

V. Safeguards

12. As one of several CPNI safeguards, the Commission required in the *Second Report and Order* each carrier to certify that it is in compliance with the Commission's CPNI rules. In describing a carrier's duty, the Commission stated that each carrier must "submit a certification" and that the certification "must be made publicly available." We clarify that the Commission's use of the word "submit" in the order was not intended to require carriers to file such certifications with the Commission. Rather, the order directs carriers to ensure only that these corporate certifications be made publicly available.

VI. Ordering Clauses

13. *It is ordered* that, pursuant to sections 1, 4(i), 222 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 222 and 303(r), and authority delegated thereunder pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 CFR 0.91, 0.291, this Order is hereby adopted.

Federal Communications Commission.

Richard K. Welch,

Acting Deputy Chief, Common Carrier Bureau.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 98-93; FCC 98-117]

1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission seeks comment on proposals that would change fundamentally the way it evaluates proposals that would create interference in the FM band. It also seeks comment on whether the contingent application rule should be modified to permit coordinated facility modifications among broadcasters. The Commission proposes a signal propagation methodology that more accurately takes into account terrain effects to better predict where interference would not occur; adoption of this methodology would permit certain applicants to obtain greater service improvements. The Commission also proposes other changes to promote

greater technical flexibility in the FM service and to streamline and expedite the processing of applications to modify existing facilities in several services.

DATES: Comments must be filed on or before August 21, 1998. Reply comments are due September 21, 1998. Written comments by the public on the proposed information collections are due on or before August 21, 1998.

ADDRESSES: All comments and reply comments should be addressed to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Copies of these pleadings also should be sent to the Mass Media Bureau, Audio Services Division (Room 302), 1919 M St., N.W., Washington, D.C. 20554, and the Office of General Counsel (Room 610), 1919 M St., N.W., Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain_t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Peter Doyle, Dale Bickel or William Scher, Audio Services Division, Mass Media Bureau, (202) 418-2780. For additional information concerning the information collections contained in this *Notice of Proposed Rulemaking (Document)* contact Judy Boley at (202) 418-1214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* in MM Docket No. 98-93 and FCC No. 98-117, adopted June 11, 1998 and released June 15, 1998. The complete text of this *Notice of Proposed Rulemaking* is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M St., N.W., Washington, D.C. 20554 and may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800 (phone), (202) 857-3805 (facsimile), 1231 20th St., N.W., Washington, D.C. 20036.

Synopsis of Notice of Proposed Rulemaking

I. Negotiated Interference in the FM Service

A. Introduction/Background

1. The Commission frequently has used the term "negotiated interference" to describe agreements between or among stations to accept new or increased interference within their protected service contours, typically in connection with proposals to expand service by one or several stations. The Commission generally has rejected attempts by applicants to negotiate interference levels on a case-by-case basis, holding that the selection of interference standards is a non-delegable Commission responsibility. Nevertheless, the Commission has concluded that the public interest would be served by modifying the contingent application rule and AM cut-off procedures to facilitate coordinated technical changes between AM stations. No parallel changes have been adopted for FM applications, with the exception of certain grandfathered short-spaced stations. Thus, the Commission has condoned the use of agreements to promote service improvements in the technically more difficult AM service, as well as agreements between stations that operate, axiomatically, at spacings substantially less than current new station requirements, while consistently rejecting the use of these same agreements between fully-spaced FM stations where interference concerns generally would be less. In short, current Commission policy provides the least flexibility for technical facility improvements in mid-sized major markets where FM broadcasters face the greatest technical constraints to undertake such improvements.

B. Specific Proposals

i. Agreements Involving Applications for Coordinated FM Station Changes

2. *Background.* Section 73.3517 prohibits the filing of contingent applications in the FM broadcast services.¹ As stated above, the Commission permits the filing of contingent applications to facilitate interference reduction and service improvements by either separately or commonly owned AM stations. The Commission has received similar requests from FM stations that have entered into agreements that propose "coordinated" or "interrelated" facility

¹ The rule does not differentiate between major and minor changes. *Amendment of Sections 1.517 and 1.520*, 61 FCC 2d 38 (1976).

relocations, modifications, and "one-step" upgrades and downgrades.²

3. *Discussion.* We propose to allow the filing of contingent minor change FM construction applications on a limited basis. We would require that such applications be filed on the same date, and that each include a copy of the agreement covering all related applications. These related minor change applications would be processed and if grantable, granted simultaneously. The construction permits would be conditioned as necessary to allow an orderly implementation of non-interfering service. If any application in the group could not be approved, we propose to dismiss all applications filed as an interrelated group. We would reject any coordinated agreement that, in our determination, would not serve the public interest. We seek comment on each aspect of this proposal.

4. We also propose to permit the filing of contingent proposals that include one-step upgrade and downgrade applications. We tentatively conclude that this change is consistent with the rationale underlying the one-step policy. The "opportunity" for filing competing proposals in this context is wholly dependent on two stations reaching agreement on the coordinated facility changes. However, stations are reluctant to pursue coordinated facility changes where there is a possibility that a competing application could be filed. We tentatively conclude that the potential preclusion of competing allotment and minor change proposals is consistent with the public interest, and that the proposed procedures are consistent with section 307(b) of the Act.

5. In addition, we tentatively conclude that contingent applications should be limited to four related, simultaneously filed applications. We seek comment on this limitation and whether a different policy should apply where some or all proposals involve stations under common ownership.

6. We also propose additional requirements when the coordinated changes include cancelling an NCE FM station license. In 1990, the Commission decided against establishing a specific local transmission service floor with respect to our public interest evaluation

of contingent arrangements that propose to terminate AM facilities. Instead we adopted guidelines that permit case-by-case evaluation of such applications. We propose to apply AM interference reduction principles to NCE FM agreements proposing the cancellation of an NCE FM station license. Thus, proposals could not create white or gray areas.³ In addition, agreements to terminate a community's only local transmission service would be considered on a case-by-case basis and would take into account the availability of other services and the possibility of restoring local service with either an AM or FM station. We seek comment on whether to establish a "local service floor" to ensure that the granting of contingent applications does not result in a loss of service that would be detrimental to the public interest.

ii. Agreements Involving Applications That Would Cause New or Increased Interference

