(8) Then following the San Joaquin River south and east returning to the point of beginning.

Signed: October 24, 1984.

W.T. Drake,

Acting Director.

Approved: November 15, 1984.

Edward T. Stevenson,

Deputy Assistant Secretary (Operations).

[FR Doc. 84-32007 Filed 12-6-84; 8:45 am]

BILLING CODE 4310-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

Permanent Program Amendment From the State of Iowa Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of certain amendments to the Iowa permanent regulatory program (hereinafter referred to as the Iowa program) under the provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

On May 8, 1984, Iowa submitted proposed program amendments pertaining to public notice of subsidence control, the amount and duration of performance bonds including methodology for determining bond amounts, and the deletion of the 10-acre prime farmland exemption which was inadvertently retained when the Iowa program was approved in 1981.

After providing an opportunity for public comment and conducting a thorough review of the program amendments, the Director of OSM has determined that the amendments meet the requirements of SMCRA and the Federal regulations, with the exception of the provisions discussed below. Accordingly, the Director is approving those amendments which are consistent with SMCRA and no less effective than the Federal regulations there under, and has notified Iowa, pursuant to 30 CFR 732.17, of additional program amendments which are required. Pursuant to 30 CFR 732.17(f), Iowa must respond to this notification within 60 days.

The Federal rules at 30 CFR Part 915 which codify decisions concerning the Iowa program are being amended to implement these actions.

EFFECTIVE DATE: December 7, 1984.

ADDRESSES: Copies of the Iowa program and the Administrative Record on the Iowa program are available for public inspection and copying during business hours at:

Office of Surface Mining, Kansas City Field Office, Professional Building, 1103 Grand Avenue, Kansas City, Missouri 64106; Telephone: (816) 374–3920.

Office of Surface Mining, Administrative Record, Room 5124, 1100 "L" Street, NW., Washington, D.C. 20240; Telephone: (202) 343–7896.

Iowa Department of Soil Conservation, Mines and Minerals Division, Wallace State Office Building, Des Moines, Iowa 50319; Telephone: (515) 281–5851.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Rieke, Field Office Director, Kansas City Field Office, Office of Surface Mining, Professional Building, 1103 Grand Avenue, Kansas City, Missouri 64106; Telephone: (816) 374–3920.

SUPPLEMENTARY INFORMATION:

I. Background

The Iowa program was conditionally approved by the Secretary of the Interior on January 21, 1981 (46 FR 5885). The approval was made effective April 10, 1981. Information pertinent to the general backgound, revisions, modifications, and amendments to the Iowa program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Iowa program can be found in the January 21, 1981 **Federal Register.**

II. Submission of Amendments

By letters dated May 9, 1984, Iowa submitted proposed program amendments consisting of:

(1) An amendment to Iowa subrule 4.523(63), subsidence control; public notice, to adopt by reference 30 CFR 817.122, as promulgated June 1, 1983. The rule concerns notice to surface owners of underground mining activities and would give underground mine operators some flexibility in providing notice;

(2) An amendment to Iowa subrules 4.41(1), 4.42, 4.322(3), and 4.332(3), to provide revised provisions on the amount and duration of performance bonds including a methodology for determining bond amounts; and

(3) An amendment to Iowa subrule 4.322(14) to delete the 10-acre prime farmland exemption which was inadvertently retained when the Iowa program was approved in 1981.

On June 8, 1984, OSM published a notice in the **Federal Register** announcing receipt of the Iowa amendment and inviting public comment on whether the proposed amendment was no less effective than the Federal regulations (49 FR 23872–23873). The public comment period ended July 9, 1984. An opportunity to request a public hearing was provided, but none was requested.

During review of the amendments, OSM identified two concerns:

(1) Iowa's proposed methodology for determining bond amounts does not explicity demonstrate that it represents a good approximation of actual reclamation costs; and

(2) Iowa's proposed maximum bond amount of $10,000 per acre might not be sufficient to assure completion of reclamation in the event of bond forfeiture.

OSM notified Iowa about these concerns by letter dated July 24, 1984, and Iowa responded by submitting clarifying information on August 30, 1984. The clarifying information identified the reasons why the specific methodology was chosen for Iowa and explained why the maximum bond amount will be sufficient.

On September 27, 1984, OSM reopened and extended the comment period for 15 days to solicit public comment on Iowa's clarifying information (49 FR 38150). The comment period closed on October 15, 1984, and no comments were received.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17, that the amendments submitted by Iowa on May 9, 1984, meet the requirements of SMCRA and the Federal regulations with the exception of the provisions discussed below. Only those provisions of particular concern are discussed in the specific findings which follow. Unless specifically stated, the Director approves the revisions to the Iowa subrules. Discussion of only those provisions for which specific findings are made does not imply any deficiency in any provision not discussed. The provisions not specifically discussed are found to be consistent with SMCRA and no less effective than the Federal regulations. All of the provisions involved in the amendment are cited at the end of this notice in the amendatory language in new sections 30 CFR 915.15 and 30 CFR 915.16.

Subrule 4.523(63), subsidence control; public notice

Iowa is adopting by reference 30 CFR 817.122 as promulgated June 1, 1983. The rule concerns notice to surface owners

of underground mining activities and would give underground mine operators some flexibility in providing notice. The Director finds this provision is no less effective than the Federal regulations.

Subrule 4.322(14), prime farmland exemption

Subrule 4.322(14) is amended to delete the 10-acre prime farmland exemption which was inadvertently retained when the Iowa program was approved in 1981. The Director finds that this provision is consistent with the Federal regulations at 30 CFR 785.17 which do not allow an exemption from prime farmland standards for areas of less than 10-acres.

Subrules 4.41(1), 4.42, 4.322(3) and 4.332(3) bonding

Subrules 4.41(1), 4.42, 4.322(3) and 4.332(3) are inconsistent with Federal standards. The Iowa amendments proposed a methodology for determination of bond amounts and established minimum and maximum bond amounts for different types of permitted sites.

Iowa's proposed methodology for determining bond amounts may be an innovative and administratively practicable method of calculating bond amounts. However, the Federal rules at 30 CFR 800.14 require that the bond amount be sufficient to assure completion of the reclamation plan if the work has to be performed by the regulatory authority in the event of forfeiture. Although Iowa subrule 4.42(2) similarly requires the bond to be sufficient to assure completion of reclamation, the proposed methodology, Iowa subrule 4.41(1), does not demonstrate that it represents a good approximation of actual reclamation costs. Iowa's clarifying information was insufficient to answer OSM's concerns.

Iowa's methodology does not consider the cost of several reclamation activities that OSM has found to be major cost generators in reclamation. These activities include final cut backfilling and grading, structure removal, and revegetation activities such as seeding. Iowa's additional information did not provide OSM with actual costs for reclamation compared to the amount of bond on similar sites calculated with Iowa's methodology. OSM is not convinced that this method of determining bond amounts will provide adequate funds in the event of bond forfeiture and third-party reclamation. Because these amendments will not assure adequate bond amounts in the event of bond forfeiture, the Director finds that these amendments are less effective than the Federal regulations at 30 CFR 800.14. Therefore, the Director is requiring a program amendment that will base bond amount determinations on the actual cost of reclamation activities if they had to be carried out by a third-party.

Proposed subrule 4.42(2) provides for a maximum bond amount of $10,000 per acre. The Federal regulations contain no maximum bond amount because the bond must reflect the actual cost of reclamation. At OSM's request, Iowa provided additional rationale for selecting the $10,000 per acre amount. The additional information does not support a maximum per acre bond of $10,000.

Iowa cited Indiana data on abandoned mine land reclamation. On 15 acres of a total of 349 acres, Indiana expended $10,148 per acre. This over-run is covered under the Indiana program's bonding pool scheme. Iowa does not have a similar scheme. The data above indicate that a maximum bond amount of $10,000 per acre will not be adequate to cover the cost of reclamation if a third-party must complete it. Because reclamation costs may exceed the $10,000 per acre maximum bond amount, the Director finds these amendments to be less effective than the Federal regulations. Therefore, the Director is requiring a program amendment to remove the maximum bond amount per acre.

IV. Public Comments

No public comments were received on the proposed subrules.

V. Director's Decision

The Director, based on the above findings, is approving the Iowa subrules on subsidence notification and special permit requirements for prime farmland submitted as amendments to the approved Iowa program. As indicated above, there are a number of provisions which are inconsistent with SMCRA and less effective than the Federal regulations. By separate letter, the Director has notified Iowa, pursuant to 30 CFR 732.17(d), that certain required program amendments will be necessary. The State must reply within 60 days after notification by submitting either the text of a proposed amendment or a description of an amendment to be proposed and a timetable for enactment which is consistent with established administrative procedures in the State. The Federal rules at 30 CFR Part 915 are being amended to implement this decision.

VI. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared for this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSM is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather it will ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 915

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR Part 915 is amended as set forth herein.

Dated: November 26, 1984.

John D. Ward,

Director, Office of Surface Mining.

PART 915—IOWA

30 CFR Part 915 is amended by adding a new § 915.15 as follows:

§ 915.15 Approval of regulatory program amendments.

(a) The following amendments are approved effective December 7, 1984: Iowa subrules 4.523(63) and 4.322(14), pertaining to subsidence control; public notice and prime farmland, respectively submitted May 9, 1984.

(b) [Reserved]

30 CFR Part 915 is amended by adding a new paragraph (b) to § 915.16 as follows:

§ 915.16 Required program amendments.

* * * * *

(b) Pursuant to 30 CFR 732.17(d), Iowa is required to submit either the text for the following program amendment or a description of an amendment to be

proposed and a timetable for enactment which is consistent with established administrative procedures in the State by February 5, 1985.

Amend its program to establish criteria for determining bond amounts that will assure third-party reclamation in the event of bond forfeiture and deleting the existing provisions for a maximum bond amount per acre that may be inadequate to assure third-party reclamation in the event of a forfeiture as required by 30 CFR Part 800.

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

[FR Doc. 84–31735 Filed 12–6–84; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Docket No. AM046MD; A–3–FRL–2732–7]

Approval of a Revision to the Maryland State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today EPA is announcing final approval of a revision to the Maryland State Implementation Plan (SIP). This revision, which was originally submitted to EPA on July 12, 1983, consists of a Plan for Compliance (PFC) for the J.L. Clark Manufacturing Company (the Company) in Havre De Grace, Maryland. The PFC ensures that the Company will come into compliance with Maryland's volatile organic compound (VOC) and visible emission (VE) regulations (COMAR 10.18.21.13B and 10.18.06.02.B).

