do not require divestment of existing interests prior to application grant. The new rules will also: (1)

expand the current two tie-breaker criteria to add an additional tie-breaker round, and therefore, reduce the need for the currently unpopular use of mandatory time-sharing; (2) eliminate the assignment and transfer “holding period” for LPFM licenses, clarify elements of the NCE “holding period” rule, and aid permittees and licensees by eliminating the current absolute bar on any section 307(b) preference-related service downgrade; (3) clarify that LPFM applicants dismissed due to unauthorized broadcasting operations cannot seek to reinstate the application by removing the board member(s) that have engaged in unauthorized broadcasting; (4) reduce challenges based on reasonable assurance of site availability; (5) toll NCE and LPFM broadcast construction deadlines without notification, for certain matters known to the agency, including when a permit is subject to international coordination or under administrative or judicial review; (6) provide at the outset a longer construction period for LPFM stations; and (7) permit the assignment and transfer of LPFM construction permits after 18 months. The Commission sought comment as to whether its goals of providing new NCE and LPFM service to the public, limiting speculation, and clarifying requirements could effectively be accomplished through these means, and the commenters supported the changes. The rules adopted herein are intended to minimize burdens on NCE and LPFM broadcasters, virtually all of whom are small businesses.

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

59. **Paperwork Reduction Act.** The *R&O* contains new or modified information

collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. The requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), it previously sought specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

60. In this *R&O*, the Commission adopts new rules and licensing procedures for new NCE broadcast and LPFM stations. The Commission has assessed the effects of the new rules on small business concerns. It finds that the streamlined rules and procedures adopted here will minimize the information collection burden on affected applicants, permittees, and licensees, including small businesses.

61. **Congressional Review Act.** The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this *R&O* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

## **ORDERING CLAUSES**

62. IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j), 301, 303, 307, 308, 309, 316, and 319 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 301, 303, 307, 308, 309, 316, and 319, this *R&O* IS ADOPTED and WILL BECOME EFFECTIVE **60 days after publication in the Federal Register.**

63. IT IS FURTHER ORDERED that part 73 of the Commission's Rules IS AMENDED and the rule changes to §§ 73.854, 73.871(c), 73.3572(b), 73.3573(a), and 73.3598 adopted herein will become effective 60 days after the date of publication in the Federal Register.

64. IT IS FURTHER ORDERED that the rule changes to §§ 73.865, 73.872, 73.7002(c), 73.7003, and 73.7005, which contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, WILL BECOME EFFECTIVE after the Commission publishes a document in the Federal Register announcing such approval and the relevant effective date.

65. IT IS FURTHER ORDERED that, should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 19-3 SHALL BE TERMINATED, and its docket CLOSED.

66. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the *R&O*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

67. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this *R&O* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Cable television, Civil defense, Communications equipment, Defense communications, Education, Equal employment opportunity, Foreign relations, Mexico, Political candidates, Radio, Reporting and recordkeeping requirements, Satellites, Television.

Federal Communications Commission.

**Marlene Dortch,**  
*Secretary,*  
*Office of the Secretary.*

## Final Rules

For the reasons set forth 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, 155, 301, 303, 307, 309, 310, 334, 336, 339.

2. Revise § 73.854 to read as follows:

#### **§ 73.854 Unlicensed radio operations.**

No application for an LPFM station may be granted unless the applicant certifies, under penalty of perjury, that neither the applicant, nor any party to the application, has engaged in any manner, including individually or with persons, groups, organizations, or other entities, in the unlicensed operation of any station in violation of Section 301 of the Communications Act of 1934, as amended, 47 U.S.C. 301. If an application is dismissed pursuant to this section, the applicant is precluded from seeking *nunc pro tunc* reinstatement of the application and/or changing its directors to resolve the basic qualification issues.

