

Subpart E—Exemptions

2. Section 761.80 is amended by adding paragraph (k) to read as follows:

§ 761.80 Manufacturing, processing and distribution in commerce exemptions.

* * * * *

(k) The Administrator grants Veolia ES Technical Solutions, LLC's November 14, 2006 petition for an exemption for 1 year to import up to 20,000 tons of PCB waste from Mexico for disposal at Veolia's TSCA-approved facility in Port Arthur, Texas. This petition is subject to the following terms and conditions:

(1) Veolia accepts complete financial liability for the transportation, storage and disposal of all PCB waste imported into the United States under this petition.

(2) In the eventuality that Veolia is unable to dispose of any PCB waste imported under this petition at its Port Arthur facility, Veolia shall arrange for the disposal of that PCB waste in an alternative TSCA-approved facility in the United States.

(3) For purposes of compliance with the 1 year storage for disposal limit under § 761.65(a), the date of removal from service for disposal for PCB waste imported under this petition is the date the PCB waste enters the United States.

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[FR Doc. E8-4429 Filed 3-5-08; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[MB Docket No. 99-25; FCC 07-204]

Creation of a Low Power Radio Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on whether additional low power FM (LPFM) service and technical rule changes are warranted, including: establishing a second-adjacent channel waiver standard; implementing a licensing presumption that would protect certain operating LPFM stations from subsequently proposed community of license modifications; imposing an obligation on full-service station applicants to assist an LPFM station potentially impacted by implementation of its new station or modification proposal; creating contour protection-based licensing standards for LPFM

stations; and establishing LPFM-FM translator protection priorities.

DATES: Comments for this proceeding are due on or before April 7, 2008; reply comments are due on or before April 21, 2008.

ADDRESSES: You may submit comments, identified by MB Docket No. 99-25, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications Commission's Web site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: (202) 418-0530 or TTY: (202) 418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Holly Saurer, Holly.Saurer@fcc.gov of the Media Bureau, Policy Division, (202) 418-2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Further Notice of Proposed Rulemaking (Second Further Notice)*, FCC 07-204, adopted on November 27, 2007, and released on December 11, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

This document contains information collection requirements subject to the

Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the information collection requirements contained in this proceeding. The Commission will publish a separate document in the **Federal Register** at a later date seeking these comments. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

Summary of the Notice of Proposed Rulemaking

1. The Commission adopts a series of wide-ranging rule changes to strengthen and promote the long-term viability of the LPFM service, and the localism and diversity goals that this service is intended to advance. We also recommend to Congress that it remove the requirement that LPFM stations protect full-power stations operating on third adjacent channels. We intend to resolve the following issues within six months. The next filing window for a non-tabled aural broadcast service will be for new LPFM stations. We plan to open this window after the Commission has resolved the issues raised in this *Second Further Notice*, and has resolved other issues that could significantly impact the availability of future spectrum for LPFM applicants, including the disposal of substantially all of the applications filed in the recent NCE FM window.

2. Based on numerous meetings with LPFM service proponents, filings, and presentations at various forums and hearings convened by the Commission over the past two years, we believe that it is appropriate to consider whether additional LPFM service and technical rule changes are warranted. We seek comment on the several issues set forth below.

A. Section 73.807 Second-Adjacent Channel Waiver Standard

3. The *Third Report and Order*, 73 FR 3202, January 17, 2007, details an interim processing policy that the Commission will use to consider § 73.807 of the rules waiver requests from certain LPFM stations. As set forth more fully therein, when implementation of a full-service station community of license modification would result in an increase in