7. *Background.* The Commission has been extremely reluctant to permit the creation of interference within a station's protected service contour, particularly where none currently exists. We have been concerned that this policy would lead to further clustering of stations in urban areas in contravention of section 307(b) of the Act. We also have opposed such proposals on spectrum efficiency grounds and because grant of interference-creating applications could effectively foreclose facility improvements by stations receiving new interference. Nevertheless, we believe that this technical streamlining initiative provides an opportunity to reconsider our policy options in the context of the technically simpler NCE FM and commercial FM services. Radio is truly a mature service. Congestion in the FM band provides a major technical impediment to the further "urban clustering" of stations. Moreover, a station's core obligation to serve its community of license will continue to limit transmitter relocations and service area modifications. As a result, measures designed to give broadcasters additional flexibility may raise lesser concerns at this time regarding the "fair, efficient, and equitable distribution of radio service * * *."⁴

8. There are additional reasons to reconsider these policies at this time. The financial and management sophistication of the radio broadcast industry has grown dramatically in recent years, spurred by fundamental changes in local ownership and the elimination of national ownership restrictions. Moreover, both Congress and the Commission are committed to relying to the greatest extent possible on competitive communications markets rather than resource-intensive regulatory policies to safeguard the public interest. In this environment, we seek comment on whether it is possible to provide broadcasters some additional flexibility under our technical rules to expand service while at the same time establishing requirements to ensure that negotiated interference agreements are limited to situations where service gains would outweigh service losses and the creation of new and/or expanded areas of interference.

9. *Discussion.* We seek comment on whether we should amend §§ 73.215(a) and 73.509 to permit applications that would result in prohibited overlap and, therefore, interference based on the following four criteria:

(1) Total interference received by any station from all interfering stations must be no greater than five percent of the area and population within each affected station's protected service contour;

(2) Total service gain must be at least five times as great as the increase in total interference, in terms of both area and population. Service gain would be defined as the difference between the current service contour area and population, and the proposed service contour area and population. Total service gain would be the sum of all service gains for all stations included in the agreement. Interference increase would be defined as the difference between the current interference area and population, and the proposed interference area and population. Total interference would be the sum of all interference increases and decreases received by all affected stations and applicants, in terms of area and population. Interference calculations would include interference received by a proposal even if it occurred beyond that station's current service contour. If interference calculations made in accordance with this criterion established that total interference would be decreased, an applicant would be exempt from any service gain requirement;

(3) No predicted interference can occur within the boundaries of any

²The commercial FM "one-step" processing rules were designed to facilitate improvements by eliminating the necessity for a petition for rulemaking in instances where licensees seek upgrades on adjacent and co-channels, modifications to adjacent channels of the same class, and downgrades to adjacent channel. One-step applications are processed as minor change applications.

³A "white" area receives no full-time aural service, a "gray" area receives one full-time aural service. We note that case law suggests that the Commission is precluded from allowing the creation of any white or gray areas. See, e.g., *West Michigan Television v. FCC*, 460 F.2d 883 (D.C. Cir. 1971).

⁴47 U.S.C. 307(b).

affected station's community of license; and

(4) Any application causing or receiving interference in an area that previously received interference-free service would be required to demonstrate the existence of at least five remaining aural services within each interference area.

We request comment on each of these factors, including whether the interference cap and gain/loss ratio strike an appropriate public interest balance. Should the Commission adopt additional or fewer restrictions? Should the Commission adopt separate service floor requirements for commercial and NCE FM stations?

10. If a rule change is adopted, applicants would be required to file coordinated facility modifications on the same date and clearly cross-reference all associated applications. A copy of the written consent of all stations receiving interference within their protected service contour as a result of proposed facility modification(s) would be submitted with the applications. Under this approach, we would amend Form 301 to require applicants to certify compliance with these negotiated interference standards and to submit supporting materials in exhibit form. We believe that careful review of interference-creating proposals filed pursuant to novel procedures would be particularly warranted. We seek comment on this conclusion and whether the Commission should rely on applicant certifications without supporting exhibits. All non-reserved band applications would be required to satisfy the less stringent § 73.215(e) spacing requirements and all construction permits granted to FM non-reserved band applicants would be granted as § 73.215 proposals. In addition, we would amend § 73.509 to prohibit second- and third-adjacent channel NCE FM stations from proposing transmitter sites within an affected station's 63 dBu contour. This would prevent interference areas deep within a station's service contour, and assure minimum distance separations between stations, thus promoting fair and equitable distribution of stations as required by section 307(b) of the Communications Act. We seek comment on whether this NCE FM restriction is necessary to prevent a deluge of modification applications that would shift service away from less well-served areas. All construction permits granted pursuant to these procedures would be conditioned on the simultaneous implementation of all related proposals.

We invite comment on each aspect of this proposal.

11. To the extent that these procedures would result in the favorable consideration of applications that propose new areas of caused interference, they would also support changes in the way we treat interference received. New areas of received interference can result from a station's unilateral proposal to extend its own service contour so that it overlaps the interfering contour of an authorized station. In effect, such a proposal reflects a station's determination that increased potential listenership outweighs a certain amount of interference within its (expanded) service area. Typically, the new area of interference affects potential listeners who were not predicted to receive service previously. We seek comment on whether we should permit such modifications provided that an applicant demonstrates compliance with each of these requirements. However, no consent from any other station would be required where the proposal would not result in interference occurring within the service contour of any reserved band station, any § 73.215 station or any station operating with the equivalent of maximum class facilities. Applicants that propose a short-spacing to any other type of station would have to obtain consent from such affected station to receive interference. If the affected station chooses not to increase power simultaneously to a full-class facility as part of the agreement with the applicant, the affected station must request reclassification as a § 73.215 licensee/permittee. This "§ 73.215 condition" on the affected station's authorization effectively would limit that station to its current facilities (with regard to the applicant's proposal) and would prevent subsequent unilateral increases by the affected station resulting in interference caused to the applicant's improved facilities.

12. We seek comment on whether we should follow the methodology adopted in the recent grandfathered short-spaced FM station proceeding to determine areas of interference using the desired-to-undesired signal strength ratio analysis and the standard F(50,50) and F(50,10) propagation curves. *Grandfathered Short-Spaced FM Stations, Report and Order*, 62 FR 50518, September 26, 1997. As noted therein, the ratio method is the most appropriate method for determining areas of interference. We seek comments on this view. Cochannel interference would be predicted to exist at all locations within the desired station's

coverage contour where the undesired (interfering) F(50,10) field strength exceeds a value 20 dB below the desired (protected) F(50,50) field strength. First-adjacent channel interference would be predicted to exist at all locations within the desired station's coverage contour where the undesired (interfering) F(50,10) field strength exceed a value 6 dB below the desired (protected) F(50,50) field strength. Second- and third-adjacent channel interference would be predicted to exist at all locations within the desired station's coverage area where the undesired (interfering) F(50,10) field strength exceeds a value 40 dB above the desired (protected) F(50,50) field strength. We invite comment on these standards and the use of this methodology.

