Register of August 26, 1999 (40 FR 46772) (FRL–6097–4), you may submit comments through the mail, in person, or electronically. Please follow the instructions in the proposed rule. Do not submit any information electronically that you consider to be CBI. To ensure proper receipt by EPA, be sure to identify docket control number OPPTS–82053 in the subject line of the first page of your correspondence.

IV. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under ''FOR FURTHER INFORMATION CONTACT.''

V. What Should I Consider As I Prepare My Comments for EPA?

EPA invites you to provide your views on the various options proposed, new approaches EPA has not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Tell us what you support, as well as what you disagree with.
6. Provide specific examples to illustrate your concerns.
7. Offer alternative ways to improve the proposed rule or collection activity.
8. Make sure to submit your comments by the deadline in this document.
9. To ensure proper receipt by EPA, be sure to provide the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation, and the appropriate EPA or OMB ICR number.

VI. What Action is EPA Taking?

EPA is extending the comment period for EPA's August 26, 1999 proposed rule (64 FR 46772) to add exposure related information requirements, alter CBI reporting and retention procedures, revise reporting thresholds and exemptions, and make other revisions. EPA proposed these changes pursuant to its authority under TSCA section 8(a).

VII. Do Any Regulatory Assessment Requirements Apply to this Action?

No. This action is not a rulemaking, it merely extends the date by which public comments on a proposed rule must be submitted to EPA on a proposed rule that previously published in the **Federal Register** of August 26, 1999 (64 FR 46772). For information about the applicability of the regulatory assessment requirements to the proposed rule, please refer to the discussion in Unit XI. of that document.

List of Subjects in 40 CFR Part 710

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements.

Dated: October 7, 1999.

William H. Sanders III.

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 99–27678 Filed 10–21–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–292; FCC 99–257]

Broadcast Services; Radio Stations, Television Stations

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: This document solicits comment the establishment of a ''Class A'' Low Power Television (LPTV) service that would afford some measure of ''primary'' station status to qualifying stations that would provide them with a degree of protection against channel displacement.

DATES: Comments are due December 21, 1999 and Reply Comments are due January 20, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Keith Larson, Associate Bureau Chief (Engineering), Mass Media Bureau (202)418–2600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making* in MM Docket No. 99–292, FCC 99–257, adopted September 22, 1999, and released September 29, 1999. The complete text of this *Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12th Street, S.W., Washington, D.C. The complete text of this *Notice of Proposed Rule Making* may also be purchased from the Commission's copy contractor, International Transcription Services (202)857–3800, 1231 20th Street, N.W., Washington, D.C. 20036.

Synopsis of Notice of Proposed Rule Making

I. Introduction

1. By this document we consider additional interference protections for certain stations in the Low Power Television (LPTV) service [1]. At this stage, we believe it is appropriate to consider the creation of a new ''Class A'' LPTV service that would afford some measure of ''primary'' status to qualifying stations. The stability this status could provide to these stations would enhance their ability to furnish valuable service to their communities, including locally produced

[1] The Low Power Television Service (Subpart G of Part 74 of the Commission's Rules) primarily consists of low power television (LPTV) stations and television translator stations. LPTV stations may retransmit the programs of full service television stations and may originate programming. A TV translator station rebroadcasts the programs and signals of a television broadcast station and may originate emergency warnings of imminent danger and, additionally, not more than thirty-seconds per hour of public service announcements and material seeking or acknowledging financial support deemed necessary to the continued operation of the station. Stations in the low power television service are authorized with ''secondary'' frequency use status and, as such, may not cause interference to, and must accept interference from full service television stations and other primary services. Additionally, as the name suggests, LPTV service stations have lower authorized power levels than full service stations. However, unlike full service stations, they are not restricted to operating on a channel specified in a table of allotments. Also, they are not subject to numerous rules applicable to full service stations.

programming. Additionally, it could augment their capacity to obtain financing, to engage in the long-term planning necessary to support the continuation of this service, and to enter the world of digital television. A Class A service could help to preserve LPTV stations that, in some cases, are a community's only local television station. It could also preserve and enhance the increased broadcast ownership diversity resulting from the LPTV service, including significant opportunities for minorities, women and small businesses.

2. The document responds to a petition for rule making filed by the Community Broadcasters Association (CBA).[2] CBA urges the Commission to secure a permanent spectrum home for low power television (LPTV) stations that provide substantial amounts of locally produced programming to their communities, thereby avoiding disruption or even elimination of service due to the emergence of digital television (DTV) and other new primary services.[3] The document seeks comments on creation of a form of primary status for qualifying stations and on the appropriate regulatory framework for a Class A television service.

