

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: February 6, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99-3536 Filed 2-12-99; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 25

[ET Docket No. 98-206; DA 99-284]

Fixed Satellite Service and Terrestrial System in the Ku-Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time for comments.

SUMMARY: This document extends the time to file comments on the Notice of Proposed Rule Making which published in the **Federal Register** of January 12, 1999, (64 FR 1786). Comments on this notice were due February 16, 1999, and reply comments were due on or before March 15, 1999. Pursuant to a request by the Boeing Company, the Commission is extending the time to file comments to afford interested parties the necessary time to coordinate and file substantive comments for the record. On February 5, 1999, the Commission released an Order (DA 99-284) which grants Boeing's "Motion for Extension of Time."

DATES: Comments must be filed on or before March 2, 1999, and reply comments on or before March 29, 1999.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Tom Derenge, Office of Engineering and Technology, (202) 418-2451.

SUPPLEMENTARY INFORMATION: 1. On November 24, 1998, the Commission released a Notice of Proposed Rule Making (NPRM), ET Docket No. 98-206, 64 FR 1786, January 12, 1999. Comments on the NPRM were due on or before February 16, 1999, and reply comments were due on or before March 15, 1999.

2. On February 1, 1999, the Boeing Company ("Boeing") submitted a motion to the Commission to extend the comment and reply comment dates in the above captioned proceeding. Boeing states that it would like to incorporate into their comments detailed technical information being developed by the International Telecommunications

Union, Radiocommunication Bureau, Joint Task Group 4-9-11 ("JTG 4-9-11"). Boeing argues that since a JTG 4-9-11 meeting recently concluded on January 29, 1999, commenters have little more than two weeks to analyze the outputs of the meeting and incorporate them into their comments. Boeing believes that extending the comment and reply comment dates by two weeks would permit parties to engage in a more in depth analysis of the JTG 4-9-11 information.

3. Although the Commission does not routinely grant extensions of time in rule making proceedings, we find that Boeing has demonstrated that providing more time will enable all interested parties to submit additional information that will be materially beneficial to the record in this proceeding. Accordingly, *it is ordered* that the date for filing comments and reply comments in the above captioned proceeding *is extended to March 2, 1999, and March 29, 1999, respectively.*

4. This action is taken pursuant to the authority found in Section 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303; and pursuant to Sections 0.31, 0.241 and 1.46 of the Commission's Rules, 47 CFR 0.31, 0.241 and 1.46.

List of Subjects

47 CFR Part 2

Communications equipment, Radio.

47 CFR Part 25

Communications equipment, Radio, Satellites.

Federal Communications Commission.

Dale N. Hatfield,

Chief, Office of Engineering and Technology.

[FR Doc. 99-3576 Filed 2-12-99; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99-25; FCC 99-6]

Creation of a Low Power Radio Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This *Notice of Proposed Rule Making* proposes to establish rules authorizing the operation of new, low power FM (LPFM) radio stations. It explores the appropriate technical parameters for such a service. It also examines potentially conflicting demands for such a service. In

addressing these issues, we are and will remain mindful of the technical requirements necessary to protect existing radio services and preserve the excellent technical quality of radio service available today, as well as any impact on the future introduction of terrestrial digital audio broadcasting. We hope to receive comment from a wide range of existing and potential users of the FM spectrum regarding the nature and extent of different and possibly conflicting demands for this spectrum (including the development of future terrestrial digital audio services), and technical analysis to assist us in best resolving those conflicts for the benefit of the public.

DATES: Comments must be filed on or before April 12, 1999. Reply comments must be filed on or before May 12, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, Room TW-A306, SW, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room C-1804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov. Alternatively, comments may also be filed by using the Commission's Electronic Comment Filing System (ECFS), via the Internet to <http://www.fcc.gov/e-file/ecfs.html>.

FOR FURTHER INFORMATION CONTACT: Paul Gordon or Bruce Romano, Policy and Rules Division, Mass Media Bureau, (202) 418-2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *NPRM*, FCC 99-6, adopted January 28, 1999 and released February 3, 1999. The full text of this Commission *NPRM* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW-A306), 445 12 St. S.W., Washington, D.C. The complete text of this *Notice* may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. It is also available on the Commission's web page at www.fcc.gov/mmb/prd/lpfm.

Synopsis of Notice of Proposed Rule Making

I. Introduction

1. By this *Notice*, we are proposing to establish rules authorizing the operation of new, low power FM (LPFM) radio stations. In particular, we are proposing to create two classes of low power radio service: a 1000-watt primary service and

a 100-watt secondary service. We also seek comment on whether to establish a third, "microradio" class of low power radio service that would operate in the range of 1 to 10 watts on a secondary basis. These proposals are in response to two petitions for rule making and related comments. We believe that these new LPFM stations would provide a low-cost means of serving urban communities and neighborhoods, as well as populations living in smaller rural towns and communities. In creating these new classes of stations, our goals are to address unmet needs for community-oriented radio broadcasting, foster opportunities for new radio broadcast ownership, and promote additional diversity in radio voices and program services. We are proposing that LPFM stations not be subject to certain technical rules currently applied to other classes of radio service. In particular, we believe that current restrictions on third-adjacent channel operations are not needed for LPFM stations, and we believe it may be possible to disregard second-adjacent channel interference for these stations as well. We are also proposing new technical rules and geographic spacing requirements to ensure that new LPFM stations do not cause interference to existing full service FM radio stations. We are wary of any provisions that might limit the development of future terrestrial digital radio services. The *Notice* also addresses related matters such as service rules, ownership issues, and application processing procedures for LPFM services. We also welcome commenters to bring to our attention any alternatives or additions to our proposals that would encourage community participation and the proliferation of local voices.

II. Service Proposals and Issue Analysis

A. Need for Low Power Radio Service

2. We are concerned that recent consolidation may be having a significant impact on small broadcasters and potential new entrants into the radio broadcasting business by driving up station prices, thereby exacerbating the difficulty of entering the broadcast industry and of surviving as an independent operator. Additionally, we received over 13,000 inquiries in the last year from individuals and groups showing an interest in starting a low power radio station. Furthermore, hundreds of commenters have urged us to create opportunities for low power locally oriented radio service.

3. Accordingly, we seek comment on whether a low power radio service would provide new entrants the ability

to add their voices to the existing mix of political, social, and entertainment programming, and would address special interests shared by residents of geographically compact areas. We are not persuaded by opponents who insist that alternative sources of information and entertainment are available to dissatisfied speakers and listeners, including acquisition of an existing frequency; leased time from full power stations; an internet website; and internet webcasting. Commenters are invited to address these issues.

B. Spectrum Considerations

4. New Spectrum Allocation. We do not intend to create a low power radio service on any spectrum beyond that which is currently allocated for FM use, because to do so would force consumers to purchase new equipment to gain the benefits of the new service.

