

*Total Annual Burden:* 750 hours.

*Total Annual Cost:* None.

*Nature and Extent of Confidentiality:*

The information to be collected will be made available for public inspection and the Commission is not requesting that respondents submit confidential information on FCC Form 175.

However, to the extent that a respondent seeks to have certain information collected on FCC Form 175 withheld from public inspection, the respondent may request materials or information submitted to the Commission be given confidential treatment under 47 CFR 0.459 of the Commission's rules.

*Needs and Uses:* The FCC Form 175 is used by the public to apply to participate in competitive bidding (auctions) for Commission licenses and permits. The information collected on FCC Form 175 is used by the Commission to determine if an applicant is legally, technically, and financially qualified to participate in a Commission auction. Commission staff reviews the information collected on FCC Form 175 for a particular auction as part of the pre-auction process, prior to the auction being held, to determine whether each applicant satisfies the Commission's requirements to participate in the auction and, if applicable, is eligible for the status as the particular type of auction participant it requested. The Commission has revised the information collection on FCC Form 175 to add an additional certification required by new section 1.2105(a)(2)(xii) of the Commission's rules, 47 CFR 1.2105(a)(2)(xii), which was adopted by the Commission in the *Report and Order to implement Section 6004 of the Middle Class Tax Relief and Job Creation Act of 2012*, Public Law 112-96, sec. 6004, 125 Stat. 156, 222-223, codified at 47 U.S.C. 1404 (2012) (2012 Spectrum Act). New section 1.2105(a)(2)(xii) requires a party seeking to participate in any auction conducted pursuant to the 2012 Spectrum Act to certify in its application, under penalty of perjury, that the applicant and all of the related individuals and entities required to be disclosed on its application are not person(s) who have been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant and thus statutorily prohibited from participating in such a Commission auction. The revised collection will enable the Commission to comply with Section 6004 and determine whether an applicant's participation in an auction conducted

pursuant to the 2012 Spectrum Act is consistent with Section 6004.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

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**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1, 22, 27, 73, and 74

[MM Docket No. 93-177; FCC 13-115]

#### An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification

**AGENCY:** Federal Communications Commission.

**ACTION:** Final Rule; Denial of Petition for Reconsideration.

**SUMMARY:** In this document, the Commission adopted a single protection scheme for tower construction and modification near AM tower arrays and designated "moment method" computer modeling as the principal means of determining whether a nearby tower affects an AM radiation pattern. The Commission also dismissed in part as moot and denied in all other respects a petition for reconsideration of the Second Report and Order in MM Docket No. 93-177.

**DATES:** Effective December 5, 2013, except for amendments to 47 CFR 1.30002, 1.30003, 1.30004, 73.875, 73.1675, and 73.1690, which contain new and revised information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date.

**Applicability Date:** The applicability date of the amendments 47 CFR 1.30000, 1.30001, 22.371, 27.63, 73.45, 73.316, 73.685, 73.1692, 73.6025, and 74.1237 is indefinitely delayed. The FCC will publish a document in the **Federal Register** announcing the applicability date.

**ADDRESSES:** Peter Doyle or Susan Crawford, Federal Communications Commission, Media Bureau, Audio Division, 445 12th Street SW., Washington, DC 20445.

**FOR FURTHER INFORMATION CONTACT:**

Peter Doyle, Chief, Media Bureau, Audio Division, (202) 418-2700 or [Peter.Doyle@fcc.gov](mailto:Peter.Doyle@fcc.gov); or Susan Crawford, Assistant Division Chief, Media Bureau, Audio Division, (202) 418-2700 or [Susan.Crawford@fcc.gov](mailto:Susan.Crawford@fcc.gov).

For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams at 202-418-2918, or via the Internet at [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Third Report and Order (Third R&O), FCC 13-115, adopted August 14, 2013, and released August 16, 2013. The full text of the Third R&O is available for inspection and copying during regular business hours in the FCC Reference Center, 445 12th Street SW., Room CY-A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street SW., Room CY-B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, <http://www.bcpi.com>, or call 1-800-378-3160. This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact the FCC by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

#### Paperwork Reduction Act of 1995 Analysis

This Third R&O adopts new and revised information collection requirements, subject to the Paperwork Reduction Act of 1995 (PRA) (Pub. L. 104-13, 109 Stat 163 (1995) (codified in 44 U.S.C. 3501-3520)). These information collection requirements will be submitted to OMB for review under section 3507(d) of the PRA. The Commission will publish a separate notice in the **Federal Register** inviting comment on the new and revised information collection requirements adopted in this document. The requirements will not go into effect until OMB has approved them and the Commission has published a notice announcing the effective date of the information collection requirements. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), it previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

#### Summary of Third Report and Order and Second Order on Reconsideration

1. In the Third R&O, the Commission furthered the initiative to simplify the Media Bureau's licensing procedures. This Order harmonizes and streamlines the Commission's rules regarding tower

construction near AM stations in two respects. First, the Order establishes a single protection scheme for tower construction and modification near AM tower arrays. Second, the Order designates “moment method” computer modeling as the principal means of determining whether a nearby tower affects an AM radiation pattern. These actions take another step in the Commission’s modernization by replacing time-consuming direct measurement procedures with an efficient computer modeling methodology that is reflective of current practice.

### I. Background

2. In AM radio, the tower itself functions as the antenna. Consequently, a nearby tower may become an unintended part of the AM antenna system, reradiating the AM signal and distorting the authorized AM radiation pattern. The Commission’s rules contain several sections concerning tower construction near AM antennas that are intended to protect AM stations from the effects of such tower construction, specifically, 47 CFR 73.1692, 22.371, and 27.63. These existing rule sections impose differing requirements on the broadcast and wireless entities, although the issue is the same regardless of the types of antennas mounted on a tower. Other rule parts, such as part 90 (Private Land Mobile Radio Services) and part 24 (Personal Communications Services), entirely lack provisions for protecting AM stations from possible effects of nearby tower construction.

3. The Second Further Notice of Proposed Rulemaking (Second Further Notice) in this proceeding (73 FR 75376), tentatively concluded that the issue of tower construction or modification near AM stations should be addressed by a single set of rules applying to all tower construction and sought comment on proposed new rules which would appear in part 1 of the Commission’s rules. The new rules are based on proposals by an ad hoc technical group of radio broadcasters, equipment manufacturers, and broadcast consulting engineers, acting collectively as the AM Directional Antenna Performance Verification Coalition (Coalition).

### II. Discussion

4. In the Second Further Notice, the Commission requested comment on the proposal to adopt a uniform set of rules applicable to all services, the use of moment method modeling to assess the effects of tower construction or modification near AM stations, as well as a number of issues that could

establish limits on the scope of the new rules and the technical and/or policy grounds for such limits. Specifically, the Commission sought comment on: (1) The proposed exclusion of short towers and antenna structures mounted on buildings from AM proximity analysis; (2) the proper notification procedures to AM stations regarding nearby tower construction; (3) a rule provision to cover circumstances that would be otherwise excluded from the new rules; (4) the structures subject to the new rules; and (5) the proposed application of the new rules to towers constructed or substantially modified after the rules’ effective date.

