

electronic system.¹⁸⁵ Andrew Morris argues that electronic filing should be required due to the threat of a backlog of paper-filed LPFM applications that would have to be entered manually into the Commission's database. However, several commenters express concern that electronic filing is untried and may delay the introduction of LPFM service. The Oklahoma and Texas Departments of Transportation comment that, based on their experiences renewing licenses and correcting addresses using the Commission's Web site, an electronic filing system is likely to be reasonably accessible and easy to use.¹⁸⁶ Several commenters urge that, regardless of whether electronic filing is required, LPFM filing procedures should be as simple and inexpensive as possible.¹⁸⁷

124. Decision. We anticipate that electronic forms will be made available via the Commission's World Wide Web site prior to the opening of the first LPFM filing window. Based on our consideration of the record, however, we will not adopt a mandatory electronic filing system for LPFM application forms at this time. Rather, assuming availability of the forms, we will make electronic filing permissive for the first LPFM filing window, which we intend to open for LP100 stations shortly after the effective date of this *Order*. Whether electronic filing is permissive for the second window that we anticipate opening for LP10 stations, as well as for any subsequent LPFM filing windows, will be resolved at a later date and will depend on several factors, including our experience with both electronic and paper filing during the first LPFM window and the time that elapses between the first and second windows.

125. We recognize that, as some commenters point out, there may be disparities among potential LPFM applicants in terms of Internet access and/or computer skills. We believe that making electronic filing permissive at this time will accommodate applicants that might be disadvantaged by mandatory electronic filing. We previously have discussed the significant advantages of a mandatory electronic filing system in terms of realizing savings and efficiencies. We do not believe that electronic filing would necessarily constitute an undue burden or expense for potential LPFM applicants, as the costs of computer and modem equipment continue to fall, and Internet access increasingly is becoming available at minimal cost commercially and at public institutions such as libraries. In addition, the Commission has made, and will continue to make, great efforts to create a simple, user-friendly electronic filing system.¹⁸⁸ However, at present we are determined to be cautious with the first applications for a new service filed by applicants whose resources and familiarity with Commission processes may be very limited. We will reassess our electronic filing decision after our experience during the first filing window. We can better determine at that time whether the first filing window has provided a reasonable opportunity for interested parties to understand and arrange for Internet access and familiarize themselves with our Web site and electronic filing system. We can then determine whether

¹⁸⁵ Comments of Metro at 13.

¹⁸⁶ Comments of the Oklahoma and Texas Departments of Transportation at 6.

¹⁸⁷ See Comments of Stephen Toner at 1; Comments of Dane Udenberg at 1.

¹⁸⁸ In order to simplify their use and speed their processing, the Commission has streamlined broadcast applications in adapting them to an electronic format. Open-ended questions requiring detailed exhibits have been replaced with simple yes/no questions as to compliance with Commission rules, supplemented by instructions and worksheets to explain the pertinent rules and help ensure that applicants answer the questions correctly. See *Streamlining Report and Order*, 13 FCC Rcd at 23067-68.

the public interest benefits of mandatory electronic filing will outweigh any difficulties encountered or inequities expected, and decide whether electronic filing will remain voluntary or be mandated for use by all.

126. Although electronic filing will be permissive, we strongly encourage applicants to take advantage of electronic filing, and expect that many will do so. The forms will be accessible to anyone with a computer and a modem, without the need to purchase any special computer software.¹⁸⁹ The Commission's software will make filing more certain for applicants by automatically notifying them of critical errors or omissions in their applications, and allowing them to correct the applications prior to submission. This software also will provide applicants with immediate verification that their applications have been received by the Commission. In addition, it will allow applicants to submit amendments, make corrections to their previously-filed applications, and submit narrative, explanatory exhibits. Furthermore, we intend to design additional software that will be available on the Commission's Web site to assist interested parties in making a preliminary determination as to which frequencies are available for LPFM use, based on current information in the Commission's database. Thus, LPFM applicants using the electronic filing system also will have access to a form of automated technical assistance in preparing their applications.

2. Window Filing Process

127. Background. We proposed in the *Notice* to adopt a window filing approach for LPFM applications, with short filing windows of a few days each to "lessen the occurrence of mutually exclusive applications and speed service to the public."¹⁹⁰ The Commission recently substituted a uniform window filing procedure for the various application procedures for new commercial broadcast stations, and for major changes to existing stations.¹⁹¹ Under this procedure, the Commission announces by public notice a "window" or specific time period during which applications may be filed. When the window closes, the staff reviews the applications filed to determine whether any request mutually exclusive authorizations and, therefore, are subject to competitive bidding. Non-mutually exclusive applications are processed in accordance with our general procedures. Groups of mutually exclusive applications are identified by public notice and proceed to auction. The Commission also is considering substituting a window procedure for the two-step, cut-off list procedures now in place for full-service NCE broadcast applications.¹⁹²

¹⁸⁹ With regard to operation and security issues, the electronic filing system for LPFM applications will function in a similar manner as the Commission's system for other broadcast applications. See *Streamlining R&O*, 13 FCC Rcd at 23062-65.

¹⁹⁰ *Notice*, 14 FCC Rcd at 2506-07.

¹⁹¹ See Implementation of Section 309(j) of the Communications Act—Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services, *First Report and Order*, MM Docket No. 97-234, 13 FCC Rcd 15920, 15972-74 (1998).

¹⁹² Reexamination of the Comparative Standards for Noncommercial Educational Applicants, Further Notice of Proposed Rulemaking in MM Docket No. 95-31, 13 FCC Rcd 21167, 21175 (1998).

128. In the *Notice*, we also asked for comment as to whether a first come-first served process might serve the public interest better than a window process by more effectively avoiding mutual exclusivity among LPFM applications.¹⁹³ We speculated that electronic filing “might give us the capacity to ascertain the precise sequence in which applications are submitted by different parties.”¹⁹⁴ Thus, applications conflicting with ones filed “even a moment earlier”¹⁹⁵ might be rejected as unacceptable for filing, avoiding mutual exclusivity in many cases. We noted a number of drawbacks to this approach, however, including the possibility that applicants might lose filing rights based solely on the quality of their Internet connections.

129. Comments. Many commenters support a window filing approach, and offer various suggestions as to the appropriate duration of filing windows.¹⁹⁶ Joshua Weiss comments that, in order to even the playing field for potential LPFM applicants, the Commission should list available frequencies and locations well in advance of opening a window. Warren Michelsen states that a Commission database capable of helping applicants determine frequency availability in the areas in which they are interested would help avoid the occurrence of mutual exclusivity.¹⁹⁷ Some commenters instead favor a first come-first served filing system, generally contending that it would be a better means of avoiding mutual exclusivity than a window approach.¹⁹⁸ However, Ronnie Miller argues that a first-come first-served system would give an unfair advantage to applicants with superior financial and technical resources.¹⁹⁹ Several commenters suggest hybrid approaches combining elements of window and first

¹⁹³ Under first-come first-served procedures, applications may be filed at any time, and the filing of an acceptable application precludes the subsequent filing of mutually exclusive applications, unless filed on the same day. Mutual exclusivity arises when competing applications are filed on the same day. These procedures now are used only for minor changes for commercial and NCE broadcast stations. See 1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission’s Rules, *First Report and Order* in MM Docket No. 98-93, 14 FCC Rcd 5272, 5273-77 (1999).

¹⁹⁴ *Notice*, 14 FCC Rcd at 2506.

¹⁹⁵ *Id.*

¹⁹⁶ See, e.g., Comments of Michael Robert Birdsill at 5; Comments of Ronnie Miller at 18-19; Comments of Andrew Morris at 15; Reply Comments of Kenneth W. Bowles at 19 (supporting short filing windows of only a few days or less); Comments of Creative Educational Media Corp. at 11; Comments of Positive Alternative Radio at 15; Comments of Community Media at 9; Comments of Oklahoma and Texas Departments of Transportation at 6; Comments of UCC, et al. at 35 (supporting windows of several months, open each year at the same time).

¹⁹⁷ Joseph Belisle and Stephen Toner suggest that LPFM applicants be limited to one application per window to reduce the likelihood of mutual exclusivity and to prevent speculative or abusive filings. Comments of Joseph Belisle at 1; Comments of Stephen Toner at 1. We need not consider this suggestion in light of the eligibility requirements we are adopting for LPFM applicants. In addition, for the reasons discussed below, we reject the suggestions of several commenters that the first filing window be reserved for institutions that serve women and minorities, or for applicants with a demonstrated commitment to their communities. See ¶ 137.

¹⁹⁸ See, e.g., Comments of Joseph Belisle at 1; Comments of John Bowker at 18; Comments of Kirk Chestnut at 1; Comments of David McOwen at 3-4; Comments of Forrest Parsons at 2.

¹⁹⁹ Comments of Ronnie V. Miller at 18-19.

come-first served systems.²⁰⁰

130. Decision. Based on our consideration of the record, we will adopt a window filing process for LPFM applications. We previously stated that a window process “provides the staff with a mechanism to control effectively the filing and processing of broadcast applications.”²⁰¹ We believe that such a mechanism is important here because of the large number of LPFM applications that we expect to receive. In addition, the first-come first-served approach envisioned in the *Notice*, which would determine filing priority based on the exact time that applications are filed, is feasible only if electronic filing is required, which will not be the case, at least initially.²⁰² Moreover, we are concerned that such an approach, by placing a premium on filing at the earliest possible moment, might unfairly disadvantage certain applicants based solely on the quality of their Internet connections.²⁰³ The filing of hundreds or thousands of applications at once also might place unbearable strains on the LPFM electronic filing system. A window filing process avoids these pitfalls, as applicants will be able to file at any time over a period of several days without losing filing rights.

131. Once this *Order* becomes effective,²⁰⁴ the Mass Media Bureau, pursuant to delegated authority, will promptly release a public notice announcing a national filing window for LP100 applications.²⁰⁵ We anticipate that this window will open in May.²⁰⁶ The notice will be issued at least thirty days in advance of the opening of the filing window. Full power broadcast applications filed on or after the date of release of a public notice announcing the opening of an LPFM window will not preclude the filing of conflicting LPFM applications filed during that window. However, where the conflict ultimately is determined to relate to service inside the city grade contours of the full power station, the LPFM application will be dismissed.²⁰⁷ The window itself will be open for a period of five business days. We believe that five days, combined with thirty days’ specific advance notice and the additional

²⁰⁰ See, e.g., Comments of Scott Drew at 2; Comments of Community Broadcasters at 18.

²⁰¹ *Auctions Ist R&O*, 13 FCC Rcd at 15973.

²⁰² Without mandatory electronic filing, the staff would have no way of determining the filing priority of applications that were electronically-filed and paper-filed on the same day.

²⁰³ Cf. Review of the Commission’s Regulations Governing Television Broadcasting, Order on Reconsideration, MM Docket No. 91-221, FCC 99-343 (released November 10, 1999) (rejecting first come-first served processing of applications filed pursuant to modified rules adopted in the local broadcast ownership proceeding because, among other things, “a ‘first come, first served’ system could initiate a ‘race’ to Mellon Bank to file applications, and result in filers camping out to be first in line at the filing counter.”).