interference caused to the LPFM station or its displacement, the LPFM station may seek a second-adjacent channel short spacing waiver in connection with an application proposing operations on a new channel. We seek comment generally on whether to codify the waiver and processing policies set forth in the *Third Report and Order*. Would modifications to these policies better balance the interests of LPFM and full-service stations? Should the procedures be narrowed to apply only when the LPFM station is subject to displacement pursuant to § 73.809 of the rules? Should the rules provide a deadline for the filing of the LPFM alternate channel application and waiver request and, if so, what should the deadline be? Should waivers be limited to second-adjacent channel short-spacings? Should waivers be granted only when the LPFM station can demonstrate no actual interference due to lack of population, terrain, or other factors, as we allow in the FM translator service? Should continued LPFM operations be subject to the resolution of all bona fide actual interference complaints? Should the “encroaching” full-service station be responsible for providing technical assistance and assuming financial responsibility for all direct expenses associated with resolving all bona fide actual interference complaints, e.g., the purchase of radio filters, etc.? Do the orders to show cause procedures fully protect impacted stations’ due process rights? Would additional procedures help ensure that the Commission has a full record on which to evaluate waiver requests? Should these procedures be expanded to include co- and first-adjacent channel situations? Finally, we seek comment on whether rule changes are warranted to provide additional flexibility to propose LPFM station modifications.

B. LPFM Station Displacement

4. As detailed more fully in the *Third Report and Order*, the Commission is adopting a processing policy to evaluate on a going forward basis each community of license modification proposal that would result in the displacement of an LPFM station or stations. We seek comment generally on whether the Commission should amend § 73.809 of the rules to establish a licensing presumption that would protect certain operating LPFM stations from subsequently proposed community of license modifications. We also seek comment on each aspect of the current processing policy. Specifically, should the presumption be limited to those LPFM stations that have regularly provided eight hours of locally

originated programming daily? What criteria should the Commission use to determine whether an LPFM station has “regularly” satisfied the eight-hour programming requirement? Should the presumption be extended to protect LPFM stations against subsequently filed petitions for rulemaking for new FM allotments and/or modification applications not proposing community of license changes? Finally, we seek comment on other approaches to resolve LPFM station displacement conflicts and the reasons why such alternative approaches would more appropriately balance the interests of these services.

C. Obligations of Full-Service New Station and Modification Applicants to Potentially Impacted LPFM Stations

5. Currently, a full-service station applicant has no obligation to assist an LPFM station potentially impacted by implementation of its new station or modification proposal. We believe that this policy is inconsistent with the comity and respect to which LPFM stations are entitled and with certain reimbursement policies which the Commission has established for full-service stations which are involuntarily required to change channels. As proposed in part by the Station Resource Group, we tentatively conclude that an applicant for a new or modified station should be required to assume certain technical, financial, and notice obligations if implementation of the proposal could impact an LPFM station. Specifically we tentatively conclude that in these circumstances, the full-service station should be required to provide notice of its application filing to the LPFM station. As part of its application filing, the full-service station should be required to include the results of its search for an alternate LPFM channel. It should also be required to cooperate in good faith with the LPFM station in developing the best technical approach, including a possible LPFM site relocation, to ameliorate the interference and/or displacement impact of its proposal. In addition, the “encroaching” full-service station should be responsible for certain expenses relating to any LPFM station channel change and/or transmitter site change necessitated by the full-service station proposal. We tentatively conclude such expenses should be limited to the physical changes in the LPFM station’s transmission system. We seek comment on each of these tentative conclusions and on other measures to ensure the equitable treatment of LPFM stations.

6. We believe that these procedures should apply if the LPFM authorization

was issued or a pending LPFM facility application was filed prior to the filing of a full-service station application for construction permit or license, including one that proposes a community of license modification. We tentatively conclude that these procedures should be limited to those situations in which implementation of the full-service proposal would result in the full-service and LPFM stations operating at less than the minimum distance separations set forth in § 73.807 of the rules and could result in either an increase in interference caused to the LPFM station or the permanent displacement of the LPFM station. We seek comment on these proposed limitations on the scope and extent of these remedial procedures.