5. *Threshold Heights and Exclusion of Building-Mounted Antennas.* The proposed rules excluded short towers from AM proximity analysis on the grounds that such towers are inefficient re-radiators that would not generally affect an AM pattern. Most commenters agree with the proposed threshold heights of 36 electrical degrees for a directional antenna and 60 electrical degrees for a non-directional antenna. Two commenters, however, propose lower threshold heights. Greater Media urges the Commission to reduce the non-directional antenna threshold height from 60 to 36 electrical degrees and adopt a more stringent 1 decibel (dB) pattern distortion threshold. Cohen, Dippell and Everist, P.C. (CDE) recommends that a 20 degree electrical height be used in lieu of the 36 electrical degree height proposed for directional antennas. These commenters, however, offer no analytical support for their alternative proposals. In contrast, our threshold height limits are premised on extensive staff modeling studies and modeling studies previously submitted by the Association of Federal Communications Consulting Engineers. The Commission’s proposed 2 dB pattern distortion threshold, which was supported by the majority of commenters, is the criterion utilized in assessing the circularity of a nondirectional pattern in other broadcast services. Accordingly, we adopt the 2 dB pattern distortion threshold and the threshold heights of 36 electrical degrees for a directional antenna and 60 electrical degrees for a non-directional antenna, and therefore, exclude shorter towers from consideration.

6. Similarly, the proposed rules excluded all antenna structures mounted on buildings from AM proximity analysis. The Joint Commenters, while agreeing in substance with the exclusion of building-mounted antennas, suggest a

modification of the proposed rule. The Joint Commenters warn that, in some cases, buildings may support towers tall enough to be significant re-radiators at an AM frequency. According to the Joint Commenters, “[s]ignificant tower structures can be mounted on buildings, and [we] are aware of several instances where the height of a microwave or other type of tower actually exceeds the height of the building on which the tower is mounted.” Therefore, the Joint Commenters suggest that the new rules should apply to any tower that would increase “the overall physical height of a building by more than 10 electrical degrees.” We acknowledge the Joint Commenters’ concern regarding taller towers atop buildings, and we agree that the proposed categorical exemption of all antennas mounted on buildings is overly broad, and therefore, could potentially expose AM stations to adverse pattern distortions. We believe, however, that the criterion of 10 electrical degrees is not a practical solution because: (1) It is difficult, if not infeasible, to predict and accurately measure re-radiation from a building; and (2) it is impossible to detune a building and similarly, impossible to detune the combination of a building and a tower. Accordingly, because it is not feasible to analyze the combined effects of the building and tower, we believe that it is more appropriate to consider the potential effects of a tower separately from any building on which it is mounted. We therefore revise the rule to exclude most antenna structures atop buildings, except where the antenna structure alone would be a significant re-radiator as defined in 47 CFR 1.30002(a) or (b).

7. *Notification.* Commenters were divided on the provisions of the proposed rules requiring 30 days’ prior notice of tower construction, including significant tower modifications, to a nearby AM station. Greater Media considers the proposed 30-day notice period too short, advocating instead for a 120-day notice period. PCIA prefers that the rules require no minimum notice when tower construction is deemed not to affect the AM pattern. Alternatively, PCIA supports procedures for expedited notice to reduce delays. The Joint Commenters support the 30-day notice proposal, but also suggest procedures for expedited notice of tower construction, citing similar provisions in the Commission’s rules governing fixed microwave services in Part 101 of the Rules. Further, the Joint Commenters recommend that the rules incorporate a narrow exception to the prior notice requirement to address

“urgent but temporary needs in the event of an emergency situation.” Finally, the Joint Commenters propose that the rules include detailed notification procedures, explicitly listing the information to be included in the notice, such as a physical description of the planned construction, and adding a requirement for a response by the affected AM station. We agree with the Joint Commenters’ proposals, and accordingly, adopt the 30-day notification period, with the addition of specific notification procedures, requests for expedited notice, and an emergency exception. We believe this represents a reasonable compromise between the competing proposals. A 30-day notification period, in lieu of the 120-day period proposed by Greater Media, will minimize unnecessary deployment delays. The detailed notification procedures will enable AM stations to effectively assess the impact of the proposed construction within the shorter 30-day period. Finally, the expedited notice process we adopt should allay PCIA’s concerns and reduce construction delays. We believe these new notification procedures, which are based on existing Commission rules, will reduce the potential for disputes, provide adequate notice to AM licensees, and enable affected AM licensees to more easily verify the proponent’s analysis without unnecessary duplication of work.

8. The Commission also sought comment on the point in the AM licensing process at which the notification procedures should apply. Specifically, the Second Further Notice asked whether a tower proponent should be required to notify the permittee of an unconstructed AM station, or whether notification procedures should apply only when the AM station is licensed or operating pursuant to Program Test Authority (PTA) prior to construction of the nearby structure. In the absence of any comments on this issue, we will apply the notification procedures to AM stations that are licensed or operating pursuant to PTA. We will not require a tower proponent to notify the permittee of an unconstructed AM station. Because the facilities authorized by AM station construction permits often remain unconstructed when the permit expires or the permits are modified before the authorized facilities are constructed, we believe it would be unproductive to require tower proponents to analyze and protect unconstructed AM facilities. Moreover, because both the field strength measurements described in 47 CFR

1.30002(f) and the adjustment of a detuning network require the presence of the AM signal, we feel that this interpretation reasonably balances the interests of the AM station with those of the tower proponent.

9. *Determination of distance from a directional AM station.* A non-directional AM antenna consists of a single tower, the coordinates of which appear in Commission databases. Directional AM antennas, on the other hand, consist of multiple towers, which may be several hundred meters apart. The relatively large spacing between directional AM towers leaves some potential for confusion when determining distances from a directional AM station. The proposed new rules require that proponents of new towers or significant modifications to existing towers examine the potential effects of the proposed construction activity on the nearby AM directional station if the tower is “within the lesser of 10 wavelengths or 3 kilometers of the AM [directional] station.” The proposed rules, however, do not specify the measuring point from which to calculate these critical distances. The Joint Commenters and Waterford each suggest clarifying the determination of distance from a directional AM station by specifying that the array center coordinates now used in the Consolidated Database System (CDBS), the Media Bureau’s database, should be used for such calculations. We agree, and revise the rule accordingly. This minor clarification is essential to facilitate compliance and mitigate confusion when determining distances, and is therefore a logical and necessary outgrowth of the proposed rules.