²⁰⁴ This Order will become effective 60 days after publication in the Federal Register.

²⁰⁵ For the reasons discussed above, the first filing window will be open solely to applicants for 100-watt LPFM stations. See ¶ 11-14. We anticipate opening a second filing window for 10-watt LPFM stations in the future, after the close of the first window. See *id.*

²⁰⁶ Information about application procedures, and in particular the timing of the application window, will be available on the Commission’s LPFM website: www.fcc.gov/mmb/prd/lpfm.

²⁰⁷ See discussion of the city-grade contour, at ¶ 67.

time between the release of this *Order* and the public notice announcing the window, should give interested parties sufficient time to prepare and file their LPFM applications, while minimizing the number of mutually exclusive LPFM applications. We emphasize that applications filed before or after the dates specified in the public notice will not be accepted.

132. In accordance with our window filing procedure for commercial broadcast applications, after the LPFM window closes, the staff initially will screen applications for the purpose of identifying those that are mutually exclusive and those that fail to protect existing broadcast stations in accordance with the standards adopted herein. Applications that fail to properly protect these existing stations will be dismissed without the applicant being afforded an opportunity to amend. This will increase the speed and efficiency with which LPFM applications can be processed by the staff. Technically acceptable non-mutually exclusive applications will be further reviewed for acceptability and processed by the staff in accordance with the Commission's general procedures. Groups of mutually exclusive applications will be identified in a subsequent public notice, and will be subject to the selection procedures set forth below.²⁰⁸ After an application is tentatively selected from a mutually exclusive group, it will be reviewed for acceptability, and a public notice will be released announcing the finding that the application has been tentatively selected and is acceptable for filing.²⁰⁹ Petitions to deny the application will be due within 30 days of the release of the public notice of its acceptability for filing.²¹⁰ Petitions and informal objections will not be considered unless and until the application has been tentatively selected for processing and found acceptable for filing.

133. As stated above, we are developing software to assist interested parties in determining whether specific frequencies may be available at specific locations for LPFM use. This software will not be able to determine conclusively whether a particular frequency will be available for an applicant, as frequency availability also will depend, among other things, on whether competing applications are filed during the LPFM filing window. Nevertheless, we anticipate that the software will help interested parties focus on potentially-available facilities, and will provide technical assistance for interested parties with limited financial resources. We anticipate that this software will be ready for use by the time we announce the first filing window for LPFM applications. The Mass Media Bureau will issue a public notice with information regarding how to access the software and the technical assistance it can provide. Such information also will be posted on the Commission's Web site.

3. Selection Among Mutually Exclusive Applications

134. Background. In the *Notice*, we requested comment as to whether the proposed LPFM

²⁰⁸ See ¶¶ 136-152.

²⁰⁹ A tentative selectee whose application is found unacceptable for filing will be given a single opportunity to submit a curative amendment, provided that the amendment is minor and the amended application has the same number of points as originally claimed, or more than the points claimed by the next highest applicant. Tentative selectees whose applications remain unacceptable for filing after this opportunity will be removed from their mutually exclusive groups, and will not be provided with an additional opportunity to amend.

²¹⁰ See 47 C.F.R. § 73.3584.

service should be restricted to NCE applicants or open to both commercial and NCE applicants.²¹¹ We tentatively concluded that, pursuant to statutory requirements, mutually exclusive applications for commercial LPFM facilities would be subject to auction.²¹² We asked for comment on alternative methods for resolving mutual exclusivity among NCE LPFM applicants. We specifically referred commenters to our proceeding reexamining full-service NCE comparative standards, where we sought comment on three possible methods for selecting among mutually exclusive applicants: (1) comparative hearings; (2) a lottery process weighted in favor of certain applicants based on statutory requirements and other factors; and (3) a system assigning points to applicants based on various selection criteria.²¹³

135. Comments. Most commenters that address the matter oppose the use of competitive bidding, arguing that it would undermine the Commission's stated goals in establishing the LPFM service.²¹⁴ Few commenters support the use of comparative hearings to resolve mutually exclusive NCE applications. There was support among commenters for the use of a lottery process, although most of these commenters argued the merits of lotteries over auctions, rather than over an alternative selection method.²¹⁵ A number of commenters also favored the use of a point system. In addition, several commenters suggest that we impose arbitration to resolve mutual exclusivity,²¹⁶ and one advocates the use of "conflict reduction methods" such as allowing "liberal channel and coverage changes."²¹⁷ Commenters also propose various selection factors for use within a comparative selection process.

136. Decision. Based on our consideration of the record, we shall adopt a point system for resolving mutual exclusivity among LPFM applicants. The point system will include three selection criteria: (1) established community presence; (2) proposed operating hours; and (3) local program origination. The system will employ voluntary time-sharing as a tie-breaker, that is, tied applicants will have an opportunity to aggregate points by submitting time-share proposals.²¹⁸ As a last resort, where a

²¹¹ Notice, 14 FCC Rcd at 2483, 2485.

²¹² *Id.* at 2507-08, citing Balanced Budget Act of 1997, § 3002(a)(1), codified as 47 U.S.C. § 309(j); see *Auctions Ist R&O*, 13 FCC Rcd at 15924-25 (concluding that auctions are mandatory for all primary and secondary commercial broadcast services).

²¹³ See *NCE Further Notice*, 13 FCC Rcd at 21170-81.

²¹⁴ See, e.g., Comments of Mid-America Broadcasting Company at 4; Comments of Morris Broadcasting Company at 11-12; Comments of Mark Pfohl at 1; Comments of Positive Alternative Radio at 9; Comments of Keith Reising at 1; Comments of Douglas E. Smith at 2; Comments of Voice of Vashon at 2; Comments of Robert T. Wertime at 1; Comments of Zillah School District at 5. Likewise, many of the comments filed in response to the two petitions for rule making requesting the creation of low power radio services opposed the use of auctions. See *Notice*, 14 FCC Rcd at 2507.

²¹⁵ See, e.g., Comments of Mid-America Broadcasting Company at 4; Comments of Morris Broadcasting Company at 10-11; Comments of Keith Reising at 1; Comments of Zillah School District at 5.

²¹⁶ See, e.g., Comments of Alliance for Community Media at 9; Comments of Robert T. Wertime at 1.

²¹⁷ See Comments of CDC at 13.

²¹⁸ Applicants also will be able to propose time-sharing as part of a settlement agreement among all mutually (continued....)

tie is not resolved through time-sharing or settlement, we shall award successive equal license terms totaling eight years (the normal license term), without renewal expectancy for any of the licensees.

137. We conclude that the point system we are adopting is superior to alternative selection methods. As discussed above, the LPFM service will be reserved for noncommercial, educational service, and we are precluded by statute from using auctions to award station licenses on channels reserved for NCE use.²¹⁹ Accordingly, we need not discuss an auction-based selection mechanism. In our proceeding reexamining full-service NCE comparative standards, we tentatively rejected comparative hearings because they tend to be lengthy, cumbersome, and resource-intensive, without substantial offsetting benefits.²²⁰ These disadvantages make comparative hearings particularly ill-suited for selecting LPFM applicants. Like comparative hearings, mandatory arbitration and engineering solutions could impose significant delays on the LPFM authorization process and impose additional expenses on applicants. Moreover, although we will encourage individual settlements as a means of resolving mutual exclusivity among LPFM applicants,²²¹ the Commission lacks the resources to administer a system that would require arbitration or the imposition of engineering solutions in every instance of mutual exclusivity. Finally, we conclude that a lottery system is comparatively inferior to a point system as an LPFM selection method. The primary benefits of a lottery system are the speed and ease with which it may be applied.²²² As discussed below, however, a point system offers like benefits. Moreover, there are unresolved legal and policy issues surrounding the use of a lottery system that pose a risk of delaying the introduction of LPFM service to the public.²²³ A point system does not entail similar risks. A lottery process is also inherently inferior to a point system in its ability to further the Commission's policy goals due its random nature. This randomness may be mitigated, but not eliminated, by weighting in favor of certain types of applicants. For these reasons, in the case of LPFM service, we reject all of these approaches in favor of a point system.²²⁴

138. *Point System.* We believe that a point system is the best-suited selection methodology for promoting the Commission's policy goals for the LPFM service and speeding its introduction to the

exclusive applicants, at any time after the release of a public notice identifying their mutual exclusive group. See ¶ 147.

²¹⁹ See *Auctions Ist R&O*, 13 FCC Rcd at 15928-31.

²²⁰ *NCE Further Notice*, 13 FCC Rcd at 21171.

²²¹ We clarify that we permit LPFM applicants to propose settlements to resolve mutually exclusive applications because the use of settlements serves the public interest in instances such as this where auctions are not permissible. In light of the fact that we are not auctioning this service, we believe settlements provide an appropriate method to resolve issues of unresolved mutual exclusivity and avoid the risk of protracted hearings. See ¶ 150.

²²² See *NCE Further Notice*, 13 FCC Rcd at 21171-72.

²²³ See *Adarand Constructors v. Pena*, 515 U.S. 200 (1995).

²²⁴ Our decision here is not intended to prejudge the issues raised in our proceeding reexamining the comparative standards for full-service NCE stations. See *NCE Further Notice*, 13 FCC Rcd at 21171-76.

public. The Commission has used a point system procedure with success in the Instructional Television Fixed Service (ITFS).²²⁵ Like lotteries, point systems have the potential to be fast, inexpensive, and administratively efficient. Unlike lotteries, however, point systems make possible the selection of applicants based on objective criteria designed to best advance the public interest in the particular service at issue. Finally, the fact that LPFM licenses are non-transferable²²⁶ eliminates a major potential disadvantage of any system based on selection criteria; it prevents the integrity of the system from being undermined by the rapid assignment or transfer of station licenses by an entity that was awarded the license over other applicants on some merit basis that is not necessarily found in the buyer.²²⁷

139. *Point System Operation—Selection Criteria.* Our point system will include three selection criteria for mutually exclusive applicants: (1) established community presence; (2) proposed operating hours; and (3) local program origination. These criteria are directly related to the advancement of the public interest that the Commission has found warrants the introduction of this new service. To protect the integrity of the selection process and ensure that its full benefits may be realized, we have chosen clear-cut selection factors that are objective in nature and do not require burdensome documentation.

140. *Established Community Presence.* For the reasons set forth above, first, applicants that have an established community presence of at least two years' duration will be awarded one point. An applicant will be deemed to have an established community presence where, for a period of at least two years prior to application, the applicant is able to certify that it has been physically headquartered, has had a campus, or has had 75 percent of its board members residing within 10 miles of the reference coordinates of the proposed transmitting antenna. This criterion will favor organizations that have been operating in the communities where they propose to construct an LPFM station and thus have "track records" of community service and established constituencies within their communities. We believe that such applicants, because of their longstanding organizational ties to their communities, are likely to be more attuned to, and have organizational experience addressing, the needs and interests of their communities. In this regard, a number of commenters suggest preferences based on prior community service and/or community support.²²⁸ These suggested factors could be subjective in nature, however, and could be burdensome to demonstrate and verify. In addition, we believe that preferring organizations that have been in existence and physically present in the community for two years will help prevent maneuvering of the point system by those who might otherwise establish multiple organizations

²²⁵ See 47 C.F.R. §74.913. The ITFS is a nonbroadcast, point-to-point service intended primarily to provide formal educational programming offered for credit to enrolled students of accredited schools. Pursuant to the provisions of the Balanced Budget Act of 1997, the Commission has determined that pending and future mutually exclusive ITFS applications shall be resolved by competitive bidding, unless Congress enacts legislation exempting ITFS from competitive bidding. See *Auctions Ist R&O*, 13 FCC Rcd at 16003-04.

