Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Aguila, Channel 297C3; adding Channel 246C3 at Bagdad; and adding Channel 242C3 at Wickenburg.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–10704 Filed 4–30–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–929; MM Docket No. 98–155, RM–9082, RM–9133]

Radio Broadcasting Services; Alva, Mooreland, Tishomingo and Tuttle, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies a Petition for Reconsideration filed by Ralph Tyler directed to the *Report and Order* in this proceeding which denied his proposal for to reallot Channel 259C3 from Tishomingo to Tuttle, Oklahoma, and modify his Station KTSH license to specifyTuttle as the community of license. *See* 65 FR 82296, December 28, 2000. With this action, the proceeding is terminated.

DATES: Effective May 1, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 98–155, adopted April 4, 2001, and released April 13, 2001. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals ll, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3805, 1231 M Street, NW., Washington, DC 20036.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–10703 Filed 4–30–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–930; MM Docket No. 89–120, RM–6701, 6999, 7000, 7001]

FM Broadcasting Services; Northwye, Cuba, Waynesville, Lake Ozark, and Eldon, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In MM Docket No. 89–120, the Commission dismissed as moot the petition for reconsideration filed by Lake Broadcasting, Inc., licensee of Station KBMX(FM), Channel 270A (101.9 MHz), Eldon, Missouri, and grantee of the construction permit for Station KFXE (FM), Channel 271A (102.1), Cuba, Missouri. Lake had requested reconsideration of the Report and Order, 57 FR 6561, published February 26, 1992. The Commission dismissed Lake's petition for reconsideration following the denial of certiorari by the U.S. Supreme Court in Lake's appeal of the revocation of its licenses and construction permits. *See Contemporary Media, Inc., et al.,* v. *Federal Communications Commission,* 214 F. 3d 187 (D.C. Cir 2000), cert. denied, 532 U.S. ____ (2001). Michael Rice, Lake's sole owner and president, had been convicted of the felonies of deviate sexual conduct and sodomy of minors. Lake and other licensees owned or controlled by Rice also made repeated misrepresentations to the Commission as to Rice's continued involvement with their stations. With this action, the proceeding is terminated.

DATES: Effective May 1, 2001.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Memorandum Opinion and Order, MM Docket 89–120, adopted April 4, 2001, and released April 13, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Information Center (room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may be also purchased from the Commission's copy contractor, International Transcription Service, 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–10702 Filed 4–30–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 00–10; FCC 01–123]

RIN 3060–AH39

Establishment of a Class A TV Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document implements the Community Broadcasters Protection Act of 1999, which directs the FCC to establish a Class A television service to provide a measure of primary status to certain low-power television stations. This document addresses a wide range of issues related to the implementation of the statute, including the protected service area of Class A stations, Class A interference protection requirements vis a vis other TV stations, eligibility criteria for Class A status, common ownership restrictions applicable to Class A stations, the treatment of modification applications filed by Class A licensees, and general operating requirements.

DATES: Effective May 31, 2001, except for 47 CFR 73.1545(e), which contains information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Debra Sabourin, Policy and Rules Division, Mass Media Bureau, (202) 418–2130, or Keith Larson, Office of the Bureau Chief, Mass Media Bureau, (202) 418–2600.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order on Reconsideration (''*MO&O*''), FCC 01–123, adopted April 5, 2001; released April 13, 2001. The full text of the

Commission's *MO&O* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12 St., SW., Washington, DC. The complete text of this *MO&O* may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 1231 20th St., NW., Washington, DC 20036.

Paperwork Reduction Act

This document contains new or modified information collection requirements. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget.

Synopsis of Memorandum Opinion and Order

I. Introduction

1. April 2000 we released a *Report and Order* (''*R&O*''), 65 FR 29985, May 10, 2000, establishing a Class A television service. Our action implemented the Community Broadcasters Protection Act of 1999 (CBPA), which was signed into law November 29, 1999. Community Broadcasters Protection Act of 1999, Public Law 106–113, 113 Stat. Appendix I at pp. 1501A–594—1501A–598 (1999), *codified* at 47 U.S.C. 336 (f) (CBPA). Pursuant to the CBPA and our implementing rules, certain qualifying low-power television (LPTV) stations will be accorded Class A status. Class A licensees will have ''primary'' status as television broadcasters, thereby gaining a measure of interference protection from full-service television stations, even as those stations convert to a digital format. The CBPA and our *R&O* will facilitate the acquisition of capital needed by LPTV stations to allow them to continue to provide free, over-the-air programming, particularly locally-produced programming, to their communities. In this *MO&O*, we dispose of petitions for reconsideration of the *R&O*, make changes to some of our rules, and provide clarification of other rules.

II. Background

2. From its creation by the Commission in 1982, the low power television service has been a secondary spectrum priority service whose members may not cause objectionable interference to existing full-service stations, and * * * must yield to facilities increases of existing full-service stations or to new full-service stations where interference occurs. Currently, there are approximately 2,300 licensed LPTV stations in approximately 1,000 communities, operating in all 50 states. These stations serve both rural and urban audiences. Because they operate at reduced power levels, LPTV stations serve a much smaller geographic region than full-service stations and can fit into areas where a higher power station cannot be accommodated in the Table of Allotments. In many cases, LPTV stations may be the only television station in an area providing local news, weather, and public affairs programming. Even in some well-served markets, LPTV stations may provide the only local service to residents of discrete geographical communities within those markets. Many LPTV stations air ''niche'' programming, often locally produced, to residents of specific ethnic, racial, and interest communities within the larger area, including programming in foreign languages.

3. In the CBPA, Congress found that the future of low-power television is uncertain. Because LPTV stations had secondary spectrum status, they could be displaced by full-service TV stations that sought to expand their own service area, or by new full-service stations that entered the same market. The statute found that this regulatory status affects the ability of LPTV stations to raise necessary capital. In addition, Congress recognized that the conversion to digital television further complicates the uncertain future of LPTV stations. In assigning DTV channels, the Commission maintained the secondary status of LPTV stations and TV translators and, in order to provide all full-service stations with a second channel, was compelled to establish DTV allotments that will displace a number of LPTV stations. Although the Commission has taken a number of steps to mitigate the impact of the DTV transition on stations in the LPTV service, that transition nonetheless would have significant adverse effects on many stations, particularly LPTV stations operating in urban areas where there are few, if any, available replacement channels for displaced stations.

4. Congress sought in the CBPA to address some of these issues by providing certain low power television stations—to be known as Class A stations—''primary'' spectrum use status. Congress also recognized, however, that, because, of the emerging DTV service, not all LPTV stations could be guaranteed a certain future. Congress recognized the importance and engineering complexity of the Commission's plan to convert full-service stations to digital format, and protected the ability of these stations to provide both digital and analog service during the transition.