10. *Towers that are excluded from the pre-construction evaluation.* The Second Further Notice sought comment on a rule provision to cover towers that are excluded from the routine pre-construction study and notification to the AM licensee, but that nonetheless affect an AM station’s radiation pattern. For example, there may be circumstances in which a tower more than 3 kilometers away may nevertheless affect a directional AM station. Similarly, a short tower or tower modification that would be otherwise excluded from study may affect an AM station if it is very close to the AM antenna. Commenters were divided on this issue. According to Waterford, “the proposed rules leave the tower proponents’ responsibilities open-ended” in these situations. Waterford asserts that tower proponents need to have their financial obligations clearly defined from the outset and that mandating “clear documentation at or

very near the time of construction about the need to detune” would provide tower proponents with more certainty. Greater Media supports the proposed rule provision, stating that “there are no absolutes in such situations.” The Joint Commenters support the proposed rule provision with modifications. They advocate defining the type of analysis that would constitute a credible showing that the tower construction has affected the AM station. Specifically, the Joint Commenters recommend that the AM station must supply either a moment method analysis or field strength measurements to support its claim. The tower proponent, according to the Joint Commenters, should be afforded an opportunity to respond to the AM station’s showing of adverse impact. Finally, the Joint Commenters propose that the rule include a two-year time limit within which the AM station must make a claim of adverse impact.

11. We agree that the proposed rule should be modified. Defining the type of showing required from an AM station when an otherwise excluded tower construction or modification affects the station’s radiation pattern and requiring the AM station to share the study with the tower proponent, as the Joint Commenters suggest, will facilitate resolution of possible problems. We also acknowledge the difficulties of potentially open-ended financial obligations, as Waterford notes. A reasonable time limit on claims of adverse impact will encourage AM station licensees to promptly identify potential pattern disruptions and provide tower proponents with greater certainty regarding future potential liabilities. We find, however, that a time limit of less than two years will not allow an AM station licensee sufficient time to ascertain that its pattern has been adversely affected, identify the source of the pattern disruption, and prepare and submit an adverse impact showing. We therefore require that showings of adverse impact under this rule section be made within two years after the date of completion of the tower construction or modification. We find that a two-year time limit fairly balances the interests of AM stations and tower proponents. The two-year time frame will protect the interests of AM stations while relieving tower proponents of long-term financial obligations. New 47 CFR 1.30002(g) includes these modifications to the proposed rule.

12. *Structures subject to the rules.* The Second Further Notice proposed to apply the revised rules to construction of all communications towers falling within established geographic limits and above a specified height, not only

to towers requiring notice to the Federal Aviation Administration and registration under part 17 of the rules. The Commission sought comment on whether the Commission may apply the proposed rules to the owners of structures that are not otherwise subject to Commission licensing processes, such as towers that do not require registration and which no Commission licensee, permittee or applicant uses or proposes to use. The Second Further Notice asked whether, alternatively, the Commission should prohibit applicants from proposing and licensees or permittees from using a tower when the owner has not complied with notice and detuning requirements. The Joint Commenters support applying the new rules to either all tower owners or, alternatively, to all Commission licensees proposing to use towers that may fall under the provisions of the new rules. Greater Media and CDE also favor applying the new rules to non-licensee tower owners.

13. Many structures other than communications towers may re-radiate an AM signal, e.g., water towers, power lines, and buildings. Furthermore, the parties that construct both registered towers and towers that do not require registration may or may not be Commission authorization holders, and a tower may or may not house a Commission licensee at the time of construction. The Second Further Notice sought comment on whether the Commission should assert jurisdiction over non-licensee tower owners and whether the towers, as incidental radiators, would be subject to part 15 restrictions. No party addressed the issue of the Commission's jurisdiction over non-licensees who build towers and other structures near AM stations. Greater Media, the only commenter to address these issues, expressed its belief that "such structures would very likely fall within the restrictions of part 15 in regard to incidental radiators," but offered no support for its contention. While the Commission's jurisdictional authority over non-licensees is well established for certain purposes, we find it administratively prudent to apply the rules only to applicants, licensees, and permittees. We adopt the Second Further Notice proposal that will bar applicants from proposing and licensees and permittees from using towers that have not completed our revised study and notice process and any necessary detuning. We clarify that under this rule, a licensee or permittee may locate an antenna on a tower that did not complete this process prior to construction if either the tower owner or

any collocator completes all the required steps before the licensee's or permittee's collocation. Similarly, we prohibit a licensee or permittee from locating an antenna on a tower that an AM station owner has shown creates a disturbance to its radiation pattern unless appropriate remedial action has been taken. We find this approach promotes the public interest in maximizing collocation opportunities for wireless and broadcast licensees and permittees because it: (1) Provides an incentive for all tower owners to complete the study and notice process before construction in order to make the tower most readily available for collocation; (2) provides an avenue through which towers that do not complete the process before construction may become available for collocation; and (3) avoids interfering with contractual or other business arrangements between Commission authorization holders and non-authorization holder tower owners.

14. *Application of the new rules.* The Second Further Notice tentatively concluded that any new rules adopted should be applied only to towers constructed or modified after the effective date of the new rules, i.e., where actual construction commences after the effective date. Commenters addressing this issue were divided. Greater Media supports this approach, while Ronald L. Myers suggests "making this rule retroactive." Crawford recommends that, if the Commission applies the new rules only to towers constructed or modified after the new rules' effective date, the Commission should also: (1) Clarify and identify how it will respond to pending formal tower complaints, and (2) employ language to "deal with existing situations wherein AM stations must operate with STA because of uncoordinated antenna structure construction near their arrays."

15. We affirm the tentative conclusion to apply the new rules to towers constructed or modified after the effective date of the new rules, an approach supported and/or unopposed by the majority of commenters. In addition, as explained below, we will apply the new rules' remediation requirement to construction commenced before the effective date, except that pending complaints will be resolved in accordance with any pre-existing rules that are applicable to the service in question. New 47 CFR 1.30002(h) includes this modification to the proposed rules. Consistent with the other rules adopted in this proceeding, the rules will only apply to Commission applicants, permittees, and licensees,

and, in accordance with the "newcomer" policy, will only apply to construction or modification that has adversely affected preexisting AM stations, i.e., stations that were operating before the tower proponent commenced construction or modification. Although the new rules will not apply to tower owners that are not applicants and do not hold Commission authorizations, this does not mean that a Commission licensee or permittee can locate an antenna on such a tower with no obligations. Rather, we clarify that as of the effective date of the new rules, a Commission applicant may not propose, and a Commission licensee or permittee may not locate, an antenna on an existing tower that is causing a disturbance to the radiation pattern of an AM station, as defined in 47 CFR 1.30002(a) or (b), and that has not previously been studied for AM radiation pattern disturbance, unless the applicant, licensee, permittee or tower owner completes the new study and notification process and takes appropriate ameliorative action to correct any disturbance, such as detuning the tower.