²²⁶ See ¶ 163.

²²⁷ See *NCE Further Notice*, 13 FCC Rcd at 21181-83.

²²⁸ See, e.g., Comments of Kirk Chestnut at 1 (require competing applicants to demonstrate community interest in their applications with letters of endorsement from community leaders and citizens); Comments of Morris Broadcasting Company at 7 (preference for applicants with record of prior service to minority communities or prior employment of minorities).

to file LPFM applications.

141. As we stated above in our discussion of the community-based eligibility requirement, we do not believe this preference for established local entities contravenes the court's concerns in *Bechtel*. In adopting such a comparative factor, we further note that the *Bechtel* court was concerned that quantitative integration factors worked to the virtual exclusion of other factors the court deemed potentially relevant in determining the relative quality of service that would be provided by an applicant. For LPFM, we are including other selection factors and giving them equivalent weight in the selection process. Moreover, while the two-year presence factor has a quantitative aspect, it is objectively verifiable and does not depend on promises of future performance, as the integration preference did.

142. Applicants claiming points for established community presence will be required to certify in their applications that they meet the above-stated conditions. The application form will identify appropriate documentation that must be made available for the point claimed. Applicants will be required to submit this information at the time of filing and it will be available in our public reference room. As with other broadcast applications, the Commission will rely on certifications but will use random audits to verify the accuracy of the certifications.²²⁹ This information also will enable applicants to verify that competing applicants qualify for the points they claim.

143. *Proposed Operating Hours.* Second, applicants that pledge to operate at least 12 hours per day will be assigned one point. As set forth below, the minimum operating hours for LPFM stations will be five hours per day.²³⁰ This criterion does not impose any additional requirement, but awards points to applicants that pledge longer hours of operation. Applicants that propose more intensive use of the broadcast frequencies they seek will advance the Commission's general policy objective of ensuring efficient spectrum use and providing more programming to serve their communities.

144. *Local Program Origination.* Finally, applicants that pledge to originate locally at least eight hours of programming per day will be assigned one point. For purposes of this criterion, local origination will be defined as the production of programming within 10 miles of the reference coordinates of the proposed transmitting antenna.²³¹ This criterion derives from the service requirements for full-service broadcast stations, which are required to maintain the capacity to originate programming from their main studios.²³² LPFM licensees will not be subject to main studio requirements, and will have discretion to determine the origination point of their programming.²³³ As a comparative selection

²²⁹ See *Streamlining R&O*, 13 FCC Rcd at 23084-87.

²³⁰ See ¶ 182.

²³¹ See generally *Arizona Communications Corp.*, 25 FCC 2d 837 (1970), *recon. denied*, 27 FCC 2d 283 (1971).

²³² See Amendment of Section 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations, Memorandum Opinion and Order in MM Docket No. 86-406, 3 FCC Rcd 5024, 5026 (1988).

²³³ See ¶ 186.

factor, local program origination can advance the Commission's policy goal of addressing unmet needs for community-oriented radio broadcasting.²³⁴ In this regard, we believe that an applicant's intent to provide locally-originated programming is a reasonable gauge of whether the LPFM station will function as an outlet for community self-expression.

145. With regard to both the second and the third selection criteria, applicants will be required to certify in their applications that they will meet the qualifying conditions for the points claimed. We will require successful applicants to adhere to their operating hours and local program origination pledges.²³⁵ As these criteria are prospective in nature, they will not be subject to verification at the application stage. The Commission will use random audits to verify the accuracy of the certifications, and will consider written complaints regarding actual performance. Consistent with our current practice, the staff may issue letters of inquiry requiring submission of documentation in connection with such audits. Where analysis of the requested information indicates that licensees have not fulfilled their pledges, appropriate action will be taken, including the possibility of monetary forfeitures and revocation proceedings.²³⁶

146. In choosing selection criteria, we have carefully considered the comments we received advocating various selection factors, as well as the point system elements under consideration in our proceeding reexamining full-service NCE comparative standards.²³⁷ We believe that the factors we have chosen best balance our interest in furthering the specific localized objectives of the LPFM service and avoiding cumbersome, subjective and manipulable criteria. We note that a number of commenters advocate preferences for entities controlled by minorities.²³⁸ We shall defer consideration of this matter. The Commission is conducting fact-finding studies as to whether such preferences may be justified consistent with the Supreme Court's decision in *Adarand Constructors v. Pena*.²³⁹ Depending on the outcome of these studies, we will consider in the future whether to adopt minority control as a point system factor.

147. *1st Tiebreaker -- Voluntary Time-Sharing.* In the event that the point system results in a tie among two or more mutually exclusive applicants, applicants will have the opportunity, within 30

²³⁴ See Notice, 14 FCC Rcd at 2471; see also Comments of Alliance for Community Media at 7 (advocating points to applicants providing most local programming); Comments of UCC, et al. at 35 (advocating point system using local program origination criteria).

²³⁵ As noted above, a primary concern of the court in *Bechtel* was that there was no obligation for successful applicants to adhere to their integration proposals. See ¶ 34.

²³⁶ See generally *Streamlining R&O*, 13 FCC Rcd at 23084-87.

²³⁷ See *NCE Further Notice*, 13 FCC Rcd at 21177-80.

²³⁸ See, e.g., Comments of Mid-America Broadcasting Company at 9; Comments of Southeast Association of Microbroadcasters at 1; see also Comments of Morris Broadcasting Company at 10-11 (preference for applicants with record of prior service to minority communities or prior employment of minorities).

²³⁹ 515 U.S. 200 (1995).

days of the release of a public notice announcing the tie, to submit amendments to their applications incorporating voluntary time-share proposals. Each time-share proponent must propose to operate at least 10 hours per week. Time-share proposals may function as tie-breakers in two different ways. First, all of the tied applicants in a mutually exclusive group may propose a time-share proposal, in which case the staff will review and process all of the tied applications. Second, some of the tied applicants in a mutually exclusive group may submit a time-share proposal, in which case the time-sharers' points will be aggregated. Time-sharers may aggregate points under each of the three selection criteria.²⁴⁰ The purpose of allowing point aggregation is to encourage time-share arrangements as a means of resolving mutual exclusivity among tied LPFM applicants. In addition, we believe that time-sharing arrangements will serve the public interest by increasing participation by a variety of local community organizations in the operation of LPFM stations.

148. Our decision to incorporate voluntary time-sharing into the point system as a tie-breaker is based on our judgment that voluntary time-share arrangements have the potential to advance the Commission's goals for the new service. We noted in our proceeding reexamining full-service NCE comparative standards that "[a] number of commenters dislike mandatory share-time arrangements, finding them confusing to audiences, and potentially inefficient for licensees."²⁴¹ On a voluntary basis, however, time-sharing has significant potential advantages for LPFM applicants. From a practical standpoint, the localized nature of the LPFM service is likely to enhance applicants' ability to time-share. In many cases, the small scale of LPFM operations also may make time-sharing more efficient for LPFM licensees. Furthermore, by increasing the number of new broadcast voices, time-sharing can advance our interest in promoting additional diversity in radio voices and program services through the LPFM service.²⁴²

149. *Final Tiebreaker -- Successive License Terms.* As a last resort, in cases where a tie is not resolved through settlement or time-sharing, the staff will review tied applications for acceptability. Applicants whose applications are grantable will be eligible for equal, successive license terms of no less than one year each, spanning a total of eight years. Successive license terms will not be granted for groups of more than eight tied, grantable applications. In the event of such a situation, the staff will dismiss all but the applications of the eight entities with the longest established community presences, as demonstrated by the documentation submitted with their applications. If this does not limit the group of applications to eight, the entire group will be deemed ungrantable and will be dismissed if, after a final opportunity to submit settlement proposals within 30 days of the release of a public notice, the situation is not resolved. Where successive license terms are granted, there will be no renewal expectancy for any of the licensees.²⁴³ If none of the tied, grantable applications proposes same-site facilities, then all will

²⁴⁰ For example, two time-sharers that claimed points individually for established community presence and proposed operating hours and local program origination may claim a combined two points for each of these criteria, for a total of six points. They need not aggregate hours of operation or locally-originated programming to aggregate their points for these criteria.

²⁴¹ *NCE Further Notice*, 13 FCC Rcd at 21180.

²⁴² *Notice*, 14 FCC Rcd at 2471.

²⁴³ If for some reason a successive term licensee becomes unable to operate the station during its portion of the license term, that licensee's time will be divided equally among the remaining licensees for that station.

be granted at the same time. The sequence of the applicants' license terms will be determined by the sequence in which they file their applications for licenses to cover their construction permits, based on the day of filing.²⁴⁴ However, if any of the tied, grantable construction permit applications propose same-site facilities, the applicants proposing such facilities will be required, within an additional 30 days, to submit a settlement agreement proposing the sequence of the license terms for such applicants. If they fail to do so, they will be removed from the mutually exclusive group and the remaining applications will be granted.

150. *Settlements.* Applicants may propose a full settlement at any time during the selection process after the release of the public notice announcing the mutually exclusive group. Such settlements must be universal -- that is, they must involve all of the mutually exclusive applicants within a group -- and must comply with the Commission's general rules for settlements, including the requirement that the settling parties certify that they have not received consideration for the dismissal of their applications in excess of their legitimate and prudent expenses.²⁴⁵ Settlements may incorporate voluntary time-share proposals.

151. *Delegated Authority.* As we explained in our proceeding reexamining full-service NCE comparative standards, the Commission currently may delegate authority for applying point systems only to administrative law judges or to individual Commissioners.²⁴⁶ This statutory restriction is based on the fact that point systems technically are considered a type of simplified hearing. We believe that the staff would be able to administer the LPFM point system in a more streamlined manner than administrative law judges or individual Commissioners. Therefore, we will seek authority from Congress, through specific legislation, to delegate responsibility to the staff for applying the point system.²⁴⁷ Until we receive such authority, the staff will refer point system proceedings to the Commission for disposition.

152. *Minor Modification of Authorized LPFM Stations.* We will adopt one exception to the window filing process to permit the filing at any time of certain "minor change" applications. For LP100 stations, a minor change may involve a transmitter site relocation of less than two kilometers. For LP10 stations, a minor change may involve a transmitter site relocation of less than one kilometer. Minor change applications may also propose a change to an adjacent or IF frequency or, upon a technical showing of reduced predicted interference, to any other frequency. Similarly, we will consider as minor any change in frequency necessary to resolve actual interference. All other changes will be classified as "major" and subject to our window filing procedures. Minor change applications also must satisfy the technical and legal requirements applicable to LPFM stations generally.