5. Channels for Low Power Radio. It does not appear possible to designate a particular FM frequency or frequencies for one or more low power services. No single frequency is available that would protect existing radio service throughout the country, and there does not appear to be any particular segment of the FM spectrum that is generally more available for LPFM operation and to which we could accordingly restrict low power radio service, but we request comment on this assessment. We do not propose to authorize low power radio use in the AM radio band. The interference potential and present congestion in the AM band would make it a poor choice for a new radio service, and the propagation characteristics of AM signals could exacerbate the interference potential of low power stations. We seek comment on these positions.

6. Noncommercial Designation. 47 CFR 73.501 currently restricts the use of FM channels 201–220 (88–92 MHz) to noncommercial educational broadcasting. Pursuant to § 73.503(a) of our rules, 47 CFR 73.503, a noncommercial educational FM broadcast station will be licensed only to a nonprofit educational organization and upon showing that the station will be used for the broadcast of noncommercial educational programming. Accordingly, absent a change in our rules, only those noncommercial entities that meet these requirements would be eligible to apply for and operate LPFM stations in this part of the band, and all operations would have to be strictly noncommercial.

7. We seek comment on whether to continue the noncommercial educational channel reservation with

respect to any new LPFM stations that would have a preclusive effect on the operation of full power stations in the reserved band, such as the primary low power stations discussed below, and on whether to extend a parallel reservation to any secondary low power or microradio stations that we might authorize on channels 201–220. Commenters should also address whether any or all low power (and microradio) services should be limited to noncommercial operation throughout the band, and whether eligibility should correspondingly be restricted to those who would qualify as noncommercial licensees under our current rules.

C. Technical Overview of LPFM Services

8. To accommodate the different visions and service demands for low power radio, we propose two distinct classes of service: (1) a primary LPFM service class with an ERP limit of 1,000 watts (designated "LP1000") and (2) a secondary class with an ERP limit of 100 watts (designated "LP100"). We also seek comment on the advisability of establishing a very low power secondary "microradio" service with ERP limit of one to ten watts.

1. 1000-Watt Primary Service ("LP1000")

9. We propose LP1000 stations that would operate at a maximum effective radiated power ("ERP") of 1000 watts at an antenna height above average terrain ("HAAT") of 60 meters (197 feet), and we propose to protect the maximum 1 mV/m (60 dBu) signal contour of LP1000 stations by minimum separation distances. (60 dBu is the protected contour for Class A stations, the next highest class of FM station.) This would provide for a minimum separation of 65 km (40 miles) between LP1000 stations on the same channel.

10. The proposed power/height combination would produce a 60 dBu signal contour at a distance of 14.2 kilometers (8.8 miles) from the station, or approximately one half the distance to the protected 60 dBu contour of a Class A station using maximum facilities. We ask whether the type of service envisioned for LP1000 stations could be met with lower power levels and/or antenna heights. We believe there should also be a lower ERP limit in the interest of efficient use of the radio spectrum. Therefore, we propose a minimum ERP of 500 watts (60 dBu signal at 12 km/7.5 miles). We ask whether different levels would be more appropriate either in general, or in specific circumstances such as to meet unique distance separation requirements or in order to

accommodate a negotiated settlement agreement.

11. Primary stations operating in the FM service are required to protect all other primary stations. We propose to extend such primary status to LP1000 stations, as secondary status might discourage potential new entrants from investing their time and money into this service, thereby frustrating its purpose.

12. These stations would operate under the majority of the service rules and obligations applicable to primary stations generally. As primary stations, LP1000 stations would be required to give and receive co-channel, first-adjacent channel, and IF interference protection equivalent to the protection levels other primary FM stations provide each other. Second- and third-adjacent channel protections are further discussed below. Likewise, new and modified facilities of existing classes of FM stations would be required to give co-channel, first-adjacent channel, and IF interference protection to LP1000 stations equivalent to the protection that they provide to each other. We propose that LP1000 stations protect other LP1000 stations on the same channel and first-adjacent channel, and we invite comment on whether these stations should have to protect each other's IF frequencies; *i.e.*, for FM channels separated by 53 or 54 channels.

13. We ask in what manner secondary FM translator and booster stations should protect LP1000 stations, and whether the current scheme for translator and booster protection of FM stations should be extended to protect LP1000 stations, including existing FM translator and booster stations. We also ask whether to prohibit the establishment of any translator or booster stations for use in conjunction with LP1000 stations, given our desire to maximize ownership and service opportunities for locally owned LPFM stations.

2. 100-Watt Secondary Service ("LP100")

14. The 100-watt class would be intended to meet the demand of people who would like to broadcast affordably to communities of moderate size (whether standing alone in rural areas or as part of a larger urban area). We propose secondary stations at maximum facilities of 100 watts ERP and 30 meters (98 feet) HAAT, to produce a 1 mV/m (60 dBu) signal contour at a distance of 5.6 kilometers (3.5 miles) from the station, for economical station construction. We propose a minimum LP100 ERP of 50 watts (60 dBu signal at 4.8 km/3 miles). We do not propose

a minimum HAAT for LP100 stations. We also propose lesser operating and service requirements, see Section G., below, to compensate for the more limited service area of LP100 stations. We invite comment on these and other options to promote an affordable community broadcasting service.

15. We propose that LP100 stations would operate on a secondary basis with respect to all primary radio stations, including LP1000 stations. They would not be permitted to cause interference within the protected service contours of existing and future primary stations, nor would they be protected from present or future interference from these stations. LP100 stations would provide co-channel, first-adjacent channel, and IF interference protection to the existing FM station classes, and co-channel and first-adjacent channel protection to LP1000 stations. We invite comment on whether LP100 stations should also provide IF protection to LP1000 stations. By proposing secondary status for LP100 stations, we believe we could authorize more of these stations with less impact on present and future primary broadcast services.

16. We seek comment on whether new LP1000 stations should be required to protect existing co-channel and 1st-adjacent channel LP100 stations. In commenting on this issue, commenters should address the likely cost differences between LP1000 and LP100 stations, including costs of station construction and operation. We also seek comment on whether LP100 stations should be permitted to select channels without regard to interference received from other stations. Preliminary staff analysis suggests that many more LP100 stations could operate if these stations were permitted to apply for channels for which up to 10% of the area within the 60 dBu contour would be predicted to receive interference. We invite comment on our technical proposals.

17. We also seek comment on the likely impact of LP100 stations on FM translator and booster stations, and whether LP100 stations should be primary with respect to FM translators and boosters, which do not originate programming. To promote localism, should we prohibit translator or booster rebroadcasts of the programming of LP100 stations?

