

**FOR FURTHER INFORMATION CONTACT:** Peter H. Doyle, Chief, Audio Division, Media Bureau, (202) 418-2700, or Andrew J. Rhodes, Audio Division, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 00-148, adopted May 5, 2011, and released May 6, 2011. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160 or <http://www.BCPIWEB.com>.

A *Notice of Proposed Rule Making* ("NPRM") in this proceeding proposed the allotment of a new FM channel at Quanah, Texas. See 65 FR 53689 (September 5, 2000). In response to the NPRM, the Joint Petitioners filed a mutually exclusive Counterproposal involving 22 communities in Texas and Oklahoma, as well as two alternative proposals. The staff dismissed the original Counterproposal and the first alternative proposal for technical defects, and these actions are not contested by the Joint Petitioners. See 68 FR 26557 (May 16, 2003). The Joint Petitioners seek review of the dismissal of the second alternative proposal in the *Memorandum Opinion and Order* in this proceeding on the grounds that it was a technically acceptable proposal and that the staff should have made it the subject of a separate Notice of Proposed Rule Making. See 69 FR 29242 (May 21, 2004).

The document reasons that, contrary to the Joint Petitioners' contention, the second alternative proposal had two fatal defects that prevented its consideration as either a rule making petition or a counterproposal. Specifically, one of the proposed allotments conflicted with a previously filed, cut-off allotment proposal in another proceeding and was impermissibly contingent upon the staff's approval of a request to withdraw that proposal. Another proposed reallocation had an unsuitable transmitter site located in or near the Colorado River. Because counterproposals must be technically correct and substantially complete when filed, the second alternative proposal was properly dismissed. To the extent that curative amendments have been

allowed in some cases, the document finds that this practice has been inconsistently applied and the public interest is better served by no longer entertaining curative amendments for counterproposals or FM allotment rule making proposals.

The Commission will not send a copy of this *Memorandum Opinion and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A), because the Application for Review was denied.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. See 46 FR 11549 (February 9, 1981).

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2011-17103 Filed 7-18-11; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 73 and 74

[MB Docket No. 09-52; FCC 11-28]

#### Policies To Promote Rural Radio Service and To Streamline Allotment and Assignment Procedures

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rules; announcement of effective date.

**SUMMARY:** In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection requirements contained in 47 CFR 73.7000, FCC Forms 301 and 340 and the AM Auction Section 307(b) Submissions. The information collection requirements were approved on July 5, 2011 and July 11, 2011 by OMB.

**DATES:** The amendments to 47 CFR 73.7000, FCC Forms 301 and 340 and the AM Auction Section 307(b) Submissions, published at 76 FR 18942, April 6, 2011, are effective on July 19, 2011.

**FOR FURTHER INFORMATION CONTACT:** For additional information contact Cathy Williams on (202) 418-2918 or via e-mail to: [cathy.williams@fcc.gov](mailto:cathy.williams@fcc.gov) (<mailto:cathy.williams@fcc.gov>).

**SUPPLEMENTARY INFORMATION:** This document announces that on July 5, 2011 and July 11, 2011, OMB approved, for a period of three years, the information collection requirements contained in 47 CFR 73.7000, FCC

Forms 301 and 340 and the AM Auction Section 307(b) Submissions. The Commission publishes this document to announce the effective date of this rule section and form revisions. See, In the Matter of Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures, MB Docket No. 09-52; FCC 11-28, 76 FR 18942, April 6, 2011.

### Synopsis

As required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on July 5 and July 11, 2011, for the information collection requirement contained in 47 CFR 73.7000, Forms 301 and 340 and the AM Auction Section 307(b) Submissions. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB Control Number.

The OMB Control Numbers are 3060-0027, 3060-0029 and 3060-0996 and the total annual reporting burdens for respondents for this information collection are as follows:

*OMB Control Number:* 3060-0027.

*Title:* Application for Construction Permit for Commercial Broadcast Station, FCC Form 301.

*OMB Approval Date:* July 5, 2011.

*OMB Expiration Date:* July 31, 2014.

*Form Number:* FCC Form 301.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities; Not-for-profit entities; State, local or Tribal governments.

*Number of Respondents and Responses:* 4,544 respondents; 7,980 responses.

*Estimated Time per Response:* 1- 6.25 hours (average).

*Frequency of Response:* On occasion reporting requirement; Third-party disclosure requirement.

*Obligation To Respond:* Required to obtain or retain benefits. Statutory authority for the information collection requirements is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 20,257 hours.

*Total Annual Costs:* \$88,116,793.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* On January 28, 2010, the Commission adopted a First Report and Order and Further Notice of Proposed Rulemaking in MB Docket No. 09–52, FCC 10–24. On March 3, 2011, the Commission adopted a Second Report and Order (“Second R&O”), First Order on Reconsideration, and Second Further Notice of Proposed Rulemaking in MB Docket No. 09–52, FCC 11–28. The Second R&O adopts modifications to the manner in which the Commission awards preferences to applicants under the provisions of Section 307(b) of the Act. For Section 307(b) purposes, licensees and permittees seeking to change community of license must demonstrate that the facility at the new community represents a preferential arrangement of allotments (FM) or assignments (AM) over the current facility. Applications that are submitted to change an existing radio facility’s community of license must include an Exhibit containing information demonstrating that the proposed change of community of license will result in a preferential arrangement of allotments or assignments under Section 307(b).

Consistent with actions taken by the Commission in the Second R&O, the Instructions to the Form 301 have been revised to incorporate the information that must be included in the Exhibit, which is responsive to the “Community of License Change-Section 307(b)” question in the Form 301. The Form 301 itself has not been revised, nor have any questions been added to the Form 301. Rather, the Instructions for the Form 301 have been revised to assist applicants with completing the mandatory, responsive Exhibit.

The modifications to the Commission’s allotment and assignment policies adopted in the Second R&O include a rebuttable “Urbanized Area service presumption” under Priority (3), whereby an application to locate or relocate a station as the first local transmission service at a community located within an Urbanized Area, that would place a daytime principal community signal over 50 percent or more of an Urbanized Area, or that could be modified to provide such coverage, will be presumed to be a proposal to serve the Urbanized Area rather than the proposed community.

In the case of an AM station, the determination of whether a proposed facility “could be modified” to cover 50 percent or more of an Urbanized Area will be made based on the applicant’s certification in the Exhibit that there could be no rule-compliant minor modifications to the proposal, based on the antenna configuration or site, and spectrum availability as of the filing

date, that could cause the station to place a principal community contour over 50 percent or more of an Urbanized Area. In the case of an FM station, the determination of whether a proposed facility “could be modified” to cover 50 percent or more of an Urbanized Area will be based on an applicant’s certification in the Exhibit that there are no existing towers in the area to which, at the time of filing, the applicant’s antenna could be relocated pursuant to a minor modification application to serve 50 percent or more of an Urbanized Area. Specifically, an FM applicant would need to certify that there could be no rule-compliant minor modification on the proposed channel to provide a principal community signal over 50 percent or more of an Urbanized Area, in addition to covering the proposed community of license. In doing so, FM applicants will be required to consider all existing registered towers in the Commission’s Antenna Structure Registration database, in addition to any unregistered towers currently used by licensed radio stations. Furthermore, we expect all applicants to consider widely-used techniques, such as directional antennas and contour protection, when certifying that the proposal could not be modified to provide a principal community signal over the community of license and 50 percent or more of an Urbanized Area.

To the extent the applicant wishes to rebut the Urbanized Area service presumption, the Exhibit must include a compelling showing (a) that the proposed community is truly independent from the Urbanized Area; (b) of the community’s specific need for an outlet of local expression separate from the Urbanized Area; and (c) the ability of the proposed station to provide that outlet.

For applicants making a showing under Priority (4), other public interest matters, the Exhibit must provide a description of all populations gaining or losing third, fourth, or fifth reception service, and the percentage of the population in the station’s current protected contour that will lose third, fourth, or fifth reception service, if any. The Commission will also require applicants to not only set forth the populations gaining and losing service under the proposal, but also the numbers of services those populations will receive if the application is granted, and an explanation as to how the proposal provides a preferential arrangement of allotments or assignments and advances the revised Section 307(b) policies.

The Commission specifically stated that these modified allotment and

assignment procedures will apply to any applications to change community of license that are pending as of the release date of the Second R&O, March 3, 2011. Therefore, an applicant with a pending community of license change application must file an amendment demonstrating how the proposal represents a preferential arrangement of allotments or assignments under the policy modifications adopted in the Second R&O. For example, an applicant claiming Priority (3) would have to file the above-referenced “could be modified” certification, if appropriate, or a showing to rebut the Urbanized Area service presumption, if applicable. Similarly, an applicant claiming Priority (4) will have to make a showing as to the populations gaining or losing service under the proposed community of license change, as well as the numbers of services those populations will receive if the application is granted, and an explanation as to how the proposal advances the revised Section 307(b) priorities set out in the Second R&O. Such amendments must be filed once the information collection requirements are approved by OMB and the effective date for the requirements is announced by the Commission. Finally, under Priority (4) applicants may offer any other information they believe pertinent to a public interest showing and relevant to the Commission’s consideration.

*OMB Control Number:* 3060–0029.

*Title:* Application for Construction Permit for Reserved Channel Noncommercial Educational Broadcast Station, FCC Form 340.

*OMB Approval Date:* July 11, 2011.

*OMB Expiration Date:* July 31, 2014.

*Form Number:* FCC Form 340.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities; Not-for-profit entities; State, local or Tribal governments.

*Number of Respondents and Responses:* 2,765 respondents; 2,765 responses.

*Estimated Time per Response:* 1–6 hours (average).

*Frequency of Response:* On occasion reporting requirement; Third-party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for the information collection requirements is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 7,150 hours.

*Total Annual Costs:* \$29,079,700.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* On January 28, 2010, the Commission adopted a First Report and Order in the Matter of Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures, MB Docket No. 09–52, FCC 10–24 (released February 3, 2010). On March 3, 2011, the Commission adopted a Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rulemaking in MB Docket No. 09–52, FCC 11–28 (released March 3, 2011). In the First Report and Order, the Commission adopted the Tribal Priority proposed in the Notice of Proposed Rule Making, with some modifications. Under the Tribal Priority, a Section 307(b) priority will apply to an applicant meeting all of the following criteria: (1) The applicant is either a Federally recognized Tribe or Tribal consortium, or an entity 51 percent or more owned or controlled by a Tribe or Tribes; (2) at least 50 percent of the daytime principal community contour of the proposed facilities covers Tribal Lands, in addition to meeting all other Commission technical standards; (3) the specified community of license is located on Tribal Lands; and (4) the applicant proposes the first local Tribal-owned noncommercial educational transmission service at the proposed community of license. The proposed Tribal Priority would apply, if at all, before the fair distribution analysis currently used to evaluate noncommercial educational applications. The Tribal Priority does not prevail over an applicant proposing first overall reception service to a significant population. The First Order on Reconsideration modifies the initially adopted Tribal Priority coverage requirement, by creating an alternative coverage standard under criterion (2), enabling Tribes to qualify for the Tribal Priority even when their Tribal Lands are too small or irregularly shaped to comprise 50 percent of a radio station's signal. In such circumstances, Tribes may claim the priority (i) if the proposed principal community contour of the station encompasses 50 percent or more of that Tribe's Tribal Lands, but does not cover more than 50 percent of the Tribal lands of a non-applicant Tribe, (ii) serves at least 2,000 people living on Tribal Lands, and (iii) the total population on Tribal Lands residing within the station's service contour constitutes at least 50 percent of the total covered population, with provision for waivers as necessary to effectuate the

goals of the Tribal Priority. This modification will enable Tribes with small or irregularly shaped lands to qualify for the Tribal Priority. The First Order on Reconsideration also provides that, under criterion (2), even an applicant whose Tribal Lands would be covered by 50 percent or more of the proposed principal community contour (the original coverage standard set forth in the First Report and Order) may not claim the credit if the principal community contour would cover more than 50 percent of the Tribal Lands of a non-applicant Tribe.

FCC Form 340 and its instructions have been revised to accommodate those applicants qualifying for the new Tribal Priority. After adoption of the First Report and Order, we added new Questions 1 and 2, which seek information as to the applicant's eligibility for the Tribal Priority and direct applicants claiming the priority to prepare and attach an exhibit, to Section III. The instructions for Section III were also revised to assist applicants with completing the new questions and preparing the exhibit. In the First Order on Reconsideration, the Commission added an alternative definition of "Tribal Coverage" to that adopted in the First Report and Order. Accordingly, we have modified the instructions for Section III, Question 2, to comport with the new alternative Tribal Coverage definition. The form itself has not been revised, nor have any questions been added to Form 340.

*OMB Control Number:* 3060–0996.

*Title:* AM Auction Section 307(b) Submissions.

*OMB Approval Date:* July 5, 2011.

*OMB Expiration Date:* July 31, 2014.

*Form Number:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities; Not-for-profit entities; State, local or Tribal governments.

*Number of Respondents and Responses:* 210 respondents; 210 responses.

*Estimated Time per Response:* 0.5–6 hours (average).

*Frequency of Response:* On occasion reporting requirement.

*Obligation To Respond:* Required to obtain or retain benefits. Statutory authority for the information collection requirements is contained in Sections 154(i), 307(b) and 309 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 1,029 hours.

*Total Annual Costs:* \$2,126,100.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* On January 28, 2010, the Commission adopted a First Report and Order and Further Notice of Proposed Rulemaking ("First R&O") in MB Docket No. 09–52, FCC 10–24. The First R&O adopted changes to certain procedures associated with the award of broadcast radio construction permits by competitive bidding, including modifications to the manner in which it awards preferences to applicants under the provisions of Section 307(b). In the First R&O, the Commission added a new Section 307(b) priority that would apply only to Native American and Alaska Native Tribes, Tribal consortia, and majority Tribal-owned entities proposing to serve Tribal lands. As adopted in the First R&O, the priority is only available when all of the following conditions are met: (1) The applicant is either a Federally recognized Tribe or Tribal consortium, or an entity that is 51 percent or more owned or controlled by a Tribe or Tribes; (2) at least 50 percent of the area within the proposed station's daytime principal community contour is over that Tribe's Tribal lands, in addition to meeting all other Commission technical standards; (3) the specified community of license is located on Tribal lands; and (4) in the commercial AM service, the applicant must propose first or second aural reception service or first local commercial Tribal-owned transmission service to the proposed community of license, which must be located on Tribal lands. Applicants claiming Section 307(b) preferences using these factors will submit information to substantiate their claims.

On March 3, 2011, the Commission adopted a Second Report and Order ("Second R&O"), First Order on Reconsideration, and Second Further Notice of Proposed Rulemaking in MB Docket No. 09–52, FCC 11–28. The First Order on Reconsideration modifies the initially adopted Tribal Priority coverage requirement, by creating an alternate coverage standard under criterion (2), enabling Tribes to qualify for the Tribal Priority even when their Tribal lands are too small or irregularly shaped to comprise 50 percent of a station's signal. In such circumstances, Tribes may claim the priority (i) if the proposed principal community contour encompasses 50 percent or more of that Tribe's Tribal lands, but does not cover more than 50 percent of the Tribal lands of a non-applicant Tribe; (ii) serves at least 2,000 people living on Tribal lands, and (iii) the total population on Tribal lands residing within the station's service contour constitutes at

least 50 percent of the total covered population, with provision for waivers as necessary to effectuate the goals of the Tribal Priority. This modification will now enable Tribes with small or irregularly shaped lands to qualify for the Tribal Priority.