16. We recognize that there may be circumstances in which an AM station has been adversely affected by tower construction or modification authorized and either commenced or completed before or on the effective date of the new rules. The Commission's longstanding "newcomer" policy obligates FCC licensees to remedy interference caused to existing stations. We acknowledge, however, that the current absence of explicit rules across all services with respect to tower construction near AM arrays has led to confusion as to what should be done to protect the AM station, and therefore, inconsistent protection to AM stations. Accordingly, we direct any affected AM station seeking remediation to submit a showing that its operation has been adversely affected by tower construction or modification authorized and either commenced or completed before or on the effective date of the new rules. Such showings must be made within one year after the effective date of the new rules. A one-year time frame will allow a potentially affected AM station sufficient time to identify the source of the pattern disruption and prepare and submit an adverse impact showing. We authorize the Commission staff, if necessary, to direct the tower owner to take appropriate ameliorative action to correct disturbances to the radiation pattern of an AM station caused by the tower construction or modification, such as installing, maintaining, and, if

necessary, adjusting any detuning apparatus necessary to restore proper operation of the AM antenna. This rule change does not impose any new obligations on licensees or permittees with respect to disturbances caused to AM antenna patterns. It does not alter the tower owner's underlying responsibility to cooperate and remediate interference caused to existing AM stations. Rather, this change simply clarifies and codifies this implicit remediation obligation, or the "newcomer" policy, a mainstay of interference protection.

### III. Second Order on Reconsideration

17. In response to the Second Report and Order in this proceeding, 73 FR 64558, which adopted rules permitting AM radio licensees to use computer modeling techniques to demonstrate that directional AM antennas perform as authorized, CDE filed a timely petition for reconsideration seeking clarification and alteration of the new rules. CDE claims that the new rules adopted in the Second Report and Order do not clearly define what information an AM station should submit with a moment method proof of performance pursuant to 47 CFR 73.151(c), and also do not explain how the Commission will determine whether such a proof of performance is acceptable. CDE urges the Commission to clarify these questions with a Public Notice. Finally, CDE reiterates comments it made earlier in this proceeding, questioning directional AM stations' use of computer modeling techniques, given that such techniques do not account for certain effects of the local environment on the AM antenna pattern.

18. As CDE suggests, the new rules adopted in the Second Report and Order represent a significant departure from long-established procedures in AM radio. In order to assist licensees, on October 29, 2009, the Media Bureau released a Public Notice clarifying certain requirements of the new rules and answering common questions. Accordingly, CDE's request to the same effect is now moot. Moreover, the Media Bureau's experience with the new rules since the Public Notice indicates that most applicants understand the requirements, and the Bureau stands ready to answer additional questions. Finally, regarding CDE's repeated concern about the use of moment method techniques without regard to the local environment, the Commission addressed this matter in the Second Report and Order. It is well established that the Commission does not grant reconsideration for the purpose of debating matters on which it has already

deliberated. We therefore dismiss in part as moot and deny in all other respects CDE's Petition for Reconsideration.

### Final Regulatory Flexibility Analysis

19. As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Second Further Notice to this proceeding. The Commission sought written public comment on the proposals in the Second Further Notice, including comment on the IRFA. The Commission received no comments on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. See 5 U.S.C. 604.

### Need for, and Objectives of, the Report and Order

20. In the Third R&O in this proceeding, the Commission harmonizes and streamlines the Commission's rules regarding tower construction and modification near AM stations, incorporating moment method computer modeling techniques and simplifying the rule provisions. The new procedures were adopted in order to simplify the Media Bureau's licensing procedures.

21. The further rulemaking proceeding leading to the Third R&O was initiated to further reduce the regulatory burden on AM broadcasters by permitting the use of computer modeling techniques to verify AM directional antenna performance. In the Second Further Notice, the Commission tentatively concluded that the issue of tower construction and modification near AM stations should be addressed by a single rule applying to all tower construction and sought comment on proposed new rules which would appear in part 1 of the Commission's rules.

22. Existing Commission rules require Commission authorization holders to notify AM stations and take appropriate action when a tower is constructed within a fixed distance of an AM station. The new rules define the critical distance for directional AM stations as any distance less than ten wavelengths of the frequency of the AM station up to a maximum distance of three kilometers, as specified in existing rules for certain wireless licensees. The rules designate moment method modeling as the principal means of determining whether a nearby tower affects an AM pattern. The rules also allow traditional partial proof measurements taken before and after tower construction as an alternative procedure when the AM

station in question was licensed pursuant to field strength measurements. Lastly, the rules eliminate short towers from consideration and exclude many routine cases in which antennas are added to existing towers.

23. More specifically, the Commission adopted a threshold height for antennas, excluding most antenna structures atop buildings, except where the structure alone would be a significant re-radiator as defined in 47 CFR 1.30002(a) or (b). It also adopted a 30-day period in which those who build or modify a tower can notify an AM station in order to reduce the potential for disputes while providing adequate notice to AM licensees. Per one commenter's suggestion, the Commission added specific procedures including requests for expedited notice. In the absence of comments on the issue of when the notification procedures would apply, the Commission adopted its proposal to apply the notification procedures to AM stations that are licensed or operating pursuant to program test authority. It clarified the determination of distance from a directional AM station by specifying the use of the array center coordinates now used in the consolidated database system. It further adopted the rule provision in 47 CFR 1.30002(g) addressing tower construction otherwise excluded, with certain modifications. In general, the Commission will apply the notification requirements only to Commission applicants, licensees, and permittees prospectively for towers constructed after the effective date of the new rules, but there may be circumstances in which an AM station has been adversely affected by prior tower construction. In such circumstances, the affected AM station may seek relief by filing a showing of adverse impact within two years of the effective date of the new rules, and the Commission may direct the tower owner to install and maintain any detuning apparatus necessary to restore proper operation of the AM station.

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

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

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

25. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the

rules adopted herein. 5 U.S.C. 603(b)(3). The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.” 5 U.S.C. 601(6). In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. 5 U.S.C. 601(3). 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.

26. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data. A “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” 5 U.S.C. 601(4). Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.” Thus, we estimate that most governmental jurisdictions are small.

27. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers. The size standard for that category is that a business is small if it has 1,500 or fewer employees. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more. Thus under this category and the associated small business size standard, the Commission

estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our proposed action.

