

**List of Subjects in 40 CFR Part 81**

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 21, 2002.

**Michael V. Peyton,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 02-7938 Filed 4-5-02; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[WT Docket No. 97-82; FCC 02-34]

### Competitive Bidding Procedures

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document the Commission declines to adopt a total assets test as part of its determination of small business eligibility in the context of spectrum auctions deciding that the potential benefit from such a test does not justify the difficulty of its use. Instead, the Commission will continue to rely on the gross revenues test already employed. The Commission adopts exceptions to the controlling interest standard's fully diluted requirements for "rights of first refusal" and "put" options. The two exceptions are consistent with the Commission's underlying goal of assuring that the decision of whether and when to transfer a license won by a designated entity rests with those in control of the designated entity. In addition, the Commission clarifies that mutually exclusive contingent ownership interests are to be considered fully diluted only in the possible combinations in which those interests can be exercised by their holder(s). This clarification offers a common sense approach to evaluating ownership interests that could not possibly be given simultaneous or successive effect.

**DATES:** Effective May 8, 2002.

**FOR FURTHER INFORMATION CONTACT:**

Audrey Bashkin of the Auctions and Industry Analysis Division at (202) 418-0660.

**SUPPLEMENTARY INFORMATION:** This is a summary of an *Eighth Report and Order* in WT Docket No. 97-82, adopted on February 8, 2002 and released on February 13, 2002. The full text of this document is available for public inspection and copying during regular

business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

### I. Introduction

1. In the *Eighth Report and Order*, the Commission addresses the proposals and tentative conclusions of the *Part 1 Fourth Further Notice of Proposed Rule Making*, 65 FR 52401 (August 29, 2000). In the *Part 1 Fourth Further Notice of Proposed Rule Making*, the Commission sought comment on whether to incorporate a total assets component into its ownership attribution rule for determining which entities are eligible for small business provisions in competitive bidding proceedings. The Commission also proposed three exceptions to the requirement in its competitive bidding attribution rule that certain ownership interests be counted on a "fully diluted" basis. For the reasons explained further, the Commission declines to adopt a total assets test as part of our determination of small business eligibility; however, the Commission adopts two of the proposed exceptions to the attribution rule and clarifies its rules regarding the third.

### II. Total Assets Test

#### A. Background

2. Historically, the Commission has defined small businesses according to a gross revenues test for purposes of ascertaining eligibility for a small business bidding credit. In the *Part 1 Third Report and Order*, 63 FR 770 (January 7, 1998), the Commission adopted a gross revenues test as its general standard for measuring the size of an entity for competitive bidding purposes, in part because such a standard provides "an accurate, equitable, and easily ascertainable measure of business size." In conjunction with a gross revenues test, the Commission currently employs a total assets test to evaluate the eligibility of applicants to acquire broadband Personal Communications Services (PCS) C and F block licenses made available in "closed" (entrepreneur-only) bidding. In the *Part 1 Fourth Further Notice of Proposed Rule Making*, the Commission sought comment on whether the use of a total assets test, in conjunction with the gross

revenues measure already employed, would enhance Commission determinations of small business status.

#### B. Discussion

3. The Commission declines to expand its definition of small business to include a total assets test for purposes of determining small business bidding credit eligibility. Commenters favoring the inclusion of a total assets test suggest that it could serve to prevent low-revenue but asset-rich businesses from taking advantage of small business programs. However, others argue that a total assets test might disqualify small entities by setting an asset limit that is too low or by attributing assets that are not readily available to these entities for auction purposes. The Commission's attribution rules already prevent many asset-rich applicants from taking advantage of the Commission's small business benefits, because, to the extent that their assets, or those of their controlling interests and affiliates, produce revenues, those revenues must be attributed to the applicant. Moreover, the Commission's experience in using a total assets test to determine C and F block entrepreneur eligibility indicates that the test adds complexity to business size determinations without producing a commensurate benefit. In broadband PCS Auctions No. 5, 10, 11, and 22, in which all C and F block bidders were required to meet a total assets test as well as a gross revenues test to establish entrepreneur eligibility, more than 95 percent of those bidders also met the more stringent gross revenues test required for small business bidding credit eligibility. Thus, in practice, having a total assets test for the C and F blocks has not made a significant difference in defining the qualified applicant population. At the same time, employing a total assets test carries administrative costs for the Commission and for applicants and raises difficult valuation issues. As the Commission observed in its decision not to establish a total assets test for Local Multipoint Distribution Service business size determinations, "[a]ssets, being potentially fluid and subject to inconsistent valuation (e.g., intangibles) are generally much less ascertainable than gross revenues \* \* \*." The Commission believes that the potential benefit provided by a total assets test does not outweigh the valuation difficulties and the administrative costs the test would impose. Moreover, the Commission is reluctant to impose an additional regulatory burden on auction applicants at a time when it is striving to streamline Commission processes. For these reasons, the Commission will

not implement a total assets test for small business eligibility determinations.

