

§ 722.13 Coal exploration compliance duties.

(a) All coal exploration and reclamation activities that substantially disturb the natural land surface or that remove more than 250 tons of coal shall be conducted in accordance with the coal exploration requirements of this part, Part 815, and the regulatory program, and any exploration permit conditions imposed by the regulatory authority.

(b) Any person who conducts any coal exploration in violation of the provisions of this part, Part 815 of this chapter, or the regulatory program shall be subject to the provisions of Section 518 of the Act, Subchapter L of this chapter, and the applicable inspection and enforcement provisions of the regulatory program.

§ 772.14 Requirements for commercial sale.

Any person who extracts coal for commercial sale during coal exploration operations must obtain a surface coal mining and reclamation operations permit for those operations from the regulatory authority under Part 771 of this chapter. No surface coal mining and reclamation operations permit is required if the regulatory authority makes a prior determination that the sale is to test for coal properties necessary for the development of surface coal mining and reclamation operations for which a permit application is to be submitted at a later time.

§ 772.15 Public availability of information.

(a) Except as provided in Paragraph (b) of this section, all information submitted to the regulatory authority under this part shall be made available for public inspection and copying at the local offices of the regulatory authority closest to the exploration area.

(b) The regulatory authority shall keep information confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and the regulatory authority determines that the information concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the persons intending to conduct coal exploration.

(c) Information requested to be held as confidential under Paragraph (b) of this section shall not be made publicly available until after notice and opportunity to be heard is afforded both persons seeking and opposing disclosure of the information.

PART 776—GENERAL REQUIREMENTS FOR COAL EXPLORATION—[REMOVED]

3. Part 776 is removed.

PART 815—PERMANENT PROGRAM PERFORMANCE STANDARDS—COAL EXPLORATION

4. Section 815.1 is revised to read as follows:

§ 815.1 Scope and purpose.

This part sets forth performance standards required for coal exploration which substantially disturbs the natural land surface.

§§ 815.2 and 815.11 [Removed]

5. Sections 815.2 and 815.11 are removed.

6. Section 815.13 is revised to read as follows:

§ 815.13 Required documents.

Each person who conducts coal exploration which substantially disturbs the natural land surface (including exploration which removes more than 250 tons of coal) while in the exploration area shall have available the required notice of intention to explore or exploration permit for review by the authorized representative of the regulatory authority or OSM upon request.

7. Section 815.15 is revised to read as follows:

§ 815.15 Performance standards for coal exploration.

The performance standards in this section are applicable to coal exploration which substantially disturbs the natural land surface (including exploration which removes more than 250 tons of coal).

(a) Habitats of unique or unusually high value for fish, wildlife, and other related environmental values, including critical habitats of threatened or endangered species and critical habitats of species protected by State or Federal law, shall not be disturbed during coal exploration.

(b) All roads used for coal exploration shall comply with the provisions of § 816.180 of this chapter when determined to be ancillary roads or §§ 816.150 through 816.156 of this chapter when determined to be primary roads.

(c) If excavations, artificial flat areas, or embankments are created during exploration, these areas shall be returned to the approximate original contour promptly after such features are no longer needed for coal exploration.

(d) Topsoil shall be removed, stored, and redistributed on disturbed areas as necessary to assure successful revegetation or as required by the regulatory authority.

(e) All disturbed areas shall be

revegetated in a manner that encourages prompt revegetation and recovery of a diverse, effective, and permanent vegetative cover. Revegetation shall be in accordance with the following:

(1) All disturbed lands shall be seeded or planted to the same seasonal variety native to the disturbed area. If the land use of the exploration area is intensive agriculture, planting of the crops normally grown will meet the requirements of this paragraph.

(2) The vegetative cover shall be capable of stabilizing the soil surface in regards to erosion.

(f)(1) Diversions of overland flows and ephemeral streams shall be made in accordance with paragraphs (a) through (e) of § 816.43 of this chapter.

(2) Diversions of perennial or intermittent streams shall be made in accordance with Paragraphs (a), (b)(1), (c), (d), and (e) of § 816.44 of this chapter.

(g) Each exploration hole, borehole, well, or other exposed underground opening created during exploration shall be reclaimed in accordance with §§ 816.13, 816.14, and 816.15 of this chapter.

(h) All facilities and equipment shall be removed from the exploration area promptly when they are no longer needed for exploration, except for those facilities and equipment that the regulatory authority determines may remain to—

(1) Provide additional environmental data;

(2) Reduce or control the on- and offsite effects of the exploration activities; or

(3) Facilitate future surface mining and reclamation operations by the person conducting the exploration under an approved permit.

(i) Coal exploration shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance in accordance with §§ 816.41, 816.42, 816.45, 816.46, and 816.47 of this chapter. The regulatory authority may specify additional measures which shall be adopted by the person engaged in coal exploration.

(j) Toxic- or acid-forming materials shall be handled and disposed of in accordance with §§ 816.48, 816.50, and 816.103 of this chapter. The regulatory authority may specify additional measures which shall be adopted by the person engaged in coal exploration.

§ 815.17 [Removed]

8. Section 815.17 is removed.

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*)

[FR Doc. 82-13445 Filed 5-17-82; 8:45 am]

BILLING CODE 4310-05-M

Register Federal Register

Tuesday
May 18, 1982

Part IV

Office of Management and Budget

Cumulative Report on Rescissions and
Deferrals

**OFFICE OF MANAGEMENT AND
BUDGET**
**Cumulative Report on Rescissions and
Deferrals**

May 1, 1982.

This report is submitted in fulfillment of the requirements of Section 1014(e) of the Impoundment Control Act of 1974 (Public Law 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year with respect to which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of May 1, 1982 of twenty-six rescission proposals and 243 deferrals contained in the first eleven messages of FY 1982. These messages were transmitted to the Congress on October 1, 20, 23, and 29, and November 6, and 13, 1981, January 22, February 8, and 19, March 18, and April 23, 1982.

Rescissions (Table A and Attachment A)

Two rescission proposals totaling \$235.7 million are currently pending before the Congress. Table A summarizes the status of rescissions proposed by the President as of May 1, 1982 while Attachment A shows the history and status of each rescission proposed during FY 1982.

Deferrals (Table B and Attachment B)

As of May 1, 1982, \$3,128.1 million in 1982 budget authority was being deferred from obligation and another \$5.4 million in 1982 obligations was being deferred from expenditure. Attachment B shows the history and status of each deferral reported during FY 1982.

Information from special messages

The special messages containing information on the rescissions and the deferrals covered by the cumulative report are printed in the Federal Registers of:

Vol. 46, No. 194, FR p. 49793,
Wednesday, October 7, 1981
Vol. 46, No. 206, FR p. 52289, Monday,
October 26, 1981
Vol. 46, No. 210, FR p. 54259, Friday,
October 30, 1981
Vol. 46, No. 212, FR p. 54691, Tuesday,
November 3, 1981
Vol. 46, No. 218, FR p. 55905, Thursday,
November 12, 1981
Vol. 46, No. 223, FR p. 57019, Thursday,
November 19, 1981
Vol. 47, No. 18, FR p. 4021, Wednesday,
January 27, 1982
Vol. 47, No. 28, FR p. 6193, Wednesday,
February 10, 1982
Vol. 47, No. 37, FR p. 8145, Wednesday,
February 24, 1982
Vol. 47, No. 57, FR p. 12751, Wednesday,
March 24, 1982
Vol. 47, No. 82, FR p. 18301, Wednesday,
April 28, 1982

David A. Stockman,

Director.

BILLING CODE 3110-01-M

ATTACHMENT A - STATUS OF RESCISSIONS - FISCAL YEAR 1982						AS OF 05/06/82 16:05	
AS OF MAY 1, 1982 AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	RESCISSION NUMBER	AMOUNT PREVIOUSLY CONSIDERED BY CONGRESS	AMOUNT CURRENTLY BEFORE THE CONGRESS	DATE OF MESSAGE MO DA YR	AMOUNT RESCIENDED	AMOUNT MADE AVAILABLE	DATE MADE AVAILABLE MO DA YR
FUNDS APPROPRIATED TO THE PRESIDENT							
International Development Assistance							
Functional development assistance program							
BA	R82- 4		8,129	2 8 82		8,129*	4 23 82
Sahel development program							
BA	R82- 5		2,500	2 8 82		2,500*	4 23 82
FUNDS APPROPRIATED TO THE PRESIDENT							
TOTAL BA			10,629			10,629	
DEPARTMENT OF AGRICULTURE							
Extension Service							
Extension service							
BA	R82- 6		2,000	2 8 82		2,000*	4 26 82
DEPARTMENT OF AGRICULTURE							
TOTAL BA			2,000			2,000	
DEPARTMENT OF COMMERCE							
National Oceanic and Atmospheric Administration							
Coastal zone management							
BA	R82- 7		12,000	2 8 82		12,000*	4 26 82
Coastal energy impact fund							
BA	R82- 8		7,000	2 8 82		7,000*	4 26 82
DEPARTMENT OF COMMERCE							
TOTAL BA			19,000			19,000	
DEPARTMENT OF DEFENSE - MILITARY							
Procurement							
Aircraft procurement, Air Force							
BA	R82- 1	65,700		10 23 81		65,700	12 14 81
Missile procurement, Air Force							
BA	R82- 2	22,500		10 23 81		22,500	12 14 81
DEPARTMENT OF DEFENSE - MILITARY							
TOTAL BA			88,200			88,200	
DEPARTMENT OF EDUCATION							
Office of Elementary and Secondary Education							
Compensatory education for the disadvantaged							
BA	R82- 9		411,933	2 8 82		411,933*	4 26 82
Special programs and populations							
BA	R82-10		65,600	2 8 82		65,600*	4 26 82
Indian education							
BA	R82-11		6,255	2 8 82		6,255*	4 26 82

ATTACHMENT A - STATUS OF RESCISSIONS - FISCAL YEAR 1982							AS OF 05/06/82 16:05
AS OF MAY 1, 1982 AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	RESCISSION NUMBER	AMOUNT PREVIOUSLY CONSIDERED BY CONGRESS	AMOUNT CURRENTLY BEFORE THE CONGRESS	DATE OF MESSAGE MO DA YR	AMOUNT RESCIENDED	AMOUNT MADE AVAILABLE	DATE MADE AVAILABLE MO DA YR
Office of Special Education and Rehab. Services							
Education for the handicapped							
BA	R82-12		258,572	2 8 82		258,572 *	4 26 82
Rehabilitation services and handicapped research							
BA	R82-13		91,171	2 8 82		91,171 *	4 26 82
Office of Vocational and Adult Education							
Vocational and adult education							
BA	R82-14		105,741	2 8 82		105,741 *	4 26 82
Office of Postsecondary Education							
Student financial assistance							
BA	R82-15		141,500	2 8 82		141,500 *	4 26 82
Higher and continuing education							
BA	R82-16		42,739	2 8 82		42,739 *	4 26 82
Office of Educational Research and Improvement							
Libraries							
BA	R82-17		22,110	2 8 82		22,110 *	4 26 82
Departmental management							
Educ. res. & train. overseas (spec. for. curr.)							
BA	R82-18		80	2 8 82		80 *	4 26 82
Office of Bilingual Educ. & Minority Lang. Affairs							
Bilingual education							
BA	R82-19		11,504	2 8 82		11,504 *	4 26 82
DEPARTMENT OF EDUCATION							
TOTAL BA			1,157,205			1,157,205	
DEPARTMENT OF ENERGY							
Energy Programs							
Energy conservation							
BA	R82-20		20,000	2 8 82		20,000*	4 26 82
DEPARTMENT OF ENERGY							
TOTAL BA			20,000			20,000	
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT							
Housing Programs							
Subsidized housing programs							
BA	R82-21		9,399,789	2 8 82		5,999,789*	4 26 82
BA	R82-21A		-3,400,000	4 23 82			
Solar Energy and Energy Conservation Bank							
Assistance for solar and conserv. improvements							
BA	R82-22		21,850	2 8 82		21,850*	4 26 82
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT							
TOTAL BA			6,021,639			6,021,639	
DEPARTMENT OF LABOR							
Mine Safety and Health Administration							
Salaries and expenses							
BA	R82-23		4,095	2 8 82		2,095 *	4 26 82
BA	R82-23A		-2,000	2 19 82			

ATTACHMENT A - STATUS OF RESCISSIONS - FISCAL YEAR 1982							AS OF 05/06/82 16:05	
AS OF MAY 1, 1982 AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	RESCISSION NUMBER	AMOUNT PREVIOUSLY CONSIDERED BY CONGRESS	AMOUNT CURRENTLY BEFORE THE CONGRESS	DATE OF MESSAGE MO DA YR	AMOUNT RESCINDED	AMOUNT MADE AVAILABLE	DATE MADE AVAILABLE MO DA YR	
DEPARTMENT OF LABOR TOTAL BA			2,098			2,095		
DEPARTMENT OF TRANSPORTATION								
Federal Highway Administration								
Highway-related safety grants								
BA	R82-24		9,623	2 8 82		9,623*	4 26 82	
DEPARTMENT OF TRANSPORTATION TOTAL BA			9,623			9,623		
OTHER INDEPENDENT AGENCIES								
Corporation for Public Broadcasting								
Public broadcasting fund								
BA	R82- 3		20,500a	11 6 81				
National Foundation on the Arts and Humanities								
Institute of Museum Services: Program operations								
BA	R82-25		10,877	2 8 82		10,877*	4 26 82	
Postal Service								
Payment to the Postal Service Fund								
BA	R82-26		215,230	3 18 82				
OTHER INDEPENDENT AGENCIES TOTAL BA			246,607			10,877		
TOTAL BA		88,200	7,488,798			7,341,268		

* This item is still under consideration by the Congress, but the amounts were made available upon expiration of the 45-day clock.

a. This is a proposal to rescind FY 1983 funds.

END OF REPORT

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1982

AS OF 05/05/82 16:43

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESS-IONALLY REQUIRED RELEASES	CUMULA-TIVE ADJUST-MENTS	AMOUNT DEFERRED AS OF 5-1-82
EXECUTIVE OFFICE OF THE PRESIDENT								
White House Office								
Salaries and Expenses	BA D82- 27	366		10 20 81	-366			
Special Assistance to the President								
Salaries and Expenses	BA D82- 28	28		10 20 81	-28			
Council of Economic Advisers								
Salaries and Expenses	BA D82- 86	32		10 23 81	-32			
Council on Envir. Quality & Office of Envir. Qual.								
Salaries and Expenses	BA D82- 29	9		10 20 81	-9			
Office of Policy Development								
Salaries and Expenses	BA D82- 30	45		10 20 81	-45			
National Security Council								
Salaries and Expenses	BA D82- 31	62		10 20 81	-62			
Office of Administration								
Salaries and expenses	BA D82- 32	139		10 20 81	-139			
OMB, Office of Fed. Procurement Policy								
Salaries and expenses	BA D82- 33	24		10 20 81	-24			
Office of Science and Technology Policy								
Salaries and expenses	BA D82- 34	30		10 20 81	-30			
Office of the U.S. Trade Representative								
Salaries and expenses	BA D82- 35	78		10 20 81	-78			
EXECUTIVE OFFICE OF THE PRESIDENT								
TOTAL BA		813			-813			
FUNDS APPROPRIATED TO THE PRESIDENT								
Appalachian Regional Development Programs								
Appalachian regional development programs	BA D82- 1	15,000		10 1 81				
	BA D82- 1A			a 1 22 82				15,000
	BA D82- 1B			a 2 8 82				
Disaster Relief								
Disaster relief	BA D82-158	7,000		10 29 81	-7,000			
	BA D82-159	138,000		10 29 81	-138,000			
International Security Assistance								
Foreign military credit sales	BA D82-222	680,000		2 8 82	-480,000			200,000
Economic support fund	BA D82-219	1,756,980		1 22 82	-1,604,775			152,205
Military assistance	BA D82-223	129,512		2 8 82	-68,000			61,512
FUNDS APPROPRIATED TO THE PRESIDENT								
TOTAL BA		2,726,492			-2,297,775			428,717
DEPARTMENT OF AGRICULTURE								
Office of the Secretary								
Office of the Secretary	BA D82-160	29		10 29 81	-29			

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1982

AS OF 05/05/82 16:43

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULA- TIVE OMB /AGENCY RELEASES	CONGRES- SIONALLY REQUIRED RELEASES	CUMULA- TIVE ADJUST- MENTS	AMOUNT DEFERRED AS OF 5-1-82
Agricultural Research Service								
Agricultural research service	BA D82-161	1,813		10 29 81	-1,813			
Cooperative State Research Service								
Cooperative state research service	BA D82-162	2,790		10 29 81	-2,790			
Extension Service								
Extension service	BA D82-163	1,990		10 29 81	-1,990			
National Agricultural Library								
National agricultural library	BA D82-164	93		10 29 81	-93			
Statistical Reporting Service								
Statistical reporting service	BA D82-165	198		10 29 81	-198			
Agricultural Cooperative Service								
Agricultural cooperative service	BA D82-166	39		10 29 81	-39			
Office of Internat. Cooperation and Development								
Scientific activities overseas	BA D82-167	700		10 29 81	-700			
Rural Electrification Administration								
Rural electr. and telephone revolving fund	BA D82-169	49,368b		10 29 81	-49,368			
Foreign Assistance Programs								
Expenses, P.L. 480	BA D82- 36	25,696		10 20 81	-25,696			
Agricultural Stabilization & Conservation Service								
Dairy and beekeeper indemnity programs	BA D82- 88	28		10 23 81	-28			
Agricultural conservation	BA D82- 87	8,600		10 23 81	-8,600			
Emergency conservation program	BA D82-168	1,400		10 29 81	-1,400			
Farmers Home Administration								
Salaries and expenses	BA D82-171	526		10 29 81	-526			
Rural housing for domestic farm labor	BA D82-173	1,750		10 29 81	-1,750			
	BA D82-224	10,728		2 8 82				10,728
Mutual and self-help housing	BA D82-174	490		10 29 81	-490			
Rural water and waste disposal	BA D82-170	8,680		10 29 81	-8,680			
Rural community fire protection grants	BA D82-172	490		10 29 81	-490			
Agricultural credit insurance fund	BA D82-175	1,316		10 29 81	-1,316			
Rural development insurance fund	BA D82-176	21,000		10 29 81	-21,000			
Soil Conservation Service								
Watershed and flood prevention operations	BA D82- 89	8,926		10 23 81	-8,926			
Animal and Plant Health Inspection Service								
Animal and plant health inspection service	BA D82- 90	4,125		10 23 81	-4,125			
Buildings and facilities	BA D82-177	236		10 29 81	-236			
Agricultural Marketing Service								
Payments to States and possessions	BA D82-178	210		10 29 81	-210			

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1982							AS OF 05/05/82 16:43	
AMOUNTS IN THOUSANDS OF DOLLARS	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB / AGENCY RELEASES	CONGRESS-IONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 5-1-82
AGENCY/BUREAU/ACCOUNT								
Food and Nutrition Service								
Food program administration	BA D82-209	487		11 6 81	-487			
Child nutrition programs	BA D82-210	472		11 6 81	-472			
Special supplemental food programs (WIC)	BA D82-211	13,831		11 6 81	-13,831			
Forest Service								
State and private forestry	BA D82- 92	776		10 23 81	-776			
	BA D82-179	657		10 29 81	-657			
Agricultural research	BA D82- 91	1,348		10 23 81	-1,348			
National forest system	BA D82- 93	12,516		10 23 81	-12,516			
	BA D82-180	1,059		10 29 81	-1,059			
Construction and land acquisition	BA D82- 94	6,693		10 23 81	-6,693			
Timber salvage sales	BA D82- 2	6,723		10 1 81				
	BA D82- 2A		561	1 22 82				7,284
Rangeland improvements	BA D82- 96	109		10 23 81	-109			
Acquisition of lands to complete land exchanges	BA D82- 95	6		10 23 81	-6			
Expenses, brush disposal	BA D82- 3	49,349		10 1 81			-948	
	BA D82- 3A			a 4 23 82				48,401

DEPARTMENT OF AGRICULTURE	TOTAL BA	245,247	561		-178,447		-948	66,413

DEPARTMENT OF COMMERCE								
General Administration								
Participation in U.S. expositions	BA D82- 4	507		10 1 81	-32			475
Bureau of the Census								
Periodic censuses and programs	BA D82-225	1,015		2 8 82				1,015
Economic and Statistical Analysis								
Salaries and expenses	BA D82- 97	420		10 23 81	-420			
Economic Development Administration								
Economic development assistance programs	BA D82- 98	38,855		10 23 81	-38,855			
Minority Business Development Agency								
Minority business development	BA D82- 99	857		10 23 81	-857			
	BA D82-226	5,000		2 8 82				5,000
United States Travel Service								
Salaries and expenses	BA D82-181	287		10 29 81	-287			
National Oceanic and Atmospheric Administration								
Operations, research, and facilities	BA D82-100	12,891		10 23 81	-12,891			
Construction	BA D82- 5	2,000		10 1 81				
	BA D82- 5A			a 1 22 82				2,000
National Telecom. and Information Admin.								
Salaries and expenses	BA D82-101	277		10 23 81	-277			

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1982

AS OF 05/05/82 16:43

AMOUNTS IN THOUSANDS OF DOLLARS	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULA- TIVE OMB /AGENCY RELEASES	CONGRES- SIONALLY REQUIRED RELEASES	CUMULA- TIVE ADJUST- MENTS	AMOUNT DEFERRED AS OF 5-1-82
DEPARTMENT OF COMMERCE								
TOTAL BA		62,109			-53,619			8,490
DEPARTMENT OF DEFENSE-MILITARY								
Procurement								
Shipbuilding and conversion, Navy	BA D82-227	1,275,000		2 8 82				1,275,000
Military Construction								
Military construction, all services	BA D82- 6	38,837		10 1 81				
	BA D82- 6A		14,101	1 22 82				
	BA D82- 6B		714,785	2 8 82	-476,355		39,510	330,878
Family Housing, Defense								
Family housing, Defense	BA D82- 7	1,992		10 1 81	-1,992			
DEPARTMENT OF DEFENSE-MILITARY								
TOTAL BA		1,315,829	728,886		-478,347		39,510	1,605,878
DEPARTMENT OF DEFENSE-CIVIL								
Cemeterial Expenses, Army								
Salaries and expenses	BA D82- 37	85		10 20 81	-85			
Corps of Engineers								
General investigations	BA D82- 38	2,068		10 20 81	-2,068			
Construction, general	BA D82- 39	14,284		10 20 81	-14,284			
General expenses	BA D82- 40	370		10 20 81	-370			
Special recreation use fees	BA D82- 41	59		10 20 81	-59			
Soldiers and Airmen's Home								
Operation and maintenance	BA D82- 42	63		10 20 81	-63			
Wildlife Conservation, Military Reservations								
Wildlife conservation, all services	BA D82- 8	597		10 1 81	-8		8	
	BA D82- 8A		433	1 22 82				1,030
DEPARTMENT OF DEFENSE-CIVIL								
TOTAL BA		17,526	433		-16,937		8	1,030
DEPARTMENT OF ENERGY								
Energy Programs								
Fossil energy R&D	BA D82-105	14,769		10 23 81	-14,769			
	BA D82-236	44,883		3 18 82		-44,883		
Fossil energy construction	BA D82- 9	135,000		10 1 81		-135,000		
Gen. science & research-plant & capital	BA D82-102	1,682		10 23 81	-1,682			
Energy supply R&D-operating expenses	BA D82-103	49,393		10 23 81	-49,393			
	BA D82-228	4,000		2 8 82				4,000
	BA D82-228A			3 18 82				
Energy supply R&D-plant and capital equip.	BA D82-104	11,949		10 23 81	-11,949			
Energy conservation	BA D82-106	14,007		10 23 81	-14,007			
Strategic Petroleum Reserve	BA D82- 10	8,000		10 1 81				
	BA D82- 10A		52,860	2 8 82	-8,000			52,860
Energy information administration	BA D82-107	2,042		10 23 81	-2,042			

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1982

AS OF 05/05/82 16:43

AMOUNTS IN THOUSANDS OF DOLLARS	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB / AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 5-1-82
Economic regulation	BA D82-108	2,436		10 23 81	-2,436			
Federal Energy Regulatory Commission	BA D82-109	490		10 23 81	-490			
Geothermal resources development fund	BA D82-110	18		10 23 81	-18			

DEPARTMENT OF ENERGY	TOTAL BA	288,669	52,860		-104,786	-179,883		56,860

DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Health Services Administration								
Health Services	BA D82- 11	1,508		10 1 81				1,508
Indian health services	BA D82-212	10,950		11 6 81	-10,950			
Centers for Disease Control								
Preventive Health Services	BA D82-213	791		11 6 81	-791			
Alcohol, Drug Abuse & Mental Health Administration								
Construction & renovation, St. Elizabeths Hospital	BA D82- 12	11,500		10 1 81				
	BA D82- 12A			a 1 22 82				11,500
Office of Assistant Secretary for Health								
Health services management	BA D82-214	1,142		11 6 81	-1,142			
Special foreign currency program	BA D82- 13	7,000		10 1 81				
	BA D82- 13A			a 1 22 82				7,000
Health Care Financing Administration								
Program management	BA D82-215	420		11 6 81	-420			
Social Security Administration								
Refugee assistance	BA D82- 43	10,000		10 20 81	-10,000			
Cuban and Haitian entrants, reception & process.	BA D82- 44	4,900		10 20 81	-4,900			
	BA D82- 44A			a 1 22 82				
Cuban and Haitian entrants, domestic asst.	BA D82- 45	37,000		10 20 81				
	BA D82- 45A		11,398	1 22 82	-48,398			
Limitation on administrative expenses	BA D82-237	9,600		3 18 82				9,600
Human Development Services								
Work incentives	BA D82-216	10,523		11 6 81	-10,523			

DEPARTMENT OF HEALTH AND HUMAN SERVICES	TOTAL BA	105,334	11,398		-87,124			29,608

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Subsidized housing programs	BA D82-182	79,218		10 29 81	-79,218			
Payments for operation of low income housing	BA D82-183	102,452		10 29 81	-102,452			
Housing for the elderly or handicapped	BA D82-111	14,294		10 23 81	-14,294			
Solar Energy and Energy Conserv. Bank								
Assist. for solar and conserv. improvements	BA D82-184	3,500		10 29 81	-3,500			

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1982

AS OF 05/05/82 16:43

AMOUNTS IN THOUSANDS OF DOLLARS	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB / AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 5-1-82
Community Planning and Development								
Community development support assistance	BA D82-112	61,589		10 23 81	-61,589			
Urban development action grants	BA D82-113	8,412		10 23 81	-8,412			
Rehabilitation loan fund	BA D82-185	26,959		10 29 81	-26,959			
Neighborhoods, Vol. Assoc. & Consumer Prot.								
Housing counseling assistance	BA D82- 46	207		10 20 81	-207			
Policy Development and Research								
Research and technology	BA D82- 47	420		10 20 81	-420			
Fair Housing and Equal Opportunity								
Fair housing assistance	BA D82- 48	96		10 20 81	-96			
Management and Administration								
Salaries and expenses	BA D82-186	3,590		10 29 81	-3,590			
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
TOTAL BA		300,737			-300,737			
DEPARTMENT OF THE INTERIOR								
Bureau of Land Management								
Acquisition, construction and maintenance	BA D82- 49	121		10 20 81	-121			
Range improvements	BA D82-114	237		10 23 81	-237			
Bureau of Reclamation								
Loan program	BA D82-115	792		10 23 81	-792			
Construction program	BA D82-116	4,603		10 23 81	-4,603			
General investigations	BA D82-117	944		10 23 81	-944			
Operations and maintenance	BA D82-118	64		10 23 81	-64			
General administrative expenses	BA D82-119	353		10 23 81	-353			
Office of Water Research & Technology								
Salaries and expenses	BA D82-120	600		10 23 81	-600			
U.S. Fish and Wildlife Service								
Resource management	BA D82-121	5,815		10 23 81	-5,815			
Construction and anadromous fish	BA D82- 50	392		10 20 81	-392			
National Park Service								
Urban park and recreation grants	BA D82-125	1,400		10 23 81	-1,400			
	BA D82-238	858		3 18 82				858
Operation of the National Park Service	BA D82-122	5,216		10 23 81	-5,216			
John F. Kennedy Center for the Performing Arts								
Construction	BA D82-124	40		10 23 81	-40			
Land and water conservation fund								
	BA D82-126	16,256		10 23 81	-16,256			
	BA D82- 14	30,000		10 1 81				
	BA D82- 14A			2 8 82				30,000
	BA D82-239	2,821		3 18 82				2,821

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1982						AS OF 05/05/82 16:43		
AMOUNTS IN THOUSANDS OF DOLLARS	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 5-1-82
AGENCY/BUREAU/ACCOUNT								
Historic preservation fund								
BA D82-218		108		11 13 81	-108			
BA 682-240		781		3 18 82				781
Geological Survey								
Surveys, investigations and research								
BA D82-51		9,019		10 20 81	-9,019			
Exploration of National Petroleum Res. in Alaska								
BA D82-52		80		10 20 81	-80			
Payments from proceeds, sale of water								
BA D82-15		45		10 1 81				45
Office of Surface Mining Reclam. and Enforcement								
Regulation and technology								
BA D82-53		1,245		10 20 81	-1,245			
Bureau of Mines								
Drainage of anthracite mines								
BA D82-16		991		10 1 81				
BA D82-16A				2 8 82				991
Mines and minerals								
BA D82-54		2,600		10 20 81	-2,600			
Bureau of Indian Affairs								
Operation of Indian programs								
BA D82-127		16,607		10 23 81	-16,607			
Construction								
BA D82-128		148		10 23 81	-148			
Road construction								
BA D82-129		279		10 23 81	-279			
Office of Territorial Affairs								
Administration of territories								
BA D82-55		2,439		10 20 81	-2,439			
Trust territory of the Pacific Islands								
BA D82-56		2,068		10 20 81	-2,068			
Office of the Solicitor and Office of the Secy								
Departmental management								
BA D82-130		414		10 23 81	-414			
Youth conservation corps								
BA D82-131		-2,494		10 23 81	-2,494			
DEPARTMENT OF THE INTERIOR								
TOTAL BA		115,037			-79,541			35,496
DEPARTMENT OF JUSTICE								
General Administration								
Salaries and expenses								
BA D82-187		250		10 29 81	-250			
BA D82-188		196		10 29 81	-196			
United States Parole Commission								
Salaries and expenses								
BA D82-189		60		10 29 81	-60			
Legal Activities								
Salaries and expenses, Antitrust Division								
BA D82-190		81		10 29 81	-81			
Salaries and expenses, Foreign Claims Settl.								
BA D82-191		12		10 29 81	-12			
Federal Prison System								
Buildings and facilities								
BA D82-192		1,922		10 29 81	-1,922			
BA D82-17		2,700		10 1 81				2,700
BA D82-17A				2 8 82				
Office of Justice Assist., Res., and Statistics								
Law enforcement assistance								
BA D82-193		10,729		10 29 81	-10,729			
DEPARTMENT OF JUSTICE								
TOTAL BA		15,950			-13,250			2,700

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1982

AS OF 05/05/82 16:43

AMOUNTS IN THOUSANDS OF DOLLARS	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB / AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 5-1-82
DEPARTMENT OF LABOR								
Employment and Training Administration								
Employment and training assistance								
	BA D82-194	407,670		10 29 81	-407,670			
	BA D82-229	88,543		2 8 82				88,543
	BA D82-18	49,881		10 1 81	-49,881			
Occupational Safety and Health Admin.								
Salaries and expenses								
	BA D82-195	8,500		10 29 81	-8,500			
DEPARTMENT OF LABOR								
TOTAL BA		554,594			-466,051			88,543
DEPARTMENT OF STATE								
Administration of Foreign Affairs								
Emergencies in dipl. and consular service								
	BA D82-58	84		10 20 81	-84			
Acquis., oper. and main. of buildings abroad								
	BA D82-57	514		10 20 81	-514			
International Commissions								
Salaries and expenses								
	BA D82-59	80		10 20 81	-80			
Construction								
	BA D82-60	20		10 20 81	-20			
American sections, internat. commissions								
	BA D82-61	25		10 20 81	-25			
Other								
Emergency refugees and migration assistance fund								
	BA D82-19	35,043		10 1 81				35,043
	BA D82-19A		100	1 22 82				
Migration and refugee assistance								
	BA D82-241	40,000		4 23 82				40,000
	BA D82-242	10,000		4 23 82				10,000
U.S. bilateral science and technology agreements								
	BA D82-230	1,000		2 8 82				1,000
	BA D82-230A		1,000	4 23 82				2,000
DEPARTMENT OF STATE								
TOTAL BA		86,766	1,100		-723			87,143
DEPARTMENT OF TRANSPORTATION								
Federal Aviation Administration								
Civil supersonic aircraft development termination								
	BA D82-20	3,446		10 1 81	-3,400			46
Facilities & equip. (Airport & airway trust fund)								
	BA D82-21	185,783		10 1 81				185,783
	BA D82-21A		164,730	1 22 82				350,513
Federal Railroad Administration								
Commuter rail transfer								
	BA D82-243	37,500		4 23 82				37,500
Grants to National Railroad Passenger Corp.								
	BA D82-217	93,400		11 6 81	-12,740	-80,660		
Maritime Administration								
Ship construction								
	BA D82-231	10,000		2 8 82				10,000
Research and Special Programs Administration								
Research and special programs								
	BA D82-220	1,050		1 22 82				1,050
DEPARTMENT OF TRANSPORTATION								
TOTAL BA		331,179	164,730		-16,140	-80,660		399,109

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1982						AS OF 05/05/82 16:43		
AMOUNTS IN THOUSANDS OF DOLLARS	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB / AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 5-1-82
DEPARTMENT OF THE TREASURY								
Office of the Secretary								
International affairs								
BA	D82-196	109		10 29 81	-109			
Office of Revenue Sharing								
Salaries and expenses								
BA	D82-197	26		10 29 81	-26			
State and local government fiscal assistance fund								
BA	D82- 22	109,738		10 1 81	-4,122		676	106,292
O	D82- 23	6,287		10 1 81				
O	D82- 23A		14,635	3 18 82	-19,477		3,937	5,382
Federal Law Enforcement Training Center								
Construction								
BA	D82- 24	4,200		10 1 81				4,200
Salaries and expenses								
BA	D82-198	240		10 29 81	-240			
Bureau of Government Financial Operations								
New York City loan guarantee program								
BA	D82-199	16		10 29 81	-16			
Chrysler Corporation loan guarantee program								
BA	D82-200	23		10 29 81	-23			
Bureau of Alcohol, Tobacco and Firearms								
Salaries and expenses								
BA	D82-201	1,039		10 29 81	-1,039			
Bureau of the Mint								
Expansion and improvements								
BA	D82-132	70c		10 23 81			-70	
Internal Revenue Service								
Payment where energy credit exceeds liab. for tax								
BA	D82-202	8		10 29 81	-8			
DEPARTMENT OF THE TREASURY								
TOTAL BA		115,469			-5,583		606	110,492
TOTAL O		6,287	14,635		-19,477		3,937	5,382
ENVIRONMENTAL PROTECTION AGENCY								
Research and development								
BA	D82-133	1,889		10 23 81	-1,889			
Abatement, control and compliance								
BA	D82-134	8,062		10 23 81	-8,062			
Buildings and facilities								
BA	D82-135	69		10 23 81	-69			
Hazardous substance response trust fund								
BA	D82-136	3,360		10 23 81	-3,360			
BA 0000								
ENVIRONMENTAL PROTECTION AGENCY								
TOTAL BA		13,380			-13,380			
NATIONAL AERONAUTICS & SPACE ADMINISTRATION								
Construction of facilities								
BA	D82-137	2,800		10 23 81	-2,800			
BA 0000								
NATIONAL AERONAUTICS & SPACE ADMINISTRATION								
TOTAL BA		2,800			-2,800			
VETERANS ADMINISTRATION								
Medical and prosthetic research								
BA	D82-138	2,583		10 23 81	-2,583			

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1982

AS OF 05/05/82 16:43

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB / AGENCY RELEASES	CONGRESS- SIONALLY REQUIRED RELEASES	CUMULA- TIVE ADJUST- MENTS	AMOUNT DEFERRED AS OF 5-1-82
Medical admin. and misc. operating expenses	BA 082-139	921		10 23 81	-921			
Construction, major projects								
BA D82-140		91,300		10 23 81		-33,800		57,500
BA D82-141		7,877		10 23 81	-7,877			
Construction, minor projects								
BA D82-142		907		10 23 81	-907			
BA 0000								
VETERANS ADMINISTRATION TOTAL BA		103,588			-12,288	-33,800		57,500
OTHER INDEPENDENT AGENCIES								
ACTION								
Operating expenses, domestic programs	BA D82- 62	2,896		10 20 81	-2,896			
Administrative Conference of the U. S.								
Salaries and expenses	BA D82-143	16		10 23 81	-16			
Advisory Committee on Federal Pay								
Salaries and expenses	BA D82-144	4		10 23 81	-4			
Arms Control and Disarmament Agency								
Arms control and disarmament agency	BA D82- 63	282		10 20 81	-282			
Board for International Broadcasting								
Salaries and expenses	BA D82- 64	252		10 20 81	-252			
Comm. for the Purchase From the Blind								
Salaries and expenses	BA D82- 65	10		10 20 81	-10			
District of Columbia								
Loans for capital outlay	BA D82-232	38,832		2 8 82				38,832
Equal Employment Opportunity Commission								
Salaries and expenses	BA D82-145	3,000		10 23 81	-3,000			
Federal Emergency Management Agency								
State and local assistance	BA D82-205	1,814		10 29 81	-1,814			
National flood insurance fund								
BA D82-203		7,140		10 29 81	-7,140			
BA D82-204		358,860		10 29 81	-358,860			
General Services Administration								
Consumer information center	BA D82- 68	26		10 20 81	-26			
Nat. Archives & Records Service-operating	BA D82- 66	140		10 20 81	-140			
Federal Property Resources Service-operating	BA D82- 67	748		10 20 81	-748			
Automated Data & Telecom. Service-operating	BA D82-206	120		10 29 81	-120			
Advisory Commission on Intergovt. Relations								
Salaries and expenses	BA D82- 69	10		10 20 81	-10			
Delaware River Basin Commission								
Salaries and expenses	BA D82- 70	2		10 20 81	-2			
Contribution to the Del. River Basin Comm.	BA D82- 71	4		10 20 81	-4			

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1982							AS OF 05/05/82 16:43		
AMOUNTS IN THOUSANDS OF DOLLARS	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE DMB /AGENCY RELEASES	CONGRES- SIONALLY REQUIRED RELEASES	CUMULA- TIVE ADJUST- MENTS	AMOUNT DEFERRED AS OF 5-1-82	
Interstate Commission on the Potomac River Basin									
Contrib. to Interst. Comm. on Potomac Riv. Basin	BA D82- 72	1		10 20 81	-1				
Susquehanna River Basin Commission									
Salaries and expenses	BA D82- 73	1		10 20 81	-1				
Contrib. to the Susquehanna River Basin Comm.	BA D82- 74	1		10 20 81	-1				
International Communication Agency									
Salaries & expenses	BA D82- 75	4,680		10 20 81	-4,680				
Center for cul. and tech. exch. bet. east & west	BA D82- 76	125		10 20 81	-125				
Interstate Commerce Commission									
Salaries and expenses	BA D82-146	648		10 23 81	-648				
Japan-U.S. Friendship Commission									
Japan-U.S. Friendship Commission trust fund	BA D82- 77	34		10 20 81	-34				
Marine Mammal Commission									
Salaries and expenses	BA L82- 78	11		10 20 81	-11				
National Capital Planning Commission									
Salaries and expenses	BA D82-207	19		10 29 81	-19				
National Foundation on the Arts & Humanities									
Net. endowment for the arts: sal. & expenses	BA D82-147	11,208		10 23 81	-11,208				
Net. endowment for the human.: sal. and expenses	BA D82-208	5,892		10 29 81	-5,892				
Net. endowment for the human.: matching grants	BA D82-148	2,628		10 23 81	-2,628				
National Mediation Board									
Salaries and expenses	BA D82- 79	58		10 20 81	-58				
National Science Foundation									
Research and related activities	BA D82- 80	19,924		10 20 81	-19,924				
Scientific activities overseas	BA D82- 81	59		10 20 81	-59				
Science and engineering educ. activities	BA D82- 82	2,623		10 20 81	-2,623				
Neighborhood Reinvestment Corporation									
Payment to Neighborhood Reinvest. Corp.	BA D82- 83	181		10 20 81	-181				
Pennsylvania Avenue Development Corporation									
Salaries and expenses	BA D82-149	15		10 23 81	-15				
Public development	BA D82-150	239		10 23 81	-239				
Land acquisition and development fund	BA D82-151	42		10 23 81	-42				
	BA D82- 25	30,896		10 1 81	-10,000				
	BA D82- 25A			a 2 8 82				20,896	
Selective Service System									
Salaries and expenses	BA D82- 84	192		10 20 81	-192				
Small Business Administration									
Salaries and expenses	BA D82-152	3,137		10 23 81	-3,137				
Business loan and investment fund	BA D82-233	2,500		2 8 82				2,500	

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1982 AS OF 05/05/82 16:43

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULA- TIVE OMB /AGENCY RELEASES	CONGRES- SIONALLY REQUIRED RELEASES	CUMULA- TIVE ADJUST- MENTS	AMOUNT DEFERRED AS OF 5-1-82
Surety bond guarantees revolving fund								
BA	D82-154	373		10 23 81	-373			
BA	D82-234	3,000		2 8 82				3,000
Lease guarantees revolving fund								
BA	D82-153	67		10 23 81	-67			
Smithsonian Institution								
Museum programs and related research								
BA	D82-155	231		10 23 81	-231			
Restoration and renovation of buildings								
BA	D82-156	145		10 23 81	-145			
Motor Carrier Rate-making Study Commission								
Salaries and Expenses								
BA	D82- 26	150		10 1 81				150
Pres. Com. for the Study of Ethical Probs. in Med.								
Salaries and expenses								
BA	D82-221	262		1 22 82				262
Tennessee Valley Authority								
Tennessee Valley Authority fund								
BA	D82-157	2,321		10 23 81	-2,321			
United States Railway Association								
Payments for purchase of Conrail securities								
BA	D82-235	84,500		2 8 82				84,500
Water Resources Council								
Water resources planning								
BA	D82- 85	42		10 20 81	-42			
OTHER INDEPENDENT AGENCIES								
TOTAL BA		590,361			-440,221			150,140
TOTAL BA		6,991,880	959,968		-4,568,562	-294,343	39,178	3,128,119
TOTAL O		6,287	14,635		-19,477		3,937	5,382

- a. This report was transmitted solely to reflect technical adjustments to the previous report.
- b. Off-budget.
- c. This deferral was reported in error. Funds for this budget account were not withheld.

END OF REPORT

[FR Doc. 82-13429 Filed 5-17-82; 8:45 am]
BILLING CODE 3110-01-C

federal register

**Tuesday
May 18, 1982**

Part V

Federal Communications Commission

**Future Role of Low Power Television
Broadcasting and Television Translators
in the National Telecommunications
System**

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73, 74, 76, and 78

[BC Docket No. 78-253; FCC 82-107]

An Inquiry Into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's rules to include a new low power television service. The service will: (1) Permit a fuller utilization of the broadcast spectrum, (2) allow broadcasting to maximize its potential to meet the needs of consumers, and (3) open the regulatory doors to purveyors of alternative technologies. The action is necessary to resolve the issues of multiple ownership, comparative procedures and technical standards, as well as permitting program origination and/or subscription service via TV translator.

DATE: Effective June 17, 1982.

FOR FURTHER INFORMATION CONTACT: Molly Pauker, Broadcast Bureau, (202) 632-6460.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Parts 73 and 74

Communications equipment, Television.

47 CFR Part 76

Cable television.

47 CFR Part 78

Cable television, Communications equipment.

In the matter of an inquiry into the future role of low power television broadcasting and television translators in the National Telecommunications System, BC Docket No. 78-253.

Report and Order—Proceeding Terminated

Adopted: March 4, 1982.

Released: April 26, 1982.

By the Commission: Chairman Fowler dissenting in part and issuing a statement in which Commissioner Dawson joins; Commissioner Washburn dissenting in part and issuing a statement; Commissioners Fogarty and Rivera issuing separate statements.

Table of Contents

Title

I. History of BC Docket No. 78-253.

- II. Overview.
- III. Issues Relating to Channel Allocation.
- IV. Technical and Engineering Requirements.
- V. Applications.
- VI. Comparative Procedures and Criteria.
- VII. Low Power Station Ownership Policy.
- VIII. Low Power Station Operation.
- IX. Programming.
- X. Conclusion.

Appendices

- A. Rule Amendments.
- B. Amended Form 346.
- C. List of Comments.
- D. Summary of Comments.
- E. Tiered Application Processing Procedures for Pending Applications.

1. We have before us a document that culminates a lengthy proceeding in which we have considered authorization of a low power television service. This service in many ways is the logical extension of the existing translator service, which was authorized as a rebroadcast service in 1956.¹ However, our decision today to permit far greater program flexibility than we ever have permitted on translators also may be viewed as inaugurating a new broadcast service. In today's telecommunications environment, we are witnessing the rapid development of a multitude of new and competitive technologies designed to deliver entertainment and information services to the public. The low power service will permit fuller utilization of the broadcast spectrum in service to those ends. It is fitting that we engage in initiatives that will allow broadcasting to maximize its potential to meet the needs of consumers as we also open the regulatory doors to purveyors of alternative technologies that will attempt competitively to meet similar needs.

I. History of BC Docket No. 78-253

2. A television translator is a broadcast station, operating at relatively low power, that receives a television signal on one channel, amplifies it and retransmits it on another channel. Over 3,000 translators are licensed today, under Subpart G of Part 74 of the Commission's Rules. 47 CFR 74.701 *et seq.* The development of the present translator service previously has been detailed in several places in this docket, most notably in Appendix B of the Notice of Inquiry,² in the Report and Recommendations in the Low Power Television Inquiry ("Staff Report"),³

paragraphs 11 through 46, and briefly, in the Notice of Proposed Rule Making ("Notice"),⁴ paragraphs 9 through 21. Therefore, we shall not reiterate this history here, but instead direct interested persons to the above-referenced documents for more detailed information. We do note that in the annals of the translator service one may find several examples of waivers authorizing program origination (via video cassette) and subscription service, the principal modes of operation that the Commission has proposed to permit generally via rule change, in the instant proceeding.⁵ These instances have illustrated the viability of a low power service substantially as proposed, though on a limited scale, and, as such, may be considered significant elements in the record of this proceeding.

3. This proceeding was initiated with a Notice of Inquiry in 1978. Citing various recent study reports, petitions and suggestions urging an expanded role for television translators, the inquiry posed the fundamental question: "what role may low power television stations and translator stations play in delivering programming to the public."⁶ Comments were requested on six "decision criteria" as the framework for initial policy development:

1. Public need for program diversity;
2. Spectrum requirements;
3. Interference to communications services;
4. Media competition and economic impact;
5. Low power/translator economic viability and ownership; and
6. Impact on Commission resources and service implementation delays.

68 F.C.C. 2d at 1536. These areas continue to be the major concerns in this proceeding. Resolution of these basic issues, which the rule making record provides, informs our determination of whether there should be a low power service and what it should look like.

4. The inquiry was concluded two years after its commencement, with the introduction into the record of the Staff Report and adoption of the Notice. The Staff Report documents the approximately 100 comments and reply comments filed in response to the Notice of Inquiry and also contains detailed staff analysis of the present television translator service and the potential for its expanded use as an originating

¹ 45 FR 69178 (published October 17, 1980).

² See, e.g., Unalaska School District (BPTTV-4857) and City of St. Paul (BPTTV-4858), Report No. 11887, October 25, 1973; Leeco TV, Inc., 9 F.C.C. 2d 1028 (1967).

³ 68 F.C.C. 2d 1525, 1527 (1978).

⁴ Report and Order, Docket No. 11811, FCC 82-44 (1982).

⁵ 68 F.C.C. 2d 1525 (1978).

⁶ Couzens, M., et al., U.S. Government Printing Office No. 721-146/134 (September 9, 1980).

broadcast service. The Report addresses and recommends an approach toward numerous aspects of the proposed low power service, within the framework of the six decision criteria. It also contains a report prepared under a Commission contract that describes the development of prototype low-powered television operations in the United States and Canada.

5. The Staff Report served as a backdrop for the contemporaneous Notice of Proposed Rule Making, which sought comment on a series of fairly explicit proposals for a new low power service.⁷ The Notice proposed generally that translators be permitted to originate programming and/or operate subscription service to any degree. It proposed that low power stations be permitted to operate on any available VHF or UHF channel on a secondary, noninterfering basis to full-service stations, at powers of up to 100 watts VHF (in certain instances) and 1,000 watts UHF. It proposed relaxation of Commission rules relating to program content and would tailor program-related statutory requirements to the limited technical capacity of the station. Finally, the Commission proposed to continue authorizing translator stations, including applications for translators seeking low power features on a waiver basis, during the pendency of the rule making. Interim grants would be conditioned upon the outcome of the rule making. Where the outcome of an application would depend upon an issue to be resolved in the rule making, such as comparative criteria, action would be deferred until the conclusion of the rule making. The rationale for this was that to stop processing applications in the conventional translator service, whose merit already was amply proved, would disserve the public, but that to refuse to consider applications seeking low power features would encourage disingenuous translator applications from parties whose real interest was low power operation.