13. We believe that consideration is warranted in this document of the standards that would apply to waiver requests of the interference rules proposed herein. Section 73.215 codifies a relief mechanism for applicants to specify sub-standard spacings provided that certain criteria are met. If an applicant cannot meet these standards, then § 73.207 distance separation requirements must control. We propose to continue to follow this same procedure with regard to any interference-related rule changes adopted pursuant to this document. Specifically, in analyzing a request for waiver of § 73.215(e), we propose to measure the short-spacing in accordance with § 73.207 and to apply the traditional threshold three-part and public interest tests developed in § 73.207 jurisprudence. Similarly, with regard to interference-creating proposals between or among consenting broadcasters, the Commission would consider prohibited overlap in accordance with established precedent. In no event would such an applicant be entitled to a presumption that creating any interference—much less five percent—within any station's protected service contour would be in the public interest. We seek comment on these proposed waiver policies.

14. A broadcaster's obligations to accurately prepare each facility application, to truthfully complete each application certification, to construct and operate facilities in accordance with its authorization, and, generally, to adhere to the Commission's technical rules become particularly significant where stations may create small amounts of interference and where several facility modifications may be mutually interdependent. We are fully committed to exercising our plenary enforcement powers against applicants that enter into negotiated interference

agreements where we find that application showings and/or certifications have fallen short of Commission standards, regardless of the time at which the application errors are brought to the Commission's attention. In the event we adopt negotiated interference procedures for FM stations, we propose to publish, as necessary, decisions that explain or clarify these new procedures. We believe that a program that combines strict enforcement and broad information dissemination would promote full and candid disclosure of material technical information in applications and compliance with our rules and policies. We seek comment on this enforcement approach for negotiated interference agreements. We also request that commenters identify specific enforcement procedures that the Commission should follow and the sort of sanctions that it should impose where an applicant provides false or incomplete information in its application or where construction is at variance to an authorization.

15. We seek comment on whether this proposal to permit small amounts of interference in limited circumstances would protect service to a station's community of license and would help preserve an adequate service floor for all listeners. In particular, we invite public comment on the following issues to help develop a better record on the technical and policy issues that these proposals raise: (1) Would these negotiated interference procedures sufficiently protect the interests of listeners and licensees not party to an agreement?; (2) Could this proposal result in service losses to smaller communities and/or less desirable demographic audiences?; (3) Should negotiated interference agreements between commercial stations be treated differently from agreements between noncommercial educational stations?; (4) How might this proposal affect the development and implementation of in-band on-channel (IBOC) digital radio systems?; (5) Is there a danger that negotiated interference agreements over time may lead to less flexibility to make future changes when, for example, a transmitter site is lost and a station must relocate?; (6) Is there reason to believe that the accumulation of negotiated interference agreements over a period of years could lead to a general degradation of FM service in the United States?; (7) Is this negotiated interference proposal consistent with section 307(b) of the Communications Act?; (8) To what extent should the Commission rely on applicant

certifications to ensure compliance with negotiated interference agreement requirements?; (9) Should the Commission require licensees to maintain negotiated interference agreements in their local public inspection files? Should they be filed with the Commission?; (10) Should the Commission limit agreements to one or several license terms? Should an agreement be terminable following the transfer of a station that previously consented to interference within its service contour?; (11) What remedies should the Commission and affected licensees have if a station breaches its negotiated interference agreement?

II. Other Proposals To Give Stations Greater Technical Flexibility

A. The Point-to-Point Prediction Methodology

16. *Background.* Interference between FM stations is defined in terms of protected and interfering contours. Because of the limited length (3 to 16 kilometers) of the radials used to determine antenna height above average terrain, the Commission's standard propagation methodology does not accurately account for all terrain effects. In 1975, the Commission adopted a limited correction factor to measure "terrain roughness" to overcome the effects of terrain beyond 16 kilometers.⁵ However, the Commission later stayed the general use of the terrain roughness factor (contained in § 73.313 (f) through (j) and Figures 4 and 5 of § 73.333) because of difficulties with "atypical terrain configurations."⁶ Presently, the Commission does not accept supplemental terrain analyses to determine predicted interference between FM stations. Thus, applications proposing new or expanded service may be precluded unreasonably where interference is predicted although, in fact, unlikely.

17. *Discussion.* In Appendix B of this document, we set forth a supplemental point-to-point ("PTP") prediction model which under many circumstances would provide for a more accurate prediction of interfering contours. We propose that an applicant may use the PTP method to calculate interfering contours for the purpose of demonstrating compliance with the Commission's various overlap/

interference requirements.⁷ Such showings would be limited to the relationships between the PTP predicted interfering contours and the affected station's standard F(50,50) curve predicted protected service contour. We also propose to permit the use of PTP methodology to demonstrate compliance with the interference area and population limits set forth above for negotiated interference agreements.

18. We tentatively conclude that applicants should be permitted to use the PTP methodology for certain other purposes. All commercial FM stations must demonstrate compliance with the community of license city grade coverage requirements of § 73.315. Since the PTP methodology more accurately incorporates the effects of terrain into the prediction of coverage, we propose to permit the use of PTP calculations by both applicants and objectors to resolve any questions raised regarding compliance with § 73.315 and to treat the PTP calculations as controlling. We propose to require applicants to submit a PTP contour study where terrain between a transmitter site and a community of license could put in issue either the use of the standard methodology or the station's compliance with city grade coverage requirements. Existing stations that currently cover their community based on the standard prediction method, but fail to satisfy the PTP methodology, would be exempt from a PTP determination provided they do not propose to relocate transmission facilities or withdraw coverage towards the community of license. Additionally, we propose to allow PTP methodology in two specific instances that require the calculation of 3.16 mV/m coverage: (1) compliance with main studio requirements of § 73.1125;⁸ and (2) demonstration that an allotment, when

⁷ Specifically, we refer to interfering contours calculated in association with the Commission's overlap requirements for FM commercial, NCE FM, and FM Translator stations (47 CFR 73.215, 73.509, 73.1204, respectively); overlap of the interfering contours of intermediate frequency (IF) grandfathered short-spaced stations (§ 73.213(b)); and the interfering contours utilized in showings that involve undesired-to-desired (U/D) signal ratios in conjunction with FM to TV Channel Six interference showings (§ 73.525) and public interest showings related to pre-1964 grandfathered short-spaced stations (§ 73.213(a)).