3. 1–10 Watt Secondary "Microradio" Service

18. We seek comment on the creation of a third class of LPFM service, intended to allow an individual or group of people with very limited

means to construct a broadcast facility to reach listeners within the confines of a very localized setting. This service would operate with a maximum antenna height of 30 meters HAAT (and no minimum HAAT) and ERP levels in the range of one to ten watts, for a 1 mV/m (60 dBu) signal contour at distances of about 1.8 kilometers to 3.2 kilometers (1–2 miles). We seek comment on whether such facilities could satisfy some of the demand that has been expressed for very inexpensive community radio services, particularly in places where LP100 stations could not be located due to interference concerns or financial constraints.

19. If we adopt a microradio service, we propose to have an FCC transmitter certification requirement. We are vitally concerned that such stations meet transmitter out-of-channel emission limits and other standards related to interference protection of stations on adjacent channels.

20. If we were to establish a microradio class, we would envision it as being secondary to all other FM radio services, including LP100 stations, and thus required to protect all existing and future primary stations, as well as FM translator and boosters, against co-channel and 1st-adjacent channel interference, and would not receive protection from these stations. While a single station operating from 1 to 10 watts ERP may not pose a serious threat for 2nd- or 3rd-adjacent channel or IF interference, where the interference range might extend only a few hundred feet, we are concerned about uncertain effects of the combined interference potential of possibly many such stations operating on the same channel in the same general area, and we seek comment in this regard. Also, if we adopt a microradio stations class, should such stations be required to protect each other against interference?

D. Interference Protection Criteria

21. *Minimum Distance Separations Between Stations.* We believe minimum distance separations between stations may be the best practical means of governing interference to and from low power radio stations, due to the number of stations we anticipate and the effective simplicity of such a service. Appendix B of the Notice of Proposed Rule Making presents several tables which specify minimum distance separations for the LPFM classes described above, including an explanation of how these distances were determined. We seek comment on our proposed use of minimum distance separations and, in particular, on whether the specific values tabulated in

Appendix B of the Notice are appropriate for the different types of interference protections. We invite comment on these issues, including the effectiveness of alternative approaches for interference protection.

22. Types of Interference Protection Standards. We propose to protect stations operating on the same channel or on a 1st-adjacent channel from interference caused by LPFM facilities, and no commenter disagrees. At issue is the need to protect stations operating on the 2nd- and 3rd-adjacent channels with respect to LPFM stations. Commenters supporting LPFM services generally oppose any requirements for 2nd- or 3rd-adjacent channel protections, contending such interference from low power stations would be, at most, minimal. Other commenters believe these protections should be retained to prevent interference and/or protect future digital terrestrial radio service. As noted below and discussed in greater detail in the Notice, these protections would limit substantially the number of channels available for low power radio generally and could preclude altogether the introduction of LPFM service in mid-sized and large cities.

23. Third-Adjacent Channel Protection. We believe that not requiring 3rd adjacent protection to or from any of the contemplated classes of LPFM station would entail, at worst, little risk of interference to existing radio service. Areas of potential interference would be very small and occur only in the immediate vicinity of the low power transmission facility. Also we note that in 1997, we eliminated the 3rd-adjacent channel protection for full power "grandfathered short spaced stations," including stations that operate at substantially higher power levels than LP1000 stations. We welcome comment on this position.

24. Second-Adjacent Channel Protection Standards. FM radio stations protect other stations operating on the 2nd-adjacent channel where the frequency separation is 400 kHz. In the case of grandfathered short-spaced FM stations, we did not receive any interference complaints as a result of such modifications during the period in which they were able to modify facilities without regard to 2nd- and 3rd-adjacent channel spacing (1964-1987). Similarly, in the noncommercial service, we have been willing to accept small amounts of potential second- and third-adjacent channel interference where such interference is counterbalanced by substantial service gains. Staff analysis suggests that the current 2nd-adjacent protection standards would be a substantially

larger impediment to LPFM service than the 3rd-adjacent standard, especially in large and medium-size cities. We ask commenters to assess the level of risk of increased interference to stations in existing FM services that would result from permitting LPFM stations to locate without regard to 2nd-adjacent channel spacing for this service. The low ERP levels proposed for LPFM stations (especially LP100 stations), together with a tight spectral emission mask for such stations and our proposed requirement to certify transmitters, should significantly reduce the potential for harmful interference to existing service, even if 2nd-adjacent channel interference protections are not adopted. We also seek comment on the current state of receiver technology and the ability of receivers to operate satisfactorily in the absence of 2nd-adjacent channel protection.

25. It is also important to take into consideration the implications of 2nd-adjacent channel protection for the possible conversion of existing analog radio services to a digital mode. While the Commission has yet to formally advance any specific proposals, it has already expressed its support for a conversion to digital radio. One specific proposal was recently submitted in a rule making petition (RM-9395) filed by USA Digital Radio Partners, L.P. ("USADR"), a terrestrial digital radio proponent of a technology that uses an in-band-on-channel ("IBOC") technology, in which an FM radio station's analog and digital signals would share portions of the same channel. In the existing radio environment, USADR suggests that 2nd-adjacent channel interference from current analog FM signals would not pose an interference threat to its IBOC signal.

26. We are concerned that our understanding of future IBOC systems is preliminary and that we may not be fully aware of any negative impact or restrictions that authorization of low power radio service would have on the transition to a digital IBOC technology for FM stations, and are particularly interested in the views of digital radio designers and manufacturers. We note that, as secondary services, LP100 and microradio stations would not be permitted to interfere with future digital radio stations within their protected service areas.

27. We accordingly seek comment on appropriate interference standards for the LPFM service. A staff study, attached to the Notice as Appendix D, demonstrates that if LPFM stations are required to comply with current interference restrictions, there will be

few or no licenses available in most major markets. This study shows that we measurably increase the opportunity to engineer in LPFM stations if third-adjacent channel protection standards are eliminated and dramatically increase such opportunities if second-adjacent channel standards are not considered.

E. LPFM Emissions and Bandwidth

28. We believe that the extent to which LPFM stations would degrade FM radio service on the 2nd-adjacent channel would be considerably limited by their lower ERP and HAAT levels. In addition, we seek other technical means for further reducing this interference potential. We could restrict out-of-channel emissions by establishing a strict spectral emission mask and/or by reducing the transmission bandwidth for LPFM stations. We also ask whether a modulation monitor should be required or, alternatively, whether transmitters should be certified with built-in modulation limits.

29. **Emission Limits.** Outside of their assigned channels, the emissions of FM radio stations must be attenuated to specific levels. This emission mask ensures that FM broadcast emissions are reasonably confined within the 200 kHz channel width. The current emission mask requires a minimum attenuation of 35 dB below the level of the unmodulated carrier for emissions extending over the second-adjacent channel. We invite comment on the extent to which an increased emission attenuation requirement would reduce the potential for 2nd-adjacent channel interference, assuming no 2nd-adjacent channel spacing requirements. By how much would this attenuation have to be increased in this regard? 10 dB? 20 dB? What would be the consequences of a more restrictive emissions mask for LPFM stations? For example, at what point would tighter emission limits become cost prohibitive? Based on what is known about IBOC technology, could a strict emission mask for LPFM stations significantly reduce the potential for interference to IBOC signals, presuming we did not impose 2nd-adjacent channel spacing requirements on LPFM stations?