6. The interim processing policy cannot be deemed successful in facilitating prompt implementation of the service.⁸ Nevertheless, it highlighted the importance of the sixth decision criterion, in paragraph 3, *supra*, providing an invaluable indication of the potential demand for the service and an object lesson regarding the necessity for

additional administrative and technical refinements in the proposals that could not have been anticipated without practical experience. The notion of interim processing itself was controversial, spawning two lawsuits. In *Little Rock Television Company, et al. v. FCC*, 646 F. 2d 1271 (8th Cir. 1981) *per curiam*, the court dismissed, on grounds of jurisdiction and ripeness, a challenge to the Commission's extension of a cut-off date.⁹ In *Corporation for Public Broadcasting v. FCC*, No. 81-1075, the United States Court of Appeals for the District of Columbia Circuit was asked to adjudicate the claim that interim allocation of spectrum for low power stations prejudices noncommercial applicants, who require more time to secure funding for applications than do their commercial counterparts. The suit was dismissed at the request of the petitioner in October, 1981.

7. In addition to the court challenges, the unexpectedly large number of interim applications filed brought to the Commission's attention a technical inadequacy in the low power proposal. The existing rules, amendment of which was not proposed, prohibit translator-to-translator interference, but essentially leave the judgment as to whether a proposed translator is mutually exclusive with existing translators or other applications to engineering discretion.¹⁰ This approach was sufficient for the largely rural translator service, where mutually exclusive applications were unusual and the relatively low volume of applications permitted extensive manual analysis. However, during the pendency of the rule making, over 7,000 applications were filed.¹¹ Many of these were in major markets and were obviously mutually exclusive with each other, but without precise translator-to-translator exclusivity standards that permit automated analysis, it was impossible formally to determine mutual exclusivity. To remedy this, a Further Notice of Proposed Rule Making was

⁹ A cut-off date is the deadline for filing petitions to deny and competing applications with respect to applications previously published on a cut-off list of applications ready and available for processing.

¹⁰ Each translator application is examined on a case-by-case basis; separate calculations are performed regarding other authorized spectrum users to which the proposed facility could cause interference. Fixed coordination distances or protected contours are not utilized between translators; rather, engineering assessment of each particular case is relied upon.

¹¹ When it became clear that the existing method of processing was inadequate to deal with this magnitude, the Commission stopped accepting additional applications, except in areas where the need for service outweighed the administrative burdens. See, Memorandum Opinion and Order, 46 FR 26062 (published May 11, 1981).

issued, augmenting the technical proposals in the Notice with a prohibited contour overlap mode of processing that can be substantially automated.¹²

8. The United States Congress also involved itself with the administrative dilemma posed by the great number of applications filed. The Omnibus Budget Reconciliation Act of 1981 amended Section 309 of the Communications Act to permit random selection among competing telecommunications facilities applicants.¹³ This was intended as an alternative to time-consuming comparative hearings:

The conferees are particularly concerned with the delay that will result if comparative proceedings are used to award licenses for low power television service. The Commission has already received over 5,000 applications, most of which are, or will be mutually exclusive with other applications. Unless alternate procedures are devised, the Commission will have a geometric increase in comparative hearings and many years of delay in action on these applications. The conferees note that a matter such as this is ideally suited for the application of random selection procedures. By authorizing the Commission to apply random selection to any license application already submitted, but not yet designated for hearing, it will be possible to process low power television applications rapidly on a random selection basis.

Omnibus Budget Reconciliation Act of 1981, Conference Report, H.R. Rep. No. 97-208, 97th Cong. 1st Sess. (July 29, 1981), at 898. In accordance with the Congressional authorization, we commenced rule making seeking public comment upon general proposals for implementation of a random selection system with preferences for underrepresented groups or individuals.¹⁴ The proceeding was terminated on February 8, 1982, with the Commission's conclusion that, on the basis of the record adduced, it would not be feasible to implement a system of random selection within the constraints of the legislative provisions.¹⁵

9. We have received numerous comments and reply comments on both the Notice and the Further Notice, as well as comments in the lottery proceeding relating to low power

¹² 46 FR 42478 (published August 21, 1981).

¹³ Pub. L. No. 97-35, 95 Stat. 736 (August 13, 1981).

¹⁴ Notice of Proposed Rule Making, In the Matter of Amendment of Part 1 of the Commission's Rules to Allow the Selection from Among Mutually Exclusive Competing Applications Using Random Selection or Lotteries Instead of Comparative Hearings, Gen. Docket No. 81-768, FCC 81-524, 46 FR 58110 (published November 30, 1981).

¹⁵ Report and Order, Gen. Docket No. 81-768, adopted February 8, 1982, 47 FR 11886 (published March 19, 1982).

⁷ The proposals will be addressed specifically below.

⁸ To date, approximately sixty-five interim translator grants have been made in the continental United States, eight including a waiver for low power features. Over one hundred additional interim grants have been made for low power operations in the State of Alaska.

application processing.¹⁶ From the voluminous record developed to date and the practical experience we have gleaned via the interim processing policy, we have been able to distill the following regulations for a low power television service. We believe the rules set out below will fulfill the multiple goals of satisfying public demand, protecting the rights of other broadcasters and affected telecommunications services, not prohibitively burdening Commission administrative resources and generally furthering our current regulatory policies and those established by Congress.

II. Overview

10. The basic issue presented in this proceeding simply is: should there be a low power service? This question must be addressed in several levels, both theoretical and practical. As the recent past has shown, we also must consider the relatively great administrative resource impact that implementation of the low power service will have upon the Commission. This is a particularly significant consideration, in light of present budgetary constraints that mandate austerity at the Commission. Nevertheless, weighing all the factors, we are convinced that the benefits of the low power service will outweigh its costs to the public. The most persuasive evidence for this conclusion are the pleadings comprising the record. The comments overwhelmingly favor institution of the low power service. As the comment summary reveals, a variety of modifications to our initial proposal are suggested. Among them are some proposals with which we are in accord; these are reflected in the rules and policies promulgated herein, which, it will be noted, do not in every instance track our initial proposals. Other comments propose changes in our proposals that, on consideration, we find unrealistic or impracticable, or simply not in accord with our policy goals. Nevertheless, the record adduced in response to the Notice airs thoroughly the major issues in this rule making and contains commentary representing a variety of interests. What is most noteworthy is the paucity of direct opposition to the concept of a low power television service.

11. Our first decision criterion was "public need for program diversity." It is self-evident that additional stations will provide additional programming. How "different" this additional programming will be is not readily determinable; however, the analysis in our Radio

Deregulation proceeding provides a basis for the inference that provision of additional outlets can act as an incentive for licensees to provide program diversity. Report and Order, Deregulation of Radio, 84 F.C.C. 2d 968, 1981. In addition, we believe that the record evidences a public desire for additional television service, as well as a belief that low power stations can provide diverse programming. We have concluded, however, that the specific nature of the programming is properly left to the licensees' discretion, based upon the mandates of the marketplace.

12. Local programming usually has been an important service objective in the broadcast services (*see*, Sixth Report and Order, Docket Nos. 8736, 8975, 9175 and 8976, 41 F.C.C. 148 (1952)), an objective that the low power service is particularly suited to carry out. The comments are in accord on this issue; however, they differ in their recommendations as to how we might achieve this objective. In our deliberations, the issue becomes: acknowledging the public desire for additional television stations with the potential to provide diverse or local program service, what should be the Commission's role in determining the precise nature of the program service?

13. In general, we are reluctant to mandate that particular kinds and amounts of programming be aired, substituting our decision for market mechanisms. First and foremost, to do so would run afoul of the discretion we must afford to the program decisions of licensees, under the First Amendment to the Constitution and our long line of precedent upholding that discretion. *See, e.g.*, Columbia Broadcasting System v. Democratic National Committee, 412 U.S. 94 (1976). Second, even where we perceive a need to adopt a hands-on policy toward low power program content, we historically have found less intrusive means of effectuating that policy. The law constrains us to choose the least drastic means of achieving even a legitimate governmental purpose that has the incidental effect of intruding upon protected freedoms. *See*, Shelton v. Tucker, 364 U.S. 479 (1960); U.S. v. O'Brien, 391 U.S. 367 (1968). In the past, we have sought to achieve programming objectives by means of more or less content-related regulations, such as ascertainment. *See*, Report and Order, Primer on Ascertainment of Community Problems by Broadcast Applicants, 27 F.C.C. 2d 650 (1971). As the radio service became more directly responsive to consumer demands, however, we found it unnecessary to continue to impose this obligation on licensees. *See*,

Deregulation of Radio, 84 FCC 2d 968 (1981); *reconsid. denied*, 87 FCC 2d 797 (1981).

14. In our deliberations, we remain mindful of the fact that, while low power television indeed is a broadcast service, its technical and operational differences from full service television inform different sets of regulatory decisions. Title III of the Communications Act sets out the basic precepts of broadcast regulation, but affords the Commission considerable latitude in their interpretation and application.¹⁷ Generally, our broadcast rules and policies proceed from the assumption that broadcast stations serve the public interest when they meet the programming needs and interests of all elements of the community. The Commission has attempted to achieve its regulatory objectives regarding programming by both content and structural rules. However, in light of the nature of the low power service, particularly the small and undefined coverage areas of low power stations, a concern that all elements of the larger community be provided with program service is not present. In addition, it is likely that low power stations will have to be very directly responsive to the interests of local consumers, to assure economic viability. In light of these factors, it is our judgment that minimal regulation of low power television is in the public interest notwithstanding the fact that it is a broadcast service.

15. We carefully have considered the option of imposing no regulatory mechanisms, direct or indirect, and instead relying exclusively upon market forces to achieve diversity of programming. (This approach seems suited to the low power service, in which we have proposed, and will apply, only minimal restrictions upon the free transferability of stations.) Further, low power stations may be constructed, and presumably transferred, at relative low costs, and their small coverage areas lend themselves to programming to suit discrete groups in a community. In this environment, where licensees are likely

¹⁷ For example, subscription radio operation using an FM subcarrier has been treated as a hybrid broadcast service and, on that basis, been exempted from statutory provisions otherwise applicable to broadcast services. *See*, KMLA Broadcasting Corp. v. Twentieth Century Cigarette Vendors Corp., 264 F. Supp. 35 (C.D. Cal. 1967); Greater Washington Educational Telecommunications Association, Inc., 49 FCC 2d 948 (1974). And the legal appendix to the staff report Policies for Regulation of Direct Broadcast Satellites (DBS), F. Setzer, et al., FCC, Office of Plans and Policy (October, 1980), raises the question of whether subscription television is properly considered a broadcast service.

¹⁶ A summary of comments is attached hereto as Appendix D.

to be directly responsive to audience desires, we believe there lies a very good possibility of consumer sovereignty. Thus, if the market works to establish consumer preferences, we must ask if anything is to be gained by imposing regulations designed to achieve those same ends. The Commission need engage in this sort of intervention only when factors exist that significantly impede consumers from influencing program fare. On the basis of the rulemaking record in this proceeding, we find no likelihood that such a market failure will occur. In addition, we are reluctant to burden an untried service with regulations that could prove unnecessary. Accordingly, we resolve our first decision criterion with the conclusion that the low power service, as authorized herein, is likely to provide program service that is responsive to public demand without the necessity of regulatory intervention by the Commission.¹⁸

16. Another issue that is critical to our conclusions is what might be considered the opportunity cost of low power, in terms of utilization of spectrum. That is, what are the legitimate, competing claims to the spectrum we have proposed for low power stations, and to what extent will they be precluded by the authorization of the low power service? Our second and third decision criteria, spectrum requirements and interference to communications services, focus upon this issue. A good deal of commentary was devoted to these questions, primarily from other users or would-be users of the frequencies that would be used by low power licensees. Full service television stations are the primary users of the radio frequencies at issue. Many voice the concern that low power stations will be permitted to encroach upon their primary status. Land mobile services share some of the channels at issue with television stations. Their representatives also fear encroachment by low power users. Another concern, raised in the Notice, is the possible use of auxiliary broadcast services by low power licensees, and the possible scarcity of television microwave spectrum that could result. The availability of frequencies for television microwave uses may be essential to continued local

coverage, both for full service and originating low power stations. Although we received little commentary on this issue, we believe it warrants consideration as a primary spectrum management concern arising from the low power proposal. Finally, cable systems, at various points in the distribution system, and multipoint distribution services, at the converters that provide the TV input signals, make use of TV broadcast frequencies. Because this use of spectrum does not require radiation of signals on frequencies allocated for broadcast use and operates on a nonpreclusion basis to broadcast stations, it has not been necessary to license it. Although cable and microwave operators generally have been able to use available television channels without interference to the primary users, they have evinced concern that authorization of low power stations will preclude them from spectrum that heretofore has been available for their use.

17. Our evaluation of the record and the technical questions involved in these issues has convinced us that we are not faced with an either/or situation, in terms of spectrum utilization. First and foremost, we intend to maintain the secondary spectrum priority of low power stations, a policy that assures protection from interference to full service stations. Secondary spectrum priority has two aspects: Low power stations may not cause objectionable interference to existing full service stations, and low power stations must yield to facilitate increases of existing full service stations or to new full service stations where interference occurs. A similar policy holds true where land mobile services currently share primary use of some UHF spectrum with full service television. In paragraphs 24 through 46, *infra*, we have defined the parameters under which we will authorize low power stations in relation to land mobile and full service stations, and thereby have defined criteria for predicting objectionable interference. We also have come to believe that auxiliary services used by low power stations and the other auxiliary broadcast services can coexist, as discussed in paragraph 47, *infra*. Finally, we believe that cable and MDS systems will be able to adapt to an environment in which low power stations use the radio spectrum. These services' use of broadcast frequencies is subject to nonpreclusion of all other authorized broadcast users. We are convinced, though, that the likelihood of interference problems arising warrants a minor change in the policy proposed in

the Notice with respect to cable systems. See, paragraph 45, *infra*.

18. In brief, we have concluded that the competing uses for television spectrum all may be accommodated, in varying degrees. However, we also recognize that this spectrum is becoming crowded, and, with the exception of full service stations, whose primary use of this spectrum is assured, no one set of interests can receive all they have sought. We believe that this is a situation in which it is feasible and indeed desirable to attempt to partially satisfy all competing claims, and it is well within our discretion to do so. See, *Goodwill Stations, Inc. v. FCC*, 325 F. 2d 637 (D.C. Cir. 1963); *Coastal Bend Television Co. v. FCC*, 234 F. 2d 686, 690 (D.C. Cir. 1956); *Loyola University, et al v. FCC*, Nos. 80-1824 and 80-2018, *slip op.* (D.C. Cir., January 26, 1982).

19. Our fourth and fifth decision criteria, media competition and economic impact and low power/translator economic viability and ownership, are interrelated to a large degree, and are amenable only to speculation until the service is operational. The record does not contain convincing evidence that the low power service could have a competitively destructive impact on existing broadcast, cable or microwave stations. Nor does it contain convincing assurance of the viability of the low power service. Indeed whether low power will be viable at all appears more uncertain than whether it will pose an undesirable competitive threat to existing facilities. For this reason, we have structured our ownership criteria to permit existing licensees to engage in low power ventures within the limits imposed by the comparative criterion favoring diversification of broadcast interests. To the extent that this may preclude new entrants later, the value to be gained from permitting experienced broadcasters to develop the service initially is believed to outweigh the possible loss of new entrants. In sum, we believe that the balance we have struck will foster a low power service that can grow to provide program alternatives to full service stations and cable systems in a manner that increases competition in the marketplace and thus enhances the telecommunications service available to the public.

20. We already have alluded to our sixth decision criterion, impact upon Commission resources and service implementation delays. This has proved to be the most critical and troublesome element of all. Throughout this proceeding, we have struggled to solve

¹⁸ We recognize, of course, that the Commission's ownership rules also are intended to influence programming content because a paramount purpose of structural regulations is to assure a variety of viewpoints in any informational programming provided by licensees. Public interest considerations relating to the imposition of ownership rules in the low power service are discussed separately at paragraphs 19 and 78 through 90, *infra*.

the dilemma posed by the early deluge of applications. Indeed, our experience with interim applications has been invaluable in informing our deliberations regarding the administrative tools required for implementation of the low power service. Our solution to this dilemma is detailed in paragraphs 51 through 74, *infra*. Briefly, we are not now proposing to lift the freeze on new applications that was imposed on April 9, 1981.¹⁹ Before considering termination of the freeze, we shall identify applications that are mutually exclusive with applications that already have been cut off,²⁰ place them on a "B" cut-off list, process those applications and either grant or designate them for hearing, as circumstances dictate. This processing will occur in several phases, beginning with the most rural applications. See, Appendix E. The cases will be set for hearings as our resources permit. When the processing of the currently cut-off applications is completed, the Commission will publish cut-off lists of applications on file that were neither mutually exclusive with applications on the existing cut-off lists nor cut off at the time of the freeze. The freeze will be lifted for acceptance of applications in competition with those on cut-off lists, and processing will continue in the manner described above.

21. The hearing process obviously will be time-consuming. When and if a system of random selection is instituted for choosing among competing broadcast applications, it, of course, will be applied to low power. Until such time, it would behoove competing applicants to settle their conflicts privately and resolve mutual exclusivities prior to hearing. We strongly encourage plans that involve time-sharing and pooling resources, which could be especially beneficial in light of the fact that low power is a new service whose viability is as yet undetermined. We shall make every effort to rule promptly on all settlements among competing applicants, under Section 311 (c) or (d) of the Communications Act of 1934, as amended, and §§ 73.3525 and 73.3568 of our rules. The use of largely paper hearings should shorten the time until authorization considerably. We are reallocating our staff resources to the

extent possible to process the backlog and new applications expeditiously, within existing budgetary limitations.

22. We recognize that the hearing process can be needlessly cumbersome, particularly in a secondary service. However, we have not been able to develop acceptable alternative procedures within current legislative constraints. We have attempted to devise somewhat streamlined comparative hearing procedures. Furthermore, we intend to restrict the types of pleadings and issues we shall entertain during this abbreviated hearing process, to a degree consistent with the nature of the low power service. See, paragraphs 65 through 68, *infra*. We continue to believe that both a lottery and modification of the hearing process may be essential to improving our efficiency with reduced staff; however, we do not believe this proceeding is the appropriate vehicle in which to modify all our practices and procedures that may affect other broadcast services, particularly in light of the functional differences between full service and low power stations.²¹ As we have indicated, we are making every effort to expedite the processing of low power applications, both with increased staff resources and computer capacity. However, some of this burden quite properly falls upon the applicants. If, given the strong incentive to settle privately or opt for paper hearings, we still are confronted with thousands of competing applicants insistent on hearings, we cannot promise prompt authorizations. The Commission is committed to elimination of the backlog; but we have discovered no magic formula for this.

23. Our conclusion that low power applications should be processed similarly to other broadcast applications is related to a broader policy issue: to what extent should the rules for low power stations diverge from the analogous rules for other broadcast facilities? As stated above, this proceeding is not intended to set broadcast policy generally. In some instances, however, low power can provide a useful test case for more general deregulatory initiatives. On the other hand, there are other areas where we believe it is more sensible to decide

a particular issue in a separate proceeding designed to air all aspects of that issue alone. For example, it has come to our attention that some low power applications propose a teletext service. Because we are looking into the advisability of teletext-related service generally, (see, Notice of Proposed Rule Making, Amendment of Part 73 to Authorize Transmission of Teletext by TV Stations, BC Docket No. 81-741, 46 FR 60851 (published December 14, 1981)), the issue of whether the same or different rules for teletext should apply to low power stations, on account of their singular service capability, will be resolved in our separate proceeding on teletext. Finally, while we have several "unregulatory" initiatives underway, and a number of additional ones are contemplated, we do not intend to dispense with rule making and enact them in the low power context, rather than awaiting the results of the separate proceedings in question. We do intend, however, to resume acceptance of applications for experimental stations that propose novel uses of low power technology, at such time as we have eliminated the present processing backlog and otherwise lifted the freeze on acceptance of new applications.²²

III. Issues Relating to Channel Allocation

24. *Spectrum Priority*. Although some parties urge us to do otherwise, it is our firm intention that low power stations remain secondary, in terms of spectrum priority. While we agree with parties averring that low power stations can provide needed and meaningful service, we point out that the coverage obligations to which we subject full service stations specifically are designed to ensure maximum service to the public, beyond what we shall require of low power. This fact, we believe, constrains us to ensure the continued primacy of full service stations by emphasizing the secondary status of low power stations. We also emphasize, though, that while the rules for the low power service are intended to protect the public's expectation of service from full service stations, we do not intend to cater to full service licensees' unreasonable fears of competition from low power stations, and fetter the low power service for that reason. We believe low power can provide competition that stimulates the entire telecommunications marketplace.

²² We stopped accepting applications for such experimental stations on April 24, 1980. See, Public Notice, FCC 80-262, April 29, 1980.

¹⁹ Because we are deciding not to abrogate the freeze herein, the several pending petitions for reconsideration of the freeze will be dismissed, as will pending requests for waiver of the freeze that do not raise a novel and compelling public interest ground for waiver in a particular unique situation.

²⁰ The pre-freeze cut-off lists were published at 45 FR 70974 (October 17, 1980); 45 FR 8114 (December 9, 1980); and 46 FR 12852 (February 18, 1981).

²¹ We are committed generally to reduction or elimination of unnecessary regulations, see, e.g., Report and Order, Deregulation of Radio, 84 F.C.C. 2d 968 (1981); *reconsid. denied*, 87 F.C.C. 2d 797 (1981); Revision of Application for Renewal of License of Commercial and Noncommercial AM, FM, and Television Licensees, 46 FR 26236 (published May 11, 1981). It goes without saying that any proceedings that accomplish this task with respect to relevant rules will apply to the low power service.

25. The record indicates that not all parties share a common understanding of the concept of secondary spectrum priority. Under the Commission's present rules (§ 74.703) and the Notice of Proposed Rule Making, secondary status means (1) a low power station will not be authorized where there is a possibility of objectionable interference to an existing full service station, under the standards prescribed herein; (2) an authorized low power station that causes objectionable interference to an existing full service station is responsible for eliminating the interference, or the low power station must cease operation; (3) an existing low power station that would cause interference in connection with a proposed increase or modification of facilities of an existing full service station or in connection with a proposed new full service station is responsible for eliminating the interference, or the low power station must cease operation. These are the rules under which low power stations will operate. The notification and reporting provisions in § 74.703 (c) and (d) will continue to apply with the one modification proposed in the Notice and advocated by Citizens Communications Center, the National Telecommunications and Information Administration and the National Translator Association, to wit, that low power stations need not cease operation until they have been proved by the complaining party to be the cause of the interference complained of, but they must cooperate fully in tests to determine the cause of interference and remain willing to cease operation at the request of the Commission.²³ "Interference" as it is used in this context is discussed in the following paragraphs, to facilitate a common understanding among all parties of when interference will be predicted to occur.

26. In agreement with parties urging that we develop more detailed interference prediction criteria, we proposed desired-to-undesired (D/U) signal ratios to define the relative signal strengths of the dominant and

²³ Several parties, including Citizens Communications Center and United Auto Workers, ask that the Commission give favorable consideration to the existence of a low power station that would be precluded by a full service application, where this situation arises. We are reluctant to do so. Where possible, the low power licensee on an allocated channel is free to propose to upgrade its service by filing a competing full service application; however, as 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.

interfering signals, both in the low power-to-full service and low power-to-low power contexts. After evaluation of the comments received in response to the Further Notice, we remain convinced that a modified prohibited contour overlap standard is the preferable method of predicting interference, in order to promote spectral efficiency. We therefore delete from our rules the UHF spacing requirements of § 74.702(c). We do note that, making a few conservative assumptions, a set of mileage requirements can be derived. While processing will be based on prohibited overlap criteria contained in the rules, detailed calculations are not required of the applicant and unless an unusually high power (greater than 20 kW UHF ERP or 100 watts VHF ERP) or antenna height (greater than 500 feet above average terrain) is anticipated, applications meeting the following full spacings should have no conflicts with full service stations:

Full service station is—	
VHF	
Co-channel non-offset	210 miles.
Co-channel offset	150 miles.
± 1 Channel	90 miles.
UHF	
Co-channel non-offset	210 miles.
Co-channel offset	150 miles.
± channel	75 miles.
± 2, 3, 4, 5 channels	20 miles.
± 7 channels	60 miles.
- 14 channels	70 miles.
- 15 channels	75 miles.

In many cases, prohibited overlap processing will allow grant of applications at smaller mileage separations. However, applicants are reminded that applications not meeting the prohibited overlap standards will be returned, so, particularly in areas where low power demand exceeds available spectrum, the proposed technical facilities should be carefully selected. Because of uncertainties inherent in predicting propagation, variations in equipment characteristics and the fact that we are, in essence, attempting to add a significant number of additional stations to a long-established allocations scheme, instances of interference from, to and between low power stations may occur. Indeed, in certain circumstances, there may be a potential for significant interference. We have attempted to adopt criteria that strike a balance between concerns over interference and a desire to maximize the benefits of a new service. As low power stations are authorized, and cases of interference are called to our attention, it is our intent to identify categories where it may be appropriate to refine our criteria to take into account

special circumstances, such as overwater paths or superrefraction and ducting, in which we would want to be more restrictive in low power authorizations. Intensified efforts also are underway by propagation scientists and engineers at the Commission, NTIA/ITS, other agencies and private organizations to improve the accuracy of propagation predictions in general and to develop practical criteria that can be incorporated into Commission deliberations and assignment decisions. For example, the Commission's Office of Science and Technology has an on-going project in cooperation with NTIA/ITS to collect propagation data in Southern California where superrefraction has created problems for a number of years. Data collection is scheduled to continue through October, 1982, leading to development of a more realistic propagation model for that area.

27. *Distance Separations.* Some parties asked that we retain the UHF separations, add VHF separations and/or adopt mileage separations to govern between low power stations, or that we promulgate a table of assignments for low power. We decline to do either, for several reasons. These approaches do not comport with the secondary nature of low power stations. They are less spectrally efficient than the prohibited contour overlap standards we have proposed. Finally, we believe a table of assignments would represent an unnecessarily rigid approach in a demand-driven service where we are fostering marketplace sovereignty. In the words of Gammon and Grange, "Communities need not rely on the Commission's clouded crystal ball for an access to spectrum space, but on market forces which will result in an efficient and quick allocation of spectrum space."²⁴ Within the constraints necessarily imposed by our prohibitions upon objectionable interference, which will be strictly enforced, we believe the public interest best will be served by our permitting applicants to locate their stations and configure their service areas as market conditions dictate. The mandates of Section 307(b) of the Communications Act are fulfilled by virtue of the fact that most channel availabilities for low power exist outside the major markets. In addition, we shall process rural applications before urban, at least until the present backlog is significantly reduced. See, Appendix E. This will have the effect of providing service where it arguably is most needed. Beyond this, we do not believe that fair and efficient spectrum

²⁴ Gammon and Grange comments at 10.

allocation can be furthered significantly by our engineering an elaborate allocation plan for stations that have no coverage requirements and whose continued existence is uncertain in light of their secondary status.

28. *Noncommercial channel reservations.* Similar reasoning applies to channel reservations for noncommercial low power stations, advocated by the corporation for Public Broadcasting, the Public Broadcasting Service and the National Association of Public Television Stations, among others. Indeed, the entire notion of noncommercial operation is called into question in this service, as discussed in paragraphs 71 and 72, *infra*. The request for reserved channels is premised on the difficulty noncommercial applicants have in obtaining financing. The theory is based upon spectrum scarcity, that is, because it takes them longer to secure funding, there may be no more channels left by the time noncommercial applicants are ready to apply. However, there still are reserved channels available for full service stations in many markets, which, we believe, fulfills the overall plan for allocation of public stations embodied in the Sixth Report and Order, *supra*. Moreover, in recognition of the often disadvantaged financial status of all noncommercial stations, Congress directed the Commission to explore alternative funding sources for public stations. Public Broadcasting Amendments Act of 1981, Pub. L. No. 97-53, 95 Stat. 736, sections 1221-1234 (August 13, 1981). In light of this initiative, and the fact that the Commission is not requiring public low power stations to operate without advertising, we believe it is unnecessary to reserve channels for noncommercial low power stations. Channel reservation comports with neither our overall approach to low power noncommercial operation nor with the secondary status of all low power stations. Indeed, we are herein adopting our proposal to eliminate the preference for educational rebroadcast on reserved channels, which gives noncommercial translators an absolute priority over commercial ones on reserved channels. *See*, 23 R.R. 2d 1504, 1508 (1971).²⁵

29. *Channel Selection.* We have received comments from many parties asking that we preclude low power use of certain channels or bands, in order to secure that spectrum for a competing use. For example, the National Cable Television Association, representing

²⁵ In the full service context, these channels continue to be reserved for the exclusive use of noncommercial stations. *See*, § 73.606(a) of the rules.

cable interests, would have low power limited to UHF channels; various land mobile concerns want Channels 4, 5, 7 and 14 through 20 to be unavailable to low power stations. As we have stated, we are aware of the competing uses for the television spectrum. However, we do not intend to engage in spectrum reallocation in this proceeding. Low power is a broadcast use; as such, it is entitled to use the radio frequencies allocated for television broadcast use, subject to the constraints imposed by its secondary priority. We are confident that the desired-to-undesired frequency ratios we are adopting are adequate to protect the primary users of this spectrum. Therefore, we shall permit low power applicants to select any channel between 2 and 69, subject to our technical rules, including land mobile protection as discussed in paragraph 46, *infra*.²⁶ We are not requiring certification that the channel selected is the one least likely to cause interference of the channels available. We do caution, however, that low power use of certain channels (principally 4, 5, 6, 7, 13, 14 through 21 and 69) may be subject to interference from authorized land mobile, point-to-point or FM stations; the rules we are adopting are not designed to protect low power stations from this. Prudence would suggest choosing a different channel where possible, but we shall not adopt a rule requiring this. Neither will we require an applicant filing a mutually exclusive application to certify that no other channel is available in the market,²⁷ because we recognize that other factors, such as site availability, may influence choice of channel, particularly in a service where stations have small coverage areas and where viability is uncertain.²⁸

30. To provide maximum flexibility in channel selection, we are adopting our proposal to eliminate § 74.732(d), which prohibits VHF translators from all-UHF markets and, § 74.732(e)(1) and (2), which has the effect of prohibiting UHF stations from operating VHF translators

²⁶ To effectuate this policy, we are amending § 74.702(c)(1) and (d) so as to eliminate priorities in UHF channel selection. Nevertheless, applications will not be accepted on channels where they cannot protect full service television stations, existing translators and land mobile allotments in the manner described in paragraphs 32 through 46.

²⁷ This has been advocated by Community Television Network.

²⁸ Indeed, it is possible to envision a situation in which a channel might be particularly desirable to an applicant on the basis of its unlikelihood of being affected by future full service stations. On the other hand, even in markets with a large number of low power channels available, a few particular channels might be attractive because they offer an opportunity for future upgrading to full service operation.

on unassigned channels in distant markets. It is possible that the addition of a number of UHF low power stations will further the goal of UHF comparability; however, we do not see additional VHF low power stations generally as posing a significant enough competitive threat to UHF full service facilities to justify restricting VHF low power stations geographically.²⁹ Finally, we are eliminating our current prohibition on use of the fifteen-mile rule, § 73.607(b), embodied in § 74.702(b)(2) and (g), because elimination of the preference in § 74.703(a) for 1,000 watt UHF translators on assigned channels renders this prohibition meaningless.

31. *Maximum Power Limits.* We have reviewed the comments regarding the power limits proposed for low power stations. A number of parties urge the Commission to permit higher power on low power stations, either across the board or on a waiver basis. Others advise against this, on the grounds that the likelihood of interference, both to full service stations and other low power stations, will increase with increased power. We are inclined to agree with this view. With one exception, it is our opinion that the power limits proposed in the *Notice* are adequate to ensure viable coverage areas for low power stations while restrictive enough to preclude undue interference under the technical standards adopted. We initially proposed to allow 100 watts VHF power in situations where both co-channel and adjacent channel mileage separations are met. Full service adjacent channel mileage separations allow substantial amounts of predicted interference, on the theory that viewers losing service will gain a replacement primary service, generally one closer to them and therefore more attuned to their local needs. We do not believe that secondary low power stations can provide an equivalent replacement service. Therefore, the power limit for low power stations will continue to be 10 watts VHF, except where a 100-watt station is proposed on an assigned channel;³⁰ and

²⁹ Our belief is based upon the secondary status and limited coverage potential of low power stations. For similar reasons, we believe that only in rare instances will a party alleging adverse impact on a UHF station be able to make an initial showing warranting consideration of the issue in a hearing prior to the award of a low power construction permit. *See*, WFMY Television Corp., 59 F.C.C. 2d 1010 (1976) (limiting the applicability of the policy inunited in Triangle Publications, Inc., 29 F.C.C. 315 (1960), *aff'd sub. nom.* Triangle Publications v. FCC, 1291 F. 2d 342 (D.C. Cir. 1981)); and *see*, paragraph 63, *infra*.

³⁰ This provision is in the current translator rules and has little or no negative impact on the coverage

1,000 watts UHF. We currently anticipate that we only would find it in the public interest to waive the power limits in extraordinary circumstances.

32. *Full Service Protected Contour.* The Further Notice indicated the Commission's intention to use the Grade B contour as the full service protected contour, but sought comment on the desirability and feasibility of attempting to protect service received from full service stations outside their Grade B contour. We received a good deal of thoughtful commentary on this matter. It is discussed in detail in the comment summary, Appendix D. Among parties advocating protection of all service received outside the full service Grade B contour are the Association of Maximum Service Telecasters, NAB, ABC and Storer. Cox suggests that one way of accomplishing this is to establish a full service contour seven dBu below the Grade B and require low power stations to protect that contour. This is the policy that the Commission adopted in Docket No. 20735, establishing that Channel 200 educational FM stations must protect the 40 dBu contour of Channel 6 television stations. See, Second Report and Order,

Noncommercial Educational FM Broadcast Stations, 43 FR 39704, 39712, 39713 (1978); but see Second Further Notice of Proposed Rule Making, to be issued at a subsequent date. Others contend that service received outside the full service Grade B contour should be protected, but on a more flexible basis, giving the Commission room to evaluate the circumstances. Communications Investment Corporation suggests that the Commission prohibit low power stations from causing "significant degradation" of service beyond the full service Grade B contour, in terms of the number of households affected. American Christian Television Stations would have low power stations protect full service stations beyond the Grade B contour where they are "significantly viewed," as defined in § 76.54 of the rules. AGK asks that the Commission not license a low power station on possibly interfering channels in any community outside the Grade B contour of a full service station in cases where the community is within the area of dominant influence (ADI) of the full service station. CBS advocates requiring low power applicants to select the channel least likely to cause interference, and then protecting service

beyond the full service Grade B contour on a complaint basis.

33. Other parties, including Spectra, Attaway and Community Media Network, aver that it is appropriate for low power stations to protect the Grade B contours of full service stations but no further. The National Translator Association agrees with this, except that NTA believes it is arbitrary to prohibit low power signals in areas where terrain prevents actual reception of a full service station within its Grade B contour. The Corporation for Public Broadcasting contends that it is unreasonable for low power stations to be required to protect the full service Grade B, because the Commission's present rules do not require full service stations to protect each other to their Grade B contours. Adding that low power stations are more likely to provide truly local service than are full service stations at the outer reaches of their field strength contours, CPB proposes the following full service contours to be protected by low power stations:

Frequency	Protected contour
Low band VHF.....	62 dBu.
High band VHF.....	68 dBu.
UHF.....	80 dBu.

34. We have considered the various alternatives and believe that the following approach is the one that will best accommodate the competing interests and ensure maximum television service to the public. We agree that existing service from full service television stations should not be impaired. Notwithstanding inferences that may have been derived from paragraph 9 of the Further Notice, we do not intend to deviate from the basic thrust of our present translator interference rule, which states:

An application for a new television broadcast translator station or for changes in the facilities of an authorized station will not be granted where it is apparent that interference will be caused * * * Interference will be considered to occur whenever reception of a regularly used signal is impaired by signals radiated by the translator, regardless of the quality of such reception or the strength of the signal so used. (Emphasis supplied.)

Section 74.703(a) and (b) of the rules. This means that any service from a full service station is to be protected from interference by a translator even beyond where the full service station provides reliable service or would be predicted to be received. However, as we stated in the Further Notice, because we are unable to process the great volume of

applications manually, and in the interest of certainty among both applicants and the Commission, it is necessary that we use an objective standard for where we consider that it is "apparent that interference will be caused." We acknowledge that inherent in the definition of the Grade B contour is the fact that some locations outside the Grade B contour receive an acceptable signal, although the majority of locations do not. Conversely, inside the Grade B contour there are locations that do not receive an acceptable signal, although the majority of locations do. Because of the characteristics of TV frequency propagation and the unaccounted-for effects of terrain, this contour value and this procedure are not particularly useful for predicting service at particular locations. This also would be true of any other predicted contour we might choose to protect, a higher contour, as proposed by CPB, or a more conservative, lower contour, which Cox advocates. It is self-evident that, were we to protect full service to the 40 dBu contour, for example, we would provide somewhat greater assurance of continued reception of full service signals where they actually are received by listeners beyond the Grade B contour. However, this undoubtedly also would preclude low power from areas that are not able to receive even attenuated full service signals beyond the Grade B contour and that may not receive any off-air service at all without low power. We cannot generalize with any expectation of accuracy whether fewer or more people would receive fewer or more signals, as a result of our choosing a different protected contour for full service stations. We continue to believe that the Grade B contour offers the most realistic approximation of service received, and therefore is an appropriate standard to use in automating application processing.³¹

³¹ It is within our discretion to adopt this contour as a processing standard, and even as an absolute protection standard. As we have said, "There is no rule of law or section of the Communications Act which affords broadcast stations protection against 'interference,' as that term is defined in the abstract without reference to the Commission's rules and regulations. Section 303(f) of the Act provides in pertinent part that the Commission shall 'make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations.' In this Section Congress has delegated to the Commission the authority to determine to what extent interference between broadcast and other radio stations shall be permitted to exist. The delegation is broad and leaves within the Commission's discretion, subject to the criterion of the public interest, convenience and necessity, not only the determination of what degree of interference between stations shall be considered excessive but also the methods by which such

of full service stations. Continuing it is not expected to present significant problems, because there are few vacant VHF assignments and they tend to be in relatively isolated locations.

35. However, we shall continue our present policy to protect full service reception from impairment of the signal by translators.³² If we receive a well-documented complaint that an authorized low power station impairs regular reception of a full service signal outside the full service Grade B contour, this could be a ground for corrective action against the low power licensee, depending upon an evaluation of the situation. This approach does not differ significantly from what we previously have done, under our existing rules.³³ Nor does it differ significantly from the approach we would take in the case of low power/full service interference anywhere. That is, we shall not knowingly authorize a low power station that would impair the reception of a full service station. Our mode of processing gives us a reasonable degree of certainty that this normally will not occur within the full service Grade B contour, and if it does, it will be the sole responsibility of the low power operator to correct the situation. On the other hand, because we have no record of where service is received outside the full service Grade B contour, we cannot take this into account in processing. As CBS recommends, we shall deal with such interference on a complaint basis,

excessive interference shall be avoided." Memorandum Opinion and Order, Roy Hofheinz (KSOX), Harlingen, Texas, 9 R.R. 784c (1953).

³² This raises an issue addressed by several parties, including the Association of Maximum Service Telecasters and General Electric Broadcasting Company. They suggest that we require low power applicants specially to notify nearby full service licensees of the filing of the application. We agree with the National Translator Association that the public notice the Commission gives by statute of the acceptance of all broadcast applications is sufficient to notify all possibly affected full service stations of the pendency of a low power application. We also will not require low power facilities to conduct field tests prior to final authorization; we believe that the entailment of secondary spectrum priority, that interfering stations cease operations on the Commission's request, will fulfill the same goal, and therefore a field test requirement is unnecessary and duplicative.

³³ E.g., Tri-State Television Translators, Inc., Docket No. 17654, and Wellersburg TV, Inc., Docket No. 17655, 15 RR 2d 1300 (1969). In this case, VHF translator systems in the Cumberland, Maryland, area were causing interference to the off-air reception of Washington, Baltimore and Pennsylvania stations. Several local residents outside the Grade B contour of these stations were able to receive the signals. The expense of modifying the translators to non-interfering UHF channels would have been prohibitive for the community-supported systems. In weighing the equities, it was concluded that protection of the distant signal reception of a small minority who had similar programming available from other distant full service stations would not justify the resultant service loss to the greater number of translator homes, many of which would not otherwise receive television service, because they could not afford CATV.

should the need arise.³⁴ We do not believe it is feasible to adopt CBS's other suggestion, that we require low power applicants to select the channel least likely to cause interference, essentially because this may be difficult to determine; furthermore, it should not be necessary, because our processing procedure will eliminate applications on channels where excessive interference is likely to be caused. However, our strict adherence to the secondary priority policy should be an incentive for low power applicants to endeavor to select channels with a minimal chance of future interference problems, the primary onus of which would fall upon themselves.³⁵

³⁴ The individual circumstances of interference to a full service station beyond the Grade B contour vary so widely as to preclude any attempt to state hard and fast rules. In many circumstances, while reception may be possible, this service is relatively unimportant to viewers themselves because alternative signals are available to them—perhaps other full service television stations, translator service or cable service. While the varying circumstances require an *ad hoc* approach of case-by-case decision making, it may be useful to specify some of the factors that would influence our decision. We would view destruction of a viewer's only television service by a translator/low power station as extremely serious. Elimination of viewers' opportunity to view a particular television network signal also would be serious. As the service impaired becomes more redundant we would feel obligated to give more attention to the benefits obtained by the translator/low power service. We also would give less attention to interference received by viewers in special circumstances receiving a full service station that their neighbors do not receive, for example, reception caused by a viewer's location on the top of a hill or the installation of a receiving system far more sophisticated than that used by the viewer's neighbors. As our past precedents show, we also shall consider the value of the translator/low power service in terms of both the numbers served and the importance of this service to the viewers. Having discussed some of the factors we would consider in whether to terminate service by a translator/low power station we must emphasize that we expect to have to deal with very few situations of this nature. The translator service has a long history of operators successfully resolving interference problems by cooperative efforts with the viewers. We expect low power operators to continue this tradition. Translator and low power stations are secondary to full service stations, and we expect operators to engage in good faith efforts to resolve all complaints of interference to full service stations.

³⁵ This applies also to low power applicants that cause interference to existing translators. As we have indicated, we shall not authorize low power stations that do not meet our protection criteria to existing translators or low power stations. We have modified our low power protected contour to values that the record in this proceeding generally supports. If interference inside these protected contours results from a subsequent low power authorization and the stations involved cannot resolve the problem among themselves, the burden to correct the interference will be on the later entrant. We, of course, would expect the licensees to cooperate in resolving the problem; however, in view of the increasingly competitive nature of this service, we believe that a significant number of unresolved cases could reach the Commission.

36. *Low Power Protected Contour.* The comments focused primarily on the proposed UHF Zone 1 protected contour of 84 dBu. Almost universally, this value was viewed as too high, protecting an area too limited to allow a station to be viable. It also is argued that many translators provide acceptable service to their communities, even where they do not provide a predicted 84 dBu signal. In addition, comments claim that many low power applications specifying existing TV towers as their transmitting site would not provide an 84 dBu signal to their city of license. Values of 70 dBu and 74 dBu most often are suggested as substitutes for the 84 dBu value. We believe that use of a 74 dBu protected contour is a reasonable compromise. A protected contour value of 74 dBu was proposed in the Further Notice for those parts of the country not in TV Zone 1 or FM Zone 1A. A couple of comments supported a zone system and suggested that the proposed UHF protected contour values in all parts of the country should be reduced by similar amounts. We are not convinced that the low power protected contour for UHF stations located outside of Zones 1 and 1A should be reduced below 74 dBu. In areas of scarce spectrum the effect of reducing the protected contour would be to lower the number of possible low power stations. This would be a restraint on the marketplace that we believe is unnecessary because the protected contour is part of a minimum protection standard. An applicant, except in most of the northeast and some urban areas, often can choose to exceed the minimum standard significantly. In areas where translators have flourished, these standards should prevent a newcomer from causing severe disruption of existing service. However, we expect that the vast majority of applicants in these areas will coordinate with each other and with existing operators and will take local factors (including terrain) into account in determining how close to a minimum standard they should apply to operate. In view of this, we believe that the 74 dBu protected contour is a reasonable

Therefore, we wish to establish now that, absent exceptional circumstances, we shall rely upon a "seniority system" for both VHF and UHF low power stations and translators. If both parties agree, we would permit two translator or low power stations to accept interference from each other, if there is no other way to authorize both and they create no additional interference to other authorized broadcast facilities. We shall not, however, permit a subsequent translator or low power station to cause interference to a currently existing translator, because this would result in destruction of existing service to the public, which is not in the public interest.

minimum standard. By adopting it for UHF stations in all parts of the country we are slightly simplifying the processing and conforming the UHF and VHF procedures. Based upon the comment record, we also are adopting the VHF protected contours as proposed.

37. *Terrain Shielding.* In our Notice, we proposed consideration of terrain shielding on a case-by-case basis. Although several comments contend that consideration of terrain is essential for a realistic authorization process, we believe that the overwhelming argument is presented by our experience with the interim applications. It is far beyond our staff capacity to evaluate individually thousands of terrain shielding claims. Also, we do not have in this proceeding sufficient information to adopt any standard method for computing a low power terrain correction factor. As indicated elsewhere in this document, we do not intend this proceeding to be the source of sweeping changes in broadcasting regulation. Therefore, the proper forum for considering a standard method of terrain correction is in a proceeding designed to deal with that subject.³⁶

38. *Receiving Antenna Front-to-Back Ratio.* Some comments support consideration of front-to-back ratios in determining desired-to-undesired interference ratios. A larger number of comments oppose it and their arguments are persuasive. For example, the average antenna front-to-back ratios listed in the Further Notice were based on test range measurements and, particularly in rough terrain, it is unlikely that they would be equalled under normal reception conditions. Further, it was indicated that front-to-back ratios for individual antennas varied significantly from channel to channel and there is no reasonable procedure by which a consumer can identify the antenna that will perform best in their specific situation. In addition, a possible scenario is described where the undesired station is in the same direction as the desired low power station so there is no benefit from receiving antenna front-to-back ratio. Finally, at the low power protected contours we are adopting herein (see, paragraph 36, *supra*) acceptable

reception will often be possible without an outside receiving antenna. For each of these reasons we feel that the traditional role of front-to-back ratios as a "safety factor" is appropriate in the low power service. By "safety factor" we mean it is a characteristic of receiving antennas that permits interference or ghosting to be eliminated in some instance, but we will not rely on it in determining where it is "apparent that interference will be caused."

39. *Offset Operation and Frequency Tolerances.* We are convinced by comment that carrier frequency offsets should be a permitted means of limiting or eliminating co-channel interference. To assure uniform, and we believe fair, treatment of applicants and licensees, we are adopting standards for low power offset operation. If an application proposes offset operation, an offset must be specified. The possible offsets are the same as those at which full service TV stations are authorized: Zero, at the standard carrier frequencies for the channel; plus, with carrier frequencies 10 kHz above the zero offset carriers; and minus, with carrier frequencies 10 kHz below the zero offset carriers. The frequency tolerance of a low power station operating with a specified offset will be \pm kHz, the same as the full service TV station frequency tolerance. The frequency tolerance for stations without a specified offset will be the same as the current translator requirements. When two stations (both low power or one low power and one full service) are to operate with difference offsets (zero and plus, zero and minus, or plus and minus) the co-channel offset D/U ratio applies. When two stations are to operate with the same offset, or one or both stations do not specify an offset, the co-channel non-offset D/U ratio applies. See, paragraph 40, *infra*. Comments indicate that manufacturers are capable of producing equipment meeting the \pm kHz frequency tolerance. Comments also convince us that even if only a small increase in equipment cost is involved, it is not justified for the vast majority of existing stations (and a significant number of proposed stations) that are located in rural areas where little or nothing would be gained by a tighter frequency tolerance.