5. Congress also recognized, however, that, because of the emerging DTV service, not all LPTV stations could be guaranteed a certain future. Congress recognized the importance and engineering complexity of the FCC's plan to convert full-service stations to digital format, and protected the ability of these stations to provide both digital and analog service during the transition.

III. Discussion

A. Application and Certification for License

1. Statutory Timeframes

6. Section 336(f)(1)(B) of the CBPA states: ''* * * Within 60 days after such date of enactment, licensees intending to seek class A designation shall submit to the Commission a certification of eligibility based on the qualification requirements of this subsection. * * * section 336(f)(1)(C) provides that, consistent with the requirements set forth in the CBPA, a licensee ''may'' submit an application for Class A designation within 30 days after final regulations are adopted implementing the CBPA. 47 U.S.C. 336(f)(1)(B), (C).

7. The 60-day certification period was clearly specified by Congress in 47 U.S.C. 336(f)(1)(B) of the CBPA. The statute states that licensees intending to seek Class A designation ''shall'' submit a certification of eligibility within 60 days after the date of enactment of the Act. The CBPA was signed into law on November 29, 1999; thus, the time for filing a certificate of eligibility ended 60 days later, on January 28, 2000. To comply with the requirements of the statute, parties must have made the requisite submission within the time period specified. Section 47 U.S.C. 336(f)(1)(C) states that applicants ''may'' file license applications within 30 days from the adoption of final implementing rules. Section 336(f)(1)(B), in contrast, states that licensees intending to seek Class A designation ''shall'' file a certification of eligibility within 60 days after enactment. Thus, even though no licensee was required to file a certificate of eligibility, any licensee that wished to do so was required to file within 60 days after enactment. The use of the word ''may'' in relation to applications indicates that the 30 day filing period is permissive only, and not mandatory. Thus, applicants were not required to file within 30 days following adoption of final rules, although they were permitted to do so. Allowing a longer filing period was appropriate to give LPTV licensees adequate time to

prepare and file their Class A applications.

2. Ongoing Eligibility

8. The intent of Congress in enacting the CBPA was to establish the rights of a very specific, already-existing group of LPTV stations. The statute itself states its intent to apply to a small number of stations: ''Since the creation of low-power television licensees by the Federal Communications Commission, a small number of license holders have operated their stations in a manner beneficial to the public good providing broadcasting to their communities that would not otherwise be available.'' The statute specifically states that an eligible low-power station must have met certain requirements ''during the 90 days preceding the date of the enactment of the Community Broadcasters Protection Act of 1999.'' 47 U.S.C. 336(f)(2)(A)(i). During that 90-day period, a qualifying station was to have ''broadcast a minimum of 18 hours per day and an average of at least 3 hours weekly of local programming * * *'' and been ''in compliance with the Commission's requirements applicable to low-power television stations * * *'' 47 U.S.C. 336(f)(2)(A)(i)(III). To comply with the requirements of the statute, parties must make the requisite showing for the time period specified.

B. Qualifying Low-Power Television Stations

1. Locally-Produced Programming

9. Section 336(f)(2)(A) of the CBPA requires that, during the 90 days preceding the date of enactment of the CBPA, LPTV stations must have broadcast an average of at least 3 hours per week of programming produced within the ''market area'' served by the station. In the *R&O*, we determined that the predicted Grade B contour was the appropriate measure for determining the provision of locally oriented programming for the communities served by LPTV stations. We clarify the ''local programming'' requirement. For a Class A station's programming to qualify as ''local programming'' under the CBPA, the programming must be produced within the same ''market area'' in which it is broadcast. For a single Class A station, ''locally produced programming'' is programming produced within the predicted Grade B contour of the station broadcasting the program or produced at the station's main studio. With respect to a group of commonly controlled stations, Class A stations whose predicted Grade B contours are physically contiguous to each other may consider the programming produced within any of these contours as ''local programming.'' If a Class A station is one of a group of commonly controlled Class A stations, but its predicted Grade B contour is not physically contiguous to that of another Class A station in the commonly-owned group, it may not consider the programming produced in any of those distant stations' contours ''local programming.''

2. Operating Requirements

10. To qualify for Class A status, the CBPA provides that, during the 90 days preceding enactment of the statute, a station must have been in compliance with the Commission's requirements for LPTV stations. 47 U.S.C. 336(f)(2)(A)(i)(III). In addition, beginning on the date of its application for a Class A license and thereafter, a station must be ''in compliance with the Commission's operating rules for full-power stations.'' 47 U.S.C. 336(f)(2)(A)(ii). We intend to apply to Class A licensees all part 73 rules, except for those which are inconsistent with the manner in which LPTV stations are authorized or the lower power at which these stations operate. We will apply the part 73 regulations to Class A applicants or licensees, except for those that cannot apply for technical or other reasons, because this course of action is most consistent with the language in the CBPA.

11. *Main Studio Requirements.* The Commission requires stations licensed under part 73 to maintain a ''meaningful management and staff presence'' at the station's main studio in order to serve the needs and interests of the residents of the station's community of license. The Commission has defined a minimally acceptable ''meaningful presence'' as full-time managerial and full-time staff personnel. It stated that there must be ''management and staff presence'' on a full-time basis during normal business hours to be considered ''meaningful.'' It further explained that the standard does not necessarily require two people at the main studio; rather, management and staff presence are required on a full-time basis, which may consist of more than two people working on part-time bases. Jones Eastern of the Outer Banks, Inc., 6 FCC Rcd 3615 (1991), clarified, 7 FCC Rcd 6800 (1992), 10 FCC Rcd 3759 (1995).

12. While we recognize that LPTV stations face financial constraints due to their generally smaller coverage areas, we do not believe it is appropriate to exempt Class A stations from the same staffing requirements we impose on full service stations under part 73. The CBPA defines a ''qualifying'' LPTV station as one that ''from and after the date of its application for a class A license, * * * is in compliance with the Commission's operating rules for full-power television stations.'' The Commission's main studio staffing requirements are intended to ensure that stations maintain a local responsive presence in the community. Exposure to daily community activities and other local media of communications helps stations identify community needs and interests, which is necessary to operate in today's competitive marketplace and to meet our community service requirements. To accomplish these objectives, stations must maintain, at a minimum, full-time managerial and full-time staff personnel. In light of the CBPA's intent that Class A stations comply with all of the requirements of full-power TV stations, we believe it is both reasonable and appropriate to require Class A stations to meet the same obligations with respect to maintaining a local community presence as their full service counterparts.