30. **Bandwidth Limits.** FM broadcast channels have a bandwidth of 200 kHz, and the frequency modulated ("FM") signal in each channel swings in frequency from the center frequency toward the channel edges, with its radiated power envelope shaped such that virtually all of the energy of the signal is contained within the channel. The potential for interference could be further reduced if LPFM stations

operated with a reduced bandwidth, creating additional frequency separation to adjacent channels, and we seek comment on its effectiveness as an alternative means of interference protection, particularly with regard to 2nd-adjacent channels. What bandwidth reduction would best serve this purpose?

31. We inquire about the operational effects of reduced bandwidth on LPFM stations. Would LPFM signals still be received by existing radios; for example, car radios, home stereo systems, and boom boxes? A narrowed channel bandwidth could restrict or preclude the use of baseband subcarriers by LPFM operators. Would prospective LPFM operators be willing to sacrifice the use of subcarriers in return for the ability to broadcast a narrow band radio signal? Could the loss of LPFM subcarrier services such as those typically provided by full power FM stations be detrimental to the public? We seek comment on the optimal bandwidth that would strike the right balance between facilitating a larger number of potential stations and optimizing the services that could be offered by those stations. Commenters should address the specific stereophonic sound transmission standards which would be appropriate for a reduced channel bandwidth. Establishing a reduced channel bandwidth for LPFM could necessitate the development and manufacture of new lines of transmitting equipment, at an unknown cost, and reduce the availability of transmitters for LPFM stations, especially used transmitters designed for a 200 kHz bandwidth. We seek comment on these matters and, generally, on whether any adverse effects of LPFM operations on a reduced channel bandwidth could outweigh the increased channel availability that could result.

F. Ownership and Eligibility

32. *Local and Cross Ownership.* We see the increased opportunity for entry, enhanced diversity, and new program services as the principal benefits of a new low power service. Accordingly, we propose not to permit a person or entity with an attributable interest in a full power broadcast station to have any ownership interest in any LPFM (or microradio) station in any market, and to prohibit joint sales agreements, time brokerage agreements, local marketing or management agreements, and similar arrangements between full power broadcasters and low power radio entities. We seek comment on whether we should permit AM licensees to file applications contingent on the divestiture of their AM station. We also

propose to limit multiple ownership by prohibiting any individual or entity from owning more than one LPFM (or microradio) station in the same community. We seek comment on the appropriate definition of "market" or "community" for purposes of the restriction proposed here, as well as on what other interests or relationships (if any) should be attributable in the LPFM context.

33. We seek comment on whether the proposed cross-ownership restriction would unnecessarily prevent individuals and entities with valuable broadcast experience from contributing to the success of the service, or is necessary in order to keep the service from being compromised or subsumed by existing stakeholders. Commenters should also address the alternative of permitting individuals and entities with attributable involvement in broadcasting to establish LPFM (or microradio) stations in communities where they do not have an attributable interest in a broadcast station. We also seek comment on whether the cross-ownership restriction should be extended to prevent ownership by newspapers, cable systems, or other mass media.

34. We are cognizant of the provisions of the Telecommunications Act of 1996 which permit significant local multiple ownership of existing full power stations. We tentatively believe, however, that those provisions would not apply to a service that did not exist in 1996. We also tentatively believe that Congress's intent, to enhance commercial efficiencies in the radio broadcast industry, does not sufficiently apply to the new classes of service we are contemplating.

35. *National Ownership.* We seek comment on whether a limit of five or ten stations nationally would provide a reasonable opportunity to attain efficiencies of operation while preserving the availability of these stations to a wide range of new applicants. We seek comment on the provisions of the 1996 Act which eliminate national ownership restrictions for full power radio service.

36. *Residency Requirements.* We do not propose to establish a local residency for any LPFM stations, and we do not propose to require that owners be involved in day-to-day management of the station. We have long recognized that full power stations require neither local residency nor integration between ownership and management to assess and address local needs and interests. Such a restriction would also frustrate any attempt at achieving certain efficiencies from

national multiple ownership long recognized as beneficial for full-power stations. Additionally, because the service areas for all stations will be relatively small, a potential new entrant may hold residency in a location where no LP1000 channels can be found, so that we might frustrate one of the significant potentials of LP1000 stations with such a requirement. Moreover, we expect the nature of the service provided would attract primarily local or nearby residents in any event. We also note the probable limitations on our discretion to adopt an integration requirement. See *Bechtel v. FCC*, 957 F.2d 873 (D.C. Cir. 1992); see also *Bechtel v. FCC*, 10 F.3d 875 (D.C. Cir. 1993).

37. *Character Qualifications and Unauthorized Broadcasters.* We propose to apply the same standards for character qualifications requirements to all LPFM broadcasters as we do to full power broadcasters. We see no reason to distinguish between LPFM (or microradio) and other broadcast licensees for this purpose. Commenters believing otherwise are invited to explain the rationale for any distinction.

38. We note how this issue relates to the particular issue of previously and currently unlicensed operators. Unlicensed radio operators not only violate the longstanding statutory prohibition against unlicensed broadcasting and our present rules on unlicensed broadcasting, but they also use equipment of unknown technical integrity. Such illegal radio transmissions raise a particular concern because of the potential for harmful interference to authorized radio operations, including public safety communications and aircraft frequencies.

39. The Commission has repeatedly urged all unlicensed radio operators to cease broadcasting. When they have not, we have filed complaints in federal district courts to shut them down by seeking: (1) injunctive relief pursuant to 47 U.S.C. 401; (2) seizure and forfeiture of the radio station equipment pursuant to 47 U.S.C. 510; (3) monetary forfeitures pursuant to 47 U.S.C. 503; and/or (4) criminal penalties pursuant to 47 U.S.C. 501. In addition, we have issued cease and desist orders pursuant to 47 U.S.C. 312 to a number of unlicensed broadcasters. Nevertheless, despite repeated warnings by Commission officials and the Commission's successes in federal district court litigation, some unlicensed broadcasters have persisted in their unlawful activity.

40. We are concerned with misconduct which demonstrates the

proclivity of an applicant or licensee to deal truthfully with the Commission and to comply with our rules and policies. Parties who persist in unlawful operation after the Commission has taken any of these enforcement actions could be deemed per se unqualified, and we seek comment as to the eligibility of such parties for a license in any new radio service. We seek comment on whether there are circumstances under which such a party could be considered rehabilitated. The reliability as licensees of parties who may have illegally operated for a time but have ceased operation after being advised of an enforcement action, however, is not necessarily as suspect. We seek comment on the propriety of accepting as licensees of low power (or microradio) licenses parties who may have broadcast illegally but have promptly ceased operation when advised by the Commission to do so, or who voluntarily cease operations within ten days of the publication of this summary in the **Federal Register**.