3. Revise § 73.865 to read as follows:

#### **§ 73.865 Assignment and transfer of LPFM permits and licenses.**

- (a) *Assignment/transfer.* No party may assign or transfer an LPFM permit or license if:

- (1) Consideration promised or received exceeds the legitimate and prudent expenses of the assignor or transferor. For purposes of this section, legitimate and prudent expenses are those expenses reasonably incurred by the assignor or transferor in obtaining and constructing the station (e.g., expenses in preparing an application, in obtaining and installing broadcast equipment to be assigned or transferred, etc.). Costs incurred in operating the station are not

recoverable (e.g. rent, salaries, utilities, music licensing fees, etc.);

(2) The assignee or transferee is incapable of satisfying all eligibility criteria that apply to a LPFM licensee; or

(3) For a period of time commencing with the grant of any construction permit awarded based on the comparative point system, § 73.872, and continuing until the station has achieved at least four years of on-air operations:

(i)(A) The assignee or transferee cannot meet or exceed the points awarded to the initial applicant; or

(B) Where the original LPFM construction permit was issued based on a point system tie-breaker, the assignee or transferee does not have a “locally established date,” as defined in § 73.853(b), that is the same as, or earlier than, the date of the most recently established local applicant in the tied mutually exclusive (MX) group.

(ii) Any successive applicants proposing to assign or transfer the construction permit or license prior to the end of the aforementioned period will be required to make the same demonstrations. This restriction does not apply to construction permits that are awarded to non-mutually exclusive applicants or through settlement.

(b) *Name change.* A change in the name of an LPFM permittee or licensee where no change in ownership or control is involved may be accomplished by written notification by the permittee or licensee to the Commission.

(c) *Holding period.* A construction permit cannot be assigned or transferred for 18 months from the date of issue.

(d) *Board changes.* Notwithstanding the other provisions in this section, transfers of control involving a sudden or gradual change of more than 50 percent of an LPFM's governing board are

not prohibited, provided that the mission of the entity remains the same and the requirements of paragraph (a) of this section are satisfied. Sudden majority board changes shall be submitted as a *pro forma* ownership change within 30 days of the change or final event that caused the LPFM permittee or licensee to exceed the 50 percent threshold.

4. Amend § 73.871 by revising paragraph (c)(3) to read as follows:

**§ 73.871 Amendment of LPFM broadcast station applications.**

\* \* \* \* \*

(c) \* \* \*

(3) Changes in ownership where the original party or parties to an application either:

(i) Retain more than a 50 percent ownership interest in the application as originally filed;

(ii) Retain an ownership interest of 50 percent or less as the result of governing board

changes in a nonstock or membership applicant that occur over a period of six months or more;

or

(iii) Retain an ownership interest of 50 percent or less as the result of governing board

changes in a nonstock or membership applicant that occur over a period of less than six months

and there is no evidence of a takeover concern or a significant effect on such organization's

mission. All changes in a governmental applicant are considered minor;

\* \* \* \* \*

5. Amend § 73.872 by revising paragraph (c) introductory text and adding paragraph (c)(5)

to read as follows:

**§ 73.872 Selection procedure for mutually exclusive LPFM applications.**

\* \* \* \* \*

(c) *Voluntary time-sharing.* If mutually exclusive applications have the same point total, no

more than three of the tied applicants may propose to share use of the frequency by electronically submitting, within 90 days of the release of a public notice announcing the tie, a time-share proposal. Such proposals shall be treated as minor amendments to the time-share proponents' applications and shall become part of the terms of the station authorization. Where such proposals include all of the tied applications, all of the tied applications will be treated as tentative selectees; otherwise, time-share proponents' points will be aggregated. Applicants may agree, at any time before the Media Bureau implements the involuntary time-share procedures pursuant to paragraph (d) of this section, to aggregate their points to enter into a time-share agreement. Applicants can only aggregate their points and submit a time-share agreement if each is designated a tentative selectee in the same mutually exclusive group, and if each applicant has the basic qualifications to receive a grant of its application.

\* \* \* \* \*

(5) In the event a tentatively accepted time-share agreement is dismissed, the Commission staff will release another public notice, initiating a second 90-day period for all remaining tentative selectees within the affected MX group to enter into either a voluntary time-share arrangement or a universal settlement in accordance with paragraph (c) or (e) of this section. If the tie is not resolved in accordance with paragraph (c) or (e) of this section, the tied applications will be reviewed for acceptability, and applicants with tied, grantable applications will be eligible for involuntary time-sharing in accordance with paragraph (d) of this section.