### III. Attribution Issues

#### A. Rights of First Refusal and Put Options

##### i. Background

4. In the *Part 1 Fifth Report and Order*, 65 FR 52323 (August 29, 2000), the Commission adopted the controlling interest standard of § 1.2110 as its general attribution rule for all future auctions. For purposes of calculating equity held in an applicant or licensee, the controlling interest standard treats certain ownership agreements, such as warrants, stock options, convertible debentures, and agreements to merge, as already having been “fully diluted,” i.e., fully exercised. Under the broadband PCS attribution rule, the Commission established two exceptions to the fully diluted requirement, one for “rights of first refusal” and the other for “put” options. Under the exceptions, neither type of interest was attributed until its actual exercise. No similar exception was ever allowed for “call” options. The Commission explained in the context of the prior broadband PCS attribution rules that “calls” vest an impermissible degree of control in the applicant’s (or licensee’s) so-called noncontrolling investors, because “calls” can be used to force a designated entity to sell its ownership interests. In the *Part 1 Fourth Further Notice of Proposed Rule Making*, the Commission sought comment on whether to incorporate into its part 1 general competitive bidding rules exceptions to the fully diluted requirement for “rights of first refusal” and “put” options.

##### ii. Discussion

5. The Commission will adopt exceptions to the controlling interest standard’s fully diluted requirements for “rights of first refusal” and “put” options. The two exceptions are consistent with the Commission’s underlying goal of assuring that the decision of whether and when to transfer a license won by a designated entity rests with those in control of the designated entity. In deciding not to treat “rights of first refusal” as exercised when calculating ownership interests in the context of broadband PCS C and F block applications, the Commission reasoned that “[r]ights of first refusal differ from other types of options because they cannot be exercised unless there is a proposed sale to a third party” and that, even then, “it will still be the designated entity’s decision as to whether to sell the business.” The

Commission used the same reasoning for “put” options, explaining that “[p]ut options held by the designated entity leave the ownership decision in the designated entity’s control and do not force an unwanted sale upon the designated entity.” The Commission believes that its earlier reasoning is generally applicable under its part 1 rules.

6. The Commission makes clear, however, that, while “rights of first refusal” and “put” options will not be factored in for purposes of determining *de jure* control, it will continue to look at whether these ownership interests in combination with other terms to an agreement deprive an otherwise qualified designated entity of *de facto* control of an applicant or licensee. As the Commission stated in the *Competitive Bidding Fifth Memorandum Opinion and Order* with regard to broadband PCS, it will look at the totality of circumstances in each particular case.

#### B. Mutually Exclusive Contingent Ownership Interests

##### i. Background

7. Under the Commission’s previous broadband PCS attribution rule, an interpretation of the fully diluted requirement was applied to contingent ownership interests that were mutually exclusive by their terms. Under this interpretation, if an ownership interest by its terms was mutually exclusive of one or more other ownership interests, the various ownership interests were treated as having been fully exercised only in the possible combinations in which they could be exercised by their holder(s). In the *Part 1 Fourth Further Notice of Proposed Rule Making*, the Commission tentatively concluded that the policy underlying its part 1 attribution rule did not require it to consider all existing stock conversion rights as having been fully exercised simultaneously in a case where the various conversion rights are mutually exclusive by their terms. The Commission sought comment on adopting this interpretation as an exception to its part 1 general competitive bidding rules.

##### ii. Discussion

8. Rather than adopt an additional exception to the fully diluted requirement, the Commission clarifies that the interpretation that was applied in the broadband PCS context for contingent ownership interests that are mutually exclusive by their terms is generally applicable under its part 1 rules. This clarification offers a common

sense approach to evaluating ownership interests that could not possibly be given simultaneous or successive effect. Under the clarification, ownership interests that by their terms are capable of being exercised simultaneously or successively will continue to be treated as if the rights thereunder had been fully exercised. Ownership interests that are mutually exclusive by their terms will be considered to be fully diluted only in the possible combinations in which they could be exercised by their holder(s). Thus, in calculating the equity held in an applicant or licensee, the Commission will consider the various combinations of stock options or conversion rights that could possibly be exercised by an investor. For each combination, the ownership interests will be considered to have been fully exercised, and each combination will be reviewed for its effect on control of the applicant or licensee. The Commission will consider one contingent ownership interest to be mutually exclusive of another only if contractual language specifies that both interests cannot be held simultaneously as present ownership interests.