G. Service Characteristics

41. *Local Programming.* We seek comment on whether to impose a minimum local origination requirement on any of the three proposed classes of LPFM service. We are inclined to give low power (and microradio) licensees the same discretion as full-power licensees to determine what mix of local and nonlocal programming will best serve the community. However, in order to promote new broadcast voices, we propose that an LPFM station not be permitted to operate as a translator, retransmitting the programming of a full-power station.

42. *Public Interest Programming Requirements.* Because they would be primary stations with potentially substantial coverage areas, we propose to require LP1000 licensees to adhere to the same Part 73 requirements regarding public interest broadcasting as apply to full power FM licensees. We propose that an LP1000 licensee's service obligations pertain to those listeners within its predicted 1 mV/m signal contour in the same way that full power radio station must serve the listeners in its community of license. We expect the very nature of LP100 and microradio stations will ensure that they serve the public. Therefore, we are disinclined to put the burdens of complying with specific programming requirements on these licensees, particularly given the size of their stations and the simplicity we are striving for in this service. We seek comment on these issues.

43. *Other Service Rules.* We also request 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 CFR 73.1125(a)), public file rule (47 CFR 73.3526, 73.3527), and the periodic ownership reporting requirements (47 CFR 73.3615). Given the purposes and power levels of LP1000 stations, we tentatively conclude that LP1000 licensees should generally meet the Part 73 rules applicable to full power FM stations, and we seek comment regarding any individual rules that should not be applied. We would be disinclined to apply these service rules to microradio stations, and we particularly seek comment with regard to the rules appropriate for LP100 stations. Where a rule should not apply to a particular class of service, commenters should analyze the characteristics of that service that warrant disparate treatment for the purposes of that rule. We also seek comment on the applicability of the various political programming rules to each class of low power service we might adopt, taking into consideration our statutory mandate.

44. We also propose to treat low power radio stations like full power stations with respect to protection against exposure to radiofrequency radiation. We invite comment on this matter, and specifically on whether and how we should treat LP100 stations differently from LP1000 stations and, if so, why. We also seek comment on how our environmental rules should apply to microradio stations, if this low power radio class is adopted.

45. *Operating Hours.* Because we intend LP1000 stations to help new entrants eventually participate in the full power radio industry, and because these stations may be able to compete with full power stations, we propose to require them to maintain the same minimum hours of operation as are required of the lowest class of full-power stations: generally two thirds of their authorized hours between 6 a.m. and midnight. With respect to LP100 and microradio stations, however, a combination of their lesser spectrum utilization, the nature of the anticipated licensees and their services, and practical enforcement concerns suggests at this time that a minimum operating schedule should not be established unless and until experience shows it to be necessary. Such a determination could also be affected by whether we designate these as secondary services.

46. *Construction, License Terms, Sales, and Renewals.* We initially believe that LP1000 stations should have the same construction period

(three years), and restriction on extensions, as full-power radio stations. We believe that LP100 and microradio stations should be able to be constructed in much less time and propose an eighteen-month construction limit for LP100 stations and a twelve-month limit for microradio stations. Also, we seek comment on whether to prohibit the transfer of low power radio construction permits.

47. We propose that LP1000 stations follow the Part 73 rules applicable to full-power radio stations with regard to the length of their license terms and renewal procedures. However, we ask if there is some regard in which their renewal process could be further simplified appropriate to their status and the nature of their service, consistent with statutory requirements. If there is little specific regulation for LP100 and microradio stations, we query how often and how closely we should actively monitor their performance, within the parameters of our statutory responsibility (47 U.S.C. 307(a)).

48. We are open to comment on whether LP100 and microradio stations should be authorized for finite non-renewable periods, such as five or eight years, so that others may eventually take their turns at the microphone. Making broadcast outlets available to more speakers is a fundamental premise of this rule making effort, and we do not expect that such a limitation would discourage the very modest investment required to build such a station, particularly if the assets would be readily transferable. We also seek comment on whether nonrenewable licenses would contravene statutory provisions providing for a "renewal expectancy" for broadcast stations in Sections 309(k)(1) of the Communications Act of 1934, and the renewal provisions of Section 307(c). We question whether these provisions direct the Commission to accept renewal applications for all broadcast services, or instead set the standards for the Commission to follow when it chooses to have renewable licenses.

49. *Emergency Alert System.* Since we expect LP1000 facilities to reach a significant number of people, we propose to treat them like full power FM stations for the purposes of the Emergency Alert System (EAS). By contrast, due to their extremely small coverage areas and probably very small audiences, as well as their limited resources, we propose that microradio stations not be required to participate in the EAS. We request comment on these proposals and on how LP100 stations, with their intermediate size and

audience reach, should fit into the EAS structure.

50. *Station Identification.* We ask commenters whether we should adopt a call sign system that would identify a low power radio station as such. Commenters should explain whether listeners benefit by having an LPFM station's status identified through its call sign.

51. *Inspection by the Commission and Compliance with its Rules.* As with full power broadcast stations, we propose that all LPFM stations would be made available for inspection by Commission representatives at any time during their business hours or at any time they are in operation. Our rules provide for the Commission to immediately shut down FM translator and booster stations, which are secondary, if they cause any actual impermissible interference. We seek comment on whether similar provisions should apply to LP100 and microradio stations if authorized as secondary services.

H. Applications

52. *Electronic Filing.* We propose to require that LPFM and microradio applications be filed electronically. Without electronic filing, the Commission lacks the resources to promptly accomplish the necessary data entry for hundreds or thousands of LPFM (and, possibly, microradio) applications.

53. We seek information from commenters regarding the experiences in other services which have adopted electronic filing, particularly the availability of internet access for electronic filing and the reliability of the process, and their view of the relevance of that experience to what we have proposed here and the likely applicants for LPFM channels.

54. We may be able to develop a system whereby the application could first be analyzed against existing facilities and, perhaps, even against previously filed applications, and thus acceptable for filing based on current data. If we use a window filing system for low power applications, the system could allow an applicant to avoid submitting a conflicting application and thus avoid mutual exclusivity and the delay which resolving such exclusivity might entail. The filing system could also be designed to assist applicants in determining HAAT or appropriate derating of permissible transmit power. Parties wishing to operate LPFM (or microradio) facilities would benefit substantially, and the public would receive service far earlier than it would otherwise.