²⁴⁴ For example, assume an unresolved tie among four grantable applications. If permittees A, B, C and D file their license applications in that order, then their two-year license terms will be in that sequence, with the eight years commencing on the date that A's license application is granted.

²⁴⁵ See 47 C.F.R. § 73.3525.

²⁴⁶ See *NCE Further Notice*, 13 FCC Rcd at 21176, n. 22. 47 U.S.C. §155(c)(1).

²⁴⁷ The Commission previously secured similar legislation allowing it to delegate authority to the staff to conduct ITFS point system proceedings. See *id.*

4. License Terms and Renewals

153. **Background.** In the *Notice*, we asked how often and how closely we should actively monitor, within the parameters of our statutory responsibility, the performance of LP100 stations in connection with the license renewal process. We asked whether a *pro forma* process would satisfy any statutory requirement, in the absence of specific public complaint. We also asked for comment on whether stations other than LP1000 stations should be authorized for finite, nonrenewable periods, such as five or eight years, to create additional opportunities for new entrants in the LPFM service. We explained that making broadcast outlets available to more speakers is a fundamental premise of this rulemaking effort, and that we did not expect that such a limitation would discourage the very modest investment required to build such a station. We sought comment on whether the disruption of service to the public that non-renewability would involve outweighed the potential benefits of making this service available to more speakers on a consecutive basis.

154. **Comments.** Commenters propose a variety of LPFM license terms and the majority argue that LPFM licenses should be renewable. Commenters suggest license terms of one,²⁴⁸ two,²⁴⁹ four,²⁵⁰ five,²⁵¹ and seven years.²⁵² REC Networks advocates a five-year renewable license term. According to REC Networks, granting a short license term would place the burden on LPFM licensees to demonstrate their continuing interest in providing local service.²⁵³ Other commenters contend that LPFM stations should have the same eight year license periods granted to full power stations.²⁵⁴

155. Most commenters argue that all LPFM licenses should be renewable.²⁵⁵ Jeffrey Richman believes that licenses should be renewable because (1) applicants might be deterred if they do not have

²⁴⁸ Comments of Robert W. Federal at 5; Comments of Scott D. Fowler at 4; Comments of John D. Bowker at 16.

²⁴⁹ Comments of Craig F. Amundsen at 1.

²⁵⁰ Comments of Jeffery A. Copeland at 2; Comments of Aaron Read at 14.

²⁵¹ Comments of Jennifer Anne Barrios at 1; Comments of Robert Keves, MD at 1; Comments of REC Networks at 16.

²⁵² Comments of Amherst at 12-13; Comments of NLG at 35; Comments of Jonathan Tesser at 2.

²⁵³ Comments of REC Networks at 16.

²⁵⁴ Comments of Michael Robert Birdsill at 4; Comments of Sunbury Broadcasting Corp. at 2.

²⁵⁵ Comments of Crawford Broadcasting Co. at 7; Comments of Craig F. Amundsen at 1; Comments of John R. Benjamin and Charles Coplien at 3; Comments of Spencer Graddy Clark at 3; Comments of William T. Croghan, Jr. at 10; Comments of Judith Fielder and Nickolaus E. Leggett at 5; Comments of John D. Bowker at 16; Comments of Gary L. Nixon at 2; Comments of Scott D. Fowler at 44; Comments of Warren Michelsen at 6; Comments of Andrew Morris at 13; Comments of Jeffrey S. Richman at 3; Comments of REC Networks at 6; Comments of Douglas E. Smith at 4.

the expectation of renewal; (2) off-air periods between transfers would be confusing to the public; and (3) nonrenewable licenses would be inconsistent with the “renewal expectancy” Congress intended in sections 307(c) and 309(k)(1) of the Act.²⁵⁶ Douglas E. Smith and Warren Michelsen believe that even with renewable licenses, there would be turnover in ownership because, *e.g.*, the leadership of community groups will rotate and individual owners move frequently.²⁵⁷ REC Networks believes that through proper frequency coordination and time-sharing arrangements, many in crowded urban areas would have their turn at the microphone without having to wait several years for a license to expire.²⁵⁸ Commenters also contend that LPFM licensees should have the same renewal expectancy as existing broadcasters.²⁵⁹ On the other hand, Jennifer Anne Barrios and Robert Keves believe LPFM licenses should not be renewable.²⁶⁰

156. Decision. We will provide LP100 and LP10 licensees with the same license terms and renewal expectancy as full-power FM radio stations. Accordingly, licenses will be renewed for a term not to exceed eight years from the date of expiration of the preceding license²⁶¹ and LPFM licenses will be renewed, without consideration of competing applicants, if they have met the renewal standard of Section 309(k)(1) of the Act. Upon considering the comments filed in this proceeding, we find that granting renewable licenses is consistent with the goals we are seeking to advance with this service. Moreover, we believe that nonrenewable licenses would discourage licensees from developing facilities and audiences to the fullest extent possible. We therefore will grant, with one exception described in paragraph 159 below, renewable licenses for LPFM stations.

157. Section 73.1020(a) divides the country into 18 different regions containing one or more states for purposes of establishing synchronized schedules for radio and television licenses.²⁶² Radio station licenses expired under this rule in intervals between October 1, 1995, and August 1, 1998, and those licenses, renewed for eight years, will expire again between September 30, 2003, and July 31, 2006.²⁶³ We consistently grant initial terms for all new broadcast authorizations to fit into this

²⁵⁶ Comments of Jeffrey S. Richman at 3-4.

²⁵⁷ Comments of Douglas E. Smith at 4; Comments of Warren Michelsen at 6.

²⁵⁸ Comments of REC Networks at 16.

²⁵⁹ See Comments of NLG at 35; Comments of John D. Bowker at 16; Comments of Scott D. Fowler at 44. NLG suggests that a renewal preference be given initially to LPFM licensees, but that preference could be lessened after a 10-year period and possibly eliminated after a twenty-year period. NLG further believes that a renewal preference should be given to an LPFM station that has joined a local self-regulatory organization. Comments of NLG at 35.

²⁶⁰ Comments of Jennifer Anne Barrios at 1; Comments of Robert Keves, MD at 1.

²⁶¹ 47 C.F.R. § 73.1020(a). We may, however, issue either an initial or renewed license for a lesser term if we find doing so is in the public interest, convenience, and necessity. *Id.*; see 47 U.S.C. §307(c).

²⁶² Implementation of Section 203 of the Telecommunications Act of 1996 (Broadcast License Terms), Sections 73.1020 and 74.15, MM Docket No. 96-90, *Report and Order*, 13 FCC Rcd 1720, 1727, ¶ 18 (1997).

synchronized schedule, although it means initial terms are usually for a period of less than eight years.

158. We adopt these synchronized schedules for LPFM licenses because maintaining the predictability, administrative efficiencies, public awareness, and fairness inherent in the existing synchronized schedule of license cycles serves the public interest. Accordingly, an initial LPFM license granted within any renewal period set forth in Section 73.1020 of our rules will be assigned the expiration date assigned to those full-power FM stations licensed in the same region during the same licensing cycle.²⁶⁴ Because of the cyclical nature of this process, granting initial full eight-year license terms in the middle of a licensing cycle could undermine the synchronization of the whole process. Like full-power licenses, LPFM licenses may then be renewed for a term not to exceed eight years from the expiration date of the preceding license. This approach will reduce the regulatory burden on LPFM broadcasters by affording them the same maximum license terms now granted other broadcasters, and will correspondingly reduce the associated burdens on the Commission. We see no compelling reason to vary from the term set by Congress for full-power stations. We further note that, while we will authorize eight-year license terms, the public may scrutinize station performance and file complaints with the Commission at any time during the term of an LPFM license.

159. The one exception to this rule pertains to situations where we grant successive license terms under the final tiebreaker procedures. These tiebreaker licenses will not be based on the synchronized licensing cycle of Section 73.1020.²⁶⁵ If applicants were granted last resort tiebreaker licenses conformed to the synchronized schedule, each licensee, depending on where in the renewal cycle we were, might receive authorizations to operate for a very short period of time, *e.g.*, a few months, with no opportunity to renew their license.

160. We will also extend the renewal expectancy provisions of Section 309(k)(1) of the Act to LPFM licensees.²⁶⁶ Providing incumbents with the likelihood of renewal encourages licensees to make investments to ensure quality service.²⁶⁷ Upon receiving an application for renewal of an LPFM license,

²⁶³ Licenses renewed for eight years in Maryland, the District of Columbia, Virginia, and West Virginia will expire on September 30, 2003. 47 C.F.R. §73.1020(a)(1). Licenses renewed for eight years in Delaware and Pennsylvania will expire on July 31, 2006. *Id.* §73.1020(a)(18).

²⁶⁴ Thus, for example, initial applications for licenses in Maryland filed within the current license cycle will expire on September 30, 2003, and initial applications for licenses in Pennsylvania filed within the current license cycle will expire on July 31, 2006. While we anticipate that many applicants will be licensed in Maryland with expiration dates of September 30, 2003, any applicant licensed in Maryland after September 30, 2003, will be assigned an expiration date no later than September 30, 2011. Likewise, any applicant licensed in Pennsylvania after July 31, 2006, will be assigned an expiration date no later than July 31, 2014.

²⁶⁵ See ¶ 149.

²⁶⁶ See 47 U.S.C. § 309(k)(1).

²⁶⁷ See Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process, *Third Further Notice of Inquiry and Notice of Proposed Rule Making*, 4 FCC Rcd 6363, 6364, ¶ 9 (1989) (quoting *Central Florida Enterprises, Inc. v. FCC*, 683 F.2d 503, 507 (D.C. Cir. 1982), *see also Greater Boston Television* (continued....))

we will determine whether the licensee has served the public interest, convenience, and necessity; whether there have been any serious violations of the Act or Commission rules; and whether there have been any serious violations that, taken together, would constitute a pattern of abuse. Only if incumbent LPFM licensees fail to meet these requirements will other applicants be eligible to apply for the same license. As noted, an exception is where the license is held for successive terms as a result of the final tiebreaker procedure. Such licenses will be nonrenewable.

5. Transferability

161. Background. In the *Notice*, we noted that some commenters urged us to restrict the sale of LPFM stations to deter the filing of speculative applications and trafficking in construction permits.²⁶⁸ We stated our belief that, in light of the limits we proposed on ownership of LPFM stations, we did not believe that it was necessary to restrict the sale of any class of LPFM station. We invited commenters to address this issue, including whether restrictions on sales would be advisable if the Commission adopts ownership rules other than those proposed in the *Notice*.