⁸ The staff currently entertains alternate prediction methods in the context of main studio locations. However, in order to warrant study, current commercial FM processing policy requires that such showings may be submitted if they alter the 3.16 mV/m contour by at least ten percent when compared to the standard prediction method. In contrast, the staff can efficiently confirm that an applicant has properly used the PTP methodology. Accordingly, we propose to eliminate the ten percent method for PTP contour studies that establish compliance with the Commission's main studio location rule.

⁵ *Field Strength Curves, Report and Order* in Dockets 16004 and 18052, 53 FCC 2d 855, 863 (1975).

⁶ *Temporary Suspension of Certain Portions of Sections 73.313, 73.333, 73.684, and 73.699, FCC 75-1226, 56 FCC 2d 749 (1975), stay extended indefinitely, 40 Rad. Reg. 2d 965 (1977).*

considered at maximum Class facilities, would comply with § 73.315 with respect to the community of license (if use of a supplemental method is warranted consistent with existing precedents). We seek comment on these proposals.

19. The PTP methodology is proposed in this document for the primary purpose of demonstrating that the standard prediction method overstates the area encompassed by a station's interfering contour. Thus, we propose to prohibit the use of the PTP methodology to extend interfering contours beyond the standard F(50,10) predicted curves for the purpose of demonstrating harmful interference received. PTP showings are not permitted in any of our international agreements and thus could not be used to demonstrate compliance with international requirements. We also propose not to permit the use of this methodology to calculate protected service contours for the purposes of demonstrating: (1) the lack or existence of overlap; or (2) compliance or non-compliance with contour limitations for boosters, fill-in translators, or auxiliary facilities. In addition, we propose not to consider PTP showings in the context of demonstrating compliance with the multiple ownership requirements of § 73.3555. We seek comments on each aspect of this proposal regarding the adoption and use of the PTP methodology.

20. As noted above, we stayed the terrain roughness provision because of difficulties with atypical terrain configurations. However, this adjustment and the PTP prediction method would provide a more sophisticated and not unduly burdensome method of assessing the effects of a variety of terrain anomalies. Therefore, we propose to delete the long-stayed terrain roughness provisions from § 73.313(f) though (j) and Figure 4 of § 73.333 from the Commission's rules as they apply to FM broadcast stations. We seek comment on these proposals.

B. Commercial FM Technical Requirements: Amendments to § 73.215

i. Reduced Minimum Separation Requirements in § 73.215(e) for Second- and Third-Adjacent Channel Stations

21. *Background.* In 1989, the Commission adopted § 73.215 to afford FM applicants some additional flexibility in locating potential transmitter sites. In response to concerns of spectrum overcrowding, the Commission retained minimum but lesser spacing requirements for § 73.215 applicants. For second- and third-

adjacent channel stations, § 73.215(e) generally limits the amount of relief from § 73.207 minimum distance separation requirements to no more than three kilometers and in some cases provides no relief.⁹ As a result, stations with second- and third-adjacent channel spacing problems have, in many cases, less flexibility to relocate facilities under § 73.215(e) than under the former § 73.207 waiver policies that permitted the staff to grant spacing waivers of up to six kilometers.

22. *Discussion.* We propose to revise the § 73.215(e) spacing table to afford all FM commercial stations a minimum of 6 kilometers of relief from the applicable § 73.207(a) standards. We also propose that grants under this proposal would continue to be listed as a contour protection construction permit. We seek comment on these proposals.

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

23. In 1993, the staff granted a request for waiver of § 73.215(a)(1) to permit an alternate method to define the protected and interfering contours of certain stations in the Virgin Islands and Puerto Rico.¹⁰ We propose revising § 73.215 to incorporate the actual protected and interfering contours for Class A, B1 and B stations set forth in *St Croix Wireless Co.* The proposed modifications take into account the higher HAAT limits specified in the rules for Puerto Rico and the Virgin Islands, while affording stations additional site location flexibility. We believe that this revision would protect other stations from interference in excess of that which may occur under our spacing rules. We seek comment on this proposal.

⁹ Specifically, out of 28 possible combinations between the second- and third-adjacent channel stations, § 73.215 provides 10 km relief to Class B1-C stations, and 9 km relief to Class C2-C stations. In addition, four combinations have 3 km of relief, 14 combinations have 2 km of relief, five combinations have 1 km of relief, and three combinations have no relief.

¹⁰ See *St. Croix Wireless Co., Inc.*, 8 FCC Rcd 7329 (1993). In *St. Croix Wireless Co.*, the permittee requested a waiver of § 73.215 as it defined the protected contour of a Class B station as the 54 dBu contour. The permittee demonstrated that use of the 54 dBu contour for Class B stations in Puerto Rico and the Virgin Islands produced an anomalous result, affording vastly more protection than the spacings provide. Instead, the permittee showed that given the spacings and maximum facilities permitted in this region, the normally protected contour of such stations is the 63 dBu contour, and the use of this contour for Caribbean stations produces a result equivalent to that on the mainland.

C. New Class C Height Above Average Terrain Requirements

24. *Background.* A recent staff study reveals that many Class C stations operate with facilities that are significantly less than maximum. Specifically, the study reveals that 519 of the 863 FM stations presently occupying Class C assignments, or approximately 60 percent, operate with facilities less than 450 meters HAAT. The fact that such a large percentage of Class C stations are operating more than 150 meters below one-half the maximum antenna height limitation of 600 meters HAAT indicates that the Commission's present allotment structure overprotects a substantial number of Class C stations and, therefore, may unnecessarily preclude proposals to introduce new and/or expand existing services.