55. *Filing Windows/Mutual Exclusivity.* We propose to adopt a processing system with short windows of only a few days each for the filing of applications. We ask whether this would have advantages over longer windows and over a first-come, first-serve procedure. We also request comment on the optimal duration of any window that might be adopted. We expect that short filing windows would lessen the occurrence of mutually exclusive applications and speed service to the public. We are concerned, however, about whether short filing windows would result in a flood of applications in a short period that would be so great as to overwhelm any filing system we might be reasonably able to devise.

56. We note that electronic filing might give us the capacity to ascertain the precise sequence in which applications are submitted by different parties. This would allow us to use a first-come, first-serve filing system, thereby preventing the accumulation of numerous mutually exclusive applications. Such a process might avoid imposing a considerable burden and expense on the Commission and the applicants, and very greatly speed the initiation of new service. However, such a system may have costs, limitations, and inequities that might be avoided by the use of filing windows. Our consideration of this matter would include our statutory "obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings." 47 USC 309(j)(6)(E).

57. *Resolving Mutually Exclusive Applications.* We tentatively conclude that auctions would be required if mutually exclusive applications for commercial LPFM facilities were filed. See 47 USC 309(j). Commenters are welcome to address whether LPFM stations could be excluded from the auctions requirement of Section 309(j) consistent with legislative intent.

58. We seek comment on alternatives or modifications to the auction procedure which could promote localism and community involvement by low power and microradio stations. The Auctions Order, 63 FR 48615 (Sep. 11, 1998), sets forth new filing requirements for broadcast stations which replace the previous filing procedures with a specific time period, or auction window, during which all applicants seeking to participate in an auction must file their applications. Prior to any broadcast auction, we will

release an initial public notice announcing an upcoming auction and specifying when the filing window will open and how long it will remain open. Initially, prospective bidders will electronically file a short-form application, along with any engineering data necessary to determine mutual exclusivity in a particular service. Once the auction is completed, a long-form application will be filed. We seek comment on the extent to which these procedures are appropriate for LPFM.

59. Licenses for noncommercial stations are specifically exempted from auction by the statute. We seek comment on the appropriate selection methodology for applications for such channels. We have the authority to resolve mutually exclusive noncommercial broadcast applications by lottery. In a *Further Notice of Proposed Rule Making* in MM Docket No. 95-31, 63 FR 58358 (Oct. 30, 1998), we explored possible selection criteria and procedures for noncommercial educational applicants for full-power FM service, including use of lotteries or of a point system, and commenters are invited to address the issues raised in that *Further Notice*. Commenters should provide a rationale for disparate treatment of full-power and low power applicants.

III. Administrative Matters

60. *Paperwork Reduction Act of 1995 Analysis.* This Notice proposes the creation of a new, low power FM radio broadcast service. Implementation of this service (e.g., issuing construction permits, granting license assignment applications) may involve an information collection requirement. We estimate that at least several hundred parties may apply to construct LPFM facilities, and we may in the future receive numerous license renewal and sales applications. In addition, depending on the rules ultimately adopted, at least some licensees may be required to complete several forms that full power radio broadcasters submit, such as Forms 323 and 323-E (Ownership).

61. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget ("OMB") to take this opportunity to comment on the information collection that might be required, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on this Notice (i.e., April 12, 1999); OMB comments are also due April 12, 1999. Comments should address: (a) whether the proposed collection of

information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room C-1804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, DC 20503 or via the internet to fain_t@al.eop.gov.

62. *Filing of Comments and Reply Comments.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 12, 1999, and reply comments on or before May 12, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

63. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

64. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, TW-A306, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. The Mass Media Bureau contacts for this proceeding are Paul Gordon and Bruce Romano at (202) 418-2120, or pgordon@fcc.gov or bromano@fcc.gov, or Keith A. Larson at (202) 418-2600, or klarson@fcc.gov.

65. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Paul Gordon, Federal Communications Commission, 445 12th Street, S.W., Room 2C223, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the docket number in this case (MM Docket No. 99-25), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036.

66. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554. It is anticipated that the Reference Center will be relocated to the Commission's Portals Building during the late spring or early summer of 1999. Accordingly, and especially after March 1, 1999, interested parties are advised to contact the FCC Reference Center at (202) 418-0270 to determine its location. Written comments by the public on the proposed and/or modified information collections are due on or before April 12, 1999. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before April 12, 1999. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room C-1804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

67. *Ex Parte Rules.* This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements

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

68. *Initial Regulatory Flexibility Analysis.* With respect to this Notice, an Initial Regulatory Flexibility Analysis ("IRFA") under the Regulatory Flexibility Act, see 5 U.S.C. 603, is provided below and in Appendix E of the Notice. Written public comments are requested on the IRFA, and must be filed in accordance with the same filing deadlines as comments on the Notice, with a distinct heading designating them as responses to the IRFA. The Commission will send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

69. *Additional Information.* For additional information on this proceeding, please contact Keith A. Larson, Office of the Bureau Chief, Mass Media Bureau at (202) 418-2600, or Bruce Romano or Paul Gordon, Policy and Rules Division, Mass Media Bureau at (202) 418-2120.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the present *Notice of Proposed Rule Making*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the IRFA provided above in paragraph 95. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small

¹ See 5 USC 603. The RFA, see 5 U.S.C. 601 et seq., has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

Business Administration. See 5 USC 603(a).

Need For and Objectives of the Proposed Rule Changes

The Commission received petitions for rulemaking asking for the creation of a low power radio service. Because they raised similar or identical issues, the Commission coordinated its responses to them. The Commission released Public Notices of its receipt of three of the proposals and invited public comment on them.

In response to significant public support, the Commission is now proposing to create a new, low power FM service. Specifically, it is proposing two classes of LPFM service, a 1000-watt maximum class ("LP1000") and a 100-watt maximum class ("LP100"). We are also asking whether to create a third class (called "microradio"), which would have a maximum power output of one to ten watts. Because of the predicted lower construction and operational costs of LPFM stations as opposed to full power facilities, we expect that small entities would be expected to have few economic obstacles to becoming LPFM licensees. Therefore, this proposed new service may serve as a vehicle for small entities and under-represented groups (including women and minorities) to gain valuable broadcast experience and to add their voices to their local communities.

Legal Basis

Authority for the actions proposed in this Notice may be found in §§ 4(i) and 303 of the Communications Act of 1934, as amended, 47 USC 154(i), 303.