II. Background

A. The Low Power Television Service

3. The Commission created the low power television service in 1982.[4] In so doing, it noted that the first of its ''decision criteria'' had been the ''public need for program diversity.''[5] Further, it acknowledged the potential for these stations to provide local program service and concluded that the very nature of the service made it likely that LPTV stations would have to be very ''directly responsive'' to the interests of local consumers.[6] Moreover, it deduced that the relatively low construction cost and small coverage area of LPTV stations suited them to programming to smaller communities and discrete groups in larger communities.[7]

4. The Commission, however, also recognized that important spectrum utilization issues were present. Accordingly, it created LPTV as a ''secondary spectrum priority'' service whose members ''may not cause objectionable interference to existing full service stations, and * * * must yield to facilities increases of existing full service stations or to new full service stations where interference occurs.''[8]

5. Since its inception, and notwithstanding its limitations, the LPTV service has grown and is providing significant television service to diverse audiences throughout the country. Currently, there are some 2,200 licensed LPTV stations in approximately 1000 communities,[9] operating in all 50 states. Commenters on the CBA petition point out that LPTV stations provide a valuable service. They say that, due to their very nature, LPTV stations can be fit into areas where a higher power station cannot be accommodated in the Table of Allotments[10] and, in many cases, are the only television station in an area providing local news, weather and public affairs programming.[11] Additionally, even in well-served markets, LPTV stations can and do provide service to the residents of discrete geographical communities within those markets.[12] Commenters say that many stations air programming, often locally produced, to residents of specific ethnic, racial and interest communities within the larger area, including airing programming in foreign languages.[13]

6. The LPTV service has also significantly increased the diversity of broadcast station ownership. Stations are operated by such diverse entities as community groups, schools and colleges, religious organizations, radio and TV broadcasters, and a wide variety of small businesses. The service has provided first-time ownership opportunities for minorities and women.[14]

7. The low power television service also includes television translator stations, which rebroadcast the programs of full service TV stations. Currently, there are approximately 4,900 licensed TV translators;[15] most operate in the western mountainous regions of the country. Translators deliver free over-the-air television service, mostly to rural communities that cannot directly receive the nearest TV stations because of distance or intervening terrain obstructions. They also provide ''fill-in'' service to terrain-obstructed areas within a full service station's service area.

8. The pursuit of other compelling public interest goals may negatively affect the service of LPTV stations in certain communities.[16] Specifically, to facilitate the transition from analog to digital television, the Commission has provided a second channel for each full service television licensee in the country that will be used for digital broadcasting during the period of conversion to an all-digital broadcast service.[17] At the same time, the amount of radio frequency spectrum allocated to broadcast television is being reduced.[18]

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

[3] On February 2, 1999, legislation was introduced in the U.S. House of Representatives by Representative Norwood (R–GA), *et al.*, the ''Community Broadcasters Protection Act of 1999'' (H.R. 486), proposing a primary Class A service for qualifying LPTV stations. On April 13, 1999, a hearing was held before the House Subcommittee on Telecommunications, Trade and Consumer Protection on ''The Regulatory Classification of Low-Power Television Stations.'' On August 5, 1999, the ''Community Broadcasters Protection Act of 1999'' (S. 1547) was introduced in the U.S. Senate by Senator Burns (R–MT), *et al.* The legislative proposals are similar in many respects to the CBA petition and different in others.

[4] Report and Order in BC Docket No. 78–253, 51 R. R. 2d 476 (1982).

[5] *Id.* at 484, see also Notice of Inquiry in BC Docket 78–253, 68 FCC 2d 1525, 1536 (1978).

[6] *Id.* at 484–485.

[7] *Id.* at 485.

[8] *Id.* at 486; see also *id.* at n. 23. ''[Because] it is integral to the concept of a secondary service that it yield to a mutually exclusive primary service, we shall not take low power stations into account in authorizing full service stations, and we urge low power applicants to consider this fact when they select channels.''

[9] Public Notice, ''Broadcast Station Totals as [of] August 12, 1999.''

[10] See, *e.g.*, comments of AirWaves, Inc. at 1. All references to comments and reply comments pertain to comments filed in response to Public Notice (No. 82996).