13. We will, however, amend our main studio requirement. For a single Class A station, a station's main studio shall be located within the station's predicted Grade B contour. With respect to a group of commonly controlled stations, Class A stations whose predicted Grade B contours are physically contiguous to each other may locate their main studio within any of these contours. Thus, two or more commonly owned Class A stations having contiguous predicted Grade B contours may construct and maintain one main studio within their combined boundaries, provided that main studio functions as the main studio for all the stations. If a Class A station is one of a group of commonly controlled Class A stations, but its predicted Grade B contour is not physically contiguous to that of another Class A station in the commonly-owned group, its main studio shall be located within its own predicted Grade B contour. We will amend our rule accordingly, and note that our requirement applies only to newly created main studios.

14. *Power Limits.* We will not raise the ERP limit for Class A stations beyond the current LPTV maximum power levels. These power levels are sufficient to preserve existing service, which is consistent with Congress' objective underlying the CBPA. Congress emphasized in the CBPA the importance of balancing the needs of LPTV licensees against the needs of full-service stations as they transition to a digital format. We do not wish to risk hindering the implementation of digital

television. We will retain the current LPTV maximum power level requirements for Class A stations.

15. *Ongoing Obligations.* In the *R&O,* we adopted a rule requiring Class A television broadcast stations to broadcast a minimum of eighteen hours per day and an average of at least three hours per week of locally produced programming each quarter. The CBPA makes clear that Class A licensees must ''continue'' to meet the qualifying low-power station eligibility criteria, indicating an intent that the criteria to qualify for Class A status create ongoing obligations. Moreover, it would be inconsistent with the overall intent of the CBPA—to afford Class A status only to stations that provide a substantial amount of locally-originated programming—to relieve stations of that obligation once Class A status has been achieved. We thus affirm our previous conclusion that Class A licensees must continue to meet the minimum operating hours and locally-produced programming obligations. Of course, Class A licensees may apply to the Commission for a waiver of the rules.

16. *Fines and Penalties.* We clarify that Class A licensees are subject to the regulations regarding fines and penalties applicable to full power stations. Although Class A licensees will not be subject to loss of license for failure to continue to comply with the eligibility requirements in 47 U.S.C.(f)(2)(A) of the CPBA, they are subject to loss of Class A status if they fail to meet these ongoing obligations.

17. *DTV Broadcast Requirements.* We permit Class A television stations that convert to digital operation to offer telecommunications services of any nature, consistent with the public interest, convenience and necessity, on an ancillary or supplementary basis in the same manner as full power DTV stations. In this regard, digital Class A stations must broadcast a free over-the-air video program service at least comparable to NTSC technical quality under the digital transmission standard applicable to full service stations. Such services will be subject to the fees due under § 73.624(g) and be subject to the same requirement that they not derogate the free over-the-air video program stream required of digital broadcasters. Taking this action furthers the Commission's goal of encouraging the transition of television broadcasting from analog to digital operation. By enabling Class A stations to generate additional revenues from ancillary or supplementary services, we seek to encourage the early conversion of Class A stations from analog to digital operation. Sections 73.624(c) and 73.624(g) will, therefore, apply to Class A television stations converting to digital operations. Section 73.624(b) will apply only to the extent that such stations must also transmit at least one over-the-air video program signal at no direct charge to viewers of the digital Class A station.

3. Mandatory Carriage

18. Both the language of the CBPA and the accompanying conference report are silent with respect to the issue of must carry rights for Class A stations. It is unlikely that Congress intended to grant Class A stations full must carry rights, equivalent to those of full-service stations, without addressing the issue directly. This conclusion with respect to Class A must carry rights is consistent with the view recently expressed by the Commission in its *R&O* implementing the Satellite Home Viewer Improvement Act of 1999. In that Order, the Commission concluded that Class A stations are low power stations for mandatory carriage purposes, and are therefore not entitled to mandatory satellite carriage. *R&O,* In the Matter of Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues, Retransmission Consent Issues, CS Docket Nos. 00–96 and 99–363, FCC 00–417 (released November 30, 2000).

19. We believe that Congress intended that Class A stations have the same limited must carry rights as LPTV stations. Section 614(a) of the Communications Act, as amended, requires the carriage of local television broadcast stations and ''qualified'' low power television stations in certain limited circumstances. Section 614(h)(2) defines the term ''qualified low power station'' as any television broadcast station ''conforming to the rules established for Low Power Television Stations contained in part 74 of title 47, Code of Federal Regulations'' that complies with the other criteria established in that section. 47 U.S.C. 534(h)(2). Thus, to be eligible for must carry, Class A stations, like other low power television stations, must comply with the part 74 rules and the other eligibility criteria established by statute and our rules.

20. Just as it is unreasonable to conclude that Congress intended to confer on Class A stations the same must carry rights as full-service stations without addressing this issue directly in the CBPA, we also believe that it is unlikely that Congress intended to take away from LPTV stations their existing must carry rights if they elect to convert to Class A. The principal intent of the CBPA was to provide additional certainty to LPTV stations during the digital transition and to alleviate the limitations that ''secondary service'' imposed on the ability of these stations to attract capital and to continue to provide high quality broadcast programming. Given the severe impact loss of must carry rights would impose on Class A stations who enjoyed these rights as LPTV stations, we conclude it is unlikely that Congress intended to remove these rights without specific mention in the CBPA.

4. Alternative Eligibility Criteria

21. Section 336(f)(2)(A) of the CBPA defines the eligibility criteria for Class A stations. Section 336(f)(2)(B) provides that a station may also qualify for Class A status if the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission.

22. Foreign language stations should have the same eligibility requirements as any other potential Class A station. We recognize that foreign language stations provide a valuable service in providing access to national news and entertainment that might not otherwise exist for non-English speaking communities. In enacting the CBPA, however, Congress intended to preserve the service of a small class of existing LPTV stations that were providing a specified level of local programming to their communities. To fulfill the intent of the statute, foreign language stations, like other potential Class A stations, must meet the local programming criteria to qualify for Class A status. We will not establish different criteria for foreign language stations that do not meet the local programming criteria. We also decline to establish alternative criteria under the CBPA for foreign language stations based on the foreign language nature of their programming. An applicant's qualification for Class A status is not contingent upon whether it serves a particular audience, but upon whether it meets the eligibility criteria set out in the CBPA.