28. *Non-Licensee Tower Owners*. Many communications towers, while used to support multiple antennas for Commission licensees in various services, are owned by entities which are not themselves Commission licensees. Although tower owners that do not hold Commission authorizations are not directly responsible for complying with the new rules, Commission authorization holders cannot lease space and locate an antenna on a non-licensee’s tower that is causing a disturbance to the radiation pattern of an AM station, unless the applicant, licensee, or tower owner takes appropriate ameliorative steps to correct the disturbance. Therefore, tower owners that do not hold Commission authorizations may be indirectly affected by the rules adopted in this proceeding. Communications towers fall into two categories: those requiring antenna structure registration, and those exempt from registration. The Commission’s rules require that any entity proposing to construct an antenna structure over 200 feet or within the glide slope of an airport must register the antenna structure with the Commission on FCC Form 854. As of September 3, 2008, there were 97,617 registration records in a ‘Constructed’ status and 13,047 registration records in a ‘Granted, Not Constructed’ status in the Antenna Structure Registration (ASR) database. This includes both towers registered to licensees and towers registered to non-licensee tower owners. The Commission does not keep information from which we can easily determine how many of these towers are registered to non-licensees or how many non-licensees have registered towers. Regarding towers that do not require antenna structure registration, we do not collect information as to the number of such towers in use and therefore cannot estimate the number of tower owners who would be subject to the proposed new rules. Moreover, the SBA has not developed a size standard for small businesses in the category “Tower Owners.” Therefore, we are unable to estimate the number of non-licensee tower owners that are small entities. We assume, however, that nearly all non-licensee tower companies are small businesses under the SBA’s definition for cellular and other wireless telecommunications services.

29. *Radio Broadcasting*. The policies adopted in the Third R&O apply to radio broadcast licensees, and potential licensees of radio service. The SBA

defines a radio broadcast station as a small business if such station has no more than \$7 million in annual receipts. Business concerns included in this industry are those primarily engaged in broadcasting aural programs by radio to the public. According to Commission staff review of the BIA Publications, Inc. Master Access Radio Analyzer Database on as of January 31, 2011, about 10,820 (97 percent) of 11,100 commercial radio stations) have revenues of \$7 million or less and thus qualify as small entities under the SBA definition. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

30. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any radio station from the definition of a small business on this basis and therefore may be over-inclusive to that extent. Also as noted, an additional element of the definition of “small business” is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

31. *FM Translator Stations and Low Power FM Stations*. The new rules apply to licensees of FM translator and booster stations and low power FM (LPMF) stations, as well as to potential licensees in these radio services. The same SBA definition that applies to radio broadcast licensees would apply to these stations. The SBA defines a radio broadcast station as a small business if such station has no more than \$7.0 million in annual receipts. Currently, there are approximately 6,105 licensed FM translator and booster stations and 824 licensed LPMF stations. Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition.

32. *Television Broadcasting*. The SBA defines a television broadcasting station as a small business if such station has no more than \$14.0 million in annual

receipts. Business concerns included in this industry are those “primarily engaged in broadcasting images together with sound.” The Commission has estimated the number of licensed commercial television stations to be 1,995. According to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) as of January 31, 2011, 1,006 (or about 78 percent) of an estimated 1,298 commercial television stations in the United States have revenues of \$14 million or less and, thus, qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

33. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also, as noted, an additional element of the definition of “small business” is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

#### **Description of Projected Reporting, Record Keeping and Other Compliance Requirements**

34. The Third R&O establishes a single protection scheme for tower construction near AM tower arrays and designates “moment method” computer modeling as the principal means of determining whether a nearby tower affects an AM radiation pattern. Overall, the changes we are adopting are designed to simplify the requirements of

the existing rules and reduce the time and expense required to determine the impact of nearby tower construction or significant modification on affected AM stations. Specifically, although the new rules require modest engineering analysis, the use of computer modeling is less onerous, time consuming, and costly than the existing proof of performance requirements. By eliminating short towers from consideration and excluding many routine cases in which antennas are added to existing towers, the new rules reduce the regulatory burdens. The new rules will modify and reduce the overall reporting, recordkeeping, and compliance requirements of tower proponents and AM station licensees and permittees. The requirements, detailed below, will affect small and large companies equally.

35. The new rules require a party proposing to construct a new tower or significantly modify an existing tower within the pertinent critical distance (the “tower proponent”) to provide notice to the AM station at least 30 days prior to the planned commencement of construction. The notification must include the following information: (1) The tower proponent’s name and address; (2) coordinates of the tower to be constructed or modified; (3) physical description of the planned construction; and (4) results of the analysis showing the predicted effect on the AM pattern, if performed. Responses to a notification must specify the technical details and be provided to the tower proponent within 30 days.

36. The rules designate moment method modeling as the principal means of determining whether a nearby tower affects an AM pattern. The rules, however, allow traditional “partial proof” measurements taken before and after tower construction as an alternative procedure when the potentially affected AM station was licensed pursuant to field strength measurements, as opposed to computer modeling. The tower proponent is responsible for the installation and maintenance of any detuning apparatus necessary to restore the AM station’s radiation pattern.

37. The new rules permit AM stations to submit a showing that tower construction not otherwise subject to the notice and remediation requirements has affected the AM station operations. The showing must consist of either a moment method analysis or field strength measurements and be provided to the tower proponent or owner and to the Commission either (1) within two years after the date of completion of the tower construction or

modification, or (2) in the case of operation adversely affected by tower construction or alteration that occurred prior to the effective date of the new rules, within one year of the effective date of the new rules. The Commission, if necessary, can direct the tower proponent or owner to install and maintain any detuning apparatus necessary to restore proper operation of the AM antenna.

38. AM station licensees will continue to be required to file FCC Form 302-AM before or simultaneously with any license application associated with installations on the AM antenna or within 30 days after the completion of the installation.

#### **Steps Taken To Minimize Significant Impact of Small Entities, and Significant Alternatives Considered**

39. The RFA requires an agency to describe any significant alternatives that might minimize any significant impact on small entities. Such alternatives 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.

40. As noted, we are directed under law to describe any such alternatives we consider, including alternatives not explicitly listed above. In the Third R&O, the Commission revised certain provisions of the proposed rules set forth in the Second Further Notice in response to concerns expressed by commenters, several of whom represent small entities. We believe that the new rules will reduce the compliance burden on most Commission licensees, and that this reduction will be particularly beneficial to small entities.

41. Specifically, the Second Further Notice proposed to cover circumstances that would be otherwise excluded from the AM proximity rules. For example, there may be circumstances in which a tower more than 3 kilometers away may affect a directional AM station. Similarly, a short tower that would be otherwise excluded from study may affect an AM station if it is very close, *i.e.*, within the near field of the AM antenna. Commenters, including small entities, were divided on this issue. According to Waterford Consultants, “the proposed rules leave the tower proponents’ responsibilities open-

ended." Waterford asserted that tower proponents need to have their financial obligations clearly defined from the outset. Greater Media supported the rule provision, stating that "there are no absolutes in such situations." The Joint Commenters supported the rule provision with modifications. They advocated defining the type of analysis that would constitute a credible showing that the tower construction has affected the AM station. In particular, the Joint Commenters recommended that the AM station must supply either a moment method analysis or field strength measurements to support its claim. The tower proponent, according to the Joint Commenters, should be afforded an opportunity to respond to the AM station's showing of adverse impact. Finally, the Joint Commenters proposed that the rule include a two-year time limit within which the AM station must make a claim of adverse impact.