162. Comments. While comments on the transferability of LPFM stations were mixed, the majority of commenters that addressed this issue supported either prohibiting transfers altogether or severely restricting them.²⁶⁹ UCC, et al., and Civil Rights Organizations proposed the adoption of rules prohibiting the sale of an LPFM station held for less than five years.²⁷⁰ Civil Rights Organizations argued that such a restriction would discourage speculators, who could operate even in a noncommercial environment, without deterring committed local broadcasters.²⁷¹ ACLU of Mass. *et al.* argues that permitting transfer of licenses and construction permits will permit the creation of a secondary market where LPFM licenses can be obtained without regard to licensing priorities that favor diversity and localism. Instead, it proposes that if an LPFM licensee decides that it can no longer own and operate its station, the license should be returned to the FCC where it can be reissued in accordance with the criteria adopted by the Commission.²⁷² A few commenters were in favor of permitting transferability of LPFM

Corp. v. FCC, 444 F.2d 841, 858 (D.C. Cir. 1970) (stating that renewal expectancies are provided “to promote security of tenure and to induce efforts and investments, furthering the public interest, that may not be devoted by a licensee without reasonable security”).

²⁶⁸ *Notice*, 14 FCC Rcd at ¶ 86; CRC Petition for Rule Making at 5.

²⁶⁹ *See, e.g.*, Comments of ACLU of Mass. *et al.* at 5-6; Comments of KVOI at 1; Comments of City of Berkeley, CA at 1; Comments of Jennifer Anne Barrios at 2; Comments of Eric Brown at 1; Comments of Mari J. Caro at 1; Comments of Robert Keveess MD at 1; Comments of Miles Ohlrich at 1. John Bowker would permit sale of a license only for an amount equivalent to the depreciated value of the existing plant. Comments of John Bowker at 16. Quinnipiac College would permit the sale of stations only to entities that do not own other commercial stations. Comments of Quinnipiac College at 2.

²⁷⁰ Comments of Civil Rights Organizations at 26; Comments of UCC, et al. at 16. UCC, et al. would permit waiver of the anti-trafficking rule for good cause.

²⁷¹ Comments of UCC, et al. at 16.

²⁷² Comments of ACLU of Mass. *et al.* at 5-6.

stations, arguing generally that owners who have invested in such stations should be able to realize the fair market value of such stations.²⁷³

163. Decision. After careful review of the comments, we have decided to prohibit the transfer of construction permits and licenses for LPFM stations. Contrary to our initial view stated in the *Notice*, we are persuaded that a prohibition on transfers will best promote the Commission's interest in ensuring that spectrum is used for low power operations as soon as possible, without the delay associated with license speculation. We are also persuaded that the goals of this new service, to foster opportunities for new radio broadcast ownership and to promote additional diversity in radio voices and program services, will best be met if unused permits and licenses are returned to the Commission. Given the modest facilities and noncommercial nature of LPFM stations, we do not believe non-transferability will discourage LPFM licensees from serving their listeners.

G. Programming and Service Rules

1. Public Interest Requirements

164. Background. In the *Notice*, we proposed to require LP1000 licensees to adhere to the same Part 73 requirements regarding public interest programming as apply to full-power FM licensees. We noted that this meant that each LP1000 licensee would be required to air programming serving the needs and interests of its community, using its discretion as to how to meet that obligation. We also listed several other rules, such as those regarding the broadcasting of taped, filmed, or recorded material, sponsorship identification, personal attacks, and periodic call sign announcements and sought comment on whether they should apply to LPFM stations. We stated a disinclination, however, to impose public interest programming requirements on LP100 and LP10 licensees, given the size of operations we envisioned and the simplicity we were striving to achieve in this service. We expected that the very nature of LP100 and LP10 would ensure that they served the needs and interests of their communities.

165. Comments. We received few comments on public interest requirements. Some commenters contend that we must apply all of the same basic public interest requirements to LPFM licensees that are applied to full-power broadcasters.²⁷⁴ The Low Power Radio Coalition believes that LPFM licensees must be held to high standards similar to those established for full-power broadcasters.²⁷⁵ UCC, et al., argues that the Commission must require all LPFM broadcasters to comply with the requirements of the public interest standard, as well as the sponsorship identification duties required by section 317 of the Act.²⁷⁶ NAB argues that all FM broadcast stations should be required to follow the same rules and contends that there is no basis on which to distinguish between different classes of stations.²⁷⁷ On the other hand, NLG contends that public interest rules outlined in the *Notice*

²⁷³ See, e.g., Comments of Scott D. Fowler at 45.

²⁷⁴ See Comments of John D. Bowker at 15; Comments of William T. Croghan, Jr. at 9.

²⁷⁵ Comments of Low Power Radio Coalition at 6.

²⁷⁶ Comments of UCC, et al. at 19-21.

²⁷⁷ Comments of NAB at 75-76.

should not be applied to LPFM stations with a 100 watt maximum.²⁷⁸ Similarly, other commenters oppose any requirements for LP100 and LP10 stations, arguing that it would place an unreasonable burden on those stations.²⁷⁹

166. **Decision.** Every broadcast licensee is required to operate its station in the public interest.²⁸⁰ Given the nature of the LPFM service, however, we conclude that certain obligations imposed on full-power radio licensees would be unnecessary if applied to LPFM licensees. We expect that the local nature of this service, coupled with the eligibility and selection criteria we are adopting, will ensure that LPFM licensees will meet the needs and interests of their communities. Thus, for example, consistent with our rules for low power television, we will not adopt a rule requiring LPFM licensees to provide programming responsive to community issues or to maintain a list of issues addressed or specific programs aired.²⁸¹

167. We will, however, apply certain specific rules applicable to all broadcasters to LPFM licensees. First, LPFM operators must, of course, comply with those rules required by statute. Thus, for example, like all broadcasters, LPFM licensees will be expressly prohibited from airing programming that is obscene, and restricted from airing programming that is “indecent” during certain times of the day.²⁸² They must also comply with our sponsorship identification and political programming rules.²⁸³ In addition, we will require LPFM licensees to comply with our rules regarding taped, filmed, or recorded material,²⁸⁴ personal attacks,²⁸⁵ and periodic call sign announcements.²⁸⁶ Violation of any of these rules by an LPFM licensee would be as detrimental to its audience as violation by a full-power broadcaster, and widespread disregard for these rules could outweigh the benefits to the public this service is intended to bring.

2. Locally Originated Programming

168. **Background.** In the *Notice*, we sought comment on whether to impose a minimum local

²⁷⁸ Comments of NLG at 36.

²⁷⁹ Comments of Andrew Morris at 10; Comments of Trident Media at 2; Comments of Gary L. Nixon at 1.

²⁸⁰ See 47 U.S.C. § 309(a).

²⁸¹ See *Report and Order*, BC Docket No. 78-253, 51 RR 2d 476 (1982) (*Low Power Television R&O*).

²⁸² 18 U.S.C. § 1464; 47 C.F.R. § 73.3999 (prohibits broadcasting of indecent material from 6:00 a.m. until 10:00 p.m., hours when children are likely to be in the audience).

²⁸³ 47 U.S.C. § 317; 47 C.F.R. § 73.1212. See ¶ 75 for a discussion of political programming rules.

²⁸⁴ 47 C.F.R. § 73.1208.

²⁸⁵ 47 C.F.R. § 73.1920.

²⁸⁶ 47 C.F.R. § 73.1201.

origination programming requirement on any of the three proposed classes of LPFM service. We opined that listeners benefit from local programming, because it often reflects needs, interests, circumstances, or perspectives that may be unique to that community. We also noted that many of LPFM's initial supporters argued that the Commission's rules should actively promote locally oriented programming by, for instance, limiting the amount of network programming a station could air. We expressed an expectation, however, that a significant amount of programming for LPFM stations would be locally produced as a matter of course. We also asserted that programming does not have to be locally produced to have interest or value to the listeners in a particular locale. Accordingly, we stated that we were inclined to give LP100 and LP10 licensees the same discretion as full-power licensees to determine what mix of local and non-local programming would best serve the community. To promote new broadcast voices, however, we proposed that an LPFM station not be permitted to operate as a translator, retransmitting the programming of a full-power station.

169. Comments. Many commenters favor the adoption of a locally originated programming obligation.²⁸⁷ According to UCC, et al., for example, a locally originated programming requirement would attract applicants that intend to provide a locally oriented service, is a basic element of the Commission's implementation of the public interest standard, and would resemble the duty TV stations have to provide educational and informational programming for children.²⁸⁸ A number of commenters oppose any specific obligations on LPFM licensees regarding locally originated programming.²⁸⁹ Amherst argues, for example, that the best way to prevent LPFM stations from becoming "corporate satellites" is through limits on LPFM license eligibility.²⁹⁰ If any locally originated programming requirements are applied, however, Amherst asserts that those requirements should be modest in scope and narrowly targeted to prevent stations from becoming mere "fronts" for the airing of material

²⁸⁷ Comments of UCC, et al., at 3-4; Comments of William T. Croghan, Jr. at 8 (advocating 50% locally originated programming); Comments of Gregory Caliri at 2 (advocating two-thirds locally originated programming); Comments of NLG at 25-26; Comments of Joseph Crump at 1; Comments of Jason D. Patent at 1 (advocating 75% locally originated programming); see Comments of Bott Broadcasting Co. at 35; Comments of Robert Keves, MD at 1; Comments of Ronnie V. Miller at 9; Comments of Libraries for the Future at 1 (advocating 80% locally originated programming); Comments of Gene Kirby at 1 (advocating 100% locally originated programming).

²⁸⁸ Comments of UCC, et al. at 10-11. NLG considers the Commission's proposal not to impose a local programming requirement a major mistake that could undermine the entire LPFM service. Comments of NLG at 25-26; see Comments of Aaron Read at 10 (arguing that without strict restrictions to ensure local programming, national programmers will obtain LPFM licenses to rebroadcast nationally sourced programming, eliminating any new or local voices). REC Networks suggests that LPFM stations be required to provide at least eight hours of local programming each weekday, but contends that there should be no restrictions between 10:00 p.m. and 7:00 a.m. on weekdays or any time on weekends. Comments of REC Networks at 14-15.

²⁸⁹ See, e.g., Comments of the Alliance for Community Media at 7 (believes local programming should not be mandatory, but suggests that the Commission give "priority points" to applicants based on the amount of public interest programming proposed); Comments of Warren Michelsen at 3 (supports the Commission's proposal to give low-power and LP10 licensees the same discretion as full-power licensees to determine what mix of local and non-local programming will best serve the community); Reply Comments of Kenneth W. Bowles at 16 (argues that local programming should not be required because LPFM is locally oriented by its nature).

²⁹⁰ Comments of Amherst at 57-58.

produced by larger entities.²⁹¹

170. Commenters generally agree that LPFM stations should not be used as translators for retransmitting full-power station programming.²⁹² The Civil Rights Organizations and Gary L. Nixon argue that an LPFM operator should not be permitted to operate as a translator or booster, except where an LPFM station might retransmit another station's programming for the purpose of student training.²⁹³ Nixon also notes that LPFM stations should be prohibited from using any satellite programming.²⁹⁴ UCC, et al. states that the Commission should not allow low power stations to replicate another station's programming because it would turn the purpose of low power radio, to provide local programming, on its head.²⁹⁵

171. Decision. We continue to believe that LPFM licensees' provision of a significant amount of locally originated programming will enhance the success of this service. This is why we are encouraging the provision of locally originated programming by means of a licensing preference.²⁹⁶ However, we also believe that in certain cases, programming need not be locally originated to be responsive to local needs. Therefore, we do not believe it is necessary to impose specific requirements for locally originated programming on LPFM licensees. We believe that the nature of the service, combined with the eligibility criteria and preferences we are adopting, will ensure that LPFM licensees provide locally originated programming or programming that is otherwise responsive to local needs.