D. Contour Protection-Based Licensing Standards for LPFM Stations

7. An LPFM new station or modification application must protect all existing stations and prior filed applications on the basis of distance separations set forth in § 73.807 of the rules. This methodology, used in connection with virtually all FM non-reserved band full-service station licensing, provides a straight-forward standard for determining technical acceptability. As a result of this methodology’s simplicity, the Commission was able to provide an on-line “channel finder” utility prior to the first series of LPFM filing windows. This tool enabled unsophisticated potential applicants to identify without expense available FM spectrum in their local communities.

8. Prometheus and other LPFM advocates argue that the Commission should adopt a more flexible “contour” methodology for the licensing of LPFM stations. Although full-service NCE FM stations are licensed pursuant to a contour methodology, it appears that these parties are urging the Commission to permit LPFM station licensing pursuant to the FM translator protection rule, § 74.1204 of the rules. As demonstrated by the filing of over 13,000 applications in the 2003 window for new non-reserved band FM translator construction permits, adoption of this standard would vastly expand LPFM licensing opportunities throughout the nation and create the possibility of locating new LPFM stations in a number of major and spectrum-congested markets.

9. The flexibility of FM translator licensing is based on four key factors. Translators, like LPFM stations, may only operate with limited power. This necessarily limits distances from the proposed station’s transmitter site to its

co- and adjacent-channel interfering contours. Secondly, a protection methodology based on contours is, itself, a more flexible licensing approach. Although contour and distance separation requirements are derived from common principles, the contour methodology requires applicants to protect actual—rather than class maximum—facilities. Thus, modifying our rules to permit LPFM applicants to “engineer in” new proposals on the basis of contour protection standards would result in new licensing opportunities.

10. The two other factors are closely tied to the fact that FM translators are licensed on a secondary basis. As a secondary service, translators are licensed without regard to the extent of received interference they would receive. LPFM stations also receive the benefit of this flexibility. The fourth factor is the § 74.1204(d) exception to the § 74.1204(a) of the rules contour methodology. Under paragraph (d) of that section, the general FM translator contour overlap provisions will not apply “if it can be demonstrated that no actual interference will occur due to intervening terrain, lack of population or such other factors as may be applicable.” For many years, the Commission has permitted FM translator applications to use the D/U signal strength ratio methodology to establish the area of predicted interference and to demonstrate the “lack of population” within this area to satisfy the requirements under § 74.1204(d) of the rules.

11. However, the FM translator technical rules include a second and essential requirement: The inflexible obligation to resolve all bona fide actual interference complaints pursuant to § 74.1203(a) of the rules. A translator station that cannot resolve all complaints must suspend operations. The two rules operate in tandem. The flexibility of § 74.1204(d) of the rules is backstopped by the permanent § 74.1203(a) secondary service obligation to resolve actual interference complaints.

12. We tentatively conclude that the licensing of LPFM stations pursuant to the standards of § 74.1204 of the rules or some other “contour-based” methodology is in the public interest. We tentatively conclude that an LPFM station licensed under this standard would be required to resolve all actual interference complaints or cease operations. We seek comment on this tentative conclusion. We also tentatively conclude not to allow the use of alternative propagation methodologies, such as Longley Rice, to show lack of

interference. These showings impose enormous staff processing burdens and are typically subject to opposition. Additionally, as demonstrated by the significant number of FM translator proposals submitted in the 2003 filing window, we believe that permitting D/U ratio showings to establish “lack of population” subject to interference provides ample licensing flexibility. We seek comment specifically on whether it is appropriate to license LPFM stations to community groups, which often have limited resources and technical expertise, under a standard that subjects such stations to the constant risk of being forced off the air if they cannot resolve interference complaints promptly. We also seek comment on whether it is appropriate to adopt an LPFM technical licensing regime that would require the use of consulting engineers. We tentatively conclude that § 73.807 of the rules should be retained if a “contour” rule is adopted in this proceeding. Stations holding licenses issued pursuant to the current Rule would not be required to resolve actual interference complaints except in accordance with the provisions of § 73.809 of the rules. We seek comment on this approach which would provide differing levels of protection to operating LPFM stations based on each station’s choice of technical processing standards.