23. We also allow deviation from the CBPA Class A eligibility criteria by waiver only where such deviations are insignificant or when compelling circumstances exist in individual cases. We disagree with CBA and other petitioners who contend that section 336(f)(2)(B) establishes a broad obligation independent of section 336(f)(2)(A) under which the Commission may determine that other groups of LPTV stations may qualify for Class A status for public interest or any

other reasons. Congress intended to protect a small group of LPTV stations that were providing local programming.

C. Class A Interference Protection Rights and Responsibilities

1. Protection of Pending NTSC TV Applications and Facilities

24. The CBPA requires that the Commission preserve the service areas of LPTV stations pending the final resolution of a Class A application. We concluded in our *R&O,* that that provision requires protection from the date of filing of an acceptable certification of eligibility for Class A status. With respect to NTSC facilities, section 336(f)(7)(A) of the CBPA provides that the Commission may not grant a Class A license, nor approve a modification of license, unless the applicant shows that the proposed Class A station will not cause interference within the predicted Grade B contour (as of the date of enactment of the * * * [CBPA] * * * or as proposed in a change application filed on or before such date) of any television station transmitting in analog format. In our *R&O,* we interpreted this provision to require Class A stations to protect both existing analog stations and full-service applicants where the Commission has completed all processing short of grant necessary to provide a reasonably ascertainable Grade B contour. Specifically, we required Class A applicants to protect the predicted Grade B contour (as of November 29, 1999, or as proposed in a change application filed on or before that date) of full-power analog stations licensed on or before November 29, 1999. We also required Class A applicants to protect the Grade B contour of full-power analog facilities for which a construction permit was authorized on or before November 29, 1999. Finally, we required Class A applicants to protect the facilities proposed in any application for full-power analog facilities that was pending on November 29, 1999, for which the Commission had completed all processing short of grant as of that date, and for which the identity of the successful applicant was known. The applications in this latter category are post-auction applications, applications proposed for grant in pending settlements, and any singleton applications cut off from further filings. We did not require Class A applicants for initial Class A authorization to protect pending rule making petitions for new or modified NTSC channel allotments or full-service applications that were not accepted for filing by November 29, 1999, including most pending television freeze waiver applications.

25. Our decision to protect the delineated categories of pending NTSC applications is not inconsistent with either the language of the CBPA or the underlying intent of Congress. Section 336(f)(7)(A)(i) of the statute requires Class A applicants and licensees to protect the predicted Grade B contour (as of * * * [November 29, 1999], or as proposed in a change application filed on or before such date) of analog facilities. Thus, Class A stations must protect the predicted Grade B contour of analog stations licensed or granted a construction permit as of November 29, 1999, as well as of facilities proposed in certain pending analog applications. As we noted in the *R&O,* the phrase ''predicted Grade B contour'' is singular. The assertion that the phrase ''transmitting in analog format'' is ambiguous is not relevant to our interpretation of the separate phrase ''predicted Grade B contour.'' This latter phrase, as modified by the parenthetical in section 336(f)(7)(A)(i), limits the facilities proposed in applications pending as of November 29, 1999 that must be protected by Class A stations to those for which there is a single, reasonably ascertainable predicted Grade B contour as of that date. These applications consist of post-auction applications, applications proposed for grant in pending settlements, and any singleton applications cut off from further filing. The applications in each of these categories have progressed through the cut-off stage and the identity of the successful applicant in each case has been determined. Class A applicants can identify a single predicted Grade B contour with respect to these applications for which protection must be afforded and are not required to show that they will not interfere with multiple, hypothetical contours that may not turn out to be actual contours, if the applicant in question does not ultimately receive the station license.

26. This interpretation is consistent with both the language of section 336(f)(7)(A)(i) and with the intent of Congress as expressed in the overall statutory scheme. Throughout the CBPA, Congress attempted to balance the enhanced rights it conferred on Class A stations against those of full service stations in light of the limited spectrum available. Requiring Class A applicants to protect applications that have progressed through the cut-off stage strikes an appropriate balance between the rights of pending NTSC applicants and the interests of LPTV stations seeking primary status. Applicants that have prosecuted their applications through the cut-off stage and to the point that the identity of the successful applicant is known have in most cases invested substantial resources in filing and prosecuting their applications. Most of these applications have been pending for some time, and LPTV stations affected by the facilities proposed in these applications have long been on notice that they would ultimately be displaced or be required to reduce their facilities. Requiring Class A applicants to protect applications that had progressed through this stage by November 29, 1999 is both equitable and a reasonable reading of the CBPA.

27. We estimate that there are still pending before the Commission applications that may account for approximately 180 potential new NTSC stations. The grant of this number of new full service stations would likely displace a significant number of LPTV stations, many of which would be unlikely to be able to successfully locate replacement spectrum within the core. In light of the primary intent of the CBPA to protect those presently operating LPTV stations that can qualify under the statute, we conclude that our interpretation of section 336(f)(7)(A)(i) appropriately balances the rights of these stations against those of pending NTSC applicants.With respect to applications for which a settlement is pending as of the date of enactment of the CBPA, we clarify that where such a settlement includes a channel change, and the application for the channel change has not been accepted for filing with the Commission, we will treat that channel change application in the same way as any other pending NTSC application for purposes of determining priority vis a vis Class A. Thus, where a pending settlement depends upon a channel change which has not been accepted for filing by the Commission, and that new channel proposal conflicts with the protected facilities of a Class A-certified LPTV station, the settlement will not be protected.

2. DTV Maximization and Allotment Adjustments

28. The CBPA provides that a Class A application for license or license modification may not be granted where the proposal would interfere with DTV stations seeking to ''maximize power'' under the Commission's rules, for those stations that complied with the notification requirements of section 336(f)(1)(D) of the statute. Section 336(f)(1)(D) requires that, to be entitled to protection by Class A applicants, DTV stations were required to have filed an application for maximization or a

notice of intent to seek maximization by December 31, 1999, and have filed a bona fide application for maximization by May 1, 2000. Approximately 370 DTV maximization applications were filed in accordance with that statutory deadline. In the *R&O,* we interpreted the use of the term ''maximization'' in the statute to refer to power and/or antenna height increases above the values given in the DTV Allotment Table, and to site changes that would extend the service area of DTV facilities beyond a station's NTSC replication facilities.

29. The CBPA provided an exception to the provision for preservation of the service areas of Class A-certified LPTV stations. According to section 336 (f)(1)(D), if, thereafter, ''technical problems arise requiring an engineering solution to a full-power station's allotted parameters or channel assignment in the digital television Table of Allotments, the Commission shall make such modifications as necessary (i) to ensure replication of the full-power digital television applicant's service area * * * and (ii) to permit maximization of a full-power digital television applicant's service area * * *'' (if the applicant complied with the notification and application requirements established by that section).