[11] Comments of Free Life Ministries, Inc. at 1.

[12] In its comments, D Lindsey Communications notes that its LPTV station is the only station providing local news for residents of Temecula and Murrietta, CA, both of which are within the Los Angeles DMA. Comments of D Lindsey Communications at 1. See also comments of Engle Broadcasting at 1–2.

[13] See, *e.g.*, comments of Community Broadcasting Company of San Diego at 2; comments of Hispanic Broadcasters of AZ, Inc. at 1; Channel 19 TV Corp. at 2; comments of ZGS Broadcast Holdings, Inc. at 1, comments of National Minority T.V., Inc at 1; comments of Liberty University, Inc. at 2; comments of Debra Goodworth, Turnpike Television at 1–2.

[14] First Report and Order in MM Docket No. 93–114, 9 FCC Rcd 2555, 59 FR 31552, June 20 1994.

[15] Public Notice, ''Broadcast Station Totals as [of] August 12, 1999.''

[16] TV translator stations may be affected to a lesser extent, given that most are distantly located from full service stations or are terrain-shielded from them. For instance, in the DTV proceeding the Commission estimated that approximately 55 to 65 percent of existing LPTV stations and 80 to 90 percent of all TV translators would be able to continue to operate and that operations in or near major urban areas would be most affected. Sixth Further Notice of Proposed Rule Making, MM Docket No. 87–268, 11 FCC Rcd 10968, 61 FR 43209, August 21, 1996.

[17] There are currently 1,599 such stations, both VHF and UHF, commercial and noncommercial. Public Notice, ''Broadcast Station Totals as [sic] August 12, 1999.''

[18] See Section 3004 of the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251,

The conversion will eventually accommodate more television stations in the reduced spectrum. In the meantime, however, numerous LPTV stations will be displaced.[19] Many will have to find new channels; some will be unable to do so and will have to cease operating.[20] As we have stated, revisions to the DTV Table to protect or otherwise accommodate LPTV stations ''would, by their very nature, pose restrictions on our choice of allotments for full service DTV stations.'' [21]

B. Current Measures To Ameliorate Station Displacement

9. In recognition of the severe consequences the transition to digital television will have on many stations in the LPTV service, the Commission took a number of steps intended to ameliorate those consequences. Despite all of the measures that we have taken to mitigate the impact of the DTV transition on stations in the LPTV service that transition will have significant adverse effects on many stations, primarily LPTV stations operating in urban areas where there are few, if any, available replacement channels. Although we have previously rejected pleas by low power advocates to grant them full primary status, we have not explored the option of granting something less than full primary status, such as the Class A status suggested by CBA. As we noted above, the greater stability that Class A status could provide such stations, many of which are small businesses, may enable them to make long term commitments to continuation of service, expansion of service (including digital operations), station upgrades and program production and purchases. Moreover, the comments filed in response to the CBA petition indicate that such status would be of tremendous benefit in obtaining the financial backing necessary to these ends. Finally, such status could remove the cloud over qualifying LPTV service stations that, even if they were to weather the DTV transition and possible displacement, they could be displaced or eliminated at any time by additional DTV stations by new entrants or by future primary services. On the other hand, Class A stations need not threaten the conversion to DTV because their ''less than full'' primary status could be tailored with appropriate safeguards. Accordingly, we herein consider whether and how to craft a Class A service with some measure of primary status for qualifying stations, and we seek comment in this regard.

C. The CBA Petition

10. On September 30, 1997, the Community Broadcasters Association filed a Petition for Rule Making requesting that Part 73, Subpart E of the Commission's Rules be amended to create a Class A low power television service that would afford primary protection status to the members of the Class; the petition was amended on March 18, 1998.[22] CBA proposed that Class A stations be regulated as television broadcast stations, except for rules related to station power or the manner in which the stations were initially authorized as LPTV stations.[23] Initial applications to attain Class A status would have to be filed within one year of the effective date of the rules for the new service. These applications would be considered minor change applications, not subject to the filing of competing applications. They could not propose a channel change or facilities changes that would extend a station's currently protected service area. Under the proposal, an applicant would be required: (1) To demonstrate that for the period of 3 months immediately preceding submission of the application, its LPTV station complied with the minimum operating schedule for TV broadcast stations (47 CFR 73.1740) and broadcast not less than 3 hours in each calendar week of locally produced programming, (2) to show that the Class A station would not cause interference within the Grade B contour of any television station operating on a channel specified in the TV Table of Allotments (47 CFR 73.606(b)) or the DTV Table of Allotments (47 CFR 73.622(b)) as of the date of filing of the Class A application or within the protected contour of any prior-authorized LPTV or TV translator station, (3) to certify that on and after the filing of the application that its station operated and would continue to operate in compliance with the pertinent regulations of Part 73. Class A stations would be protected from interference within their principal service contours, could apply for a change of channel to resolve interference conflicts without being subject to competing applications, could seek interference-free operations at certain higher levels of effective radiated power (''ERP'') than now permitted in the LPTV service, and could apply to convert to digital operation on their existing channels or seek authorization on an additional channel for this purpose where interference standards could be met.