40. *D/U Ratios.* We are adopting the desired-to-undesired ratios proposed in the Notice for UHF and in the Further Notice for VHF. No comments raised objections to the proposed values for VHF or the proposed co-channel values for UHF. In addition, no comments addressed the possibility raised in the Further Notice that low power to low

power ratios could be different from low power to full service ratios. Lacking support or opposition, we are adopting the same ratios for predicting interference to either a low power or a full service station. Several parties note that the D/U ratios proposed in the Notice for adjacent channel and taboo channel relationships are mean receiver values from the 1974 Commission staff study³⁷ and they argue for a more conservative approach where the D/U ratios would represent a level of performance exceeded by 90% of the tested receivers. The Electronics Industries Association, Consumer Electronics Group, representing receiver manufacturers, suggests that more conservative ratios be used for a period of five years. EIA indicates that receivers have improved noticeably since the 1974 tests and that they will continue to improve. However, EIA argues that additional time is required for the newer, better receivers to represent a larger percentage of the sets being used. Because of the industry representative's comments on receiver improvements, and the eight years that have passed since the tests were completed, we are of the opinion that use of the proposed mean values is justified. Essentially, there are two reasons for this conclusion. On the basis of the above, we are convinced that most receivers currently in use actually perform better than the ratios indicate. In addition, we expect that, over the next few years, most new low power stations will exceed the protection criteria by a comfortable margin so there will be few, if any, problems of actual interference. Thus, some additional time will exist during which the average receiver is expected to improve. Finally, we do not wish to reduce the manufacturers' incentive to continue to improve those receiver characteristics that affect interference. Inferior receivers, as some point, will be exposed to undesired signals that will produce interference. We believe that this is preferable to adopting standards that protect inferior receivers, at a cost of reducing the number of low power stations that can exist.

41. *Circular Polarization.* In comments discussing transmitter output power, General Electric Company proposes that transmitters with twice the normally permitted power be allowed to feed a circularly polarized transmitting antenna. Circular polarization is a recognized means of improving

³⁶For example, see, Report and Order, Docket Nos. 16004 and 18052, adopted May 29, 1975, which incorporated a terrain "roughness factor" into the FM and TV rules. However, see also, Stay, adopted April 28, 1977, 42 FR 25736 (May 19, 1977), where the Commission stayed indefinitely the effectiveness of the terrain roughness rules. We would expect that any general terrain correction factor that might be adopted would explicitly be extended to the low power service.

³⁷W. K. Roberts and L. C. Middlekamp, A Study of the Characteristics of Typical Receivers Relative to the UHF Taboos, NITS PB-235 057 (June, 1974).

reception within a station's service area. It commonly is achieved by transmitting both a horizontally polarized and a vertically polarized component of the signal with a fixed phase relationship between the components. The addition of a vertical component does not increase the distances at which a station provides service or causes interference. Full service stations are permitted to transmit a vertically polarized component as long as it does not exceed the horizontal component in any direction. In the past, through a waiver process, translators have been allowed to transmit a circularly polarized signal. However, they have been required to use two transmitters or a transmitter with multiple final amplifier stages, and two transmission lines connecting the transmitters to the antennas. We believe that it is both reasonable and appropriate for us to amend our rules herein to permit low power circular polarization and to permit a higher transmitter power output when a circularly polarized antenna is used.

42. *Canadian and Mexican Notification.* A translator notification procedure has evolved for stations in the Canadian border area. Canada is notified of 1 watt VHF translators within 10 miles of the border, and 10 watt VHF translators and 100 watt UHF translators within 20 miles of the border. Because 100 watt VHF translators and 1,000 watt UHF translators have required a channel in the Table of Assignments, they have been coordinated if they were in the area covered by the full service TV Agreement, within 250 miles of the U.S.-Canada border. There is no established protocol for notifying Mexico of translators in the border area. The full service TV Agreements with Mexico require coordination of VHF stations within 250 miles of the border and UHF stations within 199 miles. We currently are formulating a procedure for both Mexican and Canadian notifications. Until new agreements are reached, low power authorizations in the border areas (except those that would not require notification under the above standards) will be conditioned on Canadian or Mexican concurrence.

43. *Cable Protection.* The National Cable Television Association, with Spectradyn, has voiced concern that low power stations could cause interference to cable systems at the headend antenna where TV rebroadcast signals are received, cable distribution systems and at subscribers' receivers. To protect cable, NCTA would have the Commission license low power stations only on UHF channels and put the

burden of frequency coordination and correction of interference on the low power operator. The Association of Maximum Service Telecasters, the Corporation for Public Broadcasting, the National Translator Association and others oppose NCTA, arguing that the potential for interference to cable is not as serious as NCTA fears and that, in any case, cable's unregulated use of radio frequencies is predicated on its nonpreclusion of broadcast uses of the band. NTIA supports a scheme substantially similar to that proposed in the Notice, whereby the Commission would consider well-documented objections to low power applications based on potential headend interference, but that other low power/cable interference is to be solved between the parties, with primary responsibility for correction of cable-related problems on the cable operator. In the interest of spectral efficiency, we have decided not to limit low power to the UHF spectrum. We are aware that, on occasion, interference problems have arisen between cable and full service stations on VHF channels. However, we believe that it would be spectrally inefficient to preclude low power stations from the VHF band altogether, when there are many locations where this will not occur. We do not feel it necessary to restrict the low power operator's range of choice between VHF and UHF frequencies, which may depend on factors such as cost differential, channel availability and coverage potential.

44. We believe that, with one minor modification, the cable/low power interference rules originally proposed generally will be adequate to control potential interference problems with minimal disruption to existing service. The rules are as follows:

1. The low power station operator is strictly responsible for taking immediate corrective action when an interfering condition to any other service results from operation in violation of the Commission's technical standards, or from improper maintenance.³⁸
2. The cable operator generally is responsible for correcting interference in the cable distribution system and at subscribers' sets.³⁹
3. The Commission will not knowingly authorize a low power station that is likely to cause serious interference to reception at an existing cable television headend. If this does occur, the parties

³⁸ This provision applies not only to cable, but to all services.

³⁹ As discussed in paragraph 45, *infra*, we are persuaded that the special case of co-channel interference to the output of a set-top converter requires a different approach.

will be encouraged to settle the matter between themselves, in light of the Commission's first-come, first-served policy, that will favor the pre-existing service.

Because the Commission has no computer data base of cable headend locations and stations received, or of channels used elsewhere in the cable distribution system, we have no means of considering cable systems in our automated processing procedures. Where we receive documented submissions raising a substantial and material question that a proposed low power station will cause serious interference to a cable system, we shall designate the application for hearing, pursuant to Section 309 of the Communications Act.⁴⁰ However, as we have said, where an operational low power station causes interference to a pre-existing cable headend, we expect the parties to settle the dispute among themselves and come to the Commission only as a last resort. We would afford the earlier entrant, whether it be the cable system or the low power station, favorable consideration over the later one, and we would expect this to be a factor in their negotiations.

45. With respect to other interference problems, e.g., "local pickup" interference at the television receiver, we do not find a sound basis for affording formal protection to cable systems in general.⁴¹ Cable's use of radio frequencies is based on its nonpreclusion of broadcast uses; therefore there is no basis for affording cable such formal protection.⁴² On the

⁴⁰ See, *H & B Communications Corporation v. FCC*, 420 F. 2d 638 (D.C. Cir. 1969). However, as noted above, pre-grant hearings on cable/low power interference issues will be authorized only where CATV systems are able to show the potential for interference with sufficient certainty and specificity to warrant designation of the issue for hearing. See, *Washoe County School District, File No. BPTTV-6096, FCC 81-533*, released December 3, 1981; *Capital Communications, Inc., File Nos. BPTTV-8003111C and BPTTV-8003121B, FCC 81-534*, released December 4, 1981.

⁴¹ Microband makes an argument for protection of Multipoint Distribution Service down-converters that operate on Channels 12 and 13. We believe the same rationale applies to MDS use of radio frequencies as to cable and, accordingly, we are not extending such protection, but expect the parties to any such disputes to settle them privately.

⁴² See, e.g., *Memorandum Opinion and Order, Heart of Texas TV*, 25 F.C.C. 2d 754 (1970); *reconsid. denied*, 27 F.C.C. 2d 205 (1971). While this case holds that cable systems must alter facilities to permit VHF translators, the text evinces the Commission's flexible approach, mandated in *H & B Communications Corporation, supra*, n. 39, of attempting to accommodate as many competing interests as possible in such situations. Accord, *San Juan Nonprofit TV Association*, 22 F.C.C. 2d 371 (1970).

other hand, we find merit in NCTA's contention that some interference problems may occur frequently and be expensive for cable operators to correct. Various means to alleviate interference from broadcast stations may be available to cable operators. In some instances, the cost of correction would not be prohibitive, and would more easily be borne by the cable operator. See, Oregon Broadcasting Company, 20 F.C.C. 2d 246 (1969). We also note that our decision to restrict VHF translators and low power stations to 10 watts except where a station is proposed on an assigned channel further will reduce the magnitude of the problem. In the Notice we proposed to allow 100 watt operation in any situation where the co-channel, and adjacent channel full service mileage separations were met. As a result of our decision not to extend 100 watt operation beyond assigned channels, cable operators will no longer have to accept the consequences of 100 watt VHF translators or low power stations except in locations where they already were aware of the possibility of a VHF full service station. The comments have persuaded us that one additional circumstance, however, does require special consideration. Where a new translator or low power station will cause interference to the output channel of an existing cable converter, we believe that the cable system may deserve some protection. In view of the minimal preclusive impact this will have (foreclosing at most one VHF channel from local use by translators or low power stations), we find this a reasonable accommodation to make to a cable operator who already has gone to considerable effort to minimize the system's use of broadcast spectrum by using a converter. We believe that this possibility warrants extension of the "first in time, first in right" policy we are adopting with respect to headend interference. Not only will this achieve equity between the parties, more importantly, we believe that in this circumstance it best serves the public interest to protect an expectation of continued service that may have arisen over time, instead of permitting its degradation by a later entrant. Given the small number of cases in which this should occur, we believe that the best way to handle the situation is via documented objections filed by the cable operator operators to applications of translators or low power stations that will be both co-channel to the output channel of existing converters and close enough to generate local pick-up

problems.⁴³ We continue to encourage private resolution of all cable/low power interference problems, informed by our policy to favor the earlier spectrum user in the headend or converter situations. Therefore, we are amending our rules explicitly to state that, in the event of cable/low power interference, the first user of the frequency, whether cable or low power, will have priority when interference precludes joint use in these two circumstances, and the later entrant will be responsible to correct the interfering condition. The cable operator will be responsible to correct all other interfering situations. See, Appendix A, § 74.703(d).

46. *Land mobile service.* The 1979 World Administrative Radio Conference recognized the potential for shared Land Mobile/Broadcast use of the frequencies between 512 and 806 MHz (TV channels 21 through 69). Assuming the WARC agreement is ratified by the U.S. Senate, the Commission will be permitted, if it wishes, to authorize both land mobile and broadcast stations in this spectrum. In this regard, we intend to implement procedures for the processing of LPTV applications that take into account the potential for such sharing in and near major urban areas where the greatest long-term needs for land mobile channels exist. Specifically, we shall examine all low power TV applications within at least a 100-mile radius of the ten largest U.S. metropolitan areas to determine what accommodation, if any, is possible if we decide to provide some land mobile spectrum, while, at the same time, not unduly diminishing the spectrum available for low power television. (We are most concerned with: Boston, Chicago, Dallas, Detroit, Houston, Los Angeles, New York, Philadelphia, San Francisco, and Washington, D.C.) In effect, we shall attempt, through a staff study and our application processing procedures, to determine what impact additional land mobile sharing with low power TV has in these cities. Also with respect to land mobile operations, we note that a number of parties have decried the protection standards we proposed for land mobile systems now sharing VHF frequencies with broadcast users. The UHF taboos, however, still are a matter of study. Pending final resolution of this issue, we are inclined to adopt the standards proposed in the Notice for the

⁴³ Unlike consumer electronics products such as TV games and VCRs, cable converters normally do not come with a switch to change the output between two adjacent channels. If they did, then the cable problem could be solved simply by switching to the channel unused by the translator or low power station.

protection of land mobile stations, with a few modifications urged in comments. We do not believe that these standards normally will result in interference, and we conclude that they are practicable, at least on a short-term basis. However, to the extent that interference does result, low power stations are being authorized on a secondary basis to all stations in existing primary allocations and must both correct whatever interference they cause or cease operation and accept whatever interference they receive from stations in the primary allocations. Also, to protect the Offshore Radio Telecommunications Service Operations on Channel 17, we are adopting somewhat more restrictive standards for low power stations in the Gulf of Mexico. We believe that this is possible without significantly reducing the area within which Channels 16, 17 and 18 can be used, because existing full service stations on related channels and the Channel 17 Houston land mobile allocation leave little of the Gulf area with these channels available. Further, the area where Channels 16, 17 and 18 otherwise might have been used are for the most part sparsely populated with a large number of other UHF channels available for low power use. Therefore, we are adopting rules prohibiting Channel 16, 17 and 18 low power stations in the following areas: (1) Channel 17 will not be available in the area south of 31° 30' North Latitude, west of 86° 30' West Longitude and east of 95° 30' West Longitude; (2) Channels 16 and 18 will not be available in the area south of 30° 00' North Latitude, west of 87° 00' West Longitude and east of 95° 00' West Longitude. A computer review of translator stations and applications and pending low power and translator applications disclosed only two on these channels within these areas, both for Channel 16 at Galveston, Texas. Because Galveston is 40 miles from Houston, within the Channel 17 land mobile protected contour, these applications cannot be granted, regardless of the ORTS protection standards. The Commission also is aware of two petitions for rulemaking, one filed by the Offshore Telephone Company (RM-3924) and the other by the Sheriff's Department of Los Angeles County (RM-3975), both requesting nonbroadcast use of portions of the UHF-TV broadcasting spectrum. Our action today could have a negative impact upon the possibility of a favorable outcome on either of these petitions. Based upon our initial analysis, it appears that some degree of sharing between the Offshore Telephone Company use of Channels 15 and 16 and

low power TV may be possible. On the other hand, the mutual accommodation of the Sheriff's petition and low power TV seems to be considerably more difficult, if not impossible. Again this expectation is based on very preliminary analysis, and some possibilities for land mobile sharing still may exist even with significant development of low power TV. However, due to the strong public support and demand for low power TV, we do not consider it to be in the public interest to delay this proceeding to review further these two petitions, particularly because the Commission has not yet even determined whether petitioners have made a threshold showing warranting rulemaking. After further analysis has been completed, these petitions will be accommodated through separate proceedings and to the extent the Commission determines appropriate.

47. *Auxiliary Services.* The Notice proposed that low power stations have access to auxiliary broadcast frequencies, where available, for studio-to-transmitter links and remote broadcast pickups. Subparts D, E, F and H of Part 74 of the Rules cover these uses. Low power licensees are eligible for remote pickup broadcast station licenses, under Subpart D. Because in BC Docket No. 81-793 we are proposing to delete § 74.603(b), to eliminate use of aural microwave spectrum in connection with television transmissions, we shall not license this spectrum to low power licensees, until and unless resolution of Docket 81-793 permits. The present rules governing television translator microwave relays in Subpart F permit their use in connection with translators only to obtain permissible TV programming; the frequencies may not be used in connection with program origination. Television translator relays are accorded the lowest priority in use of the microwave frequencies under our present rules, *see*, § 74.602(h). As part of an originating broadcast service, low power stations should be directly eligible for television microwave assignments for STLs, intercity relay and/or TV pickups, and § 74.632(a) will be amended accordingly. The Commission recently initiated a proceeding to establish new licensing policies for television broadcast auxiliary stations, BC Docket No. 81-794.⁴⁴ The Notice of Proposed Rule Making in that docket encourages private frequency coordination in the assignment of television auxiliary microwave frequencies and proposes the establishment of priorities for such

assignments. The Notice seeks comment on the proper place for low power stations in the hierarchy. Because there was little commentary on this issue in the instant proceeding, and because BC Docket No. 81-794 is intended to encompass the entire panoply of users of this spectrum, we shall defer any possible modification of the present priority afforded to television translator relays, and leave resolution of the priority of low power stations to BC Docket 81-794. Finally, we are amending § 74.832, Subpart H of the rules to make low power television licensees eligible for low power auxiliary stations,⁴⁵ as well as § 74.432(a), audio remote pickup stations.

IV. Technical and Engineering Requirements

48. The Notice addressed a number of technical issues not strictly related to spectrum priority. *See*, Notice, paragraphs 63 through 67, 45 FR at 69188, 69189. We did not receive a great deal of commentary on this subject, possibly because we are maintaining rather than changing most of our current regulations in this area. Nevertheless, it remains our belief that the technical aspects of low power operation are critical to its success as a new broadcast service and to its coexistence with existing services. We emphasize that we shall require strict adherence to the technical standards, both interference-related and others, adopted herein for low power stations.

49. *Transmitter and Other Equipment Standards.* We are retaining § 74.750, which requires type acceptance of low power transmitters. Low power STV operations must use a Commission-approved encoding system. Section 74.736, which governs out-of-band emissions, will remain in force. Section 74.761, requiring frequency tolerance maintenance, will continue to be enforced. Where offset operation is proposed, transmitting equipment with the stability needed to meet a stricter frequency tolerance will be required. *See*, paragraph 39, *supra*. While we are amending § 74.734 to require an operator in attendance under some conditions (*see*, paragraph 95, *infra*), we shall continue to enforce § 74.734(a)(6), which requires observation for ten continuous minutes per day of the off-air signal of

⁴⁴ In this connection, we shall state here that we do not see the necessity of changing the name of the low power television service, as some parties have suggested, either because the term "low power" itself has a negative connotation or to avoid confusion with low power auxiliary stations. We believe a greater amount of confusion is likely to result from changing the name of the low power television service at this point.

translators employing modulators. We shall require the transmitting equipment used by low power stations to comply with those existing provisions of § 74.750 that relate to the prevention of interference. However, we are not adopting technical operating standards for the transmitted sync pulse and blanking wave forms, color burst or audio distortion. Our concern in regard to low power technical standards is primarily avoidance of objectionable interference. We would hope that marketplace considerations will provide additional incentive for low power licensees to maintain high quality signals for viewers.

V. Applications

50. Form 346, as revised for use by both translator and low power applicants, continues to seek information regarding the citizenship, character and financial qualifications of the applicant, as well as technical aspects of the proposal, as enumerated in Section 308(b) of the Communications Act and our rules and regulations.⁴⁶ Without opining on their continued vitality, we shall continue to enforce the minimum qualifications to hold a broadcast license in the low power service, leaving the possible modification or curtailment of such qualifications to proceedings designed for that purpose, e.g., Notice of Inquiry, Gen Docket No. 81-500, 47 FR 40899 (August 13, 1981).⁴⁷ It goes without saying that we believe that the low power service is an ideal candidate for any modifications of qualifications that are accomplished in other proceedings. However, because the Commission intends to examine these issues in separate proceedings in the future, we shall not make changes at this time.

51. We also envision several simplifications in application processing procedures for low power applications. It is consistent with the spirit of Gen. Docket No. 79-137, Revised Procedures for the Processing of Contested

⁴⁶ The information that will be required on revised Form 346 is attached as Appendix B. OMB approval must be obtained. Forms 347 and 348, the license and renewal forms, also will be revised to reflect the rule changes contained herein. Until the computer to be used in processing is operational, we shall continue processing rural, freeze-exempt applications manually. In order to facilitate these efforts, we have appended a request for a topographical exhibit to the application form. As indicated, this additional information may be supplied at the option of the applicant. However, it could considerably expedite the processing of the application.

⁴⁷ We are, however, simplifying the showing required to demonstrate financial ability to a certification requirement, in conformity with our practice with other broadcast applications.

Broadcast Applications, 72 F.C.C. 2d 202 (1979), and with the secondary nature of the low power service, that low power processing procedures be streamlined to the extent practically possible. We emphasize, however, that we intend to maintain strict standards for acceptance of applications. A low power application must be complete and sufficient to be accepted for filing. Applications with blatant defects will be returned. This policy represents a departure from the standard set out in § 73.3564(a) of our rules, under which "substantially complete" applications are acceptable for filing. It resembles, rather, the acceptance criteria of Part 22 of our rules, which requires complete applications, and return of blatantly defective applications. See, e.g., §§ 22.31(b)(2) and 22.32(b)(1) of the rules. Under our present broadcast rules, an application that is not grantable because it is incomplete still may be acceptable for filing, because it is not "patently defective" and it is "substantially complete." See, *James River Broadcasting Corp. v. FCC*, 399 F. 2d 585 (1968). On the other hand, clearly deficient applications may be returned. *Henry M. Leshner*, 41 R.R. 2d 1593 (1977). The Commission and the courts, in applying this standard, have emphasized that administrative fairness requires full notice to parties whose rights may be affected by our rules regarding what is required of them to comply. Where such notice is afforded, the Commission may require strict compliance. *Ranger v. FCC*, 297 F. 2d 240 (1961). It is open to us to modify our acceptability standards as they apply to low power and translator applications, so long as we do so explicitly and with good reason:

There is also an interest in procedures and administrative techniques that enable the Commission to handle its work load efficiently, and with optimum use of limited administrative resources. Perhaps the Commission can accommodate the various interests by adopting administrative expedients that, for example, explicitly require all applications to be letter-perfect when filed.

Radio Athens, Inc. (WATH) v. FCC, 401 F. 2d 398 (D.C. Cir. 1968). We now do so, for the following reason. The Commission's limited resources and the large number of low power applications to be processed simply will not permit the staff to coach applicants in correcting defects or omissions in applications that have been filed, as sometimes has been the case in the past. Defective low power applications will be returned summarily, and if they are resubmitted with perfecting amendments, they will be placed at the

end of the processing line, unless passage of a cut-off date precludes consideration altogether, in which case the resubmission will be returned. Because explicit notice of change in policy was not afforded in the Notice of Proposed Rule Making in this proceeding, pending applicants will have the opportunity to perfect their applications without loss of rights that arguably may have accrued during the ninety day amendment period discussed in paragraph 56, *infra*.

52. Once an application has been accepted for filing, it will be placed on a cut-off list, which will set the deadline for the filing of competing applications and petitions to deny. Applications received by the cut-off date that are accepted for filing will be examined for exclusivity, and those determined to be mutually exclusive with applications that appeared on the "A" cut-off list will be placed on a "B" cut-off list, that sets a deadline for petitions to deny; no competing applications may be filed to "B" list applications.

VI. Comparative Procedures and Criteria

53. The Notice of Proposed Rule Making proposes the following system of comparative evaluation, to enable the Commission expeditiously to decide among competing applicants:

- (1) Notification of mutual exclusivity to applicants;
- (2) Thirty days for amendments to remove mutual exclusivity;
- (3) Pre-designation conference among applicants and staff;
- (4) Designation of mutual exclusivity and paper hearing concerning:
 - (a) Qualification issues;
 - (b) Technical aspects of the applications; and
 - (c) Claims to preference points.
- (5) If no single applicant emerges victorious from the paper hearing, random selection among qualified applicants.

The Notice proposes the following comparative preference points:

- (1) First applicant to file a complete and sufficient application;⁴⁶
- (2) Over fifty percent minority ownership; and
- (3) Noncommercial applicant proposing noncommercial service to the general public.

The preferences would be cumulative and be worth one point each, so that a first-filed minority applicant would have two points and would win the frequency over a competing noncommercial applicant, for example. This comparative system contains three

departures from our customary method of comparing mutually exclusive applications: a paper hearing would be held on designated issues instead of a hearing with oral testimony; there are only three comparative criteria, and they have yes-or-no answers; and a lottery would be used to decide among applications that are equal in comparative points. These modifications were intended to "avoid head-to-head competition among applicants, with its profound drain upon the resources of the parties and the administrative agency." Notice 45 FR at 69189.

54. These comparative criteria and procedures explicitly were proposed as a "first draft" in the Notice, and we promised to consider comments advancing other approaches. The comments addressing the comparative process are voluminous, with many opposing the notion of curtailed comparative procedures and others proposing much more elaborate preference systems, while applauding the basic concept. Among the many factors favoring abbreviated comparative procedures for low power applications are that low power is a secondary service; that prolonged and elaborate comparative proceedings may impose serious financial barriers for new entrants into the industry; that for a new service it is difficult to predict which comparative factors ultimately will be the most significant or desirable; that, without a prohibition on trafficking, stations may change hands soon after construction, mooting an elaborate preference system; and that the Commission simply does not have the resources promptly to handle the volume of comparative hearings required to resolve the plethora of mutually exclusive low power applications. We find these arguments convincing, and we think the solution is to have largely paper hearings among competing applications, as detailed below. We believe the modifications in our original proposals discussed in paragraphs 65 through 68, *infra*, take into account the somewhat contradictory goals of prompt authorizations and a time-consuming, comprehensive examination of all relevant information. In discussing the steps in the process, we shall address each of the proposals from the Notice in the order listed in paragraph 53 above.

55. *Notice of Exclusivity.* Applicants will be notified that their applications are mutually exclusive with a (or several) application(s) by their inclusion on a "B" cut-off list. Mutually exclusive applications will be designated for hearing. However, mutually exclusive applicants may, and are encouraged to,

⁴⁶This preference would only be operative for applications filed after the close of the rule making.

cooperate in private settlement endeavors to remove mutual exclusivity. Applicants should explore various options, such as buying out a competing applicant or agreeing to a time sharing arrangement, keeping in mind that settlement agreements must be submitted for Commission approval, pursuant to Section 311 of the Communications Act, and that we are committed to expeditious processing of all settlement agreements that eliminate the necessity for comparative hearings. It will facilitate such efforts that the Commission does not consider changes in ownership or control of low power television applications to constitute a major change entailing competing applications, although these are subject to petitions to deny. See, paragraph 77, *infra*. Accordingly, applicants can alter their ownership structure via amendment without losing cut-off protection. We point out, however, that our policy prohibiting amendments affecting ownership that would result in comparative advantage after the "B" cut-off date has passed will apply in the low power context.

56. *Ninety Day Amendment Period.* All present applicants will be afforded a specific ninety day period during which they can amend to bring their applications into conformance with the final low power rules. On account of the large number of applications, we may, as resources permit, stagger our requests for amendments. This will be announced via public notice following the effective date of this Report and Order.⁴⁹ We have devised a phased approach to the processing of pending applications. See, Appendix E.

57. *General Processing Procedures.* Applications that are mutually exclusive with applications already on published "A" lists will be placed on "B" lists. These "B" lists will be published, and will afford applicants notice of their mutual exclusivity. After the deadline specified in the "B" list for filing amendments and petitions to deny has passed, the mutually exclusive applications will be processed. If the applicants are able to resolve their mutual exclusivity in a manner acceptable to the Commission, the

⁴⁹ As part of this process, we wish applicants to ensure that they have provided appropriate antennas, with model numbers, a correct polar diagram, including the total polar plot, accurate overall height above ground of the antenna and altitude of ground above mean sea level figures and accurate coordinates for the site proposed, which must reasonably be believed to be available for their use. Inaccurate information on applications delays the entire processing endeavor, and, under our newly-adopted strict acceptance standards, will result in nonacceptance of future low power applications.

resulting application can be processed to grant. However, if the parties are unable to resolve their exclusivity, the applications will be designated for hearing. After these mutually exclusive applications have been designated for hearing, the Commission will begin processing the remaining applications.

58. *Pre-designation Conference.* We are not making the initially-proposed pre-designation conference with staff a formal part of the comparative process, because we believe settlements and accommodations can be accomplished expeditiously without Commission intervention, and our limited staff resources better can be utilized elsewhere. In light of the delays that, to some extent, will be unavoidable, should competing applicants be unable to resolve their differences via private negotiation, we strongly encourage all groups of mutually exclusive applicants to cooperate in private settlement endeavors and particularly to explore the possibility of time-sharing arrangements.⁵⁰ As we have said, the Commission will attempt to consider settlement agreements submitted pursuant to Section 311 (c) and (d) of the Communications Act and §§ 73.3525 and 73.3568 of the rules in as expeditious a manner as possible. Indeed, such settlements will be given our highest priority and will be processed and granted before other pending applications, in the order in which the settlement agreements are received.

59. *Designation.* The designation orders will include issues raised in petitions to deny that raise substantial and material questions of fact that are in dispute and require a hearing for resolution. See, Section 309(e) of the Communications Act. These issues may include qualifications to hold a broadcast license under Section 308(b) of the Communications Act, as well as relevant comparative issues.

60. *Issues not appropriate for designation.* Because of the many differences between the low power television service and the existing full service television broadcast service, especially the secondary status of low power stations and their small service areas, we intend to limit the number of issues considered in low power comparative hearings to only those truly relevant to the situation at hand. One of the perennial technical issues considered in traditional hearings among mutually exclusive television applicants has arisen under the aegis of

⁵⁰ See, Notice of Inquiry on Part-time Programming, 55 R.R. 2d 81 (1978); but see, *Cosmopolitan Broadcasting Corp. v. FCC*, — F.2d — (D.C. Cir. 1982).

Section 307(b).⁵¹ When two competing applicants propose service areas that are to any degree different, the Commission traditionally has considered evidence on the amount of area and the population served by the competing applicants. This inquiry, undertaken in the interest of ensuring that the applicant proposing the most fair, efficient and equitable distribution of new service will predominate in the selection contest,⁵² has been one of the most time consuming and litigated issues addressed in the hearing context.⁵³

61. We shall not consider arguments directed to Section 307(b) of the Communications Act⁵⁴ in designating issues for low power applications, for several reasons. In the first place, the tiered processing program we are implementing (see, Appendix E) embodies a general Section 307(b) judgment that, of the 6,000 pending applications, those which fall within the most rural markets should be given priority over those proposing to serve more urban, and well-served, areas. We recognize that the rural authorizations may have a preclusive effect in more urban areas, and we believe that this is justified by the fact that the areas to which we are giving priority are more in need of service and that it represents fair and equitable spectrum allocation to favor them. Second, today's broadcast

⁵¹ 47 U.S.C. 307(b) provides that "[i]n considering applications for licenses, and modifications * * * thereof * * * the Commission shall make such distribution of licenses * * * among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same."

⁵² We note that at its meeting on September 17, 1981, the Commission directed its staff to include in its upcoming legislative amendments a proposal to delete Section 307(b) from the Communications Act "since fair and equitable distribution of radio and television service generally had been established nationwide." See, F.C.C. News, Report No. 5068, Mimeo 003451 (September 17, 1981).

⁵³ This may well be because a "Section 307(b)" preference is considered dispositive over applicants who do not receive this preference. See, e.g., *FCC v. Allentown Broadcasting Corp.*, 349 U.S. 348, 12 R.R. 2019, 2021 (1955).

⁵⁴ In the Table services, TV and FM, the fairness of the allocation is dealt with primarily in conjunction with the rule making that amends the Table to reflect the frequency assignment. Applications filed under §§ 73.203(b) and 73.607(b), which permit construction of a radio or television station within ten or fifteen miles of the community of assignment, represent the only instances in which Section 307(b) issues generally arise in the application process. In AM radio, where there is no table of assignments, Section 307(b) issues more frequently arise in connection with competing applications. Clear resolution of the Section 307(b) issue in favor of one qualified applicant over another is dispositive, and no further comparison of applications is made. Low power resembles AM, in that there is no table of assignments, although AM is a primary service, unlike low power.

services may be considered quite mature, in a Section 307(b) sense. The Tables of Assignments for FM and television stations, §§ 73.202(b) and 73.606(b), and the allocation scheme for wide-area AM stations memorialized in § 73.22, are intended to fulfill the Commission's Section 307(b) mandate. See, *Logansport Broadcasting Corporation v. FCC*, 210 F. 2d 24 (D.C. Cir., 1954); also see, *Loyola University, et al. v. FCC*, Nos. 80-1824 and 80-2018, slip op. (D.C. Cir., January 26, 1982). Finally, the existing array of television channel utilization will force low power into less well-served areas. The Television Table of Assignments distributed the available television allotments between large cities and less populated areas in a manner that balanced the natural gravitation of stations to large urban areas with high population densities with the need to reserve some spectrum capacity to serve the less profitable, low population density areas of the country. One result of this balanced distribution pattern is that in approximately the 50 largest markets no additional full-spaced television stations can be accommodated. Although the lower maximum transmitter power of low power stations will permit somewhat shorter coordination distances, this existing concentration of full service stations in and around the top 50 markets on every available channel will result in very few opportunities to add low power stations to locations that can serve the largest markets. Conversely, most of the locations where new low power stations can be spectrally accommodated will be outside of the top 50 markets, where the television band is not saturated. This is fortuitous in two respects. First, the lower construction and operation costs that will characterize low power stations promise to make their operation economically viable in areas with population insufficient to support a full service station. Second, and relevant to this discussion, this existing station distribution pattern, coupled with our requirement that low power stations protect the Grade B contours of all full service stations will result in the vast majority of low power authorizations being granted outside the top 50 markets. Thus, the assignment policies we are adopting for the low power service automatically will accomplish the concern we formerly addressed in our Section 307(b) hearing contests.

62. Second, the basic regulatory structure of this new service makes the application of our full service station Section 307(b) practices inappropriate.

As discussed above, we are not requiring low power licensees to serve a particular community, to maintain any specified programming format, or to retain ownership of the initial license for a fixed length of time. Furthermore, because of their secondary status, what service they do provide may be preempted by the addition of a full service station too close to permit simultaneous operation. Given these characteristics, the added delay in authorizing new low power stations, and the great cost of an expanded or otherwise unnecessary hearing to the applicant, the Commission, and ultimately the public, cannot be justified.

63. The courts have held that neither Section 307(b) nor our particular past applications express rigid and inflexible standards. The Commission has a great deal of discretion in solving problems attendant to its responsibilities for providing a "fair, efficient, and equitable distribution of radio services." *Television Corporation of Michigan v. FCC*, 294 F. 2d 730 (D.C. Cir. 1961); 21 R.R. 2107; *Logansport Broadcasting Corp. v. United States*, 210 F. 2d 24 (D.C. Cir. 1954), 10 R.R. 2008; *Federal Radio Commission v. Nelson Brothers Broadcasting Bond and Mortgage Co.*, 289 U.S. 266 (1933); *WBEN, Inc. v. United States*, 396 F. 2d 60 (2nd Cir., 1968), cert. denied, 393 U.S. 914 (1968). For instance, the Court affirmed the Commission in its determination that every initial licensing proceeding in which mutually exclusive applicants propose different communities need not present a Section 307(b) issue. *Huntington Broadcasting Co. v. FCC*, 192 F. 2d 33 (D.C. Cir. 1951), 7 R.R. 2030. In the new service before us today, we believe the inevitable allocation of the majority of low power stations to locations away from the top 50 markets, coupled with the secondary nature of the service these licensees will provide, creates a situation where none of the mutual exclusivities created by competing low power and translator applicants present a meaningful Section 307(b) issue. Therefore, consideration of Section 307(b) issues are not, in this instance, in the public interest. We do not intend this to constitute a relaxation of our concern for the Section 307(b) mandate. We remain committed to Section 307(b) determinations in the primary broadcast services. However, we believe that implementation of the low power proposal takes cognizance of the existing distribution of services. We further believe that the allocation procedures in this Report and Order will reduce the costs to all parties—society generally, the applicants, and the

Commission—while allowing for greater flexibility for the market to fine-tune allocations. In accordance with this policy, we also shall not consider *Berwick* or suburban community issues. See, *Berwick Broadcasting Corp. v. FCC*, 20 FCC 2d 393 (1969).

64. *UHF Impact*. We find it difficult to envision a situation in which a VHF low power station will cause a substantial economic threat to a full service UHF station. Because their spectrum priority is secondary, low power stations always remain vulnerable to new full service entrants or existing full service modifications on interfering channels. In addition, our limit on maximum output power and our contour overlap prohibitions both place limitations on the coverage potential of low power stations. The coverage area of a full service UHF station inevitably will be many times greater than that of a low power VHF station. Under these circumstances, we see little point in extending our UHF impact policy to the low power service. This is particularly true at a time when, as a result of Congressional and Commission efforts, as well as the workings of the marketplace, the increasing vitality of the UHF service generally is making our policies designed to protect UHF stations from competition less appropriate. See, e.g., *All-Channel Receiver Law*, 47 U.S.C. 303(s); Report and Order, 21 FCC 2d 245 (1970); Report and Order, 62 FCC 2d 164 (1976); Final Report, UHF Comparability Task Force, Gen. Docket No. 78-391, P. Gieseler, et al., FCC, Office of Plans and Policy (September, 1980), available from NTIS, Springfield, Virginia. Neither do we anticipate designating low power/CATV interference issues in many cases. See, Notes 39 and 41, *supra*. We also foresee few instances in which an allegation of harmful economic impact, made pursuant to *Carroll Broadcasting Co. v. FCC*, 258 F. 2d 440 (D.C. Cir. 1956), will meet the test of Section 309(e) and require designation for hearing, particularly in light of the secondary status and limited coverage potential of low power stations. Low power stations will have smaller coverage areas than full service stations. Therefore, their ability to garner advertising revenues on the basis of audience size will be less great. Similarly, their ability to divert revenues from existing full service stations will be limited. Finally, their secondary status, which makes their continued existence uncertain, could hinder their ability to sustain audience and advertisers. In light of these facts, we do not see a likelihood of many full service stations being able to document

a *prima facie* case that a low power station will so impair their ability to maintain its revenues that a net loss of public service programming will result. Today, where several full service television stations exist in many major markets, it is even less likely that a low power entrant will have an economic effect so severe as to result in loss of public service programming on all the full service stations. Our holding in Monroe County Board of Commissioners, 42 FCC 2d 683 (1979), that the "Carroll" doctrine should not apply to cable systems, is consistent with this belief and with the record adduced in the instant proceeding. Also see, Wrangell Radio Group, et al., 75 F.C.C. 2d 404, 407 (1980).⁶⁵

65. *Hearing.* It is our intention to minimize the expense of establishing low power stations. This goal requires that we not subject applicants to long and costly comparative hearings. Moreover, if we flood the hearing process with numerous low power proceedings, we shall further delay the resolution of all other hearing proceedings including those involving construction permits for full service facilities. Therefore, it remains our intention to utilize a random selection process when and if that becomes practicable. Applicants for licenses in this service, therefore, are advised that their applications, if mutually exclusive with other applications, may be subject to revised processing procedures, standards and qualifications in connection with implementation of a system of random selection. At this point, however, we must utilize most of our existing hearing procedures. Nevertheless, we shall make certain modifications in those procedures in order to reduce or eliminate the number

of days low power applicants will have to spend in the hearing room.

66. The comparative hearing process can be expensive and time-consuming.⁶⁶ For these reasons, we have studied steps that could be taken to minimize the expense and long delays normally inherent in comparative proceedings involving broadcast applicants. Our goal has been twofold: *First*, to assure that applicants are given an opportunity adequately and fairly to present their cases and, thus, to demonstrate why they are the "best" applicant within the context of the criteria established by the Commission; and *second*, to conclude the administrative process and provide service to the public as expeditiously as possible. We believe that we have identified several procedural actions that can facilitate this goal.

67. Based upon our review of our application processing and hearing procedures, we believe that it may be possible to shorten both the evidentiary and appellate aspects of the process through the use of a modified paper proceeding directly administered by the Commission.⁶⁷ Under the modified procedure set forth herein, the Commission *en banc* will receive the evidence and issue the final decision as to which applicant should be awarded the license.⁶⁸ Also, unlike in traditional hearings, the Broadcast Bureau will not appear as a party, unless otherwise ordered by the Commission. Instead, the Bureau will serve as advisors and staff support to the Commission with responsibility for reviewing and analyzing the pleadings and preparation of a draft of the final decision.

68. The Commission's low power application processing procedures call

⁶⁶ Pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e), mutually exclusive applications for the same frequency are entitled to simultaneous consideration before a grant of any of the applications. See, *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945). The Commission traditionally has afforded mutually exclusive applicants a "trial-type" evidentiary hearing and has established an elaborate set of procedural rules governing the process. See, 47 CFR 1.201-1.364.

⁶⁷ See, 5 U.S.C. 558(d); 47 CFR 1.248(d).

⁶⁸ See, 5 U.S.C. 558(b); 47 CFR 1.241(a). It is within the Commission's discretion to implement largely paper hearings pursuant to Section 309(e) with the Commission presiding, under the Administrative Procedure Act. Also see, *WJR v. FCC*, 337 U.S. 265, 275 (1949); *Bell Telephone Company of Pennsylvania v. FCC*, 503 F. 2d 1250 (3d Cir. 1974); *cert. denied AT&T v. FCC*, 422 U.S. 1026, *reh. denied* 423 U.S. 886 (1975); *RCA Global Communications, Inc. v. FCC* 559 F. 2d 881 (2d Cir. 1977), *reh.* 563 F. 2d 1, *appeal after remand* 574 F. 2d 727 (1978). Indeed, it is virtually essential that we utilize the abbreviated hearing procedures outlined herein, with only a limited right for oral testimony, at the discretion of the Commission, in light of the concomitant savings of time and resources, both for applicants and the Commission itself.

for the issuance of two cutoff lists: The "A" list invites competing⁶⁹ applications and the "B" list invites only petitions to deny. We shall begin the low power television comparative process upon issuance of a modified "B" list. This notice will include the hearing designation order and will set forth the standard comparative issues and the pleading schedule to be followed by applicants and other interested parties to the proceeding.

69. Specifically, the "B" list will specify that each applicant must submit in writing its direct case⁶⁹ within the approximately 30 day time period set forth therein. In addition to spelling out those facts and characteristics of its proposed operation that the applicant wishes the Commission to consider, the direct case also should include any matters that normally would be raised in a petition to deny against another applicant. Within twenty (20) days after the filing of the direct case, each applicant must submit its written rebuttal case,⁶⁹ including oppositions to any matters raised in any petitions to deny filed against its application. Twenty (20) days thereafter each applicant may submit its written surrebuttal case,⁶⁹ including any replies to oppositions to matters raised in its petitions to deny filed against other applicants. With its surrebuttal case, each applicant also may submit any request it has for oral hearings and cross examination, the subject matter of the desired cross-examination, and the basis therefor. Any request for oral hearing must state specifically the evidence that would be presented, the reason why the evidence is material to determine the merits of the proceeding, why oral hearing with cross-examination is necessary to bring it out,

⁶⁹ Under our current procedures, the "A" list invites both petitions to deny any competing applications. Pursuant to the modified procedures set forth herein, filing of all petitions to deny will be delayed until issuance of the "B" list, which will identify all non-mutually exclusive applications, as well as mutually exclusive groups.

⁶⁹ The direct case is to be limited to 50 pages in length including any index to subject matter, argument, appendices, and other attachments. An original and one (1) copy of the pleading should be filed. The pleading must be typewritten, double-spaced, on 8 1/2 by 11 inch paper.

⁶⁹ The rebuttal case is to be limited to 40 pages in length, including any index to subject matter, argument, appendices, and other attachments. An original and one (1) copy of the pleading should be filed. The pleading must be typewritten, double-spaced, on 8 1/2 by 11 inch paper.

⁶⁹ The surrebuttal case must be limited to 30 pages in length, including any index to subject matter, argument, appendices, and other attachments. An original and one (1) copy of the pleading should be filed. The pleading must be typewritten, double-spaced, on 8 1/2 by 11 inch paper.

⁶⁵ In addition, the operational differences between the low power service and full service television stations should make it unnecessary to investigate in hearing many of the issues raised in petitions to deny that we have designated in full service hearings in the past. For example, issues related to ascertainment and programming will not be relevant. Also, it rarely will be necessary to explore economic or financial issues, in light of the self-certification format of the application form. In addition, the fact that strict enforcement of the twelve-month period for construction will provide conclusive demonstration of whether an applicant's finances were sufficient makes it less important to consider this issue in hearing. Our general policy in favor of permitting free transferability of stations to some extent reduces the general efficacy of painstaking scrutiny of applications in the hearing process. Finally, as we have indicated, we believe that one principal way to expedite the hearing process is to discourage the filing of pleadings on issues that, taken alone, would be less than dispositive of the challenged application. We envision relatively simple designation orders, including only unresolved substantial and material issues of fact necessary to the disposition of the applications and the comparative criteria.

and what evidence already in the record would be contravened (with specific identification of the pleading and the page number). All material statements contained in any pleading must be verified by the person offering the statement—*i.e.*, the facts must be sworn to as true and within the specific knowledge of the person offering the statement.

70. Within 30 days after the filing of the surrebuttal case, each applicant must file a proposed decision.⁶³ This decision must set forth such information as the Commission would find necessary to make its decision, including a brief summary of the facts, proposed findings (including findings on all allegations raised in any petition to deny), and ultimate conclusions.

71. The Commission will attempt to dispose of virtually all low power comparative cases under the paper hearing procedure set forth herein. The Commission, of course, will review requests for oral testimony at the same time the staff recommended decision is submitted for consideration. However, oral testimony will be ordered only where it is shown that the paper proceeding alone will prejudice a party;⁶⁴ where a substantial and material issue of decisional significance cannot adequately be resolved without oral hearing;⁶⁵ or where designation of the matter for oral testimony would be otherwise required by the public interest.⁶⁶ Denial of an oral hearing request will not be made in a separate decision. The request will be deemed denied where the Commission decides the case on the basis of all the pleadings submitted.

72. Should the Commission determine that oral testimony is necessary, it will order that the particular issue or issues be heard by an Administrative Law Judge. The issue or issues to be tried will be set forth in an interlocutory order, which also will set a pre-hearing conference, to establish a discovery and trial schedule. At this stage, the applicants may avail themselves of the discovery procedures normally available in adjudication cases, *but not before*. After the Administrative Law Judge issues the initial decision on the issue(s) being tried, it may be appealed directly to the Commission.

⁶³ The proposed decision must be limited to 30 pages in length. An original and one (1) copy of the decision must be filed. The decision must be typewritten on 8½ by 11 inch paper. However, it may be single-spaced.

⁶⁴ See, Section 558(d) of the Administrative Procedure Act, 5 U.S.C. 558(d).

⁶⁵ See, Section 309(e) of the Communications Act, 47 U.S.C. 309(e).

⁶⁶ *Id.*

73. With these procedures and the cooperation of applicants, we believe that most low power proceedings will be resolved on the basis of entirely written submissions within reasonable time frames. With this goal in mind, we shall require strict compliance with procedural dates. Applicants that fail to adhere to established procedural dates or that, in any way, seek to delay resolution of these hearings are subject to having their applications dismissed for failure to prosecute. See, § 73.3568(b) of the rules. We encourage expedition, and we are concentrating staff resources with an eye to facilitating low power application processing; nevertheless, mutually exclusive applications that require hearings inevitably will suffer delay. We anticipate that this knowledge itself will act as an incentive to private settlements.

74. *Comparative Factors.* In the interest of administrative simplicity and efficiency, as well as to promote particular service objectives, the Notice proposed three tentative comparative criteria, for which an applicant either qualifies or does not, without more. In order to refine these proposals, we explicitly sought comments in this area. We take the wide range of commentary received to be an indication of the controversial nature of our proposal. Some parties praise the comparative factors as proposed. Others suggest various refinements on the up-or-down nature of the preferences themselves, *e.g.*, consideration of factors such as participation of ownership in management, program proposals, past broadcast record and civic involvement, as part of the minority ownership preference. Still others suggest preference systems more elaborate than the traditional comparative hearing criteria. See, Policy Statement on Comparative Broadcast Hearings, 1 F.C.C. 2d 393 (1965). Finally, there are those who advocate that nothing short of traditional hearings using traditional comparative criteria are permitted under the Communications Act.

75. The comments raise problems with two of the preferences proposed. Commenters generally disapprove the preference to be afforded to the first-filed complete and sufficient application. They argue that this preference has little relevance to the quality of service that may be expected from an applicant. The first come, first served preference initially was proposed for two reasons: We wished to encourage complete and sufficient applications; and we believed that in a new, uncharted service there might be a need to provide an incentive for parties to use the previously fallow

spectrum. The avalanche of interim applications belied the necessity of a measure to this end, however. We still wish to encourage complete and sufficient applications. However, we are convinced that we can better do this via strict adherence to our policy of returning deficient applications, without regard to any cut-off protection that might be considered to have vested. We shall adopt the single standard for acceptance of low power applications set out in §§ 22.31(b)(2) and 22.32(b)(1) of the rules and we shall require all applicants to meet that standard. We therefore shall not accord any preferential treatment to first-filed applications.⁶⁷

76. On examination of the record, we perceive confusion about the notion of noncommercial or public low power stations. Noncommercial low power service is defined only in the context of the preference proposed for applicants that are nonprofit entities proposing noncommercial service for the public. There are no other rules proposed that would distinguish the character or operation of a noncommercial low power station from its commercial counterparts. Among the commenters, contradictory assumptions regarding noncommercial or public low power stations appear to be operative.⁶⁸

77. This issue previously has not arisen in the translator service, because the rules limit translators to rebroadcast only, and they therefore fully track the mode of operation of the primary, full service station, whether noncommercial under § 73.621 or commercial.⁶⁹ We

⁶⁷ Elimination of this proposed preference will not prejudice current applicants, because it was not to be effective for applications filed during the pendency of the rule making. See, note 48, *supra*.

⁶⁸ To receive funding from the Corporation for Public Broadcasting, a station must be both nonprofit and noncommercial, as defined in Section 397(b) of the Communications Act. A noncommercial, educational television station licensee, under § 73.621 of the Commission's rules, likewise must be nonprofit, noncommercial and have an educational or cultural purpose, or be a municipality with no independently constituted educational entity. In the FM and TV services, compliance with this rule is a condition of operation on a channel reserved for noncommercial use. In the AM service, where there is no table of assignments, a station may be noncommercial, educational and comply with the above definition, but there also may be stations operated by nonprofit entities that are not educational in nature.