172. We do, however, agree with commenters that LPFM stations should not be used for retransmitting, either terrestrially or via satellite, the programming of full-power stations. This would significantly undercut a fundamental basis for the establishment of this service. This prohibition against LPFM stations operating as translators also promotes locally originated programming by eliminating a

²⁹¹ Comments of Amherst at 58-59. For example, Amherst suggests that use of all central source feeds, combined, could be "capped" at 49 percent of programming, or use of any single central source feed could be "capped" at 25 percent of programming. *Id.* Amherst also argues that local content requirements should not apply to any materials that LPFM stations develop and donate or syndicate to each other or larger institutions. According to Amherst, syndication of original material could become a major source of influence or income for LPFM stations, and a way to get innovative, but potentially popular, material to the mainstream. *Id.* at 59. *See also* Comments of the Salida Colorado Radio Club at 3 (opposing regulating locally originated programming, suggesting instead that LPFM stations show a reasonable effort to have at least half of their programming of local origination and that compliance should be reviewed through enforcement actions).

²⁹² Comments of North Cascade Broadcasting at 7; Comments of Gary L. Nixon at 2; Comments of Trident Media at 2; Comments of the Alliance for Community Media at 3; Comments of John D. Bowker at 14.

²⁹³ Comments of Civil Rights Organizations at 26; Comments of Gary L. Nixon at 10.

²⁹⁴ Comments of Gary L. Nixon at 10.

²⁹⁵ Comments of UCC, et al. at 4, n.1.

²⁹⁶ *See* ¶ 144 (mutually exclusive applicants that pledge to provide at least eight hours of locally originated programming will receive one point).

significant avenue for obtaining non-locally originated programming.

3. Political Programming Rules

173. Background. In the *Notice*, we sought comment on the applicability of political programming rules to each class of low power radio service that we might adopt. We explained that sections 312(a)(7) and 315 of the Communications Act, as amended, underlie some of these rules, and each is explicitly applicable to “broadcast stations.” Thus, we lack the discretion not to apply these provisions to any class of LPFM station, regardless of size. We specifically sought comment on how each of these political broadcasting rules should be applied to low-power stations, taking into consideration our statutory mandate.

174. Comments. The few comments that we received on this issue support our tentative conclusion to adopt political programming rules for LPFM stations. UCC, et al. asserts that application of Title III duties to low-power broadcasters is non-discretionary, contending that the Commission must require all low-power broadcasters to comply with specified duties required by Sections 312 and 315 of the Communications Act, as amended.²⁹⁷ REC Networks and John D. Bowker agree that political programming rules should be applied to LPFM services.²⁹⁸

175. Decision. We conclude that we are required by statute to apply the same political programming rules to low-power stations that we apply to full-power stations. There is ample precedent for how the political programming rules apply to noncommercial stations and thus how the rules will apply to LPFM. For example, Section 312(a)(7) of the Communications Act, as amended, requires broadcasters to allow legally qualified candidates for federal office reasonable access to their facilities,²⁹⁹ but because LPFM stations are noncommercial educational facilities, they must provide such access on a free basis.³⁰⁰ Section 315(a) of the Communications Act, as amended, requiring equal opportunities for candidates, will also apply.³⁰¹

²⁹⁷ Comments of UCC, et al. at 19-21; see also Comments of NLG at 36.

²⁹⁸ Comments of REC Networks at 15; Comments of John D. Bowker at 15.

²⁹⁹ Specifically, section 312(a)(7) provides that “[t]he Commission may revoke any station license or construction permit for willful or repeated failure to allow reasonable access to or permit purchase of reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy.” 47 U.S.C. § 312(a)(7); see 47 C.F.R. § 73.1944. This right of access does not apply to candidates for non-federal state or local offices.

³⁰⁰ See 47 C.F.R. § 73.1942(d). While noncommercial broadcasters are prohibited from charging legally qualified candidates for time, they may charge for out-of-pocket expenses.

³⁰¹ Section 315(a) of the Communications Act, as amended, provides that “if any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station.” 47 U.S.C. § 315(a); see 47 C.F.R. § 73.1941. Section 73.1940 of the Commission’s rules defines “legally qualified candidate” as any person who has publicly announced his or her intention to run for nomination or office, is qualified under the applicable local, state, or federal law to hold office for which he or she is a candidate, and has qualified for ballot (continued....)

176. In conformance with the statutory mandate, we will apply the reasonable access and equal opportunities provisions of the statute and the Commission's rules, as well as related policies delineated in prior Commission orders, to LPFM licensees. With respect to reasonable access, the Commission's policy has generally been to defer to the reasonable, good faith judgment of licensees as to what constitutes "reasonable access" under all the circumstances present in a particular case. Noncommercial educational stations, including LPFM stations, however, may not support or oppose any candidate for political office.³⁰² LPFM licensees cannot charge legally qualified candidates for the time used on their stations³⁰³ and no LPFM licensee may discriminate among candidates "in practices, regulations, facilities, or services" or "make or give any preference to any candidate for public office."³⁰⁴ In addition, we will require LPFM licensees to maintain a political file, if needed, to record the requisite particulars. The political file shall be maintained for public inspection at an accessible place in the station's community. Finally, we will resolve any issues involving LPFM licensees on a case-by-case basis to determine whether the licensee is acting within the spirit of the statute and Commission rules and policies on political programming.

4. Station Identification

177. Background. In the Notice, we sought comment on whether to adopt a call sign system that would identify a low power radio station as such. We noted in the *Notice* that a nonstandard (five letter) identifying call sign system was used for the first several years of licensing low power television (LPTV) stations, but that the Commission later allowed LPTV stations to adopt call signs that were like those of full power stations, but were appended with the suffix "-LP."

178. Comments. Commenters are divided over whether it would be in the public interest to employ special call signs that would help identify LPFM stations as low power. Some commenters argue that the use of call signs would help to identify legitimate from illegal stations, or help with the identification of malfunctioning or interfering stations.³⁰⁵ Other commenters feel that a new system of

placement or has otherwise met all the qualifications set forth in the Commission's rules. 47 C.F.R. § 73.1940. In addition, both the statute and the rules narrowly define the term "use" and exclude from the definition candidates' appearances in *bona fide* newscasts, interviews, documentaries, and the on-the-spot coverage of news events. 47 U.S.C. § 315(a)(1)-(4); see 47 C.F.R. § 73.1941(a)(1)-(4). Section 73.1941(b) further provides that "[a]s used in this section and § 73.1942, the term 'use' means a candidate appearance (including by voice or picture) that is not exempt under paragraphs 73.1941(a)(1) through (a)(4) of this section." 47 C.F.R. § 73.1941(b). Licensees have no power of censorship over the material broadcast under the equal opportunity provisions of section 315(a). 47 U.S.C. § 315(a); see 47 C.F.R. § 73.1941.

³⁰² 47 U.S.C. §399; 47 C.F.R. § 73.1930(b); see *FCC v. League of Women Voters of Calif.*, 468 U.S. 364 (1984).

³⁰³ See 47 C.F.R. § 73.1942(d).

³⁰⁴ 47 C.F.R. § 73.1941(e).

³⁰⁵ See, e.g., Comments of William Croghan Jr. at 10; Comments of the Oklahoma Department of Transportation at 4. Some commenters suggest that FM translator call signs or amateur radio operator call signs should be adopted to identify LPFM stations. See, e.g., Comments of Harry W. Pardue at 2; Comments of Douglas E. Smith at 5. See also Comments of John Bowker at 17 (suggesting that a new pattern of call signs is needed, such as the station's FM numerical channel followed by three letters); Comments of Gene Kirby at 2 (suggesting that for (continued...))

call signs for LPFM would be confusing to the public, with little or no compensating public benefit, and suggest that ordinary FM call signs be issued to new LPFM stations.³⁰⁶ Some commenters also argue that the use of call signs for low power broadcasters would not be burdensome to these broadcasters.³⁰⁷

179. Decision. The question raised by the *Notice* was not whether to have call signs for LPFM stations, as apparently misunderstood by some commenters, but whether to include a special designation in the call signs identifying LPFM stations as low power stations. It is imperative for a variety of reasons, including enforcement, convenience to the public, and conformance with international agreements, that all broadcasters, including low power broadcasters, use unique identifiers on the air. We also conclude that it will be extremely beneficial for LPFM operators to build an "identity" and do so in a radio-familiar manner. We were guided on this issue by our experience with low power television. In that service, we require stations' call signs to indicate that they are low power stations, by appending the suffix "-LP" to their four-letter call signs. We thus will require low power stations to positively identify themselves. To avoid confusion for the public and to inform the public of the reasonable expectations they may have for service, the suffix "-LP" will be appended to LPFM station call signs (e.g., "WXYZ-LP"). Such identification will inform the public that a station is a low power station. An LPFM four-letter call sign cannot exactly duplicate the call sign of any other broadcast station and cannot contain the same first four letters as another station's call sign without that station's written consent.³⁰⁸ The Commission's current call sign system will be modified to accommodate low power stations in the manner four letter call signs are provided to low power TV stations.³⁰⁹

5. Operating Hours

180. Background. In the *Notice*, we said we were not inclined to adopt minimum operating hours for LP100 or LP10 stations. However we expressed our concern that spectrum might be underutilized if low power stations were licensed but unused or underused, and asked for comments on this issue.

LP100 and LP10 stations, the only identification needed might be the station's location and ownership, perhaps given at sign on and sign off of the station's programming).

³⁰⁶ See, e.g., Comments of Andrew Morris at 14; Comments of Jeffrey S. Richman at 5.

³⁰⁷ See Comments of Timothy Cramer at 2. See also Comments of Harry W. Pardue at 2 (arguing that using an existing call sign system will reduce administrative burdens).

³⁰⁸ Thus, an LPFM station could not have the call sign WXYZ if a low power television station also had that four letter call sign because both would be identified as WXYZ-LP. If, on the other hand, WXYZ were the call sign of a full-power FM station and was not used by any LPTV station, the LPFM station could, with the consent of the full power station, use the call sign WXYZ. In this case, the two stations would be distinguished because one would be WXYZ-FM and the other would be WXYZ-LP.

³⁰⁹ 47 C.F.R. § 73.3550. LPFM stations shall also be subject to the station identification requirements of 47 C.F.R. § 73.1201. A party cannot request a call sign until a construction permit is issued. As with full power stations, the call letters of stations located east of the Mississippi River will begin with a "W" and west of the Mississippi will begin with a "K."