11. On August 27, 1998, CBA filed a ''Report of Ex Parte Communication'' (*ex parte* letter) indicating that, as a result of conversations with Mass Media Bureau personnel, it would clarify some parts of its proposal. Principally, CBA clarified that Class A television stations should not be permitted to cause interference with DTV stations within service areas that replicate their NTSC service areas, even if DTV stations were to commence operation at less than the allotted transmission parameters; that the protected service area for Class A stations be defined in the same manner as that for LPTV stations (section 74.707(a) of the Commission's Rules) or the equivalent coverage for digital operations; that its proposal to exempt Class A stations from section 73.622 of the Commission's Rules was intended to permit stations to operate digitally without being limited to channels listed in the DTV Allotment Table (other parts of that rule, such as computations of distance, might be applicable to Class A.)

approved August 5, 1997; see also Report and Order in ET Docket No. 97–157 12 FCC Rcd 22953, 63 FR 06669, February 10, 1998; see also Sixth Report and Order in MM Docket No. 87–268, 12 FCC Rcd 14588, 62 FR 26684, May 14, 1997, recon. granted in part, denied in part Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order in MM Docket No. 87–268, 13 FCC Rcd 7418, 63 FR 13546, March 20, 1998, second recon. granted in part, denied in part Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders in MM Docket No. 87–268, 64 FR 4322, January 28, 1999.

[19] For example, approximately 260 LPTV stations operate on a channel from channel 60–69 and are required by law to vacate these channels by the end of the DTV transition period or earlier if they cause interference to primary services using these channels.

[20] As an indication of the extent of potential displacement, on June 1, 1998, 548 LPTV stations and 472 television broadcast translator stations filed ''displacement relief'' applications for operation on a different channel. Of these 303 applications were filed by stations on channels 60–69. These consisted of 116 LPTV and 187 translator applications. Over 280 applications in over 100 groups were mutually exclusive and the parties were given time in which to try and resolve their situations. As a result, the number of mutually exclusive applications has been reduced to 98 in 40 groups. Since then, we have received other displacement relief applications, bringing the total received to 814 LPTV and 772 TV translator applications; about 750 of the displacement relief applications have been granted.

[21] Memorandum, Opinion and Order on Reconsideration of the Sixth Report and Order in MM Docket No. 87–268, *supra* at 7462.

[22] All references to proposed Part 73 amendments, unless otherwise specified, are to the amended rules as set forth in Appendix A to the March 18, 1998, ''Amendment to Petition for Rule Making.''

[23] For example, Class A stations would not be confined to use of channels designated in the analog or digital TV allotment tables, nor would they be subject to analog full service TV minimum distance separations, certain DTV technical application evaluation criteria, or the Commission's multiple ownership and cross ownership restrictions.

D. Comments on the CBA Petition

12. More than sixty comments were filed in response to the CBA's rulemaking petition. A large majority of the commenters favored the creation of a Class A service, pointing to the service LPTV stations now provide, especially local programming, as well as programming designed for niche markets and racial and ethnic minorities.

III. Discussion

13. We seek comment on whether and how to create a Class A primary television service for qualifying stations in the LPTV service. We tentatively conclude that the local service they provide their audiences warrants protection to the extent possible, and we seek comment on this tentative conclusion.

14. We also wish to consider if there are circumstances under which it would be appropriate to extend opportunities for Class A status to certain television translator stations. Translator stations deliver television programming to remote communities and are often a community's only means of receiving free off-air television programming, particularly at locations where the signals of the nearest TV stations are blocked by mountainous terrain.[24] The National Translator Association believes that a translator should be able meet a minimum local programming qualification for Class A status by rebroadcasting the local programming of a full service station within that station's Grade B contour. We seek comment on this proposal. We also ask if there are other situations that would warrant Class A status for translators; for example, translators that provide the only television service to a community.