\* \* \* \* \*

6. Amend § 73.3572 by revising paragraph (b) to read as follows:

**§ 73.3572 Processing TV broadcast, Class A TV broadcast, low power TV, TV translators, and TV booster applications.**

\* \* \* \* \*

(b)(1) A new file number will be assigned to an application for a new station or for major changes in the facilities of an authorized station, when it is amended so as to effect a major change, as defined in paragraph (a)(1) or (2) of this section, or result in a situation where the original party or parties to the application do not retain more than 50 percent ownership interest in the application as originally filed, and §73.3580 will apply to such amended application.

However, such change in ownership is minor if:

(i) The governing board change in a nonstock or membership noncommercial educational (NCE) full power television applicant occurred over a period of six months or longer; or

(ii) The governing board change in a nonstock or membership NCE full power television applicant occurred over a period of less than six months and there is no evidence of a takeover concern or a significant effect on such organization's mission.

(2) All changes in a governmental applicant are considered minor.

(3) An application for change in the facilities of any existing station will continue to carry the same file number even though (pursuant to FCC approval) an assignment of license or transfer of control of such licensee or permittee has taken place if, upon consummation, the application is amended to reflect the new ownership.

\* \* \* \* \*

7. Amend § 73.3573 by revising paragraph (a)(1) introductory text to read as follows:

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

(a) \* \* \*

(1) In the first group are applications for new stations or for major changes of authorized stations. A major change in ownership is one in which the original party or parties to the

application do not retain more than 50 percent ownership interest in the application as originally filed, except that such change in ownership is minor if: the governing board change in a nonstock or membership NCE applicant occurred over a period of six months or longer or the governing board change in a nonstock or membership NCE applicant occurred over a period of less than six months and there is no evidence of a takeover concern or a significant effect on such organization's mission. All changes in a governmental applicant are considered minor. In the case of a Class D or an NCE FM reserved band channel station, a major facility change is any change in antenna location which would not continue to provide a 1 mV/m service to some portion of its previously authorized 1 mV/m service area. In the case of a Class D station, a major facility change is any change in community of license or any change in frequency other than to a first-, second-, or third-adjacent channel. A major facility change for a commercial or a noncommercial educational full service FM station, a winning auction bidder, or a tentative selectee authorized or determined under this part is any change in frequency or community of license which is not in accord with its current assignment, except for the following:

\* \* \* \* \*

8. Amend § 73.3598 by:

- a. Revising paragraph (a) introductory text;
- b. Removing the word "or" at the end of paragraph (b)(2);
- c. Removing the period at the end of paragraph (b)(3) and adding a semicolon in its place;
- d. Adding paragraphs (b)(4) and (5); and
- e. Revising paragraphs (c) and (d).

The revisions and additions read as follows:

**§ 73.3598 Period of construction.**

(a) Except as provided in the last two sentences of this paragraph (a), each original construction permit for the construction of a new TV, AM, FM or International Broadcast; low power TV; low power FM; TV translator; TV booster; FM translator; or FM booster station, or to make changes in such existing stations, shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed. An eligible entity that acquires an issued and outstanding construction permit for a station in any of the services listed in this paragraph (a) shall have the time remaining on the construction permit or eighteen months from the consummation of the assignment or transfer of control, whichever is longer, within which to complete construction and file an application for license. For purposes of the preceding sentence, an “eligible entity” shall include any entity that qualifies as a small business under the Small Business Administration's size standards for its industry grouping, as set forth in 13 CFR parts 121 through 201, at the time the transaction is approved by the FCC, and holds:

\* \* \* \* \*

(b) \* \* \*

(4) A request for international coordination, with respect to a construction permit for stations in the Low Power FM service, on FM channels reserved for noncommercial educational use, and for noncommercial educational full power television stations, has been sent to Canada or Mexico on behalf of the station and no response from the country affected has been received; or

(5) Failure of a Commission-imposed condition precedent prior to commencement of operation.

(c) A permittee must notify the Commission as promptly as possible and, in any event, within 30 days, of any pertinent event covered by paragraph (b) of this section, and provide supporting

documentation. All notifications must be filed in triplicate with the Secretary and must be placed in the station's local public file. For authorizations to construct stations in the Low Power FM service, on FM channels reserved for noncommercial educational use, and for noncommercial educational full power television stations, the Commission will identify and grant an initial period of tolling when the grant of a construction permit is encumbered by administrative or judicial review under the Commission's direct purview (e.g., petitions for reconsideration and applications for review of the grant of a construction permit pending before the Commission and any judicial appeal of any Commission action thereon), a request for international coordination under paragraph (b)(4) of this section, or failure of a condition under paragraph (b)(5) of this section. When a permit is encumbered by administrative or judicial review outside of the Commission's direct purview (e.g., local, state, or non-FCC Federal requirements), the permittee is required to notify the Commission of such tolling events.