Compliance is to be achieved by replacing coatings which now have a higher than allowable VOC content with compliance coatings. If replacement coatings cannot be developed by May 30, 1985, the Company will submit an alternative compliance plan. This plan, if accepted by the State, will be based on the alternative method of assessing compliance provided by COMAR 10.18.21.02C and will ensure compliance by October 1, 1985. If this plan is unacceptable, the Company must submit by July 1, 1985 a plan for the installation of control equipment, which will ensure compliance by March 1, 1986.

EFFECTIVE DATE: This action is effective December 7, 1984.

ADDRESSES: Copies of the revision and accompanying support documents are available for inspection during normal business hours at the following offices:

U.S. Environmental Protection Agency, Region III, Air Management Division (3AM00), Curtis Building, Sixth & Walnut Streets, Philadelphia, PA 19106, Attn: James B. Topsale, P.E.

Maryland Department of Health & Mental Hygiene, Air Management Administration, 201 W. Preston Street, Baltimore, Maryland 21201, Attn: George P. Ferreri

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 201 "M" Street, SW., (Waterside Mall), Washington, D.C. 20460

The Office of the Federal Register, 1100 L Street, NW., Room 804, Washington, D.C. 20408

FOR FURTHER INFORMATION CONTACT: Mr. James Topsale, P.E. or Mr. Paul Racette at the Region III address stated above or telephone (215) 597–4553 or (215) 597–2746.

SUPPLEMENTARY INFORMATION: On July 12, 1983 the State of Maryland submitted a revision to the State Implementation Plan (SIP) in the form of a Plan for Compliance (PFC) for the J.L. Clark Manufacturing Company in Havre De Grace, Maryland.

The Company is a manufacturer of decorated metal containers and sheets. The coating operations at the Company are subject to the provisions of Sections 10.18.06.02B and 10.18.21.13B of the State of Maryland's Code of Maryland Regulations (COMAR). These regulations govern miscellaneous coating operations and visible emissions.

EPA proposed approval of this revision in a Notice appearing in the **Federal Register** (FR 25251) on June 20, 1984. No comments were received on the proposed Rulemaking for the subject SIP revision.

The revision assures that the Company is placed on a reasonable schedule for achieving compliance with the State of Maryland's VOC and VE regulations. The Company is located in the Metropolitan Baltimore Intrastate Air Quality Control Region (AQCR), which is a nonattainment area for ozone (O_3). Companies in this O_3 nonattainment area must achieve compliance with Maryland's VOC regulations on or before 1987 in order to assure that the National Ambient Air Quality Standard (NAAQS) for O_3 is met in the AQCR as expeditiously as possible, but no later than the 1987 attainment deadline.

The Company plans to achieve compliance by developing low solvent coating technology. Should this technology fail to achieve compliance, provisions for installing control equipment are included in the PFC. The complete details of this PFC are discussed in the June 20, 1984 **Federal Register** Notice.

EPA Evaluation

Based on our review of the PFC, EPA is today announcing final approval of the PFC as a SIP revision. This approval is based in part on the State's demonstration that Reasonable Further Progress (RFP) in attaining the ozone NAAQS will not be significantly affected by the plan, and on evidence that the plan will achieve compliance as expeditiously as possible. The State has determined that the Company will achieve incremental reductions in VOC emissions over a seven year period. Total VOC emissions of 93.9 tons a year in 1979 will be reduced to 41.0 tons a year by 1986.

Conclusion

This SIP revision meets the requirements of section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under 5 U.S.C. section 605(b), I have certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709)

Under section 307(b)(1) of the Act petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2))

Note.—Incorporation by reference of the State Implementation Plan for the State of Maryland was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Cabon monoxide, Hydrocarbons.

(42 U.S.C. 7401–642)

Dated: December 3, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Part 52 of Title 40, Code of Federal Regulations, is amended as follows:

Subpart V—Maryland

1. In § 52.1070, Identification of Plan, is amended by adding paragraph (c)(73) as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(73) A revision submitted by the State of Maryland on July 12, 1983, consisting of a plan for Compliance for the J.L. Clark Manufacturing Company in Havre De Grace.

[FR Doc. 84-31962 Filed 12-6-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 83-1350; FCC 84-492]

Low Power Television and Television Translator Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's rules to provide for a window period for filing new and major change low power television and television translator applications. The requirement for low power television and television translator applicants to submit a financial showing or certification is eliminated, although such applicants must now certify that they have reasonable assurance of site availability. The action is necessary to simplify and expedite the processing of low power television and television translator applications.

DATES: Rule changes will become effective on December 26, 1984; FCC Form changes will become effective upon approval by the Office of Management and Budget and notice thereof will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Larry A. Miller, Mass Media Bureau (202) 632-3894.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 73

Television broadcasting.

47 CFR Part 74

Low power television, Television translators, Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of Low Power Television and Television Translator Service (MM Docket No. 83-1350).

Adopted: October 17, 1984.
Released: November 19, 1984.

By the Commission: Commissioner Quello absent; Commissioner Dawson dissenting in part and issuing a statement at a later date; Commissioner Rivera concurring and issuing a statement.

I. Introduction

1. In this proceeding the Commission is adopting further procedures to streamline and expedite the processing of low power television and television translator applications.[1] The *Notice of Proposed Rule Making* (*"Notice"*), 49 Fed. Reg. 908, released December 23, 1983, proposed three changes in the processing procedures for low power television and television translator applications. The proposals included: (1) Modification of the cut-off rules to provide for a "window" or date certain for filing applications; (2) elimination of the requirement of filing financial information or certification with applications; and (3) the designation of television translator or certain types of television translators as a priority or separate class of service for processing purposes.

2. The Commission is adopting the first two proposals; i.e., to use a series of windows for filing applications and to eliminate the requirement to file any financial information or certification. The new window filing procedure will also apply to applications now properly on file but not cut-off or linked to a cut-off application, in the manner discussed in paragraph 5, *infra*. The changes in the financial requirements will apply retroactively to all pending as well as new applicants. However, for reasons that are more fully detailed herein, the Commission will not separate the processing of television translator applications from low power television applications nor will it afford a priority to television translator applications over low power television applications.

3. A wide variety of comments were received in this proceeding from full-service television station licensees, television translator licensees and applicants, trade associations, educational institutions, low power television applicants and individuals. There was general support for the first two proposals. However, comments on the translator priority proposal were more diverse. Full-service television station licensees generally advocated priorities for fill-in translators:[2] educators generally advocated priorities for noncommercial translators; television translator licensees generally advocated priorities for all television translator applications; and low power television applicants opposed any priority for translators. All comments and reply comments were given careful consideration.[3]

II. Modification of Cut-Off Rules

4. Under the current procedure used by the Commission, applications for low power television and television translator stations which have been found acceptable for filing are placed on an A cut-off list. This Public Notice invites competing applications until a specified cut-off date approximately thirty days later. Due to various factors, including the significant reduction and simplification of the information required in applications and the freeze on the filing of new low power television and television translator applications, almost all applications appearing on recent cut-off lists have generated numerous competing applications. The March 8, 1984, cut-off list, which contained approximately 3,400 applications, generated approximately 25,000 competing applications. This processing procedure entails administrative delay which has impeded the implementation of the low power television service and the expansion of the television translator service. Use of the cut-off lists requires double processing of all applications placed on cut-off lists. First, an application must be processed to determine whether it meets the Commission's technical requirements and whether it will cause interference to licensed or pending but cut-off facilities. If an application passes this initial evaluation, it is then placed on a cut-off list. After the cut-off date, the application must be processed again to determine whether any competing applications were filed by the cut-off date, in order to identify all mutually exclusive applications for lottery. This redundant processing is an inefficient use of the Commission's limited resources.

5. The Commission herein is adopting modified rules which eliminate the use of cut-off lists for the processing of low power television and television

[1] The modified rules are contained in Appendix A.

[2] Fill-in translators are used to provide service to areas within the city grade, Grade A or Grade B contours of a full-service television station, that do not receive adequate service due to terrain shielding.

[3] The comments and reply comments are summarized in Appendix B.

translator applications. As proposed in the *Notice*, filing windows will open no less than thirty days after Public Notice of the window is given by the Commission. The Public Notice will specify how long the filing window will remain open, generally five work days.[4] Windows will be opened as frequently as possible in order to provide various opportunities for filing applications, but consistent with the Commission's need to maintain an orderly processing procedure and our desire to use our resources efficiently. Applications filed during a window will be made available for public inspection after they have been entered into the Broadcast Application Processing data base. Applications filed during a window, which are found acceptable, will be either placed on a proposed grant list pursuant to § 73.3572(f)(4) of the Commission's Rules or grouped for a lottery with other mutually exclusive applications filed during that window and placed on a lottery public notice pursuant to §73.3572(f)(2) of the Commission's Rules. In order to expedite the processing of properly filed pending applications that have been cut-off, such applications will be cut-off on the last day of the first national window filing period. Applicants that intend to file competing applications against these properly filed pending applications that have not been cut-off and are not linked to any cut-off applications, may file during the appropriate window filing period. Although a list of these applications will not be issued by the Commission, they may be identified by reference to the Commission's engineering data base.

6. Filing windows will expedite the processing of applications and will help to reduce the processing delays encountered by both television translator and low power television applicants. Use of filing windows for low power television and television translator applications will do much to eliminate the practice of one applicant copying another applicant's information and submitting it as its own. Filing windows should also eliminate the deliberate creation mutually exclusive situations by over-filing on applications as they appear on cut-off lists. Over-filing has been a source of frustration to applicants who have diligently prepared an application and waited years only to have numerous competing applications filed on the cut-off date. Filing windows will provide an equal opportunity to all potential applicants to file new applications and will not disadvantage the first-filed application as sometimes occurred in the past. In addition, because of the contour overlap rules used to determine interference for low power television and television translator applications, unique and complex linkage situations often develop. Hundreds of applications may be linked together because of potential interference as defined by the Commission's Rules. This extensive linkage is extended by the doctrine of *Kitty Hawk Broadcasting*, 7 FCC 2d 153 (1967), which holds that an applicant must file by a cut-off date even though not mutually exclusive with an applicant on the cut-off list or risk being precluded due to the filing of an intervening application that links the applicant to the cut-off list. Thus, extensive linkage coupled with the holding of *Kitty Hawk Broadcasting* dictates that prudent applicants file on virtually every cut-off list in order to avoid being precluded from filing by other adjacent applications to which they are linked.