25. *Discussion.* We propose to create an additional intermediate class of stations between Class C and Class C1, to be designated Class C0 (Class C zero). Class C0 stations would have a maximum height limitation of 450 meters HAAT and a minimum antenna height requirement of 300 meters HAAT. Both classes of stations would be required to maintain a power level of 100 kW, the present value for Class C stations. Under this proposal, Class C stations would be required to operate at a minimum antenna height of no less than 451 meters HAAT. We would amend the FM distance separation tables to include the reduced spacing requirements for the new station class. In order to provide a reasonable opportunity for existing Class C stations not operating at the proposed antenna height minimum to maintain their full Class C status, we propose a three-year transition period to obtain a construction permit specifying an antenna HAAT of at least 451 meters. During the three-year period, each such station would be renewed on a conditional basis. If the station has not obtained the necessary authorization within the three-year period, then the station would be reclassified as a Class C0 station. We seek comments regarding this proposal, including comments that may shed light on the additional service the proposed additional station class could create, the effect of the loss of primary service areas for reclassified Class C0 stations, and whether creation of a temporary "buffer zone" to protect the ability of existing Class C stations to upgrade during the three-year transition period would be appropriate.

D. Streamlined Application Processing Changes

i. Extending First Come/First Served Processing to AM, NCE FM and FM Translator Minor Change Applications

26. *Background.* Under our present rules, minor change applications for non-reserved FM band broadcast stations are subject to "first come/first served" processing, whereby a first-filed application cuts off the filing rights of subsequent, mutually exclusive proposals. Minor changes for AM, reserved FM band and FM translator stations do not receive such cut-off protection, but remain subject to competing proposals until the staff disposes of the applications. This policy imposes significant uncertainty and delay on minor change applicants in these services: at any time during the pendency of an application, a conflicting proposal may be filed that could halt further processing of the application and necessitate a technical amendment, settlement between the parties or designation of the mutually exclusive applications for comparative hearing.

27. *Discussion.* We propose to extend application of the first come/first served processing system to AM, NCE FM and FM translator minor change applications. We believe that the unlimited exposure to conflicting applications and the concomitant expense and delay under the current policy is both inequitable and inconsistent with our treatment of minor changes for FM commercial band stations. We anticipate that this proposal would effectively remedy the uncertainty and delay presently associated with AM, NCE FM and FM translator minor change applications. We invite comment on this proposal.

ii. Revisions to the Definition of "Minor" Change in AM, NCE FM, and FM Translator Services

28. *Background.* Under our present rules, a proposed change in the facilities of an existing commercial FM band station is classified as a major change only if it involves a change in community of license and/or certain changes in frequency and/or class. For AM, NCE FM and FM translator stations, however, various other facility changes also are classified as major changes: (1) for AM stations, most proposed increases in power; (2) for NCE FM stations, any proposed change of 50 percent or more in the station's predicted 1 mV/m (60 dBu) coverage area; and (3) for FM translators, any proposed change or increase of over 10 percent in the 1 mV/m coverage area.

Accordingly, facility modification applications in these services may be subject to additional administrative procedures.

29. We propose to expand the definition of minor change for the AM, NCE FM and FM translator services to conform to the commercial FM "minor change" definition. Thus, only applications to change community of license and to change to a non-mutually exclusive channel and class would be classified as "major" changes.¹¹ To prevent NCE FM and FM translator stations from abandoning their present service areas, however, we propose to require these stations to continue to provide 1 mV/m service to some portion of their presently authorized 1 mV/m service areas in order for their applications to be classified as minor changes. We tentatively conclude that this proposal would eliminate the present inconsistent treatment of proposed facilities increases for different radio services without undermining the administration of any Commission rule or policy. We invite comment on this proposal.

iii. Coordinate Corrections by Single Application for Licensed Stations

30. *Background.* Presently, broadcast stations seeking to correct coordinates must file a construction permit application, and after grant, a license application.¹² Coordinate corrections, however, are generally considered to be minor changes to broadcast facilities because they do not involve physical changes to the facilities or a change in licensed parameters. We believe that for many coordinate corrections the two-application procedure is unduly burdensome.

31. *Discussion.* We propose to adopt new provisions in Parts 73 and 74 to allow corrections of coordinates for broadcast facilities, where no other licensed parameters are changed, via a single license application. We also propose to require the applicant to certify that all licensed parameters not altered in the license application would remain unchanged. Under our proposal, the applicant would not be required to file a separate construction permit. We propose to make this procedure available where the correction would be less than 3 seconds latitude and 3 seconds longitude, provided that the applicant has sought FAA clearance and antenna structure registration.¹³ We seek

¹¹ We propose to continue to treat AM applications to change from Class B to Class D as "minor" changes.

¹² See 47 CFR 73.1690(b)(2) and 73.3536.

¹³ In 1996, the Commission received comments in response to the *Notice of Proposed Rulemaking* in

comment on this proposal and whether an alternative standard should be adopted. We also propose to continue our policy of issuing public notices announcing the receipt of the application, and the processing of the coordinate correction as if it were a routine minor change application. However, in the event the coordinate correction establishes a violation of our technical rules, the Commission would retain a full range of options including the designation of the license application for hearing and the issuance of an order to show cause why the construction permit should not be revoked. We propose to require any permittee that discovers an antenna structure coordinate error to file an application to modify its outstanding construction permit. We tentatively conclude that the Commission may adopt this change in licensing procedures pursuant to section 319(d) of the Communications Act. We seek comment on these proposals.

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

32. *Background.* We have found when reviewing license renewals that many FM translator and booster stations are actually operating at a power less than that specified in their license. In order to authorize the reduced power operation, we now require licensees to go through the two-step process. In addition, FM translator licensees may resolve an interference complaint by a reduction in power. In this instance, the two-step process delays the resolution of the interference problem.

33. *Discussion.* In order to expedite FM station license modifications in these circumstances, we propose to eliminate the two-step application process for FM translator and booster stations seeking to decrease ERP. We tentatively conclude that recent changes

MM Docket 96-58 requesting that a rule be adopted to allow a coordinate correction in a modification of license application, thereby eliminating the requirement for a construction permit. See *Certain Minor Changes in Broadcast Facilities Without a Construction Permit, Notice of Proposed Rulemaking*, 61 FR 15439, April 8, 1996. The Commission denied the request stating that the proposed one-step procedure could invite abuse by applicants "correcting" coordinates to a short-spaced transmitter site or a site involving prohibited contour overlap. By retaining the construction permit process, the Commission indicated that the safeguards against abuse inherent in the construction permit process would be not be lost. See *Certain Minor Changes in Broadcast Facilities without a Construction Permit, Report and Order*, 62 FR 51052, September 30, 1997. We now believe that limiting one-step license application coordinate corrections to situations involving less than 3 seconds of longitude and latitude would provide adequate safeguards. We seek comment on this conclusion.

in section 319 of the Communications Act permit the Commission to adopt this one step licensing procedure.¹⁴ We seek comment on this view. In these instances, we would permit licensees to decrease their ERP after the filing of a license application proposing the power decrease. We seek comment on this proposal.