(d) A permittee must notify the Commission promptly when a relevant administrative or judicial review is resolved. Tolling resulting from an act of God will automatically cease six months from the date of the notification described in paragraph (c) of this section, unless the permittee submits additional notifications at six-month intervals detailing how the act of God continues to cause delays in construction, any construction progress, and the steps it has taken and proposes to take to resolve any remaining impediments. For authorizations to construct stations in the Low Power FM service, on FM channels reserved for noncommercial educational use, and for noncommercial educational full power television stations, the Commission will cease the tolling treatment and notify the permittee upon resolution of either:

(1) Any encumbrance by administrative or judicial review of the grant of the construction permit under the Commission's direct purview;

- (2) The request for international coordination under paragraph (b)(4) of this section; or
- (3) The condition on the commencement of operations under paragraph (b)(5) of this section.

\* \* \* \* \*

9. Amend § 73.7002 by revising paragraph (c) to read as follows:

**§ 73.7002 Fair distribution of service on reserved band FM channels.**

\* \* \* \* \*

(c)(1) For a period of four years of on-air operations, an applicant receiving a decisive preference pursuant to this section is required to construct and operate technical facilities substantially as proposed. During this period, such applicant may make minor modifications to its authorized facilities, provided that either:

(i) The modification does not downgrade service to the area on which the preference was based; or

(ii) Any potential loss of first and second NCE service is offset by at least equal first and, separately, combined first and second NCE service population gain(s), and the applicant would continue to qualify for a decisive Section 307(b) preference.

(2) Additionally, for a period beginning from the award of a construction permit through four years of on-air operations, a Tribal Applicant receiving a decisive preference pursuant to this section may not:

(i) Assign or transfer the authorization except to another party that qualifies as a Tribal Applicant;

(ii) Change the facility's community of license; or

(iii) Effect a technical change that would cause the facility to provide less than full Tribal Coverage.

10. Amend § 73.7003 by:

a. Revising paragraphs (b)(1) and (2);

b. Adding a heading for paragraph (c)(1);

c. In paragraph (c)(2):

i. Adding a heading; and

ii. Removing the semicolon at the end of the paragraph and adding a period in its place;

d. Revising paragraph (c)(3); and

e. Adding paragraphs (c)(4) and (5).

The revisions and additions read as follows:

**§ 73.7003 Point system selection procedures.**

\* \* \* \* \*

(b) \* \* \*

(1) *Established local applicant.* Three points for local applicants, as defined in § 73.7000, who have been local continuously for no fewer than the two years (24 months) immediately prior to the application filing.

(2) *Local diversity of ownership.* Two points for applicants with no attributable interests, as defined in § 73.7000, in any other broadcast station or authorized construction permit (comparing radio to radio and television to television) whose principal community (city grade) contour overlaps that of the proposed station. The principal community (city grade) contour is the 5 mV/m for AM stations, the 3.16 mV/m for FM stations calculated in accordance with § 73.313(c), and the contour identified in § 73.685(a) for TV. Radio applicants will count commercial and noncommercial AM, FM, and FM translator stations other than fill-in stations. Television applicants will count UHF, VHF, and Class A stations.

\* \* \* \* \*

(c) \* \* \*

(1) *Tie breaker 1.* \* \* \*

(2) *Tie breaker 2.* \* \* \*

(3) *Tie breaker 3.* If a tie remains after the tie breaker in paragraph (c)(2) of this section, the tentative selectee will be the remaining applicant that can demonstrate that:

(i) It applied in a previous filing window, and had its application accepted for filing and processed, but subsequently dismissed in favor of an applicant with superior points or a tie-breaker showing;

(ii) It has been in continuous existence at all times from the date of that previous filing until the present; and

(iii) It does not hold any NCE construction permit or license.

(4) *Voluntary time-sharing.* If a tie remains after the tie breaker in paragraph (c)(3) of this section, each of the remaining tied, mutually exclusive applicants will be identified as a tentative selectee and must electronically submit, within 90-days from the release of the public notice or order announcing the remaining tie, any voluntary time-share agreement. Voluntary time-share agreements must be in writing, signed by each time-share proponent, and specify the proposed hours of operation of each time-share proponent.