7. We have found no legal impediment to the use of filing windows either in legislative provisions or in judicial decisions. Neither section 309(b) of the Communications Act of 1934, as amended, nor *Ashbacker* v. *FCC*, 326 U.S. 327 (1945), requires the Commission to use cut-off lists in processing applications. Section 309(b) requires the Commission to give public notice of the acceptance for filing of an application 30 days prior to its grant. This requirement will remain. Moreover, the Supreme Court in *Ashbacker* v. *FCC*, 326 U.S. at 333, n. 9., recognized that the Commission could establish dates for the filing of conflicting applications. *See also Radio Athens, Inc.*, v. *FCC*, 401 F.2d 398 (D.C. Cir. 1968). In *Century Broadcasting Corp.* v. *FCC*, 310 F.2d 864 (D.C. Cir. 1962), the flexibility of the Commission in fashioning procedural "housekeeping" rules was recognized. While the courts have traditionally required the Commission's cut-off dates to "fairly advise prospective applicants of what is being cut-off by the notice," *Ridge Radio Corp.* v. *FCC*, 292 F.2d 770, 773 (D.C. Cir. 1961), the filing windows being adopted herein meet this requirement. Prospective applicants will be notified by a general Public Notice that they must file their application during the specified filing period in order to receive consideration along with any other mutually exclusive applications filed during the same filing period.

8. Certain parties have commented that use of filing windows will engender a land rush mentality and stimulate the filing of applications by parties with no plans to use the channels for which they have applied. However, once the remaining Tier II and III locations are opened for filing, we anticipate massive filings for available channels regardless of whether cut-off procedures or filing windows are used. It has been argued that cut-off lists have been used by some over-filers to target other applicants that might be willing to buy them out. If this is so, without cut-off lists these frequency speculators will be less inclined to file applications since there will be no readily apparent party with whom to negotiate a settlement or to whom a construction permit may later be sold.

9. Comments were requested on appropriate groupings for given window periods. Of the responsive comments, none presented viable plans for dealing with the prejudice to adjacent groups due to daisy chain effects [5] which would result from any given grouping. In certain areas such as Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands, physical distance may allow for separate windows. However, except in isolated situations where it is apparent that no prejudice will occur to adjacent areas, we will open the filing windows for all available channels throughout all of the country. This procedure will allow many applications in rural areas to be processed expeditiously since they may generally be unopposed. Television translator organizations will be able to apply for the channels which they need to provide service without the fear of inviting competing applications when they appear on a cut-off list. In addition, the filing window can be used by existing stations to file major change amendments. We feel that this approach will do much to eliminate the delay and over-filings that television translator and low power television applicants have faced since the implementation of the low power television service. In addition, we will continue our policy of expediting the processing of applications which are not mutually exclusive.

[4] The Commission intends to retain some discretion as to the timing of the windows and the periods they will be open. This discretion is necessary in order to respond to changing circumstances in the processing of low power television and television translator applications.

[5] Because of the contour overlap interference criteria used for low power television and television translator applications, daisy chains of mutually exclusive applications may extend for hundreds of miles. Daisy chains occur when an application is mutually exclusive, i.e., would cause interference, with an application in an adjacent community, which is mutually exclusive with an application in another adjacent community, and so on.

III. Financial Information

10. For the reasons stated in the *Notice* and for the reasons stated herein, the requirement that an applicant for a low power television or television translator authorization file any information or certification concerning its financial qualifications is being eliminated. Thus, completion of Section III, Financial Qualifications, on FCC Form 346 will no longer be required of low power television and television translator applicants. Because a strict one-year construction period is applied to low power television and television translator authorizations, a mechanism for post-lottery enforcement is in place that will provide for termination of authorizations won without appropriate financial backing. Moreover, since compliance will now be monitored post-lottery, it is in the public interest to have the changes apply retroactively to all pending as well as new applicants.

11. We believe that, in compliance with the statutory mandate of the Communications Act of 1934, as amended, the Commission may refrain from soliciting financial information from an applicant. Pursuant to section 308(b) "all applications for station licenses . . . shall set forth such facts as the Commission by regulation *may* prescribe as to citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station . . . ." 47 U.S.C. 308(b) (1981). (Emphasis added.) The United States Court of Appeals for the District of Columbia has confirmed that the Commission's inquiry into the financial qualifications of its applicants is discretionary.

Also, the provisions of 47 U.S.C. 308(b) authorizing consideration of factors of 'citizenship, character and financial, technical and other qualifications' is not violated because it does not require scrutiny of an applicant's financial fitness. That section leaves it within the discretion of the Commission to decide which facts relating to such factors it wishes to have set forth in applications. Since this leaves the Commission free to have no facts set forth on any of these matters, if it finds such action appropriate, it follows necessarily that the Commission is not required to consider financial fitness if it deems it irrelevant to its regulatory scheme. [*National Association of Regulatory Utility Commissioners* v. *FCC*, 525 F.2d 630, 645 (D.C. Cir. 1976).]

12. We further believe that in the case of low power television and television translator service we no longer need information on the financial qualifications of an applicant, or even a financial certification from an applicant, in order to make the public interest determination whether to grant an application as required by Section 309(a) of the Communications Act of 1934, as amended. 47 U.S.C. 309(a) (1981). Thus, we believe that we can discharge our statutory obligation with a simplified low power television and television translator application form which does not elicit information or a certification on the financial qualifications of an applicant.

IV. Separation and Priority for Television Translators

13. The Commission also requested comments on various alternative proposals to designate television translators as a priority or separate class of service for processing purposes with low power television secondary to it. Since television translator and low power television stations share the same frequencies, and since on a technical basis the operation of the stations is nearly equivalent, they are now processed together.

14. Since the establishment of the low power television service the Commission has attempted to balance two principal goals for the provision of television service. One of these goals is to recognize the contribution that the traditional translator has played in providing television service to areas where direct reception of full-service television stations is hindered by distance or intervening terrain barriers. To promote this goal, we have avoided rules that would make translator service more difficult to provide, especially in isolated rural areas where the need for television service is greatest. A second goal is to provide maximum flexibility for new originating services to come into being, easily and at low cost, and to provide for expansion of existing translator service. *Notice of Proposed Rule Making in Docket 78–253*, 82 FCC 2d 47 (1980) at paragraph 6. Such flexibility allows low power television stations to develop programming tailored to the needs and interests of the local community.

15. The Commission's attempts to balance these sometimes competing goals have included various actions. The Commission first attempted to initiate low power television service while at the same time protecting television translator service by accepting television translator applications with waiver requests to originate programming, under interim processing procedures established in 1980. *Interim Processing Procedures*, 48 RR 2d 291 (1980). These interim processing rules were designed to allow the continued processing of television translator applications while at the same time accepting new low power television applications for filing. It was believed that a total freeze on the acceptance and processing of television translator applications would not be in the public interest. At the same time, processing of only television translator applications during the interim period, when the low power television rule making was pending, would have seriously prejudiced the ability of low power television applicants to compete for available channels upon approval of the service.

16. During the interim period, the overwhelming demand for low power television stations was manifested in the thousands of low power television applications received by the Commission. The large number of applications threatened the ability of the staff to provide orderly and expeditious processing. Therefore, a series of partial and eventually total freezes was implemented in order to reduce the flow of applications to manageable levels. The partial freezes were designed to allow low power television and television translator applications to be filed first in the most rural and underserved areas. This design facilitated the two goals by allowing the continued filing of television translator applications in the areas traditionally served by translators and also allowing for the filing of low power television applications. Although the "total" freeze on new and major change applications which has been in effect since September 15, 1983, has been disruptive to the plans of some potential applicants, it has allowed the Commission to implement the lottery mechanism and make strides in processing both television translator and low power television applications.[6]

17. We have determined, based on our experience and the comments received in this rule making, that the public interest will best be served by the expeditious processing of all applications and not by choosing one group of applicants to favor over another. We have not been persuaded that expedited processing of television translator applications must come at the expense of providing maximum flexibility for existing television translator stations that want to switch to low power television status and new low power television stations, that can

[6] Under the current freeze only applications submitted in response to cut-off lists, or for television translator stations bumped from channels 70 through 83 due to land mobile radio use, may be filed. As noted above, the Commission has received more than 30,000 low power television and television translator applications in response to cut-off lists.

provide a local programming outlet beyond the capability of a television translator. Thus, we will continue to balance these two goals by seeking to accommodate both television translator and low power television applicants.

18. Under the Commission's rules a low power television station may operate as a television translator, rebroadcasting the programming of a full-service television station.[7] Thus, any attempt to give a processing priority to television translators should take into consideration all the low power television applicants that propose to operate as television translators. A provision would have to be made for giving the same priority to these low power television applicants. New restrictions on programming changes for low power television and television translator stations would be necessary to maintain the integrity of this television translator priority. Significantly, restrictions on switching from television translator to low power television status would unduly penalize television translators that desire to do small amounts of local origination programming. The low power television service was initially designed to allow existing translators to provide some local origination programming. This flexibility is still a valid goal and should not be restricted. Since low power television licensees may operate as translators and also originate programming, hybrid systems have become a popular method of operation. Low power television stations are operating as translators for a good part of the time, with the institution of some local origination programming as appropriate for a particular area. Despite the fact that low power television stations are commonly thought of as stations that engage in continuous program origination, many communities, particularly the smaller ones, lack the resources to sustain such a station. However, some of these communities may desire local programming on a limited scale. Local news, sports events and public affairs programs are now carried on an occasional basis by low power television stations that were previously strictly limited to rebroadcasting by the Commission's television translator rules. The elimination of this flexibility, which would be required by priority processing, would be destructive to the further development of these hybrid stations. In addition, relaxation of the origination requirements has permitted former exclusively translator operations to convert to low power television and to establish an economic base in a particular community by selling advertising time. The income so generated is used to finance the translator portion of the operation. Thus, the priority now proposed for translators may be short sighted. Low power television as a broadcast service is in its infancy and should be given an opportunity to develop without further restrictions.

19. In any event, the primary complaint of those parties advocating a priority for television translators is that processing in combination with low power television applications has caused delays in the granting of television translator applications. The rule changes being adopted herein, particularly the use of window filing periods, will substantially reduce the processing time for television translator applications without providing a specific priority for such applications. The use of windows will eliminate the practice of over-filing competing applications on television translator applications. With fewer mutually exclusive situations, the applications which are filed may be processed more expeditiously. Therefore, we believe that expeditious action on television translator applications may be provided without the need to designate television translator applications as a priority.