⁶⁹ Under a 1971 policy, any applicant, noncommercial or otherwise, proposing rebroadcast of noncommercial, educational programming, has priority over a commercial translator operating on a reserved channel in the Television Table of Assignments. See, 23 RR 2d 1504, 1508 (1971). We are eliminating this policy as part of our removal of all distinctions in translator or low power status arising from operation on channels in the Table. See, paragraph 28, *supra*.

perceive several reasons for not imposing strict regulations regarding noncommercial operation of low power stations. With respect to all aspects except technical ones, we envision the low power service as an essentially unregulated service. The Notice specifically stated that the mode of support, including free and pay programming in any proportions, would be left to the licensee's judgment of what the marketplace requires. In light of the secondary status, the absence of a prohibition upon the free transfer of stations and the as yet undetermined viability of low power stations, we believe that the decision whether or not to air commercials, and in what amounts, should be left to the licensee's discretion.⁷⁰ The Commission will not concern itself with this matter, nor with the corporate or organizational structure of an applicant. Whether a low power applicant or licensee is noncommercial or not-for-profit is a decision properly made by the licensee on the basis of applicable corporate and tax law, pertinent requirements of the Corporation for Public Broadcasting and perceived characteristics of the market in which it proposes to operate. Therefore, § 73.621 will not apply to low power stations.

78. In light of the above, we are not going to adopt the three preferences proposed.⁷¹ We are encouraged by many commenters to expand the comparative criteria proposed in the Notice of Proposed Rule Making, to include for example, female ownership, free versus pay service, local ownership, hours of operation, rebroadcast versus origination, financial capacity,

⁷⁰The Public Broadcasting Amendments Act of 1981, Pub. L. No. 97-35, *supra*, mandated the establishment of the Temporary Commission on Alternative Financing for Public Telecommunications, whose mission it is to identify additional sources of funding to maintain and enhance public telecommunication services. The Temporary Commission was given specific authorization to conduct an Advertising Demonstration Project to test the desirability and revenue potential of advertising on public stations. In addition, other amendments to the Public Broadcasting Act (*see e.g.*, Section 399) specifically authorize commercial and commercial-like activities by public stations. In light of these amendments and other factors that are forcing public stations to become increasingly self-sufficient financially, we believe that those broadcasting entities that choose to operate on a non-profit basis should be given the greatest possible flexibility in raising operating revenue.

⁷¹We do, however, reaffirm the continuing vitality and usefulness of our minority ownership policy, as its intent was expressed in the comparative preference proposed for minority low power applicants. We shall continue to award a comparative merit on this basis in the comparative hearing. *See also*, Policy Statement on Minority Ownership of Broadcasting Facilities, 68 F.C.C. 2d 979 (1978).

integration of ownership and management, locally-oriented programming and/or local program production. While some of these characteristics of service might be a basis for preference in particular cases or in particular areas, it is not clear that they generally should be dispositive in every case, as they would be if they operated as preference points. In many cases, the nature of the particular market proposed to be served should dictate the characteristics of service that might be considered desirable. In a secondary service, particularly one where no prohibition on "trafficking" will be imposed, (*see*, paragraphs 93 and 94, *infra*), meticulous comparative evaluation on the basis of an elaborate system of preferences easily could turn out to be a pointless, though time-consuming, exercise. Additionally, in an untested service, we cannot reliably predict what characteristics ultimately will prove desirable in a license proposal, and therefore should receive comparative preference.

79. We believe that the better course is to distill the issues that currently may be considered in broadcast application hearings to a modicum that should prove relevant for the low power service and manageable in a largely paper hearing. These include issues relating to basic qualifications as well as comparison of competing applicants. As stated above (*see*, paragraphs 60 through 62) we do not believe that Section 307(b) comparisons among competing low power applications is a worthwhile endeavor, because the goal of fair and efficient spectrum allocation already has been anticipated via the Tables of Assignments, and we can expect to accomplish little more by applying such analysis to a secondary service that has no required coverage area nor local programming requirement. As indicated in note 47, above, the application form has been amended to provide for certification of financial qualification, to conform to our practice with other broadcast applications. *See*, Appendix B. The citizenship requirement is straightforward enough. Because the Commission currently has the character requirement under scrutiny in Gen. Docket No. 81-500 (*see*, Notice of Inquiry, 47 FR 40899 (August 13, 1981)), we are not modifying this qualification for low power applications, but shall await the outcome of that Inquiry.

80. Of the comparative issues, we shall retain the criterion enunciated in our 1965 Policy Statement, *supra*, that we consider most relevant in the low power context, diversification of control of the media of mass communications.

Along with this, we shall afford merit to applicants that are over 50 percent minority owned. We shall not consider full-time participation in station operation by owners because, in many instances, the functional characteristics of low power stations will not require such extensive involvement in the operations of a particular station by any individual, whether owner or owner's employee. Nor shall we consider program proposals, because we believe low power licensees should be fully responsive to marketplace considerations, without the Commission second-guessing their decisions. These issues are designated in full service comparative hearings only on a special showing, and they rarely are dispositive of the case. *See*, Chapman Radio and Television Co., et al., 7 F.C.C. 2d 213, 215 (1967); Flint Family Radio, Inc., et al., 69 F.C.C. 2d 38, 42-46 (1977), George E. Cameron, Jr. Communications, 71 F.C.C. 2d 460, 464-466 (1979). Additionally, comparative advantage generally is afforded to program proposals on the basis of local or public service programming. We are not requiring local programming by low power licensees, because we cannot determine across the board that this would be in the public interest in every market. Therefore, we would not want to afford across-the-board comparative preference for this. We are not going to consider comparative coverage, for reasons similar to those on which we based our decision not to make Section 307(b) considerations dispositive in individual cases. *See*, paragraphs 60 through 63, *supra*. We are not considering character in the comparative context, beyond the initial qualification determination (*see*, paragraph 74, *supra*). We also are not going to consider past broadcast record comparatively; because so many applicants are new entrants to the telecommunications industry, a result that we do not discourage, it could disadvantage them to accord merit or demerit that only could be garnered by applicants with previous broadcast experience. Both to facilitate expedition in the hearing process and, more importantly, because we believe that low power stations will be very directly responsive to audience needs and interests, we find it in the public interest to limit the comparative issues to diversification and minority ownership. Moreover, we believe that this combination of criteria can further a primary objective for the low power service, facilitating entry by groups and individuals that are new to the broadcast industry.

81. *Low Power License Renewal.* As proposed in the Notice, we are not now modifying the standards governing contested and comparative renewals. See, Notice, 45 FR at 69189 n. 60. Contested renewals will be handled in the manner that full service stations are at present. The license term for translators and low power stations will be five years, in accordance with the amendment to § 73.1020(a) contained in the Order, FCC 81-497 (adopted October 30, 1981; released November 2, 1981). An abbreviated renewal form will be used, in conformity with the Commission's practice for full service stations. See, Revision of Application for Renewal of License of Commercial and Noncommercial AM, FM and Television Licensee, 46 FR 26236 (published May 11, 1981).

82. *Modifications to the License.* Sections 73.3572(a) and 74.751 currently require formal application for various equipment changes, channel changes, power changes, transmitter location changes and/or change in the primary station being rebroadcast. We are modifying this rule to include facilities or other modifications that would have a significantly greater or different preclusive effect than the existing authorization, including power or frequency change, certain equipment or other engineering modification and change in transmitter location (present § 74.751(b) (1-5), (f) and (c)). Applications for such modifications will be treated as applications for major modification and be placed on "A" cut-off lists, subject to competing applications and petitions to deny. Transfer of ownership or control will not be considered a major modification, but applications for transfer will be subject to petitions to deny. Present or future translator licensees wishing to include low power features must notify the Commission in a manner that indicates an understanding of the additional rules with which they must comply, e.g., the operator requirements. Those wishing to change the primary station being retransmitted (present § 74.751(b)(6)) will be subject only to a notification requirement.

VII. Low Power Station Operation

83. The Commission's ownership rules are informed by two related policies. The prohibitions upon multiple ownership at once are designed to encourage diversity of voices in the marketplace of ideas and to foster competition by preventing undue concentration of control of telecommunications facilities. The present rules are structured as barriers to entry imposed on proscribed entities

in proscribed markets.⁷² In a new service, whose viability is unknown and probable competitive impact on other telecommunications services is believed not to be significant cannot yet accurately be predicted, we must exercise no less care to assure that we do not create entry barriers that fetter the development of the service. Ideally, the service effectively will compete with other video services and thus stimulate their responsiveness to market forces, and low power stations will compete with each other in a manner that promotes superior service within the low power service itself.

84. Ownership of translators did not raise the issue of diversity of voices, translators being repeater stations only. In the present ownership regulations, translators are regarded as mere extensions of the primary station and not as new voices. The present rules regarding translator ownership are:

(1) Commercial television stations may not own or financially support VHF translators in distant markets not operating on assigned channels. Section 74.732(e)(1) and (2).

(2) Cable systems may not own translators licensed to the community in which the cable system is franchised. Section 76.501(a)(3).

(3) No VHF translators may be licensed in areas receiving satisfactory service from UHF television stations or UHF translators, except where particular circumstances warrant. Section 74.732(d).

(4) Translators operating at maximum power on assigned channels may be authorized only to existing licensees of television stations, unless non-licensee applicants demonstrate the technical capability to operate them. Section 74.732(i).

The Notice proposed deletion of the first, third and fourth rules cited above. It also proposed that cable systems be permitted to own translators, but no originating or subscription low power stations, within their franchise areas. Few commenters take issue with deletion of §§ 74.732(e)(1) and (2), 74.732(d) and 74.732(i), affirming our belief that it is in the public interest to do so. Cable/low power cross

⁷² It is our intention presently to re-examine in a separate proceeding the efficacy of the Commission's ownership rules and policies in light of the conditions that prevail in today's telecommunications marketplace. Until such time as that is accomplished with respect to all broadcast services, we shall endeavor to enact flexible ownership policies for the low power service that are sensitive to the environment in which the service will develop. The low power rules of course would be subject to modification, should they deviate significantly from future revisions in our overall ownership policy.

ownership is discussed in greater detail, *infra*.

85. Several additional ownership restrictions were proposed for low power stations, but not translators, on the theory that low power stations should be treated as "voices" in the first amendment sense:

(1) A *duopoly* rule, which prohibits commonly-owned stations in the *same service* with overlapping contours.

(2) A *one-to-a-market* rule, which prohibits commonly-owned stations in *different services* with overlapping contours.

(3) The three national networks (see, § 73.658(l)(1)(v)) would not be permitted to own any low power stations.

The duopoly and one-to-a-market rules would apply to noncommercial, as well as commercial, low power stations. No newspaper/low power cross ownership rule was proposed. Nor was a limit proposed on the maximum number of low power stations permitted in common ownership.⁷³ No rule restricting regional concentration of control was proposed.

86. As the comment summary reveals, there are comments virtually on all sides of the ownership issues, with public interest groups generally supporting restrictions and broadcasters generally opposing restrictions. Citizens and consumer groups and other proponents of ownership restrictions tend to characterize the proposed ownership restrictions as devices designed to promote diversity and competition. Those opposing restrictions consider them unnecessary barriers to entry into the low power service. We find that in today's telecommunications environment in which there are an increasing number of avenues on which to communicate, there may be less need for structural restrictions designed to facilitate diverse entrants. That is, the increasing availability of other technologies for telecommunications itself is providing additional modes of access that reduce the efficacy of the scarcity rationale. These general arguments may be applied to each of the rules proposed.

87. *Duopoly rule.* The proposed duopoly rule is opposed particularly by those wishing to operate multiple-channel subscription systems via low power. They argue that STV may be distinguished from true origination on low power STV systems that merely retransmit terrestrial microwave or

⁷³ A limit of 15 stations in common ownership was imposed during the pendency of the rule making only. See, Memorandum Opinion and Order, 46 FR 10728 (published February 4, 1981).

satellite feed; therefore, low power STV need not be considered a separate "voice" for multiple ownership purposes. Also, they contend that only with multiple channel capacity can low power STV compete effectively with cable.⁷⁴ A number of comments advocate waiver of the duopoly restriction in rural areas, at least for low power STV, on the grounds that spectrum is less scarce in rural areas and viability also is less certain.

88. The Justice Department is among those who believe that a duopoly rule promotes competition.⁷⁵ The worst-case scenario is that, in the absence of a duopoly prohibition, one entity will gain control of all available low power outlets in a community, when there are others who would, if they could obtain licenses, provide greater diversity. On the other hand, it is possible to envision more or less rural markets where only one entrepreneur would be willing to operate, using more than one channel, on a subscription basis or otherwise; if he is permitted to operate on only one channel, the other availabilities may lie fallow into the indefinite future, or he will choose not to initiate a single-channel operation, and the public will be deprived of service altogether. The irony of this situation is that it is precisely in markets that currently have the least service, where the viability of low power is the least certain, that have the greatest need for low power. On balance, we believe the public best may be served if we do not impose a duopoly restriction in the low power service. Therefore, we shall not do so.

89. *One-to-a-market rule.* Many commenters oppose a one-to-a-market rule, especially in the radio/low power context. Convincing arguments are

⁷⁴ We perceive a difficulty in justifying a different ownership rule for STV low power stations. It is unlikely that they will operate on a subscription basis during all their hours of operation, although we are not adopting rules prohibiting this. When STV low power stations are operating in a free mode, they are indistinguishable from other low power stations, and we encourage some local origination on each station with the authority to do so.

⁷⁵ The comments afford two contradictory economic theories that predict the behavior of common owners of stations in the same service in the same market. There may be an incentive not to actualize fully the potential of one commonly-owned facility, in order not to draw from the audience of the other. On the other hand, in a more formatted service, an owner might attempt to attract different audiences with different kinds of programming on each commonly-owned station, and to add to the total audience without fragmenting the audience of either station. The Commission's Network Inquiry Staff Report, *New Television Networks: Entry, Jurisdiction, Ownership and Regulation*, October, 1980, describes such a result. The nature of the of the particular market would seem to be essential to realistic prediction of the whether in fact this will occur.

made that local radio licensees already have broadcast expertise, already may have access to local and or national news services, already are familiar with the local community and may have the financial wherewithal to cross subsidize a low power operation with revenues from other broadcast properties. We agree that ownership rules that effectively restrict the entry of those with prior expertise or financial capacity can work to the detriment of a new service. Also, there may be significant economies in same-market ownership of a low power station and a broadcast station in another service. We note that the full service television/low power cross ownership situation closely resembles a duopoly situation, depending upon the nature of the low power operation, *i.e.*, a free full service station and STV low power station that merely broadcasts satellite feed actually may be quite different and appeal to different audiences. While the proponents of a one-to-a-market rule argue that it will have the effect of promoting diversity and competition, we find the countervailing arguments in favor of free entry persuasive, especially in the context of a new service whose viability is undetermined. Moreover, where there are competing applicants, the comparative process will favor diversification. In a comparative situation new entrants will be favored, while current licensees will not be precluded from areas where new entrants may not wish to propose service.

90. *Network ownership of low power stations.* The three commercial networks express opposition to the prohibition on their ownership of low power stations that was proposed. They argue that their expertise can be put to good use in ensuring the viability of the fledgling service and that they are in a favorable position to develop and introduce new technological advances via low power. They dispute the contention of the Justice Department that network ownership of low power stations is highly anticompetitive and will preclude new entrants from the field. The networks cite in support of their position the Network Inquiry Staff Report's conclusion that group owners have an incentive to air diverse programming on co-owned stations, to maximize audience, rather than airing similar programming that could have the effect of fragmenting audience among several co-owned stations. We do not have sufficient evidence of the magnitude of the anticompetitive potential of network ownership of low power stations to justify implementing the rule proposed

at this time. Both for this reason, and because we believe that the networks can, as they claim, contribute to the development of the fledgling low power service, we shall not prohibit network ownership of low power stations.

91. *Multiple ownership of low power stations.* A number of commenters advocate a limit on the number of low power stations, on diversity and competition grounds. We are encouraged to impose limits of between five and 25 on the number of stations the Commission would permit to a common owner; however, we are afforded no convincing reason, other than general administrative efficiency in application processing, for the choice of any particular number. Others point out that there are economies of scale in multiple ownership that may be essential to viability in the low power service. As stated in paragraph 78, above, the Commission's ownership rules have a dual purpose: prevention of undue concentration and promotion of diversity. The over 6,000 applications currently on file evince an array of diverse kinds of applicants and program proposals. And, as we stated in the *Notice*: "The concern for anticompetitive effects is lessened where the stations are both secondary and inherently limited in their coverage potential." 45 FR at 69184. The comments do not persuade us to the contrary. That is, we regard low power as neither a significant and general enough competitive threat to other broadcast services nor sufficiently distinct as a market in itself that monopolization should be considered a serious or dangerous enough possibility to warrant structural restraints on ownership. Should a real threat of inappropriate economic concentration arise as the service develops, it can be addressed via antitrust enforcement or by the Commission in appropriate proceedings.

92. We are told by some commenters that a ceiling on multiple ownership would prevent low power network formation. We believe, however, that program-oriented networking of stations can occur other than via common ownership of numerous stations. Affiliation for program distribution or syndication is an alternative. Also, a series of satellite or terrestrial microwave interconnected translators may be used to relay programming originated by one low power station. This suggests that common ownership of a number of low power stations is not necessary to the provision of common programming. However, with a network consisting on commonly-owned low

power stations, as opposed to translators, the potential exists for each station to originate some programming targeted to discrete local or regional interests. This is a result that we would encourage. Additionally, there may be economies of scale in common ownership of a number of low power stations other than those related to program acquisition or distribution. It is our present belief that the potential economic savings of multiple ownership far outweigh a remote potential of undue concentration. For this reason, we are not imposing a ceiling on the number of low power stations that may be owned in common. We also shall not impose a rule relating to regional concentration of control.

93. *Low power/cable cross ownership.* The cable/low power cross ownership issue is treated similarly in the comments to cross ownership of low power and other broadcast services. The Justice Department is among those that believe that a cable system owning a low power station in its franchise area has an incentive not to maximize the potential of the low power station, because it would compete with the cable system. Other commenters argue that there may be rural areas where the cable operator is the sole potential low power licensee, and that in such cases diversity will be enhanced, not inhibited by cable/low power cross ownership.⁷⁶ We note that issues affecting cable cross ownership are under separate consideration.⁷⁷ Without prejudging any subsequent proceeding involving the full service/cable cross ownership rules, we believe that in the low power service, the possible economies of scale, including those relating to program distribution, favor our permitting cable/low power cross ownership. Therefore, we believe that there should be no

restraints on cable/translator cross ownership.

94. *Summary.* As the preceding discussion indicates, the primary considerations that inform our deliberations on all aspects of the ownership policy are that low power may provide an opportunity for new entrants into the telecommunications industry at lower cost than would be incurred in starting full service stations or cable systems. Because of both the low cost and the comparative criterion favoring diversification, even absent ownership restrictions, it is unlikely that new entrants will be precluded by existing broadcasters. Additionally, in some areas, the development of the service itself might be fettered irretrievably, were we to impose inviolable rules that eliminate experienced broadcasters with the potential to make the service viable. This is so particularly in markets where an owner of other broadcast properties might be the sole potential entrant. Furthermore, NTIA points out in comments that an alternative to imposition of ownership rules that accommodate the latter concern is the adoption of policies that apply in the comparative situation. That is, ownership of other local or distant outlets would not be considered when no one but a sole applicant is applying for the frequency; but only when there are competing applications. NTIA suggests that in such cases a comparative demerit or disadvantage be given to applicants that already own facilities, in local or distant markets. This approach resembles that taken in the traditional comparative hearing context, where diversification of ownership is part of the standard comparative issue among competing applicants, and we are continuing to apply that criterion in the low power service.

95. In summary, we are adopting no ownership restrictions *per se* for the low power service. This approach is in accord with our general belief that free entry into and out of the low power industry will best serve potential applicants and also the public. Low power stations have limited coverage potential, which effectively limits the area from which advertising support may be garnered; their secondary status poses the possibility that they might be required to alter facilities or cease operation at any time; the majority of channel availabilities are in rural areas, where viability generally is less certain than in urbanized areas. We believe these factors augur in favor of permitting experienced participants in the market

to pioneer the low power service and outweigh our traditional concerns regarding multiple and cross-ownership. We do not wish to discourage new entrants, and we note again that the comparative criterion favoring diversification will inure to their benefit. However, we also recognize the important role those with proven track records may play in the development of the service, particularly in localities that individuals inexperienced in the market may perceive as posing too great an economic risk to warrant entry.

VIII. Low Power Station Operation

96. *Construction Permit.* Section 73.3598(b) will be applied to low power, and the Commission will strictly enforce the requirement that construction must be completed and the station be operational within twelve months of issuance of the authorization, or the construction permit must be turned back to the Commission. We envision no extensions of time with regard to this rule, the only possible exception being documented evidence of unforeseen and unavoidable delay in delivery of equipment that was contracted for properly. We do not believe this rule is overly stringent, in light of the relatively minimal burdens of construction of low power stations, as compared with full service stations. Section 73.3597 (e) and (f), which prohibits payments upon assignment or transfer or a construction permit from exceeding reimbursement of the transferor's expenses and limits the equity interest that a transferor or assignor may retain in the permittee to a proportion equal to the transferor's capital contribution, until the station commences program test operations, also will be strictly applied in the low power context, as with the other broadcast services. This appears to be an area in which Sections 301 and 304 of the Communications Act, as well as general public interest concerns, dictate that regulation should be continued. Sections 301 and 304 provide, *inter alia*, that licenses issued by the Commission convey no property interest. Allowing profit to be obtained upon transfer of a construction permit prior to commencement of program test operations appears to violate this prohibition. The permittee would appear to have nothing to convey for profit beyond the mere expectation of future profits that appends to the permit itself. Also, implicit in the filing of an application is an intent to construct a station and commence service. To maintain the integrity of the Commission's processes and to encourage the expeditious introduction

⁷⁶ We believe that this would depend on the nature of the particular market: where a cable operator has little hope of garnering additional subscribers, there may be an incentive to maximize total audience with a low power operation. On the other hand, where there is head-to-head competition between cable and low power for audience, the service affording the lowest marginal cost per viewer, or greatest profit margin per viewer, may be favored by a common owner.

⁷⁷ See, *Staff Report, FCC Policy on Cable Cross Ownership*, November, 1981. We believe that permitting cable/low power cross ownership could provide valuable data for any proceeding that is initiated regarding cable cross ownership, in general. We received little commentary regarding the proposed deletion of § 76.501(a)(3), which prohibits cable/translator cross ownership. We note that, where there are competing applicants for a translator, one a cable operator and one unaffiliated, the comparative criteria would favor the unaffiliated applicant. As the Staff Report pointed out in paragraph 362, this is the only area of real concern.

of new service in an environment in which free transferability of stations is permitted, we believe it is in the public interest that § 73.3597 (e) and (f) be maintained for the low power service.

97. *License.* We received one comment seeking that the format for the call sign for low power stations be changed to a five-letter one resembling the four-letter call signs assigned to full service stations. We believe that the confusion that is likely to result from such a change, as well as the administrative inconvenience of carrying it out, are not justified by the result. Therefore, we shall continue to assign low power call signs as we assign translator call signs.

98. We proposed in the Notice that § 73.3597 (a) through (d), the "three year rule" not apply to low power stations. We opined that permitting free transferability of stations would encourage entrants into the industry, as well as provide a useful example for reference in other contexts. Indeed, we recently have sought comments on a proposal to do away with the "trafficking" issue altogether, on the grounds that the rule no longer serves a useful purpose in the present telecommunications environment. See, Notice of Proposed Rule Making, Amendment of § 73.3597 of the Commission's rules, *supra*.

99. The comments on the proposal not to impose an anti-"trafficking" rule in the low power service were divided. The Justice Department supports a policy facilitating ready entry into and exit from the market. The principal objection to the absence of a "trafficking" prohibition is voiced by groups that would hope to garner preference in the competition for licenses. They complain that the preference system easily can be defeated, unless the Commission imposes either a required holding period for the original licensee, or a condition that the station be transferred only to another preferred entity. We do not gain say the cogency of this argument. However, it rests on an incorrect assumption about the purpose of a system of preferences. It is the statutory duty of the Commission to allocate the use of broadcast spectrum in a manner that best serves the public interest. This may be accomplished via comparative hearing, comparative preferences or lottery. However, requiring an unwilling licensee to retain an unwanted broadcast property hardly can result in the best service to the public. The Commission ought not to second guess private decisions that are made in response to marketplace forces, but should permit stations to be put to the

highest valued use in the marketplace. Therefore, we shall not impose a "three year rule" in the low power service. We shall, however, impose a one-year holding period on new low power licenses in order to maintain the integrity of the Commission's comparative processes in situations where the construction permit was awarded by virtue of a comparative preference.

100. *Station Management.* The Commission's rules and policies governing Equal Opportunity in Employment will apply to all low power stations. Reporting requirements will apply to those with sufficient employment levels to trigger the requirements. See, § 73.2080 of the Rules, which imposes a reporting requirement on all stations with five or more full-time employees. While some commenters argued forcefully to the contrary, we continue to believe that Sections 318 and 325(a) of the Communications Act require that all originating low power stations have an operator holding at least a Restricted Radio Telephone Operator's Permit in continuous attendance during local originations. It appears that some parties misunderstood the nature of the requirements proposed, for a number of comments argue that a low power station merely retransmitting terrestrial microwave or satellite feed should not require a full-time operator. We proposed that, during microwave-fed retransmissions, the statutory operator requirement would be fulfilled in the same manner as the current requirement for all translators employing modulators: observation of the off-air signal for ten continuous minutes each day on a conventional television receiver. In cases of local origination, the operator must be in continuous attendance at the transmitter site, at a remote control point or at the program source. These operator requirements are neither extraordinary nor overly burdensome, and we shall maintain them until and unless they are made unnecessary by legislative change.

101. *Low Power Station Maintenance.* We shall require translator and low power licensees to comply with §§ 74.752 (c), (d) and (e) and also to measure the carrier frequencies of their output channels at least once a year, and as often as necessary to assure compliance with the frequency tolerance standards. See, paragraph 39, *supra*. The aural carrier frequency of stations employing modulators also must be measured, but we would permit factory measurement of the modulation characteristics. Proof of performance

may be certified by a holder of a General Operator's permit.⁷⁸ Maintenance logs must be kept by all translator and low power station licensees. See, § 74.781.

IX. Programming

102. *Station Identification.* We shall require low power stations, during periods of program origination, to comply with the station identification requirements of full service broadcast stations. See, § 73.1201. However, we shall continue to allow translators, and low power stations operating in a rebroadcast mode, to be identified in accordance with the current provisions of § 74.783.

103. We believe that low power stations should be subject to a minimum of program-related regulations, so that they might be fully responsive to marketplace conditions. We received comments urging a panoply of programming rules, some even more stringent than those governing full service stations. We do believe this kind of governmental surveillance is neither necessary nor appropriate. In many instances, particularly in rural or remote areas, low power stations will be set up specifically to fill local needs. In areas where the marketplace demands coverage of local events of common interest, licensees can be expected to provide it. In some urban markets, unserved ethnic enclaves may be targeted for low power service. But in a major market that already receives adequate local coverage from several full service stations, a low power licensee may discover and attempt to fill a need for additional national news, sports or entertainment programming. Such judgments properly are left to licensees; it is in their interest, and the public's, to garner audience by attempting to serve unmet needs.

104. The principal structural limit we shall impose on low power stations with respect to programming is that the programming aired must comply with the definition of "broadcast" in the Communications Act and § 73.641(b) of the Commission's rules. Where a potential use of radio frequencies has not yet been authorized for broadcast use, it will not be permitted via low power. See, e.g., Notice of Proposed Rule Making, Amendment of Part 73 to Authorize Transmission of Teletext by TV Stations, BC Docket No. 81-741, 46 FR 60851 (published December 14, 1981).

⁷⁸The General Radiotelephone Operator's license now is issued in place of both First and Second Class licenses. See, *Report and Order*, Docket No. 20817, Radio Operator Licensing Program, 46 FR 35450 (published July 8, 1981).

Nor may low power stations be used for private communications, a service provided more suitably by point-to-point private and common carrier services. See, e.g., Report and Order, Docket No. 19493, Amendment of Parts 1, 2, 21 and 43 of the Commission's rules and regulations to Provide for Licensing and Regulation of Common Carrier Radio Stations in the multipoint Distribution Service, 45 F.C.C. 2d 616 (1974). Finally, while we repeatedly have acknowledged the difficulty of adhering strictly to any definition by which translators and low power stations may be distinguished, we continue to believe that the distinction is best framed in terms of rebroadcast versus origination. Under § 74.784 of the Commission's rules, rebroadcast is simultaneous retransmission of the signal of an existing TV broadcast station. Anything other than this is, by definition, origination, for which a low power license is required. Whether or not the low power licensee engages in any local origination, broadcasts a network feed, offers a subscription service, etc., the potential to do so defines the station.

105. *Statutory requirements.* As we have indicated, the statutory prohibitions on the broadcast of obscene material, plugola, payola and lotteries apply to the low power service. See, 18 U.S.C. 1304, 1464, Section 303(m)(D) of the Communications Act of 1934, as amended, and § 73.1211 of the Commission's rules. 47 CFR 73.1211 (1980). Our rule requiring fairness in licensee-conducted contests also will apply. We also shall continue to impose Fairness Doctrine obligations in the low power service only to an extent consonant with a station's origination capacity. If the Commission receives a complaint related to Part I of the Fairness Doctrine, the station may meet it by showing that it aired responsive issue-oriented programming submitted in a mode compatible with the station's origination equipment. Likewise, to meet its obligation under Part II of the Fairness Doctrine, the station must make time available, with or without sponsorship, to responsive issue-oriented programming submitted in a format compatible with the station's origination equipment. The fairness obligation would be on a sliding scale, depending upon the direct involvement of the station management in program production and decisions. Similarly, Sections 312(a)(7) and (f) and 315 will apply to low power stations, to the extent that their origination capacity permits. See, Alaska Public Broadcasting Commission, 82 F.C.C. 2d 220 (1980). The reasonable requests of

legally qualified candidates for federal elective office who seek to purchase reasonable amounts of time or respond to their opponents' messages must be acceded to, so long as they provide program material that is compatible with the station's origination equipment. See, Public Notice, Acceptance of Political Advertising by UHF Translator Licensees, 62 F.C.C. 2d 896 (1976). Without prejudging issues in our pending rule making on DBS, we note that the hybrid nature of subscription television, which suggest that statutory provisions for broadcast stations properly may not apply to STV stations, has been raised in the DBS proceeding. See, note 17, *supra*. In light of the fact that numerous low power applicants envision subscription service, the resolution of that issue in the DBS proceeding may have a direct bearing on our present conclusions regarding the applicability of these statutory provision to low power STV stations.

106. We are not imposing a formal ascertainment obligation on low power stations. It is in the nature of low power stations to be familiar with and responsive to the needs of the viewers they serve. Formalizing this would be needless. To be viable in the highly competitive telecommunications marketplace, these small stations will have to react with sensitivity to the needs and desires of their markets. Similarly, we are leaving decisions regarding commercialization and nonentertainment programming to the licensees' discretion. Such regulations also would have little public interest value. Indeed, at a time when the continuing vitality of such content-oriented regulations increasingly has been called into question even with respect to full service stations, it would be unreasonable to apply them to low power. See, e.g. Report and Order, Deregulation, of Radio, 84 F.C.C. 2d 968 (1981), *reconsid. denied*, 87 F.C.C. 2d 797 (1981). Consonant with this view, we are requiring no minimum hours of operation in the low power service, nor the maintenance of program logs, but only maintenance logs.

107. *Applicability of Copyright Law to Low Power Service.* As we have recognized, the copyright laws apply fully to translators and low power stations. Under the General Revision of the copyright law, Pub. L. No. 94-553, 17 U.S.C. 101 *et seq.* (1976), translator and low power operations are subject to full copyright liability, with an exception for secondary transmissions made by local governments or non-profit organizations. See, 17 U.S.C. 111(a)(4). Section 325(a) of the Communications Act requires the

consent of the originating station for rebroadcast of programming. *Also see*, §§ 73.1207 and 74.784(b) of the rules. Retransmission consent may not unreasonably be refused. See, e.g., Memorandum Opinion and Order, Docket No. 9808, 17 FR 10309 (1952). We believe that this standard is appropriate to govern the negotiations of low power operators for program services, until and unless legislative change preempts it. Presumption of rebroadcast consent, sought by National Translator Association, could amount to a substantive modification of the initial bargaining positions of the parties, one for which we do not see a necessity. Likewise, the specific standards for refusal of consent and terms for consent agreement, sought by the Washington State Association of Broadcasters, if enacted by this agency via rule making, would amount to a substantial intervention of the government in what properly should be left to private negotiations between parties at arm's length. We also believe that commercial substitution should be permitted, with consent, subject to the negotiations of the parties. Although the Washington State Association of Broadcasters opposes this, it is possible to envision a situation in which the primary station may benefit from allowing commercial substitution, and we believe the issue is best left to the parties.

108. *Low Power Subscription Service.* As we proposed, we are permitting STV via low power, at the licensees' discretion, and not subject to a "complement-of-four" restriction.⁷⁹ STV may be particularly suited to formatted programming on low power stations; indeed, in some markets it may be essential to the viability of the service. We believe that STV and low power share the potential to accelerate utilization of unused channels, provide viable financial support for specialized programming and small market stations and respond to the interests of the audience. We are not requiring a separate STV authorization, although proposed subscription operation must be indicated on the application form, and existing low power licensees that are providing free service wishing to change to subscription service must so notify the Commission via an application for minor modification. We also will not require low power STV stations to file their franchise agreements with the Commission, although we shall require

⁷⁹ This rule restricts STV operations to communities within the Grade A contour of at least five commercial television stations, including that of the STV operator.

that such agreements be consistent with the rules applicable to full service STV agreements, Section 73.642(e). Licensees, however, must provide a copy of the franchise agreement for public inspection at the station office.

Consonant with the First Report and Order in Docket No. 21502, adopted September 25, 1979, FCC 79-535, 45 FR 60091, published October 18, 1979, we are not setting technical compatibility standards for low power STV equipment. We also are not requiring any minimum hours of free programming, because this requirement could prove overly burdensome to low power operators, and would not be consonant with the absence of minimum required hours of operation. See, paragraph 101, *supra*.

109. We note that several of the issues relating to STV are under separate consideration in Docket No. 21502. See, Further Notice of Proposed Rule Making, FCC 81-449, adopted September 30, 1981, released November 13, 1981. That document explicitly leaves resolution of STV issues related to low power to the instant proceeding. There is one area, however, where we believe the issues are more appropriately addressed in the context of the separate proceeding on STV. That area is the sale of decoders. The Notice in the instant case proposed that decoders could be sold or leased, at the low power licensee's discretion. We received some comments on both sides of this issue, including a petition seeking consolidation of the STV and low power proceedings, filed by the Subscription Television Association. While that petition was denied (see, Further Notice, Docket No. 21502, *supra*, paragraph 58), we believe this particular issue would be the subject of more narrowly focused debate in the proceeding focused exclusively on subscription television service, particularly because we have sought comments on a proposal to permit the sale of decoders generally in that proceeding. Therefore, we shall defer resolution of the issue of the sale of decoders in this docket, pending its resolution in Docket No. 21502.⁶⁰ Except in this respect, we believe that the functional differences between low power and full service stations, as well as the secondary nature of the low power service, and its inherently limited coverage potential, justify a distinction in regulatory treatment between full service and low power stations. Again, we note that the structuring of subscription on a broadcast model has been called into question in the DBS

⁶⁰Interim low power grantees proposing STV have been informed that they may not sell decoders until the Commission finally has resolved this issue.

proceeding. See, note 17, *supra*. Without prejudging issues in our separate STV or DBS proceedings, we believe it is appropriate to acknowledge the possibly hybrid nature of subscription service in our treatment of low power STV stations, particularly in light of the fact that low power is something of a hybrid service itself.

110. *Network Affiliation*. In the interest of ensuring even-handed treatment of all network affiliates, full service or low power, we are requiring that any affiliation agreements between low power stations and networks will be subject to the same regulations as full service station affiliation agreements, see, §§ 73.658 and 73.3613 of the Commission's rules.

111. *Mandatory Carriage*. We proposed no mandatory carriage requirement of low power stations by cable systems. See, Notice, 45 FR at 69183 n. 31.⁶¹ This issue was hotly contested in the comments. A number of parties, including ABC, NTA and the National Association of Low Power Broadcasters, advocate mandatory carriage, on the grounds that "may carry" status could put low power stations at a serious competitive disadvantage, especially in markets where cable penetration is high. The National Cable Television Association, on the other hand, resists "must carry" rules for low power, on the grounds that they violate the first amendment rights of cable operators to choose the programming they carry and are anticompetitive. Field adds that, without a local public service requirement, low power stations do not fulfill the intent of the "must carry" rules: maintenance of local broadcast coverage within a market.

112. We carefully have considered both sides of the dispute. We believe that the decision whether a low power station will be carried on a local cable system is one best left to the private parties. Noting that the mandatory carriage issue is under consideration in connection with pending copyright legislation, and may well be considered by the Commission in the near future, we do not wish to prejudge or preempt forthcoming developments in this area. While we are not here questioning the continuing usefulness of our rules that require carriage of local full service stations by cable systems, we believe

⁶¹Under the present rules, cable systems must carry, as well as full service stations, commercial translators over 100 watts and educational translators over 5 watts within a 35-mile radius of the cable system, except where this would result in substantial duplication or the cable system already carries the primary station. See, §§ 73.55(c)(1) and (2); 76.57(a)(2); 76.59(a)(5); and 76.61(a)(3).

that it is not in the public interest to extend this rule to low power stations. Low power stations are not subject to the programming obligations with regard to the community of license that form the basis for our requiring carriage of full service stations. Additionally, it will not further our goal of fostering a fully competitive telecommunications marketplace if the Commission, by regulation, injects itself between the parties to what should be a private decision-making process. The cable operator, on the basis of his own assessment of marketplace conditions, not the FCC, should decide what programming a cable system will carry, beyond that required by our present carriage rules. Indeed, it is reasonable to assume that, if a cable system has excess channel capacity, it will carry low power programming. Where there is no excess channel capacity, the cable operator should not be required to make the hard choice between the low power signal and other programming for which his subscribers may indicate demand via pay mechanisms, when he already carries the local full service stations. And where low power must compete with other program sources for cable carriage, absence of "must carry" protection could be a spur to low power's provision of creative, innovative programming. This also may encourage low power applicants to seek out remote, unserved areas where cable is thought not to be viable economically, and thereby to fill gaps in existing television coverage, a function for which low power stations are uniquely suited. It is not inconceivable that provision of a high isolation switch, so that both cable and broadcast may be received alternately on the subscriber's set, may be negotiated, at the expense of one, or both, parties in situations where a cable system truly is unwilling or unable to carry a low power station. Finally, until and unless it becomes clear that low power stations are not being carried on cable systems, we have no reason to believe that a "must carry" rule for low power will be useful or necessary.

113. *Alaska*. The Alaska Public Broadcasting Commission evinces concern that several of the technical rules proposed in the Notice (and adopted herein) for the low power service would be overly burdensome, as well as unnecessary. For example, on-site measurement of frequency tolerance and on-site proof-of-performance certification would be prohibitively expensive, as well as unnecessary. APBC also avers that the operator requirement is unnecessary, as the Alaskan stations primarily engage in

rebroadcast. We acknowledge that Alaska is a "special case," because the low power concept long has been in use there, on a waiver basis, and it is the only means by which much of the State may receive television service. See, e.g., Wrangell Radio Group, *supra*. We agree that the present maintenance program that the state carries out is adequate, and we shall not impose additional requirements in that area. Also, to the extent that we are adding other rules, such as the full-time operator requirement for local originations, that exceed the requirements to which the Alaskan low power facilities previously have been subjected and would be particularly burdensome in that unique environment, we shall continue to authorize waivers where appropriate.

114. *Emergency Broadcast System Participation.* Translator stations normally would carry any Emergency Action Notification alert messages originated by the full service TV broadcast station being retransmitted. However, low power stations, during periods of program origination, would have the obligation, similar to other broadcast stations, promptly to inform viewers of an Emergency Action Notification under the established Emergency Broadcast System procedures. Low power stations therefore will be expected to comply with the EBS procedures set forth in Subpart G of Part 73 of the rules with one exception because of the expected limited coverage area and unspecified operating schedule. Although encouraged to do so, low power stations will be exempted from the requirement to install the encoding device for generating the two-tone EBS attention signal. This exemption is similar to that afforded 10 watt noncommercial FM stations. Subpart G is being amended to accommodate this exemption.

X. Conclusion

115. The rules promulgated herein represent, we believe, judicious balancing of competing concerns, for spectrum, for broadcast licenses, for overall maintenance of a healthy competitive telecommunications environment. The record adduced in this proceeding proffered opinion from all sectors on all aspects of the Commission's original proposals. With the comments as a basis, we have resolved the six decision criteria with which we commenced this proceeding in 1978. In light of the comment, and the Commission's intervening experience, it will be noted, we modified, to some extent, the proposals of the Notice. The one sentiment that has remained unshaken by the controversy

surrounding this proceeding is that the low power service can provide additional television service, particularly in areas where there currently is little or none.

116. The existence of so many pending applications, filed by so many eager applicants, may belie, to some degree, the uncertainties to which the fledgling service will be subjected as it becomes operational. As the public has been reminded, a low power license may not be a license to print money. It certainly is, however, a license to serve the public. It is in this spirit that we authorize the low power service today. The Commission has every hope that low power will succeed in the marketplace, adding to the mix of competitive technologies in today's telecommunications environment and acting as a bellwether for "unregulation" of the broadcast services generally.

117. *Regulatory Flexibility Act—Final Analysis.*⁸²

a. *Need for and Purpose of Rules.* The rule amendments promulgated herein are necessary to achieve the goal of additional low-powered television stations, for which the record indicates an overwhelming public demand. While the Commission intends the low power service to be a largely unregulated service, it nevertheless is essential that the technical aspects of the service, from application processing to operating specifications, be strictly maintained, to ensure that low power stations do not cause destructive interference to full service stations or to each other.

In view of the unexpectedly great numbers of TV translator and low power applications filed since the initiation of the rule making, as well as additional applications anticipated upon the lifting of the present moratorium, additional technical standards were proposed in the Further Notice to facilitate more fully automated application processing. The Commission's rules for TV translators did not contain precise standards for determining mutual exclusivity between proposed stations. A mode of processing that left much to engineering judgment was believed not to be feasible for use with large numbers of competing applications. The Commission herein adopts standards of prohibited contour

overlap that will facilitate automated processing.

b. *Comments.* We received little commentary directly in response to the initial Regulatory Flexibility Analysis. Several parties took issue with our prediction that the proposed technical standards would not significantly increase the burdens attendant upon preparation of the engineering section of the application. They evince particular concern about the burden of calculating antenna radiation center height above average terrain (HAAT).⁸³ The Commission acknowledges the possible validity of this position. However, it is our belief that the two major competing considerations, expeditious reduction of the application backlog and spectral efficiency, override the possibly increased burdens on applicants. In the long run, it is our position that the increased opportunity in broadcasting provided for small entrepreneurs by authorization of the low power service is a much more significant overall benefit of the rule changes than the details required in making an application.

c. *Alternatives Considered.* The alternatives to the mode of processing are: (1) A table of assignments for low power stations, which was ruled out as too great an administrative burden on the Commission, as well as spectrally inefficient; (2) processing using assumed antenna heights, which also is spectrally inefficient; (3) processing taking actual, instead of average terrain factors into account, which also is too cumbersome administratively and may create too great a risk of interference; and (4) not authorizing the service at all, a result not supported by the record. The technical rules adopted herein, represent an optimal compromise between factors of spectral efficiency, prevention of undue interference, administrative efficiency and cost to both applicants and the Commission. As stated above, the overall effect of the rule changes is to create additional opportunities for small entrepreneurs to own and operate new broadcast facilities by using spectrum where full service stations would cause and sustain interference. The lower power service is subject to a minimum of regulations; however, certain technical requirements are

⁸² The Notice of Proposed Rule Making in this proceeding was promulgated prior to the effective date of the Regulatory Reform Act of 1980, so that no comments on the particular impact on small businesses were elicited therein. The Further Notice of Proposed Rule Making, however, was subject to the Act. This Final Analysis addresses issues raised in the Initial Analysis, at paragraph 29, of the Further Notice.

⁸³ Applicants are not required to compute this figure as part of the application process. Indeed, in most cases of UHF low power applications, conformance with the "UHF" taboos, formerly in § 74.702(c)(2), will ensure a noninterfering application. However, because the Commission will make the calculation and use it in processing, it may be presumed that most, if not all, applicants will base their own engineering calculations upon HAAT.

essential to national spectrum management and compliance with these bears a cost that must be sustained by applicants and station operators.

d. The Secretary shall cause a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 50 U.S.C. *et seq.*).

118. In light of the foregoing and pursuant to authority contained in Sections 1, 4(i) and 303 of the Communications Act of 1934, as amended, it is ordered, That the rule amendments set out in Appendix A are adopted, effective June 7, 1982;

119. It is further ordered, That the petitions for reconsideration of the April 9, 1981, Order, FCC 81-173, filed by the Association of Maximum Service Telecasters, Bogner Broadcast Equipment Corp., the National Association of Broadcasters and the National Translator Association, are dismissed; and

120. It is further ordered, That this proceeding is terminated.

121. For further information concerning this proceeding, the contact person is Edythe Wise, Broadcast Bureau, (202) 632-7792.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; (47 U.S.C. 154, 303))

Federal Communications Commission.**
William J. Tricarico,
Secretary.

Appendix A

PART 73—RADIO BROADCAST SERVICES

1. Section 73.601 is revised in its entirety to read as follows:

§ 73.601 Scope of Subpart.

This subpart contains the rules and regulations (including engineering standards) governing TV broadcast stations, including noncommercial educational TV broadcast stations and, where indicated, low power TV and TV translator stations in the United States, its Territories and possessions. TV broadcast, low power TV, and TV translator stations are assigned channels 6 MHz wide, designated as set forth in § 73.603(a).

2. Section 73.903 is revised in its entirety to read as follows:

§ 73.903 Emergency Broadcast System (EBS).

The EBS is composed of AM, FM, and TV broadcast stations; low power TV stations; and non-government industry entities operating on a voluntary, organized basis during emergencies at National, State, or Operational (Local) Area Levels.

3. Section 73.904 is revised in its entirety to read as follows:

§ 73.904 Licensee.

The term "licensee" as used in this subpart means the holder of a broadcast station license granted or continuing in force under authority of the Communications Act of 1934, as amended. Such licensee includes any AM, FM, TV, or low power TV station holding a valid license, program test authorization, or other authorization permitting regular programming operation.

4. The second sentence of paragraph (b) in § 73.932 is revised to read:

§ 73.932 Radio monitoring and attention signal transmission requirements.

(b) Transmission Requirement. * * *

All broadcast station licensees except noncommercial educational FM stations authorized to operate with transmitter output powers of 0.010 kW or less and low power TV stations, must install, operate, and maintain equipment capable of generating the Attention Signal (see § 73.906) to modulate the transmitter so that the signal may be broadcast to other stations.

5. Paragraph (c) of § 73.961 is revised by adding a sentence at the end of the text, to read as follows:

§ 73.961 Tests of the Emergency Broadcast System procedures.

(c) Weekly Transmission Tests of the Attention Signal and Test Script. * * * However, Class D noncommercial educational FM stations authorized to operate with transmitter output powers of 0.01 kW or less and low power TV stations need not transmit the two-tone EBS Attention Signal.

6. Section 73.1001 is amended by revising paragraph (c) to read as follows:

§ 73.1001 Scope.

(c) Certain provisions of this subpart apply to International Broadcast Stations (Subpart F, Part 73), TV translator stations, and low power TV

stations (Subpart G, Part 74) where the rules for those services so provide.

7. Section 73.1010 is amended by revising paragraph (e) to read as follows:

§ 73.1010 Cross reference to rules in other Parts.

(e) Part 74 (Volume III), "Experimental, Auxiliary and Special Broadcast, and Other Program Distributional Services" including subparts on the following stations: A, "Experimental Television—," B, "Experimental Facsimile—," C, "Developmental—," "Instructional TV Fixed Service—," L, "FM Translator and Booster—."

§ 73.3500 [Amended]

8. Section 73.3500 is amended by revising the titles for FCC Forms 346, 347, and 348 as follows:

346.....	Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator, or FM Translator Station.
347.....	Application for a Low Power TV, TV Translator, or FM Translator Station.
348.....	Application for Renewal of a Low Power TV, TV Translator, or FM Translator Station License.

9. Section 73.3516 is amended by revising paragraph (a) to read as follows:

§ 73.3516 Specification of facilities.

(a) An application for facilities in the AM, FM, or TV broadcast services or low power TV service shall be limited to one frequency, or channel assignment, and no application will be accepted for filing if it requests alternate frequency or channel assignments.

10. Section 73.3533 is amended by revising paragraph (a)(7) to read as follows:

§ 73.3533 Application for construction permit.

(7) FCC Form 346, "Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator, or FM Translator Station."