E. Relaxed NCE FM and Translator Technical Requirements

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

34. *Background.* The Commission's commercial FM station interference protection standards require stations operating on the same channel or any of the first three adjacent channels to meet certain minimum distance standards. Like commercial FM stations, NCE FM stations are protected from interference by stations operating on co- and the first three adjacent channels under the rules. The NCE FM rules do not specify minimum distance separation requirements. Actual, rather than maximum class facilities are used to calculate whether prohibited contour overlap would occur. Thus, the location of a station's service and interfering contours determines the preclusionary impact of such stations on other potential cochannel and adjacent channel facilities. Although both commercial and NCE FM interference standards are derived from a common methodology, the commercial rules use a less preclusive 100 dBu interfering contour to calculate minimum distance separations for stations operating on second-adjacent frequencies.

35. *Discussion.* We propose to eliminate the inconsistency between the commercial and NCE FM station interference protection standards. Specifically, we propose to modify §§ 73.509 and 74.1204(a) to specify a 100 dBu interfering contour for second-adjacent channel NCE FM and FM translator stations.¹⁵ We seek comment on this proposed rule change.

ii. Minimum Coverage of the Community of License by NCE FM Stations

36. *Background.* The Commission's rules do not require NCE FM stations

operating in the reserved band (Channels 201 to 220) to place a minimum field strength signal over their communities of license, unlike their commercial counterparts. The Commission enacted this policy based on the fact that many NCE FM stations operate at low power levels and simply could not provide coverage to the entire area within the legal boundaries of its community of license. The Commission also recognized that NCE FM stations are generally dependent on listener support, and may not have the financial resources to construct facilities that serve the entire community of license. However, public interest concerns are raised where an NCE FM station covers *no* portion of its community of license with its 60 dBu contour. The association of a broadcast station with a community of license is a basic tenet of the Commission's allocation scheme for broadcast stations.

37. *Discussion.* We propose to delete the Note to § 73.315(a) and to add a provision requiring NCE FM stations to provide 60 dBu (1 mV/m) service to at least a portion of the community of license. We believe this proposal would give NCE FM applicants significant flexibility to locate technical facilities, consistent with the Commission's statutory licensing requirements. We seek comment on this proposal and on the percentage of the population and/or area of the community that should be covered. In the event that an NCE FM community coverage standard is adopted, we propose to apply the rule only to new station and modification applications filed after the effective date of this new rule. We seek comment on these tentative conclusions.

iii. Revisions to Class D Rules

38. *Background.* The Commission created a low power NCE FM Class D service in 1948, as an inexpensive means of encouraging the FM broadcasting service and as a substitute for the "campus broadcasting systems" then in use. By 1976, however, the demand for NCE FM licenses had increased dramatically, prompting the Commission to initiate a rule making proceeding to determine how to foster the most effective use of NCE FM spectrum. The Commission concluded that Class D stations constituted an inefficient use of spectrum, and adopted measures to minimize their negative impact on the development of the NCE FM radio service. Specifically, the Commission encouraged Class D stations to upgrade to Class A status. It required Class D stations that did not upgrade to migrate to a commercial FM channel or Channel 200, where they

would have secondary status. Those stations unable to migrate would be required to move to the reserved band channel with "the least preclusionary impact on other potential stations[.]" In addition, the Commission ended Class D stations' protection against interference and imposed a permanent freeze on applications for new Class D stations.¹⁶

39. The Commission remains committed to promoting the full use of the NCE FM channels. Congestion in the reserved band has increased during the past twenty years, and demand for NCE FM licenses remains high. Furthermore, a recent staff study reveals that a number of the remaining Class D stations with reserved band authorizations are causing interference to full service NCE FM stations.¹⁷ We believe, therefore, that certain modifications to our Class D policies are appropriate. We anticipate that the changes proposed herein would serve the Commission's original objective while avoiding the unnecessary cancellation of Class D licenses. In addition, we believe that the proposed changes would simplify and expedite Class D station licensing and renewal procedures.

40. *Discussion.* Under § 73.512(a), Class D stations are required with each renewal cycle to migrate to an available commercial channel or Channel 200, or demonstrate the unavailability of such channels. We do not believe the administrative burdens these requirements impose on both licensees and the Commission staff are warranted where an existing Class D station is operating on an NCE FM channel without objectionable interference. Accordingly, we propose to permit Class D stations to operate on any channel where no interference (as defined by § 73.509(b)) would be caused to any broadcast station, and to eliminate the requirement that Class D licensees with reserved band authorizations demonstrate the unavailability of any commercial FM channel or Channel 200 in their license renewal applications. Under this proposal, the staff would handle channel location issues as they arise rather than addressing them as license renewal issues. Furthermore, whereas the current rules require Class D stations to migrate to available

¹⁴ In 1996, Congress amended section 319 of the Act to authorize the Commission to waive the requirement for a construction permit for minor changes in the facilities of authorized broadcast stations. *Telecommunications Act of 1996*, Pub. L. No. 104-104, § 403(m), 110 Stat. 56 (1996).

¹⁵ The 97 and 94 dBu interfering contours will be specified for second-adjacent channel FM translator stations protecting class B1 and B stations in the reserved band, respectively.

¹⁶ This notice neither makes nor proposes any change to this permanent freeze policy. We note that the Commission has requested public comment on two rulemaking petitions to establish a low power or microbroadcasting service. See *Public Notice*, Report No. 2254 (released February 5, 1998) (RM # 9208); *Public Notice*, Report No. 2262 (released March 12, 1998) (RM # 9242) (erratum).

¹⁷ The study reveals that 38 of the 70 Class D stations with reserved band licenses are causing interference.

commercial channels or Channel 200 and contain no provision for such stations to move back to the reserved band, the proposed new rules would allow existing Class D stations to relocate to any available interference-free reserved or nonreserved channel in order to avoid receiving interference from full power FM stations, or for any other reason.