42. We adopted the rule provision in 47 CFR 1.30002(g) addressing tower construction otherwise excluded, with certain modifications. We felt that defining the type of showing required from an AM station and requiring the AM station to share the study with the tower proponent, as the Joint Commenters suggest, would facilitate resolution of possible problems. We also acknowledged the burden of potentially open-ended financial obligations, which would affect small entities. We therefore required that showings of adverse impact under this rule section be made within two years of the date of the tower construction or significant modification.

43. We believe that the rule provision discussed above offers significant benefits to small entities. It facilitates conflict resolution between the parties, which allows small entities to resolve issues on a grassroots level. We believe it adopts a more economically advantageous method of conflict resolution because it is likely to be faster, more informal, and may avoid the time and expense of hiring legal or technical counsel. The new rule also limits the time frame in which showings of adverse impact can be made, which benefits small entities because it avoids open-ended financial obligations. Lastly, the rule gives examples of appropriate showings required from an AM station. Such examples give predictability and allow small entities to plan, which can help limit the economic impact of making an adverse impact showing. Accordingly, by adopting policies that are more specific, including examples and a time line, the Commission adopted a rule that

imposes a substantially less significant economic impact.

#### Report to Congress

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

#### Ordering Clauses

45. Accordingly, *it is ordered*, that, pursuant to the authority contained in sections 1, 4(i) 303, 308, 309, 310, and 319 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 303, 308, 309, 310, and 319, this Third Report and Order *is adopted*.

46. *It is further ordered* that, pursuant to the authority contained in sections 1, 4(i) 303, 308, 309, 310, and 319 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303, 308, 309, 310, and 319, 47 CFR parts 1, 22, 27, 73, and 74 of the Commission's rules *are amended*, as set forth herein.

47. *It is further ordered* that the Petition for Reconsideration filed December 1, 2008, by Cohen, Dippell and Everist, P.C. *is dismissed in part as moot and is denied in all other respects*.

48. *It is further ordered* that the rules contained herein *shall become effective* upon Commission publication of a document in the **Federal Register** announcing that OMB has approved them.

#### List of Subjects in 47 CFR Parts 1, 22, 27, 73, and 74 Radio.

Federal Communications Commission.  
**Marlene H. Dortch**,  
*Secretary*.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Parts 1, 22, 27, and 73 to read as follows:

#### PART 1—PRACTICE AND PROCEDURE

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

**Authority:** 15 U.S.C. 79 et seq.; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), 309, 1403, 1404, and 1451.

- 2. Sections 1.30000 through 1.30000 are added to Subpart AA, to read as follows:

#### Subpart AA—Disturbance of AM Broadcast Station Antenna Patterns

*	*	*	*	*
Sec.				
1.30000	Purpose.			
1.30001	Definitions.			
1.30002	Tower construction or modification near AM stations.			
1.30003	Installations on an AM antenna.			
1.30004	Notice of tower construction or modification near AM stations.			

#### § 1.30000 Purpose.

This rule part protects the operations of AM broadcast stations from nearby tower construction that may distort the AM antenna patterns. All parties holding or applying for Commission authorizations that propose to construct or make a significant modification to an antenna tower or support structure in the immediate vicinity of an AM antenna, or propose to install an antenna on an AM tower, are responsible for completing the analysis and notice process described in this subpart, and for taking any measures necessary to correct disturbances of the AM radiation pattern, if such disturbances occur as a result of the tower construction or modification or as a result of the installation of an antenna on an AM tower. In the event these processes are not completed before an antenna structure is constructed, any holder of or applicant for a Commission authorization is responsible for completing these processes before locating or proposing to locate an antenna on the structure, as described in this subpart.

#### § 1.30001 Definitions.

For purposes of this subpart:

(a) *Wavelength at the AM frequency*. In this subpart, critical distances from an AM station are described in terms of the AM wavelength. The AM wavelength, expressed in meters, is computed as follows:  

$$(300 \text{ meters}) / (\text{AM frequency in megahertz}) = \text{AM wavelength in meters}.$$

For example, at the AM frequency of 1000 kHz, or 1 MHz, the wavelength is  $(300/1 \text{ MHz}) = 300$  meters.

(b) *Electrical degrees at the AM frequency*. This term describes the height of a proposed tower as a function of the frequency of a nearby AM station. To compute tower height in electrical degrees, first determine the AM wavelength in meters as described in paragraph (a) of this section. Tower height in electrical degrees is computed as follows:  $(\text{Tower height in meters}) / (\text{AM wavelength in meters}) \times 360$  degrees = Tower height in electrical degrees. For example, if the AM

frequency is 1000 kHz, then the wavelength is 300 meters, per paragraph (a) of this section. A nearby tower 75 meters tall is therefore  $[75/300] \times 360 = 90$  electrical degrees tall at the AM frequency.

(c) *Proponent*. The term proponent refers in this section to the party proposing tower construction or significant modification of an existing tower or proposing installation of an antenna on an AM tower.

(d) *Distance from the AM station*. The distance shall be calculated from the tower coordinates in the case of a nondirectional AM station, or from the array center coordinates given in CDBS or any successor database for a directional AM station.

**§ 1.30002 Tower construction or modification near AM stations.**

(a) Proponents of construction or significant modification of a tower which is within one wavelength of a nondirectional AM station, and is taller than 60 electrical degrees at the AM frequency, must notify the AM station at least 30 days in advance of the commencement of construction. The proponent shall examine the potential impact of the construction or modification as described in paragraph (c) of this section. If the construction or modification would distort the radiation pattern by more than 2 dB, the proponent shall be responsible for the installation and maintenance of any detuning apparatus necessary to restore proper operation of the nondirectional antenna.

(b) Proponents of construction or significant modification of a tower which is within the lesser of 10 wavelengths or 3 kilometers of a directional AM station, and is taller than 36 electrical degrees at the AM frequency, must notify the AM station at least 30 days in advance of the commencement of construction. The proponent shall examine the potential impact of the construction or modification as described in paragraph (c) of this section. If the construction or modification would result in radiation in excess of the AM station's licensed standard pattern or augmented standard pattern values, the proponent shall be responsible for the installation and maintenance of any detuning apparatus necessary to restore proper operation of the directional antenna.

(c) Proponents of construction or significant modification of a tower within the distances defined in paragraphs (a) and (b) of this section of an AM station shall examine the potential effects thereof using a moment method analysis. The moment method

analysis shall consist of a model of the AM antenna together with the potential re-radiating tower in a lossless environment. The model shall employ the methodology specified in § 73.151(c) of this chapter, except that the AM antenna elements may be modeled as a series of thin wires driven to produce the required radiation pattern, without any requirement for measurement of tower impedances.