E. LPFM—FM Translator Protection Priorities

13. The *Third Report and Order* does not reach a conclusion on the “co-equal” status between LPFM stations and FM translator stations. Under the rules for these services, a first-filed LPFM or FM translator application must be protected by all subsequently filed LPFM and FM translator applications. Localism, diversity and competition remain our key radio broadcasting goals. We find that it would be useful to develop a better record on whether and how these goals would be advanced by altering the priorities between these two services. We seek comment on this issue. In particular, we seek comment on whether we should distinguish between translators that are fed by satellite and those that received and retransmit programming delivered terrestrially. We also seek comment on the extent to which providing priority to LPFM stations could impact established listening patterns or disrupt established translator signal delivery systems that NCE broadcasters rely on extensively to disseminate programming. We also seek comment on the Prometheus proposal to limit the number of translator stations that would have priority over

subsequently applied for LPFM facilities. Prometheus proposes to limit priority status to 25 translator stations for each originating station but would not consider “full power repeaters” as originating stations. We seek comment both on this proposed cap and Prometheus’ proposed definition of “originating station,” for the purpose of applying this cap. We also seek comment on whether such an approach is administratively feasible given the fact that an FM translator may without prior consent or notice to the Commission change its primary station.

II. Administrative Matters

A. Filing Requirements

14. *Ex Parte Rules.* The *Second Further Notice* in this proceeding will be treated as a “permit-but-disclose” subject to the “permit-but-disclose” requirements under § 1.1206(b) of the rules. 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. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b).

15. *Comments and Reply Comments.* Pursuant to §§ 1.415 and 1.419 of the rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing

address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

16. Availability of Documents. Comments, reply comments, and ex parte submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418-0267 (voice), (202) 418-7365 (TTY), or bill.cline@fcc.gov. These documents also will be available from the Commission's

Electronic Comment Filing System. Documents are available electronically in ASCII, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554; they can also be reached by telephone, at (202) 488-5300 or (800) 378-3160; by e-mail at fcc@bcpiweb.com; or via their Web site at <http://www.bcpiweb.com>. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0531 (voice), (202) 418-7365 (TTY).

B. Regulatory Flexibility Analysis

17. Initial Regulatory Flexibility Analysis. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). By the issuance of this *Second Further Notice*, we seek comment on the impact our suggested proposals would have on small business entities. The complete initial regulatory flexibility analysis is attached.

C. Additional Information

18. For additional information on this proceeding, please contact Peter Doyle, Audio Division, Media Bureau, at (202) 418-2700, or Holly Saurer, Policy Division, Media Bureau, at (202) 418-7283.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended, the Commission has prepared this Initial Regulatory Flexibility Analysis of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Second Further Notice*. Written public comments are requested on this IRFA.

Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Second Further Notice*. The Commission will send a copy of this entire *Second Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the SBA. In addition, the *Second Further Notice* and the IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need For, and Objectives of, the Proposed Rules

The *Second Further Notice* has been initiated to obtain comments concerning proposed LPFM service and technical rule changes to address the potential interference to, or displacement of, certain LPFM stations caused by subsequently implemented full-service station community of license modifications. Specifically the *Second Further Notice* recommends that Congress remove the requirement that LPFM stations protect full service stations operating on third-adjacent channels. It seeks comment on whether to modify the LPFM technical rules to codify the second-adjacent channel waiver and displacement policies adopted in the *Third Report and Order*. It also tentatively concludes that when implementation of a full-service station facility proposal would impact an LPFM station, the full-service station would be required to provide the LPFM station notice of its application filing, provide technical assistance in identifying alternative channels, and reimbursement for any resulting LPFM facility modifications.

The *Second Further Notice* tentatively concludes that the LPFM technical rules should be modified to permit the licensing of LPFM stations by using a contour, as opposed to a distance separation, methodology in order to expand LPFM station licensing opportunities. It also tentatively concludes that the Commission should retain as an alternate licensing scheme the current LPFM distance separation rule in the event that a contour rule is adopted.