30. As we indicated in the *R&O,* the statutory language is somewhat ambiguous regarding the protection to be accorded by Class A applicants to DTV stations seeking to replicate or maximize power. Although section 336(f)(1)(D) appears to tie replication and maximization to resolution of technical problems, section 336(f)(7) appears to require all applicants for a Class A license or modification of license to demonstrate protection to stations seeking to replicate or maximize power, as long as the station seeking to maximize has complied with the notification and application requirements of section 336(f)(1)(D), without reference to any need to resolve technical problems on the part of the DTV station. Despite the reference in section 336(f)(1)(D) to technical problems, we concluded in the *R&O,* that it was most consistent with the statutory schemes for both Class A LPTV service and digital full-service broadcasting to require Class A stations to protect all DTV stations seeking to replicate or maximize facilities, as provided in section 336(f)(7)(A)(ii), regardless of the existence of ''technical problems,'' provided stations seeking to maximize complied with the notification requirements of section 336(f)(1)(D) of the statute. We interpreted section 336(f)(1)(D) as providing DTV stations with the flexibility to make adjustments to the facilities proposed in these maximization applications, including channel changes, where necessary to resolve technical problems that prevented implementation of the facilities proposed therein. Consistent with this statutory interpretation, we also provided that the maximized service areas resulting from timely filed maximization application proposals could be carried over to a DTV station's final in-core DTV channels, such as a station's in-core analog channel, to the extent the in-core channel facilities for maintaining the maximized service area would provide the required protection to other DTV stations. Such maximized facilities on post-transition channels will have priority over conflicting Class A facilities.

A. Methods of Interference Protection to Class A Facilities

1. Analog Full-Service TV Protection to Analog Class A—Frequency Offset

31. We are persuaded to modify our decisions in the *R&O,* regarding use of carrier offsets by Class A station entities. Requiring use of carrier offsets will provide for greater spectrum efficiency by making room for more new LPTV or Class A stations and/or by allowing more existing stations to increase facilities. First, we will require that, within nine months of the date of release of this *MO&O,* all Class A station licensees operate with a carrier offset. Within that time period, we will also require that Class A construction permits and pending applications for such permits be modified or amended to specify a carrier offset. To do so, station licensees, permittees, and applicants shall specify the carrier offset in a letter to the Commission staff, referencing their license, permit, or pending application. Class A stations operating with an offset must meet the +/− 1 kilohertz frequency tolerance requirements of § 73.1545(c) of the Commission's Rules. We understand that most stations not currently operating with an offset could readily do so at modest cost by modifying their existing transmitters. A small number of stations may have to obtain new transmitters equipped for offset operation. With regard to offset conversion, we will not impose the transmitter equipment performance requirements of § 73.1590 of our rules. However, stations converting to offset or changing their offset will be required to measure the visual carrier frequency and the difference between the aural and visual carriers to determine compliance with the requirements of § 73.1545(c). This data must be kept on file at the transmitter or remote control point, and be made available upon request to authorized Commission representatives.

32. Second, we will require all Class A stations or Class A-eligible LPTV stations seeking facilities increases to specify a carrier offset in their modification applications, regardless of whether the advantages of offset operation can be realized with respect to all neighboring co-channel stations. As noted above, such a requirement will improve spectrum efficiency generally for new as well as existing stations.

33. Finally, until the time at which all Class A entities are required to specify use of a carrier offset, we may, on a case-by-case basis, direct Class A station licensees, permittees and Class A-eligible LPTV applicants (affected stations) to operate their stations with a carrier offset at the request of a displaced Class A station, displaced Class A-eligible LPTV station, or applicant or allotment petitioner for a new NTSC television station (requesting stations). The requesting party must first attempt to negotiate a voluntary offset agreement with the affected Class A entity. Such agreements should be included with the applications of the requesting station and offset notification of the affected station. The Commission staff will process the related applications and offset notifications in a coordinated manner. In the event a voluntary agreement cannot be reached, the requesting station may file (or amend) its application, despite the interference conflict with the affected station. The application must set forth the requesting station's efforts to reach agreement with the affected station and request that the affected station be directed to specify a carrier offset. A copy of the application (or amendment to a pending application) must be sent to the affected station, which will be given 30 days to file comments. If the requesting station's application is otherwise acceptable (that is, except for the conflict with the affected station), the Commission staff may direct the affected station to file within 30 days a letter notification specifying a particular carrier offset. It will process the related applications and offset notifications in a coordinated manner.

34. This Class A proceeding has not addressed carrier offset issues with regard to television translator and non-Class A LPTV stations. Therefore, the above provisions do not, as a matter of policy, apply to these stations. Many translators and LPTV stations do not operate with a frequency offset. Channel

displacement among LPTV and translator stations has been extensive. The difficulties faced by translator and LPTV licensees, including Class-A eligibles, in finding replacement channels could be lessened if translators and LPTV stations operated with carrier offsets. We strongly encourage such stations to enter into voluntary offset agreements, particularly where this would accommodate use of a replacement channel by a displaced station. On a case-by-case basis, we reserve the right to modify the license of a TV translator or non-Class A LPTV station subject to the provisions of the Communications Act of 1934, as amended.

2. Alternative Means of Interference Protection

35. In the *R&O,* we concurred with commenters who favor permitting Class A stations to enter into interference or relocation agreements with full-service, LPTV, TV translator and other Class A licensees, permittees or applicants. We required agreements to be submitted with the related applications for initial or modified broadcast facilities. We said we would approve of such agreements if we find them to be consistent with the public interest. We reaffirm our decision in the *R&O.* We will approve interference or relocation agreements between Class A applicants and applicants for full-service television stations, provided we find the agreements to be consistent with the public interest.

E. Methods of Interference Protection by Class A to Other Facilities

1. Grandfathering of LPTV Interference Waivers

36. In the *R&O,* we adopted interference protection requirements for Class A applicants, as directed by the CBPA. These require protection to certain authorized and proposed NTSC TV, DTV, LPTV and TV translator and land mobile radio services. Applicants for Class A authorizations must certify in their applications that their proposed facilities comply with the applicable interference protection requirements in the Commission's Rules.