20. For the most part, the commenting parties have focused on programming related arguments. The parties have attempted to show that television translator stations are entitled to a preference because they rebroadcast the signal of a full-service television station, which has more stringent programming requirements than low power television stations. It is argued that full-service television programming guidelines will insure that the signals rebroadcast by television translators will be superior to low power television programming. However, on June 27, 1984, the Commission adopted *Deregulation of Commercial Television*, 56 RR 2d 1005 (1984), eliminating formal programming guidelines for full-service commercial television stations. In addition, the television translator station will not be able to respond to local community needs unless the primary station, which the translator is rebroadcasting, determines that it will respond to the needs of the translator community.[8] Since the primary station is often located a considerable distance from the translator station, and since a primary station may be carried on many translator stations in many diverse communities, it is impossible to determine that the needs and interests in all of the translator communities will be adequately served by the one primary station.

21. Most importantly, since low power television stations are authorized to do local program origination while television translators can only rebroadcast the signal of a full-service television station, there is a much greater probability that low power television stations will establish a local presence, *e.g.*, a local studio, and be more responsive to community needs and interests. In view of the foregoing, we find no basis for determining that television translator applications are entitled to a preference over low power television applications based on claims of superior programming.

22. It has also been suggested that a priority be afforded to television translators carrying various types of primary stations providing network programming, independent programming, and public television or noncommercial programming. Certain parties suggest that each community should be served by the three television networks, two independent stations and public television before low power television applications are accepted. However, support of a priority system based on a preference for certain types of programming runs counter to past Commission decisions. For example, in the reconsideration of the *Low Power Television Report and Order*, 53 RR 2d 1267 (1983) ("*Reconsideration*"), the Commission stated:

> [T]here is no basis for preferring Neighborhood's programming proposals over any others. The *Report and Order* imposed a minimum of program content regulations on low power television stations so that they may be responsive to marketplace conditions. *Report and Order*, at 21490. Since we favor no particular programming, we cannot favor Neighborhood's plan over other proposals. [*Reconsideration*, 53 RR 2d at 1277.]

Just as it was not appropriate to take certain programming proposals into consideration in the *Reconsideration* it

[7] The basic distinction between low power television and television translator stations is that television translators are limited to rebroadcasting the signals of full-service television stations and cannot do more than 30 seconds of local origination programming per hour. Low power television stations may carry any type of broadcast programming and do any amount of local origination programming.

[8] Some of the commenting parties are UHF licensees that transmit subscription programming for a significant portion of their broadcast time. Under these licensees' proposal, television translators carrying this subscription programming would be entitled to the same processing priority as any other television translator carrying non-subscription programming.

would also not be appropriate now to grant priorities to translator applications based on programming proposals. By affording a priority to translators the Commission would, in effect, be stating that the rebroadcast of programming by a translator should be preferred over the local origination outlet of a low power television station. We believe that this decision is more appropriately made in the marketplace and not by the Commission.

23. In addition to the above, there are procedural difficulties in providing for a priority for television translators. If television translator applications were now given a processing priority, applicants for low power television stations might file for television translators in order to secure the priority.[9] This would only exacerbate processing delays. Even if the Commission made the change from television translator to low power television service a major change, it may not be sufficient to deter mass filings of applications for television translator service. Since, as suggested in the comments, speculative filers often have no intention to utilizing the channels for which they apply, a limitation on the use of the channel would not be an effective deterrent. The speculator still would have various options including: (1) Being paid to dismiss its application by a legitimate translator applicant; (2) selling its authorization to a legitimate translator operator; and (3) retaining its authorization on the channel anticipating that the Commission will again change its rules. Proposals such as requiring a television translator applicant to submit written authority to rebroadcast the proposed primary station signal or requiring a television translator station to operate as a translator for a fixed number of years, also would not appear to solve the processing delays.

24. Designating certain classes of television translator applicants as a priority for processing purposes presents even more problems. Various commenters have suggested providing an absolute priority for translator applications to fill in the City Grade, Grade A or Grade B contour of full-service television stations. However, the Commission would be required to develop standards for determining whether certain areas within a specified contour of a full-service station were in fact not served. These technical quantification standards would be difficult, if not impossible, to develop and administer. Such priorities would require manual staff processing of applications and consideration of terrain shielding, which the Commission has previously rejected. No commenters advocating a translator priority addressed these difficult problems. Additionally, no comments were filed as to how to deal with the equally difficult situation where the unserved area is on the edge of the primary station's specified contour, and the priority translator is used to extend coverage rather than fill in unserved areas. Most commenters also advocated use of a full-service station's Grade B contour as the relevant coverage area. Under the proposed procedure a full-service television station would be entitled to an absolute preference for a television translator station that would serve any unserved area within the station's Grade B contour even if the television translator significantly extended the full-service station's signal into areas outside the Grade B contour and even if it extended the coverage of the full-service station into totally new communities. Full-service television stations might find some areas within their Grade B contours that would qualify for a television translator priority, but that would be used primarily to extend coverage into new areas. Grants of such applications would, of course, preclude the filing of conflicting low power television applications in those areas.

25. The arguments of the various educational institutions, and noncommercial broadcasters echo the previous claims of the National Association of Public Television Stations ("NAPTS") in its Petition for Further Reconsideration of the *Low Power Television Report and Order*, 51 RR 2d 476 (1982), and *Reconsideration*, 53 RR 2d 1267 (1983). The Commission, in its *Memorandum Opinion and Order*, FCC 83-486 (released October 27, 1983), considered the argument that elimination of the priority previously accorded television translator rebroadcasts of noncommercial programming seriously impairs the ability of noncommercial television to extend its services to remote areas of the country. Noncommercial broadcasters previously had an absolute priority for television translators on channels reserved for full-service noncommercial applicants in the Commission's table of television assignments. The Commission's rationale for eliminating the former noncommercial translator priority applies with equal vigor to the present proposal to give a priority to noncommercial applicants on all translator channels. We are not persuaded that there is an immediate risk of spectrum shortages which will curtail expansion of public television service to remote and unserved areas of the country. We also would note that numerous low power television applicants have proposed noncommercial service. Moreover, as explained in paragraph 6, the use of filing windows should also reduce processing delays and mutally exclusive situations for noncommericial translator applicants.

26. After giving careful consideration to the various proposals for affording television translator applicants a processing priority over low power television applicants, we have reached the conclusion that the public interest will be served by maintaining our present balance between the goals of maintaining television translator service and encouraging new low power television service. Adoption of television translator priorities would require the formulation of new regulatory restrictions that would severely impair the present flexibility for providing originating services. The ability of licensees, including television translator licensees, to respond to marketplace conditions would be significantly curtailed. Finally, implementation of the low power television service would be substantially delayed.

V. Terrain Shielding and Site Availability

27. The *Notice* invited comments on any other procedures that would effectively expedite consideration of low power television and television translator applications. The most frequently proposed procedural change was for the Commission to take into consideration terrain shielding when calculating anticipated interference. It was contended that consideration of terrain shielding would eliminate many situations of apparent mutual exclusivity. Many commenters argued that the Commission's policy does not fully take into account all terrain factors and has inhibited the development of television translator and low power television service in many mountainous areas of the country. It was contended that processing applications without consideration of terrain shielding causes an inefficient use of radio spectrum since it precludes the use of many channels in locations where the Commission's theoretical analysis indicates interference would occur. Although we are sympathetic to the

[9] Currently a television translator station may change to a low power television station by filing a letter of notification with the Commission.

concerns of the commenting parties, we will not make the procedural changes requested. As stated in the *LPTV Report and Order* and *Reconsideration*, there is no universally accepted method of predicting the effects of terrain shielding. Moreover, it is far beyond our staff capacity to evaluate individually thousands of terrain shielding claims. We continue to believe that for Commission to become embroiled in terrain shielding disputes at this time would frustrate our efforts to expedite grants of television translator and low power television applications. However, when the flow of applications diminishes it may be appropriate to reconsider the terrain shielding issue.

28. Another proposal which was made by many commenting parties is to require that some evidence of site availability be submitted with all applications for low power television and television translator service. It was suggested that the requirement to file some evidence of site availability would limit the number of frivolous applications filed with the Commission. Some commenters suggested that applicants be required to submit written authorization from the site owner evidencing a willingness to make the site available. Other commenters suggested that an applicant be required to certify that it has contacted the site owner and has obtained reasonable assurance of the site availability.

29. The Commission has held that although an applicant need not have a binding agreement or absolute assurance of a proposed site, an applicant must show it has obtained reasonable assurance that its proposed site is available. Some indication by the property owner that he is favorably disposed toward making an arrangement is necessary. A mere possibility that the site will be available will not suffice. *William F. Wallace and Anne K. Wallace*, 49 FCC 2d 1424 (Rev. Bd. 1974). The specification of a site is an implied representation that an applicant has obtained reasonable assurance that the site will be available. A failure to inquire as to the availability of a site until after the application is filed is inconsistent with such a representation. See *William F. Wallace, supra*. In view of this longstanding Commission requirement we are adding a question to FCC Form 346 which will require an applicant to certify that it has obtained reasonable assurance from the property owner that the site will be available.[10] The certification will include a reference to the name and location of the person contacted.

30. The certification and related information is necessary for applications in the low power television and television translator service for several reasons. It appears that a significant number of applicants may submit that the site will be available. This situation creates processing delays for all applicants because the staff must consider and process many applications that are not compete since they do not have reasonable assurance of a site. To date, approximately 29 percent of the low power television lotteries have drawn petitions to deny against the tentative selectee. Excluding the petitions to deny filed by Neighborhood TV Company based on its court appeal,[11] 65 percent of the petitions to deny raise issues of site availability. In 40 percent of the cases were site availability is raised we have found the tentative selectee's application deficient in this respect and dismissed its application. Another 20 percent of the cases have raised site issues that require the solicitation of further information by the staff. Thus, site availability is the major basis for challenging lottery winners and results in the dismissal of a significant number of lottery winners. Further, when a construction permit is granted to an applicant that does not have a site and thus does not build a station, service to the public is delayed and a qualified applicant may be prevented from obtaining an authorization and providing a needed service.[12] Therefore, in order to maintain the integrity of the applications process and in order to expedite processing of qualified applicants, we are adopting this site certification requirement. We feel this action will not be burdensome on applicants, since our current policy already requires that they obtain reasonable assurance that the proposed site is available. The only new requirement is that the applicant now verify this action on the application form.

VI. Other Matters

31. We are also adopting various "housekeeping" rule changes herein which are necessary to clarify and conform various rule sections and delete inapplicable rules. All of the rule changes adopted herein are reflected in Appendix A.