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

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.² The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."³ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁴ A small business

concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁵ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."⁶ Nationwide, as of 1992, there were approximately 275,801 small organizations.⁷ "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."⁸ As of 1992, there were approximately 85,006 such jurisdictions in the United States.⁹ This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.¹⁰ The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

The Small Business Administration defines a radio broadcasting station that has \$5 million or less in annual receipts as a small business.¹¹ A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.¹² Included in this industry are commercial, religious, educational, and other radio stations.¹³ The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than \$5 million in revenue in 1992. Official Commission records indicate that 11,334 individual radio stations were operating in 1992.¹⁴ As of December 31, 1998, Commission records indicate that 12,472 radio

stations were operating, of which 7,679 were FM stations.¹⁵

The proposed rules, if adopted, would apply to a new category of FM radio broadcasting service. For the proposed service, the number of stations that could be licensed without causing unacceptable interference would depend on the interference criteria that we will apply to the various classes of low power radio service. Should we determine that second-and/or third-adjacent channel interference protection would not be necessary to prevent unacceptable interference to full power stations, then far more LPFM facilities could be authorized. The number of stations that we could authorize is also dependent upon the ratio of LP1000, LP100, and microradio stations for which we would accept applications. For instance, the greater the number of LP1000 stations, the less spectrum would remain available to accommodate other LPFM facilities. This, in turn, would affect how many new stations would be available to small entities.

The number of entities that may seek to obtain a low power radio license is currently unknown. We note, however, that the Commission has received over 13,000 inquiries in the past year from individuals and groups interested in operating such a facility. In addition, we expect that, due to the small size of low power FM stations, small entities would generally have a greater interest than large ones in acquiring them.

We seek comment and data regarding the number of small entities that may be affected by the proposed rules, if adopted.

Reporting, Recordkeeping, and Other Compliance Requirements

The Commission is proposing to create a new broadcasting service that may allow hundreds or thousands of small entities to become broadcast licensees for the first time. This endeavor would require the collection of information for the purposes of processing applications for (among other things) initial construction permits, assignments and transfers, and renewals. Given the power levels and purposes of LP1000 stations (such as their potential to be an entry-level radio service), we would likely require the same or similar reporting, recordkeeping, and other compliance requirements as full power radio broadcasters. However, recognizing that LPFM 100 and microradio licensees may be small, inexperienced operators who would be serving fairly limited

opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 USC 601(3).

² Small Business Act, 15 USC 632 (1996).

³ 5 USC 601(4).

⁴ 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

⁵ 5 USC 601(5).

⁶ U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

⁷ *Id.*

⁸ 13 CFR 121.201, SIC code 4832.

⁹ 1992 Census, Series UC92-S-1, at Appendix A-9.

¹⁰ *Id.* The definition used by the SBA also includes radio broadcasting stations which also produce radio program materials. Separate establishments that are primarily engaged in producing radio program material are classified under another SIC number, however. *Id.*

¹¹ FCC News Release, No. 31327 (Jan. 13, 1993).

¹² FCC News Release, "Broadcast Station Totals as of December 31, 1998" (Jan. 25, 1999).

² 5 USC 603(b)(3).

³ 5 USC 601(6).

⁴ 5 USC 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after

areas and audiences, we intend to keep this service as simple as possible. Accordingly, we intend to keep reporting, recordkeeping, and other compliance requirements to a minimum. The Notice seeks comment on these issues, including comment specifically directed toward the possible effects of such requirements on small entities.

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

We are proposing a low power radio service that is divided into subclasses, defined by their power output (in watts): LP1000 and LP100. We are also requesting comment on a possible microradio class of 1–10 watts. With this subdivision, small entities would be able to apply for stations in the class that is most appropriate for their interests and their ability to construct and operate a station. The Notice asks for comment on the proposed classes and asks whether an alternative system would better serve the public interest.

The Notice proposes ownership rules intended to assist small entities construct or acquire LPFM stations. Parties with attributable interests in any full power broadcast facilities would not be eligible to have any ownership interest in any low power radio stations; this would prevent large group owners (or even large single-station owners) from constructing and operating LPFM facilities that might otherwise be available to small entities. The proposed local and national ownership restrictions of one station per community and five or ten nationwide similarly would be intended to ensure that ample LPFM stations are available for small entities. However, the ownership rules would also prohibit small entity full power broadcasters from acquiring LPFM licenses.

The Notice does not propose a local residency requirement on LPFM licensees. Regarding LP1000 stations, it notes that full power stations require neither local residency nor integration between ownership and management to assess and address local needs and interests. Such a restriction would also frustrate any attempt at achieving certain efficiencies from national multiple ownership long recognized as beneficial for full-power stations. Additionally, because the service areas for LP1000 stations will be relatively small, a potential new entrant might hold residency in a location where no LP1000 channels can be found, so such a residency requirement might frustrate one of the significant potentials of LP1000 stations. The same rationale can

be applied to LP100 and microradio stations. Moreover, we expect that the nature of the service provided by the two smaller classes of stations would attract primarily local or nearby residents. The Notice seeks comment on these assumptions and resulting proposal.

The Notice requests comment on whether unlicensed operators, who have broadcasted illegally, should be considered eligible to hold LPFM licensees. Although we do not have data on this issue, we presume that most of these illegal operators are individuals, small groups, or small entities. As a result, our disposition of this issue could be of great concern to this relatively small group, should they desire to operate LPFM stations within the legal framework we are proposing. The Notice asks whether unlicensed operators have the requisite character qualifications to be Commission licensees. It also asks whether those who have promptly ceased operation when advised by the Commission to do so, or who voluntarily cease operations within ten days of the publication of the summary of this Notice in the **Federal Register**, should be considered differently in this regard.

The Notice also asks 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, such as the main studio rule, the public file rule, and the periodic ownership reporting requirements. Given the purposes and power levels of LP1000 stations, we tentatively conclude that LP1000 licensees should generally meet the Part 73 rules applicable to full power FM stations. However, we seek comment on whether sufficient useful purpose would be served in applying each rule to these licensees. The Notice states that we would be disinclined to apply most of these service rules to microradio stations, and we particularly seek comment with regard to the rules appropriate for LP100 stations. Commenters are invited to discuss which existing rules should apply or what new or modified rules would be more appropriate. Because of the costs of complying with Commission rules, this issue could be of importance in determining whether a small entity could afford to operate an LPFM station.

The Notice proposes a mandatory electronic filing system, envisioning an internet-based system that would provide substantial assistance to potential applicants with little technical or legal background. For example, we may be able to develop a system that could inform a potential applicant what

frequencies are available before an application is filed. The Commission notes the increasing ease of accessibility to the internet through private homes, public libraries, and other publicly accessible places. Without electronic filing, the Commission lacks the resources to promptly accomplish the necessary data entry for hundreds or thousands of LPFM (and, possibly, microradio) applications. A manual filing system might result in applicants' not learning for many months (at least) whether their applications were acceptable for filing. As a result, electronic filing would provide superior service to LPFM applicants and speed service to the public.