37. As requested and to guide applicants for initial Class A authorizations, we provide the following clarification. Existing waivers of the LPTV station interference protection requirements may be used as a basis for certifying compliance with the Class A interference protection requirements provided: (1) Construction of the facilities for which Class A status is sought was authorized on the basis of a waiver of the interference standards with respect to a protected station; (2) all engineering parameters under that LPTV authorization remain unchanged; (3) all authorized engineering parameters of the protected station associated with the waiver remain unchanged; and (4) the LPTV licensee has no knowledge that its station is causing interference to the reception of the protected station within its protected service area; e.g., Grade B contour for NTSC TV stations. We also reiterate that any interference from existing LPTV facilities within the protected contour of later authorized or proposed LPTV or TV translator facilities is permitted by the LPTV rules and is also grandfathered.

2. Land Mobile Radio Service and TV Channel 16

38. The CBPA, at section 336(f)(7)(C), provides that the Commission may not authorize a Class A station that will cause interference to certain land mobile radio uses of television channels. In the *R&O,* we stated that it is most consistent with the statutory scheme and the waiver granted for public safety land mobile use of Channel 16 in the New York City metropolitan area that LPTV station WEBR–LP and the New York police and public safety agencies continue to cooperate to ensure that neither party interferes with the other's transmission. Pursuant to our decision in the *R&O,* because the application reflected the parties' commitment to the agreement, the Mass Media Bureau granted the application on August 21, 2000 and did not impose a condition that WEBR–LP's authority to operate as a Class A station be subject to the agreement.

F. Remaining Issues

1. Issuance of DTV Licenses to Class A, TV Translator, and LPTV Stations

39. In the *R&O,* we noted that Class A stations may convert their existing channel to digital broadcasting at any time. We also concluded that the plain reading of the CBPA, as well as its legislative history, does not require us to issue an additional license for DTV services to Class A or TV translator licensees, but does require us to accept DTV applications from licensees of Class A or TV translator stations that meet the interference protection requirements set forth in the statute. Recognizing that a number of outstanding issues regarding the transition to DTV must be resolved, we said we would defer matters regarding the issuance of additional DTV licenses for Class A stations to a future DTV rulemaking.

40. We reaffirm our decision in the *R&O.* The statute requires that we shall accept a license application for such services that meet certain interference protection requirements. Nothing in the statute requires that we assign a second DTV channel to Class A stations. A Class A station may convert its existing channel to digital broadcasting at any time, or it may compete with other interested parties for additional channels for DTV.

41. We must exercise restraint with respect to issuing additional DTV licenses in order to preserve spectrum to accommodate needs associated with the transition of full-service stations to digital service. For instance, in our DTV periodic review proceeding we expressed our belief that more out-of-core stations than initially anticipated must be accommodated with in-core channels and that this effort will be made more difficult because there are more stations occupying core channels than initially planned for. We therefore defer matters regarding the issuance of additional DTV licenses for Class A stations to a future rulemaking. Issues regarding the means of issuing such licenses will be considered in that proceeding.

2. Stations Operating Between 698 and 806 MHz

42. In the *R&O,* we decided not to impose any time limit on the filing of a Class A application by LPTV licensees operating on channels outside the core channels 2–51. We said that the CBPA provides that, if a qualified applicant for a Class A license operating on an out-of-core channel locates an in-core channel, the Commission ''shall issue a Class A license simultaneously with the assignment of such channel,'' but does not impose a time limit on the filing of such applications. We required stations operating on these channels to have filed a certification of eligibility within the time frame established in the statute (i.e., by January 28, 2000), and granted these stations a presumption of displacement, permitting them to file displacement applications immediately if they can locate a replacement channel within the core spectrum.

43. We also stated that, when a qualified LPTV station outside the core seeking Class A status locates an in-core channel, we will require the station to file a Class A application simultaneously with its application for modification of license to move to the in-core channel. We said we will provide interference protection to such stations on the in-core channel from the

date of grant of a construction permit for the in-core channel. Because the CBPA prohibits the award of Class A status to stations outside the core, we believed it would be inconsistent with the statute to provide interference protection on a channel outside the core. We stated that contour protection would commence with the award of a construction permit on the in-core channel, rather than a license to cover construction.

44. We decline to reconsider our decision not to impose a six month time limit on LPTV licensees on out-of-core channels seeking Class A status. The CBPA provides that, if a qualified applicant for a Class A license operating on an out-of-core channel locates an in-core channel, the Commission ''shall issue a Class A license simultaneously with the assignment of such channel.'' The statute does not require that we impose a time limit on the filing of such applications, and we believe many LPTV stations outside the core will need additional time to locate an in-core channel. In most cases, it would be in the best interest of qualified LPTV stations operating outside the core to try to locate an in-core channel now, as the core spectrum is becoming increasingly crowded and it is likely to become increasingly difficult to locate an in-core channel in the future.

45. We wish to clarify our policy with respect to those certified-eligible LPTV stations that are licensed on a core channel, and have received or applied for a displacement construction permit on an out-of-core channel. The authorized or proposed non-core facilities will not receive Class A protections. However, stations having a non-core construction permit or pending displacement application for such a permit as of the Class A filing deadline, and that have filed timely certifications of eligibility, will not be required to file a Class A application by that deadline, but rather at such later time as they file a displacement application for an available in-core channel. This will preserve Class A opportunities for a number of displaced LPTV stations.

3. Call Signs

46. In the *R&O,* we allowed Class A stations to use standard television call signs with the suffix ''-CA'' to distinguish the stations from ''-LP'' stations. We said that, upon grant of its initial Class A application, the qualifying LPTV licensee can change its station's existing numerical or four-letter low power call sign to a four-letter call sign with the ''CA'' suffix.

47. We reaffirm our decision. As we have stated elsewhere in this proceeding, Congress in the CBPA intended to create a distinct group of stations that are neither LPTV stations nor full power broadcast stations. Use of the ''-CA'' suffix appropriately distinguishes this unique group of stations from secondary LPTV stations that use the ''-LP'' suffix and from primary full power stations that use the ''-TV'' suffix. We note further that use of the suffix is not required for purposes of station promotion, such as station letterhead.

IV. Conclusion

48. In this *MO&O,* we generally reaffirm the decisions we reached in the *R&O,* although we make some changes and clarify certain aspects of our rules, as described previously. Pursuant to the CBPA and our implementing rules, certain qualifying LPTV stations will be accorded ''primary'' status as television broadcasters. The actions we have taken today and in the *R&O* will facilitate the acquisition of capital needed by these stations to allow them to continue to provide free, over-the-air programming to their local communities. By improving the viability of these stations, our action today promotes our fundamental goals of ensuring diversity and localism in television broadcasting.

V. Administrative Matters

49. *Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act of 1980, as amended, *See* 5 U.S.C. 601 *et seq.,* the Commission's Supplemental Final Regulatory Flexibility Analysis has been completed.