32. Section 73.3516(c) is being modified to remove a provision which provided for the filing of a television translator application on a channel on which a UHF full-service station had been authorized but not yet placed into operation. This section, which was inadvertently not changed at the time the low power television rules were adopted, eliminates an inconsistency in the Commission's Rules.

33. In § 73.3572(f)(2), certain minor clarifications are being made concerning the 30-day Public Notice announcing lotteries. Minor changes are made in §§ 73.3580(d)(1) and 74.784 distinguishing the local public notice and station identification requirements for low power television licensees that are locally originating programming as defined by § 74.701(h) of the Commission's Rules. Section 73.3584(c) is modified to make it clear that 30 days is allowed for filing petitions to deny applications which appear on a proposed grant list. Section 74.735(c)(4), requesting certain technical information, is being deleted since the information requested is no longer necessary. Section 74.780 is being updated to specify correctly the various broadcast regulations which apply to low power television and television translator stations. Section 74.763(b) is added to conform to the full-service television requirements for reporting discontinuance of operation. A minor clarification is being made in § 73.3564 to reiterate the complete and sufficient standard for acceptance of low power television and television translator applications and conform this section with § 73.3591 and the *Low Power Television Report and Order*, 51 RR 2d 476, 502 (1982). Various other minor

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[10] The applicant certifies that it has contacted an authorized spokesperson for the owner of the rights to the proposed transmitter site and has obtained reasonable assurance that the site will be available for its use it this application is granted. —— Yes —— No The person is ———— who can be contacted at the following address and telephone number ————.

[11] The *LPTV Report and Order*, which promulgated the low power television rules, was appealed by Neighborhood TV Company, Inc. Neighborhood TV Company, Inc. argued that television translator applications should have been processed separately from low power television applications. Appellant maintained that applications that were on file at the time the low power television service was initiated were prejudiced by the Commission's decision to process low power television and television translator applications together. The Court of Appeals recently denied Neighborhood's appeal. *Neighborhood TV Company, Inc.* v. *FCC*, No. 83–1635 (D.C. Cir. Aug. 17, 1984).

[12] Based upon our experience, applicants without the site specified in the application often request to move to another site after grant of the construction permit. This is usually a major change. Pursuant to § 73.3572 of the Commission's Rules, a major change requires the assignment of a new rule number to an application and reprocessing of that amended application which, as far as the technical proposal is concerned, entails the same processing as a new application.

references and inconsistencies[13] have been corrected in the following: §§ 73.3540(c)(1), 74.765(b), and 74.783.

34. Pursuant to section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Commission certifies that the action proposed will not have a significant economic impact on a substantial number of small entities. The rule revisions are designed to simplify and expedite processing procedures.

VII. Conclusion

35. In view of the foregoing and pursuant to sections 1, 3, 4 (i) and (j), 303, 308, 309 and 403 of the Communications Act of 1934, as amended, it is hereby ordered that the action taken herein and the amendment of the Commission's Rules as set forth in Appendix A, are effective December 26, 1984.

36. It is further ordered, that revised FCC Form 346 is amended, effective upon approval by the Office of Management and Budget.

37. It is further ordered that this proceeding is terminated.

38. For further information concerning this proceeding contact Larry A. Miller, Mass Media Bureau, (202) 632–3894.

(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. 47 CFR 73.3516 is amended by revising paragraph (c) to read as follows:

§ 73.3516 Specification of facilities.

* * * * *

(c) An application for a construction permit for a new broadcast station, the facilities for which are specified in an outstanding construction permit or license, will not be accepted for filing.

* * * * *

§ 73.3540 [Amended]

2. 47 CFR 73.3540 is amended by removing paragraph (c)(1).

3. 47 CFR 73.3564 is amended by revising paragraphs (a) and (c) and adding new paragraph (d) to read as follows:

§ 73.3564 Acceptance of applications.

(a) Applications tendered for filing are dated upon receipt and then forwarded to the Mass Media Bureau, where an administrative examination in 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 and sufficient are accepted for filing and are given file numbers. Low power TV and TV translator applications that are not complete and sufficient will be returned to the applicant.

* * * * *

(c) At regular intervals the FCC will issue a Public Notice listing all applications and major amendments thereto which have been accepted for filing. Pursuant to §§ 73.3571(c), 73.3572(c) and 73.3573(d), except in the case of low power TV and TV translator applications, such notice shall establish a cut-off date (no less than 30 days from the date of issuance) for the filing of mutually exclusive applications and petitions to deny. However, no application will be accepted for filing unless certification of compliance with the local notice requirements of § 73.3580(h) (Local public notice of filing of broadcast applications) has been made in the tendered application.

(d) Notwithstanding the provisions of the section and § 73.3572, new and major change applications for low power TV and TV translator stations will be accepted only on the date(s) specified by the FCC in a Public Notice.

4. 47 CFR 73.3572 is amended by revising the introductory text of paragraph (a), (a)(1), introductory text of (f), (f)(1), (f)(2) and (f)(4) to read as follows:

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

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

(1) In the first group are applications for new stations or major changes in the facilities of authorized stations. A major change for TV broadcast stations authorized under this part is any change in frequency or community of license which is in accord with a present allotment contained in the Table of Assignments (§ 73.606). Other requests for change in frequency or community of license for TV stations must first be submitted in the form of a petition for rulemaking to amend the Table of Assignments. In the case of low power TV and TV translator stations authorized under Part 74 of this chapter, a major change 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; or

(v) Authorized operating power.

However, if the proposed modification of facilities, other than a change in frequency, will not increase the signal range of the low power TV or TV translator station in any horizontal direction, the modification will not be considered a major change. Provided further that 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.

* * * * *

(f) *Processing of applications for low power TV and TV translator stations.* (1) Applications for low power TV and TV translator stations will be processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and will be drawn by the staff for study, the lowest file number first. The FCC will specify, by Public Notice, a period for filing low power TV or TV translator applications. The filing period will open no less than 30 days after release of the Public Notice and remain open for an least five work days.

(2) Subsequently, the FCC will release a Public Notice: (i) Establishing a date, time, and place for a public lottery; (ii) accepting for filing mutually exclusive applications which were timely filed during the filing period previously specified by the FCC; (iii) designating the listed mutually exclusive applications for public lottery pursuant to the procedures set forth in § 1.1601 *et seq.*; and (iv) describing each applicant's certified perferences and selection probabilities and assigning to each applicant a number block. (It will be the applicant's responsibility to notify the FCC, within 30 days of the release of the

[13] A further inconsistency in paragraph 47 of the *Reconsideration of the LPTV Report and Order*, 53 RR 2d 1267 (1983), is hereby corrected. Major changes include substantial changes in an applicant's ownership as defined in § 73.3572.

Public Notice, or any omissions of applications or clerical or mathematical errors in preferences or probabilities. The FCC will not entertain appeals involving these matters if timely notification to the FCC has not been made.) If necessary, the FCC will release subsequent Public Notices correcting only clerical or mathematical errors and including any previously omitted mutually exclusive applications. The public lottery pursuant to the procedures set forth in § 1.1601 *et seq.*, will be held no less than 30 days subsequent to the initially released Public Notice announcing the lottery. Subsequent to the lottery, the FCC will release a Public Notice announcing the selection of a tentative selectee resulting from the lottery and providing and opportunity for the filing of Petitions to Deny pursuant to the requirements of § 73.3584(c). If, upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of a tentative selectee's application, the same will be granted. Those applications which, due to the lottery, are no longer mutually exclusive with other applications will be announced in a Public Notice proposing the grant of those applications and providing an opportunity for the filing of Petitions to Deny pursuant to § 73.3584(c). Groups of mutually exclusive applicants remaining after a lottery will be designated for lottery. Applications which are are not grantable due to mutual exclusivity with the permittee selected by lottery will be dismissed.

* * * * *

(4) The FCC will periodically release a Public Notice accepting for filing and proposing for grant those applications which were timely filed during the filing period specified by the FCC in a Public Notice for filing low power TV or TV translator applications, but which are not mutually exclusive with any other application, and providing an opportunity for the filing of Petitions to Deny pursuant to § 73.3584.

5. 47 CFR 73.3580 is amended by revising the introductory text of (d), (d)(1), introductory text of (g), introductory text of (g)(1), and (g)(1)(i) read as follows:

§ 73.3580 Local public notice of filing of broadcast applications.

* * * * *

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

(1) An applicant who files for renewal of a broadcast station license, other than a low power TV station license not locally originating programming as defined by § 74.701(h), FM translator station, FM booster station or a TV translator station license, must give notice of this filing by broadcasting announcements on applicant's station. (Sample and schedule of announcements are below.) Newspaper publication is not required. An applicant who files for renewal of a low power TV station license not locally originating programming as defined by § 74.701(h), FM translator station, FM booster station or a TV translator station licensee will comply with (g) below.

* * * * *

(g) An applicant who files for an authorization, major modification, assignment, transfer or renewal, or a major 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. (An applicant who files for renewal of a low power TV station locally orginating programming as defined by § 74.701(h) must give notice pursuant to (d)(1) of this section.) 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 §§ 73.3572, 73.3573, or 73.3578.

(1) Notice requirements for these applicants are as follows:

(i) In a newspaper at least one time; or

* * * * *

6. 47 CFR 73.3584 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 73.3584 Petitions to deny.

* * * * *

(c) In the case of applications for new low power TV or TV translator stations, or for major changes in the existing facilities of such stations, any party in interest may file with the FCC a Petition to Deny any application (whether as originally filed or if amended so as to require a new file number pursuant to § 73.3572(b)) for which local notice pursuant to § 73.3580 is required, provided such petitions are filed within 30 days of the FCC Public Notice proposing the application for grant (applicants may file oppositions within 15 days after the Petition to Deny is filed); but where the FCC selects a tentative permittee pursuant to § 1.1601 *et seq.*, Petitions to Deny shall be accepted only if directed against the tentative selectee and filed after issuance of and within 15 days of FCC Public Notice announcing the tentative selectee. The applicant may file an opposition within 15 days after the Petition to Deny is filed. In cases in which the minimum diversity preference provided for in § 1.1623(f)(1) has been applied, an "objection to diversity claim," and opposition thereto, may be filed against any applicant receiving a diversity preference, within the same time period provided herein for Petitions and Oppositions. In all pleadings, allegations of fact or denials thereof shall be supported by appropriate certification. However, the FCC may announce, by the Public Notice announcing the acceptance of the last-filed mutually exclusive application, that a notice of Petition to Deny will be required to be filed no later than 30 days after issuance of the Public Notice.