(5) *Mandatory time-sharing.* If a tie among mutually exclusive applications is not resolved through voluntary time-sharing in accordance with paragraph (c)(4) of this section, the tied applications will be reviewed for acceptability. Applicants with tied, grantable applications will be eligible for equal, concurrent, non-renewable license terms.

(i) If a mutually exclusive group has three or fewer tied, grantable applications, the

Commission will simultaneously grant these applications, assigning an equal number of hours per week to each applicant. The Commission will require each applicant subject to mandatory time-sharing to simultaneously and confidentially submit their preferred time slots to the Commission. If there are only two tied, grantable applications, the applicants must select between the following 12-hour time slots: 3 a.m.-2:59 p.m., or 3 p.m.-2:59 a.m. If there are three tied, grantable applications, each applicant must rank their preference for the following 8-hour time slots: 2 a.m.-9:59 a.m., 10 a.m.-5:59 p.m., and 6 p.m.-1:59 a.m. The Commission will require the applicants to certify that they did not collude with any other applicants in the selection of time slots. The Commission will give preference to the applicant that has been local, as defined in §73.7000, for the longest uninterrupted period of time. In the event an applicant neglects to designate its preferred time slots, staff will select a time slot for that applicant.

(ii) Groups of more than three tied, grantable applications will not be eligible for licensing under this section. Where such groups exist, the Commission will dismiss all but the applications of the three applicants that have been local, as defined in §73.7000, for the longest uninterrupted periods of time. The Commission will then process the remaining applications as set forth in paragraph (c)(4)(i) of this section.

\* \* \* \* \*

11. Amend § 73.7005 by:

- a. Revising the section heading and paragraph (b);
- b. Redesignating paragraph (c) as paragraph (d);
- c. Adding new paragraph (c); and
- d. Adding a heading for newly redesignated paragraph (d)

The revision and addition read as follows:

**§ 73.7005 Maintenance of comparative qualifications.**

\* \* \* \* \*

(b) *Technical.* In accordance with the provisions of §73.7002, for a period of four years of on-air operations, an NCE FM applicant receiving a decisive preference for fair distribution of service is required to construct and operate technical facilities substantially as proposed. During this period, such applicant may make minor modifications to its authorized facilities, provided that either:

(1) The modification does not downgrade service to the area on which the preference was based; or

(2) Any potential loss of first and second NCE service is offset by at least equal first and, separately, combined first and second NCE service population gain(s).

(c) *Point system criteria.* Any applicant selected based on the point system (§ 73.7003) must maintain the characteristics for which it received points for a period of time commencing with the grant of the construction permit and continuing until the station has achieved at least four years of on-air operations. During this time, any applicant receiving points for diversity of ownership (§ 73.7003(b)(2)) and selected through the point system, is prohibited from:

(1) Acquiring any commercial or noncommercial AM, FM, or non-fill-in FM translator station which would overlap the principal community (city grade) contour of its NCE FM station received through the award of diversity points;

(2) Acquiring any UHF, VHF, or Class A television station which would overlap the principal community (city grade) contour of its NCE television station received through the award of diversity points;

(3) Proposing any modification to its NCE FM station received through the award of

diversity points which would create overlap of the principal community (city grade) contour of such station with any attributable authorized commercial or noncommercial AM, FM, or non-fill-in FM translator station;

(4) Proposing any modification to its NCE television station received through the award of diversity points which would create overlap of the principal community (city grade) contour of such station with any attributable authorized UHF, VHF, or Class A television station;

(5) Proposing modifications to any attributable commercial or noncommercial AM, FM, or non-fill-in FM translator station which would create overlap with the principal community (city grade) contour of its NCE FM station received through the award of diversity points; and

(6) Proposing modifications to any attributable UHF, VHF, or Class A television station which would create overlap with the principal community (city grade) contour of its NCE television station received through the award of diversity points. This restriction applies to the applicant itself, any parties to the application, and any party that acquires an attributable interest in the permittee or licensee during this time period.

(d) *Non-comparative permits.* \* \* \*

[FR Doc. 2020-01009 Filed: 2/11/2020 8:45 am; Publication Date: 2/12/2020]