The Commission proposes to adopt a window filing system with short filing periods of only a few days each, and it asks commenters to address if that would have advantages over a first-come, first-served system. One of the Commission's concerns is to reduce the number of mutually exclusive applications, due to the resulting delay in service implementation, and because Section 309(j) of the Communications Act of 1934, as amended, requires mutual exclusivity between or among commercial broadcast applications to be resolved through auctions. Also, Section 309(j)(6)(E) of the Communications Act of 1934, as amended, states that the Commission has the "obligation, in the public interest, to continue to use engineering solutions, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings." With auctions, receiving an LPFM construction permit could become too expensive for many of the people this service is intended to serve. With regard to a first-come system, the Notice questions the fairness of rejecting an application as unacceptable for filing because it would be mutually exclusive with one filed only a moment earlier, possibly solely because the latter party may have had a poor internet connection.

Federal Rules that Overlap, Duplicate, or Conflict with the Proposed Rules

The initiatives and proposed rules raised in this proceeding do not overlap, duplicate or conflict with any other rules.

Federal Rules that Overlap, Duplicate, or Conflict with the Proposed Rules

The initiatives and proposed rules raised in this proceeding do not overlap, duplicate or conflict with any other rules.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Magalie Roman Salas,*Secretary.*

[FR Doc. 99-3569 Filed 2-12-99; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

RIN 1018-AF35

Endangered and Threatened Wildlife and Plants: Proposed Threatened Status for the Mountain Plover**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list the mountain plover (*Charadrius montanus*) as a threatened species pursuant to the Endangered Species Act (Act) of 1973. The mountain plover is a bird of shortgrass prairie and shrub-steppe landscapes at both breeding and wintering locales. Breeding occurs in the Rocky Mountain States from Canada south to Mexico with most breeding birds occurring in Montana and Colorado. Most wintering birds occur on grasslands or similar landscapes in California; fewer wintering birds occur in Arizona, Texas, and Mexico. Breeding Bird Survey trends analyzed for the period 1966 through 1996 document a continuous decline of 2.7 percent annually for this species, the highest of all endemic grassland species. Between 1966 and 1991, the continental population of the mountain plover declined an estimated 63 percent. The current total population is estimated to be between 8,000 and 10,000 individuals. Conversion of grassland habitat, agricultural practices, management of domestic livestock, and decline of native herbivores are factors that likely have contributed to the mountain plover's decline. Pesticides may be a factor contributing to the decline of mountain plovers, but their effects are not completely understood.

DATES: We must receive comments from all interested parties by April 19, 1999. We must receive requests for public hearings by April 2, 1999.

ADDRESSES: Send comments and materials concerning this proposal to the Assistant Field Supervisor, U.S. Fish and Wildlife Service, 764 Horizon

Drive, South Annex A, Grand Junction, Colorado 81506-3946. We will make comments and materials we receive available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT:

Robert Leachman at the above address, telephone 970/243-2778; facsimile 970/245-6933.

SUPPLEMENTARY INFORMATION:**Background**

The mountain plover (*Charadrius montanus*) was described by John K. Townsend in 1837 from specimens collected near the Sweetwater River, Fremont County, Wyoming (Coues 1874, cited in Laun 1957). This species was originally named the Rocky Mountain plover because the first specimens were taken within sight of those mountains (Oberholser 1974). The mountain plover has since been known by several different scientific names, as well as other common names. The species name *Charadrius montanus* was formally adopted by the Committee on Classification and Nomenclature of the American Ornithological Union in 1983 (R. Banks, National Biological Service, pers. comm., 1994). There are no subspecies (Oberholser 1974).

The mountain plover is a small bird (about 17.5 centimeters (cm)) (7 inches (in)), about the size of a killdeer (*Charadrius vociferus*). It is light brown above with a lighter colored breast, but lacks the contrasting dark breastbelt common to many other plovers. During the breeding season it has a white forehead and a dark line between the beak and eye, which contrasts with the dark crown. Mountain plovers are insectivorous, with beetles, grasshoppers, crickets, and ants their principal food items (Stoner 1941, Baldwin 1971, and Rosenberg et al. 1991, Knopf 1998).

The mountain plover is associated with shortgrass and shrub-steppe landscapes throughout its breeding and wintering range. Historically, on the breeding range, it occurred on nearly denuded prairie dog towns (Knowles et al. 1982, Olson-Edge and Edge 1987) and in areas of major bison concentrations (Knopf 1997). Many consider nesting mountain plovers to be strongly associated with prairie dog towns (Tyler 1968, Knowles et al. 1982, Knowles and Knowles 1984, Shackford 1991, Samson and Knopf 1994, Knopf 1996b). All of the endemic grassland birds evolved within a grassland mosaic of lightly, moderately, and heavily grazed areas, and mountain plovers are considered to be strongly associated

with sites of heaviest grazing pressure, to the point of excessive surface disturbance (Knopf and Miller 1994, Knopf 1996b). Currently, the mountain plover is also attracted to man-made landscapes (e.g., sod farms, cultivated fields) that mimic the natural habitat associations, or sites with grassland characteristics (alkali flats, other agricultural lands).

Nesting mountain plovers are reported in some of the Rocky Mountain and Great Plains States from Canada south to Texas, and possibly in Mexico. Most mountain plovers breed in Colorado and Montana; breeding also occurs in Wyoming, New Mexico, Arizona, Nebraska, Utah, Kansas, Oklahoma, and Texas. Breeding is suspected in Mexico and historic nesting records occur from Canada. Nesting habitat in Canada is restricted to southeastern Alberta and southwestern Saskatchewan. Breeding adults, nests, and chicks have been observed on cultivated lands in Colorado, Kansas, Nebraska, Oklahoma, and Wyoming. Most mountain plovers winter in California where they are found on grasslands or landscapes resembling grasslands, and cultivated fields; many fewer wintering plovers are reported from Arizona, Texas, and Mexico.

The mountain plover is one of nine bird species endemic to the North American grasslands (Knopf 1996a). Endemic grassland birds have declined more rapidly than other species in North America, and the mountain plover's decline is greater than that of the other grassland endemics (Knopf 1994; Sauer et al. 1997). Unlike other plovers, mountain plovers are rarely found near water.

Habitat Characteristics

Mountain plovers evolved on grasslands that were inhabited by large numbers of nomadic grazing ungulates such as bison (*Bison bison*), elk (*Cervus elaphus*), pronghorn (*Antilocapra americana*), and burrowing mammals such as kangaroo rats (*Dipodomys* sp.), prairie dogs (*Cynomys* sp.), and badgers (*Taxidea taxus*) (Knopf 1996a). The herbivores dominated the grassland landscape at both breeding and wintering sites, and their grazing, wallowing, and burrowing activities created and maintained a mosaic of vegetation and bare ground to which mountain plovers became adapted (Dobkin 1994, Knopf 1996a).

Short vegetation, bare ground, and a flat topography are now recognized as habitat-defining characteristics at both breeding and wintering locales (Graul 1975, Knopf and Miller 1994, Knopf and Rupert 1995). Mountain plovers nesting