15. Altering the status of LPTV at this highly fluid juncture in the transition to digital television would require a careful balancing of many competing considerations. Perhaps most critically, we must ensure that the transition of full power television to digital broadcasting is not undermined. We must ensure our capacity to accommodate necessary adjustments in full power stations' operating parameters as digital service is being implemented. Therefore, the details and precise characteristics of any Class A low power service, particularly as to interference with full power stations, would have to be carefully crafted if our goals of a stable, protected low power service and a supple full power digital environment are all to be compatible and attainable. We are also concerned that the creation of a Class A LPTV service not unduly disrupt important services provided by secondary service facilities such as television translators, including public translators and translators that serve rural areas. We turn now to these matters.

A. Defining Interference Protection Rights and Responsibilities

16. The most important question before us is what does ''primary'' service mean in this context? To what level of protection should Class A stations be entitled? This issue is the most problematical issue to be resolved. Significant DTV issues include protection to allotted and authorized service, needs of DTV stations to make adjustments to correct unforeseen problems, need to accommodate DTV stations allocated on non-core channels, maximization of DTV service areas, and requests for DTV allotments by new entrants. There are also NTSC TV protection issues, which involve pending applications for new stations and petitions to amend the TV allotment table, as well as pending and future facilities modification requests.

1. DTV Protection Issues

17. *Service Replication.* We tentatively conclude that Class A status cannot be permitted to interfere with DTV broadcasters' ability to replicate insofar as possible their NTSC service areas, a primary goal in the DTV proceeding.[25] We seek comment on this tentative conclusion. At a minimum, we intend for Class A stations to protect the service areas resulting from the DTV allotment parameters and any additional DTV service authorized by construction permit or license or proposed in a DTV construction permit application before the filing of a Class A TV application. As stations under Part 73 of our rules, we believe it would be appropriate for Class A applicants to determine noninterference to DTV in the same manner as applicants for full service NTSC facilities. In this manner, Class A facilities would not be permitted to increase the population receiving interference within a DTV broadcaster's replicated service area and any additional area associated with its DTV license or construction permit. We would not permit Class A stations to cause ''*de minimis*'' levels of interference to DTV service.[26] Criteria for protecting DTV service are given in sections 73.622 and 73.623 of our rules and in OET Bulletin 69.[27] We seek comment on these proposals.

18. *Allotment Adjustments.* There are other DTV issues to be worked out in this proceeding. Channel changes and adjustments to station facilities may be necessary to correct unforeseen technical problems among DTV stations. While we have confidence in our DTV Table, situations may arise which warrant corrective action. Any requirement to protect Class A stations must not restrict our flexibility to make necessary adjustments to DTV allotment parameters, including channels changes. Accordingly, we propose that Class A primary status include this ''safety net'' provision.

19. We stated in the DTV Sixth Report and Order that we would review all requests for modification of the DTV Table for their impact on LPTV stations and ''strongly advised'' industry coordinating committees to consider LPTV and TV translator stations in developing proposed modifications to the DTV Table and to avoid impact on such stations wherever possible.[28] We propose that this provision also extend to Class A stations. Commenters should address the extent of protection Class A stations should afford to and receive from full service DTV stations.

20. *Service Area Increases.* Another issue concerns ''maximization'' of DTV service; *i.e.*, facilities increases to enlarge DTV service areas beyond NTSC-replicated service areas. In the DTV proceeding, we permitted

[24] Translator licensees could elect to become LPTV operators and adapt their operations so as to meet any qualifications we might establish for Class A status.

[25] Service areas to be replicated approximate the areas within the NTSC Grade B service contours. DTV channels and associated allotment powers and antenna heights were chosen to achieve service area replication insofar as possible. Allotment parameters are specified in Appendix B of the second DTV reconsideration order. (Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders in MM Docket No. 87–268, 64 FR 4322, January 28, 1999.

[26] In the DTV proceeding, we permitted DTV stations in the initial allotment table to decrease by two percent the populations served by NTSC and other DTV stations, not to exceed a total reduction of more than ten percent. Unlike this DTV allowance, applicants seeking facilities modifications of full service NTSC stations similarly may not cause any additional interference to DTV service. See Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order in MM Docket No. 87–268, 13 FCC Rcd 7418, 63 FR 13546, March 20, 1998.