11. Section 73.3536 is amended by revising paragraph (a)(7) to read as follows:

** Statements of Commissioners Fowler, Chairman; Dawson, Washburn, Fogarty and Rivera attached.

§ 73.3536 Application for license to cover construction permit.

(a) * * *
(7) FCC Form 347, "Application for a Low Power TV, TV Translator, or FM Translator Station License."

12. Section 73.3539 is amended by revising paragraph (d)(8) to read as follows:

§ 73.3539 Application for renewal of license.

(d) * * *
(8) FCC Form 348, "Application for Renewal of Low Power TV, TV Translator, or FM Translator Station License."

13. Section 73.3564 is amended by revising paragraph (a) to read as follows:

§ 73.3564 Acceptance of applications.

(a) Applications tendered for filing are dated upon receipt and then forwarded to the Broadcast Bureau, where an administrative examination is made to ascertain whether the applications are complete. Except for low power TV and TV translator applications, those found to be complete or substantially complete are accepted for filing and are given file numbers. In the case of minor defects as to completeness, the applicant will be required to supply the missing information. Applications that are not substantially complete will be returned to the applicant. In the case of low power TV and TV translator applications, those found to be complete are accepted for filing and are given file numbers. Low power TV and TV translator applications that are not complete will be returned to the applicant.

14. Section 73.3572 is amended by revising the headnote and paragraph (a)(1) to read as follows:

§ 73.3572 Processing of TV broadcast, low power TV, and TV translator station applications.

(a) * * *
(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 station location, or any change in the power or antenna location or height above average terrain (or combination thereof) that would result in a change of 50% or more of the area within the Grade B contour of the station. (A change in area is defined as the sum of the area gained and the area

lost as a percentage of the original area.) In the case of low power TV and TV translator stations authorized under Part 74 of this chapter, it is any change in:

- (i) Frequency (output channel) assignment;
- (ii) Transmitting antenna system including the direction of the radiation, directive antenna pattern or transmission line;
- (iii) Antenna height;
- (iv) Antenna location exceeding 200 meters;
- (v) Authorized operating power; or
- (vi) Community or area to be served.

However, the FCC may, within 15 days after the 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 §§ 73.3580 and 1.1111 pertaining to major changes.

15. Section 73.3580 is amended by revising the introductory texts to paragraphs (c), (d)(3), and (g) 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 provision of this Section, must give a notice of this filing in a newspaper. Exceptions to this requirement are applications for renewal of AM, FM, TV, and International broadcast stations; low power TV stations; TV and FM translator stations; FM booster stations; and applications subject to paragraph (e) of this section. The filing notice shall be given in a newspaper either immediately following the tendering for filing of the application or amendment, or immediately following notification to the applicant by the FCC that a major change is involved requiring the applicant to give public notice pursuant to §§ 73.3571, 73.3572, 73.3573, or 73.3578.

(d) * * *
(3) *An applicant who files for modification, assignment or transfer of a broadcast station license (except for International broadcast, low power TV, TV translator, FM translator, and FM booster stations) shall give notice of the filing in a newspaper as described in paragraph (c) of this section, and also broadcast the same notice over the station as follows:*

(g) An applicant who files an application or amendment thereto for a low power TV, TV translator, FM

translator, or FM booster station must give notice of this filing in a daily, weekly, or biweekly newspaper of general circulation in the community or area to be served. The filing notice will be given immediately following the tendering for filing of the application or amendment or immediately following notification to the applicant by the FCC that public notice is required pursuant to §§ 73.3571, 73.3572, 73.3573, or 73.3578.

16. Section 73.3594 is amended by revising the introductory text to paragraphs (a), (b), (f), and paragraph (f)(2) to read as follows:

§ 73.3594 Local public notice of designation for hearing.

(a) Except as otherwise provided in paragraph (c) of this section when an application subject to the provisions of § 73.3580 (except for applications for International broadcast, low power TV, TV translator, FM translator, and FM booster stations) is designated for hearing, the applicant shall give notice of such designation as follows: Notice shall be given at least twice a week, for 2 consecutive weeks within the 3-week period immediately following release of the FCC's order, specifying the time and place of the commencement of the hearing, in a daily newspaper of general circulation published in the community in which the station is located or proposed to be located.

(b) When an application which is subject to the provisions of § 73.3580 and which seeks modification, assignment, transfer, or renewal of an operating broadcast station is designated for hearing (except for applications for an International broadcast, low power TV, TV translator, FM translator, or FM booster stations), the applicant shall, in addition to giving notice of such designation as provided in paragraph (a) of this section, cause the same notice to be broadcast over that station at least once daily for 4 days in the second week immediately following the release of the FCC's order, specifying the time and place of the commencement of the hearing. In the case of both commercial and noncommercial TV broadcast stations such notice shall be broadcast orally with the camera focused on the announcer. The notice required by this paragraph shall be broadcast during the following periods:

(f) When an application for a low power TV, TV translator, FM translator, or FM booster station which is subject

to the provisions of § 73.3580 is designated for hearing, the applicant shall give notice of such designation as follows: Notice shall be given at least once during the 2-week period immediately following release of the FCC's order, specifying the time and place of the commencement of the hearing in a daily, weekly or biweekly publication having general circulation in the community or area to be served. However, if there is no publication of general circulation in the community or area to be served, the applicant shall determine an appropriate means of providing the rive notice of such designation as follows: Notice shall be given at least once during the 2-week period immediately following release of the FCC's order, specifying the time and place of the commencement of the hearing in a daily, weekly or biweekly publication having general circulation in the community or area to be served. However, if there is no publication of general circulation in the community or area to be served, the applicant shall determine an appropriate means of providing the required notice to the general public, such as posting in the local post office or other public place. The notice shall state:

(2) The call letters, if any, of the station or stations involved, the output channel or channels of such stations, and, for any rebroadcasting, the call letters, channel and location of the station or stations being or proposed to be rebroadcast.

17. Section 73.3597 is amended by revising paragraphs (a)(1) and (e)(1)(i) to read as follows:

§ 73.3597 Procedures on transfer and assignment applications.

(a) * * *

(1) The application involves a low power TV, TV translator, FM translator, or FM booster station only;

(e) * * *

(1) * * *

(i) "Unbuilt station" refers to an AM, FM, or TV broadcast station or a low power TV station for which a construction permit is outstanding, and, regardless of the stage of physical completion, for which program tests have not commenced or, if required, been authorized.

18. Section 73.3598 is amended by revising paragraph (b) to read as follows:

§ 73.3598 Period of construction.

(b) *Other broadcast, auxiliary and Instructional TV Fixed Stations.* Each original permit for the construction of a new AM, FM, or International broadcast; low power TV; TV translator; FM translator; FM booster; broadcast auxiliary; or Instructional TV Fixed station, or to make changes in such existing stations, shall specify a period of 12 months within which construction shall be completed and application for license be filed.

19. Section 73.3613 is amended by revising paragraph (a)(1) to read as follows:

§ 73.3613 Filing of contracts.

(a) * * *

(1) All network affiliation contracts, agreements, or understandings between a TV broadcast or low power TV station and a national, regional, or other network.

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

20. Section 74.15 is amended by revising introductory text to paragraph (d) to read as follows:

§ 74.15 License period.

(d) Initial licenses for low power TV, TV translator, and FM translator stations will ordinarily be issued for a period running until the date specified in this section for the State or territory in which the station is located or, if issued after such date, to the next renewal date determined in accordance with this Section. When renewed, low power TV and TV translator station licenses will ordinarily be renewed for 5 years and FM translator station licenses be renewed for 7 years. However, if the FCC finds that the public interest, convenience, or necessity will be served, it may issue either an initial license or a renewal thereof for a lesser term. The time of expiration of all licenses will be 3 a.m., local time, on the following dates, and, thereafter, at 5-year intervals for low power TV and TV translator stations and at 7-year intervals for FM translator stations:

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

§ 74.432 Licensing requirements and procedures.

(a) A license for a broadcast remote pickup station or system will be issued only to the licensee of an AM, FM, noncommercial educational FM, TV, or International broadcast station; low power TV station; or to an eligible network entity. To be eligible, a network entity must provide a program service for simultaneous transmission by 10 or more stations through circuit facilities available for program distribution to each affiliated station at least 12 hours of each day.

22. Section 74.601 is revised in its entirety to read as follows:

§ 74.601 Classes of TV broadcast auxiliary stations.

(a) *TV pickup station.* A land mobile station used for the transmission of television program material and related communications from the scenes of events occurring at points removed from the station studios to TV broadcast and low power TV stations.

(b) *TV STL station (studio-transmitter link).* A fixed station used for the transmission of television program material and related communications from the studio to the transmitter of a TV broadcast or low power TV station.

(c) *TV intercity relay station.* A fixed station used for intercity transmission of television program material and related communications for use by TV broadcast and low power TV stations.

(d) *TV translator relay station.* A fixed station used for relaying programs and signals of TV broadcast stations to LPTV, TV translator, and other communications facilities that the FCC may authorize.

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

23. Section 74.602 is amended by revising paragraph (h) as follows:

§ 74.602 Frequency assignment.

(h) 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 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.

24. The title of Subpart G of Part 74 is amended to read as follows:

Subpart G—Low Power TV and TV Translator Stations

25. Section 74.701 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 74.701 Definitions.

(f) *Low power TV station.* A station authorized under the provisions of this subpart that may retransmit the programs and signals of a TV broadcast station and that may originate programming in any amount greater than 30 seconds per hour and/or operates a subscription service. (See § 73.641 of Part 73 of this chapter.)

(g) *Program origination.* For purposes of this part, program origination shall be any transmissions other than the simultaneous retransmission of the programs and signals of a TV broadcast station. Origination shall include locally generated television program signals and program signals obtained via video recordings (tapes and discs), microwave, common carrier circuits, or other sources.

26. Section 74.702 is revised in its entirety to read as follows:

§ 74.702 Channel assignments.

(a) An applicant for a new low power TV or TV translator station or for changes in the facilities of an authorized station shall endeavor to select a channel on which its operation is not likely to cause interference. The applications must be specific with regard to the channel requested. Only one channel will be assigned to each station.

(1) Any one of the 12 standard VHF Channels (2 to 13, inclusive) may be assigned to a VHF low power TV or TV translator station. Channels 5 and 6 are allocated for nonbroadcast use in Alaska, and will not be assigned to a VHF low power TV or TV translator station in that State.

(2) Any one of the UHF Channels from 14 to 69, inclusive, may be assigned to a UHF low power TV or TV translator station. In accordance with § 73.603(c) of Part 73, Channel 37 will not be assigned to such stations.

(3) Application for new low power TV or TV translator stations or for changes in existing stations, specifying operation on output Channels from 70 through 83 will not be accepted for filing. License renewals for TV translator stations operating on those channels will be granted only on a secondary basis to land mobile radio operations.

(b) Changes in the TV Table of Assignments (§ 73.606(b) of Part 73 of this chapter), authorizations to construct new TV broadcast stations or to change facilities of existing ones, may be made without regard to existing or proposed low power TV or TV translator stations. Where such a change results in a low power TV or TV translator station causing actual interference to reception of the TV broadcast station, the licensee of the low power TV or TV translator station shall eliminate the interference or file an application for a change in channel assignment.

27. Section 74.703 is revised in its entirety to read as follows:

§ 74.703 Interference.

(a) An application for a new low power TV or TV translator station or for changes in the facilities of an authorized station will not be granted when it is apparent that interference will be caused. The licensee of a new low power TV or TV translator station shall protect existing low power TV and TV translator stations from interference within the protected contour defined in § 74.707.

(b) It shall be the responsibility of the licensee of a low power TV or TV translator station to correct at its expense any condition of interference to the direct reception of the signals of a TV broadcast station operating on the same channel as that used by the low power TV or TV translator station or on an adjacent channel, which occurs as the result of the operation of the low power TV or TV translator station. Interference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by the low power TV or TV translator station, regardless of the quality of such reception or the strength of the signal so used. If the interference cannot be promptly eliminated by the application of suitable techniques, operation of the offending low power TV or TV translator stations shall be suspended and shall not be resumed until the interference has been eliminated. If the complainant refuses to permit the low power TV or TV translator licensee to apply remedial techniques that demonstrably will eliminate the interference without impairment of the original reception, the licensee of the low power TV or TV translator station is absolved of further responsibility.

(c) It shall be the responsibility of the licensee of a low power TV or TV translator station to correct any condition of interference which results from the radiation of radio frequency energy outside its assigned channel.

Upon notice by the FCC to the station licensee or operator that such interference is caused by the spurious emissions of the station, operation of the station shall be immediately suspended and not resumed until the interference has been eliminated. However, short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures.

(d) When a low power TV or TV translator station causes interference to a CATV system by radiations within its assigned channel at the cable headend or on the output channel of any system converter located at a receiver, the earlier user, whether cable system or low power TV or TV translator station, will be given priority on the channel, and the later user will be responsible for correction of the interference.

(e) Low power TV and TV translator stations are being authorized on a secondary basis to existing land mobile uses and must correct whatever interference they cause to land mobile stations or cease operation.

(f) In each instance where suspension of operation is required, the licensee shall submit a full report to the FCC in Washington, D.C., after operation is resumed, containing details of the nature of the interference, the source of the interfering signals, and the remedial steps taken to eliminate the interference.

28. New § 74.705 is added to read as follows:

§ 74.705 TV broadcast station protection.

(a) The TV broadcast station protected contour shall be its Grade B contour as defined in § 73.683 of Part 73 of this chapter.

(b)(1) An application to construct a new low power TV or TV translator station or change the facilities of an existing station will not be accepted if it specifies a site which is within the protected contour of a co-channel or first adjacent channel TV broadcast station.

(2) Due to the frequency spacing which exists between TV Channels 4 and 5, between Channels 6 and 7, and between Channels 13 and 14, adjacent channel protection standards shall not be applicable to these pairs of channels. (See § 73.603(a) of Part 73 of this chapter.)

(3) A UHF low power TV or TV translator construction permit application will not be accepted if it specifies a site within the UHF TV broadcast station's protected contour and proposes operation on a channel either 14 or 15 channels above the channel in use by the TV broadcast station.

(4) A UHF low power TV or TV translator construction permit application will not be accepted if it specifies a site less than 100 kilometers from the transmitter site of a UHF TV broadcast station operating on a channel which is the seventh channel above the requested channel.

(5) A UHF low power TV or TV translator construction permit application will not be accepted if it specifies a site less than 32 kilometers from the transmitter site of a UHF TV broadcast station operating on a channel which is the second, third, fourth, or fifth channel above or below the requested channel.

(c) The low power TV or TV translator station field strength is calculated from the proposed effective radiated power (ERP) and the antenna height above average terrain (HAAT) in pertinent directions.

(1) For co-channel protection, the field strength is calculated using Figure 9a, 10a, or 10c of § 73.699 (F(50, 10) charts) of Part 73 of this chapter.

(2) For low power TV or TV translator applications that do not specify the same channel as the TV broadcast station to be protected, the field strength is calculated using Figure 9, 10, or 10b of § 73.699 (F(50,50) charts) of Part 73 of this chapter.

(d) A low power TV or TV translator station application will not be accepted if the ratio in dB of its field strength to that of the TV broadcast station at its protected contour fails to meet the following:

(1) -45 dB for co-channel operations without offset carrier frequency operation or -28 dB for offset carrier frequency operation. An application requesting offset carrier frequency operation must include the following:

(i) A requested offset designation (zero, plus, or minus) identifying the proposed direction of the 10 kHz offset from the standard carrier frequencies of the requested channel. If the offset designation is not different from that of the station being protected, the -45 dB ratio must be used.

(ii) A description of the means by which the low power TV or TV translator station's frequencies will be maintained within the tolerances specified in § 74.761 for offset operation.

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

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

(4) 15 dB when the protected TV broadcast station operates on a UHF

channel that is one channel below the requested channel.

(5) 23 dB when the protected TV broadcast station operates on a UHF channel that is fourteen channels below the requested channel.

(6) 6 dB when the protected TV broadcast station operates a UHF channel that is fifteen channels below the requested channel.

29. New § 74.707 is added to read as follows:

§ 74.707 Low power TV and TV translator station protection.

(a)(1) A low power TV or TV translator will be protected from interference from other low power TV and TV translator stations within the following predicted contours:

(i) 62 dBu for stations on Channels 2 through 6;

(ii) 68 dBu for stations on Channels 7 through 13; and

(iii) 74 dBu for stations on Channels 14 through 76.

(2) The low power TV or TV translator station protected contour is calculated from the authorized effective radiated power and antenna height above average terrain, using Figure 9, 10, or 10b of § 73.699 (F(50,50) charts) of Part 73 of this chapter.

(b)(1) An application to construct a new low power TV or TV translator station or change the facilities of an existing station will not be accepted if it specifies a site which is within the protected contour of a co-channel or first adjacent channel low power TV or TV translator station.

(2) Due to the frequency spacing which exists between TV Channels 4 and 5, between Channels 6 and 7, and between Channels 13 and 14, adjacent channel protection standards shall not be applicable to these pairs of channels. (See § 73.603(a) of Part 73 of this chapter.)

(3) A UHF low power TV or TV translator construction permit application will not be accepted if it specifies a site within the UHF low power TV or TV translator station's protected contour and proposes operation on a channel either 7 channels below or 14 or 15 channels above the channel in use by the low power TV or TV translator station.

(c) The low power TV or TV translator construction permit application field strength is calculated from the proposed effective radiated power (ERP) and the antenna height above average terrain (HAAT) in pertinent directions.

(1) For co-channel protection, the field strength is calculated using Figure 9a,

10a, or 10c of § 73.699 (F(50,10) charts) of Part 73 of this chapter.

(2) For low power TV or TV translator applications that do not specify the same channel as the low power TV or TV translator station to be protected, the field strength is calculated using Figure 9, 10, or 10b of § 73.699 (F(50,50) charts) of Part 73 of this chapter.

(d) A low power TV or TV translator station application will not be accepted if the ratio in dB of its field strength to that of the authorized low power TV or TV translator station at its protected contour fails to meet the following:

(1) -45 dB for co-channel operations without offset carrier frequency operation or -28 dB for offset carrier frequency operation. An application requesting offset carrier frequency operation must include the following:

(i) A requested offset designation (zero, plus, or minus) identifying the proposed direction of the 10 kHz offset from the standard carrier frequencies of the requested channel. If the offset designation is not different from that of the station being protected, or if the station being protected is not maintaining its frequencies within the tolerance specified in § 74.761 for offset operation, the -45 dB ratio must be used.

(ii) A description of the means by which the low power TV or TV translator station's frequencies will be maintained within the tolerances specified in § 74.761 for offset operation.

(2) 6 dB when the protected low power TV or TV translator station operates on a VHF channel that is one channel above the requested channel.

(3) 12 dB when the protected low power TV or TV translator station operates on a VHF channel that is one channel below the requested channel.

(4) 15 dB when the protected low power TV or TV translator station operates on a UHF channel that is one channel above or below the requested channel.

(5) 0 dB when the protected low power TV or TV translator station operates on a UHF channel that is seven channels above the requested channel.

(6) 23 dB when the protected low power TV or TV translator station operates on a UHF channel that is fourteen channels below the requested channel.

(7) 6 dB when the protected low power TV or TV translator station operates on a UHF channel that is fifteen channels below the requested channel.

30. New § 74.709 is added to read as follows:

§ 74.709 Land mobile station protection.

(a) Stations in the Land Mobile Radio Service, using the following channels in the indicated cities will be protected from interference caused by low power TV or TV translator stations, and low power TV and TV translator stations must accept any interference from stations in the land mobile service operating on the following channels:

City	Channels	Coordinates	
		Latitude	Longitude
Boston, MA	14, 18	42°21'24"	071°03'24"
Chicago, IL	14, 15	41°52'28"	087°38'22"
Cleveland, OH	14, 15	41°29'51"	081°41'50"
Dallas, TX	16	32°47'09"	096°47'37"
Detroit, MI	15, 18	42°19'48"	083°02'57"
Houston, TX	17	29°45'28"	095°21'37"
Los Angeles, CA	14, 20	34°03'15"	118°14'28"
Miami, FL	14	25°46'37"	080°11'32"
New York, NY	14, 15	40°45'06"	073°59'39"
Philadelphia, PA	19, 20	39°56'58"	075°09'21"
Pittsburgh, PA	14, 18	40°26'19"	080°00'00"
San Francisco, CA	16, 17	37°46'39"	122°24'40"
Washington, DC	17, 18	38°53'51"	077°00'33"

(b) The protected contours for the land mobile radio service are 130 kilometers from the above coordinates, except where limited by the following:

(1) If the land mobile channel is the same as the channel in the following list, the land mobile protected contour excludes the area within 145 kilometers of the corresponding coordinates from list below. Except if the land mobile channel is 15 in New York or Cleveland or 16 in Detroit, the land mobile protected contour excludes the area within 95 kilometers of the corresponding coordinates from the list below.

(2) If the land mobile channel is one channel above or below the channel in the following list, the land mobile protected contour excludes the area within 95 kilometers of the corresponding coordinates from the list below.

City	Channel	Coordinates	
		Latitude	Longitude
San Diego, CA	15	32°41'48"	116°56'10"
Waterbury, CT	20	41°31'02"	073°01'00"
Washington, DC	14	38°57'17"	077°00'17"
Washington, DC	20	38°57'49"	077°06'18"
Champaign, IL	15	40°04'11"	087°54'45"
Jacksonville, IL	14	39°45'52"	090°30'29"
Fl. Wayne, IN	15	41°05'35"	085°10'42"
South Bend, IN	16	41°38'20"	086°12'44"
Salisbury, MD	16	38°24'15"	075°34'45"
Mt. Pleasant, MI	14	43°34'24"	084°46'21"
Hanover, NH	15	43°42'30"	072°09'16"
Canton, OH	17	40°51'04"	081°16'37"
Cleveland, OH	19	41°21'19"	081°44'24"
Oxford, OH	14	39°30'26"	084°44'09"
Zanesville, OH	18	39°55'42"	081°59'06"
Elmira-Corning, NY	18	42°06'20"	076°52'17"
Harrisburg, PA	21	40°20'44"	076°52'09"
Johnstown, PA	19	40°19'47"	078°53'45"
Lancaster, PA	15	40°15'45"	076°27'49"
Philadelphia, PA	17	40°02'30"	075°14'24"
Pittsburgh, PA	16	40°26'46"	079°57'51"

City	Channel	Coordinates	
		Latitude	Longitude
Scranton, PA	16	41°10'58"	075°52'21"
Parkersburg, WV	15	39°20'50"	081°33'56"
Madison, WI	15	43°03'01"	089°29'15"

(c) A low power TV or TV translator station application will not be accepted if it specifies a site that is within the protected contour of a co-channel or first adjacent channel land mobile assignment.

(d) The low power TV or TV translator station field strength is calculated from the proposed effective radiated power (ERP) and the antenna height above average terrain (HAAT) in pertinent directions.

(1) The field strength is calculated using Figure 10c of § 73.699 (F(50, 10) charts) of Part 73 of this chapter.

(2) A low power TV or TV translator station application will not be accepted if it specifies the same channel as one of the land mobile assignments and its field strength at the land mobile protected contour exceeds 52 dBu.

(3) A low power TV or TV translator station application will not be accepted if it specifies a channel that is one channel above or below one of the land mobile assignments and its field strength at the land mobile protected contour exceeds 76 dBu.

(e) In order to protect stations in the Offshore Radio Telecommunications Service, a low power TV or TV translator station construction permit application specifying operation on Channel 17 will not be accepted if it specifies a latitude south of the line 31°30' North, and between longitudes 86°30' West and 95°30' West. An application specifying operation on either Channel 16 or Channel 18 will not be accepted if it specifies a latitude south of the line 31°00' North and between longitudes 87°00' West and 95°00' West.

31. Section 74.731 is amended by adding new paragraphs (g), (h), (i), and (j) to read as follows:

§ 74.731 Purpose and permissible service.

(g) Low power TV stations may operate under the following modes of service:

(1) As a TV translator station, subject to the requirements of this Part;

(2) For origination of programming and commercial matter as defined in § 74.701(f);

(3) For the transmission of subscription television broadcast (STV) programs, intended to be received in intelligible form by members of the public for a fee or charge, subject to the

provisions of §§ 73.642(e) and (f)(3), and 74.644.

(h) A low power TV station may not be operated solely for the purpose of relaying signals to one or more fixed receiving points for retransmission, distribution or relaying.

(i) Low power TV stations are subject to no minimum required hours of operation and may operate in any of the 3 modes described in paragraph (g) of this section for any number of hours.

(j) An applicant for a 1 kW UHF TV translator station to operate on a channel assigned to a TV broadcast station which is not in operation, shall notify the licensee or permittee of the TV broadcast station, in writing of the filing of the application and shall certify to the FCC that such notice has been given.

32. Section 74.732 is revised in its entirety to read as follows:

§ 74.732 Eligibility and licensing requirements.

(a) Subject to the restrictions described in paragraph (e) of this section, a license for a low power TV or TV translator station may be issued to any qualified individual, organized group of individuals, broadcast station licensee, or local civil governmental body.

(b) More than one low power TV or TV translator station may be licensed to the same applicant whether or not such stations serve substantially the same area. Low power TV and TV translator stations are not counted for purposes of § 73.636 of Part 73 of this chapter, concerning multiple ownership.

(c) Only one channel will be assigned to each low power TV or TV translator station. Additional low power or translator stations may be authorized to provide additional reception. A separate application is required for each station and each application must be complete in all respects.

(d) The FCC will not act on applications for new low power TV or TV translator stations or for changes in facilities of existing stations when such changes will result in an increase in signal range in any horizontal direction until at least 30 days have elapsed since the date on which "Public Notice" is given by the FCC of acceptance for filing of such application, in order to afford interested parties opportunity to comment and afford opportunity for competing applications to be filed.

(e) A proposal to change the primary TV station being retransmitted or an application of a licensed translator station to include low power TV station operation, i.e., program origination or

subscription service will be subject only to a notification requirement.

(f) Applications for transfer of ownership or control of a low power TV or TV translator station will be subject to petitions to deny.

33. Section 74.734 is revised in its entirety to read as follows:

§ 74.734 Attended and unattended operation.

(a) In all circumstances other than during local origination (see § 74.701(g)), low power TV and TV translator stations may be operated without a licensed radio operator in attendance if the following requirements are met:

(1) If the transmitter site cannot be promptly reached at all hours and in all seasons, means shall be provided so that the transmitting apparatus can be turned on and off at will from a point that readily is accessible at all hours and in all seasons.

(2) The transmitter also shall be equipped with suitable automatic circuits that will place it in a nonradiating condition in the absence of a signal on the input channel or circuit.

(3) The transmitting and the ON/OFF control, if at a location other than the transmitter site, shall be adequately protected against tampering by unauthorized persons.

(4) The FCC shall be supplied with the name, address, and telephone number of a person or persons who may be called to secure suspension of operation of the transmitter promptly should such action be deemed necessary by the FCC. Such information shall be kept current by the licensee.

(5) In cases where the antenna and supporting structure are considered to be a hazard to air navigation and are required to be painted and lighted under the provisions of Part 17 of the Rules, the licensee shall make suitable arrangements for the daily observations, when required, and lighting equipment inspections required by §§ 17.37 and 17.38 of the FCC rules.

(6) In the case of a low power TV or TV translator station using modulating equipment, observation of the transmitted program signal on a suitable receiver shall be made for at least 10 continuous minutes each day by a person designated by the licensee, who shall institute measures sufficient to assure prompt correction of any condition of improper operation that is observed.

(b) An application for authority to construct a new low power TV station (when rebroadcasting the programs of another station) or TV translator station or to make changes in the facilities of an authorized station, and that proposes

unattended operation, shall include an adequate showing as to the manner of compliance with this section.

34. Section 74.735 is amended by revising paragraphs (a), the introductory text of paragraph (b), and paragraphs (c), (d), and (e); and adding new paragraph (f) to read as follows:

§ 74.735 Power limitation.

(a) The power output of the final radiofrequency amplifier of a VHF low power TV or TV translator station, except as provided for in paragraphs (d) and (f) of this section shall not exceed 0.01 kW peak visual power. A UHF station shall be limited to a maximum of 1 kW peak visual power, except as provided for in paragraph (f) of this section. In no event shall the transmitting apparatus be operated with a power output in excess of the manufacturer's rating.

(b) In individual cases, the FCC may authorize the use of more than one final radio frequency amplifier at a single VHF or UHF station under the following conditions:

(c) No limit is placed upon the effective radiated power that may be obtained by the use of horizontally or vertically polarized directive transmitting antennas, provided the provisions of §§ 74.705, 74.707, and 74.709 are met.

(d) VHF low power TV and TV translator stations authorized on channels listed in the TV table of allocations (see § 73.606(b) of Part 73 of this Chapter) will be authorized a maximum output power of the radio frequency amplifier of 0.1 kW peak visual power.

(e) The power output of the final radio amplifier of a VHF or UHF transmitter may be fed into a single transmitting antenna, or may be divided between two or more transmitting antennas or antenna arrays in any manner found useful or desirable by the licensee.

(f) A station proposing to use antenna(s) designed for circularly polarized radiation may be authorized to use a type accepted transmitter or parallel connected of two type accepted translator amplifiers to operate at peak visual output power of twice that specified under the maximum transmitter power limitations given above in this section.

35. Section 74.736 is amended by revising paragraph (a) to read as follows:

§ 74.736 Emissions and bandwidth.

(a) The license of a low power TV or TV translator station authorizes the

transmissions of the visual signal by amplitude modulation (A5) and the accompanying aural signal by frequency modulation (F3).

36. Section 74.737 is revised in its entirety to read as follows:

§ 74.737 Antenna location.

(a) An applicant for a new low power TV or TV translator station or for a change in the facilities of an authorized station shall endeavor to select a site that will provide a line-of-sight transmission path to the entire area intended to be served and at which there is available a suitable signal from the primary station, if any, that will be retransmitted.

(b) The transmitting antenna should be placed above growing vegetation and trees lying in the direction of the area intended to be served, to minimize the possibility of signal absorption by foliage.

(c) A site within 8 kilometers of the area intended to be served is to be preferred if the conditions in paragraph (a) of this section can be met.

(d) Consideration should be given to the accessibility of the site at all seasons of the year and to the availability of facilities for the maintenance and operation of the transmitting equipment.

(e) The transmitting antenna should be located as near as is practical to the transmitter to avoid the use of long transmission lines and the associated power losses.

(f) Consideration should be given to the existence of strong radio frequency fields from other transmitters at the site of the transmitting equipment and the possibility that such fields may result in the retransmissions of signals originating on frequencies other than that of the primary station being rebroadcast.

37. Section 74.750 is amended by revising the headnote and paragraphs (a), (b), the introductory text to paragraph (c), (c)(3)(iii), (c)(5), (c)(7), the introductory text to paragraph (d), (d)(1), (e)(1), (e)(2), (e)(3), and (g) to read as follows:

§ 74.750 Transmission system facilities.

(a) Application for new low power TV and TV translator stations and for increased transmitter power for previously authorized facilities will not be accepted unless the transmitter is listed in the FCC's list of equipment type accepted for licensing under the provisions of this subpart.

(b) Transmitting antennas, antennas used to receive the signals to be

rebroadcast, and transmission lines are not type accepted by the FCC. External preamplifiers also may be used provided that they do not cause improper operation of the transmitting equipment, and use of such preamplifiers is not necessary to meet the provisions of paragraph (c) of this section.

(c) The following requirements must be met before low power TV and TV translator transmitters will be type accepted by the FCC:

(3) * * *
(iii) Plus or minus 1 kHz of its rated frequency for transmitters to be used at stations employing offset carrier frequency operation.

(5) The apparatus must be equipped with automatic controls that will place it in a non-radiating condition when no signal is being received on the input channel, either due to absence of a transmitted signal or failure of the receiving portion of the facilities used for rebroadcasting the signal of another station. The automatic control may include a time delay feature to prevent interruptions caused by fading or other momentary failures of the incoming signal.

(7) The transmitters of over 0.001 kW peak visual power (0.002 kW when circularly polarized antennas are used) shall be equipped with an automatic keying device that will transmit the call sign of the station, in International Morse Code, at least once each hour during the time the station is in operation when operating in the translator mode retransmitting the programming of a TV broadcast station. However, the identification by Morse Code is not required if the licensee of the low power TV or TV translator station has an agreement with the TV broadcast station being rebroadcast to transmit aurally or visually the low power TV or TV translator station call as provided for in § 74.783. Transmission of the call sign can be accomplished by:

(d) Low power TV and TV translator transmitting equipment using a modulation process for either program origination or rebroadcasting must meet the following requirements:

(1) The equipment shall meet the requirements of paragraphs (1)(1), (a)(2), (a)(3), (b)(1), and (b)(7) of § 73.687.

(e) * * *
(1) Any manufacturer of apparatus intended for use at low power TV or TV translator stations may request type

acceptance by following the procedures set forth in Part 2, Subpart J, of this chapter. Equipment found to be acceptable by the FCC will be listed in the "Radio Equipment List" published by the FCC. These lists are available for inspection at the FCC headquarters in Washington, D.C. or at any of its field offices.

(2) Low power TV and TV translator transmitting apparatus that has been type accepted by the FCC will normally be authorized without additional measurements from the applicant or licensee.

(3) Applications for type acceptance of modulators to be used with existing type accepted TV translator apparatus must include the specifications electrical and mechanical interconnecting requirements for the apparatus with which it is designed to be used.

(g) Low power TV or TV translator stations installing new type accepted transmitting apparatus incorporating modulating equipment need not make equipment performance measurements and shall so indicate on the station license application. Stations adding new or replacing modulating equipment to existing low power TV or TV translator transmitting apparatus must have an operator holding a General Radiotelephone Operator License examine the transmitting system after installation. This operator must certify in the application for the station license that the transmitting equipment meets the requirement of paragraph (d)(1) of this section. A report of the methods, measurements, and results must be kept in the station records. However, stations using modulating equipment solely for the limited local origination of signals permitted by § 74.731 need not comply with the requirements of this paragraph.

38. Section 74.751 is amended by revising paragraphs (b)(1), (b)(2), (b)(6), and (c), and adding new paragraph (d) to read as follows:

§ 74.751 Equipment changes.

(b) * * *
(1) Replacement of the transmitter as a whole, except replacement with a transmitter of identical power rating which has been type accepted by the FCC for use by low power TV and TV translator stations, or any change which could result in a change in the electrical characteristics or performance of the station.

(2) Any change in the transmitting antenna system, including the direction of radiation, directive antenna pattern, antenna gain, transmission line loss

characteristics, or height of antenna center of radiation.

(6) Any changes in the location of the transmitter except within the same building or upon the same pole or tower.

(c) Other equipment changes not specifically referred to in paragraph (a) or (b) of this section may be made at the discretion of the licensee: *Provided*, That the Engineer in charge of the Radio District in which the low power TV or TV translator station is located and the FCC in Washington, D.C., are notified in writing upon completion of such changes, and that the changes are appropriately reflected in the next application for renewal of the station license.

(d) Upon installation of new or replacement transmitting equipment for which prior FCC authority is not required under the provisions of this section, the licensee must place in the station records a certification that the new installation complies in all respects with the technical requirements of this part and the station authorization.

39. Section 74.761 is amended by revising the introduction and adding new paragraph (d) to read as follows:

§ 74.761 Frequency tolerance.

The licensee of a low power TV or TV translator station shall maintain the transmitter output frequencies as set forth below. The frequency tolerance of stations using direct frequency conversion of a received signal and not engaging in offset carrier operation as set forth in paragraph (d) of this section will be referenced to the authorized plus or minus 10 kHz offset, if any, of the primary station.

(d) The visual carrier shall be maintained to within 1 kHz of the assigned channel carrier frequency if the low power TV or TV translator station is authorized with a specified offset designation in order to provide protection under the provisions of § 74.705 or § 74.707.

40. Section 74.762 is amended in its entirety to read as follows:

§ 74.762 Frequency measurements.

(a) The licensee of a low power TV or TV translation station is not required to provide a means for measuring the operating frequencies of the transmitter. However, only equipment having the required stability will be type accepted for use by low power TV or TV translator stations.

(b) In the event that a low power TV or TV translator station is found to be operating beyond the frequency tolerance prescribed in § 74.761, the licensee promptly shall suspend operation of the transmitter and shall not resume operation until transmitter has been restored to its assigned frequencies. Adjustment of the frequency determining circuits of the transmitter shall be made only by a qualified person in accordance with § 74.750(g).

41. Section 74.763 is revised by amending paragraphs (a) and (c) to read as follows:

§ 74.763 Time of operation.

(a) A low power TV or TV translator station is not required to adhere to any regular schedule of operation. However, the licensee of a TV translator station is expected to provide service to the extent that such is within its control and to avoid unwarranted interruptions in the service provided.

(c) Failure of a low power TV or TV translator station to operate for a period of 30 days or more, except for causes beyond the control of the licensee, shall be deemed evidence of discontinuation of operation and the license of the station may be cancelled at the discretion of the FCC.

42. Section 74.764 is revised in its entirety to read as follows:

§ 74.764 Station inspections.

The licensee of a low power TV or TV translator station shall make the station and the records required to be kept by the rules in this part available for inspection by representatives of the FCC.

43. Section 74.765 is revised in its entirety to read as follows:

§ 74.765 Posting of station and operator licenses.

(a) The station license and any other instrument of authorization or individual order concerning the construction of the station or manner of operation shall be kept in the station record file so as to be available for inspection upon request of authorized representatives of the FCC.

(b) The licenses or permits of operators employed at low power TV stations originating programs shall be posted in accordance with the provisions of § 73.1230(b) of Part 73 of this chapter.

(c) The call sign of the station, together with the name, address, and telephone number of the licensee or local representative of the licensee, if the licensee does not reside in the

community served by the station, and the name and address of the person and place where the station records are maintained, shall be displayed at the transmitter site on the structure supporting the transmitting antenna, so as to be visible to a person standing on the ground. The display shall be maintained in legible condition by the licensee.

44. Section 74.766 is amended by revising the headnote and adding new paragraph (e) to read as follows:

§ 74.766 Low power TV and TV translator operator requirements.

(e) An operator holding any class of FCC operator license or permit, except the Marine Operator Permit, must be on duty in charge of the transmitting apparatus of a low power TV station during all periods of program origination as defined in § 74.701(g).

45-47. New § 74.780 is added to read as follows:

§ 74.780 Broadcast regulations applicable to low power TV stations.

The following rules are applicable to programs originated by low power TV stations:

(a) Section 73.658, "Affiliation agreements and network program practices; territorial exclusivity in non-network program arrangements."

(b) Section 73.1202, "Station identification."

(c) Section 73.1205, "Fraudulent billing practices."

(d) Section 73.1206, "Broadcast of telephone conversations."

(e) Section 73.1207, "Rebroadcasts."

(f) Section 73.1208, "Broadcast of taped, filmed, or recorded material."

(g) Section 73.1211, "Broadcast of lottery information."

(h) Section 73.1212, "Sponsorship identification; list retention; related requirements."

(i) Section 73.1216, "Licensee-conducted contests."

(j) Section 73.1940, "Broadcasts by candidates for public office."

(k) Section 73.2080, "Equal employment opportunities."

(l) Part 73, Subpart G, "Emergency Broadcast System."

48. Section 74.783 is amended by revising the introductory text of paragraph (a), paragraph (c), and adding new paragraph (d) to read as follows:

§ 74.783 Station identification.

(a) Each TV translator station over 0.001 kW peak visual power (0.002 kW when using circularly polarized

antennas) must transmit its station identification as follows:

(c) A low power TV station shall comply with the station identification procedures given in § 73.1201 of Part 73 of this chapter when originating programming (See § 74.701(g)). The identification procedures given in paragraphs (a) and (b) are to be used when programs of another station are being rebroadcast.

(d) Call signs for low power TV and TV translator stations will be made up of the initial letter K or W followed by the channel number assigned to the station and two additional letters. The use of the initial letter generally will follow the pattern used in the broadcast service, i.e., stations west of the Mississippi River will be assigned an initial letter K and those east, the letter W. The two letter combinations following the channel number will be assigned in order and requests for the assignment of the particular combinations of letters will not be considered. The channel number designator for Channels 2 through 9 will be incorporated in the call sign as a 2-digit number, i.e., 02, 03, . . . , so as to avoid similarities with call signs assigned to amateur radio stations.

49. Section 74.784 is amended by revising paragraphs (b) and (c) and adding new paragraph (d) to read as follows:

§ 74.784 Rebroadcasts.

(b) The licensee of a low power TV or TV translator station shall not rebroadcast the programs of any other TV broadcast station or other station authorized under the provisions of this Subpart without obtaining prior consent of the station whose signals or programs are proposed to be retransmitted. The FCC shall be notified of the call letters of each station rebroadcast and the licensee of the low power TV or TV broadcast translator station shall certify that written consent has been obtained from the licensee of the station whose programs are retransmitted.

(c) A TV translator station may rebroadcast only programs and signals that are simultaneously transmitted by a TV broadcast station.

(d) The provisions of § 73.1207 of Part 73 of this chapter apply to low power TV stations in transmitting any material during periods of program origination obtained from the transmissions of any other type of station.

50. Section 74.832 is amended by revising paragraphs (a)(1) and (c) to read as follows:

§ 74.832 Licensing requirements and procedures.

(a) * * *

(1) A licensee of an AM, FM, TV, or International broadcast station or low power TV station. Low power auxiliary stations will be licensed for use with a specific broadcast or low power TV station or combination of stations licensed to the same licensee within the same community.

(c) Licensees of AM, FM, TV, and International broadcast stations; low power TV stations; and eligible network entities may be authorized to operate low power auxiliary stations in the frequency bands set forth in § 74.802(a).

PART 76—CABLE TELEVISION SERVICE

51. Section 76.501 is amended by revising paragraph (a)(2) and removing paragraph (a)(3) in its entirety as follows:

§ 76.501 Cross-ownership.

(a) * * *

(1) * * *

(2) A TV broadcast station whose predicted Grade B contour, computed in accordance with § 73.684 of Part 73 of this chapter, overlaps in whole or in part the service area of such system (i.e., the area within which the system is serving subscribers).

(3) [Reserved]

52. Section 76.605 is amended by revising paragraph (a)(9)(iii) to read as follows:

§ 76.605 Technical standards.

(a) * * *

(9) * * *

(iii) Each signal that is first received by the cable television system by direct video feed from a TV broadcast station or a low power TV station.

PART 78—CABLE TELEVISION RELAY SERVICE

53. The last sentence in § 78.1 is revised to read as follows:

§ 78.1 Purpose.

* * * In addition CARS stations may be used to transmit television and related audio signals to TV translator and low power TV stations.

54. The first sentence of § 78.11, paragraph (a) is revised to read as follows:

§ 78.11 Permissible service.

(a) CARS stations are authorized to relay TV broadcast and low power TV and related audio signals, the signals of AM and FM broadcast stations, signals of instructional TV fixed stations, and cablecasting intended for use by one or more cable television systems. * * *

Appendix B

Instructions for FCC 346

Application for Construction Permit For Translator or Low Power Television Station

(FCC Form 346 attached)

General Instructions

A. This FCC form is to be used to apply for authority to construct a new translator or low power television broadcast station, or to make changes in the existing facilities of such a station. It consists of the following sections:

- I. General Information
- II. Legal Qualifications
- III. Financial Qualifications
- IV. Program Service Statement
- V. Engineering Data and Antenna and Site Information
- VI. Equal Employment Opportunity Program
- VII. Certification.

An applicant for a change in facilities need not file Sections II, III, IV and VI.

B. Prepare and submit three copies of this form and all exhibits to: The Secretary, Federal Communications Commission, Washington, D.C. 20554.

C. Many references to FCC Rules (47 CFR) are made in this application form. Before filling it out, the applicant should have on hand and be familiar with current broadcast rules in:

- (1) Volume I: Parts 0 ("Commission Organization"), 1 ("Practice and Procedure"), and 17 ("Construction Marking and Lighting of Antenna Structures").
- (2) Volume III: Part 73 ("Radio Broadcast Services").

FCC Rules may be obtained through the Government Printing Office, Washington, D.C. 20402. Orders should be sent directly to the Government Printing Office (not through the FCC). The printed rules are sold on a subscription basis, which entitles the purchaser to receive subsequent amendments to the rule part purchased until and overall revised edition is printed. You may telephone the Government Printing Office at (202) 783-3238.

D. Public Notice Requirement:

(1) Section 73.3580 of the Commission's Rules requires that applicants for construction permits for new broadcast stations and major changes in existing facilities (as defined in Section 73.3572(a)(1) or 73.3573(a)(1) of the Rules) give local notice in a newspaper of general circulation in the community to which the station is licensed. This publication requirement also applies with respect to major amendments thereto as defined in Sections 73.3572(b) and 73.3573(b) of the Rules.

(2) Completion of publication may occur within 30 days before or after tendering of the

application. Compliance or intent to comply with the public notice requirement must be certified in Section VI of this application. The information that must be contained in the notice of filing is described in Paragraph (f) of Section 73.3580 of the Rules. Proof of publication need not be filed with this application.

E. A Copy of this completed application and all related documents shall be made available for inspection by the public, pursuant to Section 73.3526 of the FCC Rules.

F. Replies to questions in this form and the applicant's statements constitute representations on which the FCC will rely in considering the application. Thus, time and care should be devoted to all replies, which should reflect accurately the applicant's responsible consideration of the questions asked. Include all information called for by this application. If any portions of the application are not applicable, so state. *Defective or incomplete applications will be returned without consideration.* Furthermore, inadvertently accepted applications are also subject to dismissal.

G. In accordance with Section 1.65 of the Rules, the applicant has a *continuing obligation* to advise the Commission, through amendments, of any substantial and significant changes in the information furnished.

Section I Instructions

A. The name of the applicant stated in Section I shall be:

(i) if a corporation, the *EXACT* corporate name;

(ii) if a partnership, the names of all partners, and the name under which the partnership does business;

(iii) if an association, the name of the individual(s) authorized to act on behalf of the association, and the name of the association;

(iv) if an individual applicant, the full legal name.

In all other sections of this form, the organization name alone will be sufficient for identification of the applicant.

B. In Section I use the following State abbreviations:

Alabama.....	AL
Alaska.....	AK
American Samoa.....	AS
Arizona.....	AZ
Arkansas.....	AR
California.....	CA
Colorado.....	CO
Connecticut.....	CT
Delaware.....	DE
District of Columbia.....	DC
Florida.....	FL
Georgia.....	GA
Guam.....	GU
Hawaii.....	HI
Idaho.....	ID
Illinois.....	IL
Indiana.....	IN
Iowa.....	IA
Kansas.....	KS
Kentucky.....	KY
Louisiana.....	LA
Maine.....	ME
Maryland.....	MD
Massachusetts.....	MA
Michigan.....	MI
Minnesota.....	MN
Mississippi.....	MS
Missouri.....	MO
Montana.....	MT

Nebraska.....	NB
Nevada.....	NV
New Hampshire.....	NH
New Jersey.....	NJ
New Mexico.....	NM
New York.....	NY
North Carolina.....	NC
North Dakota.....	ND
Northern Mariana Islands.....	CM
Ohio.....	OH
Oklahoma.....	OK
Oregon.....	OR
Pennsylvania.....	PA
Puerto Rico.....	PR
Rhode Island.....	RI
South Carolina.....	SC
South Dakota.....	SD
Tennessee.....	TN
Texas.....	TX
Trust Territory Of The Pacific Islands.....	TT
Utah.....	UT
Vermont.....	VT
Virginia.....	VA
Virgin Islands.....	VI
Washington.....	WA
West Virginia.....	WV
Wisconsin.....	WI
Wyoming.....	WY

Section II Instructions

A. As used in Section II, the words "party to this application" have the following meanings:

Individual Applicant: The applicant.
Partnership Applicant: All partners, including limited partners. If any partner is a corporation or other entity, the definitions set forth below will apply.

Corporate Applicant: All officers and directors, and all persons or entities who are the beneficial or record owners or have the right to vote any capital stock, membership or owner interest, or subscribers to such interests, shall be considered parties to this application. If any corporation or other legal entity owns stock in the applicant, its officers, directors and persons or entities who are the beneficial or record owners or have the right to vote any capital stock, membership or owner interest, or subscribers to such interest, of that entity shall also be considered parties to this application.

In the event the applicant has more than 50 stockholders, only officers and directors and persons or entities who are the beneficial or record owners or have the right to vote 1% or more of the capital stock, membership or owner interest, or subscribers to such interest shall be considered parties to this application. However, if such entity is a bank, insurance company, or investment company (as defined by 15 U.S.C. § 80a-3) which does not invest for purposes of control, the relevant stock, membership or owner interest is 5% or more. If any corporation or other legal entity owns 1% or more of an applicant with more than 50 stockholders, its officers, directors and all persons or entities who are the beneficial or record owners or have the right to vote 1% or more of the capital stock, membership or owner interest, or subscribers to such interest in the entity, shall also be considered parties to this application. However, if such entity is a bank, insurance company or investment company (as defined by 15 U.S.C. § 80-3) which does not invest for purposes of control, the relevant stock, membership or owner interest is 5% or more.

Any Other Applicant: All executive officers, members of the governing board and

owners or subscribers to any membership or ownership interest in the applicant.