### IV. Procedural Matters and Ordering Clauses

9. As required by the Regulatory Flexibility Act, 5 U.S.C. 604, the Commission has prepared a Final Regulatory Flexibility Analysis.

10. Pursuant to sections 4(i), 5(b), 5(c)(1), 309(r), and 309(j) of the Communications Act of 1934, as amended, 47 USC 154(i), 155(b), 156(c)(1), 303(r), and 309(j), the *Eighth Report and Order* is hereby adopted, and § 1.2110 of the Commission’s rules, 47 CFR 1.2110, is amended as set forth, and becomes effective May 8, 2002.

11. The Commission’s Consumer Information Bureau, Reference Information Center, shall send a copy of the *Eighth Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

### V. Final Regulatory Flexibility Analysis

12. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the notice section of the *Fourth Further Notice of Proposed Rule Making* in WT Docket No. 97–82. The Commission sought written public comment on the proposals in the *Fourth Further Notice of Proposed Rule Making*, including comment on the IRFA.

*A. Need for, and Objectives of, the Eighth Report and Order*

13. The *Eighth Report and Order* resolves the proposals and tentative conclusions of the *Fourth Further Notice of Proposed Rule Making* concerning application of the controlling interest standard in determining eligibility for small business provisions in all services governed by our part 1 rules. As stated in the *Fourth Further Notice of Proposed Rule Making*, the Commission's objective is to ensure that its small business provisions are available only to bona fide small businesses. Accordingly, the Commission sought comment in the *Fourth Further Notice of Proposed Rule Making* on whether to incorporate a total assets component into its ownership attribution rule for determining which entities are eligible for small business provisions in competitive bidding proceedings. In the *Eighth Report and Order*, the Commission declines to incorporate a total assets test into its determinations of small business eligibility, deciding that the potential benefit from such a test does not justify the difficulty of its use. Instead, the Commission will continue to rely on the gross revenues test already employed. The Commission, however, adopts two exceptions to its ownership attribution rule requiring that certain ownership agreements, such as warrants and stock options, be treated as already having been "fully diluted" (i.e., fully exercised) for purposes of determining small business eligibility in the competitive bidding context. The Commission determines that these two exceptions—for "rights of first refusal" and "put" options—are consistent with its goal that the competitive bidding attribution rules ensure that control of an applicant is held by eligible entities while allowing investment in the applicant by entities that do not meet the size restrictions in Commission rules. The Commission also decides to clarify its part 1 rules regarding application of the fully diluted requirement to contingent ownership interests that are mutually exclusive by their terms. Under this clarification, if an ownership interest by its terms is mutually exclusive of one or more other ownership interests, the various ownership interests are treated as having been fully exercised only in the possible combinations in which they could be exercised by their holder(s). The Commission determines that this clarification offers a common sense approach to evaluating ownership

interests that could not possibly be given simultaneous or successive effect.

*B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA*

14. No comments directly addressed the IRFA; however, all four comments addressed a single small business issue—whether the Commission should incorporate a total assets component into its ownership attribution rule for determining which entities are eligible for small business provisions in competitive bidding proceedings. Commenters favoring the inclusion of a total assets test suggest that it could serve to prevent low-revenue but asset-rich businesses from taking advantage of small business programs. However, others argue that a total assets test might disqualify small entities by setting an asset limit that is too low or by attributing assets that are not readily available to these entities for auction purposes. While the Commission believes that both arguments have merit, it also believes that its attribution rules effectively prevent most asset-rich applicants from taking advantage of its small business benefits. The Commission's attribution rules already prevent many asset-rich applicants from taking advantage of its small business benefits, because, to the extent that their assets, or those of their controlling interests and affiliates, produce revenues, those revenues must be attributed to the applicant. Moreover, the Commission's experience in using a total assets test to determine C and F block entrepreneur eligibility indicates that the test adds complexity to business size determinations without producing a commensurate benefit. In broadband PCS Auctions No. 5, 10, 11, and 22, in which all C and F block bidders were required to meet a total assets test as well as a gross revenues test to establish entrepreneur eligibility, more than 95 percent of those bidders also met the more stringent gross revenues test required for small business bidding credit eligibility. Thus, in practice, having a total assets test for the C and F blocks has not made a significant difference in defining the qualified applicant population. At the same time, employing a total assets test carries administrative costs for the Commission and for applicants and raises difficult valuation issues. The Commission believes that the potential benefit provided by a total assets test does not outweigh the valuation difficulties and the administrative costs the test would impose. Moreover, the Commission is reluctant to impose an additional regulatory burden on spectrum auction

applicants at a time when it is striving to deregulate and streamline Commission processes. For these reasons, the Commission will not implement a total assets test for small business eligibility determinations.