41. With regard to Class D stations that are causing or are predicted to cause interference (as defined by § 73.509(b)) on their current channel, we propose to apply the following standards: first, stations would be required to move to an available interference-free channel; second, if no interference-free channel is available, stations would be required to move to an NCE FM channel that would result in only second- and/or third-adjacent channel contour overlap;¹⁸ and third, if no channel is available that would be either interference-free or create only second- and/or third-adjacent channel interference, the station would be required to obtain the consent of each affected NCE FM station subject to co- or first-adjacent channel interference as a condition for continued operation. Should there be a number of potential channels for an existing Class D station in this situation to choose from, we propose to require applicants to adhere to the following frequency selection criteria: first, we would prefer overlap beyond an affected station's community of license to overlap within the licensed community; second, we would prefer third to second adjacent channel overlap; and third, we would prefer overlap involving the smallest percentage of population in a station's coverage area, so that there would be the least possible adverse impact on the affected station. In conjunction with these changes, we also propose to eliminate the "least preclusion" requirement, which is inadequately defined in the existing rules and has proved impracticable. With regard to Class D stations presently causing second or third adjacent channel overlap in the NCE FM band, we invite comment as to whether such stations should be allowed to remain on their present channels absent actual complaints of interference or required to move in accordance with the standards proposed herein.

42. A recent staff study reveals that every Class D station authorized to

operate on a reserved band frequency has available at the present time an NCE FM channel on which it could operate free of co- or first-adjacent channel contour overlap. However, in the event that changes in NCE FM authorizations create a situation where no channel free of co- and first-adjacent channel interference is available, we propose to require the Class D station to obtain the consent of the affected NCE FM station(s) as a condition for continued operation.¹⁹ In the event that no agreement is reached, the Class D station would be required to cease operation when program tests for the affected station commence, and would have up to one year to obtain the required consent.

43. *Revise Class D Definition Based on Transmitter Power Output.* The current rules define Class D stations as stations with transmitter power output ("TPO") of 10 watts or less. Higher class NCE FM stations, however, are defined by their predicted 1 mV/m (60 dBu) contour distances, as determined by power and antenna height in accordance with § 73.211(b). We propose to conform the definition of Class D stations to that of higher class NCE FM stations, by eliminating the TPO restriction and instead defining Class D stations as stations with predicted 60 dBu contour distances not exceeding five kilometers, as determined in accordance with § 73.211(b). We are aware of five Class D stations with predicted 60 dBu contour distances exceeding the proposed five kilometer restriction. We propose to grandfather such "superpowered" Class D facilities, permitting them to continue to operate as Class D stations at their present power and antenna height and to modify their facilities provided they do not extend their predicted 60 dBu contour distances.²⁰

44. *Classify Construction Permit Applications as Minor Changes.* Certain Class D construction permit applications, including those proposing operation on a new channel, are treated as major change applications. We propose to consider all Class D facility applications as minor change applications that would be processed under our more efficient "first come/first served" procedures. In light of the

¹⁹ We would allow Class D licensees to obtain such consent not only for the channel they are currently operating on but for any NCE FM channel or Channel 200.

²⁰ In this regard, we also propose to grandfather "underpowered" Class A facilities: Class A stations authorized prior to the adoption of the Class A minimum power and antenna height requirements in § 73.511 which do not meet such requirements. 47 CFR 73.211(a)(3). In practice, such stations currently are treated as Class A facilities.

unprotected status of Class D stations, only other Class D applications would be affected by this proposal, and mutually exclusive Class D applications are extremely unlikely due to the low power and relatively small number of Class D stations. By eliminating the 30-day public notice period for Class D permit applications, we anticipate that this proposal would expedite processing of such applications, conferring an important benefit on displaced Class D stations.²¹ Consistent with the above, we propose to permit Class D stations to propose changes of licensed community or of 50 percent or more of the area within their predicted 1 mV/m contour areas provided their applications demonstrate that they would maintain continuity of service to their core audience. The present rules prohibit such changes in order to prevent the establishment of "new" Class D stations. We seek comment on these proposals.

45. *Revise Contour Protection Requirements for Class B and B1 Stations.* Section 73.509(b) requires Class D stations to protect the 1 mV/m (60 dBu) contour of all other broadcast stations, regardless of class or location on the FM band. Commercial Class B and B1 FM stations, however, traditionally have received greater protection to their 0.5 mV/m (54 dBu) and 0.7 mV/m (57 dBu) contours, respectively. Accordingly, we propose to modify § 73.509(b) to require Class D stations to protect commercial Class B and B1 stations, as well as NCE FM Class B and B1 stations operating on commercial channels, to their respective 54 dBu and 57 dBu contours. We invite comment as to whether Class D stations that currently are required to protect the 60 dBu contours of Class B or B1 stations but would not comply with the proposed new standard should be permitted to continue to operate at their present powers and antenna heights absent actual interference complaints.

46. We invite comment on these Class D station proposals. Are they warranted in the interest of improved NCE FM channel use? Would they promote more efficient use of NCE FM channels? Should we apply to Class D stations the "actual interference" standard applicable to FM translators? Would the proposed changes sufficiently protect the ability of Class D stations to continue to operate?

²¹ We invite comment as to whether an application by a Class D station proposing to upgrade to Class A status should be classified as a major change. Arguably, a Class D to A upgrade should be classified as a major change because it would confer protected status on the subject station.

¹⁸ The current rules define Class D stations operating in the non-reserved band as "secondary," and we propose no change in this definition. See 47 CFR 73.506(a). For purposes of this Class D channel displacement discussion, Channel 200 is treated as an NCE FM channel.

III. Procedural Matters

47. *Paperwork Reduction Act.* This Notice proposes rule and procedural revisions that may contain information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It has been submitted to the Office of Management and Budget (OMB) for review under § 3507(d) of the PRA. OMB, the general public and other federal agencies are invited to comment on the information collection requirements proposed in this proceeding. Public and agency comments are due at the same time as other comments in this Notice; OMB comments are due August 21, 1998. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collection requirements proposed herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

48. *Ex Parte Rules.* This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under § 1.1206(b) of the rules. 47 CFR 1.1206(b), as revised. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b).

49. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this Notice. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice.

A. Need for and Objectives of the Proposed Rules

50. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposed amendment of certain technical rules and policies governing the radio broadcast services.

B. Legal Basis

51. Authority for the actions proposed in this Notice document may be found in sections 4(i), 4(j), 303, 308, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 308, 309, and 310.