B. All applicants must comply with Section 310 of the Communications Act of 1934, as amended. Specifically, Section 310 proscribes issuance of a construction permit to an alien, the representative of an alien, a foreign government or the representative thereof, or a corporation organized under the laws of a foreign government. This proscription also applies with respect to any corporation of which any officer or director is an alien or of which more than 20% of the capital stock is owned or voted by aliens, their representatives, a foreign government or its representative, or by a corporation organized under the laws of a foreign country. This proscription could likewise apply to any corporation directly or indirectly controlled by another corporation of which (a) any officer is, (b) more than 25% of the directors are, or (c) more than 25% of the capital stock is owned and voted by aliens, their representatives, a foreign government or its representative. The Commission may also deny a construction permit to a corporation controlled by another corporation organized under the laws of a foreign country.

C. The applicant must determine the citizenship of each officer and director. It must also determine the citizenship of each shareholder or else explain how it determined the relevant percentages. For large corporations, a sample survey using a recognized statistical method is acceptable for this purpose.

Section III Instructions

A. All applicants filing Form 346 must be financially qualified to effectuate their proposals. Certain applicants (i.e., for a new station, to reactivate a silent station, or if specifically requested by the Commission) must demonstrate their financial qualifications by filing Section III. DO NOT SUBMIT Section III if the application is for changes in operating or authorized facilities.

B. An applicant for a new station must attest it has sufficient net liquid assets on hand, or committed sources of funds to construct the proposed facility and operate for three months, without revenue. As used in Section III, "net liquid assets" means the lesser amount of the net current assets or of the liquid assets shown on a party's balance sheet, with net current assets being the excess of current assets over current liabilities.

C. Documentation supporting the attestation of financial qualification need not be submitted with this application but must be available to the Commission upon request. The Commission encourages that all financial statements used in the preparation of this application be prepared in accordance with generally accepted accounting principles.

D. It is Commission policy not to grant extension of time for construction on the basis of financial inability or unwillingness to construct.

Section VI Instructions

A. Applicants seeking authority to construct a new low power television (LPTV) broadcast station, applicants seeking authority to obtain assignment of the construction permit or

license of such a station, and applicants seeking authority to acquire control of an entity holding such construction permit or license are required to afford equal employment opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, religion, national origin or sex. See Section 73.2080 of the Commission's Rules. Pursuant to these requirements, an applicant who proposes to employ five or more full-time station employees must establish a program designed to assure equal employment opportunity for women and minority groups (that is, Blacks not of Hispanic origin, Asian or Pacific Islanders, American Indians or Alaskan Natives, and Hispanics). This is submitted to the Commission as the Model EEO Program Form. If minority group representation in the available labor force is less than five percent (in the aggregate), a program for minority group members is not required. However, a program must be filed for women since they comprise a significant percentage of virtually all area labor forces. If an applicant proposes to employ less than five full-time employees, no EEO program for women or minorities need be filed.

B. Guidelines for developing an Equal Employment Opportunity program are set forth as a separate Model EEO program.

Note.—This five-point Model EEO Program Form is to be utilized only by applicants for new construction permits, assignees and transferees.

PAGE I

Section I

General Information

FILE # _____

FCC FORM 346

1. _____

Name of Applicant _____

Mailing Address _____

City _____

State _____

Zip Code _____

Telephone No. _____

2. This application is for: FM Translator

LPTV TV Translator

(a) Channel number: _____

(b) Community of license: City

State

(c) Check one:

—New Station

—Major change in existing station (Call Letters)

—Minor change in existing station (Call Letters)

—Amendment to pending application (Application Reference Number)

—Modification of Construction Permit (Construction Permit File Number)

Note.—It is not necessary to use this form to amend a previously filed application. Should you do so, however, please submit only Section I and those other portions of the form that contain the amended information.

3. (a) Is this application mutually exclusive with a renewal application?

YES NO

If Yes, state: Call letters:

Community of license:

(b) To the applicant's knowledge, is this application mutually exclusive with any other application(s)?

YES NO

If Yes, state: Call letters:

Community of license:

4(a) Is translator applicant the licensee of primary station?

—Yes; —No.

(b) If answer to 4(a) is no, has written authority been obtained from the licensee of the station whose programs are to be retransmitted?

—Yes; —No.

5. Station Identification.

Indicate how station identification will be made:

—FSK

—By primary station

—Live or tape

—Amplitude modulation of FM Aural

Carrier

—Not required

6. Is type approved broadcast equipment being specified?

—Yes; —No. If no, please indicate date equipment submitted to FCC Lab for approval.

7. Would a Commission grant of your application be major action as defined by Section 1.1305 of the Commission's Rules?

—Yes. If yes, submit as Exhibit No.

the required statement in accordance with Section 1.1311 of the Rules.

—No. If no, explain briefly.

8. If this application is for a new FM translator, have any funds, legal or engineering services or anything else of value been furnished, directly or indirectly, by the licensee or permittee of any FM broadcast station or any person associated with such station? If the answer is "Yes", attach an explanation as Exhibit No. identifying the source and nature of the financial support or assistance.

—Yes; —No

Legal Qualifications

Section II

Applicant's Name: _____

1. Applicant is: _____ an individual;

a general partnership; _____ a limited

partnership; _____ a corporation

other.

2. If the applicant is an unincorporated association or a legal entity other than an individual, partnership or corporation, describe in Exhibit No. _____ the nature of the applicant.

Citizenship and Other Statutory Requirements

3. (a) Is the applicant in compliance with

the provisions of Section 310 of the Communications Acts of 1934, as amended, relating to interests of aliens and foreign governments? Yes No

(b) Will any funds, credit, etc., for the construction, purchase or operation of the station(s) be provided by aliens, foreign entities, domestic entities controlled by aliens, or their agents? Yes No

If yes, provide particulars as Exhibit No.

4. (a) Has an adverse finding been made, adverse final action taken or consent decree approved by any court or administrative body as to the applicant or any party to the application in any civil or criminal proceeding brought under the provisions of any law related to the following: any felony, antitrust, unfair competition, fraud, unfair labor practices, or discrimination? Yes No

(b) Is there now pending in any court or administrative body any proceeding involving any of their matters referred to in (a)? Yes No

If the answer to (a) or (b) above is yes, submit as Exhibit No. _____, a full disclosure concerning the persons and matters involved, identifying the court or administrative body and the proceeding (by dates and file numbers), stating the facts upon which the proceeding was based or the nature of the offense committed, and disposition or current status of the matter.

Other Media Interests

5. Does the applicant or any party to this application have any interest in or connection with the following:

(a) An AM, FM or TV broadcast station? Yes No

(b) A broadcast application pending before the FCC? Yes No

(c) Other non-broadcast media of mass communications, e.g. cable television, theatres and printed publications. Yes No

6. Has the applicant or any party to this application had any interest in:

(a) An application which has been dismissed with prejudice by the Commission? Yes No

(b) An application which has been denied by the Commission? Yes No

(c) A broadcast station, the license which has been revoked? Yes No

(d) An application in any Commission proceeding which left unresolved character issues against the applicant? Yes No

If the answer to any of the questions in 5 is yes, state in Exhibit No. _____ the following information:

(i) Name of party having such interest;

(ii) Nature of interest or connection, giving dates;

(iii) Call letters of stations or file number of application, or docket number;

(iv) Location.

Minority Ownership

7. Is the applicant over 50 percent minority owned? Yes No

If the answer is yes, state in Exhibit No. _____ for each minority owner:

(i) Name, address and percentage of ownership;

(ii) Minority group (e.g., Black not of Hispanic origin, Asian or Pacific Islander, American Indian or Alaskan native, and Hispanic).

Section III

Financial Qualifications

Note.—If this application is for a change in an operating facility, do not fill out this section. Yes No

1. The applicant certifies that sufficient net liquid assets are on hand or are available from committed sources to construct and operate the requested facilities for three months without revenue. Yes No

2. The applicant certifies that: (a) It has a reasonable assurance of a present firm intention for each agreement to furnish capital or purchase capital stock by parties to the application, each loan by banks, financial institutions or others and each purchase of equipment on credit; (b) it can and will meet all contractual requirements as to collateral, guarantees, and capital investment; (c) it has determined that a reasonable assurance exists that all such sources (excluding banks, financial institutions and equipment manufacturers) have sufficient net liquid assets to meet these commitments. Yes No

Section IV

Program Service Statement

For LPTV (Including STV applicants) only:

1. LPTV stations must offer a broadcast program service: a non-program broadcast service will not be permitted. Therefore, submit as Exhibit No. _____, a brief description, in narrative form, of your planned programming service. STV applicants should provide a complete description of your proposed STV system including the manner in which you intend to provide decoders to the public.

BILLING CODE 6712-01-M

Section V, Page 1

ENGINEERING DATA

1. Facilities requested:

a. Output Channel No.	Transmitter Output Power (watts)	Proposed Principal Community or Communities to be served: City: State:	Primary Station (station to be rebroadcast) (Translator only) Call: Channel No. City: State:
b. Offset (Low Power TV and TV Translator Stations only) No offset Plus offset Zero offset Minus offset			Frequency: MHz
c. Input Channel No.	If station is to operate via another translator station, indicate call sign and location of final intermediate translator:		

2. Proposed transmitter location:

City	County	State
Address or other description of location		Geographical coordinates of transmitting antenna to nearest second North Latitude West Longitude ' " " "

Attach as Exhibit No. _____ a map or maps (preferably topographic, if obtainable, such as U. S. Geological Survey quadrangles) for the area of the proposed transmitter location and show drawn thereon the following data:

- Scale of miles.
- Proposed transmitter location accurately plotted.
- Principal community to be served by the proposed TV or FM translator station, clearly identified and labeled.
- Locations of all known radio stations (except amateur), such as AM, FM, TV, Translator, Police, Fire, Aeronautical, Public Utility, etc., and known commercial or government receiving sites, within the immediate vicinity of the proposed transmitter location.

3. Transmitter:

Make	Type No.	Rated output power (watts) P
------	----------	------------------------------

4. Transmission line:

Make	Type No.	Length	Rated efficiency E for length given (decimal fraction)
------	----------	--------	--

5. Transmitting antenna

Manufacturer	Model No. ^{1/}	Description ^{1/}	Power gain G (multiplier) in lobe of maximum radiation relative to a half-wave dipole	Height of radiation center above mean sea level (ft)
Orientation ^{2/}	Height above ground ^{3/}	Elevation of Site ^{4/}	Elevation of Community ^{5/}	

- Give basic type using general descriptive terms such as half-wave dipole, "bow-tie" with screen, corner reflector, 10 element Yagi, 4 element in-phase array, two stacked 5 element Yagis, etc.
- Show the direction of the main radiation lobe in degrees with respect to true north in a 360 degree horizontal azimuth, numbered clockwise, with true north as zero azimuth.
- Show height to topmost portion of structure, including highest top mounted antenna and beacon if any.
- Show the ground elevation above mean sea level at the base of the transmitting antenna supporting structure.
- Show the average elevation of the community above mean sea level, or in lieu thereof, the commonly used elevation figure for the community to be served.

Section V, Page 2

6. Attach as Exhibit No. _____ a vertical plan sketch for the proposed total structure(s) including supporting structure(s), giving height of center of radiation above ground, overall height of structure above ground, including lighting beacon (if any) and height above mean sea level in feet for all significant features for BOTH RECEIVING AND TRANSMITTING ANTENNAS. Also indicate any horizontal separation between receiving transmitting antennas.

7. Will the proposed antenna supporting structure be shared with another station or stations of any class? YES NO
If the answer is "Yes", list the call signs and class of such stations.

8. Attach as Exhibit No. _____ a polar diagram of the radiation pattern (relative field) of the transmitting antenna, showing clearly the correct relationship between the major lobe or lobes and the minor lobes of radiation. If a non-directive transmitting antenna will be employed, i.e., an antenna with an approximately circular radiation pattern, check this and omit the polar diagram.

9. Has FAA been notified of proposed construction? YES NO
If yes, give date and office where notice was filed.
(Not necessary to file FCC Form 714, See Part 17 of the rules.)

10. Unattended operation:

a. Is unattended operation proposed? YES NO
If the answer is "Yes", and this application is for authority to construct a new station or to make changes in the facilities of an authorized station which proposes unattended operation for the first time, attach Exhibit No. _____, containing a full description of the means of compliance with the several requirements of Section 74.734 (TV Translators) or Section 74.1234 (FM Translators) of the Rules concerning unattended operation.

b. In space below state name, address and telephone number of a person or persons who may be contacted in an emergency to suspend operation of the translator should such action be deemed necessary by the Commission:

Name(s)

Address (street or other description)

City & State

ZIP Code

Telephone number(s) (include area code)

I certify that I represent the applicant in the capacity indicated below and that I have examined the foregoing statement of technical information and that it is true to the best of my knowledge and belief.

Date _____

Signature _____
(check appropriate box below)Telephone _____
(include area code)

Technical Director Chief Operator
 Registered Professional Engineer Other (Specify)
 Consulting Engineer

FCC Form 346

Section VI

Equal Employment Opportunity Program

1. Does the applicant propose to employ five or more fulltime employees? Yes; No.
If the answer is Yes, the applicant must include an EEO program called for in the separate 5 Point Model EEO Program.

Section VII

Certification

1. Has or will the applicant comply with the public notice requirement of Section 73.3580 of the Commission's Rules? Yes; No.

A copy of the text and dates of publication is attached as Exhibit No. —.

The Applicant hereby waives 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 requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

The Applicant acknowledges that all the statements made in this application and attached exhibits are considered material representations, and that all exhibits are a material part hereof and incorporated herein.

The Applicant represents that this application is not filed for the purpose of impeding, obstructing, or delaying determination on any other application with which it may be in conflict.

In accordance with Section 1.65 of the Commission's Rules, the Applicant has a continuing obligation to advise the Commission, through amendments, of any substantial and significant changes in information furnished.

Willful False Statements Made on This Form Are Punishable by Fine and Imprisonment—U.S. Code, Title 18, Section 1001

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.

Signed and dated this — day of —, 19—
Name of Applicant _____
Signature _____
Title _____

FCC Notice to Individuals Required by the Privacy Act and the Paperwork Reduction Act

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to determine if the benefit requested is consistent with the public interest. The staff, consisting variously of attorneys, accountants, engineers, and application examiners, will use the information to determine whether the application should be granted, denied, dismissed, or designated for hearing. If all the information requested is not provided, 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. Accordingly, every effort should be made to provide all

necessary information. Your response is required to obtain the requested Permit.

The foregoing Notice is required by the Privacy Act of 1974, Pub. L. 93-579, December 31, 1974, 5 U.S.C. 552a(e)(3).

Attachment 1 to FCC Form 346

The following information may be submitted at the option of applicants. However, applications containing the requested information will be processed at a faster rate than applications not containing such information. In the latter case, the Commission's limited staff will be required to compute the data manually and processing will, therefore, require substantially more time.

Attach as Exhibit No. — an allocation study utilizing topographic maps or an accurate full scale reproduction thereof and using pertinent field strength measurement data where available, a full scale exhibit of the entire pertinent area to show the following:

(a) Normally protected and the interfering contours for the proposed operation along all azimuths.

(b) Normally protected and interfering contours of existing stations and other proposed stations in pertinent areas with which prohibited overlap would result as well as those existing stations and other proposals which require study to clearly show absence of prohibited overlap.

(c) Plot of the transmitter location of each station or proposal requiring investigation, with identifying call letters, file numbers, and operating or proposed facilities.

(d) Properly labeled longitude and latitude degree lines, shown across entire exhibit.

United States of America,
Federal Communication Commission,
Washington, D.C.

Model EEO Program

1. Name of Applicant _____
Street Address _____
City _____
State _____
Zip Code _____
Telephone No. (Include Area Code) _____

2. This form is being submitted in conjunction with:

- Application for Construction Permit for New Station
- Application for Transfer of Control
- Application for Assignment of License

- (a) Call letters (or channel number of frequency)
- (b) Community of License

City _____
State _____

Instructions

Applicants seeking authority to construct a new low power television broadcast station, applicants seeking authority to obtain assignment of the construction permit or license of such a station, and applicants seeking authority to acquire control of an entity holding such construction permit or license are required to afford equal employment opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, religion, national origin or sex.

See Section 73.2080 of the Commission's Rules. Pursuant to these requirements, an applicant who proposes to employ five or more fulltime station employees must establish a program designed to assure equal employment opportunity for women and minority groups (that is, Blacks not of Hispanic origin, Asians or Pacific Islanders, American Indians or Alaskan Natives and Hispanics.) This is submitted to the Commission as the Model EEO Program. If minority group representation in the available labor force is less than five percent (in the aggregate), a program for minority group members is not required. In such cases, a statement so indicating must be set forth in the EEO model program. However, a program must be filed for women since they comprise a significant percentage of virtually all area labor forces. If an applicant proposes to employ less than five fulltime employees, no EEO program for women or minorities need be filed.

Guidelines for a Model EEO Program and a Model EEO Program are attached.

Note.—Check appropriate box, sign the certification below and return to FCC:

- Station will employ less than 5 fulltime employees; therefore no written program is being submitted.
- Station will employ 5 or more fulltime employees. Our 5 point program is attached.

Certification

I certify that the statements made herein are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

Signed and dated this — day of —, 19—
Signature _____
Title _____

Willful False Statements Made on This Form Are Punishable by Fine and Imprisonment—U.S. Code, Title 18, Section 1001

FCC Notice to Individuals Required by the Privacy Act

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to determine if the benefit requested is consistent with the public interest. The staff, consisting variously of attorneys, accountants, engineers and application examiners, will use the information to determine whether the application should be granted, denied, dismissed, or designated for hearing. If all the information requested is not provided, 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. Accordingly, every effort should be made to provide all necessary information.

The foregoing Notice is required by the Privacy Act of 1974, Pub. L. 93-579, December 31, 1974, 5 U.S.C. 552a(e)(3).

Guidelines to the Model EEO Program

The model EEO program adopted by the Commission for construction permit

applicants contains five sections designed to assist the applicant in establishing an effective EEO program for its station. The specific elements which should be addressed are as follows:

I. General Policy

The first section of the program should contain a statement by the applicant that it will afford equal employment opportunity in all personnel actions without regard to race, color, religion, national origin or sex, and that it has adopted an EEO program which is designed to fully utilize the skills of minorities and women in the relevant available labor force.

II. Responsibility for Implementation

This section calls for the name (if known) and title of the official who will be designated by the applicant to have responsibility for implementing the station's program.

III. Policy Dissemination

The purpose of this section is to disclose the manner in which the station's EEO policy will be communicated to employees and prospective employees. The applicant's program should indicate whether it: (a) intends to utilize an employment application form which contains a notice informing job applicants that discrimination is prohibited and that persons who believe that they have been discriminated against may notify appropriate governmental agencies; (b) will post a notice which informs job applicants and employees that the applicant is an equal opportunity employer and that they may notify appropriate governmental authorities if they believe that they have been discriminated against; and (c) will seek the cooperation of labor unions, if represented at the station, in the implementation of its EEO program and in the inclusion of nondiscrimination provisions in union contracts. The applicant should also set forth any other methods it proposes to utilize in conveying its EEO policy (e.g., orientation materials, on-air announcements, station newsletter) to employees and prospective employees.

IV. Recruitment

The applicant should specify the recruitment sources and other techniques it proposes to use to attract minority and female job applicants. Not all of the categories of recruitment sources need be utilized. The purpose of the listing is to assist the applicant in developing specialized referral sources to establish a pool of minorities and women who can be contacted as job opportunities occur. Sources which subsequently prove to be nonproductive should not be relied on and new sources should be sought.

V. Training

Training programs are not mandatory. Each applicant is expected to decide, depending upon its own individual situation, whether a training program is feasible and would assist it in its effort to increase the pool of available minority and female applicants. Additionally, the applicant may set forth any other assistance it proposes to give to students,

schools or colleges which is designed to be of benefit to minorities and women interested in entering the broadcasting field. The beneficiary of such assistance should be listed, as well as the form of assistance, such as contributions to scholarships, participation in work study programs, and the like.

Model Equal Employment Opportunity Program

I. General Policy

It will be our policy to provide equal employment opportunity to all qualified individuals without regard to their race, color, religion, national origin or sex in all personnel actions including recruitment, evaluation, selection, promotion, compensation, training and termination.

It will also be our policy to promote the realization of equal employment opportunity through a positive, continuing program of specific practices designed to ensure the full realization of equal employment opportunity without regard to race, color, religion, national origin or sex.

To make this policy effective, and to ensure conformance with the Rules and Regulations of the Federal Communications Commission, we have adopted an Equal Employment Opportunity Program which includes the following elements:

II. Responsibility for Implementation

(Name/Title) _____ will be responsible for the administration and implementation of our Equal Employment Opportunity Program. It will also be the responsibility of all persons making employment decisions with respect to recruitment, evaluation, selection, promotion, compensation, training and termination of employees to ensure that our policy and program is adhered to and that no person is discriminated against in employment because of race, color, religion, national origin or sex.

III. Policy Dissemination

To assure that all members of the staff are cognizant of our equal employment opportunity policy and their individual responsibilities in carrying out this policy, the following communication efforts will be made:

The station's employment application form will contain a notice informing prospective employees that discrimination because of race, color, religion, national origin or sex is prohibited and that they may notify the appropriate local, State or Federal agency if they believe they have been the victims of discrimination.

Appropriate notices will be posted informing applicants and employees that the station is an Equal Opportunity Employer and of their right to notify an appropriate local, State, or Federal agency if they believe they have been the victims of discrimination.

We will seek the cooperation of unions, if represented at the station, to help implement our EEO program and all union contracts will contain a nondiscrimination clause.

Other (specify) _____

IV. Recruitment

To ensure nondiscrimination in relation to minorities and women, and to foster their full

consideration in filling job vacancies, we propose to utilize the following recruitment procedures:

We will attempt to maintain systematic communication, both orally and in writing, with a variety of minority and women's organizations to encourage the referral of qualified minority and female applicants. Examples of organizations we intend to contact are: _____

In addition to the organizations noted above, which specialize in minority and female candidates, we will deal only with employment services, including State employment agencies, which refer job candidates without regard to their race, color, religion, national origin or sex. Examples of these employment referral services are: _____

Model Equal Employment Opportunity Program

When we recruit prospective employees from educational institutions such recruitment efforts will include area schools and colleges with significant minority and female enrollments. Educational institutions to be contacted for recruitment purposes are: _____

When utilizing media for recruitment purposes, help-wanted advertisements will always include a notice that we are an Equal Opportunity Employer and will contain no indication, either explicit or implied, of a preference for one sex over another.

When we place employment advertisements in printed media some of such advertisements will be placed in media which have significant circulation or are of particular interest to minorities and women. Examples of publications to be utilized are: _____

We will encourage employees, particularly minority and female employees, to refer minority and female candidates for existing and future openings.

V. Training

Station resources and/or needs will be such that we will be unable or do not choose to institute specific programs for upgrading the skills of employees.

We will provide on-the-job training to upgrade the skills of employees.

We will provide assistance to students, schools or colleges in programs designed to enable minorities and women to compete in the broadcast employment market on an equitable basis:

School or Other Beneficiary _____
Proposed Form of Assistance _____

Other (Specify): _____

Appendix C

List of Commenters

1. ABC Television Affiliates Association (ABC Affiliates)
2. Action for Children's Television (ACT)
3. Alaska Public Broadcasting Commission

4. American Broadcasting Companies, Inc. (ABC)
 5. American Community Television Association (ACTVA)
 6. American Radio Relay League (ARRL)
 7. American Women in Radio and Television (AWRT)
 8. Association of Maximum Service Telecasters (MST)
 9. Attaway Broadcast Group, Inc. (Attaway)
 10. Frances Ayers
 11. Stephen A. Ballo (Ballo)
 12. Dr. Marvin R. Bensman, Memphis State University (Bensman)
 13. Birmingham Amateur Radio Club (BARC)
 14. Blonder-Tongue Laboratories, Inc. (Blonder-Tongue)
 15. Blue Mt. Translator District (Blue Mt.)
 16. John W. Boler (Boler)
 17. Bonneville International Corporation (Bonneville)
 18. Craig H. Brown
 19. Paul James Broyles (Broyles)
 20. Cable Television Review Commission, City of San Diego
 21. California Public-Safety Radio Association, Inc. (CPSRA)
 22. CBS, Inc. (CBS)
 23. Channel 57 Corporation (Channel 57)
 24. Children's Hospital of Los Angeles, University Affiliated Program (Childrens Hospital)
 25. Christian Broadcasting Network (CBN)
 26. Citizens Communications Center, Black Citizens for a Fair Media and National Latino Media Coalition (CCC)
 27. City University of New York, Graduate School and University Center (CUNY)
 28. Command Productions
 29. Colorado Translator Association (CTA)
 30. Communications Investment Corporation (CIC)
 31. Community Television Network, Inc. (CTN)
 32. Consumer Federation of America (CFA)
 33. Corinthian Broadcasting Corporation (CBC)
 34. Corporation for Public Broadcasting (CPB)
 35. Margaret E. Coughlin
 36. Council on Wage Price Stability (COWPS)
 37. Department of Communications of the County of Los Angeles (LA Communications Dept.)
 38. E.B. Craney (Craney)
 39. Harvey Dinerstein
 40. Charles E. Edgley (Edgley)
 41. Electronics Industries Association, Consumer Electronics Group (EIA/CEG)
 42. EMCO
 43. Federal Express Corporation (Federal Express)
 44. Reginald A. Fessenden Educational Fund (Fessenden)
 45. Field Communications Corporation (Field)
 46. Gammon & Grange (G&G)
 47. Garryowen Corporation (Garryowen)
 48. General Electric Broadcasting Company, Inc. (GE Broadcasting)
 49. General Electric Company (GE)
 50. Grassroots Video, Inc. (Grassroots)
 51. Robert C. Greene (Greene)
 52. Darwin Hillberry (Hillberry)
 53. Howard Publications, Inc. (Howard)
 54. Independent Cinema Artists and Producers (ICAP)
 55. International Broadcasting Network (IBN)
 56. International Cultural Network, Inc. (ICN)
 57. Joint Business Council of the Shoshone and Arapahoe Tribes (Joint Business Council)
 58. Joint Comments of Broadcast Licensees (Joint-Licensees)
 59. Joint Comments of Colony Communications, etc. (Joint-Colony)
 60. Joint Comments of Cosmos Broadcasting Corp., etc. (Joint-Cosmos)
 61. KBOW
 62. Kitchen Productions (Kitchen)
 63. Ron Kurtenbach (Kurtenbach)
 64. Lake County Television Club (Lake County)
 65. Land Mobile Communications Council (LMCC)
 66. Laramie Plains Antenna TV Association (Laramie Plains)
 67. Los Angeles County Sheriff (LA Sheriff)
 68. M/A COM, Inc. (M/A COM)
 69. Don H. Martin (Martin)
 70. Maryland/District of Columbia/Delaware Broadcasters Association (MDCDBA)
 71. Daniel M. Mayeda (Mayeda)
 72. Metonomy Cable Corporation (Metonomy)
 73. Microband Corporation of America (Microband)
 74. Missionary Society of the Oblate Fathers of Texas (Oblate Fathers)
 75. Morongo Basin TV Club (Morongo Basin)
 76. National Association of Broadcasters (NAB)
 77. National Association of Business & Educational Radio, Inc. (NABER)
 78. National Association of Public Television Stations (NAPTS)
 79. National Black Media Coalition (NBMC)
 80. National Broadcasting Company (NBC)
 81. National Cable Television Association (NCTA)
 82. National Congress of American Indians (NCAI)
 83. National Council of Churches of Christ in the U.S.A., Communications Commission (NCC)
 84. National Hockey League (NHL)
 85. National League of Cities (NLC)
 86. National Telecommunications and Information Administration (NTIA)
 87. National Telephone Cooperative Association (NTCA)
 88. National Translator Association (NTA)
 89. Neighborhood Television Company (Neighborhood)
 90. New York State Education Department (NYSED)
 91. Ohio Educational Broadcasting Network Commission (OEBNC)
 92. OK TV Translator Systems (OK TV)
 93. Omega Communications, Inc.
 94. Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO)
 95. O.D. Page
 96. Kevin Parkansky (Parkansky)
 97. Pennsylvania Association of Broadcasters (PAB)
 99. Potomac Communications, Inc. (Potomac)
 100. Public Broadcasting Service (PBS)
 101. Publiccoop
 102. Quality Media Corporation, Inc. (QMC)
 103. Radio & Television Commission, Southern Baptist Convention (Southern Baptist Convention)
 104. RCA Corporation (RCA)
 105. Residential Entertainment, Inc. (Residential)
 106. Henry R. Sandy (Sandy)
 107. Lee R. Shoblom (Shoblom)
 108. Sino Communication Group, Inc. (SINO)
 109. J. Rodger Skinner (Skinner)
 110. Thomas C. Smith (Smith)
 111. Southern California Committee for Open Media (SCCOM)
 112. Span-Com Broadcasting Group (Span-Com)
 113. Spanish International Communications Corp. & Spanish Intl. Network (SIN)
 114. Spanish Radio Broadcasters Association
 115. Spectradyne, Inc. (Spectradyne)
 116. Susan L. Stolcker
 117. Storer Broadcasting, Inc. (Storer)
 118. Charles E. Strange, M.D. (Strange)
 119. William E. Sullivan (Sullivan)
 120. Summers Broadcasting, Inc. (Summers)
 121. Television Technology Corp. (TTC)
 122. Telicommunity, Inc. (Telicommunity)
 123. Telocator
 124. Third Avenue Community Center (Third Ave.)
 125. Tunnel Radio
 126. B.D. Thornton (Thornton)
 127. Mr. Tomczak (Tomczak)
 128. Turner Television Stations, Inc. (Turner)
 129. Philip Tymon (Tymon)
 130. United Church of Christ (UCC)
 131. United Media Corp.
 132. United States Catholic Conference (USCC)
 133. United States Department of Justice
 134. University of Wisconsin System (Univ. of Wisconsin)
 135. U.P. TV Systems, Inc. (U.P. TV)
 136. Utilities Telecommunications Council (UTC)
 137. Richard I. Vega & Associates (Vega)
 138. The Video Factory
 139. Video Makers
 140. Washington State Broadcasters Association (WSBA)
 141. Watts Labor Community Action Committee
 142. Westinghouse Broadcasting Company, Inc. (Westinghouse)
 143. WWHT, Inc. (WWHT)
 144. Wometco
 145. Steven Zeitlin (Zeitlin)
- Reply Comments*
1. Alaska Public Broadcasting Commission (APBC)
 2. American Broadcasting Companies, Inc. (ABC)
 3. American Community Television Association (ACTVA)
 4. Associated Public-Safety Communications, Inc. (APCO)

5. Association of Community Organizations for Reform Now (ACORN)
 6. Association of Maximum Service Telecasters (MST)
 7. Belvidere Daily Republican Co. (Belvidere)
 8. Messenger Publishing Company (Messenger)
 9. John W. Boler (Boler)
 10. Channel 57 Corporation (Channel 57)
 11. Citizens Communications Center (CCC)
 12. CBS, Inc. (CBS)
 13. Community Television Network, Inc. (CTN)
 14. Corporation for Public Broadcasting (CPB)
 15. Council for UHF Broadcasting (CUB)
 16. Joint Reply of Broadcast Licensees (Licensees)
 17. Joint Reply of Cox Broadcast Corp., etc. (Joint, Cox)
 18. Jerrell K. Davis (Davis)
 19. Electronic Industries Association, Consumer Electronics Group (EIA/CEG)
 20. Field Communications Corp. (Field)
 21. State of Florida, Division of Communications (Florida)
 22. Gammon & Grange (G&G)
 23. Gannett Co., Inc. (Gannett)
 24. General Electric Broadcasting Co., Inc. and General Electric Broadcasting Co. of Colorado, Inc. (GEBCO)
 25. Global Village Video Resource Center, Inc. (Global Village)
 26. Robert C. Greene
 27. Arnold Gregg (Gregg)
 28. Howard Publications, Inc. (Howard)
 29. Honorable Daniel K. Inouye
 30. International Broadcasting Network (IBN)
 31. B. Jackson (Jackson)
 32. Harlan L. Jacobsen (Jacobsen)
 33. Joint Council on Educational Telecommunications (JCET)
 34. Land Mobile Communications Council, Inc. (LMCC)
 35. Don Mason (Mason)
 36. Microband Corp. of America (Microband)
 37. National Association of Broadcasters (NAB)
 38. National Association of Business & Educational Radio, Inc. (NABER)
 39. National Association of Educational Broadcasters (NAEB)
 40. National Association of Public Television Stations (NAPTS)
 41. National Association of Low Power Broadcasters (NALPB)
 42. National Black Media Coalition (NBMC)
 43. National Broadcasting Company (NBC)
 44. National Cable Television Association (NCTA)
 45. National Citizens Committee for Broadcasting (NCCB)
 46. National Congress of American Indians (NCAI)
 47. National Council of Churches of Christ in the U.S.A., Communications Commission (NCC)
 48. National Federation of Local Cable Programmers (NFLCP)
 49. National Hockey League (NHL)
 50. National Innovative Programming Network (NIPN)
 51. National League Of Cities Network, Inc. Companies (NIPN)

52. National League of Cities (NLC)
 53. National Translator Association (NTA)
 54. Neighborhood TV Company (Neighborhood)
 55. New Jersey Television Corp.
 56. Jeffrey Nightbyrd (Nightbyrd)
 57. Oak Industries, Inc. (Oak)
 58. Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO)
 59. Park Broadcasting
 60. Praxis
 61. Public Broadcasting Service (PBS)
 62. Response Broadcasting Corp. (Response)
 63. Lloyd R. Smith, Sr. (Smith)
 64. Spanish International Communications Corp. and Spanish International Network (SIN)
 65. Television Technology Corp. (TTC)
 66. Tunnel Radio of America, Inc. (Tunnel)
 67. International Union, UAW (UAW)
 68. UP TV Systems, Inc. (UP)
 69. Utilities Telecommunications Council (UTC)
 70. Ventures In Communications, Inc. (Ventures)
 71. Washington State Association of Broadcasters (WSAB)
 72. Western Communications Research Institute (Western)

N.B. All informal comments and letters are not identified herein, on account of the volume received.

List of Commenters—Further Notice of Proposed Rule Making

1. AGK Communications, Inc. (AGK)
 2. American Broadcasting Companies, Inc. (ABC)
 3. American Christian Television System, Inc. (ACTS)
 4. American Petroleum Institute, Central Committee on Telecommunications (API, CCT)
 5. Associated Public-Safety Communications Officers, Inc. (APCO)
 6. Association of Maximum Service Telecasters (MST)
 7. Attaway Broadcast Group, Inc. (Attaway)
 8. CBS, Inc. (CBS)
 9. Communications Investment Corporation (CIC)
 10. Community Media Network, Inc. (CMN)
 11. Corporation for Public Broadcasting (CPB)
 12. Cox Broadcasting Corporation (Cox)
 13. Electronics Industries Association, Consumer Electronics Group (EIA)
 14. Field Communications Corporation (Field)
 15. John P. Gallagher and Garry N. Johnson (Gallagher and Johnson)
 16. Garryowen Corporation (Garryowen)
 17. General Electric Broadcasting Company, Inc. and General Electric Broadcasting Company of Colorado, Inc. (GEBCO)
 18. Howard Publications, Inc. (Howard)
 19. International Broadcasting Network (IBN)
 20. KHQ, Incorporated (KHQ)
 21. Kitchen Productions (Kitchen)
 22. Motorola, Inc. (Motorola)

23. Multilingual Broadcasting Company, Inc. (Multilingual)
 24. National Association of Broadcasters (NAB)
 25. National Association of Public Television Stations (NAPTS)
 26. National Cable Television Association, Inc. (NCTA)
 27. National Translator Association (NTA)
 28. Neighborhood TV Company, Inc. (Neighborhood)
 29. New Jersey Television Corporation (NJTV)
 30. Offshore Telephone Company (Offshore)
 31. Ohio Educational Broadcasting Network Commission (OEBNC)
 32. Radio Broadcasting Company, et al. (RBC)
 33. Spectra Associates, Inc. (Spectra)
 34. Storer Broadcasting Company (Storer)
 35. Taft Broadcasting Company, McGraw-Hill Broadcasting Company, NEP Communications, Inc. (Taft)
 36. Joint Comments of Television Station Licensees (Licensees)
 37. Television Technology Corporation (TV Technology)
 38. WHP, Inc. (WHP)

Reply Comments

1. ABC
 2. ACTS
 3. MST
 4. CBS
 5. SPB
 6. Cox
 7. GEBCO
 8. IBN
 9. King Broadcasting Company (King)
 10. NAB
 11. National Association of Business and Educational Radio, Inc. (NABER)
 12. National Broadcasting Company, Inc. (NBC)
 13. NTA
 14. NJTV
 15. Licensees
 16. International Union, UAW (UAW)

Appendix D—Summary of Low Power Comments

Contents

General commentary on the low power proposal
 Spectrum-related issues
 Secondary Status
 Interference
 Multipoint Distribution Service
 Land Mobile Service
 Cable
 Full-Service Stations
 Notification
 Field Tests
 Low Power Stations
 Allocation Issues
 Channel Selection
 Desired-to-Undesired Signal Ratios
 Noncommercial Reservations
 UHF Comparability
 Engineering Issues
 Power
 License Issues
 Operator requirement
 License renewal

Trafficking
 Programming Issues
 Ascertainment
 Fairness Doctrine
 Access for Political Candidates; Personal
 Attack Rule
 Nonentertainment Programming
 Limits on Commercialization
 Prohibitions on Obscenity and Lotteries
 Retransmission and Commercial
 Substitution Consent
 Local Programming
 Alaska
 Ownership Restrictions
 Duopoly Rule
 One-to-a-Market Rule
 Network Ownership
 Multiple Ownership
 Regional Concentration Rule
 Translators
 Newspapers
 Local Ownership
 Cable Ownership
 Mandatory Carriage
 Comparative Issues
 Lottery
 Paper hearing
 Predesignation Conference
 Alternative Proposals
 Comparative Preferences
 First to File
 Minority Ownership
 Female Ownership
 Noncommercial
 Commercials on Noncommercial Stations
 Channel Reservations for Noncommercial
 Use
 Free Versus Pay
 Local Preference
 Translator Versus Low Power Station
 Alternative Proposals

1. In this summary, an attempt was made to note all relevant comments on the proposals in the *Notice of Proposed Rule Making*. Comments occasionally are referred to by the abbreviation following their names in the list of comments, attached hereto. Except where necessary to the sense of the commentary, whether a statement was made in comments or reply comments is not indicated. Neither all the details nor the identity of every proponent of each suggestion are included, both for the sake of brevity and in recognition of the fact that the entire record is available for examination by anyone wishing to do so. Where a party laid out a detailed counterproposal, an effort was made to include all relevant details, however. Comments that clearly are irrelevant or beyond the scope of this proceeding are not mentioned herein.

2. *General commentary on the low power proposal.* The vast majority of the comments support the concept of the low power service in principle. Supporting comments were filed by such diverse entities as broadcast companies, trade associations, commercial and noncommercial networks, government agencies, public interest groups, religious groups, Indian tribes, individuals, newspaper publishers and equipment manufacturers. Laundry lists of names generally are eschewed herein as of less value than specific suggestions themselves; however, the following list, while by no means exhaustive, may be useful in affording a sense of the

apparently broad appeal of the low power proposal. General supporting comments were filed by, among others: Action for Children's Television (ACT), Alaska Public Broadcasting Commission (APBC), American Broadcasting Companies, (ABC), Association of Community Organizations for Reform Now (ACORN), Attaway Broadcast Group (Attaway), Birmingham Amateur Radio Club (BARC), John Boler (Boler), Bonneville International Corporation (Bonneville), Children's Hospital of Los Angeles-University Affiliated Programs, Paul James Broyles (Broyles), Citizens Communications Center (Citizens), Columbia Broadcasting System (CBS), Consumer Federation of America (CFA), Independent Cinema Artists and Producers (ICAP), International Union-United Auto Workers (UAW), Joint Business Council of the Shoshone and Arapahoe Indian Tribes, Lake County Translator Association (Lake County), Messenger Publishing Company (Messenger), Microband Corporation of America (Microband), Missionary Society of the Oblate Fathers of Texas (Oblate Fathers), National Association of Broadcasters (NAB), National Cable Television Association (NCTA), National Federation of Local Cable Programers (NFLCP), National Hockey League (NHL), National Congress of American Indians (NCAI), National Telecommunications and Information Administration (NTIA), National Translator Association (NTA), New York State Department of Education (NYSED), Kevin Parkansky (Parkansky), Potomac Communications, Inc. (Potomac), The Public Broadcasting Service (PBS), Thomas Smith (T. Smith), Spanish International Network (SIN), Charles E. Strange (Strange), William Sullivan (Sullivan), Philip Tymon (Tymon), United Church of Christ (UCC), United States Catholic Conference (USCC), United States Department of Justice (DOJ), Western Communications Research Institute (WCRI), and Steven Zeitlin (Zeitlin). Their various reasons for supporting the proposal include the deregulatory and marketplace-oriented aspects of the proceeding, the potential importance of the low power service to rural telecommunications, the possibilities for additional local television outlets providing local service, the potential for additional minority-owned and noncommercial stations, the possibility for increased programming for specialized audiences such as children and the elderly and the potential for more diverse television service nationally.

3. In contrast, the number of negative comments was quite small, generally relating to what may be characterized as competing needs for spectrum space. The Los Angeles County Sheriff and other representatives of land mobile interests evince concern regarding low power's impact on land mobile services sharing frequencies with broadcast uses. Field Communications Corporation (Field), Channel 57 Corporation (Channel 57), Corinthian Broadcasting Corporation (Corinthian) and Omega Communications (Omega) voice concern about impact on full-service UHF stations. Garryowen Corporation (Garryowen) argues that the typical low power coverage area will not be large enough to serve rural areas adequately. B. D. Thornton (Thornton) wonders whether

and how low power stations will be profitable. ABC cautions against "financial bailouts," such as waivers of technical standards, after the service is on line. The ABC Television Affiliates Association (ABC Affiliates) and Pennsylvania Association of Broadcasters (PAB) oppose the proposal, fearing that audience fragmentation will cause a decline in existing program services, especially in marginally profitable markets that cannot withstand increased competition. The above points are addressed in greater detail in the discussion that follows.

4. *Spectrum-related issues.* The greatest volume of commentary was addressed to spectrum-related issues, including low power's spectrum priority, channel selection and other technical and engineering matters. A number of parties discuss the proposed secondary status, or spectrum priority, for low power stations. Not all parties are in agreement on the definition of secondary status, not to mention whether or not it should be accorded to low power stations.¹

5. Parties favoring maintenance of secondary status for the low power service are generally full-service broadcasters and their representatives. They include ABC, ABC Affiliates, CBS, Association of Maximum Service Telecasters (MST), NAB, National Broadcasting Company (NBC), Storer Broadcasting, Inc. (Storer), and Washington State Association of Broadcasters (WSAB). They argue that secondary status must be maintained, to protect full-service stations from potential interference from low power stations and generally to preserve the integrity of the Television Table of Assignments. They encourage the Commission not to modify the secondary status of low power stations to preserve against possible future economic problems. NAB cautions against waiver of technical standards, in particular. Gammon and Grange states that secondary status permits flexibility in low power authorizations.

6. Parties opposing secondary status generally wish the Commission to provide added channel security for low power stations. They include Metonymy Cable Corporation (Metonymy) and Grassroots Video. Some comments address spectrum priority among translators and low power stations themselves. Colorado Translator Association (CTA) would like translators to have priority over low power stations. Garryowen states that it would expect a low power station on a channel in the Television Table of Assignments to have priority over one on an unassigned channel. Several parties evince concern about low power stations being required to yield their frequency to later full-service stations.

¹For purposes of reference, the *Notice of Proposed Rule Making* defined secondary status as follows:

"This means that a translator or low power station creating harmful interference to a full-service station must cease operation if it is unable to change its channel or take other steps to correct the interference. Translators and low power stations also are secondary in the sense that they must give way to a full-service station proposing a mutually exclusive use of a frequency." 45 FR at 60181, paragraph 22, published October 17, 1980.

Citizens accepts that low power stations would be secondary to existing full-service stations, but finds it unfair that an existing low power station would have to yield to a later full-service station, suggesting that the Commission hold a hearing on which station would better serve its community before mandating the elimination of the low power station. UAW also argues that the Commission should give consideration to the fact that a proposed full-service station would preclude an existing low power station, in licensing the full-service station. The Ohio Educational Broadcasting Network Commission (OEBNC) seeks channel security for noncommercial educational translators, as does the New York State Board of Education, contending that noncommercial low power stations in operation for over three years be accorded primary status. The National Translator Association also would like primary status for low power stations over three years old, adding that when a full-service station is applied for on the channel of a low power station, the low power station should have the opportunity to upgrade to full service, with a comparative preference over the full-service applicant, or a preference on another channel, if the low power station chooses to yield its original frequency to the full-service applicant. International Broadcasting Network (IBN) favors primary status for originating, free low power stations that broadcast a minimum number of hours. The Los Angeles Children's Hospital University Affiliated Program would like the Commission to afford primary status to low power stations providing a unique service.

7. *Interference.* Several parties including ABC, the Los Angeles County Department of Communication, Microband and Storer, would like the Commission to develop more detailed interference criteria than those in the *Notice of Proposed Rule Making*.² A number of comments address the potential for interference by low power stations to various other services that use the same frequencies.

8. *Interference to Multipoint Distribution Service.* (The multipoint distribution service (MDS) transmits a signal using microwave frequencies and down-converts the signal to a television channel for receipt on subscribers' television sets.) Microband believes that the Commission should not permit low power stations on channels currently used by MDS carriers, or should require the low power operator to pay to retrofit the MDS down-converters to another channel and related costs. In reply comments, NTA avers that no additional protection is necessary for MDS down-conversion because any channel can be used. CPB contests the right of MDS home delivery to protection from low power, because MDS is unregulated based upon the rationale that it does not preclude broadcast uses of spectrum.

9. *Interference to Land Mobile Stations.* (In thirteen major urban areas, land mobile services are permitted on UHF Channels 14 through 20 on a sharing basis with broadcast uses.) Microband sees a need for interference

criteria to and from low power stations and land mobile services using UHF channels.³ The Los Angeles County Department of Communication, joined by the California Public Safety Radio Association, urge the Commission not to authorize low power stations on Channels 14 through 20. The State of Florida wants Channels 14 through 20 frozen for land mobile use in the top 25 urban areas, as does Channel 57. The Land Mobile Communications Council, citing the 1979 WARC authorization of the band 614-806 MHz (Channels 38 through 69) for land mobile uses, would like this band either reserved exclusively for land mobile, or for land mobile priority to be established in the band. The National Association of Business and Educational Radio Stations (NABER) would like low power to be secondary to land mobile between Channels 4 and 5 and on Channels 14 through 20. Telocator, fearing interference to mobile paging devices, would forbid low power on Channels 4 and 5 and 14 through 20. The Utilities Telecommunications Council (UTC) would like more channels, as well as Channels 38 through 69 restricted as to low power uses. APCO agrees with this approach, including Channel 7 in its prohibition, at least until the Commission studies the utilization of these channels in connection with land mobile needs. The Los Angeles County Sheriff wants the Commission to limit low power to the upper end of the UHF band and to require greater receiver selectivity and sensitivity, to prevent potential interference to land mobile uses.

10. The Maryland, District of Columbia, Delaware Broadcasters Association and the Association of Maximum Service Telecasters oppose the position taken by the Land Mobile Communications Council and allied commenters. Howard Publications (Howard) urges the Commission to resist land mobile claims to Channels 4 and 5. The Corporation for Public Broadcasting (CPB), in response to the land mobile advocates, contends that low power stations should be required to afford protection to land mobile stations on Channels 14 through 20 in the same manner as other broadcast stations must, but that low power should not be made secondary to nonbroadcast uses on Channels 4 and 5, 14 through 20 or 38 through 69. NTA agrees that no additional protection for land mobile is necessary. OK TV Translator Company asks that Channels 70 through 83 be reinstated for low power use.

11. The American Radio Relay League fears that low power stations will receive interference from amateur radio operations, because current television receivers do not have sufficient rejection capacity to prevent this.

12. *Interference to Cable Systems.* (Cable systems sometimes receive program material at the headend via VHF radio frequencies; they also may convert the signal from the cable into the subscribers' receivers using available low-band VHF channels.)⁴

²The *Further Notice of Proposed Rule Making* proposes such standards.

³The *Notice* proposed the following policies, with respect to low power/cable interference:

1. The low power station operator is strictly responsible for taking immediate corrective action

13. NCTA is concerned about interference low power stations might cause to cable systems, both at the headend and the subscribers' receivers. As a solution, it suggests that the Commission either authorize no VHF low power stations, or put the burden of frequency coordination with existing cable systems entirely on the low power operator. Joint comments filed by a group of cable companies also argue that cable systems should not be required to yield if a low power station causes interference to the signal received at the subscribers' sets, but that the low power station should be required to modify its operation to a noninterfering UHF channel, because a cable company cannot modify its subscribers' receivers. Storer believes that low power stations should be authorized only when no potential interference to cable is illustrated. Spectradyn, explaining that MATV systems use coaxial cable to bring pay television into hotels on Channels 12 and 13, states that low power could cause ghosting at the MATV headend, and urges either that low power stations be required to meet the VHF mileage separations, or not be authorized at all on Channels 12 and 13.