* * * * *

7. 47 CFR 73.3591 is amended by revising paragraph (b) to read as follows:

§ 73.3591 Grants without hearing.

* * * * *

(b) In making its determinations pursuant to the provisions of paragraph (a) of this section, the FCC will not consider any other application, or any application if amended so as to require a new file number, as being mutually exclusive or in conflict with the application under consideration unless such other application was substantially complete, or, in the case of low power TV and TV translator stations, complete and sufficient, and tendered for filing by:

(1) The close of business on the day preceding the day designated by Public Notice as the day the listed application is to be available and ready for processing;

(2) The date prescribed in § 73.3516(e) in the case of applications which are mutually exclusive with applications for renewal of license of broadcast stations; or

(3) The close of business on the day designated by the FCC pursuant to § 73.3564(d) as the date(s) for filing low power TV or TV translator applications.

* * * * *

PART 74—[AMENDED]

8. 47 CFR 74.701 is amended by revising paragraph (h) to read as follows:

§ 74.701 Definitions.

* * * * *

(h) *Local origination.* Program origination if the parameters of the program source signal, as it reaches the transmitter site, are under the control of the low power TV station licensee. Transmission of TV program signals generated at the transmitter site constitutes local origination. Local origination also includes transmission of programs reaching the transmitter site via TV STL stations, but does not include transmission of signals obtained from either terrestrial or satellite microwave feeds or low power TV stations.

9. 47 CFR 74.732 is amended by revising paragraph (d) to read as follows:

§ 74.732 Eligibility and licensing requirements.

* * * * *

(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 a major change until the applicable time for filing a petition to deny has passed pursuant to § 73.3584(c).

* * * * *

§ 74.735 [Amended]

10. 47 CFR 74.735 is amended by removing paragraph (c)(4) and redesignating paragraphs (c)(5) and (c)(6) as (c)(4) and (c)(5).

11. 47 CFR 74.763 is amended by adding paragraph (b) to read as follows:

§ 74.763 Time of operation.

* * * * *

(b) In the event that causes beyond the control of the low power TV or TV translator station licensee make it impossible to continue operating, the station may discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.

* * * * *

12. 47 CFR 74.765 is amended by revising paragraph (b) to read as follows:

§ 74.765 Posting of station and operator licenses.

* * * * *

(b) The licenses or permits of operators employed at low power TV stations locally originating programs (as defined by § 74.701(h)) shall be posted in accordance with the provisions of § 73.1230(b).

* * * * *

13. 47 CFR 74.780 is revised to read as follows:

§ 74.780 Broadcast regulations applicable to TV translator and low power TV stations.

The following rules are applicable to TV translator stations and low power TV stations:

Section 73.653—Operation of TV aural and visual transmitters.

Section 73.658—Affiliation agreements and network program practices; territorial exclusivity in non-network program arrangements.

Part 73, Subpart G—Emergency Broadcast System (for low power TV stations locally originating programming as defined by § 74.701(h)).

Section 73.1201—Station identification (for low power TV stations locally originating programming as defined by § 74.701(h)).

Section 73.1205—Fraudulent billing practices.

Section 73.1206—Broadcast of telephone conversations.

Section 73.1207—Rebroadcasts.

Section 73.1208—Broadcast of taped, filmed or recorded material.

Section 73.1211—Broadcast of lottery information.

Section 73.1212—Sponsorship identifications; list retention; related requirements.

Section 73.1216—Licensee conducted contests.

Section 73.1510—Experimental authorizations.

Section 73.1515—Special field test authorizations.

Section 73.1615—Operation during modifications of facilities.

Section 73.1635—Special temporary authorizations (STA).

Section 73.1650—International broadcasting agreements.

Section 73.1680—Emergency antennas.

Section 73.1940—Broadcasts by candidates for public office.

Section 73.2080—Equal employment opportunities (for low power TV stations only).

Section 73.3500—Application and report forms.

Section 73.3511—Applications required.

Section 73.3512—Where to file; number of copies.

Section 73.3513—Signing of applications.

Section 73.3514—Content of applications.

Section 73.3516—Specification of facilities.

Section 73.3517—Contingent applications.

Section 73.3518—Inconsistent or conflicting applications.

Section 73.3519—Repetitious applications.

Section 73.3521—Mutually exclusive applications for low power TV and TV translator stations.

Section 73.3522—Amendment of applications.

Section 73.3525 (a), (b), (d), (f), (g), (h) and (i)—Agreements for removing application conflicts.

Section 73.3533—Application for construction permit or modification of construction permit.

Section 73.3534—Application for extention of construction permit or for construction permit to replace expired construction permit.

Section 73.3536—Application for license to cover construction permit.

Section 73.3538(a) (1) (3) (4), (b)(2)—Application to make changes in existing station.

Section 73.3539—Application for renewal of license.

Section 73.3540—Application for voluntary assignment or transfer of control.

Section 73.3541—Application for involuntary assignment or transfer of control.

Section 73.3542—Application for temporary authorization.

Section 73.3544—Application to obtain a modified station license.

Section 73.3545—Application for permit to deliver programs to foreign stations.

Section 73.3561—Staff consideration of applications requiring Commission action.

Section 73.3562—Staff consideration of applications not requiring action by the Commission.

Section 73.3564—Acceptance of applications.

Section 73.3566—Defective applications.

Section 73.3568—Dismissal of applications.

Section 73.3572—Processing of TV broadcast, low power TV, and TV translator station applications

Section 73.3580—Local public notice of filing of broadcast applications.

Section 73.3584—Petition to deny.
Section 73.3587—Informal objections.
Section 73.3591—Grants without hearing.
Section 73.3593—Designation for hearing.
Section 73.3594—Local public notice of designation for hearing.
Section 73.3597—Procedures on transfer and assignment applications.
Section 73.3598—Period of construction.
Section 73.3599—Forfeiture of construction permit.
Section 73.3601—Simultaneous modification and renewal of license.
Section 73.3603—Special waiver procedure applicable to applications.
Section 73.3612—Annual employment report (for low power TV stations only).
Section 73.3613—Filing of contracts (network affiliation contracts for low power TV stations only).

14. 47 CFR 74.783 is amended by revising the introductory text of paragraph (a) and paragraph (c) to read as follows:

§ 74.783 Station identification.

(a) Each TV translator station and low power TV station not originating local programming as defined by § 74.701(h), 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 when locally originating programming, as defined by § 74.701(h). The identification procedures given in paragraphs (a) and (b) are to be used at all other times.

* * * * *

Appendix B

List of Commenters

1. American Christian Television System, Inc. (ACTS)
2. Association of Independent Televison Stations, Inc. (ITS)
3. Association of Maximum Service Telecasters, Inc. (MST)
4. Sandi Barrio (Barrio)
5. Blair Broadcasting of Oklahoma, Inc. (Blair)
6. Blue Mountain Community College (BMCC)
7. Blue Mountain Translator District (BMTD)
8. Civic Light Television (Civic)
9. Cohn and Marks
10. Colby-Bates-Bowdoin Educational Telecasting Corporation (CBB)
11. Daly, Joyce and Borsari (DJ&B)
12. Milt Davis (Davis)
13. Dow, Lohnes and Albertson (DL&A)
14. Frontier Broadcasting Companies (Frontier)
15. Greater Willamette Vision, Ltd. (Willamette)
16. Gunnison County Metropolitan Recreation District (Gunnison)
17. Hubbard Broadcasting, Inc. (Hubbard)
18. International Broadcasting Network (IBN)
19. John S. Jacobson (Jacobson)
20. KNME-Television (KNME)
21. Lake of the Woods County (Lake)
22. Local Power Television, Inc. (Local)
23. May Broadcasting Company (May)
24. National Association of Broadcasters (NAB)
25. National Association of Public Television Stations (NAPTS)
26. National Hispanic Broadcasters Association (NHBA)
27. National Institute of Low Power Television (NILPTV)
28. National Translator/LPTV Association (NTA)
29. North Fork Television Systems (North Fork)
30. OKTV Translator System (OKTV)
31. Oregon Translator Association (Oregon)
32. Pappas Telecasting of the Carolinas (Pappas)
33. Progressive Communications, Inc. (Progressive)
34. Ralph C. Wilson Industries, Inc. (Wilson)
35. Rocky Mountain Corporation for Public Broadcasting (Rocky Mountain)
36. Fred Alan Ross (Ross)
37. Salmon Television Translator District (Salmon)
38. Satech Associates (Satech)
39. Schwartz, Woods and Miller (SW&M)
40. Scripps-Howard Broadcasting Company (Scripps-Howard)
41. Six-County Commissioner's Organization (Six County)
42. State of Alaska Division of Telecommunications Systems (Alaska)
43. Stuart B. Mitchell and Associates (Mitchell)
44. Television Station KOOD (KOOD)
45. Television Technology Corp. (TTC)
46. University of North Carolina (UNC)
47. University of Utah (U of U)
48. Villareal Broadcasting Co., Inc. (Villareal)
49. Honorable Barbara Vucanovich, M.C.
50. WPIX, Inc. (WPIX)
51. WSTE–TV, Inc. (WSTE)
52. Western Slope Communications, Inc. (Western Slope)
53. Winnebago Cooperative Telephone Association (Winnebago)

Reply Comments

1. American Christian Television System, Inc. (ACTS)
2. Association of Independent Television Stations, Inc. (ITS)
3. Blue Ridge Electric Membership Corp. (Blue Ridge)
4. Honorable James T. Broyhill, M.C.
5. Honorable James McClure Clarke, M.C.
6. Frontier Broadcasting Companies (Frontier)
7. Greater Willamette Vision, Ltd. (Williamette)
8. Hubbard Broadcasting, Inc. (Hubbard)
9. May Broadcasting Company (May)
10. National Association of Broadcasters (NAB)
11. National Translator/LPTV Association (NTA)
12. Honorable Stephen L. Neal, M.C.
13. North Platte Television, Inc. (North Platte)
14. Aracelis Ortiz (Ortiz)
15. Ralph C. Wilson Industries, Inc. (Wilson)
16. Schwartz, Woods and Miller (SW&M)
17. State of Alaska Division of Telecommunications Systems (Alaska)
18. Television Technology Corporation (TTC)
19. Western Carolina University (WCU)
20. Western North Carolina Associated Communities (WNCAC)
21. Western North Carolina Tomorrow (WNCT)

1. In this summary, an attempt was made to note all relevant comments on the proposals in the *Notice of Proposed Rule Making* (*"NPRM"*). Except where necessary to the context 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 in the Dockets Branch at the Commission. An effort was made to include all relevant details of counter proposals.