(d) A significant modification of a tower in the immediate vicinity of an AM station is defined as follows:

(1) Any change that would alter the tower's physical height by 5 electrical degrees or more at the AM frequency; or

(2) The addition or replacement of one or more antennas or transmission lines on a tower that has been detuned or base-insulated.

(e) The addition or modification of an antenna or antenna-supporting structure on a building shall be considered a construction or modification subject to the analysis and notice requirements of this subpart if and only if the height of the antenna-supporting structure alone exceeds the thresholds in paragraphs (a) and (b) of this section.

(f) With respect to an AM station that was authorized pursuant to a directional proof of performance based on field strength measurements, the proponent of the tower construction or modification may, in lieu of the study described in paragraph (c) of this section, demonstrate through measurements taken before and after construction that field strength values at the monitoring points do not exceed the licensed values. In the event that the pre-construction monitoring point values exceed the licensed values, the proponent may demonstrate that post-construction monitoring point values do not exceed the pre-construction values. Alternatively, the AM station may file for authority to increase the relevant monitoring-point value after performing a partial proof of performance in accordance with § 73.154 to establish that the licensed radiation limit on the applicable radial is not exceeded.

(g) Tower construction or modification that falls outside the criteria described in the preceding paragraphs is presumed to have no significant effect on an AM station. In some instances, however, an AM station may be affected by tower construction or modification notwithstanding the criteria set forth above. In such cases, an AM station may submit a showing that its operation has been affected by tower construction or modification. Such a showing shall consist of either a moment method analysis as described in paragraph (c) of this section, or of

field strength measurements. The showing shall be provided to:

(1) The tower proponent if the showing relates to a tower that has not yet been constructed or modified and otherwise to the current tower owner; and

(2) To the Commission, within two years after the date of completion of the tower construction or modification. If necessary, the Commission shall direct the tower proponent or tower owner, if the tower proponent or tower owner holds a Commission authorization, to install and maintain any detuning apparatus necessary to restore proper operation of the AM antenna. An applicant for a Commission authorization may not propose, and a party holding a Commission authorization may not locate, an antenna on any tower or support structure that has been shown to affect an AM station's operation pursuant to this subparagraph, or for which a disputed showing of effect on an AM station's operation is pending, unless the applicant, party, or tower owner notifies the AM station and takes appropriate action to correct the disturbance to the AM pattern.

(h) An AM station may submit a showing that its operation has been affected by tower construction or modification that was commenced or completed prior to or on the effective date of the rules adopted in this Part pursuant to MM Docket No. 93-177. Such a showing shall consist of either a moment method analysis as described in paragraph (c) of this section, or of field strength measurements. The showing shall be provided to the current tower owner and the Commission within one year of the effective date of the rules adopted in this Part pursuant to MM Docket No. 93-177. If necessary, the Commission shall direct the tower owner, if the tower owner holds a Commission authorization, to install and maintain any detuning apparatus necessary to restore proper operation of the AM antenna.

(i) An applicant for a Commission authorization may not propose, and a party holding a Commission authorization may not locate, an antenna on any tower or support structure, whether constructed before or after December 5, 2013, that meets the criteria in paragraphs (a) and (b) of this section, unless the analysis and notice process described in this subpart, and any necessary measures to correct disturbances of the AM radiation pattern, have been completed by the tower owner, the party proposing to locate the antenna, or any other party, either prior to construction or at any

other time prior to the proposal or antenna location.

**§ 1.30003 Installations on an AM antenna.**

(a) *Installations on a nondirectional AM tower.* When antennas are installed on a nondirectional AM tower the AM station shall determine the operating power by the indirect method (see § 73.51 of this chapter). Upon completion of the installation, antenna impedance measurements on the AM antenna shall be made. If the resistance of the AM antenna changes by more than 2 percent (see § 73.45(c)(1) of this chapter), an application on FCC Form 302-AM (including a tower sketch of the installation) shall be filed with the Commission for the AM station to return to direct power measurement.

(b) *Installations on a directional AM array.* Before antennas are installed on a tower in a directional AM array, the proponent shall notify the AM station so that, if necessary, the AM station may determine operating power by the indirect method (see § 73.51 of this chapter) and request special temporary authority pursuant to § 73.1635 of this chapter to operate with parameters at variance.

(1) For AM stations licensed via field strength measurements (see § 73.151(a)), a partial proof of performance as defined by § 73.154 of this chapter shall be conducted by the tower proponent both before and after construction to establish that the AM array will not be and has not been adversely affected. If the operating parameters of the AM array change following the installation, the results of the partial proof of performance shall be filed by the AM station with the Commission on Form 302-AM.

(2) For AM stations licensed via a moment method proof (see § 73.151(c) of this chapter), a base impedance measurement on the tower being modified shall be made by the tower proponent as described in § 73.151(c)(1). The result of the new tower impedance measurement shall be retained in the station's records. If the new measured base resistance and reactance values of the affected tower differ by more than  $\pm 2$  ohms and  $\pm 4$  percent from the corresponding modeled resistance and reactance values contained in the last moment method proof, then the station shall file Form 302-AM. The Form 302-AM shall be accompanied by the new impedance measurements for the modified tower and a new moment method model for each pattern in which the tower is a radiating element. Base impedance measurements for other towers in the array, sampling system measurements, and reference field

strength measurements need not be repeated. The procedures described in this paragraph may be used as long as the affected tower continues to meet the requirements for moment method proofing after the modification.

(c) *Form 302-AM Filing.* When the AM station is required to file Form 302-AM following an installation as set forth in paragraphs (a) and (b) of this section, the Form 302-AM shall be filed before or simultaneously with any license application associated with the installation. If no license application is filed as a result of the installation, the Form 302-AM shall be filed within 30 days after the completion of the installation.

**§ 1.30004 Notice of tower construction or modification near AM stations.**

(a) Proponents of proposed tower construction or significant modification to an existing tower near an AM station that are subject to the notification requirement in §§ 1.30002 and 1.30003 shall provide notice of the proposed tower construction or modification to the AM station at least 30 days prior to commencement of the planned tower construction or modification. Notice shall be provided to any AM station that is licensed or operating under Program Test Authority using the official licensee information and address listed in CDBS or any successor database. Notification to an AM station and any responses may be oral or written. If such notification and/or response is oral, the party providing such notification or response must supply written documentation of the communication and written documentation of the date of communication upon request of the other party to the communication or the Commission. Notification must include the relevant technical details of the proposed tower construction or modification. At a minimum, the notification should include the following:

(1) Proponent's name and address. Coordinates of the tower to be constructed or modified.

(2) Physical description of the planned structure.

(3) Results of the analysis showing the predicted effect on the AM pattern, if performed.

(b) Response to a notification should be made as quickly as possible, even if no technical problems are anticipated. Any response to a notification indicating a potential disturbance of the AM radiation pattern must specify the technical details and must be provided to the proponent within 30 days. If no response to notification is received within 30 days, the proponent may

proceed with the proposed tower construction or modification.