14. NTIA advocates a policy that would require cable systems and low power stations to work out interference problems by mutual agreement. NTIA would require a cable company first to object to a low power proposal that would result in headend interference, and then make the cable company responsible to correct all other interference, including that which occurs at subscribers' receivers. NTA takes issue with NCTA's allegation that low power will cause interference to cable, claiming that little evidence exists to support this, and favors the policy proposed in the *Notice* with respect to cable/low power interference. TV Technology Corp. suggests that low power stations be required to protect cable headends within the Grade B contour of the primary station and not more than five degrees below the line-of-sight path between the primary station and any obstacle in the path to the cable headend, and not beyond, because beyond this area there is not a reasonable expectation of reception of the primary station. As a precaution against interference at cable subscribers' receivers, this comment also would require low-band VHF low power stations to maintain a frequency tolerance of better than 25 kHz where cable systems use the phase lock "zero beat" technique to reduce the interference potential of ambient co-channel signals. In reply to NCTA's comment, TV Technology

where an interference condition to any other service results from operations in violation of the Commission's technical standards, or from improper maintenance.

2. The cable operator should be responsible to correct interference at the cable distribution system and at the subscriber's set (footnote omitted).

3. The first-come, first-served principle should govern conditions of interference between a low power station and reception to a cable television headend. Where possible, a solution should be found by mutual agreement upon the lowest cost solution, and the sharing of any burdens from taking corrective action.

⁴It should be noted that these comments were filed prior to issuance of the *Further Notice of Proposed Rule Making*, which proposes expanded exclusivity and interference definitions and criteria for the low power service.

Corp. argues that cable systems can use midband or superband, instead of VHF channels, so that VHF frequencies should not be off limits to low power stations. CPB, in response to NCTA and Spectradyne, contends that because cable's use of broadcast spectrum is unregulated based upon a nonpreclusion theory, delivery via cable or MATV should not be protected from low power frequency use. CPB supports the proposed first-come, first-served policy with respect to headend protection.

15. MST and NBC urge that all low power applicants be required to make noninterference showings, including measurement of field strength in the direction of the affected primary station, to establish antenna performance. NBC and Field point out that low power stations must yield when later full-service station modifications, particularly facilities increases of UHF stations, preclude the low power stations. NBC, Field and General Electric (GE) urge that low power stations be required to cease operations immediately on a report of any interference to full-service stations and remain dark until the interference is cured. ABC also advocates prompt procedures for testing for and remedying interference. NAB suggests that the Commission place the burden of resolution on a low power station whenever it receives notice of interference and that it file a report with the Commission regarding resolution of interference. Bonneville evinces concern that authorization of low power stations as proposed in the Notice will jeopardize the integrity of the Television Table of Assignments. Joint comments filed by broadcasters, including Cosmos Broadcasting Corp., seek that the Commission revise § 74.703(b) of the rules (the "UHF Taboos") to govern all VHF and UHF low power applications. Microband and Turner Television Stations, Inc. (Turner) ask for clarification as to whether assigned but unoccupied channels are to be taken into account, in finding a channel available for low power use.

16. NTIA believes that, when interference is complained of, a low power station should be permitted to continue operating until it is proved to be the cause of the interference. Citizens supports this position. NTA argues that the low power station only should be required to cease operations if it cannot correct interference it causes.

17. *Notification.* Several comments addressed the question of whether and under what circumstances low power applicants should be required to notify full-service stations of the pendency of the application. MST, GE and Joint Comments filed by broadcasters, including Cosmos, would require from low power applicants both a noninterference showing and notification to all full-service stations within whose Grade B contour the low power station would be. GE would dismiss low power applications that do not provide this. ABC and Field would require notification to full-service stations to which low power applications do not meet the "UHF Taboos" or full-service mileage separations. NTA objects to such notification as both unnecessary and burdensome, arguing that publication of low power applications in the Federal Register should be

sufficient to notify interested parties, as is the case with all other broadcast applications.

18. Two comments addressed whether low power stations should be required to protect service received inside the Grade B contour of full-service stations.⁵ NTIA believes that low power stations should be required to protect any reasonable expectation of service within the Grade B contour of a full-service station. Field wishes low power stations to protect service received outside a full-service station's Grade B contour and to this end encourages low power-to-full-service mileage separations.

19. *Field Tests.* Several parties commented upon whether low power stations should be required to conduct field tests prior to authorization. NAB says the Commission should require a field test prior to grant under a one-to-two month temporary authorization. Field would like low power stations to be required to certify to the Commission that they can directionalize as predicted. NCTA supports the concept of a sixty-to-ninety day provisional license, during which period the low power operator must ensure that the low power station does not cause interference. Citizens opposes the NCTA proposal; while recognizing that such a policy might have the effect of encouraging noninterfering applications, Citizens complains that it also would disadvantage applicants who could not afford to risk termination of the low power service, once initiated. NTA and Western Communications Research Institute argue that temporary licenses and field tests are unnecessary and merely burdensome in a secondary service such as low power.

20. *Low Power-to-Low Power Interference.* The Colorado Translator Association, while acknowledging that this might cause problems in the larger markets, argues that generally low power stations can work out interference problems among themselves. The National League of Cities (NLC) supports interference criteria that would permit as many low power stations as possible. National Association of Public Television Stations (NAPTS) argues that leaving the resolution of interference problems up to low power stations themselves will promote marginal applications, cause delays in service and generally favor wealthier applicants. Garryowen states that a low power station on an assigned channel should receive priority over a low power station on an unassigned channel, if an interference problem should arise. TV Technology Corporation would like a policy to protect the first-filed low power applications from interference by later filers, or for the Commission to intervene and decide interference questions. Turner suggests that the Grade B concept be extended from full-service, so that later low power stations can be guided by a standard in protecting earlier low power stations.

21. *Allocation Issues—Channel Selection.* The Los Angeles County Sheriff sees no need for additional television service in urban areas at all. The Los Angeles County Department of Communications likewise would have the Commission require low

power applicants first to select a channel from the TV Table of Assignments and if none is available, then to select from Channels 21 through 69, and authorize low power stations on channels not in the Table only in rural areas that do not receive four television signals already. NTIA opposes low power stations being permitted on channels in the Table in urban areas, which it defines as areas receiving a Grade B or better signal from three or more stations. Thomas Smith suggests that low power applicants should try to meet the full-service mileage separations in major markets, that the Commission permit use of the 15-mile rule for low power applicants and that the Commission should amend the Table with additional available channels, because this would be less expensive for low power applicants.

22. ABC supports the establishment of mileage separations for the low power service. William Sullivan advocates a three-tiered system, including full-service and regional and local low power stations, with a new low power table of assignments, to document low power authorizations. Mr. Sullivan proposes the following mileage separations:

	To full-service stations (miles)	To low power stations (miles)
Co-channel:		
Full-service stations.....	60	40
Regional stations.....	45	25
Local stations.....	40	15
Adjacent channel:		
Full-service stations.....	55
Regional stations.....	40	20
Local stations.....	30	15

NAPTS and PBS advocate a table of allotments for low power stations. They contend that a demand system of allocation may permit interference, while a table based on mileage separations is both simpler to administer and encourages the use of maximum facilities. They propose three classes of stations, full-service, low power and micro-power (these would be UHF only, with less than one kilowatt effective radiated power (ERP) and would not be reflected in the table of allotments).

23. CPB, while supporting reserved channels for noncommercial low power stations, advocates a protected contour allocation standard based upon desired-to-undesired (D/U) signal ratios. The National League of Cities supports CPB's approach. Spanish International Network advocates relaxed channel selection standards. TV Technology Corporation opposes mileage separations or a table of assignments, averring that engineering flexibility is necessary for low power. Praxis supports case-by-case application processing as essential for maximum spectrum utilization. Gammon and Grange agrees that a table of assignments would result in inefficient spectrum use, stating that a demand system of allocation is most responsive to market forces: "Communities need not rely on the Commission's clouded crystal ball for an access to spectrum space, but on market

⁵ This issue specifically was raised in the Further Notice of Proposed Rule Making, FCC 81-369.

forces which will result in an efficient and quick allocation of spectrum space." Gammon and Grange comments, at page 10.

24. National Black Media Coalition (NBMA), citing the WARC Third Notice of Inquiry, Docket No. 20271, asked that low power stations be precluded from Channels 65 through 69, because these frequencies might be used for FM stations.

25. *Desired-to-Undesired Signal Ratios.* Several parties commented on the D/U ratios proposed in the Notice. MST, NAB and RCA criticize the use of D/U ratios based upon mean receiver performance, because under this standard, theoretically, up to one-half of the receivers could sustain interference in an

affected area. MST and NAB suggest use of a 90 percent standard. RCA Corporation (RCA) advocates use of § 74.702(c) ("UHF Taboos") only, for three years after a Report and Order in this proceeding, and then modification of the taboos based upon an assessment of receiver performance, stating that receivers would be redesigned to reflect the modified taboos. Electronics Industries Association, Consumer Electronics Group (EIA/CEG) suggest the following D/U ratios be used for five years after a Report and Order, with increased protection to take into account a time lag in improved receiver design, including better RF transistors and surface acoustic wave filters:

	D/U Ratio dB		Maximum U dB	
	EIA/CEG	(Notice)	EIA/CEG	(Notice)
Co-channel.....	n	45		19
Adjacent channel.....	n+1	-6	(-15)	70 (79)
Sound image.....	n-14	-7	(-23)	71 (87)
Picture image.....	n-15	10	(-6)	54 (71)
Intermodulation.....	n+2, 3, 4, 5	(¹)		
Oscillator.....	n+7	(²)		

¹ Minimum separation, 20 miles.

² Minimum separation, 50 miles.

EIA/CEG also advocates specific standards under which terrain shielding may be taken into account. CPB argues that the median receiver standard is an appropriate one, because use of a worst case, or ninety percent, standard would be unduly preclusive.

26. Turner states that facilities proposing directional antennas cannot simply use a line between stations as a D/U measure, because there might be interference in other directions than the line, adding that applicants should have to provide full interference analysis, including interstation radial interference analysis with respect to all full-service stations inside the separation requirements on taboo channels.

27. *Noncommercial reservations.* A number of parties address the issue of whether channels should be reserved for noncommercial low power stations. The New York State Department of Education favors reservation of low power channels for noncommercial use by educational institutions. Community Television Network (CTN) would like one channel reserved for noncommercial use in each of the top 25 markets. Citizens would like a low power table of assignments, with UHF channels reserved for minority and noncommercial ownership. CPB, in reply comments, contends that CTN's and Citizens' suggestions are inadequate, and that a table of channel reservations based upon population is necessary to ensure full development of noncommercial low power service. The Joint Council for Educational Telecommunications (JCET) supports this position. CPB attached proposed tables to its comments and reply comments. Its population criteria for the top 150 markets would be: Three reserved channels in communities of over one million population, two channels in communities of over 250 thousand population and one channel in communities of under 250 thousand population. NAPTS and PBS discuss the theory underlying the need for

reserved channels for noncommercial use—that nonprofit corporations require more time to acquire funding and thus prepare complete applications. In light of this, they advocate channel reservations for five years after a Report and Order in this proceeding and suggest that 36 percent of the channels available for low power stations be reserved for noncommercial, educational use to mirror the proportion of full-service stations that are noncommercial. They also advocate retention of the priority for noncommercial low power stations on reserved channels in the Television Table of Assignments and urge that the Commission permit subscription service on reserved low power channels.

28. Noncommercial reservations for low power stations are opposed by IBN, Microband and NAB. Gammon and Grange and NTA point out that reserved channels in the Television Table of Assignments still are available in many markets. NAB argues that the concept of reserved channels gives noncommercial low power stations an enhanced status that does not comport with the policy of secondary status for all low power stations.

29. *UHF Comparability.* Several parties commented on whether VHF low power stations would pose a significant competitive threat to UHF full-service stations. NBC argues against any VHF low power authorizations in all-UHF markets, because of the impact on UHF full-service stations and the greater risk of interference. NTIA proposes no 100 watt VHF authorizations in all-UHF markets, until the UHF comparability question is resolved. The Council for UHF Broadcasting states that the entry of low power stations on VHF channels makes it important to achieve UHF comparability as soon as possible. Joint comments filed by various broadcast licensees seek abolition of § 74.732(d) as is proposed, so that UHF full-service stations may operate VHF low power stations.

30. *Engineering Issues.* The pleadings contain various suggestions regarding other engineering matters. Turner argues against relaxation of spurious emissions standards because present equipment is manufactured in accordance with present standards, and even the savings involved in relaxed standards do not justify increased interference. Sullivan would like elimination of the IF beat taboo for low power, while NAB contends it should not be eliminated without further testing. Vega avers that the rules should encourage the use of frequency offset and, as a separation criterion, would permit low power applications outside the Grade B contours of a co-channel full-service or low power station and outside the Grade A contour of adjacent channel stations. Harlan L. Jacobsen (Jacobsen) would like the low power "pick-up" channel protection to be modeled on that of cable, that is, first in time must be protected by later users. GE favors the use of circular polarization to increase the low power coverage area. Grassroots Video urges no vertical blanking requirements for low power.

31. *Power.* Some comments, including those of ABC, GE and Bonneville, strongly urge the Commission never to waive the power limitations proposed in the Notice, because of the likelihood that low power stations with higher powers than those proposed could cause interference. Field thinks this is important because low power stations are likely to operate with ERPs higher than those predicted. Western Communications Research Institute stresses that the VHF power limit should be 100 watts. The Los Angeles County Department of Communications would like the Commission to retain the present translator power limits—10 watts VHF and 100 watts UHF, except on channels in the Television Table of Assignments, where 100 watts VHF and 1,000 watts UHF are permitted. Vega supports the 100 watt VHF and 1,000 watt UHF power limits proposed in cases where the mileage separations for full-service stations are satisfied.

32. On the other hand, a number of parties support increased power, either on a waiver basis or across the board. Edward Craney believes low power stations should apply for whatever power they actually would need to cover the desired service area. Los Angeles Children's Hospital thinks that interference alone should limit the power of a low power station. Grassroots Video suggests a 1,000 watt VHF power limit in areas where UHF availability is low. Sullivan, who suggests two classes of low power stations, would permit regional stations to operate at powers up to five kilowatts UHF and one kilowatt VHF, while local stations would be limited to one kilowatt UHF and 100 watts VHF. Garryowen, contending that the proposed power limits are too low to permit adequate coverage of rural areas, would permit, on channels in the Television Table of Assignments, 1,000 watts VHF and 10 kilowatts UHF, as well as multiple final amplifier outputs. GE, supported by UAW, avers that circular polarization would permit 2,000 watts UHF and 20 watts VHF without a low power station's increasing the coverage

in a particular direction, by radiating 1,000 watts UHF or 10 watts VHF each way from one horizontal antenna and one vertical antenna. Spanish International Network urges the Commission to consider waiver requests for higher power on a showing that this is necessary to provide adequate service and that no interference to full-service stations will be caused thereby. Turner believes that the Commission should revisit the power issue at some time after the conclusion of the rule making and consider authorizing low power stations to operate with higher power, or should waive the power limitations on a noninterference showing.

33. *License Issues—Operator Requirement.* A number of commenters argue that the Section 318 operator requirement should not apply to low power stations that merely rebroadcast satellite feed, as opposed to literal program origination. These include Spanish International Network, Residential, Community Broadcasting Network and Gammon and Grange. Westinghouse argues that requiring a full-time operator when this is technically unnecessary imposes a needless barrier to entry into the low power industry, but that in the case of local originations, including tape, film or live transmission, an operator should be available at the transmitter site, a remote control point, or the program source. Turner would like to see Congress amend the statute to permit unattended operation in situations where there is no local origination by a low power station, or permit the operator requirement to be met by having an operator at a remote monitoring point from which the transmitter can be controlled. Metonymy believes there should be no operator requirement, but that the Commission should establish a parameter of satisfactory performance, possibly mandating refunds for subscribers if low power service is disrupted.

34. The OK TV Translator Company believes that a service technician should be available at not more than one hour's distance from the low power station, with 24-hour telephone availability. The telephone number to be posted at the transmitter site. MST suggests that a "low power" operating license be required to monitor low power transmissions, not just a restricted operator's permit. NAPTIS believes that low power stations should have to meet the same operator requirements as full-services station.

35. *License Renewal.* The OK TV Translator Company suggests that the renewal form be streamlined and that the license term be two-to-three years or more. Colorado Translator Association also would have a three-year license term. NTA and Morongo Basin TV Association opt for a five-year license term. Metonymy suggests 10 years. The now-defunct executive Council on Wage Price Stability (COWPS) refers to the statement in the *Notice* to the effect that "responsiveness to specialized needs and interests" would be favored at license renewal, suggesting that this statement either be made more specific or abandoned. CFA avers that the incumbent should not be favored automatically in a contested renewal situation.

36. NTIA suggests that the following technical information is necessary on the license application: Transmitter output power, antenna gain, azimuth at point of maximum gain, gain in horizontal plane at ten degree intervals, height above ground of center of maximum radiation, elevation above mean sea level of the ground on which the tower is situated and ERP in the direction of maximum antenna gain. NTIA and Community Television Network contend that the financial qualification requirement can be replaced by a requirement that construction be completed within a certain period, say, a year, after authorization. NTIA would have no character requirement beyond no felony conviction and no loss of license in the previous five years. NTIA also believes that an applicant that agrees to abide by Commission rules should be deemed technically qualified.

37. NBC suggests a requirement that construction be completed within one year after grant of the construction permit, as in § 73.3598(b), and a requirement that low power stations also commence programming within a specified time. NBC also recommends that minimum hours of operation be prescribed, and that the amount be at least as much as that set out for full-service stations in § 73.1740(a)(12). The National League of Cities advocates a policy requiring prompt construction, with a penalty of forfeiture of the construction permit. ACTVA advocates automatic one-year extensions of the construction period permitted when equipment is not readily available. Kitchen Productions believes that licenses should include a condition that the site be shared with other facilities on different channels serving the same area with the same power. The OK TV Translator Company believes that low power licensees should be required to live in the state of license. Robert C. Greene (Greene) thinks no license should be required for 100 milliwatt translators serving rural areas. William Sullivan thinks new technologies should be permitted on low power stations without specific authorization required: "Local or low power stations may originate subsidiary or ancillary services as part of their licensed service, provided the service does not interfere with the normal reception standards and good engineering practices." He also would like originating low power stations to be assigned five call letters—W or K and four following letters of the licensee's choice.

38. NTIA advocates a *WLVA* standard for when a hearing will be granted under *Carroll Broadcasting Company v. FCC*, 258 F. 2d 440 (1958), on a petition to deny based on economic harm. Under this standard, the petitioner must make a *prima facie* case that (1) his loss of income in his market will cause (2) elimination of public service programming, the loss of which (3) will not be offset by similar programming provided by the applicant.

39. A number of parties encourage the Commission to consider the change from translator to low power station a minor modification. Morongo Basin TV Club (Morongo Basin) and OK TV Translator Company believe it should be a minor modification for translators licensed for more

than six years. UPTV also advocates the upgrade being a minor modification and adds that a facility engaging in rebroadcast should be considered a translator and a low power station only if it originates programming. CTN also believes that the upgrade should be a minor modification, but cautions that upgrades not be permitted where they would violate the ownership restrictions. NTA points out that minor modification treatment for translator/low power upgrades would encourage rapid development of the service. NFLCP believes that the upgrade should be considered a minor modification, but that low power ownership restrictions should extend to translators. NAPTIS also favors minor modification treatment for upgrades, after final rules are adopted for the low power service. Western Institute of Communications Research says that applications to upgrade translators to low power should be subject to petitions to deny but not competing applications. Kitchen Productions would like upgrade applications to be subject to competing applications, but otherwise not treated as a major modification. CFA and CPB believe that translator-to-low power upgrades should be treated as major modifications, with competing applications. Richard I. Vega and Associates (Vega) advocates major modification treatment for translator-to-STV upgrades.

40. *Trafficking.* The Justice Department favors no prohibition on trafficking, because this permits ready entry into and exit from the market. NTIA also supports the absence of a trafficking prohibition, so long as the Commission maintains the minimal involvement in transfers required by the Communications Act. CTN agrees that a prohibition on trafficking is not necessary, but encourages that the Commission oversee transfers to prevent sham transactions. National Citizens Committee for Broadcasting (NCCB) also favors no trafficking prohibition, but wants the Commission to remain willing to investigate complaints regarding particular transfers. NFLCP avers that there should be no trafficking prohibition, but would permit transfers of low power stations only to entities with at least as many preference points as the transferor (see paragraph 91, *infra*), or where this does not occur, would require that a transfer be open to challenge from competing applicants. (*But see* Section 310(d), *Avco* Rule.)

41. A number of commenters point out that lack of a trafficking rule could undercut the effect of awarding licenses on the basis of preference points. They include CFA, CPB, Microband, NBMC, NLC and NTA. NBC would not permit sale by a preferred applicant within the first three years of authorization, but would require that the license be turned back to the Commission. UAW would limit the sale price to not more than 200 percent of cost incurred to date, if a station acquired on the basis of preference is not transferred to a preferred applicant. Western Institute of Communications Research would prohibit noncommercial licensees from transferring the station to a commercial entity and would prevent transfer of a low power station to an entity with

fewer preference points than the transferor. Channel 57 says that it is not fair to UHF full-service licensees not to prohibit trafficking in low power stations. NAPTS would require permittees to complete construction and commence operation before allowing sale of a low power station for a price in excess of costs incurred in its acquisition.

42. *Programming Issues.* Turner would like the low power rules to promote diverse programming, particularly all-news formats. NTA agrees that program content regulation should be minimal, perhaps mandated by legislative change, if necessary. ABC avers that minimal programming requirements are consistent with the deregulatory nature of the low power service. Colorado Translator Association cites the necessity for flexible programming rules, especially in rural areas. NAPTS would have the Commission afford a comparative advantage to public service programming proposals, and also would like an hourly station identification requirement, as with full-service stations. The OK TV Translator Company believes there should be no identification requirement on translators of under 100 watts. Telcommunity urges that teleconferencing be permitted to low power stations. Tymon would permit teletext in the low power service. Garryowen argues that translators should not be permitted to duplicate over 50 percent of the prime-time network programming aired on any local full-service station.

43. *Ascertainment.* A number of parties believe that some form of ascertainment should be required of low power stations. The Video Factory suggests a smaller scale ascertainment process than that required of full-service stations. ABC Affiliates aver that if no ascertainment is required of low power stations this will be unfair to full-service stations. The National Association of Low Power Broadcasters (NALPB) and the United Church of Christ also believe that low power stations should be subject to an ascertainment requirement. Citizens proposes, in lieu of ascertainment, a requirement that low power stations periodically broadcast a message to the effect that the station has a statement reflecting its familiarity with community needs and interests and a list of responsive programming in its public file, which the public may examine and comment upon to the Commission. CFA also supports a requirement that low power stations maintain such a statement in the public file. NBMC states that if there is no ascertainment requirement, low power stations should be required to keep logs of nonentertainment programming broadcast, to facilitate monitoring by the public. The American Community Television Association (ACTVA) supports the proposal in the *Notice* that no ascertainment be required of low power stations.

44. *Fairness Doctrine.* Several parties believe that the Fairness Doctrine should be strictly applied to low power stations. These include the National Council of Churches, United Auto Workers and the United Church of Christ, which would impose a fairness obligation only on originating low power stations. Citizens would like to see greater Fairness Doctrine responsibility than that

proposed in the *Notice*, suggesting that a sliding scale of fairness obligations be used only if the station provides access time. CFA thinks that originating low power stations should be required to pay for responsive programming, not merely offer time for opposing views free of charge. NAB avers that stringent fairness obligations will discourage experimental originated programming by low power licensees.

45. *Access for Political Candidates; Personal Attack Rule.* CFA and UAW believe that sections 312 (a) and (f) and 315, the rules relating to political candidates, as well as the rules regarding personal attacks and political editorials, should apply to low power stations. Los Angeles Children's Hospital believes that editorializing prohibitions should not be imposed upon noncommercial low power licensees. NAB avers that these rules will discourage experimental originated programming.

46. *Nonentertainment Programming.* CFA suggests a five percent news and public affairs programming requirement for low power stations. ABC Affiliates argue that it is unfair to full-service stations not to impose nonentertainment programming guidelines on low power stations.

47. *Limits on Commercialization.* CFA wants a ceiling of no more than one-third of all originated programming to be commercial material. ABC Affiliates complains that the absence of limits on low power commercialization is unfair to full-service stations. Los Angeles Children's Hospital supports the absence of limits on commercialization on low power stations.

48. Several parties, including Ventures in Communications and the National League of Cities, indicate that they would like noncommercial low power stations to be permitted to air commercial material. See also paragraph 80, *infra*. ACTVA, for example, proposes that a commercial entity be permitted to lease up to ten hours per day from a noncommercial low power licensee, during which hours commercials could be broadcast. ACTVA further suggests that the noncommercial licensee could own the commercial entity, so long as separate corporate identities are maintained. ACORN believes that nonprofit corporations holding low power licenses should be permitted to air advertisements and still receive a noncommercial preference. Global Village supports the concept of advertising on noncommercial low power stations, so long as the majority of broadcast time is free from commercial material. UAW believes that commercial material should be permitted on noncommercial low power stations, so long as they are nonprofit. NFLCP also thinks commercials are acceptable on noncommercial low power stations, but would favor comparatively the non-profit applicant proposing the highest percentage of air time without commercials. National Innovative Programming Network would afford a preference to instructional programming, whether aired on a noncommercial station or not. Western Communications Research Institute, SINO Communications Group, Inc. (SINO) and Washington State Broadcasters Association believe that noncommercial low power

stations should not be permitted to air commercials, except possibly those in rebroadcast programming.

49. *Prohibition on Obscenity and Lotteries.* ABC believes these rules should apply to low power stations. Los Angeles Children's Hospital disagrees, arguing that they should not apply to a secondary service.

50. *Retransmission and Commercial Substitution Consent.* Colorado Translator Association believes that retransmission consent should not be required. National Translator Association asks the Commission to establish a presumption in favor of retransmission consent. CBS opposes this suggestion, stating that the present standard of reasonableness for refusal is adequate in the low power context. NTIA agrees with CBS. ABC and the National Hockey League also favor required consent for program retransmission and commercial substitution. Washington State Association of Broadcasters would like the grounds for refusal of retransmission consent within the Grade B contour of the originating station to be clearly defined, and to include failure to negotiate in good faith. This party also would like a requirement that the request be in writing, include a fee as compensation for market fragmentation and a prohibition on commercial substitution.

51. *Local Programming.* Some parties suggest additional programming requirements not proposed in the *Notice*. The only one for which there appears to be even a moderate consensus is that low power programming be required to have some sort of local component. See also paragraph 83, *infra*. This view is taken by Stephen A. Ballo (Ballo) and Kitchen Productions. Charles Edgely would like a local news and public affairs requirement for rural areas. Colorado Translator Association believes that originated programming should be shown to be in the local public interest. New York State Department of Education wants all low power stations outside the Grade B contour of the originating station or 90 miles from the control point to be required to provide local emergency information.

52. A couple of parties suggest a name change for the low power television service, either because they dislike the connotation of "low power," or because they fear confusion with Subpart H of Part 74 of the rules, "Low Power Auxiliary Stations." ACTVA, supported by Ventures in Communications, suggests "Community Television Service." Attaway, also supported by Ventures in Communications, suggests "Local Television Service." Gammon and Grange believes that the rules for low power should be different according to the nature of the community served, including site of market, urban or rural, whether or not already served by STV or cable and character of population, *i.e.*, large minority component. The comment suggests that the zone concept of § 76.51 could be used to define an urban market.

53. *Alaska.* Alaska Public Broadcasting Commission states that a number of the rules proposed in the *Notice* and, more particularly, additional proposals made in comments, are too burdensome and unnecessary for Alaskan low power stations.

For example, some of the maintenance requirements are too burdensome to be carried out in remote bush country. The comment complains that an annual video proof of performance check would cost \$278,000, because it would require year-round use of an airplane and two personnel. Further, the comment contends that it is unnecessary to check for frequency drift where there are no full-service stations for over 50 miles. Because the Alaskan stations engage primarily in rebroadcast, the comment adds, no operator requirement should be imposed. Alaska also opposes the proposed ownership restrictions and any suggestion that a table of assignments might be implemented for low power stations in Alaska.

54. *Ownership Restrictions.* Various parties comment generally on the ownership issues. M/A Com, Inc. (M/A Com) avers that the ownership rules proposed in the *Notice* are premature and that the Commission should first institute the low power service without ownership restrictions and evaluate whether the Fairness Doctrine obligation is sufficient to promote diversity, before imposing additional requirements toward that end. Communications Investment Corporation believes that media concentration only should be an issue in the comparative situation. Community Television Network states that the secondary nature and limited coverage area of low power stations do not distinguish the low power service sufficiently from full-service stations to justify relaxed ownership restrictions. CTN believes that ownership rules based on local and national diversity considerations should apply to low power, including all those proposed in the *Notice*, and argues that the "clear threat of monopoly" test proposed for the Direct Broadcast Satellite Service is not adequate for low power, because competitive abuses can occur far short of a monopoly situation. Gammon and Grange believes there should be no cross ownership prohibition in rural areas, only urban. The National Association of Educational Broadcasters, joined by the National Association of Public Television Stations and the Public Broadcasting Service, objects to multiple ownership restrictions for noncommercial low power stations, on the grounds that such restrictions would have the effect of fragmenting the already limited funds available for noncommercial broadcasting. The Corporation for Public Broadcasting favors no cross ownership rules for noncommercial low power stations, or at least no cross ownership prohibition for noncommercial radio and low power licensees, with a comparative preference for the applicant with fewer other media interests when two noncommercial low power applications are mutually exclusive. The National Federation of Local Cable Programmers advocates no exception to the multiple ownership restriction for noncommercial low power stations, except in rural areas or for an interactive or other kind of service that would require more than one channel. NFLCP also suggests that the Commission maintain a favorable attitude toward the possibility of waivers to permit noncommercial radio/low power cross ownership.

55. *Duopoly Rule.* [A duopoly rule prohibits common ownership of more than one station in the same service with overlapping contours.] A number of parties oppose the duopoly rule proposed for low power stations. These include Storer, Summers Broadcasting, Inc. (Summers), Howard, Communications Investment Corporation, NAB, the Maryland, Delaware, District of Columbia Broadcasters Association and Joint Comments filed by various broadcast licensees, including Cox. Boler believes a low power duopoly rule is unsuitable for rural areas. The National Congress of American Indians and the Joint Business Council of the Shoshone and Arapahoe Tribes think that the rule would have a harsh effect on Indian tribes. Garryowen cautions against extension of the duopoly prohibition to translators. A great many commenters believe that multiple-channel, low power STV services are economically essential, to be competitive with cable systems, particularly in rural areas. Residential Entertainment, Inc. (Residential) argues that where STV is rebroadcast solely, the duopoly prohibition should not apply. UPTV Systems concurs that originating low power stations should be distinguished from STV rebroadcast. Metonymy, Blonder Tongue Laboratories, Inc. (Blonder Tongue), M/A Com, Kevin Parkansky, TV Technology Corp., Jerrell K. Davis (Davis), General Electronic Broadcasting Company and Morongo Basin also take this position. NTA believes that low power STV stations with multiple channel capacity should be permitted in rural areas on a waiver basis. Morongo Basin also takes this position. NBC would favor a comparative preference for an applicant with no other low power stations in a market, but opposes a duopoly rule. Turner argues that overlapping contours of commonly-owned low power stations should be permitted where the programming is the same. CBS, pointing out that the basis of a duopoly prohibition is to foster diversity in the face of spectrum scarcity, contends that a duopoly rule is not necessary for low power stations because there is no scarcity of spectrum. WHA-TV, City University of New York, Graduate School and University Center (CUNY/GSUC) and the New York State Board of Education oppose a duopoly prohibition for noncommercial low power stations, on the grounds that contour overlap may be necessary to facilitate regional educational networking.

56. ACORN, Community Television Network, Consumer Federation of America, Federal Express, Arnold Gregg (Gregg), National Citizens Committee for Broadcasting, and Western Communications Research Institute support a duopoly rule for low power. The Justice Department favors a duopoly rule as promoting competition. Citizens Communications Center believes it can promote diversity within a market. William Sullivan believes the rule should apply to heterodyne conversion modulated signal translators, as well.

57. *One-to-a-Market Rule.* (A one-to-a-market rule prohibits common ownership of broadcast facilities in different services with overlapping contours.) A great number of parties oppose the one-to-a-market

prohibition proposed for the low power service. They include NBC, OK TV Translator Company, Howard Publications, Maryland, District of Columbia, Delaware Association of Broadcasters, TV Technology Corporation, the Joint Reply of Cox Broadcast Corp., etc., NAB and Park Broadcasting (Park). Don Martin and Quality Media Corporation believe the rule will hamper the development of the low power service. Gannett Co., Inc. (Gannett) sees no reason for it. A number of parties believe that local broadcasters can lend their already-acquired expertise and familiarity with the community to a new low power venture. This is regarded as a potential economy by Field Communications. ABC and Bonneville see it as a way for local broadcasters to provide specialized service to parts of a larger service area. Many parties, including Lee R. Shoblom (Shoblom), Storer and Summers, believe that the one-to-a-market prohibition will have an especially detrimental effect in smaller communities. Many see wisdom in permitting local radio stations to lend their expertise and financial backing to low power stations. These include Span-Com Broadcasting Group (Span-Com), the Justice Department and Communications Investment Corporation. Joint comments filed by broadcast companies including Forward Communications wonder if low power stations will be financially viable if existing broadcasters are not permitted to subsidize new ventures in low power. Joint comments filed by various broadcast licensees state that the market is sufficiently competitive already, so that a one-to-a-market rule for low power is not necessary to promote diversity. CBS argues that low power does not face the scarcity of spectrum space that is necessary to justify a one-to-a-market rule to ensure diversity. General Electric opposes the rule on the grounds that low power stations are not sufficiently like full-service stations for such a precaution to be required. The National Congress of American Indians and the Joint Business Council of the Shoshone and Arapahoe Tribes object to a one-to-a-market restriction for Indian tribes, alleging that on most reservations it is unlikely that anyone other than existing licensees would start a low power station. CUNY/GSUC, WHA-TV and Dr. Marvin R. Bensman (Bensman) object to the rule for noncommercial low power licensees. Residential and Oak Industries, Inc. (Oak) believe the rule should not preclude common ownership of originating low power stations, STV low power stations that merely rebroadcast any full-service STV stations in the same market. NTIA believes that the rule might be applied in the form of a comparative demerit, but not as an across-the-board cross-ownership prohibition.

58. ACORN, Gregg, Consumer Federation of America, National Citizens Committee for Broadcasting and William Sullivan support a one-to-a-market rule for low power. Community Television network contends that viewer preferences do not determine that there will be diverse programming on commonly-owned stations, and, with Citizens Communications Center, believes the one-to-a-market rule can promote diversity. Gammon and Grange agrees, adding that

such a rule also will discourage strike applications. Microband supports the rule, except in the case of MDS/low power cross ownership, because MDS operations do not control the programming broadcast via MDS.

59. *Network Ownership of Low Power Stations.* Several parties believe networks should be permitted to own low power stations, including NBC, the National Association of Broadcasters and Quality Media Corporation (QMC). William Sullivan believes networks should be limited by the one-to-a-market rule only. Turner states that networks will not garner affiliates on account of the counter-programming principle. NTIA would permit networks to own low power stations, but would prohibit duplication of network programs on a network-owned low power station within the Grade B contour of a network affiliate. ABC and NBC cite the conclusion of the Commission's Network Inquiry to the effect that multiple owners have an incentive to provide diverse programming, to add to, rather than simply fragment their existing audiences. CBS adds that it is unfair to distinguish networks from other group owners and points out that networks are in a favorable position to develop and introduce new technologies via low power.

60. Network ownership of low power stations is opposed by ACTVA, Gammon and Grange, Western Communications Research Institute, Charles Edgely, Consumer Federation of America, IBN, ACORN and Gregg. Community Television Network and National Citizens Committee for Broadcasting ascribe to the view that an entity with the capacity to reach up to 25 percent of the nation's television households should not be permitted further broadcast interests. This would preclude network ownership of low power stations. Field would preclude the three national commercial networks, but not any new networks that might arise in connection with low power. The National Council of Churches would forbid network ownership in major markets, but not in rural areas. The Justice Department believes that networks should not be permitted to own or affiliate with low power stations or translators, because this would have the anticompetitive effect of precluding new entrants into the industry. Community Television Network, in reply comments, opposes this view insofar as it applies to network affiliates as well as networks themselves.

61. *Multiple Ownership.* A great many commenters, including Channel 57, the National Association of Low Power Broadcasting, National League of Cities, Lake County Translator Association and the United Church of Christ, believe there should be some limit upon the number of low power stations permitted in common ownership. Attaway would put the limit at 25 low power stations. Quality Media Corporation suggests 21. Fessenden supports 15 to 20. Fifteen is supported by the National Council of Churches, Arnold Gregg, B. Jackson, IBN, Citizens, NBMC, Consumer Federation of America, Westinghouse Broadcasting Company, Inc. (Westinghouse), Jeffrey Nightbyrd, Darwin Hillberry and Western Communications, and Research Institute.

Gregg would add a limit of not more than five applications of an entity with five or more percent common ownership interest to be eligible for processing at one time, for purposes of administrative efficiency. NBMC would favor a liberal waiver policy for minority ownership in excess of 15. UPTV Systems would put the limit at twelve, four VHF and eight UHF low power stations. Sullivan would start from the seven-station limit for full-service stations and set a ten-station limit for regional stations (including full-service in the total), a fourteen station limit for local stations (including full-service, and regional) and a sixteen-station limit for translators (including full-service, regional and local). See paragraph 19, *infra*. Don Mason (Mason) would permit seven low power stations in common ownership. Potomac Communications would set a limit of not more than five low power stations in common ownership. Community Television Network would prohibit further ownership of low power stations by any entity with existing broadcast ownership interests that permit access to over twenty-five percent of national television households. Vega believes that one way to encourage joint ventures to resolve mutually exclusive applications would be to exempt from the multiple ownership limit an applicant acquiring less than twenty percent interest in a competing application.

62. ACORN, Federal Express, the Department of Justice, Gammon and Grange, the Corporation for Public Broadcasting, Residential, Turner and Videomakers oppose a numerical limit on low power stations in common ownership. Daniel Mayeda and the United Auto Workers believe a preference for local ownership is preferable to an overall limit. Microband points to economies of scale involved in group ownership. NTIA believes that networking may be necessary for low power to be viable economically. Neighborhood TV Company sees a benefit in low power facilitating additional national networks. New York State Board of Education cites the BOCES system, which has 79 stations, as a successful low power network experiment. The Radio and Television Commission, Southern Baptist Convention, believes there should be no multiple ownership limitation on noncommercial low power licensees. National Innovative Programming Networks seeks no limit for minority owners.

63. *Regional Concentration Rule.* Citizens Communications Center, Community Television Network and Consumer Federation of America believe there should be a regional concentration rule for low power stations. CFA suggests that an owner of two stations not be permitted to acquire a third if the primary service contours of any of the three overlap.

64. *Translators in Common Ownership.* Colorado Translator Association urges that conventional translators not be included in the low power ownership restrictions. The *Notice* does not propose to do so, although a number of parties appear to assume that translators would be included.

65. *Newspapers.* The parties evince some confusion regarding whether the cross-ownership rules proposed for the low power

service would include low power/newspaper crossownership. Community Television Network and Consumer Federation of America believe that newspaper/low power cross ownership should be prohibited, in the interest of diversity. Messenger Publishing Company, Gannett, Belvedere Daily Republican and Joint Reply of Cox Broadcast Corp., etc., advocate no newspaper/low power cross ownership prohibition, on the grounds that local newspapers, especially in smaller communities, may be uniquely well-situated to operate low power stations that provide local information services subsidized by newspaper revenues.

66. *Local Ownership.* In addition to comments advocating a comparative preference for local ownership, some would like a local ownership requirement. Craney wants local ownership and operation required for low power stations. Kitchen Productions believes that low power stations should be 50 percent locally owned. Darwin Hillberry proposes that for all entities that own more than seven low power stations, 61 percent of the owners should live within 300 miles of the station.

67. *Noncommercial Operation.* Ron Kurtenbach argues that either all low power stations should have to operate noncommercially, or 75 percent, with 50 percent of those providing access for free speech messages. International Culture Network would like 50 percent of low power stations to be noncommercial or minority-owned.

68. *Cable/Low Power Cross Ownership.* A number of parties, including Attaway, Storer, Don Martin, National Telephone Cooperative Association, believe that cable companies should be permitted to own low power stations within their franchise areas. NTIA believes that this situation should give rise to a comparative demerit only. National Congress of American Indians believes that a cable/low power cross ownership rule should not apply to Indian reservations, where a local cable company is likely to be the only entity with the financial wherewithal and communications expertise to operate a low power station. Joint Comments filed by Colony Communications and other Cable Companies dispute that cable/low power cross ownership would be anticompetitive.

69. *Opposing cable/low power cross ownership* are Blue Mountain Translator District, Colorado Translator Association, Consumer Federation of America, Charles Edgely, Garryowen and Spanish International Network. The Justice Department envisions a situation where a cable company could acquire a local low power license solely for the purpose of thwarting potential competitors.

70. *Mandatory Carriage Rules.* The issue of whether cable systems should be required to carry low power stations is contested. The National Cable Television Association supports a "may carry" policy, such as was proposed in the *Notice*. NCTA claims that "must carry" rules violate the first amendment rights of cablecasters, inhibit competition and have the illegal effect of imposing a common carrier-like obligation on cablecasters. Field argues that the primary

intent of the Commission's mandatory carriage requirement is to maintain local broadcast coverage within a market, but for low power "must carry" rules would have the additional effect of extending the signal. Because low power stations are under no public service obligations, Field contends that "must carry" rules for low power work an unfairness on full-service broadcasters, who have public service obligations. Finally, Field adds, with respect to low power STV stations, the scrambled signal may be incomprehensible to cable subscribers anyway, defeating the purpose of a "must carry" rule. Omega opposes a "must carry" rule on the grounds that it would provide an improper subsidy to low power stations. Channel 57 thinks mandatory carriage is inappropriate for low power because it is a secondary service on which no local programming is required. TV Technology Corporation opposes "must carry" rules, but believes that cable operators should be required to provide all subscribers with high isolation switches, so that broadcast signals, including low power, may be received.

71. Numerous parties favor "must carry" status for low power signals. They include the National Translator Association, New Jersey TV Corp., Spanish International Network, Kitchen Productions, ACORN, Fessenden Educational Foundation, P. J. Broyles, Ron Kurtenbach, Thomas Smith, Los Angeles Children's Hospital, Grassroots Video, National Hockey League and Ventures In Communications. Garryowen believes that all low power stations of 100 or greater wattage should be carried. ABC supports "must carry" rules based on the principle that local broadcasters are entitled to an assurance of their audiences. Association of Maximum Service Telecasters and National Association of Broadcasters urge maintenance of the present translator/cable carriage rules. Howard contends that low power will not be viable in areas of high cable penetration without a "must carry" requirement. Harlan Jacobsen would require carriage of all free low power stations that originate over five percent of their programming locally. The National Association of Public Television Stations and Philip Tymon advocate mandatory carriage of all low power stations by cable systems located within the low power station's Grade B contour. Alternatively, Tymon would require that cable companies provide A/B switches free of charge to subscribers if there are no "must carry" rules for low power. International Broadcasting Network would require cable carriage of low power signals except on a showing of no preclusion to their off-air reception. ACTVA would require mandatory carriage on a first-come, first-served basis. The National League of Cities would require carriage if a vacant cable channel is available. Gammon and Grange would grandfather saturated cable systems and give them 18 months to add channel capacity for low power carriage. Nightbyrd would require cable carriage of low power stations on all greater-than-twelve channel cable systems. National Federation of Local Cable Programmers would impose a "must carry" rule for low power on all cable systems having over 30 channels. On systems

with fewer than 30 channels, NFLCP would require carriage unless the system were saturated, in which case the cable operator would be required to provide an A/B switch. NFLCP contends that low power would be severely hampered without a "must carry" rule, designed to assure local broadcasters access to their audience and thus promote competition in local programming. National Citizens Committee for Broadcasting would require free carriage of low power signals on all cable systems of over 36 channels, channels to be shared among low power operators if the subject cable system is saturated. Western Communications Research Institute also would require low power carriage on all over-36-channel systems, and smaller systems that have available channels, that are within the 64 dBu contour of the subject low power station. United Auto Workers would require the cable company to pay the costs associated with carriage of the low power signal if the cable system is located within the low power coverage area; otherwise the low power station should pay for coverage. UAW believes that low power stations should share channels in saturated cable systems. OK TV Translator Company wants cable companies to be required to obtain written consent to carry low power signals and to be forbidden to degrade the low power signal. Darwin Hillberry suggests that cable operators must pay low power operators for signals carried.

72. *Comparative Issues.* (The Omnibus Budget Reconciliation Act (Pub. L. No. 97-35), signed into Law by President Reagan on August 13, 1981, gave the Commission 180 days to establish a system of choosing among competing applicants by random selection, with significant preferences for groups that are under represented in ownership of telecommunications facilities. A separate proceeding was initiated toward this end. It set the framework for establishment of a random selection system with preferences, but does not apply to any particular service. Institution of the system in the broadcast service will be accomplished in a separate proceeding directed toward that end. However, because a comparative selection system for the low power service may be implemented sooner than the lottery for broadcast services, the comments and replies relating to comparative procedures and criteria for low power stations are memorialized below.)

73. *Lottery.* A number of parties oppose the lottery proposed as the last resort mode of selection for competing low power applications. NBC, Residential, CBS, General Electric, Howard, Citizens Communications Center, Consumer Federation of America, United Church of Christ, United States Catholic Conference, National Translator Association, Washington State Association of Broadcasters, National Council of Churches, National Citizens Committee for Broadcasting, International Broadcasting Network, National Federation of Local Cable Programmers, National Innovative Programming Network and United Auto Workers agree that the lottery violates the Communications Act of 1934 (before it was amended by the Omnibus Budget Reconciliation Act of 1981). ACORN calls the

lottery proposal capricious. The Corporation for Public Broadcasting and Microband contend that the lottery proposal violates the strictures of the *Ashbacker* case. The Maryland, District of Columbia, Delaware Broadcasters Association argues that a lottery will not elicit the best-qualified applicant, in many cases. ABC states: "The only possible justification for administrative adjudication by lot would be if reasoned decision-making were infeasible."

74. The Justice Department and the now-defunct Executive Council on Wage/Price Stability would support a lottery, although they believe that auction is the most efficient method of frequency allocation. NTIA, Community Television Network and International Cultural Network support a lottery where the preference system proposed results in a tie. Mason would favor a lottery only in the last resort.

75. *Paper hearing.* Parties generally were in favor of a paper hearing of some sort. National Citizens Committee for Broadcasting, United Auto Workers, the Justice Department and NTIA support the paper hearing proposal as detailed in the *Notice*. International Broadcasting Network, Gammon and Grange, and Western Communications Research Institute commend the cost-saving aspect of the proposal. Gammon and Grange believes this is particularly appropriate in a secondary service. Summers believes that paper hearings can be a significant time-saving device. National Translator Association and National Association of Public Television stations believe curtailed hearing procedures are essential. Other commenters, while supporting the concept of a paper hearing, believe that all relevant comparative considerations must be evaluated in the paper hearing, not just the proposed comparative preferences. They include Microband (suggesting additional factors for comparison such as financial capacity, technical, programming and entrepreneurial experience), Community Television Network (suggest factors such as diversification of ownership and programming, integration of ownership and management and past broadcast record), joint comments by broadcast licensees and by cable operators, Citizens Communications Center (including additional factors such as efficient use of spectrum, programming free vs. pay service and integration of ownership and management), Consumer Federation of America, National Council of Churches and National Innovative Programming Network. General Electric would like the paper hearing to include recognition of past service by translator operators. The Corporation for Public Broadcasting favors the paper hearing concept only as an initial screening device.

76. Residential contends that the paper hearing concept violates the Communications Act. ABC agrees, on grounds of arbitrariness. CBS finds no public interest justification for the departure from a full hearing requirement, and argues that a paper hearing violates Section 307(b). The National Association of Broadcasters would like a traditional hearing required for low power. Washington State Association of Broadcasters also opposes the

paper hearing concept. Federal Express proposes evidentiary hearings, held in the locality of the competing applications. Grammon and Grange replies that this would be prohibitively expensive.

77. *Pre-designation Conference.* Microband and the Washington State Association of Broadcasters favor the pre-designation conference proposed in the *Notice*. International Broadcasting Network believes the plan will not work.