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

15. 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. The RFA generally defines the term "small entity" as having the same meaning as the terms "small organization," "small business," and "small governmental jurisdiction." The term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. According to SBA reporting data, there were 4.44 million small business firms nationwide in 1992. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "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." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 81,600 (91 percent) are small entities.

16. The amendments to § 1.2110 adopted in the *Eighth Report and Order* will apply to all entities that apply to participate in Commission auctions, including small entities. The number of entities that may apply to participate in future Commission auctions is unknown. The number of small businesses that have participated in prior auctions has varied. In all of our auctions held to date except for the auctions for broadcast licenses, 1,513 out of a total of 1,881 qualified bidders have been small businesses as that term has been defined under rules adopted

by the Commission for specific services. Given these statistics, the Commission expects that, in the future, a large percentage of participants in our auctions program generally will continue to be small businesses; although, there may not be a large percentage in every auction.

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

17. The rule changes established in the *Eighth Report and Order* do not alter reporting, recordkeeping, or other compliance requirements.

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

18. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (i) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design, standards; and (iv) an exemption from coverage of the rule or any part thereof for small entities. In the *Eighth Report and Order*, the Commission considers the following issues, all of which concern how best to apply the Commission's ownership attribution rule in order to determine which entities are eligible for small business provisions in competitive bidding proceedings.

19. *Total assets test.* The Commission generally employs a gross revenues test to measure the size of an entity for competitive bidding purposes. In the *Eighth Report and Order*, the Commission declines to add a total assets component to the existing gross revenues test in order to determine small business eligibility. While some commenters contend that the addition of a total assets test might help prevent low-revenue but asset-rich businesses from taking advantage of small business programs, others argue that including a total assets test might disqualify small entities by setting an asset limit that is too low or by attributing assets that are not readily available to these entities for auction purposes. In addition to a gross revenues test, the Commission currently employs a total assets test to evaluate the eligibility of applicants to acquire broadband Personal Communications Services (PCS) C and F block licenses

made available in "closed" (entrepreneur-only) bidding. The Commission's experience in using a total assets test for C and F block entrepreneur eligibility determinations suggests that the potential benefit derived from a total assets test is insufficient to justify the difficulty involved in its implementation. In broadband PCS Auctions No. 5, 10, 11, and 22, in which all C and F block bidders were required to meet a total assets test as well as a gross revenues test to establish entrepreneur eligibility, more than 95 percent of those bidders also met the more stringent gross revenues test required for small business bidding credit eligibility. Thus, in practice, having a total assets test for the C and F blocks has not made a significant difference in defining the qualified applicant population. At the same time, employing a total assets test carries administrative costs for the Commission and for applicants and raises difficult valuation issues. The Commission believes that the potential benefit provided by a total assets test does not outweigh the valuation difficulties and the administrative costs the test would impose.

20. *Attribution exceptions for "rights of first refusal" and "put" options.* The Commission adopts exceptions to the controlling interest standard's fully diluted requirements for "rights of first refusal" and "put" options. The two exceptions are consistent with the Commission's underlying goal of assuring that the decision of whether and when to transfer a license won by a designated entity rests with those in control of the designated entity. Adoption of these exceptions should help the Commission realize its goal of widening the opportunities for small businesses in the spectrum auction program.

21. *Attribution clarification for mutually exclusive contingent ownership interests.* The Commission clarifies that the interpretation that was applied in the broadband PCS context for contingent ownership agreements that are mutually exclusive by their terms is generally applicable under its part 1 rules. Under the clarification, ownership interests that by their terms are capable of being exercised simultaneously or successively will continue to be treated as if the rights thereunder had been fully exercised. Ownership interests that are mutually exclusive by their terms will be considered to be fully diluted only in the possible combinations in which they could be exercised by their holder(s). Applying this clarification provides a common sense approach to evaluating

ownership interests that could not possibly be given simultaneous or successive effect and should further help the Commission realize its goal of widening the opportunities for small businesses in the spectrum auction program.