2. Virtually all of the commenting parties supported processing procedures which would expedite the processing of applications in the television translator and low power television service. In general, the proposals set forth in the *NPRM* were supported by a majority of the comments. However, there were many variations suggested on the specific procedures to be used in implementing the general proposals. Comments were filed by a diverse group of entities including: television translator licensees and applicants; full-service television stations; low power television applicants; educational institutions; trade associations; and individuals.

3. *Modification of Cut-Off Procedures.* The majority of comments supported the general concept of filing windows for low power television and television translator applications. Some commenters such as Cohn and Marks supported a window approach only if television translator applications were not given a priority as suggested in the third proposal in the *NPRM.* Commenters supporting the idea of a filing window generally cite the prevention of misappropriation of application materials prepared by others and the reduction of systematic overfiling on applications appearing on cut-off lists; thus, resulting in the expedited processing of applicants as the main benefits of such a system. See DL&A, Civic, Hubbard, Local, NAB, NTA, and Alaska. However some commenters thought that windows would prompt the filing of more

applications (NAPTS, ACTS) because it would encourage a now or never approach (Hubbard) or gold rush attitude (IBN).

4. There was much disagreement about how the windows should be structured. Many commenters suggested that the windows should be open to both low power television and television translator applications on an equal basis. Most commenters that supported a priority for television translator applications and also supported filing windows, proposed separate filing windows for television translator applications (NAB). It was generally indicated that windows should be open on a national basis due to the potential for daisy chains prejudicing applicants in locations adjacent to the open window areas (NTA). In order to avoid a deluge of applications some commenters advocated that the present tiered system be used for opening windows (ACTS). DL&A also supported use of the current tiered system for windows with all translator applications proposing to institute, expand or maintain a first public television service to be treated as Tier I applications. Local advocated the continued use of tiers with the window approach but suggested reducing the existing 55 mile radius around ranked television markets to 35 miles. Alaska proposed splitting the country into less than 10 geographic regions. The initial regions to be opened for filing would be those where there is a high percentage of rural, underserved areas such as the Rocky Mountain regions, the midwest and, of course, Alaska. Hubbard proposed that windows be opened by channel but only after a proposed applicant filed a rudimentary petition, indicating an interest in applying for a specific channel. This approach would be similar to an allocation plan. None of the commenters that proposed the use of tiers or regions suggested procedures for dealing with the resulting prejudice to adjacent window areas. Moreover, as noted by NTA, the use of tiers will merely paint a bulls eye on specific filing areas for mass filers with the resulting large number of applications delaying service to the areas which need service the most.

5. The frequency of windows was proposed as daily (Civic), weekly (Civic), every six months (DL&A), or as needed as determined by the Commission (NTA). Alaska supported the proposal to provide 30 days or less notice of an open window. Likewise, the proposal to open a window for five work days or less was supported (DL&A). The minimum window period suggested was one day (Civic).

6. Commenters opposing a window filing approach generally indicated that this approach would not be sufficient to give translators the priority which the commenters were advocating (ITS, Cohn & Marks and Rocky Mountain). It was also suggested that limited windows would encourage the filing of applications by entities that were not prepared to provide service because of the fear of forever losing a chance at an available channel (IBN and KNME). NAPTS suggested that the use of windows would not reduce the number of applications filed nor diminish the likelihood of competing applications. NHBA opposed windows because it felt that this procedure would restrict the applicant field to big business concerns and would hinder the ability of minorities to compete in the application process.

7. *Elimination of Financial Requirements.* Comments on the proposal to eliminate the requirement that applicants file any financial information or certification were more evenly divided. Commenters supporting the elimination of the financial questions indicated that the questions were relatively useless now since they alleged the financial standards were being virtually ignored by the Commission. Since construction costs for low power television and television translators are minimal and since uncertainty concerning the source of financing at the time of filing is understandable, it would be more realistic to eliminate the financial questions (Civic). Cohn and Marks notes that if financial information is no longer deemed of value to the Commission for either an absolute or comparative analysis, it should no longer be required. Speculation as to the tendency to increase or decrease the number of applicants is irrelevant (Cohn and Marks). IBN notes that letters of financial commitment are generally equivocal and not legally binding and thus do not in fact demonstrate financial ability although they satisfy Commission requirements. Since the present financial questions do little if anything to ensure that an applicant is financially qualified, they should be eliminated and the Commission's resources devoted to other areas (NTA).

8. Most commenters supporting elimination of the financial questions also advocated strict enforcement of the one year period to construct the proposed station (NTA). However, Cohn & Marks stated that a hard and fast one year limit would not be appropriate in all circumstances. With respect to educational or state agencies, there may be valid reasons why construction is not completed in one year. Since governmental agency budgeting processes are generally limited to one year and since applications may languish at the Commission for years, it is difficult to authorize expenditures immediately upon grant of an application. Also weather and delays in equipment delivery may cause construction delays beyond the control of the permittee.

9. Many commenters opposed elimination of the requirement to file financial information or certification with an application. The general consensus was that elimination of this requirement would open the floodgates for fraudulent (BMTD), speculative (Pappas) applications and engender a land rush mentality (DL&A). Elimination of this requirement will also sanction mass filers since they will no longer need to consider their ability to finance any or all of their proposals. The NAB notes that although the Communications Act does not mandate consideration of financial qualifications, it is a sound and well reasoned policy. Consideration of financial qualifications reflects a policy that the allocation of scarce resources under government control should not be done casually and that construction permits should not be given to those not having the financial resources to utilize the assignment (NAB). Moreover, the use of a strict one year construction period to enforce financial requirements is shortsighted and inefficient in terms of administrative costs and delays in the implementation of low power television and television translator service. The public interest in implementing a procedure which will cause delay is questionable (NAB). Rocky Mountain suggested that lowering the financial requirement will result in increased numbers of applications being filed and will cause further delays in processing. Furthermore, Public Telecommunications Facilities Program applicants will be disadvantaged since they must still certify their financial ability. ACTS recommends that rather than eliminating consideration of financial qualifications, the Commission should more strictly enforce its existing financial criteria. Such action, it is contended, would significantly reduce the backlog of applications and do much to prevent speculative filings. This action would be especially effective against mass filers. Financial scrutiny, even on a random basis, would do much to expedite the processing of applications

10. *Separation and Priority for Television Translator Applications.* The proposal to separate the processing of low power television and television translator applications and to give television translators or certain types of television translators a priority drew more comments than any of the other proposals. The majority of the commenters supporting this proposal were television translator licensees and applicants, educational institutions and full-service television licensees. Numerous commenters supported absolute priorities across the board for television translator applications. Commenters indicated that since the percentage of pending applications which are for television translators is small (1000 out of 12,000) it would not be disruptive or burdensome to afford them a priority. Lake states that the primary goal of the television translator service is to bring the signals of full-service televisions stations to rural areas. Low power television stations do not necessarily contribute to this Commission goal. Also low power television stations have no obligations to provide any local programming nor are they required to directly serve the needs and interests of their licensed communities. Lake states that, based on its experience, residents of rural areas generally prefer television translator service over low power television service when given a choice. Many would also give an absolute priority to television translator applications but only after a threshold showing of need for the facility was made. Such a showing would demonstrate that the translator was necessary to fill gaps in existing service areas, to provide service to shadowed areas or to bring programming to rural or underserved markets. NAB would have an absolute priority for all traditional television translators which would exclude stations retransmitting satellite-fed programming outside the State of Alaska. It is argued that full-service television stations, which are rebroadcast by television translator stations, have public interest obligations that are absent for low power television stations. Several commenters suggested that processing priorities be made retroactive to apply to all pending applications (ITS).

11. Many educational and public television licensees supported priorities for educational or public television translators only. SW&M on behalf of numerous public broadcast clients has renewed its request to create a reservation system for public broadcast television translators which the Commission denied in the *Reconsideration* of the *Low Power Television Report and Order*, 53 RR2d 1267 (1983). SW&M further requests a priority for any public broadcast applicant proposing conventional translator operation on any channel. It is contended that such a priority is necessary in order to offset the present priority given to new commercial applicants under the Commission's lottery procedures. SW&M pointed out that an applicant for a new translator which is also the licensee of other translators or a full-service station is at an automatic disadvantage under the Commission's diversity preference scheme for lottery purposes. Separate processing is necessary in order to allow the orderly planning and implementing of state wide noncommercial educational and public television systems. KNME would give noncommercial applicants an absolute priority if only one channel is available for assignment and if the area currently receives no public television translator service. Rocky Mountain would also give an absolute preference to translators forced to change channels because of the commencment of operation of a full-service television station. Cohn & Marks, filing on behalf of a group of educators, would prefer the priority to be limited to noncommercial educational and non-satellite fed applicants.

12. Many licensed full-service stations supported a priority to fill in their coverage contours. ITS would limit the processing preference to television translators seeking to fill in the full-service station's area of dominant influence (ADI) or to extend service to underserved communities (*e.g.*, those with two or fewer full-service television stations). This would require the submission of more detailed engineering and coverage contours. MST would effectuate its proposed priority for fill-in television translators by providing for a separate window for fill-in translator applications followed by a window for all other television translator and low power television applications. Cohn & Marks would also change the present diversification disadvantage that a full-service station has when trying to obtain a translator license within its coverage area. Cohn & Marks would give the same diversity preference to a fill-in translator applicant as to an applicant for new low power television service. CBB recommends a priority for all television translator applications but especially for those located within the primary station's Grade B contour. DL&A on behalf of various licensees of noncommercial educational television stations (PTV) suggested that priority processing should be given to television translator applications which would provide or maintain a first PTV service to an area, or which would fill in a problem reception area within a service area of an existing PTV station. These favored applications would be moved to the head of the processing line. PTV translator applications would also receive a priority in the selection process, but this priority would not apply retroactively. Williamette would afford a retroactive priority to all fill-in translator applications. A licensee which was granted authority due to a fill-in priority could not change programming service without subjecting its license to competing applications. Ross proposed separate priority processing for applications to construct television translators to fill in the Grade B service contour of the primary station, where the intended service area of the proposed translator is within the Grade B contour of no other full power facility. WPIX would designate as a priority all pending and future new or major change television translator applications which seek to provide service to presently underserved areas (two or less full-service stations) or to fill in gaps in the coverage contours of existing full-service stations. WSTE would provide a priority for television translator applications to fill in the Grade B contour of the originating full-service station and for all television translators in Puerto Rico. Western Slope would give a priority to all television translator applications proposing service to communities that are located within the predicted Grade B contour of less than three full-service stations. OKTV would even go so far as to require licensed television translator stations to be notified of all pending applications for low power television service in their area, and be given a priority on that channel. Also all licensed television translators would be grandfathered for new applications on other channels at the same site.