78. *Alternative Proposals.* Microband suggests a system which affords a thirty-day period for amendment after designation of mutual exclusivity, followed by the pre-designation conference and a paper hearing with extensive pleadings on all relevant comparative factors, particularly program proposals, as opposed to comparative preferences. Turner would like to see amendments to change channel permitted without a cut-off requirement, or a grant specifying a different channel, in the situation where applications are mutually exclusive and none has comparative preferences. The Justice Department advocates as an alternative, should the streamlined comparative procedures proposed prove legally insufficient, a pre-designation conference, designation of issues as to which a *prima facie* case has been made and a paper hearing on those issues. NTIA proposes issuance of a show cause order asking why a mutually exclusive applicant should not change to another frequency, with dismissal of the application as the penalty for an insufficient response. If no alternative frequency is available, NTIA suggests a thirty-day period for the filing of pleadings establishing claims to the comparative preferences, a thirty-day reply period, Commission solicitation of pleadings regarding material questions of fact, responsive pleadings to the solicitation, oral hearings on unresolved questions, Commission ranking of applications based on the pleadings and a lottery, in the event of a tie. Community Television Network favors a presumption that a later-filed mutually exclusive application is a strike application, if other channels are available, and, minor modification treatment of amendments by mutually exclusive applicants to change channel to a non-mutually exclusive channel. William Sullivan describes a preliminary hearing without counsel before a local official, with the results certified to the Commission on a rating form. See paragraph 90, *infra*. National Federation of Local Cable Programmers would give minimally acceptable, mutually exclusive applications twenty days to file information relating to the preferences claimed, followed by sixty days for rebuttal pleadings and then either a compromise proposal or a comparative hearing. John Boler advocates case-by-case evaluation of mutually exclusive applications as the preferable comparative procedure.

79. *Comparative Preferences—First to File.* An overwhelming number of parties oppose the preference point proposed for the first-filed complete and sufficient application. Microband argues that this is irrelevant as a comparative criterion. NBC insists that this would have the effect of encouraging sloppy applications. Summers finds no public

interest justification in the notion. ACTVA believes it is arbitrary. Southern California Committee for Open Media and United Church of Christ state that the first-filed preference would have the effect of disadvantaging noncommercial, minority and other less affluent applicants. These commenters' disapproval is echoed by Citizens Communications Center, SINO, Joint Comments filed by Cable Companies, Los Angeles Children's Hospital, Consumer Federation of America, National Black Media Coalition, National Congress of American Indians, National League of Cities, Corporation for Public Broadcasting, National Association of Broadcasters, Grammon and Grange, National Council of Churches, Ohio Educational Broadcasting Network, National Citizens Committee for Broadcasting, United Auto Workers, National Association of Public Television Stations and National Federation of Local Cable Programmers.

80. Community Television Network, NTIA and National Innovative Programming Network find the first-filed preference acceptable.

81. *Minority-Ownership Preference.* The preference proposed for minority ownership is widely supported, by Spanish International Network, NTIA, Community Television Network, Consumer Federation of America, Grassroots Video, National League of Cities, National Congress of American Indians, Corporation for Public Broadcasting, ACORN, International Broadcasting Network, National Federation of Local Cable Programmers, National Innovative Programming Network, National Citizens Committee for Broadcasting, United Auto Workers, Ventures in Communications, Western Communications Research Institute and Microband. National Black Media Coalition would prefer channel reservations for minority applicants to a minority preference. Mason believes 100 percent ownership by minorities is preferable to the over 50 percent proposed. National Association of Broadcasters contends that minority participation in management of the stations must be considered in conjunction with mere ownership. Turner would like minority-oriented program proposals to be considered part of the minority preference. SINO says the minority ownership criterion should be based on the existing comparative criteria, including the extent of minority ownership, the degree of integration of ownership and management, program proposals. Summers concurs, averring that minority ownership alone might be unconstitutional, but that the existing criteria, including participation of ownership in management, local ownership, past broadcast record, program proposals and civic involvement of ownership, should be part of the minority evaluation.

82. CBS contends that a minority preference is tantamount to reverse discrimination, that minority control cannot be assured by an initial preference, absent a trafficking prohibition and that the Commission cannot make an irrebuttable presumption that minority owners will air minority-oriented programming. Federal Express agrees that a minority preference is discriminatory. The National Hockey League complains that it inhibits the free enterprise

system. E. B. Craney opposes it on the grounds that excellence of service should be the sole criterion of a license award.

83. *Preference for Women.* A number of parties contend that, although not within the Commission's definition of minority, female low power applicants should receive a comparative preference. They include the National League of Cities, NTIA, Corporation for Public Broadcasting, American Women in Radio and Television, National Federation of Local Cable Programmers, Western Communications Research Institute, United Auto Workers, Microband, Los Angeles Children's Hospital and Consumer Federation of America.

84. *Noncommercial Preference.* The proposed preference for noncommercial service is favored by Grassroots Video, National Black Media Coalition, National Congress of American Indians, National League of Cities, Corporation for Public Broadcasting, International Broadcasting Network, Mason, National Innovative Programming Network, National Federation of Local Cable Programmers, United Auto Workers, Ventures in Communications and Western Communications Research Institute. National Citizens Committee for Broadcasting believes the preference should be afforded to nonprofit corporations applying for low power stations. National Association of Public Television Stations would like the preference to go to public service programming proposals. Independent Cinema Artists and Producers wants a preference for local noncommercial programming only.

85. The noncommercial preference is opposed by NBC, Summers, Consumer Federation of America and the National Hockey League. The comment of the now-defunct Executive Council on Wage/Price Stability claims that noncommercial stations are becoming increasingly less important because of the increase in "high-brow" programming on commercial stations. CBS says that it is not clear why noncommercial service is more in the public interest than commercial service. E. B. Craney believes the only appropriate comparative criterion is excellence of service, whether commercial or noncommercial. National Association of Broadcasters avers that the presence of a noncommercial station in no way assures that a market's needs will be met.

86. *Commercials on Noncommercial Stations.* Several comments raise the issue of whether noncommercial low power stations that air commercials nevertheless should receive a comparative preference. National League of Cities and Ventures in Communications support this view. United Auto Workers believes this is permissible, so long as no profit is made. National Innovative Programming Network would give a preference point for instructional programming, whether proposed by a commercial or noncommercial applicant. Global Village proposes a preference in the situation under consideration, so long as the majority of the station's time is without commercials. ACORN would give a preference to applicants that are nonprofit corporations, whether or not they propose to

have advertising. National Federation of Local Cable Programmers would rank noncommercial applicants in the basis of the highest percentage of advertising-free time proposed and issue preference points on that basis. See paragraph 91, *infra*. National Citizens Committee for Broadcasting supports the concept of a noncommercially-preferred low power station being permitted to sell up to ten hours per day to a commercial entity, so long as the noncommercial entity is kept strictly separate from the commercial entity, even if one owns the other. Western Communications Research Institute, SINO and Microband believe that noncommercial low power stations should be bound by § 73.621 of the rules, which currently forbids advertising on full-service stations.

87. *Channel Reservations for Noncommercial Stations.* Corporation for Public Broadcasting proposes that channels be set aside for noncommercial low power stations in the top 150 markets, the number of channels to be set aside to be determined by the population of the market. It is claimed that only in this way will the more slowly developing noncommercial service be permitted to develop fully in the low power context. See paragraph 24, *supra*. Western Communications Research Institute believes that Channels 2 through 4 and 14 through 35 should be set aside for noncommercial low power stations and that a comparative preference should be afforded to noncommercial applicants for channels over 35. National Federation of Local Cable Programmers supports the concept of channel reservations for noncommercial low power applicants only if no comparative preference is to be awarded to same.

88. *Free vs. Pay.* William Sullivan, National Association of Broadcasters, Los Angeles Children's Hospital, International Broadcasting Network and Consumer Federation of America believe that free low power stations should be preferred over those proposing subscription service. Community Television Network disagrees.

89. *Local Preference.* A number of parties propose a preference for some sort of local component, whether ownership, program origination or orientation. These include the United Church of Christ, the National League of Cities and William Sullivan. Potomac Communications favors a local ownership preference. Daniel Mayeda would give a comparative preference for 50 percent local ownership. Video makers would prefer local owners proposing service oriented to unique community needs. Community Television Network would give a comparative preference for 100 percent participation of local owners in management of a low power station proposing locally produced news of public affairs programming. Thomas Smith would give a comparative preference to local origination of public service programming. National Federation of Local Cable Programmers and Los Angeles Children's Hospital would prefer local ownership and programming. Video Factory would award a preference point for locally originated "high quality art and cultural programming." Independent Cinema Artists and Producers believe a preference should go to local noncommercial programming. Praxis would

favor programs to serve local needs. International Broadcasting Network would give preference to locally produced programming. Consumer Federation of America would give a comparative preference for local access and management and programming addressed to local concerns. Ventures In Communications also would prefer a proposal that includes local access and program origination. Metonymy would favor local small business as low power applicants.

90. Microband disagrees, stating that the market may be depended upon to provide local programming, if there is demand for it. GEBCO and joint comments filed by various broadcast licensees argue that a further notice of proposed rule making is necessary to explore further the entire issue of comparative preferences.

91. *Translator vs. Low Power Station.* UPTV Systems, Residential, Colorado Translator Association and OK TV Translator Company argue that existing translator licensees should get a comparative advantage when seeking to add low power features in competition with new low power applicants, in recognition of the service previously provided by the translator. NBC and joint comments filed by broadcast licensees aver that extension of the coverage of a full-service station should be the only decisive comparative preference. Telecommunity believes that a locally-originating low power application should be preferred over a translator application. Consumer Federation of America and Ventures In Communications agree that low power applications should be favored when in competition with translator applications. Gammon and Grange and Microband disagree.

92. NBC argues that all relevant comparative factors must be weighed together, particularly technical and service characteristics of mutually exclusive low power proposals. National Association of Broadcasters contends that the proposed preferences are not flexible enough. National Translator Association and National Council of Churches urge that all relevant comparative factors be considered. Washington State Association of Broadcasters would like the 1965 comparative criteria used for low power applications. Summers argues that the proposed preferences are not sufficiently detailed to provide a basis for a meaningful choice among competing applicants, stating that the present criteria are preferable. Response argues that the secondary nature of the low power service justifies abbreviated preferences. Turner would like a system of weighted preferences, the foremost for live informational programming proposals, the next most important for minority ownership and the least most important for noncommercial applicants. NTIA would give equal weight to the following comparative criteria: First-to-file, ownership (demerit for duopoly situations), women or minority applicant, but would not consider the proposed service area. Ed Craney would place paramount emphasis upon excellence of service as a comparative criterion. Thomas Smith would look to local origination,

minority ownership, minority programming and proposed coverage area as comparative criteria. Joint comments filed by various cable companies cite financial qualifications, ability to meet local needs, local preference and proposed service as appropriate comparative criteria. Los Angeles Children's Hospital suggests ownership by the handicapped and women, local ownership and programming, time sharing or other innovative concepts, service to underserved audiences or geographical areas and free service as meriting favorable comparative consideration. Gammon and Grange suggests that in urban markets a preference be afforded to the first specialized programming of its kind.

93. National Association of Public Television Stations believes that the comparison of competing low power applications should include the complete range of relevant criteria, including public service programming, other media interests and local ownership. National Association of Low Power Broadcasters also favors a greater range of preferences, stating that the Commission should determine the unmet needs of a service area and award the license on that basis. Mason would give a preference point for residence of the licensee in the proposed service area, noncommercial service, 100 percent minority ownership, no more than 51 percent ownership of another broadcast facility and demonstrated broadcasting expertise (two years of work or four years of education). In case of a tie, the license would be awarded to the most extensively qualified applicant.

94. ABC argues that a further notice of proposed rule making must be issued to consider expanded comparative criteria, including ability to implement proposals, recognition of the value of traditional translator service, financial qualification, prior broadcast experience and record, familiarity with the community to be served, ability to acquire or produce programming and program plans. GEBCO and Joint Reply of Broadcast Licensees also recommend a further notice of proposed rule making to consider as comparative issues: minimum hours of operation, local origination, familiarity with community interests, recognition of translator service, minority population served, noncommercial service, the need for local service, the need for STV and program proposals.

95. Community Television Network advocates a paper hearing preference system based in part upon media concentration, with two points if the applicant's other broadcast interests reach fewer than fifteen percent of national television households, one point if they reach between fifteen and twenty percent of national television households and no points if they reach over twenty percent. CTN also would award two points for at least one-half hour per day of local informational programming, two points for minority ownership and one point for 100 percent participation of local owners in management. CTN would not give comparative merit to free versus pay service, hours of operation, first-filed application, population covered or efficient use of spectrum, on the grounds that

these factors are too difficult to evaluate without an oral hearing. Consumer Federation of America would award comparative preference to, in descending order of importance, low power versus translator service, minority and female ownership, specialized programming addressing local concerns (e.g., programming for the elderly, handicapped, foreign language, cultural and educational programming), opportunity for local access, commitment to Fairness Doctrine and access for political candidates, news and public affairs programming, control of least other broadcast interests, local management, EEO compliance, hours of operation, free versus pay service, amount of commercial material and originated programming. NBMC indicates that it assumes that the Commission's EEO policies will apply to low power stations.

96. International Broadcasting Network proffers a three-tiered preference system, first awarding one point each for noncommercial service, minority ownership and free versus pay service; then, in the event of a tie, one point each for locally produced programming and absence of other broadcast interests and, finally, one point each for specialized programming and greatest hours of operation. Corporation for Public Broadcasting would consider minority ownership, female ownership, local origination facilities (as opposed to local ownership), absence of other media interests, efficient use of frequency (i.e., larger service area than competitor by a least 50 percent) and noncommercial service (outside the top 150 markets, where CPB advocates noncommercial channel reservations). See paragraphs 27 and 84, *supra*, on the comparative process.

97. William Sullivan advocates the following system of preferences:

Preference	Points
First local service.....	10
Local ownership (within one hour's drive).....	9
Population covered (largest).....	8
Local origination of more than 20 prime time hours per week.....	6
Financial feasibility.....	4
Familiarity with community needs.....	4
Free, versus pay, service.....	2
Nonduplicated program service.....	2
Site availability.....	1
Possibility of channel upgrade.....	1
Creative or auxiliary service.....	2
City grade coverage over entire community.....	2

98. The National Federation of Local Cable Programmers suggests the following preference scheme:

Category	Amount (percent)	Points
Minority/female ownership, control.	91 to 100.....	20
	81 to 90.....	17
	71 to 80.....	15
	61 to 70.....	12
	51 to 60.....	10
Percent of time noncommercial.	95 to 100.....	20
	85 to 95.....	10
Local ownership, control.....	75 to 85.....	5
	100.....	15
	75 to 99.....	10
	51 to 74.....	5

Category	Amount (percent)	Points
Local programming.....	Over 25.....	15
	15 to 25.....	10
	10 to 14.....	5
No other broadcast interests owned.....		15
Local access.....	Over 25.....	15
	20 to 25.....	10
	10 to 19.....	5

99. Western Communications Research Institute proposed:

Noncommercial.....	10
Minority/female ownership, control:	
Over 50.....	10
Over 25.....	3
Less than 3% minority.....	-2
Less than 10% women.....	-2
Other media interest:	
5% or greater control.....	5
None within 150 miles or in same state.....	2
Radio.....	1
Low power stations—over 10.....	-3
TV.....	-3
Newspaper.....	-3
Other print media.....	-3
Cable:	
Under 10,000 subscribers.....	-1
10-50,000 subscribers.....	-2
Over 50,000 subscribers.....	-3
Integration of ownership and management (full-time):	
Over 50.....	3
Over 25.....	1
Under 2.....	-1
Local residence of owners (within 64 dBu contour of station):	
Over 50.....	3
Over 25.....	1
Under 2.....	-1
Local programming production:	
Over 10.....	3
Some.....	1
None.....	-2
Amount of service, free or pay:	
Over 12 hours/day.....	2
100% free.....	3
70% free.....	2
Under 20% free.....	-2

Western Communication Research Institute would not consider the size of the service area, the population served or specific program proposals.

Summary of Comments and Reply Comments Filed in Response to the Further Notice of Proposed Rule Making

1. *Automated Processing.* A number of parties, including CBS and NBC, support the concept of automated processing with a prohibited contour overlap standard. CPB proposes a system virtually identical to that proposed in the Further Notice. According to CPB, the application should include location, frequency, ERP, antenna gain and directionality and HAAT. Field strengths should be calculated in accordance with § 73.684 of the rules. Processing should be accomplished using automated terrain data, the F(50,10) curves and standardized antenna patterns. NAPTS evinces concern that low power stations not be locked into their initially authorized facilities and suggests that the Commission establish and assume maximum power and antenna height in processing. NTA opposes this concept on grounds of spectral efficiency. NAB opposes protecting future low power facilities increases. Cox approves automated processing only to reduce the present application backlog. NAB endorses automated processing, but adds that manual engineering review should continue, as well.

2. Other parties advocate retention of the mileage separations¹ and the two-tiered mode of processing originally proposed: Applicants first should try to meet the mileages, but if they cannot they may submit a special engineering showing with a request for waiver of the mileage separations. ABC, American Christian Television Systems, EIA and Cox are in this group. MST proposes a new set of mileage separations for low power stations. Field would have the Commission establish three classes of low power stations, each with mileage separations prescribed:

	ERP	HAAT (feet)
Class A.....	1 kW.....	300
Class B.....	10 kW.....	500
Class C.....	(¹).....	(¹)

¹ Facilities in excess of Class B—must meet full service mileage separations.

3. A number of parties urge the Commission to permit UHF low power licensees to accept interference received on the seventh, fourteenth or fifteenth adjacency. They include ACTS, CTN, Kitchen, Neighborhood, NTA and Taft. CPB, Kitchen and Taft also advocate elimination of the separation directed toward intermodulation interference.

4. A great number of parties, including OEBNC and Multilingual, object that the low power UHF protected contour is too small, a result, they aver, of the unrealistic assumption on which the 84 dBu contour was calculated. Community Media Network says that instead of assuming two maximum facilities UHF stations at the minimum separation, the UHF stations should be assumed to operate at 1 megawatt power with 1,000 foot antennas, which more closely approximates actual full service UHF station operating characteristics. AGK finds the contour proposed for VHF low power stations acceptable, but, with ACTS, recommends a 74 dBu protected contour for UHF low power stations. CTN, Neighborhood, Storer and Taft would have a 70 dBu protected contour for UHF low power stations. EIA believes the UHF adjacent channel D/U ratio should be used for UHF low power stations. MST says that the low power-to-low power station protected contours proposed are adequate. CPB says that they are too small and that the Grade B contour should be used. Cox believes that the low power protected contour should be the higher of the Grade B or interference received from full service stations. IBN proposes a Grade B protected contour for low power stations as follows:

Frequency	Protected contour (decibel units)
Low band VHF.....	47
High band VHF.....	56

¹ It should be noted that there currently are no VHF translator-to-full service mileage separations in the rules.

Frequency	Protected contour (decibel units)
UHF.....	64

King wants low power stations protected beyond the Grade B contour. Garryowen, complaining that the protection standards proposed for low power stations won't protect existing translators, proposes the following protected contours for low power stations:

TPO (watts)	Protected contour (miles)
1.....	10
1 to 10.....	20
10 to 100.....	40
100 to 1,000.....	80

NBC suggests an 8-to-10 dB increase in the D/U ratios proposed for both low power and full service stations. OEBNC states that low power protected contours should be defined with reference to the population and area proposed to be served.

5. Spectra argues that the Commission should not play the role of engineer but should rely on applicants' engineering showings and suggests five percent interference caused and ten percent probability of interference. Taft advocates use of the antenna radiation height above the elevation center of the community of license instead of height above average terrain. NBC agrees that HAAT is too burdensome for applicants to compute. CPB favors use of HAAT, for greater spectral efficiency.

6. *Protection to full service stations.* A number of parties advocate protection of any service received from full service stations. MST, endorsed by EIA, GEBCO, ABC, Storer and Joint Comments filed by broadcast licensees, proposes a set of mileage separations for low power stations, or, alternatively, that low power stations be required to protect the following contours of full service stations:

Frequency	Protected contour (decibel units)
Low band VHF.....	40
High band VHF.....	50
UHF.....	60

7. Cox, in response to CPB's argument that a low power station will provide more truly local service than a full service station at the farthest reaches of its signal, points out that full service stations have a secondary ascertainment obligation within their field intensity contours. Cox proposes that a low power/full service protected contour be established seven dB below the Grade B at 40 dBu, similar to that adopted in Docket 20735 for Channel 200/Channel 6 protection. Cox also asks that low power stations that would cause interference to full service stations that increase facilities be required to amend their

licenses to correct the interference within 60 days after issuance of the full service construction permit. NAB concurs that full service stations should be protected beyond the Grade B by low power stations, adding that the Grade B concept should be re-examined before it is used as an allocations tool. CIC argues that the standards must be flexible and allow for waivers in deserving cases, suggesting that the Commission permit no low power interference to existing service beyond the full service Grade B contour where the low power signal would cause "significant degradation" to the full service signal, in terms of the number of households affected. ACTS suggests a rule requiring low power stations to protect a full service signal beyond the Grade B contour where it is "significantly viewed," as defined in § 76.54 of the rules. Kitchen believes that actual reception should be the test of protection of service by low power licensees. AGK suggests that the Commission not license a low power station in any community outside the Grade B contour of a full service station if the community is within the ADI (area of dominant influence) of the full service station. CBS advocates a requirement that low power applicants choose the channel least likely to cause interference and that the Commission then protect service received beyond a full service station's Grade B contour on a complaint basis. Field would require low power applicants to engage in prior frequency coordination with full service licensees, in the hopes that this policy would encourage private resolution of interference disputes.

8. NAPTS avers that full service stations should receive protection from low power stations at least to the Grade B contour. Spectra contends that service received beyond the full service Grade B contour should be disregarded, in a low power context. ACTS and Attaway believe that low power stations should have to protect the Grade B contour of full service stations. Community Media Network agrees, arguing that full service stations should be limited to their power levels as of a date certain, e.g., December 31, 1982. NTA advocates low power stations protecting full service station coverage to the Grade B contour, except where terrain prevents actual reception of a full service station within the predicted Grade B contour.

9. CPB, supported by IBN, argues that low power stations should not have to protect full service stations to their Grade B contours because two full service stations are not required to protect each other's signal to the Grade B contour. MST contests this by pointing out that neither of two full service stations is secondary to the other, as low power is to full service. CPB adds that low power stations are more likely to provide truly local service than are full service stations at the perimeter of their field intensity contours. CPB recommends that the following full service contours should be protected by low power stations:

Frequency	Protected contour (decibel units)
Low band VHF.....	62
High band VHF.....	68
UHF.....	80

10. *Terrain roughness.* Several parties, including Attaway, Community Media Network, NTA, Multilingual and OEBNC, recommend that terrain roughness be considered in processing, to achieve greater spectral efficiency. Others, including ABC, NAB and Spectra, argue that automated terrain data is not sufficiently reliable to justify the cost.

11. *Offset.* ABC, Cox and MST argue that use of a nonstandard offset factor is too expensive to justify its implementation. CBS believes that relaxed frequency tolerance standards such as those proposed will not permit the maintenance of a nonstandard visual carrier offset factor. Other commenters, including NTA, Multilingual and Gallagher and Johnson, support the use of a nonstandard offset factor as an interference reducer, provided that frequency stability is required. CPB endorses the use of a 10 kHz offset factor, with 1 kHz frequency tolerance required. Field would permit ± 20 kHz offset, with a ± 1.5 kHz frequency tolerance requirement. TV Technology Corp and IBN support a 8 or 24 kHz offset factor with a ± 1 kHz tolerance requirement. Kitchen endorses use of an offset factor with a tolerance requirement, on a waiver basis, in large cities. OEBNC and Community Media Network endorse a higher frequency tolerance requirement. NTA would require a stricter tolerance standard where it proves necessary on a case-by-case basis. EIA would require between 2 and 3 kHz tolerance.

12. Attaway, Kitchen, Multilingual, CMN, NTA, OEBNC and Spectra support the inclusion of a front-to-back ratio in the protection ratio, as proposed in paragraph 10 of the Further Notice. A number of other parties, including ABC, MST, CBS, CPB, Cox, EIA, Field, Gallagher and Johnson, NAB, Storer, Taft, ACTS, IBN and NBC, advocate consideration of a front-to-back ratio as a safety factor only. Storer contends that use of a front-to-back ratio has been considered and rejected in BC Docket No. 80-499, VHF Drop-Ins. See, Notice of Proposed Rule Making, BC Docket No. 80-499, 83 F.C.C. 2d 51, 102 (1980). The other comments aver that outdoor receiving antennas cannot be relied upon to afford additional protection against interference in a uniform manner. CPB believes inclusion of a front-to-back ratio would result in low power stations receiving more interference from full service stations than they would otherwise.

13. Several parties, including ABC, Taft Cox, NAB and MST, express the concern that any standards adopted ensure the secondary spectrum priority of low power stations, as well as ensuring that full service stations are fully protected from interference. Others believe that, in certain circumstances, the status of power of low power stations should be enhanced. As discussed in paragraph 4,

above, Garryowen believes that higher power is necessary for low power adequately to serve rural areas. IBN wants the standards to afford full protection between low power stations and to permit future facilities increases to ensure good reception. NTA would like rural low power stations to be fully protected from interference within the city of license.

14. A number of comments, including those of CBS and Garryowen, believe that any standards adopted should ensure protection from interference to traditional translators. OEBNC and NTA believe that existing translators that do not meet the standards adopted should be grandfathered. NTA would like low power stations to be required to protect existing translators to a contour twenty miles beyond the Grade B contour of the station the translator rebroadcasts. CMN also advocates full protection from interference by low power stations for translators completing plans of area-wide coverage by full service stations. ACK proposes a comparative preference for translators proposed by full service stations within their Grade B contours. KHQ, Taft and King would like low power applicants to be required to show that they will not interfere with the off-air input channels of translators, as well as their output channels. King also believes that low power stations should be required to protect translators outside their Grade B contour.

15. NCTA complains that the Further Notice does not propose that low power stations protect the use of radio frequencies by cable systems. The Commission should, according to NCTA, require frequency coordination between low power applicants and cable operators. NCTA also would prefer low power stations only to be licensed in UHF channels, but if the Commission should license low power stations in VHF channels, NCTA believes that low power licensees should be held responsible to correct all interference between low power and cable, including interference to set-top converters on output channels 2, 3 or 4, interference to cable headends and frontend overload, all of which NCTA claims, would be very expensive for the cable operator to correct. NTA would have low power licensees protect CATV systems to twenty miles beyond the Grade B contour of stations whose signal the CATV system extends. Taft would require showings from low power applicants that they will not interfere with any existing cable system off-air pickup. MST objects to NCTA's proposal, averring that cable systems have to remedy cable/low power interference, because cable does not have to pay for programming but charges for program service. NAB also opposes low power having to protect cable reception at the headend or the output channel of set-top converters, further contending that cable systems can correct frontend overload with filters.

16. A number of parties decry the protection standards proposed for land mobile systems. The Central Committee on Telecommunications of the American Petroleum Institute emphasizes the health and safety factors involved in maintaining interference-free communications service to offshore drilling personnel in the Gulf Coast

off Southern Louisiana. The Offshore Telephone Company concurs. They are concerned that the Channel 17 land mobile stations in Southern Louisiana and others will receive interference from low power stations, because the assumed maximum facilities UHF stations on which the low power/full service UHF separations are based are unrealistic. Where land mobile shares frequencies with full service television stations, it is averred, low power stations should be secondary to both. The Offshore Telephone Company would require low power applicants to select the highest available UHF channel and believes that enhanced separation criteria from Zone 3 should be applied to low power stations proposed in Zone 3. APCO believes that land mobile stations would receive interference from low power stations because of the wideband characteristics of television receivers. APCO would prohibit low power stations on Channels 14 through 20 and on 4 and 5, to protect the 72 through 76 MHz band between Channels 4 and 5 that is used by land mobile. Motorola advocates increased separations to prevent low power interference to land mobile base stations, viz. a 190 mile co-channel separation between a low power station and the center of the land mobile city and a 170-mile adjacent channel separation. NABER endorses these separations, adding that low power applicants should be required to choose from channels 55 through 69 first and that low power stations should not be permitted on Channels 14 through 20 within 115 miles of the urban areas in which these channels may be used by land mobile. Radio Broadcasters, concerned that land mobile stations in Philadelphia will receive interference from low power stations, argue that the F(50,50) curves instead of the F(50,10) curves should be used to calculate permitted low power signal strengths in relation to the land mobile channels and suggest that co-channel low power stations should not be permitted to exceed 38 dBu at the land mobile protected contour. 68 dBu is suggested for adjacent channel stations. Telocator advocates prohibition of low power stations from Channels 14 through 20 and 4 and 5, and a 140-mile separation requirement from Philadelphia and Los Angeles on Channel 21.

17. ACTS, on the other hand, contends that the threat of interference by low power to land mobile is not as serious as that claimed by land mobile advocates. Kitchen agrees with the land mobile protection standards proposed in the Further Notice and also believes that low power/land mobile sharing should be reinstated on Channels 70 through 83. NTA would like land mobile removed from the other channels used by television and relegated entirely to 70 through 83. WHP would permit low power on Channels 14 through 20 without regard to land mobile and remove land mobile to Channels 70 through 83 (in the 806 and 960 MHz band). MST also would remove land mobile uses from Channels 14 through 20 and opposes keeping low power off Channels 4 and 5. Neighborhood would either remove land mobile from Channels 14 through 20 or have no fixed protection standards for land mobile by low power applicants on those channels,

but require a noninterference showing by the low power applicant. NJTV contends that adjacent channel interference to land mobile is not a serious risk and simply would condition low power grants on the licensee's correcting any interference caused to adjacent channel land mobile stations. NJTV also advocates the Commission's appointing a committee to investigate the land mobile and television channel sharing issue.

Appendix E—Tiered Application Processing Procedures for Pending Applications

1. The Commission currently is confronted with an unprecedented processing backlog of more than 8,500 applications for television translators and low power stations. While herein we adopt channel allocation standards tailored to rapid computerized interference analysis, the full implementation of this capability cannot be realized for at least the next 12 months. During this period, the processing staff faces the enormous task of identifying mutually exclusive applications on an essentially manual basis.¹ We also are confronted by a situation in which a sizeable majority of the applications propose service in the larger television markets. We estimate that approximately one half of the applications are associated with the top 50 television markets and 70 percent with the top 100 markets. In contrast, only 15 to 20 percent propose to locate outside of any ranked market, i.e., outside a market having at least one commercial television station. We recognize that these percentages do not reflect the extent to which numerous applicants compete for relatively few available channels in the largest markets. Nonetheless, we are concerned that this imbalanced demographic array of the pending applications could frustrate near-term attainment of one of our principal goals in this proceeding: to provide programming, including local outlets, in unserved and lesser-served rural areas. We believe the public interest would be served by our adopting a processing hierarchy that would facilitate the expeditious authorization of service to rural areas. In view of the circumstances, we believe the best vehicle for achieving this objective is a transitional "tiered" processing system, in which the application backlog is subdivided into a number of prioritized groups of applications on the basis of the extent of existing television diversity. Once the present backlog has been eliminated (in three phases), and only then, will we lift the freeze on the filing of television translator and low power applications.

2. In general terms, the tiered processing system will function in the following manner. We shall identify and make public lists of applications as either TIER I, TIER II or TIER III applications, classified on the basis of market location. We envision three stages of processing pending applications, including freeze-exempt applications. During the initial phase only TIER I and freeze-exempt applications will be processed. All pending

¹ To this end, we are requesting additional topographical information from present applicants that could greatly facilitate our manual processing. See, note 46 of the Report and Order.

freeze-exempt applications as of the effective date of this *Report and Order* will be treated as TIER I applications. During the second stage, only pending TIER II and freeze-exempt applications (as these are filed) will be considered. TIER I applications still awaiting grant or denial (some may be awaiting hearing) will be accorded "protected" status in terms of our contour overlap standards. During this second stage, newly-received freeze-exempt applications will be accorded equal protection status with pending TIER II applications. The freeze will be lifted only for competing TIER II filings. Finally, the Commission will enter into the third stage, in which the remaining pending TIER III applications will be considered. At this stage, TIER III applications must protect yet-undisposed TIER I and II applications. Freeze-exempt applications received during this stage will be treated as TIER III applications. The Commission will announce publicly the completion of each stage of processing.

3. The three tier classifications will be defined in terms of the Commission's ranking of television size as contained in the Public Notice captioned "Television Channel Utilization" (Public Notice dated April 16, 1982, mimeo number 3331). This report ranks markets from one to 212. For purposes of tiered processing, we define the boundary of a market as a 55-mile circle centered about the reference coordinates of the principal market city or town (cities or towns in the case of hyphenated markets).² The 55-mile radius is roughly equivalent to the predicted Grade B coverage area of a full service UHF television station operating at maximum power. Thus, TIER I will consist of those applications proposing to locate the transmitting antenna at a distance of more than 55 air miles from any FCC-ranked television market. TIER II will consist of those additional applications proposing a location within 55 miles from the reference coordinates of all ranked markets from 101 through 212. TIER III will comprise the remaining applications proposing location within 55 miles of the reference coordinates of all ranked markets from one through 100, inclusive. Fractions of miles should be rounded off to the nearest mile, in accordance with the Commission's customary practice. See § 73.611(d) (5) of the rules. Hereinafter, we shall eliminate the freeze exemption pertaining to the number of television services received. In its place, we shall consider any prospective applicant meeting TIER I qualifications to be freeze exempt. The remaining two freeze exemptions will remain unchanged.³

4. We believe that this tiered processing approach is consistent with the public interest and represents the best means of addressing the application backlog until a fully automated system of processing can be

implemented. During the initial stage, the staff will be required to make its determinations through analysis of only 15 to 20 percent of the pending applications. Upon commencement of the last stage, involving some 70 percent of the applications, we expect to have a fully automated processing capability. Second, and perhaps of greater significance, the tiered processing approach will provide greater opportunities for increased service, beginning with the least-served rural areas, a major goal of this proceeding.⁴

5. We recognize that, in affording priority to rural applicants, we may be precluding timely-filed non-rural applications that may be mutually exclusive with rural applications. To alleviate this situation and to preserve any rights that may be argued to have accrued on behalf of non-rural applicants, where a group of mutually exclusive applications includes applications that would fall into a tier to be processed later, the entire group will be deferred until we reach the later tier. That is, if an otherwise exclusively TIER I group contains one or more applications that do not meet the standard for processing during TIER I (more than 55 miles from any ranked market) but fall within TIER II or III, we will defer processing of the group until TIER II (or III) applications are to be processed. The same will hold true when TIER II groups contain TIER III applications. Only in this manner can we ensure that urban channel availabilities will not be precluded by tiered processing of rural applications. With this exception, we believe that tiered processing is fully justified, both on policy and administrative grounds. Provision of service to rural areas that currently are unserved or underserved is an objective that the low power service is particularly suited to carry out. The cost of constructing and operating a full service station often is prohibitive in sparsely-populated rural areas. The lower cost of a low power television may facilitate the introduction of local television service in such areas. However, saddling rural applicants with the costs and delays associated with hearings involving urban applicants as well would raise the entry costs considerably and could discourage applicants from attempting to provide service to rural areas. Additionally, giving priority to rural applicants comports with our mandate under Section 307(b) of the Communications Act to allocate spectrum in an equitable, fair and efficient manner, and with the way we interpret Section 307(b) as it applies to the low power service. See, paragraph 61 of the Report and Order. Moreover, applications in TIERS II and III appear to contemplate additional television service to areas and populations already receiving multiple services, whereas TIER I applications would bring needed service to unserved or

underserved rural areas and populations. Affording processing priority to the latter group would appear to comport with our Section 307(b) obligations. Finally, all interim applicants have been on notice from the outset of this proceeding that their applications and/or interim authorizations would be conditioned upon the outcome of the rule making, so that no inalterable rights can be argued to have accrued.

6. In the near term, between of adoption of the Report and Order and employment of fully computerized processing methods, the tier system will be of little assistance in expediting authorization of service due to the necessarily tedious nature of manual processing using complex engineering criteria. However, with the advent of the computer as a processing tool, the tier system will aid in increasing the number of authorizations because it will reduce the numbers of mutually exclusive applications that must be considered together in chain sequences. This also will expedite the hearing process.

Statement of Chairman Mark S. Fowler in Which Commissioner Mimi Weyforth Dawson Joins

Re: Low Power Television

Low power television may not have the transmission capabilities of full broadcast television, but its capacity to provide televised programming that is directly responsive to the interests of smaller audience segments makes it truly unique in its ability to expand consumer choices in video programming. From this perspective, the power of these stations may be low, but their potential is enormous.

I fear, however, that the majority may not realize how their vote to impose a one year trafficking limitation on low power facilities may undercut the potential for this service to provide an outlet for new broadcast entrepreneurs, particularly minorities and nonprofit groups, to enter the market. We cannot ignore the fact that the low power service will be inaugurated during a time when financing costs pose a significant barrier to capital investment. It will be difficult enough for these new entrants to obtain financial backing without the added burden that this limitation on the disposability of the facility will impose. Against this very real concern, the majority's speculations as to possible problems that might arise absent a rule seem all the less compelling as a pretext for a general proscription.

Absent a showing of need for government interference in the marketplace, the burden for imposing regulation should lie with those proposing regulation with the presumption in favor of non-interference. I find no argument of the majority overcoming the presumption in favor of non-interference and, therefore, dissent to this aspect of the order.

Dissenting—in Part—Statement of Commissioner Abbott Washburn

Re: Low Power Television, BC Docket No. 78-253

The absence of any limitation on multiple ownership of this new low power service is inconsistent with the Commission's long-

² We shall utilize the reference coordinates for cities and towns specified in the publications "All Populated Places" available from the United States Geological Survey, 507 National Center, NCIC, Reston, Virginia 22092.

³ The other exceptions are applications for major amendments to change frequency from Channels 70 through 83 or to change frequency to resolve interference to or from full service stations.

⁴ The Notice formulated the two principal goals as (1) not adopting burdensome new regulations "that would make translator service more difficult to provide, especially in isolated rural areas where the need for television service is greatest" and "to provide maximum flexibility for new originating services to come into being, easily and at low cost." See, Notice of Proposed Rule Making, 45 FR at 89179.

standing limitation on ownership of conventional television stations and of AM and FM stations. Currently, ownership of each of these three services is limited to seven stations per licensee. Such limits have proved valuable in preventing concentration (chain ownership) of these facilities and in encouraging diversity of voices of opinion. It would have been in the public interest to include a similar provision here for low power television. Therefore, I dissent to that portion of today's decision which permits unlimited ownership of low power stations.

I also dissent to the majority's abandonment of the proposed preference for noncommercial applicants. As both the Congress by statute and the Commission by our decisions have affirmed repeatedly: *There is an important place for public broadcasting in our society.* But the tremendous number of applications for LPTV, only 6% of which are noncommercial applicants, suggests that we cannot be sure that noncommercial licensees will occupy that place in low power television unless we award a comparative preference to noncommercial licensees. Similarly, the record before us does not persuade me that a completely open and unregulated market environment will assure diversity of programming. Specifically, programming which appeals to special or limited audiences will not survive in a commercial marketplace environment where success is largely determined by broad audience appeal.¹ The Commission recognizes this fact in preserving the comparative preference for minority low power applicants (see Footnote 62). I regret that my colleagues' desire to maximize diversity of programming for the public does not extend to awarding a preference to noncommercial applicants.

Finally, I caution the Commissioners to keep a close watch on the hearing procedures under which decisions in mutually exclusive low power cases are to be made by the Commission in the first instance. It may happen that contrary to our goal of expediting establishment of the new low power service, resolution of mutually exclusive cases by the Commission itself without the helpful assistance of an Administrative Law Judge's Initial Decision and review by the Review Board will prove to be too cumbersome and burdensome. It is possible that a total of 10,000 to 12,000 additional applications will be received. Our staff estimates that three quarters of these are likely to be mutually exclusive. Such a flood of LPTV paperwork could end up seriously impeding the other work of the Commissioners and their staffs.

Separate Statement of Commissioner Joseph R. Fogarty

In Re: Low Power Television Broadcasting—Report and Order.

This *Report and Order* begins to clear the way for Low Power Television (LPTV) to have its chance in the telecommunications marketplace. The regulatory framework established by this decision gives LPTV the

opportunity to prove its promise of enhanced program service diversity and increased minority ownership without jeopardizing the technical integrity or continued development of the full service television station system.

Because of the uncertain viability of this new and secondary LPTV service and the herculean administrative task of processing the 6,000 low power applications now pending before the Commission, this *Report and Order* wisely and appropriately prescribes a minimum of governing regulation. At the same time, however, I also believe that the tiered processing system and comparative criteria specified by this decision meet the Commission's important statutory responsibilities under Sections 307(b) and 309(e) of the Communications Act. In particular, the tiered processing standards ensure first consideration of underserved rural area LPTV applications but also guarantee that where early grant of a rural application might preclude the availability of an LPTV frequency in an urban area, those rural and urban applications will be jointly processed and reviewed. In light of the fledgling and secondary status of this new LPTV service, I am convinced that this processing system meets the command of Section 307(b) that the Commission "provide a fair, efficient, and equitable distribution" of service to each of the "several States and communities." As I emphasized in my Separate Statement on the Notice of Proposed Rulemaking in this proceeding, the statutory mandate of Section 307(b) is not a static, one-time requirement because the balance of demand for broadcast facilities and service is dynamic and changes over time.¹ While the Commission has considerable discretion in implementing the Section 307(b) requirement, it may not ignore it. We have kept faith with Section 307(b) in this *Report and Order*.

Our decision to apply the 1965 *Policy Statement on Comparative Broadcast Hearings*² to competing LPTV applications according to diversification and minority ownership criteria also adheres to the statutory requirements of Section 309(e) of the Act while providing the flexibility and expedition necessary for the effective implementation of this untested, secondary service. While difficult *ad hoc* adjudicatory issues may be presented under these two criteria, I believe that the paramount public interest in "best practicable service" will be advanced and protected by this case-by-case process.

In terms of further protecting the public interest, I am especially pleased that the Commission has decided to apply a one-year anti-trafficking rule to LPTV license grants. Together with the strict requirement that LPTV stations be constructed and go on-air within one year of grant of construction permit, this action safeguards the integrity of the diversification and minority ownership comparative criteria and provides critical assurance that only bona fide public interest applications will be prosecuted.

¹ Separate Statement of Commissioner Joseph R. Fogarty, Concurring in Part, 82 FCC 2d 82, 83-84 (1980), citing *Pasadena Broadcasting Co. v. FCC*, 555 F. 2d 1048 (D.C. Cir. 1977).

² 1 FCC 2d 393 (1965).

Low Power Television offers exciting new ownership and public service opportunities in broadcasting, as the 6,000 applications filed during the pendency of this proceeding more than amply demonstrate. This Commission is doing its part to provide the fair chance for these dreams to become reality. Candor, as well as standards of truth in advertising, compels the final observation that there are no guarantees. As former Chairman Robert E. Lee perhaps presciently observed, an LPTV authorization "isn't going to be a license to print money."³ The fair opportunity, however, is afforded. This Commission should do no less and can do no more.

Separate Statement of Commissioner Henry M. Rivera

Re: Broadcast Docket No. 78-253; Low Power Television

Today's *Report and Order* is the first concrete step toward making the low power television service available to the American public. There are several impediments to substantial near-term development of this service. Among the most prominent obstacles to the low power service are: (i) The staggering number of pending applications and the resulting continuation of the existing processing freeze; and (ii) the possibility that low power grants may even be precluded in some large markets if the Commission reallocates television spectrum for land mobile use after reviewing the staff recommendations it has requested on the subject. In this context, truth in advertising requires that the public (especially members of minority groups) be advised to temper its optimism over the low power television service at this juncture.

Despite these implementation handicaps, I firmly support the decision to launch the first new broadcast service in decades. The Commission's initiative offers a rich, if distant, opportunity to promote diversity of ownership generally and to widen opportunities for minority ownership in particular; it also may serve as a testing ground for new regulatory approaches.

Our decision to impose minimum regulatory constraints upon low power television is appropriate for a service whose viability is so uncertain, and whose stations are of limited reach and easily preemptable by full-service stations. However, the framework adopted is not without risk. The failure to impose any ownership limitations, for instance, is said to be likely to induce experienced broadcasters to provide LPTV service and to allow parties to achieve economies of scale from multiple ownership—thereby generally fostering the development of the low power service. It is also possible, on the other hand, that without restrictions on network ownership, cross-ownership or duopolies, a low power television landscape far different from that intended by the Commission will develop. I am persuaded by the *Report and Order* that the Commission does not now need to impose ownership limits but am prepared to reconsider if the absence of ownership rules

³ Concurring Statement of Commissioner Robert E. Lee, 82 FCC 2d 81 (1980).

¹ An example of this is children's television programming which today, in quality and quantity, is so well handled on public television.

seriously erodes the primary goals of the low power service.

The tiered processing system adopted to resolve the serious administrative problems caused by the ocean of pending LPTV applications is an unfortunate, but probably necessary, by-product of this proceeding. Most unfortunate is that under the scheme, LPTV authorizations in major urban centers—where ethnic and minority groups with special needs are highly concentrated—will be the last to be made. However, to its credit, the system is designed to protect urban LPTV service: it expressly defers action on all rural applications, which if granted, would foreclose a pending application to serve an urban area.

Not surprisingly, a sizeable number of applications filed by minorities are concentrated in urban markets. A processing hierarchy premised exclusively on geographic remoteness would have precluded many of these applications at the starting gate, and substantially undercut this proceeding's goals of encouraging minority ownership of broadcast facilities. The Commission's modified tier approach avoids that pitfall by according priority to underserved rural area as a general matter but preserving the interests of those proposing service in urban areas where there are competing demands to provide LPTV.

The one-year holding period preserves the dignity of the comparative process. It gives some assurance that those who were deemed comparatively superior by the Commission will indeed serve the public and forestalls the creation of a low power "CP futures market" that could vitiate the essential goals of the comparative process. Contrary to assertions in some quarters, this restriction will not force parties to operate failing LPTV stations. Waivers of the holding period are always grantable upon a proper showing by the

licensee. Moreover, if the restriction works an unintended hardship on the development of the service the Commission has the discretion to revisit the issue.

I sincerely hope that the Commission's decision to award priority to diversification of media control and minority ownership in comparative cases will go far in advancing the goals of this new service.¹

¹ In view of the severe underrepresentation of minorities in broadcast ownership, *see, e.g.*, Policy Statement on Minority Ownership of Broadcast Facilities, 68 FCC 2d 979 (1979), the decision to accord comparative priority to applicants proposing over fifty percent minority ownership in low power television licensing policies is eminently justified. That decision also follows the theme of prior agency actions designed to increase minority ownership of broadcast facilities. In the clear channel proceeding, for example, *see* Clear Channel Broadcasting in the AM Broadcast Band, 78 FCC 2d 1345 (1980), the Commission found that the public interest would be served (in awarding frequencies made available by the decision to allow limited sharing of clear channel frequencies), by giving precedence to applicants proposing a first or second local primary service, applicants with over fifty percent minority ownership and applicants proposing non-commercial operations. *See* 78 FCC 2d at 1368-70. The Commission classified as "paramount" among competing demands for spectrum the need to increase the number of minority-owned radio stations, citing the fact that just 200 of the over 8,000 radio stations were then owned by minorities. *Id.* at 1368. This decision was recently judicially affirmed. *Loyola University v. FCC*, No. 80-1824 (D.C. Cir. Jan. 26, 1982). The record regarding minority ownership of television outlets is even more discouraging, with just 16 of 1,050 licensees being minority owned, and thus, the case for awarding comparative priority in this new television service all the more compelling. *See also* Policy Statement on Minority Ownership, *supra*; Grayson Enterprises, Inc., FCC 80-175 (1980) (allowing approval of "distress sale" applications when it is shown that over fifty percent of the prospective licensee is minority-owned).

Applying these two comparative factors will surely be among the Commission's most challenging tasks. I frankly would have preferred a more precise discussion of the substantive elements of the comparative process, but on balance am satisfied to let the requisite detail emerge as we begin to process the myriad pending comparative cases.

The Commission may ultimately find that adoption of a policy statement to guide its application of the two primary comparative criteria—diversification of ownership and minority ownership—will facilitate speedier and surer resolution of comparative cases. Until that time, considerable gloss will have to be placed on these criteria in evaluating competing applications. The Commission has reconfigured its comparative licensing standards for the low power service,² and its comparative analysis will have to be reconfigured as well.³

[FR Doc. 82-13389 Filed 5-17-82; 8:45 am]

BILLING CODE 6712-01-M

² As an initial matter, the focus of the Commission's comparative inquiry has been substantially narrowed. In addition, the Commission has altered the prerequisites for comparative recognition of minority ownership in two important particulars: integration of ownership and management is no longer required, but over fifty percent ownership by minorities must now be shown. The Commission, in my judgment, has the latitude to recast its comparative analysis in this manner, and the record in this proceeding furnishes a rational basis for doing so.

³ For example, because the Commission has altered the circumstances under which it will consider minority ownership in the low power service, reference to the "merit" concept as it has evolved under *TV 9, Inc. v. FCC*, 495 F.2d 929 (D.C. Cir. 1973) and its progeny would be essentially inapposite here.