181. Comments. For LP100 and LP10 services, commenters either argue for: (1) low or no minimum operating hours, because of the cost burden involved in requiring extended hours of operations, or (2) a time sharing arrangement among local broadcasters.³¹⁰ This latter group of commenters argue that time sharing arrangements would reduce the part-time warehousing of spectrum that would occur by a single non full-time licensee, and would permit the entry of additional new voices into the local radio market.³¹¹

182. Decision. In order to ensure an effective utilization of channels, we will impose the same minimum operating hour requirements on LP100 and LP10 FM stations that we currently apply to full-power noncommercial educational FM stations. Under our rules, “[a]ll noncommercial educational FM stations are required to operate at least 36 hours per week, consisting of at least 5 hours of operation per day on at least 6 days of the week; however, stations licensed to educational institutions are not required to operate on Saturday or Sunday”³¹² These requirements are not extensive and should not impose an inordinate burden on LPFM licensees. In cases where individual parties are interested in applying for LP100 and LP10 stations but do not have sufficient programming to meet the minimum operating hour requirements, we encourage those parties to find other applicants with whom they could share the license. To accommodate those situations in which the demand for airtime does not exceed the spectrum availability, however, we will not automatically delete a station that is operating at less than the minimum hours. When another applicant comes forward that wants to utilize the underused channel, that applicant can notify the Commission of the incumbent’s failure to meet minimum hours and demand that the incumbent return its license or agree to a time-sharing arrangement that will accommodate both parties.

6. Main Studio Rule, Public File Rule and Ownership Reporting Requirements

183. Background. In the *Notice*, we invited comment on whether LPFM stations of each class should be subject to the variety of other rules in Part 73 with which full power stations must comply, including, for example, the main studio rule (47 C.F.R. § 73.1125(a)), public file rule (47 C.F.R. §§ 73.3526, 73.3527), and the periodic ownership reporting requirements (47 C.F.R. § 73.3615). Given the purposes and power levels of LP1000 stations, we tentatively concluded that LP1000 licensees should generally meet the Part 73 rules applicable to full power FM stations. However, the *Notice* sought comment on whether sufficient useful purpose would be served in applying each rule to these licensees. We were disinclined to apply these service rules to LP10 stations, and sought comment with regard to the rules appropriate for LP100 stations.

³¹⁰ Comments of Andrew Morris at 12 (suggesting that the Commission could reduce its administrative burdens by imposing no minimum operating hours, and relying instead on the “silent station” statute); Comments of Warren Michelsen at 4 (believing that minimum operating hours discourage greater diversity by compelling stations to fill up broadcast time with canned programming, and by potentially precluding more creative broadcast startups, which may not have sufficient programming or capital to afford the longer required broadcast hours).

³¹¹ See, e.g., Comments of William T. Croghan Jr. at 9; Comments of Mid-America Broadcasting Company, Inc. at 8; Comments of Morris Broadcasting Company of New Jersey, Inc. at 9; Comments of Positive Alternative Radio, Inc. et al. at 14; Comments of University of Dayton at 9.

³¹² See 47 C.F.R. § 73.561.

184. Comments. Comments were divided on this issue. Most broadcasters who commented on this issue agree that LPFM stations should generally follow existing regulations for full-power stations,³¹³ but some note that they should only have minimal day-to-day regulatory requirements because of the difficulty of survival if such stations had to follow the exact rules that full-power stations are required to follow.³¹⁴ Many other commenters state that the Commission should not require LPFM stations to comply with a main studio, public file or ownership reporting requirement, because of the burdens they would impose.³¹⁵

185. Decision. We conclude that we should not impose the main studio, public file,³¹⁶ or ownership reporting requirements on LPFM stations. We believe these requirements would place an undue burden on such small noncommercial educational stations. In addition, we believe that the nature of this service will ensure that LPFM stations are responsive to their communities. This approach is consistent with our treatment of low power television stations.³¹⁷

186. As to equal employment opportunity (EEO) rules, we conclude that all LPFM licensees must comply with the Commission's long-standing prohibition against employment discrimination.³¹⁸ We believe that a finding that any broadcaster has engaged in employment discrimination raises a serious question as to its character qualifications to be a Commission licensee.³¹⁹ In addition to the prohibition against discrimination, the broadcast EEO Rule also includes EEO program requirements.³²⁰ These

³¹³ See, e.g. Comments of NAB at 76; Comments of Buckley Broadcasting, Inc., at 16; Comments of Big City Radio, Inc. at 17; Comments of Barry Broadcasting Company at 4; Comments of Delmarva Broadcasting at 9-10.

³¹⁴ See Comments of Creative Educational Media Corporation, Inc. at 3; Comments of Mid-America Broadcasting Company at 3; Comments of Morris Broadcasting at 3; Comments of Nassau Broadcasting at 3. These commenters propose that all LPFM stations should be required to submit periodic program summary reports so that the FCC as well as the general public can verify the localized performance of all LPFM stations. REC Networks believes that all LPFM stations should maintain a public file which, for LP100 watts or less, could be placed on the internet in lieu of having a public inspection location, since many of these stations may be operated from private residences. Comments of REC Networks at 7.

³¹⁵ See, e.g., Comments of Texas Department of Transportation at 3; Comments of Oklahoma Department of Transportation at 5 (Both believe that the micropower station licensees should be exempted from the main studio rule, the public file rule and periodic ownership reporting requirements). Ronnie Miller argues that we should impose the absolute minimum amount of regulation for smaller stations to allow for experimentation, and Gene Kirby states that LP10 should be as free of unnecessary rules, paperwork, logs, etc., as is practical. Comments of Ronnie Miller at 23; Comments of Gene Kirby at 1.

³¹⁶ As noted above, however, LPFM licensees must maintain a political file. See ¶ 175.

³¹⁷ Report and Order in BC Docket No. 78-253, 51 RR 2d 476 (1982) ("Low Power Television R&O").

³¹⁸ See 47 C.F.R. § 73.2080(a).

³¹⁹ *Bilingual Bicultural Coalition on Mass Media, Inc. v. FCC*, 595 U.S. 621, 628-29 (D.C. Cir. 1978).

³²⁰ See 47 C.F.R. § 73.2080(b) and (c).

requirements are not currently in force.³²¹ In any event, we did not enforce compliance with the EEO program requirements by broadcast stations with fewer than five full-time employees. Because we anticipate that the vast majority of this class of licensees will employ very few (if any) full-time, paid employees, we do not intend to require LPFM licensees to comply with any EEO program requirements we adopt in our pending rulemaking proceeding.

7. Construction Permits

187. Background. In the *Notice*, the Commission proposed an 18-month construction period for LP100 stations and a twelve-month limit for LP10 stations. The shorter construction time limits for LP100 and LP10 stations (relative to the three-year construction period that is allowed to full-power FM stations³²²) were meant to reflect the simpler construction requirements for these facilities. The 18- and 12-month periods also assumed that difficulties with obtaining the requisite construction permits would be minimal.

188. Comments. Many commenters state that the proposed construction periods for LP100 and LP10 stations are reasonable, given the relatively smaller facilities and simpler construction involved with these stations.³²³ Other commenters argue for even shorter construction periods for LP100 and micro-radio services.³²⁴ Some commenters thought that imposing strict construction time limits would help to prevent spectrum hoarding and help encourage the rapid deployment of the spectrum resources.³²⁵

189. Decision. We will adopt an 18-month construction period for both LP10 and LP100 services, and it will be strictly enforced. While we believe that most permittees will be able to and will have ample incentive to construct their low power stations in far less than 18 months, given the relative

³²¹ The United States Court of Appeals for the District of Columbia Circuit held that the EEO program requirements of the broadcast EEO Rule are unconstitutional. *Lutheran Church - Missouri Synod v. FCC*, 141 F.3d 344, *pet. for reh'g denied*, 154 F.3d 487, *pet. for reh'g en banc denied*, 154 F.3d 494 (D.C. Cir. 1998) ("*Lutheran Church*"). The Commission has proposed and requested comment concerning a new broadcast EEO Rule and policies consistent with the D.C. Circuit's decision in *Lutheran Church*. See *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding*, 13 FCC Rcd 23004 (1998).

³²² See Report and Order in MM Dockets Nos. 98-43 and 94-149, FCC 98-281 (released November 25, 1998) ("*Non-Technical Broadcasting Streamlining R&O*"), providing a three year construction period for new radio stations.

³²³ See, e.g., Comments of the Texas Department of Transportation at 5; Comments of the Oklahoma Department of Transportation at 4 (supporting the proposed construction limit).

³²⁴ Comments of REC Networks at 7 (arguing for a 12-month construction period); Comments of the Lawyers Guild at 37 (arguing for construction periods of 10 months and 9 months for LP100 and LP10, respectively, reasoning that "these stations should be fairly inexpensive and relatively easy to put on the air.").

³²⁵ See, e.g., Comments of Andrew Morris at 12 (arguing that a designated construction period helps to guarantee use of the spectrum by a set date.); Comments of Joshua Weiss at 1 (arguing that licensees should be precluded from hoarding construction permits).

technical simplicity of LP100 and LP10 stations, we do not wish to burden applicants who may encounter unforeseen difficulties with a shorter construction period. We recognize that while the facilities themselves will be relatively easy to construct, zoning and permitting processes may, in some cases, delay construction. However, we expect that applicants will have well-considered proposals in this regard and we do not intend to grant extensions to the construction permits.³²⁶ Therefore, to avoid the complications and delays of extension rulings, as well as to encourage well-planned and executed proposals, we have allowed what we consider to be more than ample time for permittees to complete construction and begin operation, and we expect to see many stations in operation long before the allowed 18 months.

8. Emergency Alert System

190. Background. In the *Notice*, we proposed to treat LP1000 facilities like full-power FM stations for the purposes of the Emergency Alert System (EAS). We explained that, in this way, we would expect to avoid having significant numbers of people deprived of this critical information resource. By contrast, because of their extremely small coverage areas and correspondingly sized audiences, as well as their limited resources, we proposed that LP10 stations, if authorized, not be required to participate in the EAS. We sought comment on these proposals and also on how LP100 stations, with their intermediate size and audience reach, should fit into the EAS structure.

191. Comments. Some commenters argue that compliance should not be required for LP100 or LP10 stations because small operations and coverage areas make compliance unnecessary and too expensive;³²⁷ stations other than LP100 and LP10 stations can take on the role of alerting the community to emergencies;³²⁸ the short range and secondary status of LP100 stations make them unsuitable for emergency message propagation;³²⁹ and removing LP100 stations from the air during national emergencies would help prevent interference during such crisis times.³³⁰ Other commenters suggest that EAS be required only under certain circumstances.³³¹ A few commenters provide suggestions on how to

³²⁶ LPFM permittees will be eligible for tolling of the construction period pursuant to our rules and consistent with Section 319(b) of the statute. *See* 47 U.S.C. §319.

³²⁷ *See* Comments of Gene Kirby at 1; Comments of Morris Broadcasting Co. at 9; Comments of Gary L. Nixon at 2, Comments of Stanley L. Scharch at 1; Comments of Creative Educational Media Corp. at 10; Comments of John R. Benjamin and Charles Coplien at 5; Comments of Spencer Graddy Clark at 5.

³²⁸ Comments of the Oklahoma Department of Transportation at 5; Comments of the Texas Department of Transportation at 5.

³²⁹ Comments of Andrew Morris at 13.

³³⁰ Comments of Andrew Morris at 13; Comments of REC Networks at 7.