13. Various methods were proposed by advocates of television translator priorities in order to maintain the integrity of the processing priority. Many commenters agreed that a subsequent change to low power television service by a television translator that had been licensed with a processing priority, should be classified as a major change and subject to competing applications (MST and NAB). Others would require the television translator to operate as a translator for a specific period of years; generally a

one (Lake) to five year period (May). BMTD suggests that television translators seeking a priority be required to submit written consent of the station to be rebroadcast. Commenters advocating priorities for fill-in translators generally recommended the use of detailed engineering studies or engineering affidavits to support the applicants' claims (DL&A).

14. Commenters opposing separation or a priority for television translator applications generally cited the Commission's own pronouncement in the Low Power Television Rule Making as supporting the need for and public interest in developing the low power television service. Low power television furthers the Commission goal of increased diversity and provides a unique opportunity for increased local television service (ACTS). The public policy objective of promoting diversity is deeply engrained in the infrastructure of electronic media regulation and is grounded on the Constitution itself (DJ&B). The large number of low power television applications which have been filed is further evidence of the tremendous unsatisfied demand for this service (DJ&B). If the Commission designates television translators as a priority service a large number of low power television applicants would merely switch to designate their applications as television translators. This action would occur even if a change from a low power television to television translator was a major change or other limitations applied. Applicants would still apply as television translators in anticipation of a later Commission change in policy or as mere speculators. The net effect would not be a reduction in the number of total applications but merely a change in their designation from low power television to television translator (ACTS). IBN argues that separate priority processing for television translators is merely a way for the large established broadcasters to expand and prevent new low power television applicants from competing in their markets. Local suggests that the proposals designed to speed up the processing of applications will benefit both low power television applicants and television translator applicants. To separate these two services would be an admission by the Commission that its processing procedures are a failure. If any priority is afforded by the Commission, it should be for low power television service which is more flexible and responsive to public needs than is television translator service (Local). NILPTV contends that affording a processing preference for television translators would thwart two major Commission goals: encouraging local origination programming and encouraging minority and female ownership in broadcasting. NTA states that no special priority for television translator applications is necessary if the Commission adopts a national window filing period. Alaska also feels that a window approach will expedite the processing of applications without the need for processing priorities. Alaska suggests that if it is the rebroadcast of the signal of a full-service station which is the key to its priority, then low power television stations that are involved in rebroadcast should be entitled to the same preference. The question then becomes how much rebroadcasting of conventional programming is necessary to entitle an applicant to a preference. Alaska contends that the Commission should not discriminate against one kind of programming over another. Moreover, separation of services would cause an applicant to choose between the expedited processing and absolute priority of a television translator and the flexibility to respond to programming interests of a low power television station. Mitchell urges the Commission to adopt a priority for the processing of low power television applications.

15. The *NPRM* also solicited other possible alternatives to the various proposals. The most frequently requested proposal from translator associations was for the Commission to take terrain shielding into consideration when calculating interference caused by low power television and television translator applications (NTA). It was contended that the Commission's so called "flat earth" policy has contributed greatly to the problems that beset television translator applicants, especially in the mountainous regions of the country. It is claimed that the Commission's refusal to consider terrain shelding prevents the licensing of television translators in many locations where interference in fact will not occur. Some parties would have the Commission individually consider each claim of terrain shielding. Oregon would have regional frequency coordination committees determine when interference would occur. None of the commenting parties submitted objective criteria for determining the effects of terrain shielding.

16. Another frequently suggested proposal was that all applicants be required to submit evidence of site availability. KNME would require that a written agreement with the owner of an existing tower be submitted with the application. Local would require a certification that authority from the site owner has been obtained. It is contended that if evidence of site availability would be required of all applicants, the number of applications filed would be greatly reduced with a resulting increase in the speed of processing.

17. Another suggestion was that all applicants be required to submit an affidavit of publication indicating that notice of the filing of the application has been published in a local newspaper. Although the current form contains a certification that the applicant will comply with § 73.3580 of the Commission's Rules which requires publication, it is apparent from the comments that many parties do not publish as required (BMTD). Some applicants do not publish until after they have been chosen in a lottery. Others may never publish, since the Commission no longer requires proof from the applicant (NTA).

18. Other comments concerning the classification of major and minor changes to low power television and television translator stations were filed in MM Docket No. 83–1377 which dealt with major changes to certain broadcast licenses and applications. The *Report and Order* in MM Docket No. 83–1377 indicated that to the extent these comments addressed issues in MM Docket No. 83–1350, they would be associated with that docket. We have reviewed these comments and they do not persuade us that our previous determination of what constitutes a major change should be reconsidered. Moreover, we find that these comments are outside the scope of this rule making.

19. No comments were received on the *Initial Regulatory Flexibility Analysis* which was attached as Appendix B to the *NPRM*.

Statement of Commissioner Henry M. Rivera Concurring in Part

October 17, 1984.

Re: Low Power Television and Television Translator Service

I reluctantly concur in that part of this decision that does not designate translators as a priority or separate class of service for processing purposes.[1]

Since the Commission authorized the low power television service, it has had several opportunities to provide translator service to areas of the country

[1] *See Report and Order*, paras. 13–26.

that lack television reception.[2] The Commission has taken the position that providing a priority for translators, would, among other things, greatly diminish origination flexibility for translators.[3] Such a position reflects a lack of sensitivity to the fact that to the rural citizen with no television service, any service now is much more useful than service later that might be superior because of origination capacity.

In any event, the Commission has now procrastinated to such an extent that anything we could do now will not make up for the years of service to rural areas that was lost. To the contrary, the *Report and Order* states that attempting now to give translators priority will only exacerbate the delay.[4] Given that statement, the commitment I have received from the Mass Media Bureau that it will process single applications which come from rural areas first and the Bureau's assurances that rural translator applicants will be less likely to be subject to mutually exclusive applications under the new processing system, I feel the best course is to concur. If I were writing on a clean slate, I certainly would have done things differently.

[FR Doc. 84-31737 Filed 12-6-84; 8:45 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1057

[Ex Parte No. MC-43 (Sub-15)]

Elimination of Thirty Day Leasing Requirement

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts final rule modifying Part 1057 of the Commission's vehicle leasing regulations by eliminating the requirement that equipment be leased for a minimum duration of 30 days when operated by its owner. The Motor Carrier Act of 1980 promotes increased competition to meet a number of important goals, among them fair wages and working conditions, productive use of equipment, and meeting the needs of shippers, receivers, and consumers. Permitting lessors to lease equipment for less than 30 days will offer the potential for increased earnings by lessors who now find themselves party to a 30-day lease with no freight to haul. Such lessors could trip-lease to other carriers.

EFFECTIVE DATE: This decision is effective on January 7, 1985.

FOR FURTHER INFORMATION CONTACT:
Robert G. Rothstein, (202) 275-7912
or
Mary Kelly, (202) 275-7292.

SUPPLEMENTARY INFORMATION: Proposed rules were published at 48 FR 39251, August 30, 1983; comment period extended for 30 days at 48 FR 44590, September 29, 1983.

Additional information is contained in the full Commission decision which is available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, or may be purchased from TS Infosystems, Inc., Room 2227, Interstate Commerce Commission Building, 12th St. and Constitution Ave., NW., Washington, DC 20423; or call toll free (800) 424-5403, or (202) 289-4357 in the Washington, DC, metropolitan area.

Environmental and Energy Considerations

We adopt the preliminary finding in the notice that this action will have no significant impact on the quality of the human environment or conservation of energy resources. No specific comments were submitted on any matter indicating that a contrary position is warranted. We reaffirm our earlier position that this rule modification will improve operating efficiency.

Regulatory Flexibility Analysis

The rules modifications adopted here will confer a significant, beneficial economic impact upon lessors of equipment by allowing more efficient equipment utilization during periods when their equipment might not otherwise be used. Authorized carrier lessees will realize a benefit in that they can augment their equipment with that leased for less than 30 days, thus offering improved service to the public. At the same time, they will be responsible for controlling equipment only for the precise time needed. These advantages to the lessee should benefit the public in the form of improved service and lower rates. The rules modification address the congressionally-mandated goal of efficient and productive utilization of equipment and energy resources, and reaffirm the agency's responsibility to encourage safe, adequate, and efficient transportation.

List of Subjects in 49 CFR Part 1057

Motor carriers.

Adoption of Rules

Accordingly, we adopt the revisions to Title 49, Part 1057, of the Code of Federal Regulations as described in Appendix B to this decision.

This action is taken under the authority of 49 U.S.C. 10321 and 11107 and 5 U.S.C. 553.

Decided: November 27, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio.

James H. Bayne,
Secretary.

Appendix

PART 1057—[AMENDED]

Part 1057 of the Code of Federal Regulations, Title 49, is amended as follows:

1. Section 1057.2 is amended as follows:

a. Paragraph (d) is revised to read as follows:

§ 1057.2 Definitions.

* * * * *

(d) *Owner*—A person (1) to whom title to equipment has been issued, or (2) who, without title, has the right to exclusive use of equipment, or (3) who has lawful possession of equipment registered and licensed in any State in the name of that person.

* * * * *

b. Paragraphs (f) and (g) are removed.

c. Paragraphs (h), (i), (j), (k), (l), (m), (n), and (o) are redesignated as paragraphs (f), (g), (h), (i), (j), (k), (l), and (m), respectively.

2. Section 1057.11 is amended as follows:

a. Paragraph (d)(1) is revised to read as follows:

§ 1057.11 General leasing requirements.

* * * * *

(d) * * *

(1) The authorized carrier shall prepare and keep documents covering each trip for which the equipment is used in its service. These documents shall contain the name and address of the owner of the equipment, the point of origin, the time and date of departure, and the point of final destination. Also, the authorized carrier shall carry papers with the leased equipment during its operation containing this information and identifying the lading and clearly

[2] For example, tiered processing could have included evaluation of Tier I (rural) applications without regard to Tier II and Tier III (urban) applications; additionally, at several points, various commenters pled with the Commission to maintain a processing distinction between translator and LPTV applicants.

[3] *See e.g., Report and Order*, paras. 5, 14 and 17-26.

[4] *Report and Order*, para. 23.