Finally, the *Second Further Notice* seeks additional comment on the issue of whether the Commission should retain the current "co-equal" status between the LPFM and FM translator services.

The Commission believes that adoption of these proposed rule changes will strengthen and promote the long-term viability of the LPFM service, and the localism and diversity goals that this service is intended to advance by streamlining and clarifying the process by which LPFM stations can resolve

potential interference issues with full-power stations.

B. Legal Basis

The authority for this *Second Further Notice* is contained in sections 1, 2, 4(i), 303, 403 and 405 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 303, and 403.

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

The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term "small entity" as encompassing the terms "small business," "small organization," and "small governmental entity." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

LPFM Radio Stations. The proposed rules and policies potentially will apply to all low power FM radio broadcasting licensees and potential licensees. The SBA defines a radio broadcasting station that has \$6.5 million or less 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. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. As of the date of release of this *Second Further Notice*, the Commission's records indicate that more than 1,286 LPFM construction permits have been granted. Of those permits, approximately 809 stations are on the air, serving mostly mid-sized and smaller markets. It is not known how many entities ultimately may seek to obtain low power radio licenses. Nor do we know how many of these entities will be small entities. We expect, however, that due to the small size of low power FM stations, small entities would generally have a greater interest than large ones in acquiring them.

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

None.

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

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

In this *Second Further Notice*, the Commission (1) recommends that Congress remove the requirement that LPFM stations protect full-service stations operating on third-adjacent channels; (2) seeks comment on whether to modify the LPFM technical rules to codify the second-adjacent channel waiver and displacement policies adopted in the *Third Report and Order*; (3) tentatively concludes that when implementation of a full-service station facility proposal would impact an LPFM station, the full-service station would be required to provide the LPFM station notice of its application filing, provide technical assistance in identifying alternative channels, and reimbursement for any resulting LPFM facility modifications; (4) tentatively concludes that the LPFM technical rules should be modified to permit the licensing of LPFM stations by using a contour, as opposed to a distance separation, methodology in order to expand LPFM station licensing opportunities, and (5) tentatively concludes that the Commission should retain as an alternate licensing scheme the current LPFM distance separation rule in the event that a contour rule is adopted.

In light of changed circumstances since the Commission last considered the issue of protection rights for LPFM stations from subsequently authorized full-service stations, the Commission found it necessary to consider these rule changes to avoid the potential loss of LPFM stations. The Commission considered maintaining the status quo, but rejected this idea because it would create an inappropriate burden on LPFM stations by allowing the issue of interference caused by encroaching full-service stations to go unresolved. By contrast, the *Second Further Notice* proposes a codified approach to

resolving interference issues with encroaching full-service stations, which will, in turn, allow more LPFM stations to remain on-the-air.

LPFM service has created and will continue to create significant opportunities for new small businesses by allowing small businesses to develop LPFM service in their communities. In addition, the Commission generally has taken steps to minimize the impact on existing small broadcasters. To the extent that the *Second Further Notice* imposes any burdens on small entities, these burdens are only incidental to the benefits conferred by the creation of a set of rules that would allow LPFM stations to resolve potential interference and/or displacement conflicts with encroaching full-service FM stations by making the requisite showings under the proposed rules.

F. Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Proposals

None.

List of Subjects in 47 CFR Part 73

Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8-4456 Filed 3-5-08; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R1-ES-2007-0006; 92210-1117-0000-B4]

RIN 1018-AU93

Endangered and Threatened Wildlife and Plants; Revised Proposed Designation of Critical Habitat for 12 Species of Picture-Wing Flies From the Hawaiian Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of public comment period, and notice of public hearings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period and the scheduling of public hearings on the revised proposed rule to designate critical habitat for 12 species of Hawaiian picture-wing flies (*Drosophila aglaia*, *D. differens*, *D. hemipeza*, *D. heteroneura*, *D.*