*F. Report to Congress*

22. The Commission will send a copy of the *Eighth Report and Order*, including this FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the *Eighth Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 1**

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

**William F. Caton,**  
*Acting Secretary*

**Rule Changes**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

**PART 1—PRACTICE AND PROCEDURE**

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

**Authority:** 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.2110 is amended by revising paragraph (c)(2)(ii)(A), the text of paragraph (c)(5)(v) preceding the examples, and example 1 to paragraph (c)(5)(v) and by adding a note to paragraph (c)(5)(v) following the examples to read as follows:

**§1.2110 Designated entities.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(A) *Fully diluted requirement.* (1)

Except as set forth in paragraph (c)(2)(ii)(A)(2) of this section, ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised.

(2) Rights of first refusal and put options shall not be calculated on a fully diluted basis for purposes of determining *de jure* control; however, rights of first refusal and put options shall be calculated on a fully diluted

basis if such ownership interests, in combination with other terms to an agreement, deprive an otherwise qualified applicant or licensee of *de facto* control.

**Note to Paragraph (c)(2)(ii)(A):** Mutually exclusive contingent ownership interests, i.e., one or more ownership interests that, by their terms, are mutually exclusive of one or more other ownership interests, shall be calculated as having been fully exercised only in the possible combinations in which they can be exercised by their holder(s). A contingent ownership interest is mutually exclusive of another only if contractual language specifies that both interests cannot be held simultaneously as present ownership interests.

\* \* \* \* \*

(5) \* \* \*

(v) Affiliation arising under stock options, convertible debentures, and agreements to merge. Except as set forth in paragraph (c)(2)(ii)(A)(2) of this section, stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are generally treated as though the rights held thereunder had been exercised. However, an affiliate cannot use such options and debentures to appear to terminate its control over another concern before it actually does so.

**Example 1 to paragraph (c)(5)(v).** If company B holds an option to purchase a controlling interest in company A, who holds an attributable interest in a PCS application, the situation is treated as though company B had exercised its rights and had become owner of a controlling interest in company A. The gross revenues of company B must be taken into account in determining the size of the applicant.

\* \* \* \* \*

**Note to Paragraph (c)(5)(v):** Mutually exclusive contingent ownership interests, i.e., one or more ownership interests that, by their terms, are mutually exclusive of one or more other ownership interests, shall be calculated as having been fully exercised only in the possible combinations in which they can be exercised by their holder(s). A contingent ownership interest is mutually exclusive of another only if contractual language specifies that both interests cannot be held simultaneously as present ownership interests.

\* \* \* \* \*

[FR Doc. 02-7793 Filed 4-5-02; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 02-690; MM Docket No. 97-178; RM-8329, RM-8739, RM-10099]

#### Radio Broadcasting Services; West Hurley, Rosendale and Rhinebeck, NY, and North Canaan and Sharon, CT

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule, petition for reconsideration, denied.

**SUMMARY:** This document denies a Petition for Reconsideration filed by Sacred Heart University, Inc. directed to the *Report and Order* in this proceeding. See 66 FR 39454, published July 31, 2001. Specifically, that action allotted Channel 273A\* to Rhinebeck, New York, and reserved this channel for noncommercial educational use. With this action, the proceeding is terminated.

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 97-178, adopted March 6, 2002, and released March 8, 2002. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals 11, CY-A257, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

Federal Communications Commission.

**John A. Karousos,**  
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02-8396 Filed 4-5-02; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 02-693; MM Docket No. 99-28, RM-9438]

#### Radio Broadcasting Services; Olathe, Colorado.

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission grants a petition for rule making filed by Mountain West Broadcasting to allot Channel 270C2 to Olathe, Colorado, as a second local transmission service. See 64 FR 7846 (February 17, 1999). Channel 270C2 can be allotted to Olathe at reference coordinates 38-36-18 NL and 107-58-54 WL without a site restriction in compliance with the Commission's technical requirements for spacing and city grade coverage. The Commission dismissed the counterproposal filed by the licensee of Station KAVD(FM), Limon, CO, at its request in compliance with Section 1.420(j) of the Commission's Rules.

**DATES:** Effective May 6, 2002.

**FOR FURTHER INFORMATION CONTACT:** Andrew J. Rhodes, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 99-28 adopted March 13, 2002 and released March 22, 2002. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

#### PART 73—RADIO BROADCAST SERVICES

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

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

##### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Channel 270C2 at Olathe.

Federal Communications Commission.

**John A. Karousos,**  
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02-8397 Filed 4-5-02; 8:45 am]

BILLING CODE 6712-01-P