³³¹ *See, e.g.,* Comments of Ronnie V. Miller at 22 (not opposed to voluntary compliance for LP100 stations); Comments of REC Network at 17 (supports voluntary compliance for LP100 stations); Comments of Robert J. Wertime at 2 (believes EAS should include automatic deference to local FM stations, if not fully implementable at an LPFM station); Comments of Roger P. Doering at 1 (believes that LPFM should shut down in an alert, unless a full power station is disabled); Comments of John A. Crutti, Jr. at 1 (believes that LP100 stations should be exempt from EAS compliance, except where full-power stations are not present in local areas to provide EAS); Comments (continued....)

overcome the expense involved in EAS participation.³³² Finally, Andrew Morris and William T. Croghan, Jr. assert that LP100 stations should not be required to use EAS encoders because these stations only broadcast to listeners, not to EAS participants that would use encoded information.³³³

192. Other commenters, however, stress the importance of participation in EAS by all broadcast stations.³³⁴ NAB and John D. Bowker argue that LP100 stations should not be excluded from EAS system requirements because listeners will be unaware that they will not receive the emergency warnings from LPFM stations that they have come to expect from radio stations.³³⁵ West End Radio asserts that LPFM stations should be required to participate in EAS because Americans who live in remote areas would be put in jeopardy if they cannot receive any kind of emergency alert.³³⁶ Aaron Read argues that the costs of EAS are not too heavy a financial burden (average \$1600), and for an EAS system in general to work, all broadcast services must participate. Read further argues that Congress has mandated participation in EAS for all broadcast services, which would include LPFM stations.³³⁷ Noting that the minimum facility Class A FM station operating at 100 watts must participate in the EAS, Wright Broadcasting argues that exempting LP100 stations from participation is discriminatory.³³⁸

193. Decision. We conclude that LPFM stations should be required to participate in the EAS structure, but in a modified way. Our requirements will balance the cost of compliance, the ability of stations to meet that cost, and the needs of the listening public to be alerted in emergency situations. LPFM licensees will be able to satisfy our EAS requirements if they install and operate Commission-certified decoding equipment, which will alert station personnel to emergency alerts. Once that decoding equipment is installed, station personnel must pass any national emergency audio message on to listeners as prescribed in our rules. As is the case for full service broadcasters, LPFM participation at the state and local levels will be on a voluntary basis.

of Andrew Morris at 13 (same as John A. Crutti, Jr.).

³³² See Comments of Douglas E. Smith at 4-5 (suggests that LPFM could use equipment, which is available at a modest cost (less than \$100), to detect EAS codes originated by the National Weather Service and that it would not be excessively burdensome to require LPFMs to monitor their area's local primary station for EAN, and to go off the air if it is received, returning only after EAT is issued); Comments of Robert Zukowski at 2 (suggests that an economical way for LPFM stations to participate in EAS is to rebroadcast a full power station's EAS messages).

³³³ Comments of Andrew Morris at 13; Comments of William T. Croghan, Jr. at 10.

³³⁴ See Comments of Barry Broadcasting Co. at 4; Comments of Buckley Broadcasting Corp. at 16; Comments of Crawford Broadcasting Co. at 7; Comments of Delmarva at 10; Comments of Sunbury Broadcasting Corp. at 2.

³³⁵ Comments of NAB at 77; Comments of John D. Bowker at 16.

³³⁶ Comments of West End Radio at 1.

³³⁷ Comments of Aaron Read at 15.

³³⁸ Comments of Wright Broadcasting at 10-11.

194. The EAS is composed of several entities, including FM broadcast stations, LPTV stations, and cable systems operating on an organized basis at the national, state, and local levels.³³⁹ The EAS alert is designed to make viewers and listeners aware of emergencies that may affect them so that they may take appropriate protective action or seek additional information.³⁴⁰ Though the arguments of financial hardship for LPFM licensees to implement the EAS are well taken, alert messages are potentially important to all listeners and viewers, and commenters do not persuade us that the LPFM stations should, as a class, be exempted from this important public safety function. We will, however, minimize the cost of effective participation for LPFM licensees. Accordingly, we amend section 11.11(a) to include LPFM stations in the list of the EAS entities. We also amend the Broadcast Station Timetable of section 11.11(a) to set out the requirements for LPFM.

195. While we will require EAS participation, we will exempt LPFM stations from purchasing some of the EAS equipment required for other participants under our rules. In general, EAS equipment must be able to perform the functions described in all of our rules regulating EAS.³⁴¹ However, we relaxed some of these requirements for Class D noncommercial educational FM and LPTV stations.³⁴² Because LPFM stations will also provide service to small audiences, we exempt LPFM stations from the requirement to install and operate encoders. We believe that the cost to LPFM licensees of installing and operating both encoding and decoding equipment outweighs the benefits that these small stations could provide to the public.³⁴³

³³⁹ 47 C.F.R. § 11.11(a).

³⁴⁰ EAS relies on equipment that provides emergency alerts via a digital signaling process. Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, FO Docket Nos. 91-171 and 91-301, *Third Report and Order*, 14 FCC Rcd 1273, 1274, ¶ 2 (1998); see Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, FO Docket Nos. 91-171 and 91-301, *Report and Order and Further Notice of Proposed Rulemaking*, 10 FCC Rcd 1786 (1994) (*EAS First Report and Order*). EAS equipment transmits a message that is generally no longer than two minutes in length and at a minimum, provides the viewer with the reason or event posing a threat, the location that the event may be affecting, the approximate time period that a threat to safety will last, and the originator of the alert message. *Id.* at ¶ 2, n. 4. National level EAS messages and EAS tests must be forwarded to the public upon receipt. EAS participants transmit state and local messages on a voluntary basis. *Id.* at ¶ 2.

³⁴¹ Specifically, EAS equipment must be able to perform the functions described in sections 11.31, 11.32, 11.33, 11.51, 11.52, and 11.61 of our rules.

³⁴² Class D noncommercial educational FM and LPTV stations are not required to install or operate encoders as defined in section 11.32,³⁴² to have equipment capable of generating the EAS codes and Attention Signal specified in section 11.31, or to perform certain parts of EAS tests.

³⁴³ Accordingly, we amend section 11.11(b) to provide that LPFM stations, as defined herein, are not required to comply with section 11.32. Because LPFM stations are not required to install or operate encoders, we amend section 11.51(e) to provide that LPFM stations are not required to have equipment capable of generating the EAS codes and Attention Signal specified in section 11.31. Because we are not requiring LPFM stations to install equipment capable of generating the EAS codes and Attention Signal, we amend the last sentence of section 11.61(a)(1)(v) to require Class D noncommercial educational FM, LPTV, and LPFM stations to transmit only the test script of this monthly test. Monthly tests are required of the EAS header codes, Attention Signal, Test Script and EOM code, but Class D noncommercial educational FM and LPTV stations are only required to transmit the Test Script. In addition, we amend section 11.61(a)(2)(ii)(E)(2)(iii) to provide that Class D noncommercial
(continued....)

196. While we are not requiring LPFM stations to install encoding equipment, all LPFM stations are required to use decoding equipment that notifies the station in case of any emergency. We recognize that there will be costs associated with EAS decoders, but believe the costs are justified. Current Commission-certified integrated encoder/decoder equipment costs \$1,500 or more depending on the options a station wants to install. We note that today's manufacturers only produce certified encoders and decoders as integrated units, as that is the only demand that exists. Noncertified decoding equipment, however, is currently available and is advertised in some places for as little as \$650.³⁴⁴ Thus, it appears that Commission-certified decoding equipment should be available for well under \$1000 and should be able to reach the market in the near future. Accordingly, we will require the use of Commission-certified EAS decoders or decoder/encoders by all LPFM stations when they commence operations. It will be several months before the first LPFM stations are on the air. Given that decoders are already on the market, this should be ample time to obtain Commission certification and make certified units available for purchase. If certified decoder equipment is not available at that time, we can grant a temporary exemption for LPFM stations until such time as it is reasonably available. Once the licensee has installed decoding equipment, if the station is on the air at the time it receives a national emergency alert message, station personnel must pass the information along to listeners.³⁴⁵

197. Finally, we will continue to grant waivers of EAS requirements to broadcasters, including LPFM licensees, on a case-by-case basis in appropriate circumstances upon a sufficient showing of need. As we outlined in the *EAS First Report and Order*, the waiver request must contain at least the following: (1) justification for waiver, with reference to the particular rule sections for which a waiver is sought; (2) information about the financial status of the entity, such as a balance sheet and income statement for up to the previous two years (audited, if possible); (3) the number of other entities that serve the requesting entity's coverage area and that have or are expected to install EAS equipment; and (4) the likelihood (such as proximity or frequency) of hazardous risks to the requesting entity's audience.³⁴⁶

III. CONCLUSION

198. In this *Report and Order*, we set the stage for a new dimension in radio broadcasting, creating additional, affordable outlets for the expression of views and the provision of information and entertainment to local communities. By limiting participants in this service to noncommercial, educational organizations, we hope to ensure that this service will meet needs unmet by the commercial radio service. Through eligibility requirements, selection preference factors, and the relatively small range of LPFM stations, we hope to create a service that will serve the distinct needs of small local

educational FM, LPTV, and LPFM stations are not required to transmit this digital test, but must log receipt. Class D noncommercial educational FM and LPTV stations are not required to transmit weekly tests of the EAS header and EOM codes.

³⁴⁴ Such equipment is used, for instance, by police or fire departments to monitor the Emergency Alert System.

³⁴⁵ Accordingly, we amend section 11.53(a)(3) of our rules to require LPFM stations to disseminate the national audio message to all subscribers if it is received via wire services.

³⁴⁶ *EAS First Report and Order*, 10 FCC Rcd at 1830, ¶ 123.

communities. Mindful of the need to protect the technical integrity of the existing radio service and to preserve its potential transition to digital service, however, we are proceeding cautiously. Accordingly, we are limiting radio stations in the LPFM service to a maximum of 100 watts. We are also maintaining 2nd-adjacent channel protection. Based on our engineers' careful review of the technical data submitted to the Commission, as well as their own studies, we are confident that any risk of interference is small and, on balance, outweighed by the benefits this new service will bring.

ADMINISTRATIVE MATTERS

199. Paperwork Reduction Act Analysis. This *Report and Order* has been analyzed with respect to the Paperwork Reduction Act of 1995, and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act.

200. Regulatory Flexibility Analysis. Pursuant to the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. § 601, the Commission's Final Regulatory Flexibility Analysis for this *Report and Order* is attached as Appendix C.

201. Additional Information. For additional information on this proceeding, please contact Julie Barrie, Policy and Rules Division, Mass Media Bureau, (202) 418-2130.

ORDERING CLAUSES

202. Accordingly, IT IS ORDERED that, pursuant to authority contained in sections 1, 4(i), 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303, Part 73 of the Commission's rules, 47 C.F.R. Part 73, IS AMENDED as set forth in Appendix A below.

203. IT IS FURTHER ORDERED that, the amendments set forth in Appendix A shall be effective 60 days after publication in the Federal Register.

204. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Act Analysis, to the Chief Counsel for the Small Business Administration.

205. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary