

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Establishment of a Class A)	MM Docket No. 00-10
Television Service)	
)	
)	
)	
)	

REPORT AND ORDER

Adopted: March 28, 2000

Released: April 4, 2000

By the Commission:

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I. INTRODUCTION

1. In this *Report and Order*, we establish a Class A television service to implement the Community Broadcasters Protection Act of 1999 (CBPA), which was signed into law November 29, 1999.¹ Pursuant to the CBPA and our implementing rules, certain qualifying low-power television (LPTV) stations will be accorded Class A status. Class A licensees will have “primary” status as television broadcasters, thereby gaining a measure of protection from full-service television stations, even as those stations convert to digital format. The LPTV stations eligible for Class A status under the CBPA and our rules provide locally-originated programming, often to rural and certain urban communities that have either no or little access to such programming. LPTV stations are owned by a wide variety of licensees, including minorities and women, and often provide “niche” programming to residents of specific ethnic, racial, and interest communities. The actions we take today will facilitate the acquisition of capital needed by these stations to allow them to continue to provide free, over-the-air programming, including locally-originated programming, to their communities. In addition, by improving the commercial viability of LPTV stations that provide valuable programming, our action today is consistent with our fundamental goals of ensuring diversity and localism in television broadcasting.

II. BACKGROUND

2. From its creation by the Commission in 1982, the low power television service has been a “secondary spectrum priority” service whose members “may not cause objectionable interference to existing full-service stations, and ... must yield to facilities increases of existing full-service stations or to new full-service stations where interference occurs.”² Currently, there are approximately 2,200 licensed LPTV stations in approximately 1,000 communities,³ operating in all 50 states. These stations serve both rural and urban audiences. Because they operate at reduced power levels,⁴ LPTV stations serve a much

¹ Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-594 – 1501A-598 (1999), *codified at* 47 U.S.C. § 336(f) (CBPA). This bill was enacted as part of the Intellectual Property and Communications Omnibus Reform Act of 1999, which itself is part of a larger consolidated omnibus appropriations bill entitled “Making consolidated appropriations for the fiscal year ending September 30, 2000, and for other purposes.”

² *Report and Order* in BC Docket No. 78-253, 51 R.R. 2d 476, 486 (1982). *See also id.* at n. 23: “[Because] it is integral to the concept of a secondary service that it yield to a mutually exclusive primary service, we shall not take low power stations into account in authorizing full-service stations, and we urge low power applicants to consider this fact when they select channels.”

³ *Public Notice*, “Broadcast Station Totals as [of] September 30, 1999” (*rel.* November 22, 1999).

⁴ LPTV stations may radiate up to 3 kilowatts of power for stations operating on the VHF band (*i.e.*, channels 2 through 13), and 150 kilowatts of power for stations operating on the UHF band (*i.e.*, channels 14 through 69). By comparison, full-service stations on VHF channels radiate up to 316 kilowatts of power, and stations on the UHF channels radiate up to 5,000 kilowatts of power. LPTV signals typically extend to a range of approximately 15 to 20 miles, while the signals of full-service stations can reach as far as 60 to 80 miles away.

smaller geographic region than full-service stations and can fit into areas where a higher power station cannot be accommodated in the Table of Allotments. In many cases, LPTV stations may be the only television station in an area providing local news, weather, and public affairs programming.⁵ Even in some well-served markets, LPTV stations may provide the only local service to residents of discrete geographical communities within those markets.⁶ Many LPTV stations air “niche” programming, often locally produced, to residents of specific ethnic, racial, and interest communities within the larger area, including programming in foreign languages.⁷

3. The LPTV service has significantly increased the diversity of broadcast station ownership. Stations are operated by such diverse entities as community groups, schools and colleges, religious organizations, radio and TV broadcasters, and a wide variety of small businesses. The service has also provided first-time ownership opportunities for minorities and women.⁸

4. In the CBPA, Congress found that the future of low-power television is uncertain.⁹ Because LPTV stations have secondary spectrum status, they can be displaced by full-service TV stations that seek to expand their own service area, or by new full-service stations seeking to enter the same market. The statute finds that this regulatory status affects the ability of LPTV stations to raise necessary capital.¹⁰ In addition, Congress recognized that the conversion to digital television further complicates the uncertain future of LPTV stations. To facilitate the transition from analog to digital television, the Commission has provided a second channel for each full-service television licensee in the country that will be used for digital broadcasting during the period of conversion to an all-digital broadcast service. In

⁵ See *First Report and Order, In the Matter of Review of the Commission's Rules Governing the Low Power Television Service*, MM Docket No. 93-114, 9 FCC Rcd 2555 (1994) (“*LPTV First Report and Order*”). See also Comments of Free Life Ministries, Inc. at 1. References to comments pertain to comments filed in response to the *Public Notice* (No. 82996) of the filing of the Community Broadcasters Association (CBA) petition for rule making. See n. 16, below.

⁶ Comments of D Lindsey Communications at 1 (noting that its LPTV station is the only station providing local news for residents of Temecula and Murrieta, CA, both of which are within the Los Angeles DMA). See also Comments of Engle Broadcasting at 1-2.

⁷ *LPTV First Report and Order*, 9 FCC Rcd at 2555 (1994). See also Comments of Community Broadcasting Company of San Diego at 2; Hispanic Broadcasters of AZ, Inc. at 1; Channel 19 TV Corp. at 2; ZGS Broadcast Holding, Inc. at 1; National Minority T.V., Inc. at 1; Liberty University, Inc. at 2; Debra Goodworth, Turnpike Television at 1-2.

⁸ *LPTV First Report and Order*, 9 FCC Rcd at 2555 (1994). See also, *Sixth Further Notice of Proposed Rule Making, In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MM Docket No. 87-268, 11 FCC Rcd 10968, 10995 (1996).

⁹ Section-by-Section Analysis to S. 1948, the Act known as the “Intellectual Property and Communications Omnibus Reform Act of 1999,” as printed in the Congressional Record of November 17, 1999 at pages S 14708 – 14726 (“Section-by-Section Analysis”), at S 14724.

¹⁰ Section-by-Section Analysis at S 14724.

assigning DTV channels, the Commission maintained the secondary status of LPTV stations and TV translators and, in order to provide all full-service stations with a second channel, was compelled to establish DTV allotments that will displace a number of LPTV stations.¹¹ Although the Commission has taken a number of steps to mitigate the impact of the DTV transition on stations in the LPTV service,¹² that transition nonetheless will have significant adverse effects on many stations, particularly LPTV stations operating in urban areas where there are few, if any, available replacement channels.

5. Congress sought in the CBPA to address some of these issues by providing certain low power television stations "primary" spectrum use status. The CBPA requires the Commission, within 120 days after the date of enactment, to prescribe regulations establishing a Class A television license available to qualifying LPTV stations. The CBPA directs that Class A licensees be subject to the same license terms and renewal standards as full-power television licensees, and that Class A licensees be accorded primary status as television broadcasters as long as they continue to meet the requirements set forth in the statute for a qualifying low-power station. In addition, among other matters, the CBPA sets out certain certification and application procedures for low-power television licensees seeking Class A designation, prescribes the criteria low-power stations must meet to be eligible for a Class A license, and outlines the interference protection Class A applicants must provide to analog (or NTSC), digital (DTV), LPTV, and TV translator stations.

6. Congress also recognized, however, that, because, of the emerging DTV service, not all LPTV stations could be guaranteed a certain future.¹³ Congress recognized the importance and engineering complexity of the FCC's plan to convert full-service stations to digital format, and protected the ability of these stations to provide both digital and analog service during the transition.¹⁴

7. On January 13, 2000, the Commission adopted an *Order and Notice of Proposed Rule Making (Notice)* seeking comment on a wide range of issues related to implementation of the CBPA. The Commission also terminated an earlier proceeding relating to establishment of primary status for LPTV stations. In its earlier proceeding, the Commission had adopted a *Notice of Proposed Rule Making*

¹¹ In the DTV proceeding the Commission estimated that approximately 55 to 65 percent of existing LPTV stations and 80 to 90 percent of all TV translator stations would be able to continue to operate and that operations in or near major urban areas would be most affected by the implementation of the DTV service. *Sixth Further Notice of Proposed Rule Making*, MM Docket No. 87-268, 11 FCC Rcd 10968 (1996). Television translators, which rebroadcast the programs of full-service TV stations, may be affected to a lesser extent because many translators operate in mountainous areas and are terrain-shielded from other stations. In addition to the DTV impact, hundreds of LPTV and translator stations operate on channels 60-69 and are required by law to vacate these channels by the end of the DTV transition period due to the reallocation of this spectrum for other uses. Full-service TV stations operating on channels 60-69 are also required to relocate to lower channels by that time. *In the Matter of Reallocation of Television Channels 60-69, the 746-806 MHz Band, Report and Order* in ET Docket No. 97-157, 12 FCC Rcd 22953 (1998).

¹² See *Notice of Proposed Rule Making, In the Matter of Establishment of a Class A Television Service*, MM Docket No. 99-292, RM-9260, FCC 99-257 (rel. Sept. 29, 1999) (*September 22 Notice*) at ¶¶ 9-14. The Commission terminated this earlier proceeding considering establishment of a form of primary status for LPTV stations in light of the subsequent passage of the CBPA on November 29, 1999.

¹³ Section-by-Section Analysis at S 14725.

¹⁴ Section-by-Section Analysis at S 14724.

(*September 22 Notice*)¹⁵ responding to a petition for rule making filed by the Community Broadcasters Association (CBA).¹⁶ In light of passage of the CBPA, which addresses many of the same issues raised in the *September 22 Notice* and the CBA petition, we terminated the earlier proceeding and initiated this new proceeding to implement the CBPA.

III. DISCUSSION

A. Certification and Application for License

1. Statutory Timeframes

8. Section (f)(1)(A) of the CBPA requires the Commission, within 120 days after the date of enactment (November 29, 1999), to prescribe regulations establishing a Class A television service.¹⁷ The CBPA establishes a two-part certification and application procedure for LPTV stations seeking Class A status. First, the CBPA directed the Commission to send a notice to all LPTV licensees describing the requirements for Class A designation.¹⁸ Within 60 days of the date of enactment, licensees intending to seek Class A designation were required to submit to the Commission a certification of eligibility based on the applicable qualification requirements.¹⁹

9. The CBPA provides that, absent a material deficiency in a licensee's certification of eligibility, the Commission shall grant the certification of eligibility to apply for Class A status.²⁰ The CBPA further provides that licensees "may" submit an application for Class A designation "within 30 days after final regulations are adopted" implementing the CBPA. We will construe the phrase "final regulations" in this context to mean the effective date of the Class A rules adopted herein. Thus, Class A applications may be filed beginning on the effective date of the rules. Within 30 days after receipt of an application that is acceptable for filing, the Commission must act on the application.²¹

¹⁵ In its January 13 *Notice*, the Commission indicated it had suspended the comment cycle in the earlier proceeding in light of passage of the CBPA, and directed that parties that filed comments in response to the *September 22 Notice* who wished to have their comments considered herein to refile the comments in this proceeding. See *Notice* at ¶ 2 and n. 4.

¹⁶ The petition was filed on September 30, 1997, and amended on March 18, 1998. On April 21, 1998, the Commission gave public notice of the filing of the petition and amendment and sought public comment. *Public Notice* (No. 82996), "Petition for Rulemaking filed for 'Class A' TV Service" (RM-9260), April 21, 1998.

¹⁷ 47 U.S.C. § 336(f)(1)(A). These regulations must be in place by March 28, 2000.

¹⁸ 47 U.S.C. § 336(f)(1)(B). The CBPA directed that this notice be sent within 30 days of the date of enactment. On December 13, 1999, the Mass Media Bureau issued a *Public Notice* informing the public of the statute and the eligibility requirements. *Public Notice*, "Mass Media Bureau Implements Community Broadcasters Protection Act of 1999," (*rel.* December 13, 1999). The Commission has also mailed to every LPTV licensee a "Statement of Eligibility for Class A Low Power Television Station Status." Congress directed licensees intending to convert to Class A status to complete the statement and return it to the Commission by January 28, 2000.

¹⁹ More than 1,700 certifications of eligibility have been filed with the Commission.

²⁰ 47 U.S.C. § 336(f)(1)(B).

²¹ 47 U.S.C. § 336(f)(1)(C).

2. Ongoing Eligibility

10. Background. Although the Act provides clear guidance on the time within which a licensee is entitled to file an application, and thus to start the clock for Commission action on the application, it does not address the specific question whether the Commission may continue to accept applications more than 30 days after our adoption of final rules. Section (f)(1)(B) of the statute states that licensees intending to seek Class A designation "shall" submit a certification of eligibility within 60 days after the date of enactment of the Act.²² Section (f)(2)(A) lists the eligibility requirements for Class A status.²³ However, Section (f)(2)(B) of the statute gives the Commission discretion to determine that the public interest, convenience and necessity would be served by treating a station as a qualifying LPTV station, or that a station should be considered to qualify for such status for other reasons, even if it does not meet the Section (f)(2)(A) requirements.²⁴ Section (f)(1)(C) provides that consistent with the requirements set forth in Section (f)(2)(A), a licensee "may" submit an application for Class A designation within 30 days after the Commission adopts final rules in this docket. In the Notice, we asked commenters to address whether the statute permits the Commission to continue to accept applications to convert to Class A after the 30 day period expires. In addition, presuming we have statutory authority to permit the filing of Class A license applications beyond that 30 day period, we asked commenters to discuss whether we should, as a matter of policy, allow LPTV stations to do so.

11. Decision. We believe that the basic purpose of the CBPA was to afford existing LPTV stations a window of opportunity to convert to Class A stations. Therefore, we will not accept applications from LPTV stations that did not meet the statutory criteria and that did not file a certification of eligibility by the statutory deadline, absent compelling circumstances. To be eligible for a Class A license, an LPTV station must go through several steps. First, it must have filed a certification of eligibility within 60 days of the enactment of the CBPA. Second, the certification of eligibility must be approved by the Commission. Third, it must file an application for a Class A license, as we determine below, within 6 months from the effective date of the Class A rules. And fourth, that license must be granted. The first stage of this process has already ended; those potential applicants who seek Class A status must have already filed their certifications of eligibility.

12. Some commenters asked that we expand the initial group of eligible LPTV stations beyond those who filed their certification in a timely manner. We decline to expand the eligible class in that way. We agree with the commenters who argue that for the purposes of conversion of the current class of stations, the statute clearly set forth a time frame within which licensees must file Class A certifications.²⁵ As expressed by the Association of Local Television Stations, Inc. (ALTV), the statute was designed to permit a one-time conversion of a single pool of LPTV applications that met specific

²² The provision governing filing of Class A applications does not contain the same mandatory language. It states that licensees "may" submit an application for Class A designation within 30 days after final regulations are adopted. 47 U.S.C. § 336(f)(1)(C).

²³ 47 U.S.C. § 336(f)(2)(A).

²⁴ 47 U.S.C. § 336(f)(2)(B).

²⁵ See, e.g., Comments of Association of America's Public Television Stations (APTS) at 10; Association of Local Television Stations, Inc. (ALTV) at 3; Association for Maximum Service Television, Inc. and National Association of Broadcasters (MSTV/NAB) at 15-16; Sinclair Broadcast Group, Inc. (Sinclair) at 11-12; WB Television Network (WB) at 21; AirWaves, Inc. (AirWaves) at 1.

criteria before the statute was enacted.²⁶ We find the statutory interpretation set forth by the Community Broadcasters Association (CBA), and others,²⁷ arguing that the statute allows ongoing eligibility, unpersuasive because the intent of Congress in enacting the CBPA was to establish the rights of a very specific, already-existing group.²⁸ The statute itself states its intent to apply to a small number of stations: "Since the creation of low-power television licensees by the Federal Communications Commission, a small number of license holders have operated their stations in a manner beneficial to the public good providing broadcasting to their communities that would not otherwise be available."²⁹ We recognize that Section (f)(2)(B) grants us discretion to determine that other LPTV stations qualify for Class A status. This discretion will be addressed in detail below.

13. The statute states that applicants "may" apply for licenses within 30 days after the adoption of final implementing rules, but gives no ultimate deadline. In order to allow sufficient time to potential applicants to prepare their applications, we will allow licensees that have filed timely certifications of eligibility to file Class A applications up to 6 months after the effective date of the rules we adopt today. We believe that establishing a 6 month period in which applications may be filed is consistent with the CBPA. The statute states that applicants "may" file license applications within 30 days from the adoption of final implementing rules. In contrast, the statute states that licensees intending to seek Class A designation "shall" file a certification of eligibility within 60 days after enactment.³⁰ We believe that the use of the word "may" in relation to applications indicates that the 30 day filing period is permissive only. Thus, applicants are not required to file within 30 days following the adoption of final rules, and we have authority to provide for a longer filing period.

14. We find that the 6 month deadline for filing a Class A application is a reasonable time frame that will afford all LPTV applicants, including those who must file displacement applications, adequate time to prepare and file their Class A applications consistent with the rules we adopt today. Where potential applicants face circumstances beyond their control that prevent them from filing within 6 months, we will examine those instances on a case-by-case basis to determine their eligibility for filing. We will not, however, accept license applications from LPTV licensees who did not timely file certifications of eligibility because we do not believe that Congress intended to create an open-ended class of potential Class A stations.

B. Qualifying Low-Power Television Stations

²⁶ Comments of ALTV at 8.

²⁷ CBA takes the position that the alternative eligibility criteria in the statute would be rendered a "nullity" and contrary to the intent of Congress if the opportunity to seek Class A eligibility ceased after the 60 day period for the filing of certificates of eligibility. See Comments of CBA at 3. See also Comments of Commercial Broadcasting Corp. (CBC) at 1; Community Service Television Company (Com Service) at 2; Council Tree Communications, LLC (Council) at 2-3; Home Shopping Club (Home Shopping)) at 6; Image Video Teleproductions, Inc. (Image) at 2.

²⁸ "[I]t is not clear that all LPTV stations should be given such a guarantee [of Class A status] in light of the fact that many existing LPTV stations provide little or no original programming service." Section-by-Section Analysis at S14725.

²⁹ CBPA, § (b)(1).

³⁰ 47 U.S.C. § 336(f)(1)(B).

1. Statutory Eligibility Criteria

15. Section (f)(2)(A) of the CBPA provides that an LPTV station may qualify for Class A status if, during the 90 days preceding the date of enactment of the statute: (1) the station broadcast a minimum of 18 hours per day; (2) the station broadcast an average of at least 3 hours per week of programming produced within the market area served by the station, or the market area served by a group of commonly controlled low-power stations that carry common local programming produced within the market area served by such group; and (3) the station was in compliance with the Commission's requirements for LPTV stations.³¹ In addition, from and after the date of its application for a Class A license, the station must be in compliance with the Commission's operating rules for full-power television stations.³² Alternatively, Section (f)(2)(B) of the CBPA provides that a station may qualify for Class A status if "the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission."³³ This alternative eligibility will be addressed below.

2. Locally-Produced Programming

16. Background. We stated in the *Notice* that the statute's requirement that, during the 90 days preceding the date of enactment of the CBPA, LPTV stations must have broadcast a minimum of 18 hours per day is straightforward. The statute also prescribes that, during this period, LPTV stations must have broadcast an average of at least 3 hours per week of programming produced within the "market area" served by the station. As the statute does not define "market area," we proposed in the *Notice* to define it as the station's protected service area. We noted that we had proposed to define the Class A protected service area as the protected area now afforded LPTV stations, and asked commenters to address whether the protected service area ultimately adopted by the Commission should also be used to define "market area" in connection with the local programming criterion. With respect to a group of commonly controlled stations, we proposed to define the "market area" of such stations as the area covered by the protected service area of all stations in the commonly-owned group. We stated that we were not inclined to include repeated programming or locally produced commercials as contributing to the mandatory 3 hours of locally produced programming, and invited comment on this tentative conclusion.³⁴

17. Decision. We will not adopt the definition of "market area" that we proposed in the *Notice*. We are persuaded to adopt a more expansive definition after reviewing the many comments, such as those of Larry Schrecongost,³⁵ that contend our proposal would be too restrictive with respect to the local production of programming. Commenters propose a number of broader alternative definitions. For example, Turnpike Television (Turnpike) contends that the definition of market area should be each station's predicted Grade B service area,³⁶ Centex Television Limited Partnership (Centex) argues for the

³¹ 47 U.S.C. § 336(f)(2)(A)(i).

³² 47 U.S.C. § 336(f)(2)(A)(ii).

³³ 47 U.S.C. § 336(f)(2)(B).

³⁴ *Notice* at ¶ 19.

³⁵ See Comments of Larry Schrecongost (Schrecongost) at 2-3.

³⁶ See Comments of Turnpike Television (Turnpike) at 5-6. See also Comments of Airwaves at 1; CBA at 13. See also Reply Comments of CBA at 17.

DMA,³⁷ and CBA would expand the market area to include coverage of out-of-town events. There are several commenters, however, such as WB Television Network (WB), that support our proposed definition,³⁸ but only one, Sinclair Broadcast Group, Inc. (Sinclair), argues that the market area should be even more restricted, defining the market area as the LPTV station's community of license.³⁹

18. We instead will expand our definition of "market area" to encompass the area within the predicted Grade B contour determined by the Class A station's antenna height and power, which encloses a larger area than that of an LPTV station's protected service contour.⁴⁰ With respect to a group of commonly controlled stations, the market area will be the area within the predicted Grade B contours of any of the stations in the commonly owned group.

19. With respect to the local market definition, a number of commenters urge us to expand our definition of the market area to include the predicted Grade B contour, contending that it is the only reasonable and realistic definition for defining where locally originated programming would be produced. Centex argues that broadening the market area definition, rather than limiting it to the protected service area, serves the Congressional intent of rewarding and protecting LPTV stations which provide communities with locally oriented programming.⁴¹ We agree. We also believe that extending the market area to encompass the Grade B contour will give stations more flexibility to provide locally oriented programming to the community within their signal range, and provide them with a more stable economic base in which to improve their commercial viability. Accordingly, we believe that the predicted Grade B contour is a more appropriate measure than our original protected contour proposal with respect to provision of locally oriented programming for the communities served by LPTV stations. We do not agree with those commenters who suggested that market should be defined even more broadly, such as the DMA.⁴² Many LPTV stations serve areas considerably smaller than the DMA in which they are located. Moreover, some DMAs are extremely large, with the availability of even full-service stations throughout the DMA substantially dependent on cable carriage. It does not appear appropriate, therefore, to consider programming produced anywhere in the DMA to be "locally produced" for purposes of Class A stations' eligibility.

20. Some commenters are concerned about the possible conflicts between the locally produced programming requirement and the existing main studio rule, arguing that we should either consider waivers of the main studio rule⁴³ or not adopt so restrictive a definition of market area as to

³⁷ See Comments of Centex at 1. See also Comments of National Minority TV, Inc. (NRB) at 7.

³⁸ See Comments of WB at 24. See also Comments of Alaskan Choice Television (Alaskan) at 2; Sherjan Broadcasting Company (Sherjan) at 3-4.

³⁹ See Comments of Sinclair Broadcast Group, Inc. (Sinclair) at 10.

⁴⁰ See discussion of Class A station's antenna height, power, and protected service contour, below.

⁴¹ See Comments of Centex at 1.

⁴² We note that the predicted Grade B signal contour of an LPTV station, which typically would not extend beyond 20-25 miles, is generally smaller than the DMA, which normally encompasses several counties. In some cases, different communities within a DMA might be served by different Class A stations. The LPTV service was tailored to meet the needs of local communities, as opposed to such wider areas as would be covered in a DMA.

⁴³ 47 C.F.R. § 1125.

conflict with the rule.⁴⁴ As discussed below in this *Report and Order*, we have decided to require Class A stations to maintain a main studio located within their predicted Grade B contours. We have also decided to grandfather all main studio locations now in existence and operated by LPTV stations. To avoid any conflicts between the local market definition and our main studio rule, we will consider programming produced at the main studio of such grandfathered Class A stations to be locally produced programming even though the main studio is located outside the stations' Grade B contours.

3. Operating Requirements

21. Background. To qualify for Class A status, the CBPA provides that, during the 90 days preceding enactment of the statute, a station must have been in compliance with the Commission's requirements for LPTV stations.⁴⁵ In addition, beginning on the date of its application for a Class A license and thereafter, a station must be "in compliance with the Commission's operating rules for full-power stations."⁴⁶ We stated in the *Notice* our intent to apply to Class A applicants and licensees all Part 73 rules, except for those which are inconsistent with the manner in which LPTV stations are authorized or the lower power at which these stations operate. Thus, for example, we proposed that Class A stations comply with the Part 73 requirements for informational and educational children's programming and the limits on commercialization during children's programming, the political programming rules, and the public inspection file rule. We stated that we intended to exempt Class A licensees only from Part 73 rules that clearly cannot apply, either due to technical differences in the operation of low-power and full-power stations, or for other reasons. For example, we noted that some Class A stations might not be able to comply with the requirement of Section 73.685(a) that stations provide a specified level of coverage to their community of license. We requested comment on this provision and any other Part 73 requirement that, for technical or other reasons, either cannot apply to Class A stations or must be modified with respect to such stations. We also invited comment on whether the Commission should group the new Class A service under the Part 73 rules, governing full-service facilities, or the Part 74 rules, governing low-power stations.

22. We also stated our belief in the *Notice* that the current power limits in the LPTV rules should apply to Class A. We noted that further increases could hinder the implementation of digital television and could limit the number of Class A stations that could be authorized. Finally, we sought comment on whether to require Class A stations to provide some requisite level of coverage over their community. We noted that such stations may not operate with sufficient power to serve large communities, and that we had reservations about increasing power limits for Class A stations beyond the current limits in the LPTV service.⁴⁷

23. Decision. We will adopt our proposal to apply to Class A applicants and licensees all Part 73 regulations except for those that cannot apply for technical or other reasons. We believe that this course of action is most consistent with the language of the statute, which provides that from and after the date of an application for a Class A license, LPTV stations must comply with the operating rules for full-power television stations to be eligible for Class A status. Most commenters that addressed this issue

⁴⁴ See Comments of W.B. St. Clair (St. Clair) at 2; WatchTV, Inc. (WatchTV) at 2.

⁴⁵ 47 U.S.C. § 336(f)(2)(A)(i)(III).

⁴⁶ 47 U.S.C. § 336(f)(2)(A)(ii).

⁴⁷ See *Notice* at ¶¶ 54-56.

agree that Class A stations should be required to comply with most Part 73 obligations except for those that are clearly inappropriate or inapplicable.⁴⁸

24. The Part 73 requirements that we will apply to Class A applicants and licensees are set forth in Appendix A. Among other Part 73 obligations, we will require that Class A applicants and licensees comply with the following: our rules governing informational and educational children's programming and the limits on commercialization during children's programming; the requirement to identify a children's programming liaison at the station and to provide information regarding the "core" educational and informational programming aired by the station to publishers of television program guides; the requirement to place in their file the quarterly forms 398; the political programming rules; the public inspection file rule, including the requirement to prepare and place in the public inspection file on a quarterly basis an issues/programs list; and station identification requirements. We will require Class A stations to comply with the Emergency Alert System (EAS) rules applicable to full-service television stations; for example, they will be required to have and operate a digital EAS encoder and perform the weekly and monthly EAS tests required of full-service stations.⁴⁹ As provided in Section (f)(1)(A)(ii) of the CBPA, Class A licensees must also continue to meet the requirements for a qualifying low-power station in order to continue to be accorded Class A status.⁵⁰

25. We will require Class A applicants and licensees to maintain a main studio. As Class A stations will be low-power and thus serve a smaller area than most full-service stations, we do not believe it is appropriate to permit Class A stations to locate their main studio within the principal community contour of any station serving that market, or 25 miles from the center of its community of license, as we permit for full-service stations.⁵¹ Instead, we will require Class A stations to locate their main studios within the station's Grade B contour, as determined pursuant to the Commission's rules.⁵² This will ensure that newly created main studios are more accessible to the population that receives the station's programming. We will grandfather all main studios now in existence and operated by LPTV stations. We

⁴⁸ See, e.g., Comments of CBA at 13-17 (would exempt Class A stations only from certain ownership, principal city coverage, filing fee, and call sign requirements); Fox Television Stations, Inc. a/k/a Fox Broadcasting Company (Fox) at 13-15 (would exempt Class A stations from the Part 73 provisions addressing the table of allotments, minimum distance separations, and power and antenna height requirements, and would reduce the minimum field strength requirements for community coverage to correspond with the lower power levels at which Class A stations would operate); Sinclair at 10 (Class A stations must be subject to all Part 73 rules, such as children's television programming requirements, main studio rule, public inspection file rules, and political programming rules); WB at 24-27 (Class A stations must comply with all Part 73 requirements, including children's educational programming requirements and commercial limits, and the political programming, public inspection file, and main studio rules).

⁴⁹ The EAS rules are given in Part 11 of the Commission's Rules. LPTV stations, except those that operate as television translator stations, are required to have a digital decoder. At the present time, manufacturers of EAS equipment produce only integrated encoder/decoder devices. Therefore, as a practical matter, we believe most LPTV stations already have a digital encoder.

⁵⁰ 47 U.S.C. § 336(f)(1)(A)(ii).

⁵¹ See 47 C.F.R. § 73.1125.

⁵² The Grade B field strength values are defined in 47 C.F.R. § 73.683(a) as 47 dBu for channels 2-6, 56 dBu for channels 7-13, and 64 dBu for channels 14-69. The method of predicting the location of the Grade B contour is specified in 47 C.F.R. § 73.684.

do not believe it is necessary to require these stations to change the location of their existing studio, or build a new studio, to comply with our Class A rules. We will grandfather those main studios for purposes of our Class A main studio rule adopted in this *Report and Order*.

26. For purposes of our Class A rules, we will also modify a number of other requirements applicable to full-service television broadcast stations, including: (1) minimum hours of operation of 18 hours per day, as required by the statute; (2) grandfather the use of LPTV broadcast transmitters; and (3) permit Class A stations to operate without a carrier frequency offset. We will permit qualified Class A station licensees to continue to operate their existing LPTV transmitters, provided these transmitters do not cause interference due to excessive emissions on frequencies outside of the station's assigned channel. We will require Class A stations seeking facilities increases under the more inclusive definition of "minor" changes we are adopting for these stations to specify operation on an offset frequency and to operate with a transmitter meeting the required frequency tolerance for offset operation.

27. We will not apply to Class A facilities the following provisions of Part 73: (1) the NTSC and DTV Tables of Allotments (sections 73.606 and 73.607); (2) mileage separations (section 73.610); and (3) minimum power and antenna height requirements (section 73.614). As qualifying LPTV stations are not governed by mileage separations, do not have allotted technical parameters, and will not have a community coverage requirement, these provisions of Part 73 will not apply to Class A. LPTV stations are not subject to minimum power and antenna height requirements under Part 74, and we will not impose any such requirements on Class A stations.

28. We will also exempt Class A facilities from the principal city coverage requirement of section 73.685(a) of the rules. At this time, we believe that it is unnecessary to require Class A stations to provide a requisite level of coverage over their community. Although LPTV stations are associated with a specific community on their license application, they are not subject to any requirement to provide a specified level of coverage to that community. As we indicated in the *Notice*, those Class A stations that are intended to serve an entire community that is otherwise unserved or underserved have ample incentive to provide service to the residents of the whole of that community without a mandatory requirement to do so.⁵³ Other stations may intend to serve only a narrow segment of their community. In view of the lower power levels at which LPTV stations now operate and at which Class A facilities will continue to operate, and the fact that in many cases these stations provide programming to areas where a higher power station could not be accommodated in the Table of Allotments, we do not believe a minimum coverage requirement is appropriate. The commenters that addressed this issue generally agreed that no new coverage requirement should be imposed on existing LPTV stations seeking Class A designation.⁵⁴ If the circumstances regarding operation of Class A stations change in the future, including, for example, the permitted power levels of such facilities, we reserve the right to revisit the issue of minimum coverage requirements at that time.

⁵³ See *Notice* at ¶ 55.

⁵⁴ CBA argues that, at a minimum, every existing LPTV station should be grandfathered under any principal city coverage requirement the Commission may adopt. For new stations and Class A stations seeking to change their community of license, CBA states "it may be appropriate" to require that the Class A station protected service contour encompass a portion of the community of license. See Comments of CBA at 15-16. WB would require that a Class A station's protected signal contour cover the same or a greater percentage of the LPTV station's community of license as it did on November 29, 1999. See Comments of WB at 35.

29. As we proposed in the *Notice*, we will also maintain for now the current LPTV maximum power levels for Class A stations.⁵⁵ We believe that these power levels are sufficient to preserve existing service, which is consistent with Congress' objective underlying the CBPA.⁵⁶ While many commenters urged us to permit Class A stations to increase power above the limits currently applicable to LPTV stations,⁵⁷ we will not adopt such a course at this time. Congress emphasized in the CBPA the importance of balancing the needs of LPTV licensees against the needs of full-service stations as they transition to a digital format. We believe that further power increases at this time could hinder the implementation of digital television, as well as limit the number of Class A stations that could be authorized. Moreover, we recently increased power levels for LPTV stations in our DTV *Sixth Report and Order*,⁵⁸ and have not yet opened a filing window to permit stations to modify their facilities to take advantage of this power increase.

30. Several commenters propose that we require Class A licensees to certify annually their continued compliance with the Class A eligibility criteria and with applicable Part 73 requirements.⁵⁹ As we noted above, in addition to requiring Class A applicants and licensees to comply with the operating requirements for full-power television stations, the CBPA also requires that Class A licensees continue to meet the eligibility criteria established for a qualifying low-power station in order to retain Class A status.⁶⁰ We will not adopt an annual certification or reporting requirement for Class A stations. We do not have such a general requirement for other television broadcast stations, and see no need to treat Class A stations differently. However, like other Part 73 licensees, we will require Class A licensees to certify compliance with applicable FCC rules at time of renewal. In addition, as in the case of other Part 73

⁵⁵ See 47 C.F.R. § 74.735.

⁵⁶ According to Congress, the purpose of the CBPA is to "ensure that many communities across the nation will continue to have access to free, over-the-air low-power television (LPTV) stations, even as full-service television stations proceed with their conversion to digital format." Section-by-Section Analysis at S 14724 (emphasis added).

⁵⁷ CBA argues that the FCC should permit increased power levels above the current Part 74 limits particularly for high-band VHF stations. CBA also states that whatever ERP limits that do apply should apply only in the horizontal plane, allowing additional power to be directed at downward elevations. Comments of CBA at 22. We disagree that the ERP limits should apply strictly in the horizontal plane. The LPTV rules establish limits for a station's maximum peak effective radiated power. Allowing power levels beyond those specified in the LPTV rules in connection with antenna beam tilt would increase the potential for causing interference to full-service stations operating near a Class A station; for example, stations operating on the 2nd, 3rd or 4th adjacent channels. MSTV/NAB, National Translator Association (NTA), Fox, and WB oppose permitting increased power for Class A. See Comments of MSTV/NAB at 14 n. 43; NTA at 5; Fox at 13; WB at 34.

⁵⁸ *Sixth Report and Order, In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MM Docket No. 87-268, 12 FCC Rcd 14588, 14605-06 (1997) ("*Sixth Report and Order*").

⁵⁹ See, e.g., Comments of WB at 27 (Class A stations should be required to certify annually their continued compliance with the local programming requirement, the minimum operating requirement, and all applicable provisions of Part 73); Sinclair at 10 (FCC should adopt reporting requirements for Class A stations to ensure they are in compliance with the operating rules for full-service stations from the date of their application for a Class A license).

⁶⁰ 47 U.S.C. § 336(f)(1)(A)(ii).

licensees, Class A renewal applications will be subject to petitions to deny. Finally, we will require licensees seeking to assign or transfer a Class A license to certify on the application for transfer or assignment of license that the station has been operated in compliance with the rules applicable to Class A stations. We will also require Class A assignees and transferees to certify on their portion of the transfer or assignment application that they will operate the station in accordance with these rules.

31. We will place our rules governing the new Class A television service under Part 73. As Class A stations must comply with the operating rules for full-service stations, which are found in Part 73, it appears most logical to group the rules for Class A service with the full-service broadcast rules. LPTV stations that are not eligible for or choose not to apply for Class A status will continue to be governed by Part 74 of our rules.⁶¹

4. Alternative Eligibility Criteria

32. Background. The CBPA grants the Commission authority to establish alternative eligibility criteria for LPTV stations seeking Class A designation if “the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission.”⁶² In the *Notice*, we sought comment on (1) how far an LPTV station may deviate from the statutory eligibility criteria and still be considered eligible for Class A status, and (2) whether we should establish a different set of criteria for certain types of LPTV stations, such as foreign language stations or TV translators.

33. Decision. Congress mandated three Class A eligibility qualifications in the CBPA. For the 90 days prior to enactment of the CBPA, an applicant must have (1) broadcast a minimum of 18 hours per day, (2) broadcast an average of at least 3 hours per week of programming produced within the market area served by the station, and (3) been in compliance with Commission requirements of LPTV stations. We will allow deviation from the strict statutory eligibility criteria only where such deviations are insignificant or when we determine that there are compelling circumstances, and that in light of those compelling circumstances, equity mandates such a deviation. Examples of such compelling circumstances include a natural disaster or interference conflict which forced the station off the air during the 90 day period before enactment of the CBPA.

34. We will not establish a different set of criteria for foreign language stations that do not meet the local programming criteria. We recognize the valuable service provided by foreign language stations, but conclude that Congress’ intent was to preserve the service of a small class of existing LPTV stations that were providing local programming.⁶³ We appreciate the comments submitted by groups with foreign language programming that encourage us to allow such programming to meet the statutory

⁶¹ Nothing in this *Report and Order* is intended to affect a Class A LPTV station’s eligibility to qualify for mandatory carriage under 47 U.S.C. § 534.

⁶² 47 U.S.C. § 336(f)(2)(B).

⁶³ See Section-by-Section Analysis at S14725.

requirement.⁶⁴ We conclude, however, that foreign language stations should have the same eligibility requirements as any other potential Class A station.⁶⁵

35. We will not adopt separate eligibility criteria for translator stations under the CBPA, as requested by the National Translator Association (NTA).⁶⁶ The statute limits eligibility to LPTV stations that produce local programming and can meet the operating rules applicable to full-service stations.⁶⁷ We recognize, however, the extremely valuable service that translators provide, often representing the only source of free, over-the-air broadcasting in rural areas. Indeed, we expressly asked about according translators Class A status in the September 22 Notice. While that proceeding has been terminated, we still believe that this is an issue that should be examined. Thus, we will institute a new proceeding seeking comment on whether translators should be permitted to qualify for some form of primary status, and what the eligibility requirements for such protection should be.

C. Class A Interference Protection Rights and Responsibilities

1. Class A Protected Service Area

36. Background. The CBPA requires the Commission to preserve the service areas of low power television licensees pending the final resolution of Class A applications.⁶⁸ In the *Notice*, the Commission proposed to protect the service contours of analog Class A stations and certified eligible LPTV stations to the field strength values that define LPTV protected signal contours.⁶⁹ The *Notice* also sought comment on whether protected contour values for digital Class A stations should be based on the field strength values that define DTV noise-limited contours or other field strength values better suited for this purpose.⁷⁰

37. Decision. We will adopt the proposal in the *Notice* with respect to analog stations and define the following protected signal contour values for these stations: 62 dBu for channels 2-6, 68 dBu

⁶⁴ See, e.g., Comments of Council at 3-4; Comments of Entravision Holdings, LLC (Entravision) at 4; Comments of K Licensee, Inc. (K Licensee) at 2-4; Comments of Paging Systems, Inc. (Paging) at 5.

⁶⁵ See, e.g., Comments of Nicolas Communications Corporation (Nicolas) at 11.

⁶⁶ See Comments of NTA at 2.

⁶⁷ "Congress has recognized that 'LPTV stations are distinct from so called 'translators.' " Whereas LPTV stations typically offer original programming, translators merely amplify or 'boost' a full-service television station's signal into rural or mountainous regions adjacent to the station's market." Section-by-Section Analysis at S 14726, n. 28.

⁶⁸ 47 U.S.C. § 336(f)(1)(D).

⁶⁹ 47 C.F.R. § 74.707(a). Most LPTV interference requirements limit the strength of a station's signal at another station's protected service contour. The service contour is defined by a field strength that is protected against interference. The protected signal contour is the locus of points where that field strength is predicted to occur. The contour-defining field strength, together with an LPTV station's power and antenna height, determine the geographic extent of its protected service. For a given facility, as long as that field strength is large enough to be received, the station's protected area would increase as the defining field strength is set to smaller dBu values.

⁷⁰ The DTV noise-limited contour values are: 28 dBu for channels 2-6, 36 dBu for channels 7-13 and 41 dBu for channels 14-69. See 47 C.F.R. § 73.622(e).

for channels 7-13, and 74 dBu for channels 14 and above, as calculated using the Commission's F(50,50) signal propagation curves. CBA and several LPTV station operators urge an expanded Class A protected contour, such as the TV Grade B contour.⁷¹ We recognize, as these commenters point out, that LPTV stations can be viewed in the areas between their protected contour and the Grade B contour of their facilities, just as the signals of NTSC stations are often viewed beyond their Grade B contours.⁷² In enacting the CBPA, Congress equated the service areas to be preserved with the LPTV signal contours, which have always been defined by the above field strength values.⁷³ We agree with Fox that expanding contour protection for Class A stations would be inconsistent with the intent of the CBPA to preserve existing service.⁷⁴ Also, as noted by the Association of Federal Communications Consulting Engineers (AFCCE), this would be likely to create new situations of prohibited contour overlap between LPTV stations where none currently exist.⁷⁵ More than 2,000 LPTV stations have been engineered to fit into the broadcast landscape on the basis of protection to the LPTV service contours.⁷⁶ The LPTV service is now mature, and service expectations are well established. We do not want to upset the balance that has been achieved between service and interference considerations. For these reasons, we will apply the LPTV service contour definitions to Class A stations as the basis for interference protection.

38. The above considerations are also relevant to our choice of protected signal contours for digital Class A stations. Some commenters favor use of the DTV noise-limited signal contours for this purpose, which are comparable to NTSC Grade B contours.⁷⁷ Use of these values would, in effect, expand protection for digital Class A stations, compared to that for analog Class A stations, whose protected contours are comparable to NTSC Grade A contours.⁷⁸ Using these values would also create situations where Class A digital service contours would overlap with the interference-limited contours of analog LPTV and Class A stations. This "built-in" interference would occur to a lesser extent if the Class A digital protected contours were geographically smaller. Also, digital conversion opportunities for Class A and other services would be precluded to a lesser extent through the use of digital contour values more comparable to the Class A analog values. We will adopt the protected contour values suggested by the AFCCE, du Treil, Lundin & Rackley (du Treil), and the Society of Broadcast Engineers (SBE): 43 dBu

⁷¹ See Comments of CBA at 7 (advocating greater protection from new prohibited signal contour overlap). See also Comments of Commercial Broadcasting Corporation at 2; Equity Broadcasting Corporation (Equity) at 5; Turnpike at 2; Martinez Group (Martinez) at 2; Sherjan at 3; and Airwaves, Inc. at 1.

⁷² The Grade B field strength values are defined in 47 C.F.R. § 73.683(a) as 47 dBu for channels 2-6, 56 dBu for channels 7-13 and 64 dBu for channels 14-69.

⁷³ See Section-by-Section Analysis at S14725.

⁷⁴ See Reply Comments of Fox at 4.

⁷⁵ See Comments of the Association of Federal Communications Consulting Engineers (AFCCE) at 1. See also the comments of St. Clair at 1 (stating that changing the protected contour definition for Class A stations would create confusion).

⁷⁶ Some stations operate with facilities just sufficient to protect other LPTV or TV translator stations.

⁷⁷ See Comments of MSTV/NAB at 24 and Technical Supplement to Reply Comments of CBA at 1.

⁷⁸ NTSC Grade A contour values are defined in 47 C.F.R. § 73.683(a) as 68 dBu for channels 2-6, 71 dBu for channels 7-13 and 74 dBu for channels 14-69.

for channels 2-6, 48 dBu for channels 7-13 and 51 dBu for channels 14-51.⁷⁹ These values reflect the differences between analog LPTV protected contours and NTSC Grade B contours. For example, the analog LPTV and Grade B values for UHF stations are 74 dBu and 64 dBu, respectively - a 10 dB difference. This difference (or scaling factor) is added to the 41 dBu DTV noise-limited field strength value to obtain a protected contour of 51 dBu for UHF digital Class A stations. In a future proceeding, we will consider rules for permitting on-channel digital conversion for TV translator and non-Class A LPTV stations. We may wish to revisit the issue of Class A digital protected contour values at that time.

2. Time Protection Begins

39. Background. Section (f)(1)(D) of the CBPA requires the Commission to preserve the service areas of low-power television licensees pending the final resolution of a Class A application.⁸⁰ In the *Notice*, we proposed to preserve the service area of LPTV licensees from the date the Commission receives an acceptable certification of eligibility for Class A status; that is, a certification that is complete and that, on its face, indicates eligibility for Class A status pursuant to the eligibility criteria established by statute and any other criteria ultimately approved in this proceeding. Thus, we proposed to protect the service area of an LPTV station, to the extent provided in the CBPA and our rules, from the date a certification for eligibility is filed with the Commission, as long as the certification is ultimately granted by the Commission.

40. Decision. We will adopt our proposal to commence preservation of the service area of LPTV stations from the date of receipt of an acceptable certification of eligibility filed pursuant to section (f)(1)(B) of the CBPA. As we stated in the *Notice*, this timing appears most consistent with the CBPA's dual certification and application scheme for Class A status, despite the reference in the statute to the pendency of an application, as opposed to a certification, to trigger contour protection. Senator Conrad Burns, a sponsor of the CBPA in the Senate, introduced a statement on the Senate floor clarifying the issue of when an LPTV station's contour should be preserved. He stated in part: "It is clearly our intent that as soon as the Commission is in receipt of an acceptable certification notice, it should protect the contours of this station until final resolution of that application."⁸¹

41. We disagree with MSTV/NAB that protection should begin from the time a Class A application is filed, rather than the date of filing of a certification of eligibility. This reading of the statute would render the separate certification of eligibility requirement meaningless. MSTV/NAB argue that protecting the more than 1700 eligibility certifications filed by the January 28, 2000 deadline⁸² would "paralyze" the Commission.⁸³ However, more than a third of these certifications, on their face, do not

⁷⁹ See Comments of the AFCCE at 1; du Treil, Lundin & Rackley (du Treil) at 1-2; the Society of Broadcast Engineers (SBE) at 5.

⁸⁰ 47 U.S.C. § 336(f)(1)(D).

⁸¹ See District of Columbia Appropriations Act, 2000 –Conference Report Resumed, Congressional Record of November 19, 1999 at p. S14989. With respect to LPTV stations operating on channels outside the core that seek Class A status, we will commence contour protection for those stations upon issuance of a construction permit for an in-core channel. See *infra*.

⁸² See *Statements of Eligibility for Class A Low Power Television Status Tendered for Filing*, Public Notice (rel. Feb. 8, 2000).

⁸³ See Reply Comments of MSTV/NAB at 13.

comply with the eligibility criteria established in the CBPA and our rules adopted herein. Included in this group are certifications submitted by translator station licensees and permittees of unbuilt LPTV stations. Such licensees and permittees do not meet the eligibility standards of the CBPA and our rules. Accordingly, their certifications are not acceptable and will be dismissed. Similarly deficient are those certifications filed after the January 28, 2000 deadline and those certifications submitted by LPTV licensees whose stations aired no locally produced programming during the entire 90-day period preceding enactment of the CBPA. They too will be dismissed.

42. As discussed above, the CBPA permits the Commission to establish alternative criteria for Class A eligibility if it determines that the public interest, convenience and necessity would be served thereby, or for other reasons.⁸⁴ Thus, there may be instances in which a certification of eligibility is filed but the corresponding Class A application may not be granted because the alternative eligibility showing cannot be approved. We also note that a Class A application could be denied if a certification of eligibility were later determined to be incorrect. In situations where the Commission determines that a Class A certification of eligibility or Class A application may not be granted, protection of the service contour of that facility will cease from the date the Commission determination is made.

3. Protection of Pending NTSC TV Applications and Facilities

43. Background. The CBPA requires that the Commission preserve the service areas of LPTV stations pending the final resolution of a Class A application.⁸⁵ As discussed above, we interpret that provision to require protection from the date of filing of an acceptable certification of eligibility for Class A status. With respect to NTSC facilities, Section (f)(7)(A) of the CBPA provides that the Commission may not grant a Class A license, nor approve a modification of license, unless the applicant shows that the proposed Class A station will not cause interference "within the predicted Grade B contour (as of the date of enactment of the ...[CBPA] ...) or as proposed in a change application filed on or before such date) of any television station transmitting in analog format."⁸⁶ We invited comment in the *Notice* on how to interpret the phrase "transmitting in analog format." We indicated that we were inclined to include among the NTSC facilities that Class A stations must protect both stations actually transmitting in analog format and those that have been authorized to construct facilities capable of transmitting in analog format (*i.e.*, construction permits). Under this interpretation, pending applications for new NTSC full-service stations would not be protected, including applications of successful bidders in the September 1999 broadcast auction that have not been granted a construction permit. In addition, there are still pending before the Commission applications and channel allotment rule making petitions involving channels 60 - 69 and requests for waiver of the 1987 TV filing freeze, which may account for approximately 180 potential new NTSC stations. We indicated in the *Notice* that these applications and allotment proposals would not be protected under this interpretation of the CBPA, nor would any modified allotment proposals for channel or other technical changes or any applications for modification of facilities filed after November 29, 1999.⁸⁷

⁸⁴ 47 U.S.C. § 336(f)(2)(B).

⁸⁵ 47 U.S.C. § 336(f)(1)(D).

⁸⁶ 47 U.S.C. § 336(f)(7)(A)(i).

⁸⁷ See *Notice* at ¶ 27-28.

44. Decision. Upon further reflection, and after careful consideration of the comments, we have reconsidered our proposal regarding interpretation of the interference protection that must be accorded by Class A to pending NTSC applications. Instead, we will adopt the proposal similar to that advanced by CBA in its comments to require Class A stations to protect both existing analog stations and full-service applicants that have completed all processing short of grant necessary to provide a reasonably ascertainable Grade B contour.⁸⁸ We believe this proposal is both equitable and consistent with the CBPA. Specifically, we will require Class A applicants to protect the predicted Grade B contour (as of November 29, 1999, or as proposed in a change application filed on or before that date) of full-power analog stations licensed on or before November 29, 1999. We will also require Class A applicants to protect the Grade B contour of full-power analog facilities for which a construction permit was authorized on or before November 29, 1999. Finally, we will require Class A applicants to protect the facilities proposed in any application for full-power analog facilities that was pending on November 29, 1999, that had completed all processing short of grant as of that date, and for which the identity of the successful applicant is known. The applications in this latter category are post-auction applications, applications proposed for grant in pending settlements, and any singleton applications cut off from further filings. We will not require Class A applicants for initial Class A authorization to protect pending rule making petitions for new or modified NTSC channel allotments or full-service applications that were not accepted for filing by November 29, including most pending television freeze waiver applications.

45. We believe that protecting these categories of pending NTSC applications is consistent with both the language of the CBPA and the underlying intent of Congress. Section (f)(7)(A)(i) requires Class A applicants to show that they "will not cause" interference within "the predicted Grade B contour (as of the date of the enactment of [CBPA]...) of any television station[s] transmitting in analog format." It is not immediately clear from the statutory language whether the station entitled to interference protection must have been "transmitting in analog format" as of the date of enactment of the CBPA in 1999, or as of the date it would experience the interference.⁸⁹ We believe that a sound interpretation of the statutory language, in light of the considerations that follow, is that it refers to the nature of the service entitled to protection (*i.e.*, analog) rather than to its operational status on the date of enactment of the CBPA. Therefore, the analog station could be licensed, one for which an application is currently pending, or one for which a construction permit has been granted but which is not yet built. The statute does require that analog stations entitled to protection must have had a "predicted Grade B contour (as of the date of the enactment of the [CBPA], or November 1, 1999, whichever is later, or as proposed in a change application filed on or before such date)."⁹⁰ A station does not have to be operating, however, to have a "predicted grade B contour" as described in Section (f)(7)(A)(i). A station proposed in a pending application or an unbuilt station with an outstanding construction permit may also have a predicted Grade B contour. Indeed, the clause referring to the predicted Grade B contour specifically includes predicted Grade B contours proposed in change applications filed before the specified date. Thus, this section explicitly contemplates that interference protection by Class A stations may extend to at least some analog stations that are not yet operating, but nonetheless had predicted Grade B contours as of the date specified in the statute. It would make no sense to protect pending change applications and licensed stations but not outstanding construction permits, which are closer to operational status. We believe that Congress

⁸⁸ See Comments of CBA at 9.

⁸⁹ The legislative history merely repeats the phrase "station transmitting in analog format," without additional explanation. See Section-by-Section Analysis at S 14725.

⁹⁰ 47 U.S.C. § 336(f)(7)(A)(i).

included the reference to change applications to make it clear that those are entitled to protection, rather than to suggest that other applications or construction permits are not similarly protected.

46. Under this reading of the statute, Section (f)(7)(A)(i) requires Class A applicants and licensees to protect “the predicted Grade B contour (as of ... [November 29, 1999], or as proposed in a change application filed on or before such date)” of analog facilities. Thus, Class A stations must protect the predicted Grade B contour of analog stations licensed or granted a construction permit as of November 29, 1999, as well as of facilities proposed in certain pending analog applications. We note that the phrase “predicted Grade B contour” is singular. We believe that the best interpretation of this phrase, as modified by the parenthetical in Section (f)(7)(A)(i), is that it limits the facilities proposed in applications pending as of November 29, 1999 that must be protected by Class A stations to those for which there is a single, reasonably ascertainable predicted Grade B contour as of that date. These applications consist of post-auction applications, applications proposed for grant in pending settlements, and any singleton applications cut off from further filing. The applications in each of these categories have progressed through the cut off stage and the identity of the successful applicant in each case has been determined. Class A applicants thus can identify a single predicted Grade B contour with respect to these applications for which protection must be afforded and are not required to show that they will not interfere with multiple, hypothetical contours that may not turn out to be actual contours, if the applicant in question does not ultimately receive the station license.

47. Moreover, we believe that this interpretation of the statute best reflects the intent of Congress as expressed in the overall statutory scheme. Under the interpretation we proposed in the Notice, Class A applicants and licensees would not have been required to protect post-auction applications for which a construction permit had not been issued as of the date of enactment of the CBPA. There is no language in the statute or the legislative history that suggests that Congress intended a result so dramatically inconsistent with its grant of auction authority to the Commission in the Balanced Budget Act of 1997.⁹¹ As the Supreme Court recently noted, it is a “fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.”⁹² The Court further stated that “the meaning of one statute may be affected by other Acts . . .”⁹³ We agree with CBA that, in securing the future of qualified LPTV stations, Congress did not intend to disrupt the rights and long-settled expectations of applicants for pending NTSC facilities that have prosecuted their applications past the cut off stage and to the point that a final successful applicant has been identified. Instead, Congress intended to place Class A licensees on roughly even footing with full-service licensees, while protecting the DTV transition. These pending cut-off NTSC applications are protected against new full-service analog applicants, and therefore should be protected by Class A applicants

⁹¹ See Balanced Budget Act of 1997, § 3002(a)(1), codified at 47 U.S.C. 309(j). As WB points out, winning bidders in the September 1999 broadcast auction have already submitted their required down payments. WB argues that to interpret the CBPA such that these winning bidders do not receive an FCC authorization could have a chilling effect on the bid amounts in any future FCC auctions, and could be a “taking” in violation of the Fifth Amendment. See Comments of WB at 9-12.

⁹² *Food and Drug Administration v. Brown & Williamson Tobacco Corp.*, No. 98-1152, slip op. at 10, 2000 WL 289576 (U.S.) (March 21, 2000).

⁹³ *Id.* In applying this principle to the facts of the FDA case, the Court noted that this is particularly true “where Congress has spoken subsequently and more specifically to the topic at hand.” *Id.* Nevertheless, the principle applies here as well.

48. We believe making these distinctions is consistent with Congress' intent because requiring Class A applicants to protect applications that have progressed through the cut-off stage strikes an appropriate balance between the rights of pending applicants versus the interests of LPTV stations seeking primary status. Applicants that have prosecuted their applications through the cut off stage and to the point that the identity of the successful applicant is known have in most cases invested substantial resources in filing and prosecuting their applications. Most of these applications have been pending for some time, and LPTV stations affected by the facilities proposed in these applications have long been on notice that they would ultimately be displaced or be required to reduce their facilities. Requiring Class A applicants to protect applications that had progressed through this stage by November 29, 1999 is both equitable and a reasonable reading of the CBPA.

4. New DTV Service

49. Background. Section (f)(7)(A)(ii)(III) of the CBPA requires Class A applicants to protect "the digital television service areas of stations subsequently granted by the Commission prior to the filing of a Class A application."⁹⁴ We stated in the *Notice* that we interpreted this provision not to apply to applications for initial Class A licenses that have filed acceptable certifications of eligibility, but rather to applications seeking to modify Class A facilities, such as requests for power increases.⁹⁵ We noted that section (f)(1)(D) of the Act, which requires the Commission to preserve the service areas of LPTV licensees upon certification of eligibility except in the case of "technical problems" in connection with DTV replication and maximization, does not include an exception to service area protection for new DTV service.⁹⁶ We stated our belief that the exclusion of new DTV service in section (f)(1)(D) means that new DTV entrants must preserve the service areas of LPTV stations that have been granted a certification of eligibility, and invited comment on this interpretation. We also stated our belief that Class A applicants who have filed acceptable certifications of eligibility would not be required to protect the DTV application and allotment proposals of new DTV entrants, and sought comment on this interpretation.

50. Decision. Upon further reflection, we have decided we should treat new DTV station applications⁹⁷ in the same manner as we are treating new NTSC station applications. That is, we would require Class A applicants to protect pending applications for a new DTV station that were on file November 29,1999 and that had completed all processing short of grant as of that date. However, there are no new DTV station applications that were pending November 29, 1999 or that are currently pending. Before such an application will be accepted, a rule making proceeding must be completed to allot a new DTV channel to a community. At this time, we have not completed any such rule making proceeding. In a new DTV allotment rule making, we will require protection of Class A stations. We will not require

⁹⁴ 47 U.S.C. § 336(f)(7)(A)(ii)(III).

⁹⁵ We also stated that should we conclude that stations have an ongoing right to convert to Class A status, these Class A applicants would face the same requirement; that is, they would not be required to protect new DTV stations granted by the Commission after the Class A station has filed an acceptable certification of eligibility.

⁹⁶ 47 U.S.C. § 336(f)(1)(D).

⁹⁷ These applications do not include applications to implement allotments in the initial DTV Table, or DTV maximization applications filed pursuant to the May 1, 2000 filing deadline, or applications filed pursuant to (f)(1)(D) of the CBPA to effect necessary allotment adjustments.

Class A applicants to protect pending allotment proposals from new DTV entrants, that is, petitioners who do not already have a DTV authorization.⁹⁸

5. DTV Maximization

a. Definition of Maximization

51. Background. The CBPA provides that a Class A application for license or license modification may not be granted where the proposal would interfere with stations seeking to "maximize power" under the Commission's rules, if such station has complied with the notification requirements in Section (f)(1)(D) of the statute.⁹⁹ Section (f)(1)(D) requires that, to be entitled to protection by Class A applicants, DTV stations must file an application for maximization or a notice of intent to seek maximization by December 31, 1999, and file a bona fide application for maximization by May 1, 2000.¹⁰⁰ We sought comment in the *Notice* on whether the term "maximize" in the statute refers only to situations in which stations seek power and/or antenna height greater than the allotted values, or whether "maximization" also refers to stations seeking to extend their service area beyond the NTSC replicated area by relocating their station from the allotted site.

52. Decision. Comments on this issue were divided.¹⁰¹ We believe that the best interpretation of the term "maximization," as used in the statute, refers both to power and antenna height increases above the values allotted in the DTV Table, and to site changes that extend the service area of DTV facilities beyond the NTSC replication facilities. A broad interpretation of the term maximization is consistent with the CBPA's emphasis on protecting the digital transition. Permitting changes to technical parameters and sites gives broadcasters wider flexibility to maximize coverage and maximize service to the public. In addition, by construing the term maximization to include site changes sought by full-service DTV stations, we allow such stations greater flexibility to seek engineering solutions that provide for efficient spectrum use. In this regard, we have historically encouraged applicants to employ coordination and interference agreements, including co-location of facilities, as a means of resolving interference conflicts. Site changes are often integral to such agreements.

53. We indicated in the *Notice* that the statutory language is ambiguous regarding the protection to be accorded by Class A applicants to DTV stations seeking to replicate or maximize power. Section (f)(1)(D), entitled "Resolution of Technical Problems," directs the Commission to preserve the service areas of LPTV licensees pending final resolution of a Class A application. That section further provides that if, after certification of eligibility for a Class A license, "technical problems arise requiring

⁹⁸ Allotment proposals filed pursuant to Section (f)(1)(D) of the CBPA where necessary to resolve a technical problem are discussed under Section III. C. 5. c. of this *Report and Order*.

⁹⁹ 47 U.S.C. § 336(f)(7)(A)(ii)(IV).

¹⁰⁰ 47 U.S.C. § 336(f)(1)(D).

¹⁰¹ MSTV/NAB and Fox supported a broad interpretation of the term maximization. See Comments of MSTV/NAB at 5; Fox at 12. CBA argues that the term "maximization" should not be deemed a "carte blanche" for full-service stations to shut down Class A stations anytime, particularly where a full-service station seeks a power increase after the May 1, 2000 deadline in the statute and it seeks to extend coverage beyond its analog service area. In those situations, CBA argues an existing Class A station should be given priority, and if displaced, should be permitted to move to the channel that the maximized station abandons at the end of the DTV transition. Comments of CBA at 9-10.

an engineering solution to a full-power station's allotted parameters or channel assignment in the digital television Table of Allotments, the Commission shall make such modifications as necessary (i) to ensure replication of the full-power digital television applicant's service area ...; and (ii) to permit maximization of a full-power digital television applicant's service area..." (if the applicant has complied with the notification and application requirements established by that section).¹⁰² Although Section (f)(1)(D) appears to tie replication and maximization to resolution of technical problems, Section (f)(7) appears to require all applicants for a Class A license or modification of license to demonstrate protection to stations seeking to replicate or maximize power, as long as the station seeking to maximize has complied with the notification and application requirements of (f)(1)(D), without reference to any need to resolve technical problems on the part of the DTV station. Despite the reference in section (f)(1)(D) to technical problems, we continue to believe it is more consistent with the statutory schemes both for Class A LPTV service and for digital full-service broadcasting to require Class A applicants to protect all stations seeking to replicate or maximize DTV power, as provided in section (f)(7)(ii), regardless of the existence of "technical problems." The large majority of commenters that addressed this issue concur with this view.¹⁰³ Stations seeking to maximize must comply with the notification requirements in paragraph (f)(1)(D). This interpretation seems most consistent with the intent of Congress to protect the ability of DTV stations to replicate and maximize service areas.

b. Preserving the Right to Maximize

54. Background. We sought comment in the *Notice* on how the maximization rights in the statute can be applied to full-service stations that maximize their DTV facilities but subsequently move their digital operations to their original analog channel at the end of the transition. Some of these stations may not be in a position to file maximization applications on their analog channels by the deadline prescribed in the statute. We asked in the *Notice* whether these stations can preserve the right to maximize on their analog channels should they revert to those channels at the end of the transition. If so, we asked how the right to replicate the station's maximized DTV service area can be preserved on the analog channel. As a corollary issue, we also sought comment on how the maximization allowance in the CBPA applies to full-service stations for which the DTV channel allotment or both the NTSC and DTV channel allotments lie outside the DTV core spectrum (channels 2 - 51). We asked commenters to address whether these stations can preserve their right to replicate their maximized DTV service area on a new in-core channel once that channel has been assigned.

55. Decision. As a preliminary matter, we believe that all DTV licensees are entitled, at a minimum, to replicate the service area of their analog station. As we stated in *the Sixth Report and Order* in the DTV proceeding, we believe that service replication is important to ensure that digital broadcasters can continue to reach the audiences to which they provide analog service and that viewers continue to have access to the stations they can receive over-the-air.¹⁰⁴ In enacting the CBPA, Congress made clear that Class A service would not interfere with this service replication principle. As Congress stated, "recognizing the importance of, and the engineering complexity in, the FCC's plan to convert full-service

¹⁰² 47 U.S.C. § 336(f)(1)(D).

¹⁰³ See, e.g., Comments of APTS at 8; MSTV/NAB at 5-6; Fox at 7; Sinclair at 14.

¹⁰⁴ *Sixth Report and Order*, 12 FCC Rcd at 14605.

television stations to digital format, [the CBPA] protects the ability of these stations to provide both digital and analog service *throughout their existing service areas*.¹⁰⁵

56. The CBPA also recognizes and preserves the right of full-service television broadcasters to maximize their digital television service area, but balances this right against the provision of stability to Class A applicants and licensees. Sections (f)(1)(D) and (f)(7)(A) of the CBPA require Class A applicants to protect stations seeking to maximize power, if such stations have filed an application for maximization or a notice of intent to seek maximization by December 31, 1999, and filed a bona fide application for maximization by May 1, 2000.¹⁰⁶

57. There are 17 full-service television stations that have been allotted both NTSC and DTV channels that lie outside the DTV core spectrum.¹⁰⁷ The Commission has stated that stations with both NTSC and DTV channels outside the core spectrum will be assigned new channels within the core from spectrum recovered after the transition.¹⁰⁸ As a number of commenters in this proceeding point out, the deadlines established in the CBPA for filing an application for maximization create a dilemma for these stations. These stations are required to file a maximization application to preserve their rights; however, they either cannot or do not want to maximize facilities on an out-of-core channel. Several commenters argue that these stations should not be required to file a maximization plan based on their temporary out-of-core DTV assignment, as maximization is expensive and these stations will not be operating on those channels after the transition. Moreover, these commenters argue that requiring maximization on an out-of-core channel does not provide certainty to Class A stations because the required interference protection will ultimately involve a different in-core channel.¹⁰⁹

58. The problem of preserving the rights of full-service stations in this situation, and balancing those rights against the provision of certainty to Class A stations, is extremely complex. After careful consideration, we will adopt the following compromise. To preserve their ability to maximize once assigned a channel within the core, we will require stations with both NTSC and DTV channels outside the core to nonetheless maximize their DTV service area on their temporary out-of-core DTV channel. These stations must have filed a notice of intent to maximize and must file an application to maximize within the deadlines mandated by the CBPA. Once these stations are assigned a permanent in-core DTV channel, we will allow these stations to carry over to their in-core channel the maximized digital service area achieved on the out-of-core channel, to the extent that the in-core channel facilities for maintaining the maximized service area provide required interference protection to other DTV stations. Section (f)(1)(D) of the statute gives us broad authority to resolve problems arising with respect to replication and maximization, including problems involving the assignment of channels such as those

¹⁰⁵ Section-by-Section Analysis at S 14724 (emphasis added).

¹⁰⁶ 47 U.S.C. § 336(f)(1)(D) and (f)(7)(A)(ii)(IV).

¹⁰⁷ See Appendix B of the *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket No. 87-268, 13 FCC Rcd 7418 (1998) ("*Reconsideration of the Sixth Report and Order*"). These 17 stations are located in the following cities: Riverside, CA; San Mateo, CA; Stockton, CA; Aurora, IL; Joliet, IL; Springfield, MA; Newark, NJ; Vineland, NJ; Riverhead, NY; Bethlehem, PA; two stations in Arecibo, PR; Caguas, PR; Naranjito, PR; Providence, RI; Lake Dallas, TX; Fairfax, VA.

¹⁰⁸ *Sixth Report and Order*, 12 FCC Rcd at 14628.

¹⁰⁹ See, e.g., Comments of ALTV at 9-10.

faced by stations with out-of-core channel assignments.¹¹⁰ Thus, stations seeking to carry over their maximized service areas to their newly assigned in-core DTV channels will have priority over conflicting Class A facilities.

59. We believe this approach strikes a reasonable balance between the rights of full-service stations and Class A facilities. While we recognize that there may be inefficiencies involved in requiring maximization on an out-of-core channel to preserve the right to maximize later on an in-core channel, allowing all full-service stations outside the core to "reserve" the right to maximize on unidentified channels within the core reduces substantially the certainty that can be accorded to Class A facilities. As we recognized in our DTV biennial review, core spectrum is becoming increasingly crowded and it will become increasingly difficult to locate channels for all parties seeking DTV spectrum in the core after the transition.¹¹¹ In view of the difficulty in establishing priorities among the numerous parties seeking in-core spectrum, we believe it is reasonable to require stations with both NTSC and DTV assignments outside the core to first maximize DTV service on an out-of-core channel in order to retain the right to replicate that maximized service area on an in-core channel.

60. We will apply a similar requirement to stations with an analog channel within the core and a DTV channel outside the core, as well as to those stations with both channels inside the core that intend to convert their DTV operations to their analog channel at the end of the transition. These stations will also be required to maximize on their DTV channel in order to preserve their right to carry over that maximized service area to their analog in-core channel. We also believe that the CBPA requires that these stations must have filed a notice of intent to maximize and must file an application to maximize within the deadlines established in the statute. In addition, the maximized facilities they ultimately propose for DTV operation on their analog channel must provide required interference protection to other DTV stations. The election of a post-transition DTV channel by stations with both the analog and DTV allotments within the core is an issue discussed in our DTV biennial review.¹¹²

c. Allotment Adjustments

61. Background. As noted above, Section (f)(1)(D) of the CBPA directs the Commission to preserve the service areas of LPTV licensees, upon certification of eligibility, pending final resolution of a Class A application. However, that section also permits modifications to a full-service station's allotted parameters or channel assignment in the DTV Table of Allotments, where made necessary by "technical

¹¹⁰ The legislative history to Section (f)(1)(D) makes clear that problems surrounding the assignment of channels constitute a technical problem within the scope of the technical resolution provisions of the statute. Congress stated

Subparagraph (d) mandates that the FCC must act to preserve the signal contours of an LPTV station pending final resolution of its application for a Class A license. In the event technical problems arise that require an engineering solution to a full-service station's allotted parameters or channel assignment in the DTV table of allotments, subparagraph (d) requires the FCC to make the necessary modifications to ensure that such full-service station can replicate or maximize its service areas, as provided for in the FCC rules. Section-by-Section Analysis at S 14725.

¹¹¹ See *Notice of Proposed Rule Making, In the Matter of Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MM Docket No. 00-39, FCC 00-83, (rel. March 8, 2000).

¹¹² *Id.*

problems" requiring an "engineering solution," to ensure both replication and maximization of the DTV service area. We raised in the *Notice* certain questions regarding DTV allotment adjustments that are not addressed in the CBPA. Specifically, we asked whether a station requesting an adjustment to the DTV Table that would impinge upon the service area of a Class A station should be required to show that the modification can *only* be made in this manner. If the modification requires displacement of the Class A station, we asked if the affected Class A should be permitted to exchange channels with the DTV station, provided it could meet interference protection requirements on the exchanged channel.

62. Decision. As we indicated in the *Notice*, we recognize that it may be necessary to permit DTV stations to change channels and make adjustments to station facilities in order to correct unforeseen technical problems. For example, it was necessary in some cases to make DTV Table allotments on adjacent channels at noncollocated antenna sites in the same markets, which raised concerns among broadcasters over possible adjacent channel interference.¹¹³ In addition to changing some of those allotments, we stated that we would address these concerns by tightening the DTV emission mask and by "allowing flexibility in our licensing process and for modification of individual allotments to encourage adjacent channel co-locations..."¹¹⁴ We also provided broadcasters with flexibility to deal with allotment problems, for example, by permitting allotment exchanges among licensees in the same or adjacent markets.

63. Section (f)(1)(D) of the CBPA gives full-service stations the flexibility to make these kinds of necessary adjustments to DTV allotment parameters, including channel changes, even after certification of an LPTV station's eligibility for Class A status. That section provides for an exception to protection of Class A facilities to resolve "technical problems" associated with DTV replication and maximization, and provides for such modifications when necessary to "a full-power station's allotted parameters or *channel assignment* in the digital television Table of Allotments." This language indicates that maximization encompasses channel changes as well as site changes and changes to technical parameters. Thus, stations that have filed an application for maximization or a notice of intent to maximize by December 31, 1999 and an application for maximization by May 1, 2000 have flexibility to make adjustments to the facilities proposed in these maximization applications where necessary to resolve technical problems that prevent implementation of the facilities proposed in these applications.

64. We will not require full-service stations requesting an adjustment to the DTV Table that will cause interference to the protected service contour of a Class A station to demonstrate that the adjustment can *only* be made in this fashion. We have outlined above the replication and maximization rights of full-service DTV licensees vis-a-vis Class A facilities, and do not believe that imposing additional obligations on DTV licensees to justify a modification request is warranted. However, we note that in the interest of ensuring efficient spectrum utilization we may question modification requests that unnecessarily impinge on Class A service. In addition, while we will not give Class A stations affected by allotment adjustments made to accommodate DTV stations the automatic right to exchange channels with the DTV station, we will consider such allotment exchanges on a case-by-case basis where both parties consent and where the parties meet all applicable interference requirements on the new channel. Where we determine such swaps meet interference and other criteria, we will not consider competing applications for these channels.

¹¹³ *Reconsideration of the Sixth Report and Order*, 13 FCC Rcd at 7456-57.

¹¹⁴ *Id.*

D. Methods of Interference Protection to Class A Facilities

65. Background. In the CBPA, Congress did not address the method of providing interference protection to Class A service areas, other than equating these areas with LPTV signal contours.¹¹⁵ In the *Notice*, the Commission generally proposed to protect the Class A service contours in the manner that LPTV stations protect NTSC stations and each other.¹¹⁶ We proposed that applicants for NTSC stations protect Class A stations pursuant to the criteria in Section 74.705 of the LPTV rules.¹¹⁷ The *Notice* proposed that applicants for LPTV and TV translator stations and Class A facilities modifications protect Class A stations under the standards in Section 74.707.¹¹⁸ The *Notice* sought comment on the means by which DTV application and allotment proposals should protect analog and digital Class A stations, as well as the means for protecting such stations against interference from NTSC, Class A, LPTV and TV translator application proposals. We also invited comment on whether DTV application proposals should protect Class A service contours or the population receiving service within these contours, in the manner in which DTV stations protect full-service NTSC stations and each other.¹¹⁹

66. Decision. We will adopt the protection methods proposed in the *Notice*. We first present the standard methods for protecting Class A service and then discuss alternative methods that may be used on a waiver basis.

I. Analog Full-Service TV Protection to Analog Class A

67. We will require full-service analog TV stations to protect Class A stations by using the criteria in Section 74.705, a position supported by the CBA, MSTV/NAB and other commenters. We agree with CBA that protection requirements generally based on distance separations would be impractical and spectrally inefficient because LPTV stations have been authorized at different antenna heights and

¹¹⁵ Section-by-Section Analysis at S14725.

¹¹⁶ *Notice* at ¶¶ 14, 16.

¹¹⁷ 47 C.F.R. § 74.705. The various protection standards in this rule account for different types of interference based on the relationships between the channels of protected and proposed facilities. Most of these are given in terms of desired-to-undesired ("D/U") field strength ratios, which impose limits on the strength of unwanted signals at points along a station's protected contour. A D/U ratio is the numerical difference (in dB) between the field strength values of the desired and undesired signal (in dBu). Different ratios apply to the protection of stations on the same channel, the first adjacent channels above and below the proposed channel and the 14th and 15th channels below the proposed channel. For example, a D/U ratio of 28 dB is used to protect a co-channel UHF station where the proposed and protected stations specify different carrier frequency offsets. The predicted field strength of the proposed LPTV station must be at least 28 dB less than the protected 64 dBu field strength at points along the NTSC station's Grade B contour; the field strength of the proposed facilities cannot exceed 46 dBu. Section 74.705 also prescribes minimum distance separations between NTSC stations and proposed LPTV facilities for the 2nd, 3rd, or 4th adjacent channel to that of NTSC stations or the 7th adjacent channel below NTSC channels.

¹¹⁸ 47 C.F.R. § 74.707.

¹¹⁹ DTV interference protection criteria are given in 47 C.F.R. §§ 73.622 and 73.623 and also are described in OET Bulletin 69, which is available on the FCC Internet site at <http://www.fcc.gov/oet/info/documents/bulletins#69>.

powers on the basis of a contour protection methodology.¹²⁰ Table 1 below gives the D/U ratios that must be met or exceeded at the Class A protected signal contours.

Table 1

Service Band	Protected Class A Contour (dBu)	Co-channel D/U Ratio (dB)	1 st Upper Adjacent Channel D/U Ratio (dB)	1 st Lower Adjacent Channel D/U Ratio (dB)	14 th Upper Adjacent Channel D/U Ratio (dB)	15 th Upper Adjacent Channel D/U Ratio (dB)
Low VHF (channel 2 –6)	62	+ 28/45	- 12	- 6	n/a	n/a
High VHF (channels 7-13)	68	+ 28/45	- 12	- 6	n/a	n/a
UHF (channels 14-69)	74	+ 28/45	- 15	- 15	- 23	- 6

The Class A protected signal contours are to be determined by using the Commission F(50,50) signal propagation model. Potentially interfering signal levels at the protected contour are to be determined by using the F(50,10) propagation model for co-channel signals and the F(50,50) model for the 1st, 14th and 15th adjacent channel signals.¹²¹ Interference predictions will be based on the facilities proposed in the NTSC application. Parties with pending petitions for new NTSC channel allotments or those requesting modified channel allotments must identify reference facilities (site coordinates and elevation above mean sea level (msl), effective radiated power, antenna radiation center height above msl, and, if desired, antenna radiation pattern and orientation) for the purpose of showing the necessary contour protection.

68. We will adopt a 45 dB D/U ratio for co-channel interference protection for situations where a Class A station proposal does not specify a carrier frequency offset or where the proposed and protected co-channel stations specify the same offset.¹²² Where different offsets are specified between the

¹²⁰ See Comments of CBA at 6 and accompanying Technical Supplement at 2.

¹²¹ Use of these signal propagation curves for these purposes are specified in Section 74.705(c) of the Commission's Rules. The FCC computer model used in application acceptance studies (the "LPONE" program) calculates D/U ratios at 10-degree azimuthal increments along the protected contour. We note that channels 4 and 5 and channels 6 and 7 are not adjacent channels.

¹²² Frequency offsetting involves shifting the visual carrier frequency from its nominal position of 1.25 MHz from the lower edge of a TV channel. Standard offsets are of 10 kHz above the nominal frequency (plus offset), 10 kHz below (minus offset) or no shift (zero offset). Stations operating on the same channel but with different offsets may be located closer together with no additional interference potential than for stations operating without frequency offsets or on the same carrier offset. To maintain the stability of frequency offset relationship, stations must employ transmitters with a frequency tolerance of at least +/- 1 kHz.

proposed and protected stations, a 28 dB D/U ratio will apply. The TV Table of Allotments is constructed on the basis of frequency offsets; that is, all full-service TV stations operate on different offset frequencies with respect to their nearby co-channel stations. Offset operation permits significantly more efficient utilization of the broadcast spectrum; there is a difference of 17 dB between the co-channel D/U ratios for offset and nonoffset operations. The LPTV rules permit, but do not require offset operation. As a means of facilitating a “minimization of interference and maximization of service” we agree with du Triel, Lundin & Rackley, Inc. (du Triel) that analog Class A stations should operate with a carrier frequency offset and realize the advantages of offset operation wherever possible.¹²³ Many LPTV stations already operate on this basis. Nevertheless, we will not make operation with a carrier offset a condition for an initial Class A license. However, we will require Class A licensees seeking facilities increases to specify an offset in their modification applications unless they can demonstrate it would not be possible to realize the efficiencies of offset operation. For example, a Class A station could be situated between three or more neighboring co-channel NTSC, LPTV or translator stations that use all available carrier offsets: plus, minus and zero. Any offset chosen by the Class A station would be the same as that of one of the neighboring stations, rendering the 28 dB co-channel D/U ratio inapplicable. In that event, use of the 28 dB ratio could result in interference to the Class A station, and, therefore, the 45 dB co-channel D/U ratio will be applied.¹²⁴

69. Section 74.705 (a) of the LPTV rules generally requires the site of a proposed UHF LPTV station to be located at least 100 kilometers from the site of a protected full-service station operating on the 7th adjacent channel above the proposed channel. It also requires LPTV proposals for stations with more than 50 kilowatts of effective radiated power to be separated by at least 32 kilometers from full-service stations operating on the 2nd, 3rd, and 4th adjacent channel above or below the requested channel. We disagree with du Triel’s proposal that we eliminate the 14th adjacent channel protection requirements in Table 1 above and the 32-kilometers spacing requirements for protection of Class A stations.¹²⁵ Du Triel states that the potential for interference to a Class A station from stations operating on these “UHF taboo channels”¹²⁶ is limited to the immediate vicinity of the “taboo channel” station’s transmitter site. It also notes that because of their secondary status, LPTV stations have been authorized without consideration of interference that would be caused to them by “taboo channel” stations and that it is unaware of any instances of significant interference to LPTV stations by “taboo channel” full-service stations. Du Triel concludes that, with declining spectrum availability, it is “unreasonable” to require other NTSC stations (full-service, Class A and LPTV) to protect Class A stations operating on any “taboo” channel other than the upper 15th adjacent channel, which has a greater potential for interference. DLR does not propose eliminating the “taboo” interference requirements for Class A, LPTV and TV translator protection of full-service NTSC stations. If the operation of a full-service “taboo channel” TV station, with 1 megawatt or more of power, would pose a minimal interference risk to Class A service, the much lower power levels of Class A stations would pose even less risk to the service of full-power stations. Thus, if we were to eliminate requirements to protect Class A stations from interference on the “taboo channels,” we would also eliminate all remaining requirements that Class A stations protect full-service

¹²³ See Comments of du Triel, Lundin & Rackley, Inc. (du Triel) at 3-4.

¹²⁴ The LPTV rules specify a co-channel D/U protection ratio of 45 dB in situations where the proposed and protected stations do not specify different frequency offsets. See 47 C.F.R. § 74.705(d)(1).

¹²⁵ See Comments of du Triel at 4-5. See also Comments of Paxson at 5.

¹²⁶ The following protected channels in the LPTV rules are sometimes referred to as the “UHF Taboo” channels: 2 adjacent, 3rd adjacent, 4th adjacent, 7th adjacent, 14th adjacent and 15th adjacent.

stations operating on these channels. In the recently concluded DTV proceeding, the Commission relaxed several interference protection requirements for LPTV stations. While we understand du Triel's reasoning, it would not be appropriate to adopt further relaxation on the basis of the scant record on this issue in this proceeding. However, we believe du Triel's suggestions may warrant further consideration in a subsequent proceeding. We will also adopt our proposal in the *Notice* to accept applications for NTSC facilities modifications that would not create new interference to Class A stations, beyond the interference already predicted by the authorized facilities of such NTSC stations; these would include, for example, facilities modifications that would not further decrease the D/U ratios at the Class A protected contour.

2. Analog LPTV, TV Translator, and Class A Protection to Analog Class A

70. We are adopting the proposal in the *Notice* to apply the protection requirements in Section 74.707 to protect Class A stations from LPTV, TV translators, and other Class A stations. Commenters supported this proposal to use the protection methods by which LPTV stations protect each other.¹²⁷ This method is well-established and has been well-tested.

3. Full-Service DTV Protection to Analog Class A

71. Where interference protection to Class A stations is required, full-service DTV proposals must protect the Class A service contours in accordance with the D/U ratios in Section 73.623(c)(2) of the DTV rules for "DTV into analog TV" protection.¹²⁸ We will not eliminate protection requirements from DTV stations proposing operation on the "taboo" channels, as suggested by du Triel.¹²⁹ The potential for interference to Class A stations, du Triel contends, would be limited to the immediate vicinity of the "taboo" channel DTV station's transmitter site. However, neither du Triel nor any other commenter analyzes the extent of such interference. Moreover, digital Class A stations, with significantly lower power levels, will be required to protect NTSC stations on the taboo channels. Parties filing petitions to amend the DTV Table, where required to protect Class A stations, must specify reference facilities that meet the above criteria. Several commenters favor basing protection on the provisions in Sections 73.622 of the DTV rules and OET Bulletin 69 ("OET 69") or, alternatively, allowing use of this methodology where contour protection requirements cannot be met.¹³⁰ We agree that use of the methods by which DTV stations protect full-service NTSC stations would permit flexibility and could provide more accurate predictions of interference. However, at this time we will not adopt Class A protection standards centered around these methods. To do so would require extensive revisions to the computer interference model (FLR) used by the Commission and outside engineers to include the effects of LPTV, TV translator, and Class A stations. For now, the contour protection approach is straight forward and can be readily implemented without unduly affecting the preparation and processing of DTV applications. We will, however, permit use of the Longley-Rice terrain dependent propagation model and OET Bulletin 69 to support waivers of the Class A interference protection requirements. We will also permit Class A station and full-service station parties to negotiate interference agreements.

¹²⁷ See, e.g., Comments of MSTV/NAB at 25-26; Comments of St. Clair at 2.

¹²⁸ 47 C.F.R. § 73.623(c)(2).

¹²⁹ See Comments of du Triel at 6.

¹³⁰ See, e.g., Comments of du Treil at 4-5; AFCCE at 2; SBE at 5; Ruarch Associates LLC (Ruarch) at 2; Blade Communications (Blade) at 5 and Fox at 4.

4. Full-Service NTSC and DTV Protection to Digital Class A

72. We will require full-service NTSC and DTV proposals to protect digital Class A service contours based on the protection ratios (D/U) in Section 73.623(c)(2) of the DTV rules for “Analog TV into DTV” and “DTV into DTV.”¹³¹ These ratios must be met or exceeded at the protected digital signal contours of Class A stations. Where protection to a Class A station is required, parties filing petitions to amend the TV or DTV allotment tables must specify reference facilities that meet the applicable requirements. We will permit the use of OET 69 type showings in support of requests to waive these requirements, and we will permit interference agreements among the affected parties.

5. LPTV, TV Translator, and Class A Modification Protection to Digital Class A

73. We will adopt the requirements in Section 74.706 of the LPTV rules for the contour protection of digital Class A stations.¹³² Application proposals for analog LPTV, TV translator and those of Class A facilities modifications must protect the service contours of digital Class A stations to the extent provided by the D/U ratios in this rule. Application proposals for digital Class A stations must protect the service contours of other digital Class A stations to the extent provided by the “DTV into DTV” D/U ratios of Section 73.623(c) of the Commission’s Rules. For both analog and digital applicants, we will permit terrain shielding, OET 69- type analysis, or interference agreements in support of requests to waive the protection requirements.

6. Alternative Means of Interference Protection

74. LPTV and TV translator applicants currently are permitted to support requests for waiver of certain interference protection rules on the basis of D/U ratio protection for co-located stations on 1st and 14th adjacent channels, terrain shielding and Longley-Rice terrain dependent propagation and OET 69-type methods.¹³³ We are not adopting protection standards for Class A service based on these methods. However, we agree with AFCCE and other commenters that we should permit use of available means of interference analysis to support requests to waive the Class A contour protection requirements.¹³⁴ We will permit waiver requests to be supported by interference analysis based on OET Bulletin 69, D/U ratios, terrain shielding and other considerations. With regard to OET Bulletin 69 studies, we will not permit a *de minimis* interference allowance. Interference among full-service stations that is *de minimis* usually occurs in the outer reaches of a station’s service area between the NTSC Grade A and Grade B contours. Analog and digital Class A stations will not receive interference protection to the Grade B contour. Their protected service contours will be similar in extent to an NTSC station’s Grade A contour, which is not nearly as vulnerable to *de minimis* service population reductions. Class A service areas will be smaller and to a greater extent more interference-limited than those of full-service stations. The viewing audience beyond the Class A LPTV service contour is unprotected, and we believe it would be unfair to subject

¹³¹ 47 C.F.R. § 73.623(c)(2).

¹³² 47 C.F.R. § 74.706. The protection ratios in this rule are also included in Section 73.623.

¹³³ See 47 C.F.R. §§ 74.705 and 74.707.

¹³⁴ See, e.g., Comments of AFCCE at 1-2; du Triel at 5; Technical Supplement to Reply Comments of the CBA at 1.

Class A stations to additional reductions in service population. For these reasons we will not at this time apply a *de minimis* interference allowance to the protection of Class A stations.¹³⁵ Where analysis is based on OET Bulletin 69 methods, we will allow a “service population” rounding tolerance of 0.5%, which is also allowed for NTSC applicants protecting DTV service. We will permit OET 69-type studies to take into account reductions in a Class A service population due to predicted interference from existing full-service, LPTV and TV translator stations (the “masking” of service) and, on this basis, applicants may demonstrate that their proposed facilities would not result in additional interference within the protected contours of Class A stations.¹³⁶

75. We concur with commenters who favor permitting Class A stations to enter into interference or relocation agreements with full-service, LPTV, TV translator and other Class A licensees, permittees or applicants.¹³⁷ Paxson notes that full-service stations may now enter into voluntary channel coordination and interference agreements and believes that Class A stations with “quasi-primary” status should similarly be permitted to enter into agreements to resolve interference concerns.¹³⁸ Our rules permit DTV stations to negotiate interference agreements with other analog and DTV stations, including the exchange of money or other compensation.¹³⁹ Agreements will be approved if the Commission finds them to be consistent with the public interest.¹⁴⁰ LPTV and TV translator licensees, permittees and applicants are also permitted to enter into interference agreements, such as those involving terrain shielding. We are persuaded that Class A stations should also be permitted to negotiate interference agreements or relocation arrangements with full-service, low power service and other Class A licensees, permittees or applicants. Agreements may include monetary compensation or other considerations from

¹³⁵ Analysis involving the DTV *de minimis* interference criteria is exceedingly complex. It would require determining a “baseline” service population for each Class A station, from which to calculate the allowable reductions to the station’s service population. Baseline populations would have to account for interference already caused to Class A stations by other full-service, LPTV and TV translator stations, which would require significant revisions to the computer adaptations of OET 69 used by the Commission and consulting engineers. This would be a time consuming process and could affect not only the timely implementation of the Class A service, but also DTV application processing.

¹³⁶ CBA expressed concern that the current computer implementation of the OET Bulletin 69 methods may not be compatible with the LPTV service contours. This is due to the assumed use in the computer program of outdoor receiving antennas that provide as much as 14 dB of discrimination between desired and undesired signals. CBA suggests that much viewing of LPTV stations is done with indoor antennas and that use of OET Bulletin 69 methods could mistakenly predict service where, in fact, interference would occur. See Technical Supplement to Comments of CBA at 2-3. CBA is correct that the current computer implementation of OET Bulletin 69 does assume use of an outdoor receiving antenna, which attenuates the field strength of unwanted signals. However, CBA provides no basis for quantifying the extent to which LPTV viewers use only indoor antennas. Some LPTV station viewers, as well as those of full-service stations, do use outdoor antennas at locations other than the periphery of a station’s service contour. We cannot conclude from CBA’s comments that use of OET Bulletin 69 methods would result in “severe” interference to the reception of Class A stations.

¹³⁷ See, e.g., Comments of Paxson at 5; WB at 18; Connecticut Public Broadcasting (Connecticut) at 9; Cosmos Broadcasting (Cosmos) at 6.

¹³⁸ See Comments of Paxson at 5.

¹³⁹ 47 C.F.R. § 73.623(g).

¹⁴⁰ *Id.*

one station to another. Agreements must be submitted with the related applications for initial or modified broadcast facilities. The Commission will grant applications submitted pursuant to agreements if it finds the public interest would be served.

E. Methods of Interference Protection by Class A to Other Facilities

1. Class A Protection of NTSC

76. **Background.** With respect to NTSC facilities, Section (f)(7)(A) of the CBPA provides that a Class A license or modification of license may not be granted where the station will cause interference "within the predicted Grade B contour ..." ¹⁴¹ In the *Notice*, we proposed that applicants for Class A stations protect the NTSC Grade B contour in the manner given in Section 74.705 of the LPTV rules, indicating that would be more appropriate than establishing a new and different form of interference protection. We tentatively concluded that Class A applicants should be permitted to utilize all means for interference analysis afforded to LPTV stations in the DTV proceeding, including the Longley-Rice terrain-dependent propagation model.

77. **Decision.** We are adopting the proposal from the *Notice*. It is supported by most of the commenters that addressed this issue. ¹⁴² However, SBE suggests a different analysis based on the Longley-Rice propagation model with an NTSC TV station allowed to object if a Class A station would be the source of unique (not masked) interference to any viewers. ¹⁴³ SBE also indicates that this interference analysis should be based on the proposed main beam effective radiated power (ERP) and not on the ERP toward the radio horizon that LPTV and TV translator applicants are now permitted to use. ¹⁴⁴ We believe the SBE proposals would add unnecessary complexity to a well-established and well-tested process. Class A stations can be established without undue risk of excessive interference to NTSC TV stations if the Class A facilities conform to the LPTV protection standards contained in Section 74.705 of our rules. Moreover, where a requested Class A station does not provide the protection required by that rule, Section 74.705(e) specifies that a waiver can be requested based on terrain shielding and use of the Longley-Rice model to demonstrate that actual interference would not be predicted to occur.

2. Class A Protection of DTV

78. **Background.** With respect to DTV, the statute provides that Class A applicants must protect the DTV service areas provided in the DTV Table of Allotments and the areas protected in the Commission's digital television regulations (47 C.F.R. 73.622(e) and (f)). ¹⁴⁵ Thus, Class A stations may not interfere with DTV broadcasters' ability to replicate insofar as possible their NTSC service areas. ¹⁴⁶ In

¹⁴¹ 47 U.S.C. § 336(f)(7)(A)(i).

¹⁴² See Comments of NAB/MSTV at 4, 5; Apogee at 5; Connecticut at 6-7; Sherjan at 6; and Skinner at 3.

¹⁴³ See Comments of SBE at 5-6.

¹⁴⁴ See Comments of SBE at 11-12.

¹⁴⁵ 47 U.S.C. § 336(f)(7)(A)(ii)(I), (II).

¹⁴⁶ DTV allotment parameters to achieve service areas that replicate the areas within the NTSC Grade B service contours are specified in Appendix B of the second DTV reconsideration order. *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders* in MM Docket No. 87-268, 64 FR 4322 (1998).

the *Notice*, we indicated we believed it would be appropriate for Class A applicants to determine noninterference to DTV in the same manner as applicants for full-service NTSC facilities. Thus, we proposed that Class A facilities would not be permitted to increase the population receiving interference within a DTV broadcaster's replicated service area or other protected service area. We would not permit Class A stations to cause *de minimis* levels of interference to DTV service, other than a 0.5% rounding allowance.¹⁴⁷ Criteria for protecting DTV service are given in Sections 73.622 and 73.623 of our rules and in OET Bulletin 69.¹⁴⁸

79. Decision. We are adopting the proposal from the *Notice* regarding Class A protection of DTV service. Analog and digital Class A station proposals generally will be subject to the protection criteria in Sections 73.622 and 73.623 of our rules and in OET Bulletin 69. Commenters generally supported this proposal.¹⁴⁹ Some commenters question allowing interference to 0.5% of the DTV service population as a rounding tolerance. NAB/MSTV are concerned about the cumulative effect of several Class A stations. SBE suggests that a DTV station should be allowed to object if a Class A station would be the source of unique (not masked) interference to any viewers in its authorized service area, although it agrees with use of the 0.5% criteria for interference to allotted DTV facilities.¹⁵⁰ Media-Com Television, Inc. (Media-Com) supports the DTV interference analysis procedure, but suggests that we should allow interference to 2% of the population served by the DTV station to be considered *de minimis*, as we generally allow that amount of interference to be caused by other DTV stations. We are not persuaded that more than 0.5% interference should be allowed. Full-service NTSC stations are limited to that amount and the statute does not require higher status for Class A stations in this regard. Neither are we convinced that any one DTV station will be subject to interference from so many Class A stations that the cumulative loss of DTV service would be significant. Finally, we note that the statute provides that Class A applicants also must protect the DTV service areas provided in the DTV Table of Allotments and the DTV Table includes approximately 40 vacant noncommercial educational DTV allotments that must be protected.¹⁵¹

¹⁴⁷ In the DTV proceeding, we permitted DTV stations in the initial allotment table to decrease by two percent the populations served by NTSC and other DTV stations, not to exceed a total reduction of ten percent. Unlike this DTV allowance, applicants seeking facilities modifications of full-service NTSC stations may not cause any additional interference to DTV service, other than a 0.5% reduction in service population to account for rounding and calculation tolerances. See *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket No. 87-268, 13 FCC Rcd 7418 (1998).

¹⁴⁸ OET Bulletin 69, Longley-Rice Methodology for Evaluating TV Coverage and Interference (July 2, 1997), available at FCC Internet address <http://www.fcc.gov/oet/info/documents/bulletins/#69>. See also the Mass Media Bureau Public Notice "Additional Application Processing Guidelines for Digital Television (DTV)," August 10, 1998.

¹⁴⁹ See, e.g., Comments of WB at 18-19; NAB/MSTV at 4-5; SBE at 5-6; Ruarch at 4; and Media-Com Television Inc. (Media-Com) at 5.

¹⁵⁰ See Comments of SBE at 5-6.

¹⁵¹ See Appendix B of the *Sixth Report and Order*, 12 FCC Rcd at 14639. Note that Appendix B does not contain facilities or service and interference statistics for these allotments. They can be activated through the construction permit application process and may use the maximum facilities permitted by Section 73.622(f) of the rules. Analysis of the 0.5% interference criteria for these allotments will require the Class A applicant to determine the population that would be served by a maximum facilities DTV station at the designated reference coordinates contained in Table 2 of Appendix B.

3. Protection of LPTV and TV Translators

80. Background. The CBPA requires Class A stations to protect previously authorized LPTV and low-power TV translator stations (license and/or construction permit), as well as previously filed applications for these facilities. Specifically, section (f)(7)(B) of the statute provides that the Commission may not grant an application for a Class A license or modification of license unless the applicant shows that the Class A station will not cause interference within the protected contour of any LPTV or low-power TV translator station that was licensed, or for which a construction permit was issued, or for which a pending application was filed, prior to the date the Class A application was filed.¹⁵² In the *Notice*, we proposed to require that Class A stations protect the LPTV and TV translator protected contours on the basis of the standards given in Section 74.707 of the LPTV rules, *i.e.*, on the basis of compliance with certain desired-to-undesired signal strength ratios.

81. Decision. We are adopting the proposal from the *Notice*. Commenters generally supported this proposal.¹⁵³ SBE did request that we clarify that the specified LPTV and TV translator protection rule involves contour overlap prohibitions and not simply application of desired-to-undesired signal strength ratios. We will require protection pursuant to all provisions in Section 74.707 of the rules, which are based on prohibited contour overlap. For purposes of implementing Section (f)(7)(B) of the CBPA, we agree with K Licensee, Inc. (K Licensee) that interference caused within the protected contour of a licensed LPTV or TV translator station or that of a construction permit or pending application should not be counted against an applicant for a Class A authorization if that interference is permitted by the LPTV rules, taking into account the manner in which LPTV and TV translator stations are authorized.¹⁵⁴ The rules require new LPTV stations to protect existing LPTV and TV translator stations within their defined protected contours.¹⁵⁵ However, the rules do not prohibit new stations from receiving interference from existing stations. LPTV and TV translator stations may also enter into written agreements to accept interference from other LPTV or TV translator stations.¹⁵⁶ As a result of these provisions, many LPTV stations or proposed stations may be predicted to receive interference within their protected contours from earlier-authorized stations.¹⁵⁷ We believe it would be inconsistent with the objectives of the CBPA to count such permissible interference against applicants for Class A stations, nor should interference resulting from a negotiated agreement be counted. We are not permitting LPTV licensees to request facilities modifications in their applications for initial Class A authorizations. Therefore, any interference from existing LPTV facilities within the protected contours of later authorized and proposed LPTV and

¹⁵² 47 U.S.C. § 336(f)(7)(B).

¹⁵³ *See, e.g.*, Comments of SBE at 9-10; and K Licensee at 4-10.

¹⁵⁴ *Id.* *See also* the Comments of CBA at 7 and Equity Broadcasting Corporation at 5.

¹⁵⁵ 47 C.F.R. § 74.703(a). *See also* 47 C.F.R. § 74.707, which provides that an application for a new or modified LPTV station will not be accepted if it is located within or predicted to interfere with the protected contour of an authorized station in the LPTV service.

¹⁵⁶ *Id.*

¹⁵⁷ Communications Technologies, Inc. (CTI) notes that many licensees of displaced LPTV stations have elected to receive interference from existing stations in their recently filed applications for replacement channels. Comments of CTI at 3.

TV translator facilities is permitted by the LPTV rules and will be grandfathered for the purposes of Section (f)(7)(B) of the CBPA.

4. Land Mobile Radio Services and TV Channel 16

82. Background. Section (f)(7)(C) of the CBPA provides that the Commission may not grant a Class A license or modification of license where the Class A station will cause interference within the protected contour 80 miles from the geographic center of the areas listed in Sections 22.625(b)(1) or 90.303 of the Commission's rules (47 C.F.R. §§ 22.625(b)(1), 90.303) for frequencies in the 470-512 megahertz band identified in sections 22.621 or 90.303 of our rules (47 C.F.R. §§ 22.621, 90.303), or in the 482-488 megahertz band in New York. This provision protects land mobile radio services, which have been allocated the use of TV channels 14-20 in certain urban areas of the country, as well as Channel 16 in New York City metropolitan area. In the *Notice*, we proposed that these land mobile operations be protected by Class A applicants in the manner prescribed in Section 74.709 of the LPTV rules.

83. We also sought comment on whether the requirement to protect channel 16 in the New York metropolitan area applies to low power television station WEBR-LP, licensed to K Licensee, Inc. (K Licensee) for New York City and discussed details of its history.¹⁵⁸ In view of a Senate colloquy between Senators Burns, Moynihan and Hatch, and the terms of a condition on the grant of the waiver that permitted the land mobile use of channel 16 in New York, we indicated that we were inclined to agree that station WEBR-LP is exempted from the requirement to show interference protection to use of channel 16 in the New York City metropolitan area.

84. Decision. With respect to general land mobile protection, we are adopting our proposal to use the criteria in Section 74.709 of the rules. This proposal was supported by the NY Police and no commenters opposed it.¹⁵⁹ With respect to the Channel 16 New York City situation, the NY Police object to the premise that there is no obligation for WEBR-LP, due to the waiver, to protect land mobile operations, indicating that the *Notice* ignores the current practice between the member public safety agencies and WEBR-LP to coordinate actions and ensure that neither party interferes with the other's transmission. K Licensee argues that the Commission must implement specific interference requirements in a manner consistent with congressional intent and with sensitivity to the impact such implementation will have on deserving stations such as WEBR-LP, the only free Korean-language licensee serving New York City metropolitan area.¹⁶⁰ We believe that it is most consistent with the statutory scheme and with the waiver granted for public safety land mobile use of Channel 16 in New York City that WEBR-LP and the NY Police continue to cooperate to ensure that neither party interferes with the other's transmission on Channel 16. The parties have entered into a written agreement pursuant to which they will advise each other at least 60 days in advance of any change, alteration, or modification in its transmission facilities that may adversely affect or cause interference to the other party's communications system(s).¹⁶¹ As requested by both parties, we have included a copy of this agreement in the record of this proceeding, and will include it in the record of any application filed by WEBR-LP to become a Class A television station. We

¹⁵⁸ See *Notice* at ¶40.

¹⁵⁹ See Comments of NY Police at 2-3.

¹⁶⁰ See Comments of K Licensee at 2-4.

¹⁶¹ See Letter from WEBR-LP and the New York Metropolitan Advisory Committee to Roy Stewart, Chief, Mass Media Bureau, dated March 27, 2000.

believe that the current situation is satisfactory and that continued cooperation between the parties will permit maximal use of the spectrum in New York City.

F. Change Applications

85. Background. Section (f)(1)(E) of the CBPA provides for protection of a DTV station that has been granted a construction permit to maximize or significantly enhance its digital television service area and later files an application for a change in facilities that reduces its digital television service area. In such a case, the statute provides that the protected contour of the DTV station "shall be reduced in accordance with such change modification."¹⁶² In the *Notice*, we stated our belief that the protection of the reduced coverage area would become effective upon grant of the application that requested the reduced facilities and that, in these circumstances, Class A stations would no longer need to protect the service area produced by the "replication" facilities established in the initial DTV Table of Allotments. We stated our expectation that few, if any, DTV stations would follow this course, and invited comment on our interpretation of this provision.¹⁶³

86. Decision. In the event that a DTV station that has been granted a construction permit to maximize or significantly enhance its digital television service area later files an application to reduce its digital television service area, the protected contour of that station will be the reduced digital service area as long as that area is not less than the area resulting from the "replication" facilities provided in the DTV Table of Allotments. Where a DTV station chooses to operate with technical parameters less than those allotted in DTV Table, we will require Class A stations to nonetheless protect the service area produced by the "replication" facilities established in the Table. We agree with MSTV/NAB that the service areas in the DTV Table represent the minimum degree of interference protection that must be accorded by Class A stations to full-service stations.¹⁶⁴ Section (f)(7)(A)(ii)(I) of the CBPA requires that Class A stations cause no interference to the digital service areas provided in the Table.¹⁶⁵

87. ALTV argues that the Commission should distinguish between full-service stations that intend to lower their coverage areas permanently, and those that file change applications to lower power on only a temporary basis to, for example, avoid technical problems or meet short-term marketplace realities during the DTV transition.¹⁶⁶ We will not adopt the ALTV proposal. The CBPA itself does not draw a distinction between a temporary and a permanent reduction in service area. Moreover, as a practical matter, a station given the option would be likely to characterize any reduction in service area as "temporary," if only to preserve the value of the station even if larger facilities for the station are not contemplated in the future. We believe it is most consistent with the intent underlying section (f)(1)(E) of the statute, and with Congress' goal of balancing the competing needs of DTV and Class A stations, to require Class A stations to protect only the reduced service area of full-service stations in the circumstances described by (f)(1)(E), as long as those facilities are not less than the replication facilities provided in the DTV Table of Allotments.

¹⁶² 47 U.S.C. § 336(f)(1)(E).

¹⁶³ See *Notice* at ¶ 17.

¹⁶⁴ See Comments of MSTV/NAB at 10. See also Comments of AFCCE at 3.

¹⁶⁵ 47 U.S.C. § 336(f)(7)(A)(ii)(I).

¹⁶⁶ See Comments of ALTV at 6-7. See also Reply Comments of MSTV/NAB at 7-8.

G. Common Ownership

88. Background. The CBPA provides that no LPTV station “authorized as of the date of the enactment of the [CBPA] may be disqualified for a Class A license based on common ownership with any other medium of mass communication.”¹⁶⁷ Thus, stations authorized as of November 29, 1999 may seek Class A status without regard to the station owner’s interest in any other media entity. In the *Notice*, we sought comment on the appropriate interpretation of this provision. We asked whether the ownership exemption confers a right to convert only, or whether it also confers a right to transfer the station regardless of the buyer’s cross media interests, and whether it insulates an owner from application of the common ownership rules with respect to any new cross media ownership acquired after conversion to Class A. We tentatively concluded that no LPTV station, regardless of when authorized, should be disqualified from Class A status based on common ownership with other media entities.

89. Decision. After review of the record, we will adopt our initial tentative conclusion and will not impose any common ownership limitations on holders of the new Class A licenses. We agree with the commenters who argue that Congress intended that Class A stations be exempt from existing common ownership requirements and that this exemption should apply when a license is subsequently transferred to a buyer with other media interests.¹⁶⁸ As noted above, Congress directed that common ownership with any other medium of mass communication will not disqualify a potential Class A licensee. We believe that the only logical outgrowth of Congress’ language here is that the lack of common ownership rules would also apply to transferred ownership.

H. Issuance of DTV Licenses to Class A, TV Translator, and LPTV Stations

90. Background. We stated in the *Notice* that the CBPA provides that the Commission is not required to issue an additional DTV license to a Class A station licensee or to a licensee of a TV translator,¹⁶⁹ but the Commission “shall accept a license application for such services proposing facilities that will not cause interference to the service area of any other broadcast facility applied for, protected, permitted, or authorized on the date of filing of the advanced television application.”¹⁷⁰

91. We sought comment in the *Notice* on this provision and how to implement it. We asked whether this provision means that the Commission does not need to identify a paired DTV channel for each Class A station or TV translator, but that the Commission should authorize a paired channel for DTV operation if the Class A or TV translator station licensee identifies and applies for an acceptable channel.

¹⁶⁷ CBPA Section (f)(3).

¹⁶⁸ See Comments of Fox at 16. See also Comments of Airwaves, Inc. at 3; Apogee at 4; Media-Com Television, Inc. at 5; Ruarch at 3; and Turnpike at 6-7.

¹⁶⁹ TV translators rebroadcast the programs of full-service TV stations. In most respects, translators are technically equivalent to LPTV stations and are licensed in the same manner. Currently, there are approximately 4,900 licensed TV translators, most operating in the western mountainous regions of the country. *Public Notice*, “Broadcast Station Totals as [of] September 30, 1999” (*rel.* November 22, 1999). Translators deliver free over-the-air television service, mostly to rural communities that cannot directly receive the nearest TV stations because of distance or intervening terrain obstructions. They also provide “fill-in” service to terrain-obstructed areas within a full-service station’s service area.

¹⁷⁰ 47 U.S.C. § 336(f)(4).

We noted that this interpretation might create an apparent inequity with respect to full-service permittees and licensees that do not have a paired DTV channel because they received their initial station construction permit after the April 3, 1997 date used to define eligibility for the initial paired DTV licenses.

92. Decision. As an initial matter, we note that Class A stations may convert their existing channel to digital broadcasting at any time.¹⁷¹ However, we conclude that the plain reading of the CBPA, as well as the legislative history of the Act,¹⁷² does not require us to issue an additional license for DTV services to Class A or TV translator licensees, but does require us to accept DTV applications from licensees of Class A or TV translator stations that meet the interference protection requirements that are identified in the statute.¹⁷³

93. Most commenters that address this issue agree with our interpretation of these requirements. For example, APTS notes that the statute merely requires that we "shall accept" a DTV license application from such entities and does not require approval of the application,¹⁷⁴ while Turnpike contends that LPTV stations are converting from secondary to primary status and should have the option of applying for a digital simulcast channel "just like the other television licensees in Part 73."¹⁷⁵ CBA and USAB argue that Class A stations should be permitted to apply for a second channel for DTV at any time.¹⁷⁶ WB, however, argues that we should not permit Class A stations to apply for a second DTV channel, but should limit them to filing applications to convert from NTSC to DTV on existing channels.¹⁷⁷

94. As we stated in the *Notice*, there currently are a number of full-service permittees and licensees who do not have a paired DTV channel because they received their construction permits after the cut-off date for eligibility for the initial paired DTV licenses. Some commenters contend that, if we decide to award additional channels for DTV, we should give priority to such full-service licensees and permittees who are currently precluded from applying for a paired DTV channel. WB, for example, suggests that any additional channels should first be awarded to full-service licensees, and that we should apply to Class A licensees the same technical and service rules as are applied to full-service licensees.¹⁷⁸

95. Although the statute requires us to accept Class A applications for additional DTV licenses, it does not direct us to issue such licenses to Class A licensees. We agree with MSTV and NAB

¹⁷¹ The licensee may elect to convert to advanced television services on its analog channel, but is not required to convert to digital format until the end of the DTV transition. Section-by-Section Analysis at S14725.

¹⁷² Section-by-Section Analysis at S14725.

¹⁷³ The FCC "shall accept a license application for such services proposing facilities that will not cause interference to the service area of any other broadcast facility applied for, protected, permitted, or authorized on the date of filing of the advanced television application." 47 U.S.C. § 336(f)(4).

¹⁷⁴ See Comments of APTS at 14.

¹⁷⁵ See Comments of Turnpike at 7.

¹⁷⁶ See Comments of CBA at 23; USAB at 15-16. See also Comments of Lockwood at 4-5; NRB at 8.

¹⁷⁷ See Comments of WB at 31.

¹⁷⁸ See Comments of WB at 31.

that we should exercise restraint with respect to issuing additional DTV licenses in order to preserve spectrum to accommodate needs associated with the transition of full-service stations to digital service.¹⁷⁹ Moreover, we find that the various issues concerning the means of issuing additional DTV licenses for Class A stations to be outside the scope of this rulemaking. We note that the transition to DTV is scheduled to end in 2006, and that a number of issues regarding the transition are yet to be resolved in future DTV proceedings. We therefore defer matters regarding the issuance of additional DTV licenses for Class A stations to a future rulemaking.

I. Interim Qualifications

1. Stations Operating Between 698 and 806 MHz

96. Background. Section (f)(6)(A) of the CBPA provides that the Commission may not grant a Class A license to an LPTV station for operation between 698 and 806 megahertz (television broadcast channels 52 – 69).¹⁸⁰ Thus, only LPTV stations operating on channels in the core spectrum (television broadcast channels 2 through 51) are eligible for Class A status. That section also provides, however, that the Commission shall provide to LPTV stations assigned to and temporarily operating between 698 and 806 megahertz the opportunity to meet the qualification requirements for a Class A license. If a qualified Class A applicant is assigned a channel within the core spectrum, the statute further provides that the Commission shall issue a Class A license simultaneously with the assignment of the in-core channel.

97. We pointed out in the *Notice* that this provision does not address when a station operating outside the core channels becomes eligible for contour protection. We stated that we were inclined to provide protection to such stations only when the station is assigned a channel within the core spectrum, and requested comment on this proposal. We also requested comment on whether Class A status and contour protection should commence with the grant of a construction permit on the in-core channel or a license to cover construction.¹⁸¹

98. We also invited comment in the *Notice* on Section (f)(5) of the CBPA, which stipulates that the provisions of the statute do not preempt or otherwise affect Section 337 of the Communications Act.¹⁸² As we stated in the *Notice*, Section 337 addresses two matters relevant to Class A television. First, Section 337 involves the reallocation and licensing of TV channels 60-69, which, pursuant to Section (f)(6)(A) of the CBPA, are not available to Class A stations. Second, Section 337 contains certain provisions for LPTV stations already authorized to operate on TV channels 60-69. In the Balanced Budget Act of 1997 (Budget Act),¹⁸³ Congress required that the Commission "seek to assure" that a qualifying LPTV station authorized on a channel from channel 60 to channel 69 be assigned a channel

¹⁷⁹ See Comments of MSTV and NAB at 26.

¹⁸⁰ 47 U.S.C. § 336(f)(6)(A).

¹⁸¹ See *Notice* at ¶ 24.

¹⁸² 47 U.S.C. § 336(f)(5).

¹⁸³ Pub. L. No. 105-33, 111 Stat. 251, §3004 (1997), adding new section number 337(e) to the Communications Act.

below channel 60 to permit its continued operation.¹⁸⁴ In the DTV proceeding, we amended our rules to permit all LPTV stations on channels 60 to 69 to file displacement relief applications at any time requesting a channel below channel 60, even where there is no predicted or actual interference conflict.¹⁸⁵ We have received more than 300 such displacement applications from LPTV and TV translator stations operating on these channels. These applications have a higher priority than all other nondisplacement applications for LPTV and TV translators, regardless of when the applications were filed. Other LPTV and TV translator stations on channels 60 - 69 have so far elected not to file displacement applications, but may do so at any time provided they protect the proposed facilities of earlier-filed displacement applications. The Commission has not selected channels for qualifying LPTV stations; however, it has provided the opportunity for affected stations to seek channels below channel 60 on a priority basis. We believe this meets our obligation under Section 337 to assist qualifying LPTV stations on channels 60-69.

99. In contrast, stations on channels 52-59 are not currently entitled to the presumption of displacement extended to stations on channels 60-69, and instead are entitled to seek displacement relief only where there is an actual or potential interference conflict, including a conflict with a DTV co-channel allotment. Operators on channels 52-59 nonetheless face displacement when channels 52-59 are reclaimed at the end of the DTV transition, and will be barred from becoming Class A stations if they cannot secure a replacement channel below channel 52. We sought comment in the *Notice* on whether the presumption of displacement should be extended to LPTV and TV translator stations authorized on channels 52 - 59, giving these operators an immediate opportunity to seek replacement channels while such channels might still be available.¹⁸⁶

100. Decision. We will extend the presumption of displacement to LPTV stations and TV translators authorized on channels 52-59. We will permit these stations to file displacement applications immediately if they can locate a replacement channel within the core spectrum. The majority of the commenters that addressed this issue supported extending the presumption of displacement to these stations.¹⁸⁷ Many of these stations would be barred from becoming Class A stations if they cannot secure a replacement channel below channel 52. We believe it is most consistent with Congress' intent to provide qualified LPTV stations the opportunity to obtain Class A status to permit such stations on channels 52-59 to seek a replacement channel now on which they may apply for a Class A license. Any displacement applications filed by LPTV (Class A or non-Class A) or TV translators will receive equal treatment for processing purposes.

¹⁸⁴ Section 337(f)(2) of the Communications Act of 1934, as amended, establishes criteria for qualifying LPTV stations. The qualifications are: the station broadcasts a minimum of 18 hours per day; the station broadcasts an average of at least 3 hours per week of programming produced within the market area served by the station; and, the station complies with the requirements applicable to low-power television stations.

¹⁸⁵ *Reconsideration of the Sixth Report and Order*, 13 FCC Red at 7465-66.

¹⁸⁶ *See Notice* at ¶ 53.

¹⁸⁷ *See, e.g.*, Comments of CBA at 18; NTA at 5. WB opposes extending the presumption of displacement to channels 52-59, arguing that the CBPA does not require the FCC to give these stations priority over existing full-service stations and pending applications for new NTSC stations proposing operations on channels 52-59 with respect to securing an in-core channel. Comments of WB at 32-43.

101. We recognize that full-service NTSC broadcasters on channels 52-59 may also seek to relocate to an in-core channel and such a proposal may conflict with a displacement application filed by an LPTV station seeking to move from channels 52-59.¹⁸⁸ For the time being, these full-service stations may continue to operate on their present channel and most of them have an in-core paired DTV channel allotment. Nevertheless, we do not want to grant a displacement application that might preclude a move to an in-core channel without giving these broadcasters an opportunity to seek such a channel change. The process for the full-service station moving to an in-core channel involves filing a petition for rule making seeking to amend the TV Table of Allotments. The Commission invites comments on the proposal in a Notice of Proposed Rule Making and based on the record, decides whether or not to make the proposed change in a Report and Order. Conflicting proposals, referred to as counterproposals, must be filed during the time period for initial comments, so that an opportunity exists for comments on the counterproposal to be filed during the time period allowed for reply comments. In order to be considered in a channel-change rulemaking proceeding, a conflicting displacement application from an LPTV station that has been determined to be eligible for Class A status must be filed by the end of the initial comment filing period. Conflicting displacement applications filed after that date will be dismissed.

102. Where such a preclusive displacement application seeking to move from channels 52-59 to an in-core channel is filed by an LPTV station eligible for Class A status before a full-service rulemaking petition, we believe it is appropriate to allow a similar, limited opportunity for a conflicting proposal to be filed. Complete and acceptable displacement applications are announced in a Commission Public Notice called a "Proposed Grant List." We will identify any displacement applications filed by Class A eligible stations in future Proposed Grant Lists. Petitions for a channel change filed by a full-service NTSC licensee or permittee must be filed not later than 30 days from the release of the Public Notice proposing grant of a conflicting displacement application. Conflicting TV rulemaking petitions filed after that date must protect the Class A eligible LPTV station's displacement application. Similarly, we will apply the same procedures and time periods to other displacement applications filed by LPTV stations eligible for Class A status, seeking to move from channels 60-69, or from one in-core channel to another to avoid DTV or new NTSC interference.

103. We will require LPTV stations on channels 52-59 that are seeking Class A status to have filed a certification of eligibility within the time frame established in the statute (*i.e.*, by January 28, 2000). When a qualified LPTV station outside the core seeking Class A status locates an in-core channel, we will require the station to file a Class A application simultaneously with its application for modification of license to move to the in-core channel. We will provide interference protection to such stations on the in-core channel from the date of grant of a construction permit for the in-core channel. As the CBPA prohibits the award of Class A status to stations outside the core, we believe it would be inconsistent with the statute to provide interference protection on a channel outside the core. We believe it is appropriate to commence contour protection with the award of a construction permit on the in-core channel, rather than a license to cover construction, as these permittees will have already certified their eligibility for Class A status. Unlike other Class A applicants, we will not require LPTV licensees on out-of-core channels seeking Class A status to file a Class A application within 6 months of the date of adoption of this order. The CBPA provides that, if a qualified applicant for a Class A license operating on

¹⁸⁸ See, e.g., *Sixth Further Notice of Proposed Rule Making, In the Matter of Advanced Television Systems, and Their Impact upon the Existing Television Broadcast Services*, MM Docket No. 87-268, 11 FCC Red 10968, 10987 (1996); *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order*, 13 FCC Red 6865 (1998). See also "Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations," *Public Notice*, DA 99-2605 (Nov. 22, 1998).

an out-of-core channel locates an in-core channel, the Commission "shall issue a Class A license simultaneously with the assignment of such channel." The statute does not impose a time limit on the filing of such applications. Accordingly, we will not impose any time limit on the filing of a Class A application by LPTV licensees operating on channels outside the core. However, we believe that, in most cases, it would be in the best interest of qualified LPTV stations operating outside the core to try to locate an in-core channel now, as the core spectrum is becoming increasingly crowded and it is likely to become increasingly difficult to locate an in-core channel in the future.

2. Channels Off-Limits

104. Background. Section (f)(6)(B) of the CBPA provides that the FCC may not grant a Class A license to an LPTV station operating on any of the 175 additional channel allotments referenced in paragraph 45 of the Commission's February 23, 1998 *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket 87-268.¹⁸⁹ In that *Order*, the Commission expanded the DTV core spectrum to include all channels 2-51, and noted that this expansion would add approximately 175 additional channels for DTV stations and other new digital data services, many in top markets. The CBPA further requires that the Commission identify the channel, location and applicable technical parameters of those 175 channels within 18 months after the date of enactment of the CBPA. We stated in the *Notice* that these additional 175 DTV allotments will be part of the spectrum reclaimed at the end of the transition when existing stations end their dual channel analog TV/DTV operation and begin providing only DTV service on a single channel. Some stations will be continuing DTV operation on their DTV channel. Other stations will convert to DTV operation on their analog channel. In either case, the channel on which these stations discontinue operation may become available for other parties. We stated our belief in the *Notice* that the protection of these DTV allotments that will become available after the transition is effectively provided now because either analog TV or DTV stations are currently authorized and protected on these channels at these locations, and sought comment on our interpretation of this provision. Alternatively, we asked if we should interpret the CBPA to prohibit the authorization of Class A service on TV channels 2-6, which were added to the permanent core spectrum in the DTV proceeding.¹⁹⁰

105. Decision. We continue to believe that the requirement of section (f)(6)(B) of the CBPA that we protect the 175 channel allotments referenced in the Commission's *Sixth Report and Order*¹⁹¹ in the DTV proceeding from Class A stations is effectively accomplished now because these channels are occupied by existing NTSC or DTV allotments. These channels will become available for other parties once full-power stations discontinue operation on one of their paired channels at the end of the DTV transition. Commenters that addressed this issue agreed with this view.¹⁹² Accordingly, we need not take further steps at this time to protect these channels from Class A service, and need not adopt our alternative proposal of prohibiting the authorization of Class A service on television channels 2-6.

J. Class A Applications

¹⁸⁹ 47 U.S.C. § 336(f)(6)(B). See *Reconsideration of the Sixth Report and Order*, 13 FCC Rcd 7418 (1998).

¹⁹⁰ See *Notice* at ¶ 25.

¹⁹¹ *Sixth Report and Order*, 12 FCC Rcd at 14698-754.

¹⁹² See Comments of MSTV/NAB at 27.

1. Application Forms

106. Background. We are required, under the terms of the CBPA, to award Class A licenses within 30 days after receipt of acceptable applications.¹⁹³ In the *Notice*, we proposed to grant initial Class A status as a modification of an existing LPTV station's license, and to limit those conversions to those stations with no change in facilities. We also proposed that applications be accepted if they met a "substantially complete" standard. We further proposed to require that LPTV stations seeking Class A status file FCC Forms 302 and 301 for facilities modifications if we placed Class A service under Part 73, and Forms 347 and 346 if the service was placed under Part 74.

107. Decision. We have created a streamlined license application form to be used by LPTV stations that seek to convert to Class A status. That form, Form 302-CA, requires a series of certifications by the Class A applicant and is attached to this *Report and Order*.¹⁹⁴ Where a construction permit to modify licensed facilities has been issued, a licensee may choose whether to file its Class A application on its license or on its authorized construction permit. Until that choice is made, we will protect the facilities reflected in the construction permit. We will not require a letter perfect application, but will accept applications on a "substantially complete" basis and will process them, as required by the statute, within 30 days unless the applications contain omissions or face challenges. For subsequent modification applications, Class A stations will be required to submit modified versions of Forms 301 and 302, to be released at a later date.

108. Normally, license applicants are not required to provide local public notice of their applications. However, since the nature of the underlying service is changing from secondary to primary service, Class A license applicants will be required to provide local public notice of their applications. Two weeks before and after submission of their applications, Class A applicants must provide weekly announcements to their listeners informing them that the applicant has applied for a Class A license, and announcing the public's ability to comment on the application prior to Commission action.

2. Class A Facilities Changes

109. Background. In the *Notice*, we proposed to define Class A minor facilities modifications like full-service television stations, to permit Class A stations the flexibility to change facilities outside of filing windows. Under this flexible approach, Class A stations could seek authorization for a minor change outside both filing windows and auction procedures. Channel changes would continue to be considered major changes. The *Notice* sought comment on whether Class A stations proposing facilities changes should be required to protect the maximum facilities of full-service stations and, if so, whether we should apply a reciprocal rule to protect the maximum facilities of Class A stations.

110. Decision. We will adopt our proposal to define Class A facilities modifications in a manner that permits greater flexibility and does not require window application filings for most changes.¹⁹⁵ Channel change requests, other than changes in frequency offset, will be considered major changes. All other proposed facilities changes will be considered "minor", including changes in station power, antenna height and antenna horizontal radiation pattern and orientation of directional antenna.

¹⁹³ 47 U.S.C. § 336(f)(1)(C).

¹⁹⁴ See Appendix D.

¹⁹⁵ Commenters generally support this proposal. See, e.g., Comments of CBA at 21; NTA at 3-4.

Proposed changes in transmitting antenna site location will also be classified as minor, provided the protected signal contour resulting from the relocated site would overlap some portion of the protected contour based on the Class A station's authorized facilities.¹⁹⁶ This approach will permit flexibility, while preventing Class A stations from relocating completely away from the viewing audiences they presently serve. Proposed site relocations that do meet this requirement will be considered major changes. Proposed changes in Class A facilities must meet applicable interference protection requirements with respect to DTV allotments, authorized DTV and NTSC TV service and must protect those pending station proposals that full-service NTSC TV applicants are required to protect. In addition, the CBPA requires proposals for Class A facilities changes to protect licensed LPTV and TV translator facilities, those authorized by construction permit, and those proposed in pending applications filed with the Commission prior to the filing of the Class A application.¹⁹⁷

111. Commenters are divided on whether proposed Class A facilities changes should be required to protect NTSC TV service based on authorized or maximum permissible facilities. Several commenters favor protection of maximum facilities. MSTV and NAB contend that this is necessary so as not to threaten the ability of DTV stations to return to their analog channels at the end of the DTV transition without incurring a loss of service area.¹⁹⁸ However, we agree with du Treil and other commenters that this approach is not spectrally efficient because it would require protection of facilities that could never be authorized due to interference constraints.¹⁹⁹ As a result, Class A licensees could be unnecessarily hindered in seeking facilities changes or locating replacement channels in the event of channel displacement. Therefore, Class A facilities modification proposals will be required to protect full-service TV Grade B contours based on authorized facilities. We will, however, permit full-service NTSC and Class A station licensees and permittees to file mutually exclusive minor change applications until grant of the pending NTSC and Class A minor change applications. Mutually exclusive applications will be resolved through the auction process in the event the parties do not eliminate the mutual exclusivity through "minor" engineering amendments to their applications. We will give notice of Class A facilities minor change applications in the manner notice is given for such NTSC TV applications. We will not establish a petition to deny period for Class A minor change applications; however, these applications will be subject to the filing of informal objections. We will also adopt the above provisions for digital Class A stations. Class A stations may file minor change applications for the purpose of converting to digital operations on their analog channels.

112. As contemplated in the *Notice*, we will apply the more inclusive definition of minor facilities changes to TV translator and non-Class A LPTV stations in order to provide additional flexibility to these stations. NTA indicates that translators and non Class A LPTV stations would also benefit from the ability to file most facilities changes outside of application filing windows.²⁰⁰ We will continue authorizing in the normal manner those LPTV and TV translator applications that are filed pursuant to the

¹⁹⁶ A continuity of service provision was proposed in the Comments of the NTA at 4 and the Comments of St. Clair at 3 (citing a similar restriction in the FM translator rules at 47 C.F.R. § 74.1233(a)(1)).

¹⁹⁷ 47 U.S.C. § 336(f)(7)(B)

¹⁹⁸ See also Comments of WB at 28.

¹⁹⁹ See Comments of du Treil at 8; CBC at 3; Equity Broadcasting Corporation at 23; North Rocky Mountain Television, L.L.C. (NRMTV) at 9.

²⁰⁰ See Comments of NTA at 3.

current minor change definition in the LPTV rules.²⁰¹ Minor change application proposals of non Class A LPTV and TV translator stations, filed under the more inclusive definition, must meet all applicable interference protection requirements to authorized stations. These applications must also protect the facilities proposed in full-service NTSC TV minor change applications, regardless of which applications are earlier filed. The CBPA requires Class A facilities modification proposals to protect earlier-filed LPTV and TV translator applications.²⁰² Therefore, we are adopting a first-come, first-served policy with respect to the minor change applications of LPTV, TV translator, and Class A stations. We do not want minor change application proposals, under the more inclusive definition, to complicate the authorization of initial Class A licenses, nor displacement relief applications that may be filed shortly after adoption of this *Report and Order*. We note that displacement applications would have a higher priority than non-displacement minor change applications, regardless of which are filed earlier.²⁰³ For this reason, we will not permit the filing of Class A, LPTV and TV translator facilities change applications, pursuant to the more inclusive minor change definition, until October 1, 2000. However, minor change applications under the less inclusive definition in the LPTV rules may continue to be filed by LPTV, TV translator, and Class A permittees and licensees.

3. Class A Channel Displacement Relief

113. Background. In the *Notice*, the Commission proposed that displaced Class A stations be permitted to apply for replacement channels on a first-come, first-served basis that would not be subject to mutually exclusive applications.²⁰⁴ Under that proposal, Class A stations could apply for replacement channels at any time, without waiting for a filing window. The *Notice* proposed to interpret the CBPA to grant displaced LPTV stations a higher priority than other nondisplacement LPTV applications and sought comment on this interpretation.

114. Decision. The Commission will adopt its proposal and allow displaced Class A station licensees and permittees to apply for replacement channels on a first-come, first-served basis, not subject to mutually exclusive applications. We will adopt generally the displacement relief policies and procedures that apply in the low power television service.²⁰⁵ Class A stations causing or receiving interference with full-service NTSC TV, DTV or any other service or predicted to cause prohibited interference or to receive interference may apply at any time for a replacement channel, together with any technical changes that are necessary to eliminate or avoid interference or continue serving the area within the station's protected signal contour. Site relocation proposals will be permitted in displacement applications, provided the protected signal contour resulting from the relocated site would overlap some portion of the protected contour based on the Class A station's authorized facilities. Class A displacement relief applications will be filed as major change applications, given their protected status. Applications will not be mutually exclusive with other displacement applications unless filed on the same day and, in

²⁰¹ See 47 C.F.R. § 73.3572(a). This rule defines minor changes to include antenna site relocations not exceeding 200 meters or facilities changes that would not increase the signal range of the station in any horizontal direction.

²⁰² 47 U.S.C. § 336(f)(7)(B)

²⁰³ 47 C.F.R. § 73.3572(a)(2)(ii)

²⁰⁴ *Notice* at ¶ 50.

²⁰⁵ The LPTV displacement relief provisions are found in 47 C.F.R § 73.3572(a)(2).

that event, will be subject to the auction procedures.²⁰⁶ These applications will be placed on public notice for a period not less than 30 days and will be subject to the filing of petitions to deny. Class A displacement relief applications will be afforded a higher priority than nondisplacement Class A, LPTV and TV translator applications, to the exclusion of those applications that are mutually exclusive with a Class A displacement application.²⁰⁷ We will not prioritize among Class A displacement applications, nor will these be afforded a higher priority than LPTV and TV translator displacement applications.²⁰⁸ Displacement applications filed on the same day by Class A, non-Class A LPTV or TV translator stations will be mutually exclusive and subject to the auction procedures. In such cases, we encourage engineering solutions to remove the mutual exclusivity wherever possible.

K. Remaining Issues

1. Call Signs

115. Background. In the *Notice*, we sought comment on the call sign designation to be used for new Class A stations. Currently, LPTV stations have the option of using standard broadcast call signs with the suffix “-LP.”

116. Decision. We will allow Class A stations to use standard television call signs with the suffix “-CA” to distinguish the stations from “-LP” stations. We agree with CBA, National Minority T.V., Inc. (NMTV) and others²⁰⁹ that use of the suffix “-LP” would create confusion between LPTV, LPFM and Class A stations. Upon grant of its initial Class A application, the qualifying LPTV licensee can change its station’s existing numerical or four-letter low power call sign to a four-letter call sign with the “CA” suffix. Class A licensees should use the Mass Media Bureau’s automated call sign reservation and authorization system to effectuate this change by accessing the call sign change request screen and providing the required information. While there is no fee payment required for the initial change to a four-letter “- CA ” call sign, a subsequent change from one four-letter “- CA” call sign to another will require payment of a fee.

²⁰⁶ 47 U.S.C. § 309(j)(14)(c).

²⁰⁷ Commenters generally supported the displacement relief proposals in the *Notice*. CBA states that displacement channel changes should take priority over other change applications. *See* Comments of CBA at 21. *See also* Comments of Commercial Broadcast Corporation at 3; AFCCE at 6; Alaskan Choice at 7. We disagree with SBE’s view that Class A displacement relief applications should be subject to mutually exclusive applications, contending there will be few displaced Class A stations and that a first-come, first-served policy would give a “super priority” to Class A priority of NTSC and DTV stations. *See* Comments of SBE at 10. Given their various DTV protection responsibilities, we cannot say that only a few Class A stations will be displaced, nor is this relevant to providing a relief mechanism for facilitating the survival of displaced stations. Moreover, Class A licensees do not have an absolute priority over full-service broadcasters. For example, as provided by the CBPA, they are subject to displacement by DTV stations that encounter technical problems with allotments, which require engineering solutions.

²⁰⁸ We do not believe the CBPA constrains a priority for displacement applications over nondisplacement applications. In fact it affords a displacement priority for LPTV stations displaced by Class A stations. Treating Class A, LPTV and TV translator displacement applications on an equal footing, that is, on a first-come, first-served basis, we believe, satisfies the intent of Section (f)(7)(B)(iii) of the CBPA.

²⁰⁹ *See* Comments of CBA at 17; National Minority T.V., Inc. (NMTV) at 9-10.

2. Certification of Class A Transmitters

117. Background. In the *Notice*, we sought comment regarding whether Class A transmitters should be certified in a manner similar to the former "type acceptance" requirement or whether the less stringent Part 73 "verification" requirements should apply.

118. Decision. We have decided to use the Part 73 verification scheme for new Class A transmitters. Existing LPTV transmitters will eventually be replaced by digital equipment, so we will "grandfather" use of these analog transmitters, except where these transmitters cause interference due to spurious emissions on frequencies outside of the assigned channel. As noted above, Class A stations proposing facilities increases, such as increased power, must specify a frequency offset. Upon authorization to operate with a frequency offset, station licensees must use a transmitter capable of meeting a frequency tolerance of +1/-1 kHz.

3. Fees

119. Background. In the *Notice*, we proposed to apply minor modification fees to Class A applications and requested comment on treatment of Class A stations for the purposes of annual regulatory fees.

120. Decision. Consistent with the use of a Part 73 license application form (302-A), we will apply the existing full-service television license fee to initial Class A applications. This fee is lower than the minor modification fee. However, we will apply the low power regulatory fees to Class A stations going forward. Class A stations, while having greater rights than the preceding LPTV stations, will still be greatly limited in their power and height restrictions. To require the same regulatory fees as are required for full-power stations would be onerous to these small, local operations. We agree with the CBA that these lower regulatory fees are more appropriate in the Class A context, unless Congress legislates otherwise at some future time.²¹⁰

4. International Coordination Provisions

121. In establishing rules for Class A stations, the Commission is mindful of its obligations under its existing bilateral agreements with Canada and Mexico regarding the authorization of LPTV service in the common border areas.²¹¹ These agreements do not contain provisions for analog or digital Class A TV stations. Under the agreements, LPTV stations have a secondary status with respect to Canadian and Mexican primary television stations and allotments and must not cause interference to the reception of these stations, nor are LPTV stations protected against interference from these stations. The agreements also include provisions for notifying and coordinating LPTV station proposals in the border areas. We agree with Grupo Televisa, S.A. (Grupo) that any authorization of Class A stations must be consistent with international agreements.²¹² We will continue to apply the LPTV provisions in our existing

²¹⁰ See Comments of CBA at 17.

²¹¹ Agreement on the Assignment of Low Power Television Stations Along the Border, Sept. 14, 1998, United States-Mexico; Agreement on VHF and UHF Television Broadcasting Channels, Jan. 5, 1994, United States-Canada.

²¹² See Comments of Grupo Televisa, S.A. (Grupo) at 5. Grupo is a Mexican television broadcaster that operates a number of television stations in the U.S.-Mexican border area.

agreements with Canada and Mexico to LPTV stations, including those that seek Class A status. Grupo believes we should not allow primary status for any LPTV station "that is required under the U.S.-Mexican TV agreements to be operated on a secondary basis or to be coordinated between the two governments."²¹³ We will not grant an analog or digital Class A license to any LPTV station affected by the U.S.-Mexican or U.S. Canadian agreements without the expressed concurrence of Canada or Mexico. We will work over time to update the current bilateral agreements to recognize when possible Class A assignments. In the interim we will attempt to obtain temporary approval of Class A stations in the border area or on a case by case basis. However, any Class A stations authorized on this basis would be subject to any conditions resulting from the coordination process or any final bilateral agreement reached with Canada and Mexico.

5. Broadcast Auxiliary Frequencies

122. LPTV stations may be authorized to operate remote pickup stations and various TV broadcast auxiliary stations (BAS).²¹⁴ Some LPTV stations use studio-to-transmitter links and other fixed microwave links. LPTV stations may also conduct electronic newsgathering operations on BAS frequencies. Licenses for television pickup, studio-transmitter link and point-to-point TV relay stations are issued to LPTV stations on a secondary basis, such that full-service stations may displace LPTV station use of broadcast auxiliary channels. We agree with SBE that once an LPTV station is authorized as a Class A station, all of that station's BAS licenses should automatically be upgraded to primary status,²¹⁵ that is, upon receiving its initial Class A authorization, the station licensee will not be required separately to seek upgraded BAS licenses. Class A stations may also file applications under existing procedures, requesting authority to operate BAS stations on a primary basis. As SBE also points out, we remind Class A licensees of their responsibility to avoid interference with other users of a BAS channel, including the requirement to consult with a local frequency coordinating committee, if one exists.

IV. CONCLUSION

123. In this *Report and Order*, we adopt regulations establishing a Class A television license for qualifying low power television stations in accordance with the Community Broadcasters Protection Act of 1999. The measure of primary Class A status afforded to qualifying low power television stations will provide stability and a brighter future to these stations that provide valuable local programming services in their communities, while protecting the transition to digital television.

ADMINISTRATIVE MATTERS

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

²¹³ *Id.* at 7.

²¹⁴ 47 C.F.R. §§ 74.432 and 74.632.

²¹⁵ *See* Comments of SBE at 7.

125. Regulatory Flexibility Analysis. Pursuant to the Regulatory Flexibility Act of 1980, as amended, *see* 5 U.S.C. § 604, the Commission's Final Regulatory Flexibility Analysis for this *Report and Order* is attached as Appendix C.

126. Additional Information. For additional information on this proceeding, please contact Kim Matthews, Policy and Rules Division, Mass Media Bureau, (202) 418-2130, or Keith Larson, Office of the Bureau Chief, Mass Media Bureau, (202) 418-2600.

ORDERING CLAUSES

127. Accordingly, IT IS ORDERED that, pursuant to authority contained in sections 1, 4(i), 303, and 336(f) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303, and 336(f), Part 73 of the Commission's rules, 47 C.F.R. Part 73, and Part 74 of the Commission's rules, 47 C.F.R. Part 74, ARE AMENDED as set forth in Appendix A below.

128. IT IS FURTHER ORDERED that the amendments set forth in Appendix A shall be effective 30 days after publication in the Federal Register. Class A applications may be filed beginning on the date the rules are effective.

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

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

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDIX A

Rules

List of Subjects

47 CFR Part 1

Practice and procedure

47 CFR Part 11

Emergency alert system.

47 CFR Part 73 and Part 74

Radio broadcasting

Rule Changes

For the reasons set forth in the preamble parts 1, 11, 73 and 74 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

PART 1 - PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C 79 et seq.; 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 303(r).

* * * * *

2. Section 1.1104 is amended by adding part 8 to read as follows:

§ 1.1104 Schedule of charges for applications and other filings for the mass media services.

* * * * *

8. Class A Television Service

Action	FCC Form No.	Fee Amount	Payment	
			Type Code	Address
a. New or major change construction permit	301-CA	3,245	MVT	FCC, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251-5165
b. New license	302-CA	220	MJT	“ “

c. License renewal	303-S	130	MGT	“ “
d. Special Temporary Authority	Corres. & 159	130		“ “
e. License assignment	314 & 159 or 316 & 159	725 105	MPT MDT	FCC, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251-5350
f. Transfer of control	315 & 159 or 316 & 159	725 105	MPT MDT	“ “
g. Main studio request	Corres. & 159	725	MPT	FCC, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251-5165
h. Call sign	Corres. & 159	75	MBT	“ “

3. Section 1.1153 is amended by adding part VIII to read, as follows:

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

VIII. Class A TV (47 C.F.R., Part 73)	290	FCC, Class A, PO Box 358835, Pittsburgh, PA 15251-5835
---------------------------------------	-----	--

PART 11 - EMERGENCY ALERT SYSTEM (EAS)

4. The authority citation for part 11 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (o), 303(r), 544(g) and 606.

5. Section 11.11 is amended by:

- (1) Adding in paragraph (a) the words “Class A television (CA) stations” in the first sentence after the words “TV broadcast stations.”
- (2) Revising the table “Timetable Broadcast Stations.”

6. The amendment adds a new column to the chart to read as follows:

§ 11.11 The Emergency Alert System (EA).

* * * * *

I. TIMETABLE

BROADCAST STATIONS

Requirement	Class A TV
Two-tone encoder	Y
Two-tone decoder	Y
EAS decoder	Y
EAS encoder	Y
Audio message	Y
Video message	Y

7. Section 11.53 is amended by revising paragraph (a)(4) to read as follows:

§ 11.53 Dissemination of Emergency Action Notification.

(a) * * *

(4) Wire service to all subscribers (AM, FM, low power FM (LPFM), TV, LPTV, Class A television (CA) and other stations).

* * * * *

PART 73 - RADIO BROADCAST SERVICES

8. The authority citation for part 73 continues to read as follows:

Authority: (47 U.S.C. 154, 303, 334, 336.)

* * * * *

9. Subpart E is amended by adding Section 73.613 to read as follows:

§ 73.613 Protection of Class A TV stations.

(a) An application for a new TV broadcast station or for changes in the operating facilities of an existing TV broadcast station will not be accepted for filing if it fails to comply with the requirements specified in this section.

Note: Licensees and permittees of TV broadcast stations that were authorized on November 29, 1999 (and applicants for new TV stations that had been cut-off without competing applications or that were the winning bidder in a TV broadcast station auction as of that date, or that were the proposed remaining applicant in a group of mutually exclusive applications for which a settlement agreement was on file as of that date) may continue to operate with facilities that do not protect Class A TV stations. Applications

filed on or before November 29, 1999 for a change in the operating facilities of such stations also are not required to protect Class A TV stations under the provisions of this section.

(b) Due to the frequency spacing which exists between TV channels 4 and 5, between channels 6 and 7, and between channels 13 and 14, first-adjacent channel protection standards shall not be applicable to these pairs of channels. Some interference protection requirements of this section only apply to stations transmitting on the UHF TV channels 14 through 51 (See §73.603(a) of this part).

(c) A UHF TV broadcast station application will not be accepted if it specifies a site less than 100 kilometers from the transmitter site of a UHF Class A TV station operating on a channel which is the seventh channel above the requested channel. Compliance with this requirement shall be determined based on a distance computation rounded to the nearest kilometer.

(d) A UHF TV broadcast station application will not be accepted if it specifies a site less than 32 kilometers from the transmitter site of a UHF Class A TV station that is authorized an effective radiated power of more than 50 kilowatts and operating on a channel which is the second, third, or fourth channel above or below the requested channel. Compliance with this requirement shall be determined based on a distance computation rounded to the nearest kilometer.

(e) In cases where a TV broadcast station has been authorized facilities that do not meet the distance separation requirements of this section, an application to modify such a station's facilities will not be accepted if it decreases that separation.

(f) New interference must not be caused to Class A TV stations authorized pursuant to Subpart J of this part, within the protected contour defined in §73.6010 of this part. For this prediction, the TV broadcast station field strength is calculated from the proposed effective radiated power and the antenna height above average terrain in pertinent directions using the methods in §73.684 of this part.

(1) For co-channel protection, the field strength is calculated using the appropriate F(50,10) chart from Figure 9a, 10a, or 10c of §73.699 of this part.

(2) For TV broadcast stations that do not specify the same channel as the Class A TV station to be protected, the field strength is calculated using the appropriate F(50,50) chart from Figure 9, 10, or 10b of §73.699 of this part.

(g) A TV broadcast station application will not be accepted if the ratio in dB of its field strength to that of the Class A TV station at the Class A TV station's protected contour fails to meet the following:

(1) - 45 dB for co-channel operations where the Class A TV station does not specify an offset carrier frequency or where the TV broadcast and Class A TV stations do not specify different offset carrier frequencies (zero, plus or minus) or - 28 dB for offset carrier frequency operation where the TV broadcast and Class A TV stations specify different offset carrier frequencies.

(2) 6 dB when the protected Class A TV station operates on a VHF channel that is one channel above the requested channel.

(3) 12 dB when the protected Class A TV station operates on a VHF channel that is one channel below the requested channel.

- (4) 15 dB when the protected Class A TV station operates on a UHF channel that is one channel above or below the requested channel.
- (5) 23 dB when the protected Class A TV station operates on a UHF channel that is fourteen channels below the requested channel.
- (6) 6 dB when the protected Class A TV station operates on a UHF channel that is fifteen channels below the requested channel.
- (h) New interference must not be caused to digital Class A TV stations authorized pursuant to Subpart J of this part, within the protected contour defined in §73.6010 of this part. A TV broadcast station application will not be accepted if the ratio in dB of the field strength of the digital Class A TV station at the digital Class A TV station's protected contour to the field strength resulting from the facilities proposed in the TV broadcast station application fails to meet the D/U signal ratios for "analog TV-into-DTV" specified in §§73.623(c)(2) and 73.623(c)(3) of this part. For digital Class A TV station protection, the TV broadcast station field strength is calculated from the proposed effective radiated power and the antenna height above average terrain in pertinent directions using the methods in §73.684 of this part and using the appropriate F(50,10) chart from Figure 9a, 10a, or 10c of §73.699 of this part.
- (i) In cases where a TV broadcast station has been authorized facilities that do not meet the interference protection requirements of this section, an application to modify such a station's facilities will not be accepted if it is predicted to cause new interference within the protected contour of the Class A TV or digital Class A TV station.
- (j) In support of a request for waiver of the interference protection requirements of this section, an applicant for a TV broadcast station may make full use of terrain shielding and Longley-Rice terrain dependent propagation methods to demonstrate that the proposed facility would not be likely to cause interference to Class A TV stations. Guidance on using the Longley-Rice methodology is provided in *OET Bulletin No. 69*, which is available through the Internet at <http://www.fcc.gov/oet/info/documents/bulletins/#69>.

* * * * *

10. Section 73.623 is amended by adding paragraph (c)(5) to read as follows:

§ 73.623 DTV applications and changes to DTV allotments.

* * * * *

(c) * * *

(5) A DTV station application that proposes to expand the DTV station's allotted or authorized coverage area in any direction will not be accepted if it is predicted to cause interference to a Class A TV station or to a digital Class A TV station authorized pursuant to Subpart J of this part, within the protected contour defined in § 73.6010 of this part. This paragraph applies to all DTV applications filed after May 1, 2000, and to DTV applications filed between December 31, 1999 and April 30, 2000 unless the DTV station licensee or permittee notified the Commission of its intent to "maximize" by December 31, 1999.

- (i) Interference is predicted to occur if the ratio in dB of the field strength of a Class A TV station at its protected contour to the field strength resulting from the facilities proposed in the DTV application (calculated using the appropriate F(50,10) chart from Figure 9a, 10a, or 10c of § 73.699 of this part) fails to meet the D/U signal ratios for "DTV-into-analog TV" specified in paragraph (c)(2) of this section.
- (ii) Interference is predicted to occur if the ratio in dB of the field strength of a digital Class A TV station at its protected contour to the field strength resulting from the facilities proposed in the DTV application (calculated using the appropriate F(50,10) chart from Figure 9a, 10a, or 10c of § 73.699 of this part) fails to meet the D/U signal ratios for "DTV-into-DTV" specified in paragraphs (c)(2) and (c)(3) of this section.
- (iii) In support of a request for waiver of the interference protection requirements of this section, an applicant for a DTV broadcast station may make full use of terrain shielding and Longley-Rice terrain dependent propagation methods to demonstrate that the proposed facility would not be likely to cause interference to Class A TV stations. Guidance on using the Longley-Rice methodology is provided in *OET Bulletin No. 69*, which is available through the Internet at <http://www.fcc.gov/oet/info/documents/bulletins/#69>.

* * * * *

11. Section 73.1001 is revised to read as follows:

§ 73.1001 Scope.

(a) The rules in this subpart are common to all AM, FM, TV and Class A TV broadcast services, commercial and noncommercial.

(b) Rules in part 73 applying exclusively to a particular broadcast service are contained in the following: AM, subpart A; FM, subpart B; Noncommercial Educational FM, subpart C; TV, subpart E; and Class A TV, subpart J.

* * * * *

12. Section 73.1120 is revised to read as follows:

§ 73.1120 Station location.

(a) Each AM, FM, TV and Class A TV broadcast station will be licensed to the principal community or other political subdivision which it primarily serves. This principal community (city, town or other political subdivision) will be considered to be the geographical station location.

* * * * *

13. Section 73.1125 is amended by adding paragraph (c), and amending the remaining paragraphs to read as follows:

§ 73.1125 Station main studio location.

* * * * *

(c) Each Class A television station shall maintain a main studio at the site used by the station as of November 29, 1999 or a location within the station's Grade B contour, as defined in Section 73.683 and calculated using the method specified in Section 73.684 of this part.

(d) Relocation of the main studio may be made:

- (1) From one point to another within the locations described in paragraph (a) or (c) of this section, or from a point outside the locations specified in paragraph (a) or (c) to one within those locations, without specific FCC authority, but notification to the FCC in Washington shall be made promptly.
- (2) Written authority to locate a main studio outside the locations specified in paragraphs (a) or (c) of this section for the first time must be obtained from the Audio Services Division, Mass Media Bureau for AM and FM stations, or the Television Branch, Video Services Division for TV and Class A television stations before the studio may be moved to that location. Where the main studio is already authorized at a location outside those specified in paragraphs (a) or (c), and the licensee or permittee desires to specify a new location also located outside those locations, written authority must also be received from the Commission prior to the relocation of the main studio. Authority for these changes may be requested by filing a letter with an explanation of the proposed changes with the appropriate division. Licensees or permittees should also be aware that the filing of such a letter request does not imply approval of the relocation request, because each request is addressed on a case-by-case basis. A filing fee is required for commercial AM, FM, TV or Class A TV licensees or permittees filing a letter request under the section (see § 1.1104).

(e) Each AM, FM, TV and Class A TV broadcast station shall maintain a local telephone number in its community of license or a toll-free number.

* * * * *

14. Section 73.1201 is amended to read as follows:

§ 73.1201 Station identification.

(a) *When regularly required.* Broadcast station identification announcements shall be made: (1) at the beginning and ending of each time of operation, and (2) hourly, as close to the hour as feasible, at a natural break in program offerings. Television and Class A television broadcast stations may make these announcements visually or aurally.

* * * * *

15. Section 73.1202 is amended to read as follows:

§ 73.1202 Retention of letters received from the public.

(a) All written comments and suggestions received from the public by licensees of commercial AM, FM, TV and Class A TV broadcast stations regarding operation of their station shall be maintained in the local public inspection file, unless the letter writer has requested that the letter not be made public or when the licensee feels that it should be excluded from the public inspection file because of the

nature of its content, such as a defamatory or obscene letter.

- (1) Letters shall be retained in the local public inspection file for three years from the date on which they are received by the licensee.
- (2) Letters received by TV and Class A TV licensees shall be placed in one of the following separated subject categories: programming or non-programming. If comments in a letter relate to both categories, the licensee shall file it under the category to which the writer has given greater attention.

* * * * *

16. Section 73.1210 is amended to read as follows:

§ 73.1210 TV/FM dual-language broadcasting in Puerto Rico.

* * * * *

(b) Television and Class A television licensees in Puerto Rico may enter into dual-language time purchase agreements with FM broadcast licensees, subject to the following conditions.

* * *

- (3) No television, Class A television, or FM broadcast station may devote more than 15 hours per week to dual-language broadcasting, nor may more than three (3) hours of such programming be presented on any given day.

* * * * *

17. Section 73.1211 is amended to read as follows:

§ 73.1211 Broadcast of lottery information.

(a) No licensee of an AM, FM, television, or Class A television broadcast station, except as in paragraph (c) of this section, shall broadcast any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise or scheme, whether said list contains any part or all of such prizes. (18 U.S.C. 1304, 62 Stat. 763).

* * * * *

18. Section 73.1250 is amended to read as follows:

§ 73.1250 Broadcasting emergency information.

* * * * *

(h) Any emergency information transmitted by a TV or Class A TV station in accordance with this section shall be transmitted both aurally and visually or only visually. TV and Class A TV stations may use any method of visual presentation which results in a legible message conveying the essential emergency information. Methods which may be used include, but are not necessarily limited to, slides, electronic captioning, manual methods (e.g., hand printing)

or mechanical printing processes. However, when an emergency operation is being conducted under a national, State or Local Area Emergency Alert System (EAS) plan, emergency information shall be transmitted both aurally and visually unless only the EAS codes are transmitted as specified in Sec. 11.51(b) of this chapter.

* * * * *

19. Section 73.1400 is amended to read as follows:

§ 73.1400 Transmission system monitoring and control.

The licensee of an AM, FM, TV or Class A TV station is responsible for assuring that at all times the station operates within tolerances specified by applicable technical rules contained in this part and in accordance with the terms of the station authorization. Any method of complying with applicable tolerances is permissible. The following are typical methods of transmission system operation:

* * * * *

20. Section 73.1540 is amended to read as follows:

§ 73.1540 Carrier frequency measurements.

(a) The carrier frequency of each AM and FM station and the visual carrier frequency and the difference between the visual carrier and the aural carrier or center frequency of each TV and Class A TV station shall be measured or determined as often as necessary to ensure that they are maintained within the prescribed tolerances.

* * * * *

21. Section 73.1545 is amended by adding paragraph (e) to read as follows:

§ 73.1545 Carrier frequency departure tolerances.

* * * * *

(e) *Class A TV stations.* The departure of the carrier frequency of Class A TV stations may not exceed the values specified in section 74.761 of this chapter. Provided, however, Class A TV stations licensed to operate with a maximum effective radiated power greater than the value specified in their initial Class A TV station authorization must comply with paragraph (c) of this section.

* * * * *

22. Section 73.1560 is amended to read as follows:

§ 73.1560 Operating power and mode tolerances.

* * * * *

(c) TV stations. (1) Except as provided in paragraph (d) of this section, the visual output power of a TV or Class A TV transmitter, as determined by the procedures specified in Sec. 73.664, must be maintained as near as is practicable to the authorized transmitter output power and may not be less than 80% nor more than 110% of the authorized power.

* * * * *

23. Section 73.1570 is amended by revising the title and paragraph (b)(3) to read as follows:

§ 73.1570 Modulation levels: AM, FM, TV and Class A TV aural.

* * * * *

(b) * * *

(3) *TV and Class A TV stations.* In no case shall the total modulation of the aural carrier exceed 100% on peaks of frequent recurrence, unless some other peak modulation level is specified in an instrument of authorization. For monophonic transmissions, 100% modulation is defined as +/- 25 kHz.

* * * * *

24. Section 73.1580 is amended to read as follows:

§ 73.1580 Transmission system inspections.

Each AM, FM, TV and Class A TV station licensee or permittee must conduct periodic complete inspections of the transmitting system and all required monitors to ensure proper station operation.

* * * * *

25. Section 73.1590 is amended by revising paragraph (a) to read as follows:

§ 73.1590 Equipment performance measurements.

(a) The licensee of each AM, FM, TV and Class A TV station, except licensees of Class D non-commercial educational FM stations authorized to operate with 10 watts or less output power, must make equipment performance measurements for each main transmitter as follows:

* * * * *

26. Section 73.1615 is amended to read as follows:

§ 73.1615 Operation during modification of facilities.

When the licensee of an existing AM, FM, TV or Class A TV station is in the process of modifying existing facilities as authorized by a construction permit and determines it is necessary to either discontinue operation or to operate with temporary facilities to continue program service, the following procedures apply:

(a) Licensees holding a construction permit for modification of directional or nondirectional FM, TV or Class A TV or nondirectional AM station facilities may, without specific FCC authority, for a period not exceeding 30 days:

* * * * *

27. Section 73.1620 is amended to read as follows:

§ 73.1620 Program tests.

(a) Upon completion of construction of an AM, FM, TV or Class A TV station in accordance with the terms of the construction permit, the technical provisions of the application, the rules and regulations and the applicable engineering standards, program tests may be conducted in accordance with the following:

(1) The permittee of a nondirectional AM or FM station, or a nondirectional or directional TV or Class A TV station, may begin program tests upon notification to the FCC in Washington, DC provided that within 10 days thereafter, an application for a license is filed with the FCC in Washington, DC.

* * * * *

28. Section 73.1635 is amended to read as follows:

§ 73.1635 Special temporary authorizations (STA).

(a) * * *

(4) Certain rules specify special considerations and procedures in situations requiring an STA or permit temporary operation at variance without prior authorization from the FCC when notification is filed as prescribed in the particular rules. See § 73.62, Directional antenna system tolerances; § 73.157, Antenna testing during daytime; § 73.158, Directional antenna monitoring points; § 73.691, Visual modulation monitoring; § 73.1250, Broadcasting emergency information; § 73.1350, Transmission system operation; § 73.1560, Operating power and mode tolerances; § 73.1570, Modulation levels: AM, FM, TV and Class A TV aural; § 73.1615, Operation during modification of facilities; § 73.1680, Emergency antennas; and § 73.1740, Minimum operating schedule.

* * * * *

29. Section 73.1660 is amended to read as follows:

§ 73.1660 Acceptability of broadcast transmitters.

(a) An AM, FM, TV or Class A TV transmitter shall be verified for compliance with the requirements of this part following the procedures described in part 2 of the FCC rules.

* * * * *

30. Section 73.1665 is amended to read as follows:

§ 73.1665 Main transmitters.

(a) Each AM, FM, TV and Class A TV broadcast station must have at least one main transmitter which complies with the provisions of the transmitter technical requirements for the type and class of station. A main transmitter is one which is used for regular program service having power ratings appropriate for the authorized operating power(s).

(b) There is no maximum power rating limit for FM, TV or Class A TV station transmitters, however, the maximum rated transmitter power of a main transmitter stalled at an AM station shall be as follows:

Authorized power	Maximum rated transmitter power (kW)
0.25, 0.5, or 1 kW.....	1
2.5 kW.....	5
5 or 10 kW.....	10
25 or 50 kW.....	50

* * * * *

31. Section 73.1675 is amended by revising paragraphs (a)(1) and (c)(1) to read as follows:

§ 73.1675 Auxiliary antennas.

(a)(1) An auxiliary antenna is one that is permanently installed and available for use when the main antenna is out of service for repairs or replacement. An auxiliary antenna may be located at the same transmitter site as the station's main antenna or at a separate site. The service contour of the auxiliary antenna may not extend beyond the following corresponding contour for the main facility:

- (i) AM stations: The 0.5 mV/m field strength contours.
- (ii) FM stations: The 1.0 mV/m field strength contours.
- (iii) TV stations: The Grade B coverage contours.
- (iv) Class A TV stations: The protected contours defined in § 73.6010.

* * * * *

(c)(1) Where an FM, TV or Class A TV licensee proposes to use a formerly licensed main facility as an auxiliary facility, or proposes to modify a presently authorized auxiliary facility, and no changes in the height of the antenna radiation center are required in excess of the limits in § 73.1690(c)(1), the FM, TV or Class A TV licensee may apply for the proposed auxiliary facility by filing a modification of license application. The modified auxiliary facility must operate on the same channel as the licensed main facility. An exhibit must be provided with this license application to demonstrate compliance with § 73.1675(a). All FM, TV and Class A TV licensees may request a decrease from the authorized facility's ERP in the license application. An FM, TV or Class A TV licensee may also increase the ERP of the auxiliary facility in a license modification application, provided the application contains an analysis demonstrating compliance with the Commission's radiofrequency radiation guidelines, and an analysis showing that the auxiliary facility will comply with § 73.1675(a). Auxiliary facilities mounted on an AM antenna tower must also demonstrate compliance with § 73.1692 in the license application.

* * * * *

32. Section 73.1680 is amended by revising paragraph (b)(3) to read as follows:

§ 73.1680 Emergency antennas.

* * * * *

(b) * * *

(2) *FM, TV and Class A TV stations.* FM, TV and Class A TV stations may erect any suitable radiator, or use operable sections of the authorized antenna(s) as an emergency antenna.

* * * * *

33. Section 73.1690 is amended to read as follows:

§ 73.1690 Modification of transmission systems.

* * * * *

(a) * * *

(2) Those that would cause the transmission system to exceed the equipment performance measurements prescribed for the class of service, (AM, § 73.44; FM, §§ 73.317, 73.319, and 73.322; TV and Class A TV, §§ 73.682 and 73.687).

(b) * * *

(2) Any change in station geographic coordinates, including coordinate corrections. FM, TV and Class A TV directional stations must also file a construction permit application for any move of the antenna to another tower structure located at the same coordinates.

(5) Any change which would require an increase along any azimuth in the composite directional antenna pattern of an FM station from the composite directional antenna pattern authorized (see § 73.316), or any increase from the authorized directional antenna pattern for a TV broadcast (see § 73.685) or Class A TV station (see § 73.6025).

* * * * *

(5) Any decrease in the authorized power of an AM station or the ERP of a TV or Class A TV station, or any decrease or increase in the ERP of an FM commercial station, which is intended for compliance with the multiple ownership rules in § 73.3555.

* * * * *

(7) Any increase in the authorized ERP of a television station, Class A television station, FM commercial station, or noncommercial educational FM station, except as provided for in Secs. 73.1690(c)(4), (c)(5), or (c)(7), or Sec. 73.1675(c)(1) in the case of auxiliary facilities.

(8) A commercial TV or noncommercial educational TV station operating on Channels 14 or Channel 69 or a Class A TV station on Channel 14 may increase its horizontally or vertically polarized ERP only after the grant of a construction permit. A television or Class A television station on Channels 15 through 21 within 341 km of a cochannel land mobile operation, or 225 km of a first-adjacent channel land mobile operation, must also obtain a construction permit before increasing the horizontally or vertically polarized ERP (see part 74, Sec. 74.709(a) and (b) for tables of urban areas and corresponding reference coordinates of potentially affected land mobile operations).

(c) The following FM, TV and Class A TV station modifications may be made without prior authorization from the Commission. A modification of license application must be submitted to the Commission within 10 days of commencing program test operations pursuant to Sec. 73.1620. With the exception of applications filed solely pursuant to Sections (c)(6), (c)(9), or (c)(10), the modification of license application must contain an exhibit demonstrating compliance with the Commission's radio frequency radiation guidelines. In addition, except for applications solely filed pursuant to Sections (c)(6) or (c)(9), where the installation is located within 3.2 km of an AM tower or is located on an AM tower, an exhibit demonstrating compliance with Sec. 73.1692 is also required.

* * * * *

(3) A directional TV on Channels 2 through 13 or 22 through 68 or a directional Class A TV on Channels 2 through 13 or 22 through 51; or a directional TV or Class A TV station on Channels 15 through 21 which is in excess of 341 km (212 miles) from a cochannel land mobile operation or in excess of 225 km (140 miles) from a first-adjacent channel land mobile operation (see Part 74, § 74.709(a) and (b) for tables of urban areas and reference coordinates of potentially affected land mobile operations), may replace a directional TV or Class A TV antenna by a license modification application, if the proposed horizontal theoretical directional antenna pattern does not exceed the licensed horizontal directional antenna pattern at any azimuth and where no change in effective radiated power will result. The modification of license application on Form 302-TV or Form 302-CA must contain all of the data set forth in § 73.685(f) or § 73.6025(a), as applicable.

(4) Commercial and noncommercial educational FM stations operating on Channels 221 through 300 (except Class D), NTSC TV stations operating on Channels 2 through 13 and 22 through 68, Class A TV stations operating on Channels 2 through 13 and 22 through 51, and TV and Class A TV stations operating on Channels 15 through 21 that are in excess of 341 km (212 miles) from a cochannel land mobile operation or in excess of 225 km (140 miles) from a first-adjacent channel land mobile operation [see Part 74, Sec. 74.709(a) and (b) for tables of urban areas and reference coordinates of potentially affected land mobile operations], which operate omnidirectionally, may increase the vertically polarized effective radiated power up to the authorized horizontally polarized effective radiated power in a license modification application. Noncommercial educational FM licensees and permittees on Channels 201 through 220, that do not use separate antennas mounted at different heights for the horizontally polarized ERP and the vertically polarized ERP, and are located in excess of the separations from a Channel 6 television station listed in Table A of Sec. 73.525(a)(1), may also increase the vertical ERP, up to (but not exceeding) the authorized horizontally polarized ERP via a license modification application. Program test operations may commence at full power pursuant to Sec. 73.1620(a)(1).

* * * * *

34. Section 73.1740 is revised to add paragraph (6) to read as follows.

§ 73.1740 Minimum operating schedule

(a) All commercial broadcast stations are required to operate not less than the following minimum hours:

* * * * *

(6) *Class A TV stations.* Not less than 18 hours in each day of the week.

* * * * *

35. Section 73.1870 is amended to read as follows:

§ 73.1870 Chief operators.

- (a) The licensee of each AM, FM, TV or Class A TV broadcast station must designate a person to serve as the station's chief operator. At times when the chief operator is unavailable or unable to act (e.g., vacations, sickness), the licensee shall designate another person as the acting chief operator on a temporary basis.

* * * * *

36. Section 73.2080 is amended to read as follows:

§ 73.2080 Equal employment opportunities.

- (a) *General EEO Policy.* Equal opportunity in employment shall be afforded by all licensees or permittees of commercially or noncommercially operated AM, FM, TV, Class A TV, or international broadcast station (as defined in this part) to all qualified persons, and no person shall be discriminated against in employment by such stations because of race, color, religion, national origin, or sex.

* * * * *

37. Section 73.3500 is amended to read as follows:

§ 73.3500 Application and Report Forms.

Following are the FCC broadcast application and report forms, listed by number.

Form number	Title
302-CA	Application for Class A Television Broadcasting Station Construction Permit or License

* * * * *

* * * * *

38. Section 73.3516 is amended to read as follows:

§ 73.3516 Specification of facilities.

- (a) An application for facilities in the AM, FM, TV or Class A TV broadcast services, or low power TV service shall be limited to one frequency, or channel, and no application will be accepted for filing if it requests an alternate frequency or channel. Applications specifying split frequency AM operations using one frequency during daytime hours complemented by a different frequency during nighttime hours will not be accepted for filing.

* * * * *

39. Section 73.2526 is amended to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

(a) *Responsibility to maintain a file.* The following shall maintain for public inspection a file containing the material set forth in this section.

* * * * *

(3) Every permittee or licensee of an AM, FM, TV or Class A TV station in the commercial broadcast services shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(10) and paragraph (e)(13) of this section. In addition, every permittee or licensee of a commercial TV or Class A TV station shall maintain for public inspection a file containing material, relating to that station, described in paragraphs (e)(11) and (e)(15) of this section, and every permittee or licensee of a commercial AM or FM station shall maintain for public inspection a file containing the material, relating to that station, described in paragraphs (e)(12) and (e)(14) of this section. A separate file shall be maintained for each station for which an authorization is outstanding, and the file shall be maintained so long as an authorization to operate the station is outstanding.

* * * * *

(11)(i) *TV issues/programs lists.* For commercial TV and Class A TV broadcast stations, every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period. The list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October - December, April 10 for the quarter January - March, etc.) The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs shall include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated. The lists described in this paragraph shall be retained in the public inspection file until final action has been taken on the station's next license renewal application.

(ii) *Records concerning commercial limits.* For commercial TV and Class A TV broadcast stations, records sufficient to permit substantiation of the station's certification, in its license renewal application, of compliance with the commercial limits on children's programming established in 47 U.S.C. 303a and 47 C.F.R. 73.670. The records for each calendar quarter must be filed by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October - December, April 10 for the quarter January - March, etc.). These records shall be retained until final action has been taken on the station's next license renewal application.

(iii) *Children's television programming reports.* For commercial TV and Class A TV broadcast stations, on a quarterly basis, a completed Children's Television Programming Report ("Report"), on FCC Form 398, reflecting efforts made by the licensee during the preceding quarter, and efforts planned for the next quarter, to serve the educational and informational needs of children. The Report for each quarter is to be filed by the tenth day of the succeeding calendar quarter. The Report shall identify the licensee's educational and informational programming efforts, including programs aired by the station that are specifically designed to serve the educational and informational needs of children, and it shall explain how programs identified as Core Programming meet the definition set forth in § 73.671(c). The Report shall include the name of the individual at the station responsible for collecting comments on the station's compliance with the Children's Television Act, and it shall be separated from other materials in the public inspection file. These Reports shall be retained in the public inspection file until final action has

been taken on the station's next license renewal application. Licensees shall publicized in an appropriate manner the existence and location of these Reports. For an experimental period of three years, licensees shall file these Reports with the Commission on an annual basis, i.e., four quarterly reports filed jointly each year, in electronic form as of January 10, 1999. These reports shall be filed with the Commission on January 10, 1998, January 10, 1999, and January 10, 2000.

* * * * *

(15) *Must-carry or retransmission consent election.* Statements of a commercial television or Class A television station's election with respect to either must-carry or re-transmission consent, as defined in § 76.64 of this chapter. These records shall be retained for the duration of the three year election period to which the statement applies.

* * * * *

(16) *Class A TV Continuing Eligibility.* Documentation sufficient to demonstrate that the Class A television station is continuing to meet the eligibility requirements set forth at § 73.6001.

* * * * *

40. Section 73.3536 is amended to read as follows:

§ 73.3536 Application for license to cover construction permit.

* * * * *

(c) Eligible low power television stations which have been granted a certificate of eligibility may file FCC Form 302-CA, "Application for Class A Television Broadcast Station Construction Permit Or License."

41. Section 73.3550 is amended to read as follows:

§ 73.3550 Requests for new or modified call sign assignments.

* * * * *

(f) Only four-letter call signs (plus an LP, FM, TV or CA suffix, if used) will be assigned. However, subject to the other provisions of this section, a call sign of a station may be conformed to a commonly owned station holding a three-letter call assignment (plus FM, TV, CA or LP suffixes, if used.

* * * * *

(m) Where a requested call sign, without the "-FM," "-TV," "-CA" or "LP" suffix, would conform to the call sign of any other non-commonly owned station(s) operating in a different service, an applicant utilizing the on-line reservation and authorization system will be required to certify that consent to use the secondary call sign has been obtained from the holder of the primary call sign.

* * * * *

42. Section 73.3572 is amended to read as follows:

§ 73.3572 Processing of TV Broadcast, Class A TV Broadcast, low power TV, TV translator and TV booster station applications.

(a) Applications for TV stations are divided into two groups:

(1) In the first group are applications for new stations or major changes in the facilities of authorized stations. A major change for TV broadcast stations authorized under this part is any change in frequency or community of license which is in accord with a present allotment contained in the Table of Allotments (§ 73.606). Other requests for change in frequency or community of license for TV broadcast stations must first be submitted in the form of a petition for rulemaking to amend the Table of Allotments.

(2) In the case of Class A TV stations authorized under subpart J of this part and low power TV, TV translator, and TV booster stations authorized under part 74 of this chapter, a major change is any change in:

(i) Frequency (output channel), except a change in offset carrier frequency; or

(ii) Transmitting antenna location where the protected contour resulting from the change is not predicted to overlap any portion of the protected contour based on the station's authorized facilities.

(3) Other changes will be considered minor; *provided*, until October 1, 2000, proposed changes to the facilities of Class A TV, low power TV, TV translator and TV booster stations, other than a change in frequency, will be considered minor only if the change(s) will not increase the signal range of the Class A TV, low power TV or TV booster in any horizontal direction.

(4) The following provisions apply to displaced Class A TV, low power TV, TV translator and TV booster stations:

(i) In the case of an authorized low power TV, TV translator or TV booster which is predicted to cause or receive interference to or from an authorized TV broadcast station pursuant to § 74.705 or interference with broadcast or other services under § 74.703 or § 74.709, an application for a change in output channel, together with technical modifications which are necessary to avoid interference (including a change in antenna location of less than 16.1km), will not be considered as an application for a major change in those facilities.

(ii) Provided further, that a low power TV, TV translator or TV booster station authorized on a channel from channel 52 to 69, or which is causing or receiving interference or is predicted to cause or receive interference to or from an authorized DTV station pursuant to § 74.706, or which is located within the distances specified below in paragraph (iv) of this section to the coordinates of co-channel DTV authorizations (or allotment table coordinates if there are no authorized facilities at different coordinates), may at any time file a displacement relief application for a change in output channel, together with any technical modifications which are necessary to avoid interference or continue serving the station's protected service area. Such an application will not be considered as an application for a major change in those facilities. Where such an application is mutually exclusive with applications for new low power TV, TV translator or TV booster stations, or with other nondisplacement relief applications for facilities modifications of Class A TV, low power TV, TV translator or TV booster stations, priority will be afforded to the displacement application(s) to the exclusion of the other applications.

(iii) A Class A TV station which is causing or receiving interference or is predicted to cause or receive interference to or from an authorized TV broadcast station pursuant to §§ 73.6011 or 73.613; a DTV station or allotment pursuant to §§ 73.6013 or 73.623, or which is located within the distances specified below in paragraph (iv) of this section to the coordinates of co-channel DTV authorizations (or allotment table coordinates if there are no authorized facilities at different coordinates); or other service that protects

and/or is protected by Class A TV stations, may at any time file a displacement relief application for a change in channel, together with technical modifications that are necessary to avoid interference or continue serving the station's protected service area, provided the station's protected contour resulting from a relocation of the transmitting antenna is predicted to overlap some portion of the protected contour based on its authorized facilities. A Class A TV station displacement relief applications will be considered major change applications, and will be placed on public notice for a period of not less than 30 days to permit the filing of petitions to deny. However, these applications will not be subject to the filing of competing applications. Where a Class A displacement relief application becomes mutually exclusive with applications for new low power TV, TV translator or TV booster stations, or with other non-displacement relief applications for facilities modifications of Class A TV, low power TV, TV translator or TV booster stations, priority will be afforded to the Class A TV displacement relief application(s) to the exclusion of other applications. Mutually exclusive displacement relief applications of Class A TV, low power TV, TV translators or TV booster stations filed on the same day will be subject to competitive bidding procedures if the mutual exclusivity is not resolved by an engineering solution.

(iv)(A) The geographic separations to co-channel DTV facilities or allotment reference coordinates, as applicable, within which to qualify for displacement relief are the following:

- (1) Stations on UHF channels: 265 km (162 miles)
- (2) Stations on VHF channels 2-6: 280 km (171 miles)
- (3) Stations on VHF channels 7-13: 260 km (159 miles)

(B) Engineering showings of predicted interference may also be submitted to justify the need for displacement relief.

(v) Provided further, that the FCC may, within 15 days after acceptance of any other application for modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore subject to the provisions of Sections 73.3522, 73.3580, and 1.1111 of this chapter pertaining to major changes. Such major modification applications filed for Class A TV, low power TV, TV translator, TV booster stations, and for a non-reserved television allotment, are subject to competitive bidding procedures and will be dismissed if filed outside a specified filing period. See 47 CFR 73.5002(a).

(b) * * * A new file number will be assigned to an application for a new station or for major changes in the facilities of an authorized station, when it is amended so as to effect a major change, as defined in paragraphs (a)(1) or (a)(2) of this section, or result in a situation where the original party or parties to the application do not retain more than 50% ownership interest in the application as originally filed and § 73.3580 will apply to such amended application. An application for change in the facilities of any existing station will continue to carry the same file number even though (pursuant to FCC approval) an assignment of license or transfer of control of such licensee or permittee has taken place if, upon consummation, the application is amended to reflect the new ownership.

(c) Amendments to Class A TV, low power TV, TV translator, TV booster stations, or non-reserved television applications, which would require a new file number pursuant to paragraph (b) of this section, are subject to competitive bidding procedures and will be dismissed if filed outside a specified filing period. See 47 CFR 73.5002(a). When an amendment to an application for a reserved television allotment would require a new file

number pursuant to paragraph (b) of this section, the applicant will have the opportunity to withdraw the amendment at any time prior to designation for a hearing if applicable; and may be afforded, subject to the discretion of the Administrative Law Judge, an opportunity to withdraw the amendment after designation for a hearing.

(d) * * *

(e)(1) The FCC will specify by Public Notice, pursuant to Sec. 73.5002, a period for filing applications for a new non-reserved television, low power TV and TV translator stations or for major modifications in the facilities of such authorized stations and major modifications in the facilities of Class A TV stations.

(2) Such applicants shall be subject to the provisions of Secs. 1.2105 and competitive bidding procedures. See 47 CFR 73.5000 et seq.

(f) Applications for minor modification of Class A TV, low power TV, TV translator and TV booster stations may be filed at any time, unless restricted by the FCC, and will be processed on a "first-come/first-served" basis, with the first acceptable application cutting off the filing rights of subsequent, competing applicants. Provided, however, that applications for minor modifications of Class A TV and those of TV broadcast stations may become mutually exclusive until grant of a pending Class A TV or TV broadcast minor modification application and will be subject to competitive bidding procedures.

(g) TV booster station applications may be filed at any time. Subsequent to filing, the FCC will release a Public Notice accepting for filing and proposing for grant those applications which are not mutually exclusive with any other TV translator, low power TV, TV booster, or Class A TV application, and providing for the filing of Petitions To Deny pursuant to § 73.3584.

* * * * *

43. Section 73.3580 is amended to read as follows:

§ 73.3580 Local public notice of filing of broadcast applications.

* * * * *

(c) An applicant who files an application or amendment thereto which is subject to the provisions of this section, must give notice of this filing in a newspaper. Exceptions to this requirement are applications for renewal of AM, FM, TV, Class A TV and international broadcasting stations; * * *

(d) The licensee of an operating broadcast station who files an application or amendment thereto which is subject to the provisions of this section must give notice as follows:

* * * * *

(5) An applicant who files for a Class A television license must give notice of this filing by broadcasting announcements on applicant's station. (Sample and schedule of announcements are below.) Newspaper publication is not required.

(i) The broadcast notice requirement for those filing for Class A television license applications and amendment thereto are as follows:

(A) *Pre-filing announcements.* Two weeks prior to the filing of the license application, the following announcement shall be broadcast on the 5th and 10th days of the two week period. The required announcements shall be made between 6 p.m. and 11 p.m. (5 p.m. and 10 p.m. Central and Mountain Time) Stations broadcasting primarily in a foreign language should broadcast the announcements in that language.

On (date), the Federal Communications Commission granted (Station's call letters) a certification of eligibility to apply for Class A television status. To become eligible for a Class A certificate of eligibility, a low power television licensee was required to certify that during the 90-day period ending November 28, 1999, the station: (1) broadcast a minimum of 18 hours per day; (2) broadcast

an average of at least three hours per week of programming produced within the market area served by the station or by a group of commonly-owned low power television stations; and (3) had been in compliance with the Commission's regulations applicable to the low power television service. The Commission may also issue a certificate of eligibility to a licensee unable to satisfy the foregoing criteria, if it determines that the public interest, convenience and necessity would be served thereby.

(Station's call letters) intends to file an application (FCC Form 302-CA) for a Class A television license in the near future. When filed, a copy of this application will be available at (address of location of the station's public inspection file) for public inspection during our regular business hours. Individuals who wish to advise the FCC of facts relating to the station's eligibility for Class A status should file comments and petitions with the FCC within two weeks of the filing of the license application.

- (B) *Post-filing announcements.* The following announcement shall be broadcast on the 1st and 10th days following the filing of an application for a Class A television license.. The required announcements shall be made between 6 p.m. and 11 p.m. (5 p.m. and 10 p.m. Central and Mountain Time). Stations broadcasting primarily in a foreign language should broadcast the announcements in that language.

On (date of filing license application) (Station's call letters) filed an application, FCC Form 302-CA, for a Class A television license. Such stations are required to broadcast a minimum of 18 hours per day, and to average at least 3 hours of locally produced programming each week, and to comply with certain full-service television station operating requirements.

A copy of this application is available for public inspection during our regular business hours at (address of location of the station's public inspection file). Individuals who wish to advise the FCC of facts relating to the station's eligibility for Class A status should file comments and petitions with the FCC prior to Commission action on this application.

* * * * *

44. Section 73.3612 is amended to read as follows:

§ 73.3612 Annual employment report.

Each licensee of permittee of a commercially or noncommercially operated AM, FM, TV, Class A TV or International Broadcast station with five or more employees shall file an annual employment report with the FCC on or before September 30 of each year on FCC Form 395.

* * * * *

45. Subpart J of part 73 is adopted as follows.

Subpart J - Class A Television Broadcast Stations

Authority: (47 U.S.C. 336(f))

§ 73.6000 Definitions.

“*Locally produced programming.*” For the purpose of this subpart, locally produced programming is programming: (1) produced within the predicted Grade B contour of the station or within the predicted Grade B contours of any of the stations in a commonly owned group; or (2) programming produced at the station’s main studio.

Note: See Report and Order, In the Matter of Establishment of a Class A Television Service, MM Docket No. 00-10, released April xx, 2000.

§ 73.6001 Eligibility and service requirements.

- (a) Qualified low power television licensees which, during the 90-day period ending November 28, 1999, operated their stations in a manner consistent with the programming and operational standards set forth in the Community Broadcasters Protection Act of 1999, may be accorded primary status as Class A television licensees.
- (b) Class A television broadcast stations are required to: (1) broadcast a minimum of 18 hours per day; and (2) broadcast an average of at least three hours per week of locally produced programming each quarter.
- (c) Licensed Class A television broadcast stations shall be accorded primary status as a television broadcaster as long as the station continues to meet the minimum operating requirements for Class A status.
- (d) Licensees unable to continue to meet the minimum operating requirements for Class A television stations, or which elect to revert to low power television status, shall promptly notify the Commission, in writing, and request a change in status.

§ 73.6002 Licensing requirements.

- (a) A Class A television broadcast license will only be issued to a qualified low power television licensee that: (1) filed a Statement of Eligibility for Class A Low Power Television Station Status on or before January 28, 2000, which was granted by the Commission; and (2) files an acceptable application for a Class A Television license (FCC Form 302-CA).

§§ 73.6003-73.6005 [Reserved]

§73.6006 Channel assignments.

Class A TV stations will not be authorized on UHF TV channels 52 through 69, or on channels unavailable for TV broadcast station use pursuant to §73.603 of this part.

§ 73.6007 Power limitations.

An application to change the facilities of an existing Class A TV station will not be accepted if it requests an effective radiated power that exceeds the power limitation specified in §74.735 of this chapter.

§ 73.6008 Distance computations.

The distance between two reference points must be calculated in accordance with §73.208(c) of this part.

§ 73.6010 Class A TV station protected contour.

-
- (a) A Class A TV station will be protected from interference within the following predicted signal contours:
- (1) 62 dBu for stations on Channels 2 through 6;
 - (2) 68 dBu for stations on Channels 7 through 13; and
 - (3) 74 dBu for stations on Channels 14 through 51.
- (b) The Class A TV station protected contour is calculated from the effective radiated power and antenna height above average terrain, using the F(50,50) charts of Figure 9, 10 or 10b of §73.699 of this part.
- (c) A digital Class A TV station will be protected from interference within the following predicted signal contours:
- (1) 43 dBu for stations on Channels 2 through 6;
 - (2) 48 dBu for stations on Channels 7 through 13; and
 - (3) 51 dBu for stations on Channels 14 through 51.
- (d) The digital Class A TV station protected contour is calculated from the effective radiated power and antenna height above average terrain, using the F(50,90) signal propagation method specified in § 73.625(b)(1) of this part.

§ 73.6011 Protection of TV broadcast stations.

Class A TV stations must protect authorized TV broadcast stations, applications for minor changes in authorized TV broadcast stations filed on or before November 29, 1999, and applications for new TV broadcast stations that had been cut-off without competing applications or that were the winning bidder in a TV broadcast station auction as of that date, or that were the proposed remaining applicant in a group of mutually-exclusive applications for which a settlement agreement was on file as of that date. Protection of these stations and applications must be based on the requirements specified in §74.705 of this chapter. An application to change the facilities of an existing Class A TV station will not be accepted if it fails to protect these TV broadcast stations and applications pursuant to the requirements specified in §74.705 of this chapter.

§ 73.6012 Protection of Class A TV, low power TV and TV translator stations.

An application to change the facilities of an existing Class A TV station will not be accepted if it fails to protect other authorized Class A TV, low power TV and TV translator stations and applications for changes in such stations filed prior to the date the Class A application is filed, pursuant to the requirements specified in §74.707 of this chapter.

§ 73.6013 Protection of DTV stations.

Class A TV stations must protect the DTV service that would be provided by the facilities specified in the DTV Table of Allotments in §73.622 of this part, by authorized DTV stations and by applications that

propose to expand DTV stations' allotted or authorized coverage contour in any direction, if such applications either were filed before December 31, 1999 or were filed between December 31, 1999 and May 1, 2000 by a DTV station licensee or permittee that had notified the Commission of its intent to "maximize" by December 31, 1999. Protection of these allotments, stations and applications must be based on not causing predicted interference within the service area described in §73.622(e) of this part. The interference analysis is based on the methods described in §§73.623(c)(2) through (c)(4) of this part, *except* that a Class A TV station must not cause a loss of service to 0.5 percent or more of the population predicted to receive service from the DTV allotment, station or application. An application to change the facilities of an existing Class A TV station will not be accepted if it fails to protect these DTV allotments, stations and applications in accordance with this section.

§ 73.6014 Protection of digital Class A TV stations.

An application to change the facilities of an existing Class A TV station will not be accepted if it fails to protect authorized digital Class A TV stations and applications for changes in such stations filed prior to the date the Class A application is filed, pursuant to the requirements specified in §74.706 of this chapter.

§ 73.6016 Digital Class A TV station protection of TV broadcast stations.

Digital Class A TV stations must protect authorized TV broadcast stations, applications for minor changes in authorized TV broadcast stations filed on or before November 29, 1999, and applications for new TV broadcast stations that had been cut-off without competing applications or that were the winning bidder in a TV broadcast station auction as of that date, or that were the proposed remaining applicant in a group of mutually-exclusive applications for which a settlement agreement was on file as of that date. This protection must be based on meeting the D/U ratios for "DTV-into-analog TV" specified in §73.623(c)(2) of this part at the Grade B contour of the TV broadcast station or application. An application for DTV operation of an existing Class A TV station or to change the facilities of a digital Class A TV station will not be accepted if it fails to protect these TV broadcast stations and applications pursuant to these requirements.

§ 73.6017 Digital Class A TV station protection of Class A TV, low power TV and TV translator stations.

An application for digital operation of an existing Class A TV station or to change the facilities of a digital Class A TV station will not be accepted if it fails to meet the D/U ratios for "DTV-into-analog TV" specified in §73.623(c)(2) of this part at the protected contours as defined in 73.6010 of this part for other authorized Class A TV stations and 74.707 of this chapter for low power TV and TV translator stations. This protection also must be afforded to applications for changes in other authorized Class A TV, low power TV and TV translator stations filed prior to the date the digital Class A application is filed.

§ 73.6018 Digital Class A TV station protection of DTV stations.

Digital Class A TV stations must protect the DTV service that would be provided by the facilities specified in the DTV Table of Allotments in §73.622 of this part, by authorized DTV stations and by applications that propose to expand DTV stations' allotted or authorized coverage contour in any direction, if such applications either were filed before December 31, 1999 or were filed between December 31, 1999 and May 1, 2000 by a DTV station licensee or permittee that had notified the Commission of its intent to "maximize" by December 31, 1999. Protection of these allotments, stations and applications must be based on not causing predicted interference within the service area described in

§73.622(e) of this part. The interference analysis is based on the methods described in §§73.623(c)(2) through (c)(4) of this part, *except* that a digital Class A TV station must not cause a loss of service to 0.5 percent or more of the population predicted to receive service from the DTV allotment, station or application. An application for digital operation of an existing Class A TV station or to change the facilities of a digital Class A TV station will not be accepted if it fails to protect these DTV allotments, stations and applications in accordance with this section.

§ 73.6019 Digital Class A TV station protection of digital Class A TV stations.

An application for digital operation of an existing Class A TV station or to change the facilities of a digital Class A TV station will not be accepted if it fails to meet the D/U ratios for "DTV-into-DTV" specified in §73.623(c)(2) through (c)(4) of this part at the protected contours as defined in §73.6010 of this part for other authorized Class A TV stations and applications for changes filed prior to the date the digital Class A application is filed.

§ 73.6020 Protection of stations in the land mobile radio service.

An application to change the facilities of an existing Class A TV station will not be accepted if it fails to protect stations in the land mobile radio service pursuant to the requirements specified in §74.709 of this chapter. In addition to the protection requirements specified in §74.709(a) of this chapter, Class A TV stations must not cause interference to land mobile stations operating on channel 16 in New York, NY.

§ 73.6022 Negotiated interference and relocation agreements.

(a) Notwithstanding the technical criteria in this subpart, Subpart E of this part, and Subpart G of Part 74 of this chapter regarding interference protection to and from Class A TV stations, Class A TV stations may negotiate agreements with parties of authorized and proposed analog TV, DTV, LPTV, TV translator, Class A TV stations or other affected parties to resolve interference concerns; *provided*, however, other relevant requirements are met with respect to the parties to the agreement. A written and signed agreement must be submitted with each application or other request for action by the Commission. Negotiated agreements under this paragraph can include the exchange of money or other considerations from one entity to another. Applications submitted pursuant to the provisions of this paragraph will be granted only if the Commission finds that such action is consistent with the public interest.

(b) A Class A TV station displaced in channel by a channel allotment change for a DTV station may seek to exchange channels with the DTV station, provided both parties consent in writing to the change and that the Class A station meets all applicable interference protection requirements on the new channel. Such requests will be treated on a case-by-case basis and, if approved, will not subject the Class A station to the filing of competing applications for the exchanged channel.

§ 73.6024 Transmission standards and system requirements.

(a) A Class A TV station must meet the requirements of §§ 73.682 and 73.687, except as provided in paragraph (b) of this section.

(b) A Class A TV station may continue to operate with the transmitter operated under its previous LPTV license, provided such operation does not cause any condition of uncorrectable interference due to radiation of radio frequency energy outside of the assigned channel. Such operation must continue to meet the requirements of §§ 74.736 and 74.750 of this chapter.

(c) A Class A TV station is not required to operate on an offset carrier frequency and must meet the frequency tolerance requirements of § 73.1545 of this part.

§ 73.6025 Antenna system and station location.

(a) Applications for modified Class A TV facilities proposing the use of directional antenna systems must be accompanied by the following:

(1) Complete description of the proposed antenna system, including the manufacturer and model number of the proposed directional antenna. In the case of a composite antenna composed of two or more individual antennas, the antenna should be described as a "composite" antenna. A full description of the design of the antenna should also be submitted.

(2) Relative field horizontal plane pattern (horizontal polarization only) of the proposed directional antenna. A value of 1.0 should be used for the maximum radiation. The plot of the pattern should be oriented so that 0 degrees (True North) corresponds to the maximum radiation of the directional antenna or, alternatively in the case of a symmetrical pattern, the line of symmetry. Where mechanical beam tilt is intended, the amount of tilt in degrees of the antenna vertical axis and the orientation of the downward tilt with respect to true North must be specified, and the horizontal plane pattern must reflect the use of mechanical beam tilt.

(3) A tabulation of the relative field pattern required in paragraph (a)(2), of this section. The tabulation should use the same zero degree reference as the plotted pattern, and be tabulated at least every 10 degrees. In addition, tabulated values of all maxima and minima, with their corresponding azimuths, should be submitted.

(4) Horizontal and vertical plane radiation patterns showing the effective radiated power, in dBk, for each direction. Sufficient vertical plane patterns must be included to indicate clearly the radiation characteristics of the antenna above and below the horizontal plane. In cases where the angles at which the maximum vertical radiation varies with azimuth, a separate vertical radiation pattern must be provided for each pertinent radial direction.

(5) The horizontal and vertical plane patterns that are required are the patterns for the complete directional antenna system. In the case of a composite antenna composed of two or more individual antennas, this means that the patterns for the composite antenna, not the patterns for each of the individual antennas, must be submitted.

(b) Applications for modified Class A TV facilities proposing to locate antennas within 61.0 meters (200 feet) of other Class A TV or TV broadcast antennas operating on a channel within 20 percent in frequency of the proposed channel, or proposing the use of antennas on Channels 5 or 6 within 61.0 meters (200 feet) of FM broadcast antennas, must include a showing as to the expected effect, if any, of such proximate operation.

(c) Where a Class A TV licensee or permittee proposes to mount an antenna on an AM antenna tower, or locate within 3.2 km of an AM directional station, the TV licensee or permittee must comply with Sec. 73.1692.

(d) Class A TV stations are subject to the provisions in § 73.685(d) regarding blanketing interference.

§ 73.6026 Broadcast regulations applicable to Class A television stations.

The following rules are applicable to Class A television stations:

§ 73.603 Numerical designation of television channels.

§ 73.635 Use of common antenna site.

§ 73.642 Subscription TV service.

§ 73.643 Subscription TV operating requirements.

§ 73.644 Subscription TV transmission systems.

§ 73.646 Telecommunications Service on the Vertical Blanking Interval and in the Visual Signal.

- § 73.653 Operation of TV aural and visual transmitters.
- § 73.658 Affiliation agreements and network program practice; territorial exclusivity in non-network program arrangements.
- § 73.664 Determining operating power.
- § 73.665 Use of TV aural baseband subcarriers.
- § 73.667 TV subsidiary communications services.
- § 73.669 TV stereophonic aural and multiplex subcarrier operation.
- § 73.670 Commercial limits in children's programs.
- § 73.671 Educational and informational programming for children.
- § 73.673 Public information initiatives regarding educational and informational programming for children.
- § 73.688 Indicating instruments.
- § 73.691 Visual modulation monitoring.

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

46. The authority citation for part 74 is amended to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f) and 554.

47. Section 74.432 is amended by revising paragraph (a) to read as follows:

§ 74.432 Licensing requirements and procedures.

(a) A license for a remote pickup station will be issued to: the licensee of an AM, FM, noncommercial FM, TV, Class A TV, international broadcast or low power TV station; broadcast network-entity; or cable network-entity.

* * * * *

48. Section 74.600 is amended to read as follows:

§ 74.600 Eligibility for license.

A license for a station in this subpart will be issued only to a television broadcast station, a Class A TV station, a television broadcast network-entity, a low power TV station, or a TV translator station.

49. Section 74.601 is amended by revising paragraphs (a) through (f) to read as follows:

§ 74.601 Classes of TV broadcast auxiliary stations.

(a) TV pickup stations. A land mobile station used for the transmission of TV program material and related communications from scenes of events occurring at points removed from TV station studios to a TV broadcast, Class A TV or low power TV station or other purposes as authorized in § 74.631.

(b) TV STL station (studio-transmitter link). A fixed station used for the transmission of TV program material and related communications from the studio to the transmitter of a TV broadcast, Class A TV or low power TV station or other purposes as authorized in § 74.631.

(c) TV relay station. A fixed station used for transmission of TV program material and related

communications for use by TV broadcast, Class A TV and low power TV stations or other purposes as authorized in § 74.631.

(d) TV translator relay station. A fixed station used for relaying programs and signals of TV broadcast or Class A TV stations to Class A TV, LPTV, TV translator, and to other communications facilities that the Commission may authorize or for other purposes as permitted by § 74.631.

(e) TV broadcast licensee. Licensees and permittees of TV broadcast, Class A TV and low power TV stations, unless specifically otherwise indicated.

(f) TV microwave booster station. A fixed station in the TV broadcast auxiliary service that receives and amplifies signals of a TV pickup, TV STL, TV relay, or TV translator relay station and retransmits them on the same frequency.

50. Section 74.602 is amending by revising paragraphs (f) and (h) to read as follows:

§ 74.602 Frequency assignment.

* * * * *

(f) TV auxiliary stations licensed to low power TV stations and translator relay stations will be assigned on a secondary basis, i.e., subject to the condition that no harmful interference is caused to other TV auxiliary stations assigned to TV broadcast and Class A TV stations, or to community antenna relay stations (CARS) operating between 12,700 and 13,200 MHz. Auxiliary stations licensed to low power TV stations and translator relay stations must accept any interference caused by stations having primary use of TV auxiliary frequencies.

* * * * *

(h) TV STL and TV relay stations may be authorized, on a secondary basis and subject to the provisions of Subpart G of this chapter, to operate fixed point-to-point service on the UHF-TV channels 14-69. These stations must not interfere with and must accept interference from current and future full-power UHF-TV stations, Class A TV stations, LPTV stations, and TV translator stations. They will also be secondary to current land mobile stations (in areas where land mobile sharing is currently permitted and contingent on the decision reached in the pending Dockets No. 85-172 and No. 84-902).

* * * * *

51. Section 74.703 is amended by revising paragraph (a) to read as follows:

§ 74.703 Interference.

(a) An application for a new low power TV, TV translator, or TV booster station or for a change in the facilities of such an authorized station will not be granted when it is apparent that interference will be caused. Except where there is a written agreement between the affected parties to accept interference, or where it can be shown that interference will not occur due to terrain shielding and/or Longley-Rice terrain dependent propagation methods, the licensee of a new low power TV, TV translator, or TV booster shall protect existing low power TV and TV translator stations from interference within the protected contour defined in § 74.707 of this part and shall protect existing Class A TV and digital Class A TV stations within the protected contours defined in § 73.6010 of this chapter. Such written agreement shall accompany the application. Guidance on using the Longley-Rice methodology is provided in OET

Bulletin No. 69. Copies of OET Bulletin No. 69 may be inspected during normal business hours at the: Federal Communications Commission, 445 12th Street, S.W., Reference Information Center (Room CY-A257), Washington, DC 20554. This document is also available through the Internet on the FCC Home Page at <http://www.fcc.gov/oet/info/documents/bulletins/#69>.

* * * * *

53. Subpart G is amended by adding a new Section 74.708 to read as follows:

§ 74.708 Class A TV and digital Class A TV station protection.

(a) The Class A TV and digital Class A TV station protected contours are specified in § 73.6010 of this chapter.

(b) An application to construct a new low power TV, TV translator, or TV booster station or change the facilities of an existing station will not be accepted if it fails to protect an authorized Class A TV or digital Class A TV station or an application for such a station filed prior to the date the low power TV, TV translator, or TV booster application is filed.

(c) Applications for low power TV, TV translator and TV booster stations shall protect Class A TV stations pursuant to the requirements specified in paragraphs (b) through (e) of § 74.707 of this part.

(d) Applications for low power TV, TV translator and TV booster stations shall protect digital Class A TV stations pursuant to the following requirements:

(i) An application must not specify an antenna site within the protected contour of a co-channel digital Class A TV station.

(ii) The ratio in dB of the field strength of the low power TV, TV translator or TV booster station to that of the digital Class A TV station must meet the requirements specified in paragraph (d) of § 74.706 of this part, calculated using the propagation methods specified in paragraph (c) of that section.

APPENDIX B

Comments

AirWaves, Inc. (AirWaves)
Alaskan Choice Television (Alaskan)
Apogee Companies, Inc. (Apogee)
Association of America's Public Television Stations (APTS)
Association of Federal Communications Consulting Engineers (AFCCE)
Association of Local Television Stations, Inc. (ALTS)
Association for Maximum Service Television, Inc. (MSTV), and National Association of Broadcasters (NAB)
Blade Communications, Inc. (Blade)
Board of Trustees, Coast Community College District, et al. (Coast)
Centex Television Limited Partnership (Centex)
Certain Channel 2-6 Licensees a/k/a Mt. Mansfield Television, Inc. (Channels 2-6)
Channel 12 of Beaumont, Inc. (Channel 12)
Channel 13 Television, Inc. (Channel 13)
Commercial Broadcasting Corp. (CBC)
Communications Technologies, Inc. (Com Tech)
Community Broadcasters Association (CBA)
Community Service Television (Com Service)
Connecticut Public Broadcasting, Inc. (Connecticut)
Cordillera Communications, Inc. (Cordillera)
Cosmos Broadcasting Corporation (Cosmos)
Council Tree Communications (Council)
Davis Television Clarksburg, et. al. (Davis)
Delmarva Broadcast Service General Partnership (Delmarva)
Dutchess Community College (Dutchess)
DuTreil, Lundin & Rackley, Inc. (DuTreil)
Educational Broadcasting Corporation (EBC)
Engles Communications, Inc. (Engles)
Entravision Holdings (Entravision)
Equity Broadcasting Corporation (Equity)
Eubanks, Derek Ray (Eubanks)
Far Eastern Telecasters (Far Eastern)
First United, Inc. (First United)
Fox Television Stations, Inc. a/k/a Fox Broadcasting Company (Fox)
G.I.G., Inc. (G.I.G.)
Gateway Communications, Inc. (Gateway)
Grupo Televisa S.A. (Grupo)
H&R Production Group (H&R)
HIC Broadcast, Inc. (HIC)
Home Shopping Club, LP (Home Shopping)
IBL (IBL)
Image Video Teleproductions, Inc. (Image)
International Broadcasting Network (IBN)
K Licensee, Inc. (K Licensee)
KB Prime Media (KB)

KM Communications, Inc. (KM)
KRHP Television (KRHP)
KSLS, Inc. (KSLS)
Kelly, Robert E. (Kelly)
Knies, Paul E. (Knies)
Lockwood Broadcasting, Inc. (Lockwood)
Maranatha Broadcasting Company, Inc. (Maranatha)
Marksteiner, Guenter (Marksteiner)
Martinez Group (Martinez)
McGreevy, Ron L. (McGreevy)
Media-Com Television, Inc. (Media-Com)
Miller, Larry A. and World Broadcasting, Inc. (Miller & World)
Mobile Video Tapes, Inc. (Mobile)
Mohave County Board of Supervisors (Mohave)
Montgomery Communications, Inc. (Montgomery)
NYN (NYN)
Nachman, Ivan C. (Nachman)
National Minority Television, Inc. (NMTV)
National Religious Broadcasters Association (NRB)
National Translator Association (NTA)
New York City, Policy Department (NYC)
Nicolas Communications Corporation (Nicolas)
North Rocky Mountain Television (NRMTV)
Oklahoma Educational Television Authority (Oklahoma)
Omni Broadcasting Company (Omni)
Paging Systems, Inc. a/k/a WLMF-LP (Paging)
Pappas Telecasting Companies (Pappas)
Paxson Communications Corporation (Paxson)
Pelican Broadcasting Company (Pelican)
Proclaim Broadcasting, Inc. (Proclaim)
Quorum of Utica License (Quorum)
Robert Broadcasting of Alabama (Robert)
Ruarch Associates Limited Liability Company a/k/a Stamler, Dr. Arthur D. (Ruarch)
Rule Communications (Rule)
Saga Broadcasting Corp. (Saga)
Sarkes Tarzian, Inc. (Sarkes)
Schrecongost, Larry L. (Schrecongost)
Schwartz, Woods & Miller (Schwartz)
Sherjan Broadcasting Company (Sherjan)
Silentco, Inc. (Silentco)
Simons, Mike (Simons)
Sinclair Broadcast Group, Inc. (Sinclair)
Skinner Broadcasting, Inc. (Skinner)
Society of Broadcast Engineers, Inc. (SBE)
Sonshine Family Television, Inc. (Sonshine)
St. Clair, B. W. (St. Clair)
TTI, Inc. (TTI)
TV 31 (TV 31)
TV Translator Licensees and LPTV Licensees (Translator-LPTV)

Telemundo's Group, Inc. (Telemundo)
Television Capital Corporation (TCC)
Three TV Licensees (Three TV)
Tiger Eye Broadcasting, Corp. (Tiger)
Turnpike Television (Turnpike)
Union Mission (Union)
University of California (UCA)
Univision Communications, Inc. (Univision)
U.S. Interactive, L.L.C., d/b/a AccelerNet (AccelerNet)
USA Broadcasting, Inc. (USAB)
Venture Technologies Group (Venture)
Vermillion, Richard and Ann (Vermillion)
Viking Communications, Inc. (Viking)
Vista Communications, Inc. (Vista)
WB Television Network (WB)
WLNY-TV, Inc. (WLNY)
WZBN-TV, Inc. (WZBN)
WatchTV, Inc. (WatchTV)
Week-TV License, Inc. (Week-TV)
WinStar Broadcasting Corporation (WinStar)

Reply Comments

Aiken, David R. (Aiken)
Alaskan Choice Television (Alaskan)
Association of Federal Communications Consulting Engineers (AFCCE)
Association of Maximum Service Television, Inc. (MSTV) & National Association of
Broadcasters (NAB)
Baughn, David M. (Baughn)
Certain Channel 2-6 Licensees a.k.a. Mt. Mansfield Television, Inc. (Mansfield)
Communications Technologies, Inc. (Com Tech)
Community Broadcasters Association (CBA)
Cosmos Broadcasting Corporation (Cosmos)
Davis Television Clarksburg, et al. (Davis)
Descriptive Theatre Vision (Descriptive)
Equity Broadcasting Corporation (Equity)
Fox Television Stations, Inc. (Fox)
Good Life Broadcasting, Inc. (Good Life)
Grupo Televisa (Grupo)
HIC Broadcast, Inc. (HIC)
Home Shopping Club (Home Shopping)
Jackson, Martin (Jackson)
K Licensee, Inc. (K)
KM Broadcasting, Inc. (KM)
Mojave Broadcasting Company (Mojave)
National Translator Association (NTA)
Pacific Bay Broadcasting (Pacific)
Paxson Communications Corporation (Paxson)
Schrecongost, Larry L. (Schrecongost)

Sherjan Broadcasting Company (Sherjan)
Simons, Mike (Simons)
Sinclair Broadcast Group, Inc. (Sinclair)
Society of Broadcast Engineers (SBE)
Sonshine Family Television, Inc. (Sonshine)
St. Clair, B. W. (St. Clair)
TV-61 San Diego, Inc. (TV-61)
Telemundo Group, Inc. (Telemundo)
Three TV Licensees (Three TV)
Trumbly, Warren a/k/a Polar Broadcasting (Trumbly)
U.S. Interactive, d/b/a AccelerNet (AccelerNet)
Upper Cumberland Broadcast Council (Cumberland)
Vacation Channel, Inc. (Vacation)
Venture Technologies Group (Venture)
WB Television Network (WB)
WGBH Educational Foundation (WGBH)
WinStar Broadcasting Corp. (WinStar)
Wright, Joan and Kenneth (Wright)

APPENDIX C

FINAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act (RFA),²¹⁶ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking (Notice)*.²¹⁷ The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. No comments were received in response to the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.²¹⁸

Need for, and Objectives of, the Adopted Rules

The Community Broadcasters Protection Act of 1999 (CBPA) directed the Commission, within 120 days after the date of enactment, to prescribe regulations establishing a Class A television license available to licensees of qualifying low-power television (LPTV) stations. The CBPA directs that Class A licensees be subject to the same license terms and renewal standards as full-power television licensees, and that Class A licensees be accorded primary status as a television broadcaster as long as the station continues to meet the requirements set forth in the statute for a qualifying low-power station. In addition to other matters, the CBPA sets out certain certification and application procedures for low-power television licensees seeking to obtain Class A status, prescribes the criteria low-power stations must meet to be eligible for a Class A license, and outlines the interference protection Class A applicants must provide to analog (or "NTSC"), digital ("DTV"), LPTV, and TV translator stations. The Commission is adopting the *Report and Order* to implement the CBPA.

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

No comments were received in response to the IRFA.

²¹⁶ See 5 U.S.C. § 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).

²¹⁷ On January 13, 2000, the Commission adopted an *Order and Notice of Proposed Rule Making* seeking comment on a wide range of issues related to implementation of the CBPA. See *Order and Notice of Proposed Rule Making, In the Matter of Establishment of a Class A Television Service*, MM Docket No. 99-292, RM-92-60, FCC 00-16 (rel. Jan. 13, 2000) ("*Notice*"). The Commission also terminated an earlier proceeding relating to establishment of primary status for LPTV stations. See *Notice of Proposed Rule Making, In the Matter of Establishment of a Class A Television Service*, MM Docket No. 99-292, RM-92-60, FCC 99-257 (rel. Sept. 29, 1999) ("*September 22 Notice*"), responding to a petition for rule making filed by the Community Broadcasters Association ("CBA"). In light of passage of the Community Broadcasters Protection Act of 1999 (CBPA), which addresses many of the same issues raised in the September 22 Notice and the CBA petition, the Commission terminated the earlier proceeding in the January 13 Notice and initiated this new proceeding to implement the CBPA.

²¹⁸ See 5 U.S.C. § 604.

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

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules.²¹⁹ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act.²²⁰ 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.²²¹

Small TV Broadcast Stations. The SBA defines small television broadcasting stations as television broadcasting stations with \$10.5 million or less in annual receipts.²²²

As directed by the CBPA, the *Report and Order* establishes a Class A television license available to licensees of qualifying LPTV stations. According to the Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database, virtually all LPTV broadcast stations have revenues of less than \$10.5 million. Currently, there are approximately 2,200 licensed LPTV stations.²²³ The Commission notes, however, that under SBA's definition, revenues of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. The Commission's estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

As directed by the CBPA, the *Report and Order* requires LPTV stations seeking Class A status to file certifications of eligibility and applications to convert to Class A. In addition, as directed by the CBPA, Class A stations must comply with the operating requirements for full-service television broadcast stations, including the requirements for informational and educational children's programming and the limits on commercialization during children's programming, the political programming rules, and the public inspection file rule.²²⁴ These rules contain a number of recordkeeping requirements that will apply to Class A stations.

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

Creating New Opportunities for Small Businesses. Pursuant to the CBPA and the Commission's implementing rules, certain qualifying low-power television ("LPTV") stations will be accorded Class A status. Class A licensees will have "primary" status as television broadcasters, thereby gaining a measure of protection against full-service television stations, even as those stations convert to digital format. The

²¹⁹ 5 U.S.C. § 603(b)(3).

²²⁰ 5 U.S.C. § 601(3)(1980).

²²¹ 5 U.S.C. § 632.

²²² 13 C.F.R. § 121.201 (SIC Code 4833).

²²³ *Public Notice*, "Broadcast Station Totals as [of] September 30, 1999" (*rel.* November 22, 1999).

²²⁴ *See Report and Order*, Section III.B.3, Operating Requirements.

LPTV stations eligible for Class A status under the CBPA and the Commission's rules provide locally-originated programming, often to rural and certain urban communities that have either no or little access to local programming. LPTV stations are owned by a wide variety of licensees, including minorities and women, and often provide "niche" programming to residents of specific ethnic, racial, and interest communities. The provisions adopted in the *Report and Order* will facilitate the acquisition of capital needed by these stations to allow them to continue to provide free, over-the-air programming, including locally-originated programming, to their communities. In addition, by improving the commercial viability of LPTV stations that provide valuable programming, the *Report and Order* is consistent with the Commission's fundamental goals of ensuring diversity and localism in television broadcasting.²²⁵

Minimizing Impact on Existing Small Business Broadcast Stations. The CBPA directs that Class A licensees be subject to the same license terms and renewal standards as full-power television licensees. However, the *Report and Order* adopts a number of rules designed to help LPTV stations seeking to convert to Class A status and exempts Class A licensees from Part 73 rules that clearly cannot apply, either due to technical differences in the operation of low-power and full-power stations, or for other reasons. For example, although the *Report and Order* applies the Main Studio rule for the first time to LPTV stations who qualify as Class A stations, requiring them to locate their main studios within the station's Grade B contour, as determined pursuant to the Commission's rules, it grandfathers their main studios at the site in use as of November 28, 1999. The *Report and Order* also modifies a number of other requirements applicable to full-service television broadcast stations, including: (1) requiring a minimum hours of operation of 18 hours per day, as required by the Statute; (2) grandfathering the use of LPTV broadcast transmitters and (3) permitting full-service NTSC stations to protect Class A stations on the basis of carrier frequency offsets.²²⁶

In response to comments, the Commission will not apply to Class A facilities the following provisions of Part 73: (1) the NTSC and DTV Tables of Allotments (sections 73.606 and 73.607); (2) mileage separations (section 73.610); and (3) minimum power and antenna height requirements (section 73.614). The *Report and Order* also exempts Class A facilities from the principal city coverage requirement of section 73.685(a) of the rules. As proposed in the *Notice*, the *Report and Order* maintains for now the current LPTV maximum power levels for Class A stations. In addition, the *Report and Order* does not adopt an annual certification or reporting requirement for Class A stations, but it does require licensees seeking to assign or transfer a Class A license to certify on the application for transfer or assignment of license that the station has been operated in compliance with the rules applicable to Class A stations. The *Report and Order* also requires that Class A renewal applications be subject to petitions to deny.²²⁷

Alternative eligibility criteria. The CBPA grants the Commission authority to establish alternative eligibility criteria for LPTV stations seeking Class A designation if "the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission."²²⁸

²²⁵ See *Report and Order*, Section I., Introduction.

²²⁶ See *Report and Order*, Section III. B. 3., Operating Requirements.

²²⁷ *Id.*

²²⁸ 47 U.S.C. § 336(f)(2)(B).

Congress mandated three qualifications in the CBPA. For the 90 days prior to enactment of the CBPA, an applicant must have (1) broadcast a minimum of 18 hours per day, (2) broadcast an average of at least 3 hours per week of programming produced within the market area served by the station, and (3) been in compliance with Commission requirements of LPTV stations. The *Report and Order* allows deviation from the strict statutory eligibility criteria only where such deviations are insignificant or when the Commission determines that there are compelling circumstances, such as a natural disaster or interference forcing a station off the air, and that in light of those compelling circumstances, the interest of equity mandates such a deviation.²²⁹

The *Report and Order* does not establish a different set of criteria for foreign language stations that do not meet the local programming criteria for a Class A license. Although the *Report and Order* recognizes the valuable service provided by foreign language stations, it concludes that congressional intent was to keep the class of stations granted this special status as a small class and that locally originated programming was an integral part of the specifics of the class.²³⁰ Finally, the *Report and Order* does not adopt separate eligibility criteria for translator stations, concluding that the statute limits eligibility to LPTV stations that produce local programming and can meet the operating rules applicable to full-service stations.²³¹

Report to Congress

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

²²⁹ *See Report and Order*, III B 4, Alternative Eligibility Criteria.

²³⁰ *Id.*

²³¹ *Id.*

NOT FOR OFFICIAL USE

APPENDIX D

Federal Communications Commission
Washington, D.C. 20554

NOT Approved by OMB
DRAFT

APPLICATION FOR CLASS A TELEVISION BROADCAST STATION
CONSTRUCTION PERMIT OR LICENSE

GENERAL INSTRUCTIONS

A. This FCC Form is to be used in all cases by: (a) low power television (LPTV) licensees seeking to convert their licensed or authorized construction permit facilities to Class A status; (b) LPTV licensees filing simultaneously a displacement construction permit application; and (c) Class A licensees seeking a license to cover their authorized Class A construction permit facilities. The form consists of the following sections:

- I. General Information
- II. Legal Qualifications
- III. Engineering Data and Preparer's Certification for preparer of engineering sections of the application

B. This application form makes references to FCC rules. Applicants should have on hand and be familiar with current broadcast rules in Title 47 of the Code of Federal Regulations (C.F.R.):

- (1) Part 0 "Commission Organization"
- (2) Part 1 "Practice and Procedure"
- (3) Part 73 "Radio Broadcast Services"
- (4) Part 74 "Experimental, Auxiliary, and Special Broadcast and Other Program Distributional Services"

FCC Rules may be purchased from the Government Printing Office. Current prices may be obtained from the GPO Customer Service Desk at (202) 512-1803. For payment by credit card, call (202) 512-1800, M-F, 8 a.m. to 4 p.m. e.s.t; facsimile orders may be placed by dialing (202) 518-2233, 24 hours a day. Payment by check may be made to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250-7954.

C. Electronic Filing of Application Forms. The Commission is currently developing electronic versions of various broadcast station application and reporting forms, such as this application form. As each application form and report goes online, the Commission will by Public Notice announce its availability and the procedures to be followed for accessing and filing the application form or report electronically via the Internet. For a six-month period following the issuance of the Public Notice, the subject application form or report can be filed with the Commission either electronically or in a paper format. Electronic filing will become mandatory, on a form-by-form basis, six months after each application form or report becomes available for filing electronically.

D. Applicants that prepare this application in paper form should file an original and two copies of this application and all exhibits. Applicants should follow the procedures set forth in Part 0 and Part 73 of the Commission's Rules. Amendments to previously filed applications should be prepared, signed and filed in the same manner as the original application, and should contain the following information to identify the associated application:

- (1) Applicant's name.
- (2) Service.
- (3) Call letters.
- (4) Channel number.
- (5) Community of license.
- (6) File number of application being amended (if known).
- (7) Date of filing of application being amended (if file number is not known).

E. A copy of the completed application and all related documents shall be made available for inspection by the public in the applicant's public inspection file pursuant to 47 C.F.R. Section 73.3526 for commercial stations.

F. Applicants should provide all information requested by this application. No section may be omitted. If any portions of the application are not applicable, the applicant should so state. **Defective or incomplete applications will be returned without consideration.** Inadvertently accepted applications are also subject to dismissal.

G. In accordance with 47 C.F.R. Section 1.65, applicants have a continuing obligation to advise the Commission, through amendments, of any substantial and material changes in the information furnished in this application. This requirement continues until the FCC action on this application is no longer subject to reconsideration by the Commission or review by any court.

H. This application requires applicants to certify compliance with certain statutory and regulatory requirements. Detailed instructions provide additional information regarding Commission rules and policies. These materials are designed to track the standards and criteria which the Commission applies to determine compliance and to increase the reliability of applicant certifications. They are not intended to be a substitute for familiarity with the Communications Act and the Commission's regulations, policies, and precedent. While applicants are required to review all application instructions, they are not required to

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complete or retain any documentation created or collected to complete the application.

I. This application is presented primarily in a "Yes/No" certification format. However, it contains appropriate places for submitting explanations and exhibits where necessary or appropriate. Each certification constitutes a material representation. Applicants may only mark the "Yes" certification when they are certain that the response is correct. A "No" response is required if the applicant is requesting a waiver of a pertinent rule and/or policy, or where the applicant is uncertain that the application fully satisfies the pertinent rule and/or policy. Thus, a "No" response to any of the certification items **will not** cause the immediate dismissal of the application provided that an appropriate exhibit is submitted.

J. **The applicant, and the applicant's authorized engineering representative, if any, must sign the application.** Depending on the nature of the applicant, the application should be signed as follows: if a sole proprietorship, personally; if a partnership, by a general partner; if a corporation, by an officer; if an unincorporated association, by a member who is an officer; if a governmental entity, by such duly elected or appointed official as is competent under the laws of the particular jurisdiction. Counsel may sign the application for his or her client, but only in cases of the applicant's disability or absence from the United States. If the application is filed electronically, the signature will consist of the electronic equivalent of the typed name of the individual. See Report and Order in MM Docket No. 98-43, 13 FCC Rcd 23056, 23064 (1998).

INSTRUCTIONS FOR SECTION I: GENERAL INFORMATION

A. **Item 1: Applicant Name.** The legal name of the applicant must be stated exactly in Item 1. If the applicant is a corporation, the applicant should list the exact corporate name; if a partnership, the name under which the partnership does business; if an unincorporated association, the name of an executive officer, his/her office, and the name of the association; and, if an individual applicant, the person's full legal name.

Applicants should use only those state abbreviations approved by the U.S. Postal Service.

Facility ID Number. Radio and TV Facility ID Numbers can be obtained at the FCC's Internet Website at www.fcc.gov/mmb/asd/seacall.html or by calling: Radio (202) 418-2730; TV (202) 418-1600. Further, the Facility ID Number is now included on all Radio and TV authorizations and postcards.

B. **Item 2: Contact Representative.** If the applicant is

represented by a third party (for example, legal counsel), that person's name, firm or company, and telephone/electronic mail address may be specified in Item 2.

C. **Item 3: Fees.** The Commission is statutorily required to collect charges for certain regulatory services to the public. Generally, applicants seeking a license to cover a facility authorized by and constructed pursuant to an outstanding construction permit are required to pay and submit a fee with the filing of the application. However, governmental entities, which include any possession, state, city, county, town, village, municipal corporation or similar political organization or subpart thereof controlled by publicly elected and/or duly appointed public officials exercising foreign direction and control over their respective communities or programs, are exempt from the payment of this fee. Also exempted from this fee are licensees and applicants of noncommercial educational FM and full-service television broadcast stations seeking to construct new LPTV, TV translator or TV booster stations, or to make major changes in the authorized facilities of such stations, provided those stations will be operated or operate on a noncommercial educational basis. Applicants that earlier obtained either a fee refund because of a NTIA facilities grant for the station or a fee waiver because of demonstrated compliance with the eligibility and service requirements of 47 C.F.R. Section 73.621, are similarly exempt from payment of this fee. See 47 C.F.R. Section 1.1114.

When filing a fee-exempt application, an applicant must complete Item 3 and provide an explanation as appropriate. Applications **NOT** subject to a fee may be hand-delivered or mailed to the FCC at its Washington, D.C. offices. See 47 C.F.R. Section 0.401(a). Fee-exempt applications should not be sent to the Mellon Bank Lockbox; so doing will result in a delay in processing the application.

The Commission's fee collection program utilizes a U.S. Treasury lockbox bank for maximum efficiency of collection and processing. Prior to the institution of electronic filing procedures, all FCC Form 302-CA applications requiring the remittance of a fee, or for which a waiver or deferral from the fee requirement is requested, should be mailed, along with FCC Form 159, to the Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, Pennsylvania 15251-5165. Hand-delivered FCC Form 302-CA and 159 can be submitted to the Commission's lockbox bank, the Mellon Bank, in Pittsburgh, Pennsylvania. See 47 C.F.R. Section 0.401(b)(2).

In completing FCC Form 159, July 1997, edition, the applicant should specify on line 20A, payment code "MJT" and on line 22A, \$220.00, the fee required to initially obtain

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Class A status for the LPTV station's licensed or authorized construction permit facilities or to obtain a Class A license covering subsequently authorized and constructed Class A station facilities.

Payment of any required fee must be made by check, bank draft, money order, or credit card. If payment is made by check, bank draft, or money order, the remittance must be denominated in U.S. dollars, drawn upon a U.S. institution, and made payable to the Federal Communications Commission. No postdated, altered, or third-party checks will be accepted. **DO NOT SEND CASH.** Additionally, checks dated six months or older will not be accepted.

Procedures for payment of application fees when applications are filed electronically will be announced by subsequent Public Notice. See General Instruction C above. Payment of application fees may also be made by Electronic Payment **prior to** the institution of electronic filing, provided that prior approval has been obtained from the Commission. Applicants interested in this option must first contact the Credit and Debt Management Center at (202) 418-1995 to make the necessary arrangements.

Applicants hand-delivering FCC Forms 302-CA may receive dated receipt copies by presenting copies of the applications to the acceptance clerk at the time of delivery. For mailed-in applications, a "return copy" of the application should be furnished and clearly marked as a "return copy." The applicant should attach this copy to a stamped, self-addressed envelope. Only one piece of paper per application will be stamped for receipt purposes.

station or by a group of commonly-controlled low power television stations; and (3) been in compliance with the Commission's regulations applicable to the low power television service. In the event that a low power television licensee is not able to satisfy the foregoing criteria, the Commission is empowered by the legislation to issue a certificate of eligibility if it determines that the public interest, convenience and necessity would be served thereby. The legislation also provided that licensees intending to seek Class A designation file a certification of eligibility with the Commission no later than January 28, 2000. A Class A licensee shall continue to be accorded primary status as a television broadcaster as long as its station continues to meet the requirements of (1) and (2) above.

C. **Item 4: Local Public Notice.** Applicants seeking Class A status for their licensed or authorized facilities are required to broadcast announcements informing the public of the filing of FCC Form 302-CA. The required notices must be broadcast both before and after the tendering of FCC Form 302-CA with the Commission and the application's simultaneous inclusion in the station's local public inspection file. The required timing and content of the local notice broadcast is set forth in 47 C.F.R. Section 73.3580(d)(4). Worksheet #1 attached to these instructions provides additional guidance. Proof of completion of publication need not be filed with the Commission.

D. **Items 5 and 6: Character Issues/Adverse Findings.** Item 5 requires the applicant to certify that neither it nor any party to the application has had any interest in or connection with an application that was or is the subject of unresolved character issues. An applicant must disclose in response to Item 6 whether the applicant or any party to the application has been the subject of a final adverse finding with respect to certain relevant non-broadcast matters. The Commission's character policies and litigation reporting requirements for broadcast applicants focus on misconduct which violates the Communications Act or a Commission rule or policy and on certain specified non-FCC misconduct. In responding to Items 5 and 6, applicants should review the Commission's character qualifications policies, which are fully set forth in Character Qualifications, 102 FCC 2d 1179 (1985), reconsideration denied, 1 FCC Rcd 421 (1986), as modified, 5 FCC Rcd 3252 (1990) and 7 FCC Rcd 6564 (1992).

NOTE: As used in this question, the term "party to the application" includes any individual or entity whose ownership or positional interest in the applicant is attributable. An attributable interest is an ownership interest in or relation to an applicant or licensee which will confer on its holder that degree of influence or control over the applicant or licensee sufficient to implicate the Commission's multiple ownership rules. See Report and Order in MM Docket No. 83-46, 97 FCC 2d 997 (1984),

INSTRUCTIONS FOR SECTION II: LEGAL INFORMATION

- A. **Item 1: Certification.** Each applicant is responsible for the information that the application instructions convey. As a key element in the Commission's streamlined licensing process, a certification that these materials have been reviewed and that each question response is based on the applicant's review is required.
- B. **Items 2 and 3: Statements of and Continued Eligibility for Class A Status.** On November 29, 1999, the Community Broadcasters Protection Act of 1999 was signed into law. That legislation provides that a low power television licensee may convert the secondary status of its station to the new Class A status, provided it can satisfy certain statutorily-established criteria. To become eligible for a Class A certificate of eligibility, the licensee's station must, during the 90-day period ending November 28, 1999, have: (1) broadcast a minimum of 18 hours per day; (2) broadcast an average of at least three hours per week of programming produced within the market area served by the

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reconsideration granted in part, 58 RR 2d 604 (1985), further modified on reconsideration, 61 RR 2d 739 (1986).

Where the response to Item 5 is "No," the applicant must submit an exhibit that includes an identification of the party having had the interest, the call letters and location of the station or file number of the application or docket, and a description of the nature of the interest or connection, including relevant dates. The applicant should also fully explain why the unresolved character issue is not an impediment to a grant of this application.

In responding to Item 6, the applicant should consider any relevant adverse finding that occurred within the past ten years. Where that adverse finding was fully disclosed to the Commission in an application filed on behalf of this station or in another broadcast station application and the Commission, by specific ruling or by subsequent grant of the application, found the adverse finding not to be disqualifying, it need not be reported again and the applicant may respond "Yes" to this item. However, an adverse finding that has not been reported to the Commission and considered in connection with a prior application would require a "No" response.

Where the response to Item 6 is "No," the applicant must provide in an exhibit a full disclosure of the persons and matters involved, including an identification of the court or administrative body and the proceeding (by dates and file numbers), and the disposition of the litigation. Where the requisite information has been earlier disclosed in connection with another pending application, or as required by 47 U.S.C. Section 1.65(c), the applicant need only provide an identification of that previous submission by reference to the file number in the case of an application, the call letters of the station regarding which the application or Section 1.65 information was filed, and the date of filing. The applicant should also fully explain why the adverse finding is not an impediment to a grant of this application.

E. Item 7: Anti-Drug Abuse Act Certification. This question requires the applicant to certify that neither it nor any party to the application is subject to denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862.

Section 5301 of the Anti-Drug Abuse Act of 1988 provides federal and state court judges the discretion to deny federal benefits to individuals convicted of offenses consisting of the distribution or possession of controlled substances. Federal benefits within the scope of the statute include FCC authorizations. A "Yes" response to Item 9 constitutes a certification that neither the applicant nor any party to this application has been convicted of such an offense or, if it has, it is not ineligible to receive the authorization sought by this application because of Section 5301.

NOTE: With respect to this question, the term "party to the application" includes if the applicant is an individual, that individual; if the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5 percent or more of the outstanding stock or shares (voting and/or non-voting) of the applicant; all members if a membership association; and if the applicant is a partnership, all general partners and all limited partners, including both insulated and non-insulated limited partners, holding a 5 percent or more interest in the partnership.

F. Item 8. Main Studio. The main studio of a Class A station may be located at the site utilized by the station as of November 28, 1999, or at any site within the station's Grade B contour, as defined in 47 C.F.R. Section 73.683. In order to qualify as a "main studio," the location must be equipped with appropriate equipment capable of originating programming at any time. Additionally, the studio must be staffed by **at least** one management-level employee **and** one staff-level employee at all times during regular business hours. See Joint Eastern of the Outer Banks, Inc., 6 FCC Rcd 3115 (1991), clarified, 7 FCC Rcd 6800 (1992), aff'd, 10 FCC Rcd 3759 (1995). Further, each Class A broadcast station must at all times maintain a local or toll-free telephone line from its community of license to its main studio, wherever located.

G. Item 9. Public Inspection File. A Class A licensee must maintain certain documents pertaining to its station in a file kept at the station's main studio. The file must be available for inspection by anyone during the station's regular business hours. The documents to be maintained generally include applications filed on behalf of the station, quarterly lists of the community issues significantly addressed by the station's programming during the preceding three months, and certain records regarding children's educational and informational programming and the amount of commercial matter aired during the station's broadcast of children's programming. A complete listing of the required documents and their mandatory retention periods is set forth in 47 C.F.R. Section 73.3526.

INSTRUCTIONS FOR SECTION III: ENGINEERING DATA AND PREPARER'S CERTIFICATION

A. Tech Box: The applicant must specify the information requested in Items 1 through 6 of the Tech Box. The data should accurately reflect the specifications set forth in the LPTV station's license or authorized construction permit or in the Class A station's underlying construction permit.

The latitude and longitude coordinates for all points in the United States are based upon the 1927 North American Datum (NAD 27). The National Geodetic Survey is in the process of replacing NAD 27 with the more accurate 1983 North American Datum (NAD 83) and updating current

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topographic maps with NAD 83 datum. In addition, coordinates determined by use of the satellite-based Global Positioning System already reflect the NAD 83 datum. To prevent intermixing of data using two different datums, however, the Commission announced that until further notice, applicants are to furnish coordinates based on the NAD 27 datum on all submissions and the Commission will continue to specify NAD 27 coordinates in its data bases and authorizations. In addition, applicants who have already filed applications with coordinates that reflect NAD 83 datum must provide NAD 27 coordinates to the appropriate Commission licensing bureau. See Public Notice, entitled "FCC Interim Procedures for the Specification of Geographic Coordinates," 3 FCC Rcd 1478 (1988).

B. Certifications.

Changed Circumstances. This question requires the applicant to certify that all information provided in the underlying LPTV or Class A construction permit application remains correct. If any circumstance has arisen which would cause any statement or representation contained in the construction permit application to be incorrect, the applicant should respond "No" and provide an appropriate explanatory exhibit.

Constructed Facility. The applicant must certify that the facility was constructed as authorized in the underlying construction permit. If there are any differences between the facilities constructed compared with those authorized in the construction permit, the applicant may need to seek approval for the change on FCC Form 301. See Section 73.3572.

Special Operating Conditions. The special operating conditions are located on the final pages of the construction permit. Attach exhibits, if required, to document compliance with the special operating conditions.

NOTE: SPECIAL OPERATING CONDITIONS MAY PROHIBIT AUTOMATIC PROGRAM TEST AUTHORITY. Automatic Program Test Authority: The permittee of a Class A TV may begin program tests upon filing FCC Form 302-CA with the FCC. See 47 C.F.R. Section 73.1620. **This provision does not apply if the underlying construction permit contains a special operating condition prohibiting automatic program test authority.**

Preparer's Certification. When someone other than the applicant has prepared the engineering section of FCC Form 302-CA, Section III requires that person to certify, to the best of his/her knowledge and belief, the veracity of the technical data supplied. The Section III preparer's certification in FCC Form 302-CA need not be completed if

the engineering portion of the application has been prepared by the applicant. In that event, the applicant's certification in Section II of FCC Form 302-CA will encompass both the legal and engineering sections of the application.

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

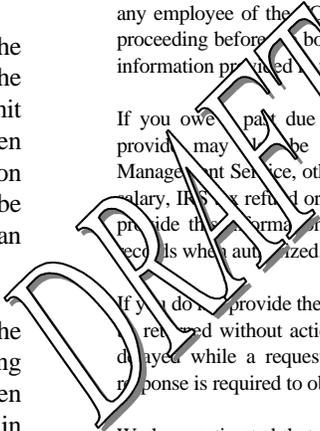
The FCC is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this form. We will use the information provided in the application to determine whether approving this application is in the public interest. If we believe there may be a violation or potential violation of a FCC statute, regulation, rule or order, your application may be referred to the Federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation or order. In certain cases, the information in your application may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC or (b) any employee of the FCC; or (c) the United States Government is a party to a proceeding before a body or has an interest in the proceeding. In addition, all information provided on this form will be available for public inspection.

If you owe a debt due to the federal government, any information you provide may be disclosed to the Department of Treasury Financial Management Service, other federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized.

If you do not provide the information requested on this form, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Your response is required to obtain the requested authorization.

We have estimated that each response to this collection of information will take 2 hours. Our estimate includes the time to read the instructions, look through existing records, gather and maintain the required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project (3060-XXXX), Washington, DC 20554. We will also accept your comments via the Internet if you send them to jboley@fcc.gov. Please **DO NOT SEND COMPLETED APPLICATIONS TO THIS ADDRESS.** Remember - you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-XXXX.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1995, P.L. 104-13, OCTOBER 1, 1995, 44 U.S.C. Section 3507.



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Worksheet #1

Local Public Notice Checklist

Applicants must certify their intention to comply with 47 C.F.R. Section 73.3580(d)(4) regarding publication of local notice of the subject application. This worksheet may be used in responding to Section II, Item 4 of FCC Form 302-CA.

1. Broadcast Notice

- a. Pre-filing: at least once daily on the 5th and 10th days in the two-week period preceding the filing of FCC Form 302-CA? Yes No
- b. Post-filing: at least once daily on the 1st and 10th days following the filing of FCC Form 302-CA? Yes No
- c. Timing: at least two announcements during "prime time" (6 p.m.-11 p.m. or 5 p.m. - 10 p.m. Central and Mountain Time) in both the pre-filing and post-filing periods? Yes No

2. Text of Notice

- a. Pre-filing: Did the announcement contain at least the following statements? Yes No

On (date), the Federal Communications Commission granted (Station's call letters) a certification of eligibility to apply for Class A television status. To become eligible for a Class A certificate of eligibility, a low power television licensee was required to certify that during the 90-day period ending November 28, 1999, the station: (1) broadcast a minimum of 18 hours per day; (2) broadcast an average of at least three hours per week of programming produced within the market area served by the station or by a group of commonly-owned low power television stations; and (3) had been in compliance with the Commission's regulations applicable to the low power television service. The Commission may also issue a certificate of eligibility to a licensee unable to satisfy the foregoing criteria, if it determines that the public interest, convenience and necessity would be served thereby.

(Station's call letters) intends to file an application (FCC Form 302-CA) for a Class A television license in the near future. When filed, a copy of this application will be available at (address of location of the station's public inspection file) for public inspection during our regular business hours. Individuals who wish to advise the FCC of facts related to that application and the station's eligibility for Class A status should file comments with the FCC prior to Commission action on that application.

- b. Post-filing: Will the announcements contain at least the following statements? Yes No

On (date of filing license application) (Station's call letters) filed an application, FCC Form 302-CA, for a Class A television license. Such stations are required to broadcast a minimum of 18 hours per day, and to average at least 3 hours of locally produced programming each week, and to comply with certain full-service television station operating requirements.

A copy of this application is available for public inspection during our regular business hours at (address of location of the station's public inspection file). Individuals who wish to advise the FCC of facts relating to this application and the station's eligibility for Class A status should file comments with the FCC prior to Commission action on this application.

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Federal Communications Commission
Washington, D. C. 20554

NOT Approved by OMB
DRAFT

FOR
FCC
USE
ONLY

FCC 302-CA
APPLICATION FOR CLASS A
TELEVISION BROADCAST STATION
CONSTRUCTION PERMIT OR LICENSE

FOR COMMISSION USE ONLY
FILE NO.

Section I - General Information

1. Legal Name of the Licensee

Mailing Address

City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)		E-Mail Address (if available)
	Call Sign	Facility Identifier

2. Contact Representative (if other than licensee)

Firm or Company Name

Telephone Number (include area code)	E-Mail Address (if available)
--------------------------------------	-------------------------------

3. If this application has been submitted without a fee, indicate reason for fee exemption (see 47 C.F.R. Section 1.1114):

Governmental Entity Noncommercial Educational Licensee Other _____

4. Community of License:

City	State
------	-------

5. Purpose of Application:

- Convert licensed LPTV facilities to Class A facilities (list LPTV file number): File No. _____
- Convert authorized LPTV construction permit facilities to Class A facilities (list LPTV construction permit file number): File No. _____
- Cover displacement application for construction permit for Class A facilities (list date of filing): Date _____
- License to cover construction permit for Class A facilities (list underlying construction permit file number): File No. _____
- Amend a pending Class A license application.

If an amendment, **submit as an Exhibit** a listing by Section and Question Number the portions of the pending application that are being revised.

Exhibit No.
1

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NOTE: In addition to the information called for in this section, an explanatory exhibit providing full particulars must be submitted for each question for which a "No" response is provided.

Section II - Legal

1. **Certification.** Licensee certifies that it has answered each question in this application based on its review of the application instructions and worksheets. Licensee further certifies that where it has made an affirmative certification below, this certification constitutes its representation that the application satisfies each of the pertinent standards and criteria set forth in the application instructions and worksheets. Yes No

2. **Statement of Eligibility.** Licensee certifies that it has filed a statement of eligibility on or before January 28, 2000, which has been found to be acceptable by the Commission. Yes No

3. **Continued Eligibility.** Licensee certifies that its station does, and will continue to, broadcast: (a) a minimum of 18 hours per day; and (b) an average of at least 3 hours per week of programming each quarter produced within the market area served by the station, or the market area served by a group of commonly controlled low-power or Class A stations that carry common local programming produced within the market area served by such groups. Yes No

See Explanation in Exhibit No. 2
--

4. **Local Public Notice.** Licensee certifies that it will comply with the public notice requirements of 47 C.F.R. Section 73.3580. Yes No

See Explanation in Exhibit No. 3
--

5. **Character Issues.** Licensee certifies that neither licensee nor any party to the application has or has had any interest in, or connection with: Yes No

See Explanation in Exhibit No. 4
--

 - a. any broadcast application in any proceeding where character issues were left unresolved or were resolved adversely against the applicant or party to the application; or
 - b. any pending broadcast application in which character issues have been raised.

6. **Adverse Findings.** Licensee certifies that, with respect to the licensee and any party to the application, no adverse finding has been made, nor has an adverse final action been taken by any court or administrative body in a civil or criminal proceeding brought under the provisions of any law related to the following: any felony; mass media-related antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination. Yes No

See Explanation in Exhibit No. 5
--

7. **Anti-Drug Abuse Act Certification.** Licensee certifies that neither licensee or any party to the application is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862. Yes No

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8. **Main Studio.** Licensee certifies that it has constructed and maintains a main studio at a location in compliance with the requirements of 47 C.F.R. Section 73.1125. Yes No See Explanation in Exhibit No. 6
9. **Public Inspection File.** Licensee certifies that it maintains for its station a public inspection file that includes the documentation required by 47 C.F.R. Section 73.3526. Yes No See Explanation in Exhibit No. 7
10. **Operating Requirements.** Licensee certifies that it complies with those station operating requirements set forth in subparts H and J of 47 C.F.R. Part 73 that are applicable to Class A stations. Yes No See Explanation in Exhibit No. 8

I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that all certifications and attached Exhibits are considered material representations. I hereby waive any claim to the use of any particular frequency as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and request an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

Typed or Printed Name of Person Signing	Typed or Printed Title of Person Signing
Signature	Date

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SECTION III - Engineering

TECHNICAL SPECIFICATIONS

Ensure that the specifications below are accurate. All items must be completed. The response "on file" is not acceptable.

NOTE: In addition to the information called for in this section, an explanatory exhibit providing full particulars must be submitted for each question for which a "No" response is provided

TECH BOX

1. Channel: _____

2. Frequency Offset

No offset

Zero offset

Plus offset

Minus offset

3. Antenna Location Coordinates: (NAD 27)

_____ ° _____ ' _____ " N S Latitude
 _____ ° _____ ' _____ " E W Longitude

4. Operating Constants:

Transmitter power output (after vestigial sideband filter, if used, and after multiplexer, if combined)		Multiplexer loss in dB, if separate	Input to transmission line
dBk	kW	dB	dBk
Transmission line power loss	Antenna Input power	Maximum antenna power gain	Maximum effective radiated power
dB	dBk	dB	dBk kW

5. Antenna Data:

Manufacturer	Model
--------------	-------

6. Height of radiation center above mean sea level: _____ meters

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CERTIFICATIONS

Part A: For LPTV licensees seeking to convert their licensed or authorized construction permit facilities to Class A status or to cover a displacement application for construction permit for Class A facilities.

1. **Interference.** The facility authorized in the license or construction permit or proposed in the construction permit application, complies with the following applicable interference protection rule sections.

Analog TV broadcast station protection. See 47 C.F.R. Section 73.6011.

Yes No

See Explanation
in Exhibit No.
9

Digital TV station and DTV Table of Allotments protection. See 47 C.F.R. Section 73.6013.

Yes No

See Explanation
in Exhibit No.
10

Low Power TV, TV translator, Class A, and Digital Class A station protection. See 47 C.F.R. Sections 73.6012 and 73.6014.

Yes No

See Explanation
in Exhibit No.
11

Land mobile station protection. See 47 C.F.R. Section 73.6020.

Yes No

See Explanation
in Exhibit No.
12

2. **Changed Circumstances.** Apart from changes already reported, no cause or circumstance has arisen since the grant of the underlying LPTV construction permit which would result in any statement or representation contained in the construction permit application to be now incorrect.

Yes No

See Explanation
in Exhibit No.
13

Part B: For Class A licensees seeking a license to cover their authorized Class A construction permit facilities.

1. **Constructed Facility.** The facility was constructed as authorized in the underlying construction permit.

Yes No

See Explanation
in Exhibit No.
14

2. **Special Operating Conditions.** The facility was constructed in compliance with all special operating conditions, terms, and obligations described in the construction permit.

Yes No

See Explanation
in Exhibit No.
15

An exhibit may be required. Review the underlying construction permit.

Exhibit No.
16

3. **Changed Circumstances.** Apart from changes already reported, no cause or circumstance has arisen since the grant of the underlying Class A construction permit which would result in any statement or representation contained in the construction permit application to be now incorrect.

Yes No

See Explanation
in Exhibit No.
17

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Part C: PREPARER'S CERTIFICATION

I certify that I have prepared Section III (Engineering Data) on behalf of the applicant, and that after such preparation, I have examined and found it to be accurate and true to the best of my knowledge and belief.

Name		Relationship to Applicant (e.g., Consulting Engineer)	
Signature		Date	
Mailing Address			
City		State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)		E-Mail Address (if available)	

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001),
AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)),
AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).