The modifications to the Commission's allotment and assignment policies adopted in the Second R&O include a rebuttable "Urbanized Area service presumption" under Priority (3), whereby an application to locate or relocate a station as the first local transmission service at a community located within an Urbanized Area, that would place a daytime principal community signal over 50 percent or more of an Urbanized Area, or that could be modified to provide such coverage, will be presumed to be a proposal to serve the Urbanized Area rather than the proposed community. In the case of an AM station, the determination of whether a proposed facility "could be modified" to cover 50 percent or more of an Urbanized Area will be made based on the applicant's certification in the Section 307(b) showing that there could be no rule-compliant minor modifications to the proposal, based on the antenna configuration or site, and spectrum availability as of the filing date, that could cause the station to place a principal community contour over 50 percent or more of an Urbanized Area. To the extent the applicant wishes to rebut the Urbanized Area service presumption, the Section 307(b) showing must include a compelling showing (a) That the proposed community is truly independent from the Urbanized Area; (b) of the community's specific need for an outlet of local expression separate from the Urbanized Area; and (c) the ability of the proposed station to provide that outlet.

In the case of applicants for new AM stations making a showing under Priority (4), other public interest matters, an applicant that can demonstrate that its proposed station would provide third, fourth, or fifth reception service to at least 25 percent of the population in the proposed primary service area, where the proposed community of license has two or fewer transmission services, may receive a dispositive Section 307(b) preference under Priority (4). An applicant for a new AM station that cannot demonstrate that it would provide the third, fourth, or fifth reception service to the required population at a community with two or fewer transmission services may also, under Priority (4), calculate a "service

value index" as set forth in the case of Greenup, Kentucky and Athens, Ohio, Report and Order, 2 FCC Rcd 4319 (MMB 1987). If the applicant can demonstrate a 30 percent or greater difference in service value index between its proposal and the next highest ranking proposal, it can receive a dispositive Section 307(b) preference under Priority (4). Except under these circumstances, dispositive Section 307(b) preferences will not be granted under Priority (4) to applicants for new AM stations. The Commission specifically stated that these modified allotment and assignment procedures will not apply to pending applications for new AM stations and major modifications to AM facilities filed during the 2004 AM Auction 84 filing window.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2011-18151 Filed 7-18-11; 8:45 am]

**BILLING CODE 6712-01-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 100526226-1322-02]

RIN 0648-AY95

#### Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Amendment 16, Framework Adjustment 44, and Framework Adjustment 45

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Interim final rule; correcting amendment; request for comments.

**SUMMARY:** This action makes corrections, clarifications, and modifications to existing regulations to ensure consistency with measures adopted by the New England Fishery Management Council (Council) to regulate the Northeast (NE) multispecies fishery and to provide additional flexibility for some of the administrative regulatory requirements. The current regulations governing the NE multispecies fishery contain a number of inadvertent errors, omissions, and potential inconsistencies with measures adopted by the Council and approved by the Secretary of Commerce

(Secretary) in recent actions regarding the NE Multispecies Fishery Management Plan (FMP). This interim final rule is being taken by NMFS under the authority of section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act); NMFS is implementing changes made to the dockside monitoring program (DSM), not included in the proposed rule, as an interim rule in order to seek public comments on the changes.

**DATES:** Effective on July 19, 2011.

Written comments must be received on or before August 18, 2011.

**ADDRESSES:** You may submit comments, identified by 0648-AY95, by any of the following methods:

- *Electronic submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: <http://www.regulations.gov>.

- *Fax:* (978) 281-9135.

- *Mail:* Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the Interim Final Rule to Correct/Clarify the NE Multispecies Regulations."

*Instructions:* All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the Regulatory Impact Review (RIR) prepared for this rule are available from the Regional Administrator at the above address. Copies of previous management actions, including Amendment 16, Framework Adjustment 44 (FW 44), FW 45, and the respective Final Environmental Impact Statements (FEISs) and Environmental Assessments (EAs) prepared for each action are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. These documents are also accessible via the Internet at <http://www.nefmc.org/nemulti/index.html>.