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

52. 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.²² 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). A

²² 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*." 5 U.S.C. 601(3). While we tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small radio stations, for purposes of this document, we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to radio broadcast stations subject to the proposed rules in this document and to consider further the issue of the number of small entities that are radio broadcasters or other small media entities in the future.

small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."

53. The proposed rules and policies will apply to radio broadcasting licensees and potential licensees. The Small Business Administration defines a radio broadcasting station that has no more than \$5 million in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. As of January 31, 1998, official Commission records indicate that 12,241 radio stations were operating, of which 7,488 were FM stations. Thus, the proposed rules will affect some of the 12,241 radio stations, approximately 11,751 of which are small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-radio affiliated companies.

54. In addition to owners of operating radio stations, any entity who seeks or desires to obtain a radio broadcast license may be affected by the proposals contained in this item. The number of entities that may seek to obtain a radio broadcast license is unknown. We invite comment as to such number.

D. Description of Projected Recording, Recordkeeping, and Other Compliance Requirements

55. In addition to enhancing opportunities for improvement of radio broadcast technical facilities and service, a number of the measures proposed in this notice document would reduce the reporting required of prospective and current applicants, permittees and licensees.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

56. This notice document solicits comment on a variety of alternatives discussed herein. These alternatives are intended to enhance opportunities for improvement of technical facilities and service and eliminate unnecessary administrative burdens and delays associated with our radio broadcast licensing processes. Any significant alternatives presented in the comments will be considered.

F. Federal Rules that Overlap, Duplicate, or Conflict With the Proposed Rules

57. None.

Ordering Clauses

58. *Accordingly, it is ordered*, that pursuant to the authority contained in sections 4(i), 4(j), 303, 308, 309 and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 308, 309 and 310, this Notice of Proposed Rule Making and Order is adopted.

List of Subjects

47 CFR Part 73

Radio, reporting and recordkeeping requirements.

47 CFR Part 74

Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98-16514 Filed 6-19-98; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AC09

Endangered and Threatened Wildlife and Plants; Reopening of the Comment Period on the Proposed Endangered Status and Notice of Availability of the Draft Conservation Agreement for Review and Comment for *Pediocactus winkleri* (Winkler cactus) in Central Utah

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Fish and Wildlife Service provides notice that the comment period is reopened on a proposal to list *Pediocactus winkleri* (Winkler cactus) as endangered, pursuant to the Endangered Species Act of 1973 (Act), as amended. The Service is reopening the comment period on this proposal and any new information. In addition, the Service announces the availability of a draft conservation agreement for *Pediocactus winkleri*, also for public comment. This conservation agreement is accessible on the internet at www.blm.gov\utah.

DATES: The comment period on this proposal and draft conservation

agreement is extended until July 22, 1998.

ADDRESSES: Written comments and materials concerning the proposal and draft conservation agreement should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Lincoln Plaza Suite 404, 145 East 1300 South, Salt Lake City, Utah 84115. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John L. England at the above address (telephone 801/524-5001).

SUPPLEMENTARY INFORMATION:

Background

On October 6, 1993, the Service proposed to add *Pediocactus winkleri* (Winkler cactus) to the list of endangered and threatened plants (58 FR 52059). At that time *Pediocactus winkleri* was known from six populations with a total population of about 3,500 plants with a range in central Utah from near Notom in central Wayne County to near Fremont Junction in southwestern Emery County.

Since the closing of the comment period on December 6, 1993, an additional population has been discovered near Ferron in western Emery County, Utah. In addition, additional plants have been documented within previously known populations. While the documented numbers of the species have increased little over the 1993 estimates, the Service now estimates that the population may number up to 10,000 plants (Fish and Wildlife Service 1994, 1997). The Bureau of Land Management and the National Park Service initiated a comprehensive inventory of the species within its potential habitat in the spring of 1998.

The Species continues to be exploited by cactus collectors. In 1984, the Service established a population monitoring transect for *P. winkleri* in an easily accessible area that cactus collectors frequent (Fish and Wildlife Service 1994, 1997). The Service has periodically monitored this transect, usually at 2-year intervals. The *P. winkleri* population along this transect declined from 53 plants 1984 to zero plants in 1997. The Notom population's estimated size has declined from about 2,000 individuals in 1984 (Heil 1984) to an estimated 700 individuals in 1997 (Fish and Wildlife Service 1997). The Service during its 1997 survey of the Notom population discovered several shovel marks within the occupied habitat of this species. These marks

were at the locations of plants last observed in 1994 and missing in 1997. Threats to species and its habitat, from off-highway vehicles, mining and quarrying, oil and gas drilling, and livestock trampling, continue with varying significance throughout the species range (Fish and Wildlife Service 1997).

A moratorium on listing actions (Public Law 104-6) took effect April 10, 1996, and prevented the Service from making a final decision on this proposal by the August 1995 administrative deadline. The moratorium was lifted on April 26, 1996, when the appropriation for the Department of the Interior for the remainder of fiscal year 1996 was enacted into law. In a **Federal Register** document published on May 16, 1996 (61 FR 24722), the Service outline in detail the history of the moratorium and indicated the priorities it would follow in eliminating the listing program backlog resulting from the moratorium. Preparation of the final rule for this proposed species is considered a Tier 2 priority—processing final decisions on proposed listings. For more information on the moratorium and the priority for backlogged listing actions, refer to the May 16, 1996, **Federal Register** notice.

The Service does not believe that the new distributional and population information has changed the status of the species. However, we are reopening the comment period on the proposed rule to solicit comments on this new information and request any additional information on scientific studies conducted since the comment period last closed on December 6, 1993.

The Draft Conservation Agreement was developed by the Bureau of Land Management, in coordination with the Park Service, Forest Service, and the Service. The agreement focuses on identifying, reducing and eliminating significant threats to *Pediocactus winkleri* (and *P. Despainii*, a listed species) that warrant its candidate status, and on enhancing and maintaining the species population to ensure its long term conservation. The Service also is seeking comments on the adequacy of the proposed conservation agreement and whether or not the agreement will satisfactorily provide for the species conservation independent of the Endangered Species Act. The Service hereby announces reopening of the comment period until July 22, 1998.

References Cited

Heil, K.D. 1984. Status report on *Pediocactus winkleri*. U.S. Fish and Wildlife Service, Denver, Colorado. 14 pp.