50. *Paperwork Reduction Act Analysis.* The actions taken in this *MO&O* have been analyzed with respect to the paperwork Reduction Act of 1995, and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act.

VI. Supplemental Final Regulatory Flexibility Analysis

51. As required by the Regulatory Flexibility Act (RFA), *see* 5 U.S.C. 601 *et seq.*, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice and a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *R&O.* The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. No comments were received in response to the IRFA or the FRFA. This present Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) conforms to the RFA. *See* 5 U.S.C. 604.

Need for, and Objectives of, the Memorandum Opinion and Order on Reconsideration

52. The Community Broadcasters Protection Act of 1999 (CBPA) directed the Commission, within 120 days after the date of enactment, to prescribe regulations establishing a Class A television license available to licensees of qualifying low-power television (LPTV) stations. The CBPA directs that Class A licensees be subject to the same license terms and renewal standards as full-power television licensees, and that Class A licensees be accorded primary status as a television broadcaster as long as the station continues to meet the requirements set forth in the statute for a qualifying low-power station. In addition to other matters, the CBPA sets out certain certification and application procedures for low-power television licensees seeking to obtain Class A status, prescribes the criteria low-power stations must meet to be eligible for a Class A license, and outlines the interference protection Class A applicants must provide to analog (or NTSC), digital (DTV), LPTV, and TV translator stations.

53. The Commission adopted the *R&O,* to implement the CBPA. In that Order, we determined that the service areas of LPTV licensees would be preserved from the date the Commission receives a certification of eligibility for Class A status, as long as the certification is ultimately approved by the Commission. The *R&O,* interpreted the CBPA to require that Class A stations protect both existing analog stations and full power analog applicants that have completed all processing short of grant. Similarly, the *R&O* required Class A stations to protect the digital service areas of DTV facilities proposed in an application pending as of the CBPA enactment date (November 29, 1999) and that had completed all processing short of grant as of that date. The *R&O,* generally applied to Class A applicants and licensees all part 73 regulations except those that cannot apply for technical or other reasons. The *R&O* also addressed a wide range of other issues related to the implementation of the CBPA, including the protected service area of Class A stations, Class A interference protection requirements vis-a-vis other TV stations, common ownership restrictions applicable to Class A stations, and the treatment of modification applications filed by Class A licensees.

54. In this *MO&O,* we do not change most of the determinations made in the *R&O.* We do, however, adopt the following changes. We modify our main studio location requirements with respect to LPTV stations in a commonly owned group. We also clarified our definition of ''local programming'' with respect to LPTV stations in a commonly owned group. We permit Class A television stations that convert to digital operation to offer ancillary or supplementary services in the same manner as full power DTV stations. We clarify that Class A stations have the same limited must carry rights as LPTV stations, but do not have the same must carry rights as full service television stations under part 73 of the Commission's rules. To foster efficient spectrum utilization, we modify our decision regarding the use of carrier frequency offsets by Class A stations, by establishing a deadline for the required use of offsets and requiring the use of such offsets to accommodate, where possible, certain Class A and full-service NTSC station proposals.

Summary of Significant Issues Raised by Public Comments

55. No comments were received in response to the IRFA. Furthermore, no petitions or comments were received on the *R&O,* concerning the FRFA. Two petitioners, however, did file Petitions for Reconsideration raising concerns about the main studio staffing requirements. These petitioners advised that the Commission Class A staffing requirements were too costly. As a result of petitioners' comments, we clarified that the staffing standard does not necessarily require two full-time staff to be present at the main studio. Rather, management and staff presence are required on a full-time basis, which may consist of more than two people working on part-time bases. In addition, the Commission amended the main studio requirement so that commonly owned Class A stations having contiguous boundaries may share a single main studio. Further analysis of this issue may be found below in the section on minimizing significant impacts.

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

56. The 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 rules. 5 U.S.C. 603(b)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 601(3). A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

57. *Small TV Broadcast Stations.* The SBA defines small television broadcasting stations as television broadcasting stations with $10.5 million or less in annual receipts. 13 CFR 121.201 (SIC Code 4833). The *MO&O* modifies certain rules applicable to Class A television licenses, which are available to licensees of qualifying LPTV stations. According to the Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database, virtually all LPTV broadcast stations have revenues of less than $10.5 million. Currently, there are approximately 2,200 licensed LPTV stations. Public Notice, ''Broadcast Station Totals as [of] September 30, 1999'' (released November 22, 1999). The Commission notes, however, that under SBA's definition, revenues of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. The Commission's estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

58. We anticipate that the frequency offset requirement in the *MO&O* will result in changes to the reporting and recordkeeping requirements of Class A stations. When a Class A station begins operating with a frequency offset, it will be necessary for it to notify the Commission in writing.

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

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

60. The R&O, adopted a number of rules designed to help LPTV stations seeking to convert to Class A status and exempts Class A licensees from part 73 rules that clearly could not apply, either due to technical differences in the operation of low-power and full-power stations, or for other reasons. Although the *R&O* applied the main studio rule for the first time to LPTV stations who qualify as Class A stations, requiring them to locate their main studios within the station's Grade B contour, as determined pursuant to the Commission's rules, the *R&O* grandfathers the main studios at the site in use as of November 28, 1999. As discussed, several petitioners expressed concern about the main studio requirement and its effect on small entities. Petitioners argued that the cost of the main studio staffing requirement, as adopted in the *R&O*, was financially prohibitive for small businesses and would result in the demise of Class A stations. This *MO&O* both clarifies and modifies the rules set forth in the *R&O*. These revisions work together to reduce both the staffing burden and the burden of maintaining multiple studios by permitting commonly owned LPTV stations having contiguous boundaries to share a main studio and staff. This alternative significantly reduces the costs associated with maintaining multiple studios and additional staff. In contrast the Commission could have merely clarified the staffing rule as set forth in the *R&O* and not modified the main studio location rule; however, the result works to benefit those small entities with multiple stations. Any further relaxation of the main studio rules would have been inconsistent with the intention and language of the CPBA which requires Class A stations to have a local presence and local programming.

61. In the *MO&O* we permit Class A television stations that convert to digital operation to offer ancillary or supplementary services in the same manner as full power DTV stations. A petitioner to the *R&O* requested a modification of the rules to allow such stations to offer telecommunications services on either an ancillary or supplemental basis in the event that the station decides to convert to DTV. We have complied with this request and have created an alternative for Class A stations which are interested in converting to digital operation. Since

this is optional, it in no way should be perceived as a requirement for Class A licensure or operation. Class A stations are not required to convert to DTV under the CBPA.