(c) The 30-day response period is calculated from the date of receipt of the notification by the AM station. If notification is by mail, this date may be ascertained by:

(1) The return receipt on certified mail;

(2) The enclosure of a card to be dated and returned by the recipient; or

(3) A conservative estimate of the time required for the mail to reach its destination, in which case the estimated date when the 30-day period would expire shall be stated in the notification.

(d) An expedited notification period (less than 30 days) may be requested when deemed necessary by the proponent. The notification shall be identified as "expedited" and the requested response date shall be clearly indicated. The proponent may proceed with the proposed tower construction or modification prior to the expiration of the 30-day notification period only upon receipt of written concurrence from the affected AM station (or oral concurrence, with written confirmation to follow).

(e) To address immediate and urgent communications needs in the event of an emergency situation involving essential public services, public health, or public welfare, a tower proponent may erect a temporary new tower or make a temporary significant modification to an existing tower without prior notice to potentially affected nearby AM stations, provided that the tower proponent shall provide written notice to such AM stations within five days of the construction or modification of the tower and shall cooperate with such AM stations to promptly remedy any pattern distortions that arise as a consequence of such construction.

**PART 22—PUBLIC MOBILE SERVICES**

■ 3. The authority for Part 22 continues to read as follows:

**Authority:** 47 U.S.C. 154, 222, 303, 309, and 332.

**§ 22.371 [Removed and Reserved]**

■ 4. Remove § 22.371.

**PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES**

■ 5. The authority for Part 27 continues to read as follows:

**Authority:** 47 U.S.C. 154, 301, 302(a), 303, 307, 309, 332, 336, 337, 1403, 1404, and 1451 unless otherwise noted.

§ 27.63 [Removed and Reserved]

- 6. Remove § 27.63.

PART 73—RADIO BROADCAST SERVICES

- 7. The authority for Part 73 continues to read as follows:

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

- 8. Amend § 73.45 paragraph (c) introductory text by revising the first two sentences to read as follows:

§ 73.45 AM antenna systems.

\* \* \* \* \*

(c) Should any changes be made or otherwise occur which would possibly alter the resistance of the antenna system, the licensee must commence the determination of the operating power by a method described in § 73.51(a)(1) or (d). (If the changes are due to the addition of antennas to the AM tower, see § 1.30003.) \* \* \*

\* \* \* \* \*

- 9. § 73.316 paragraph (e) is revised to read as follows:

§ 73.316 FM antenna systems.

\* \* \* \* \*

(e) Where an FM licensee or permittee proposes to mount its antenna on or near an AM tower, as defined in § 1.30002, the FM licensee or permittee must comply with § 1.30003 or § 1.30002, depending on whether the antenna is proposed to be mounted on an AM tower (§ 1.30003) or near an AM tower (§ 1.30002).

- 10. § 73.685 paragraph (h) is revised to read as follows:

§ 73.685 Transmitter location and antenna system.

\* \* \* \* \*

(h) Where the TV licensee or permittee proposes to mount its antenna on or near an AM tower, as defined in § 1.30002, the TV licensee or permittee must comply with § 1.30003 or § 1.30002.

- 11. Amend § 73.875 paragraph (c) introductory text by revising the last sentence to read as follows:

§ 73.875 Modification of transmission systems.

\* \* \* \* \*

(c) \* \* \* In addition, for applications filed solely pursuant to paragraphs (c)(1) or (2) of this section, where the installation is on or near an AM tower, as defined in § 1.30002, an exhibit demonstrating compliance with § 1.30003 or § 1.30002, as applicable, is also required.

\* \* \* \* \*

- 12. Amend § 73.1675 paragraph (c)(1) by revising the last sentence to read as follows:

§ 73.1675 Auxiliary antennas.

\* \* \* \* \*

(c)(1) \* \* \* Where an FM, TV, or Class A TV licensee or permittee proposes to mount an auxiliary facility on an AM tower, it must also demonstrate compliance with § 1.30003 in the license application.

\* \* \* \* \*

- 13. Amend § 73.1690 paragraph (c) introductory text by revising the last sentence to read as follows:

§ 73.1690 Modification of transmission systems.

\* \* \* \* \*

(c) \* \* \* In addition, except for applications solely filed pursuant to paragraphs (c)(6) or (c)(9) of this section, where the installation is located on or near an AM tower, as defined in § 1.30002, an exhibit demonstrating compliance with § 1.30003 or § 1.30002, as applicable, is also required.

\* \* \* \* \*

§ 73.1692 [Removed and Reserved]

- 14. Remove and reserve § 73.1692.

- 15. Amend § 73.6025 by revising paragraph (c) to read as follows:

§ 73.6025 Antenna system and station location.

\* \* \* \* \*

(c) Where a Class A TV licensee or permittee proposes to mount its antenna on or near an AM tower, as defined in § 1.30002, the Class A TV licensee or permittee must comply with § 1.30003 or § 1.30002.

\* \* \* \* \*

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

- 16. The authority for Part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 309, 336 and 554.

- 17. In § 74.1237, paragraph (e) is revised to read as follows:

§ 74.1237 Antenna location.

\* \* \* \* \*

(e) Where an FM translator or booster licensee or permittee proposes to mount its antenna on or near an AM tower, as defined in § 1.30002, the FM translator or booster licensee or permittee must comply with § 1.30003 or § 1.30002.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket Nos. 12-69, 12-332; FCC 13-136]

Promoting Interoperability in the 700 MHz Commercial Spectrum; Requests for Waiver and Extension of Lower 700 MHz Band Interim Construction Benchmark Deadlines

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) takes certain steps to implement an industry solution to provide interoperable Long Term Evolution (LTE) in the Lower 700 MHz band to improve choice and quality for consumers of mobile services. The Commission revises its Part 27 rules to modify the technical requirements for the Lower 700 MHz D and E blocks to eliminate potential harmful interference while continuing to allow high value use of D and E blocks. Additionally, the Commission proposes to modify AT&T's B and C Block licenses. Finally, the Commission waives the construction requirements for A, B, and E Block licensees and extends the deadlines.

DATES: Effective December 5, 2013.

FOR FURTHER INFORMATION CONTACT: Jennifer Salhus, Wireless Telecommunications Bureau, (202) 418-1310, email Jennifer.Salhus@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order and Order of Proposed Modification (R&O and Order), WT Docket Nos. 12-69, 12-332; FCC 13-136, adopted October 25, 2013 and released October 29, 2013. The full text of this document is available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. Also, it may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY-B402, Washington, DC 20554; the contractor's Web site, http://www.bcpweb.com; or by calling (800) 378-3160, facsimile (202) 488-5563, or email FCC@BCPIWEB.com. Copies of the R&O and Order also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number WT Docket 12-69. Additionally, the complete item is available on the Federal Communications Commission's Web site at http://www.fcc.gov.