62. Lastly, we modify our decision regarding the use of carrier frequency offsets by Class A stations. We now require the use of frequency offsets to accommodate, where possible, certain Class A and full-service NTSC stations and, more generally, will require all Class A stations to specify operation with an offset within nine months of the release of this *MO&O*. In response to the *R&O*, two parties requested this modification in order to allow the stations to make more efficient use of scarce broadcast spectrum. These frequency offsets are of a nominal nature and if required, would result in the expenditure of modest financial resources. We believe that offset operations will greatly facilitate an increase in the number of Class A stations by maximizing use of the broadcast spectrum. The alternative, if we had not granted petitioners' requests, would have been to continue with the existing rule. Such a continuation would have resulted in fewer LPTV stations becoming Class A stations. Furthermore, this modification only affects those LPTV stations which choose to apply for a Class A license.

63. *Report to Congress:* The Commission will send a copy of the *MO&O*, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *MO&O*, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *MO&O* and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

VII. Ordering Clauses

64. Pursuant to authority contained in sections 1, 4(i), 303, and 336(f) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303, and 336(f), part 73 of the Commission's rules, *are amended* as set forth.

65. The amendments set forth *shall be effective* May 31, 2001, except for 47 CFR 73.1545(e), which contains information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

66. The petitions for reconsideration or clarification listed *are granted* to the extent provided herein and otherwise *are denied*.

67. The Motion for Acceptance of late-Filed Petition for Reconsideration, filed on June 12, 2000 by Larry L. Schrecongost, *is granted*.

68. The Emergency Petition for Extension of Time, filed on December 4, 2000 by John W. Smith, Jr., *is dismissed*.

69. The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this *MO&O*, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

This proceeding is terminated.

List of Subjects in 47 CFR Part 73

Television, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons set forth in the preamble part 73 title 47 of the Code of Federal Regulations is amended to read as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

2. Section 73.1125 is amended by revising paragraph (c) to read as follows:

§ 73.1125 Station main studio location.

* * * * *

(c) Each Class A television station shall maintain a main studio at a location within the station's predicted Grade B contour, as defined in § 73.683 and calculated using the method specified in § 73.684. With respect to a group of commonly controlled stations, Class A stations whose predicted Grade B contours are physically contiguous to each other may locate their main studio within any of these contours. If a Class A station is one of a group of commonly controlled Class A stations, but its predicted Grade B contour is not physically contiguous to that of another Class A station in the commonly owned group, its main studio shall be located within its own predicted Grade B contour. Alternatively, a Class A television station shall maintain a main studio at the site used by the station as of November 29, 1999.

* * * * *

3. Section 73.1545 is amended by revising paragraph (e) and adding a note to paragraph (e) to read as follows.

§ 73.1545 Carrier frequency departure tolerances.

* * * * *

(e) *Class A TV stations.* The departure of the carrier frequency of Class A TV stations may not exceed the values specified in § 74.761 of this chapter. Provided, however, that Class A TV stations licensed to operate with a carrier offset, including those stations licensed with a maximum effective radiated power and/or antenna height greater than the values specified in their initial Class A TV station authorization, must comply with paragraph (c) of this section.

Note to paragraph (e): At a date not later than nine months after release of the Memorandum Opinion and Order on Reconsideration in MM Docket No. 00–10 (the proceeding that established the Class A TV service), all licensed Class A stations must operate with a carrier frequency offset. See *Memorandum Opinion and Order on Reconsideration*, In the Matter of Establishment of a Class A Television Service, MM Docket No. 00–10, released April 13, 2001.

4. Section 73.6000 is revised to read as follows:

§ 73.6000 Definitions.

Locally produced programming. For the purpose of this subpart, locally produced programming is programming:

(1) Produced within the predicted Grade B contour of the station broadcasting the program or within the contiguous predicted Grade B contours of any of the stations in a commonly owned group; or

(2) Programming produced at the station's main studio.

Note to § 73.6000: *See Report and Order,* In the Matter of Establishment of a Class A Television Service, MM Docket No. 00–10, released April 4, 2000; *Memorandum Opinion and Order on Reconsideration,* In the Matter of Establishment of a Class A Television Service, MM Docket No. 00–10, released April 13, 2001.

5. Section 73.6024 is amended by revising paragraph (c) to read as follows:

§ 73.6024 Transmission standards and system requirements.

* * * * *

(c) A Class A TV station must meet the offset carrier frequency and frequency tolerance provisions of § 73.1545 of this part.

6. Section 73.6026 is revised to read as follows:

§ 73.6026 Broadcast regulations applicable to Class A television stations.

The following rules are applicable to Class A television stations:

§ 73.603 Numerical designation of television channels.
§ 73.624(b), (c) and (g) Digital television broadcast stations. Section 73.624(b) will apply only to the extent that such stations must also transmit at least one over-the-air video program signal at no direct charge to viewers of the digital Class A station
§ 73.635 Use of common antenna site.
§ 73.642 Subscription TV service.
§ 73.643 Subscription TV operating requirements.
§ 73.644 Subscription TV transmission systems.
§ 73.646 Telecommunications Service on the Vertical Blanking Interval and in the Visual Signal.
§ 73.653 Operation of TV aural and visual transmitters.
§ 73.658 Affiliation agreements and network program practice; territorial exclusivity in non-network program arrangements.
§ 73.664 Determining operating power.
§ 73.665 Use of TV aural baseband subcarriers.
§ 73.667 TV subsidiary communications services.
§ 73.669 TV stereophonic aural and multiplex subcarrier operation.
§ 73.670 Commercial limits in children's programs.
§ 73.671 Educational and informational programming for children.
§ 73.673 Public information initiatives regarding educational and informational programming for children.
§ 73.688 Indicating instruments.
§ 73.691 Visual modulation monitoring.

[FR Doc. 01–10706 Filed 4–30–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013–1013–01; I.D. 042501D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season amount of the Pacific cod total allowable catch (TAC) apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 26, 2001, until 1200 hrs, A.l.t., June 10, 2001.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2001 A season Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA is 1,098 metric tons (mt) as established by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season amount of the Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 948 mt, and is setting aside the remaining 150 as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the amount of the 2001 A season Pacific cod TAC specified for the offshore component constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20 (b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the 2001 A season Pacific cod TAC specified for the offshore component constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 25, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–10784 Filed 4–26–01; 4:30 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013–1013–01; I.D. 042601A]

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the second seasonal apportionment of the 2001 Pacific halibut bycatch allowance specified for the trawl yellowfin sole fishery category.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 26, 2001, until 1200 hrs, A.l.t., May 21, 2001.

ADDRESSES: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the