[27] OET Bulletin 69, Longley-Rice Methodology for Evaluating TV Coverage and Interference (July 2, 1997), available at FCC Internet address http://www.fcc.gov/oet/info/documents/bulletins/#69.

[28] DTV Sixth Report and Order at Paragraph 182. See also the Notice of Proposed Rule Making in ET Docket No. 99–34, ''An Industry Coordination Committee System for Broadcast Digital Television Service'', FCC 99–8, 64 FR 06296 (February 9, 1999), at Paragraph 4. Paragraph 16 of this Notice seeks comment on whether coordinating committees should assist with coordination of certain LPTV and TV translator activities, including stations affected by the implementation of DTV.

broadcasters to request facilities increases that would enable them to provide service to larger audiences, and this was a partial basis for establishing the *de minimis* interference allowance. We seek comment on whether a Class A station should be required to yield to subsequently increased or relocated facilities of DTV stations or should have to protect a DTV station's ability to maximize its facilities. Conversely, should the service areas of authorized or proposed Class A facilities be protected against subsequent DTV application proposals to increase or modify service areas beyond the areas produced by a station's DTV allotment parameters?

21. *New DTV Entrants.* We seek comment on whether existing Class A stations should be protected by new entrants seeking new DTV channel allotments and whether Class A stations should be considered as primary television broadcast stations with respect to future primary services; *i.e.*, their operations on ''core'' channels (channels 2–51) could not be displaced by future primary services.[29] Without protection against displacement by future primary services, these stations would still lack the certainty and stability that they seek and that we tentatively believe are important to their continued viability as significant sources of local programming.

22. *Hybrid Primary Status.* We seek comment on whether Class A service should have a hybrid primary status that protects existing service while protecting Class A stations against new DTV and future primary services on core spectrum. In this instance we believe that consideration should be given to the preservation and stability of an existing service to the public, for which investments have already been made. We seek comment on whether Class A station licensees should be afforded the certainty that their stations will not be vulnerable to displacement by new and future DTV stations or other primary services.

23. We seek comment on these proposals. Should interference protection by DTV allotment petitions for new DTV service be given to earlier-filed Class A station applications, in addition to authorized stations? Should distance separations be used to protect Class A stations? If so, which distances should apply? Alternatively, should the service contours of Class A stations be protected, and are the protection criteria in section 73.623(c) of our rules suitable for this purpose?

2. NTSC TV Protection Issues

24. *Authorized Service.* With regard to NTSC television, we agree with CBA that applicants for Class A stations should protect previously authorized service within a station's Grade B contour in the manner given in section 74.705 of the LPTV rules. LPTV stations have been engineered to avoid causing interference to the Grade B contour of full-service stations, often using directional antennas to avoid such interference and, for this reason, continuation of the current standards would appear to be more appropriate than a different form of interference protection, such as minimum distance separations between stations. We believe that Class A station applicants should be permitted to utilize all means for interference analysis afforded to LPTV stations in the DTV proceeding, such as use of the Longley-Rice terrain-dependent propagation model. To provide additional stability, we would consider not imposing a requirement that Class A stations protect NTSC stations at locations beyond their Grade B contours wherever their signals are regularly viewed.[30]

25. *Pending Application and Allotment Proposals for New NTSC Stations.* Additionally, we have questions concerning protection of pending application and allotment proposals for new NTSC full power stations. Altogether, these proposals could result in approximately 250 new TV stations, most located in the eastern half of the country or in the western coastal region.

26. We have previously stated that we would seek to accommodate applicants and petitioners who have pending proposals for channels 60–69, none of which can be granted due to the reallocation of these channels, or freeze waivers that conflict with DTV stations or allotments.[31] We stated that these parties will be given an opportunity to seek replacement channels below channel 60, where this is possible, and that the details of the amendment opportunity period would be announced by public notice. This public notice will be issued shortly.

27. Releasing the NTSC amendment opportunity Notice soon after the adoption of the Class A Notice of Proposed Rule Making will assist us in gauging the impact of NTSC channel changes on LPTV and TV translator stations and, thus, the extent to which new NTSC service would limit opportunities for Class A service. It is not possible to approximate the magnitude of risk without first evaluating the NTSC channel change proposals filed in the amendment period. Based on our experience in developing the DTV allotment table, we believe it may be difficult, if not impossible, for many NTSC applicants and petitioners to find replacement channels consistent with our interference protection requirements. It is also likely, however, that many of the NTSC new-station proposals will no longer be pending if and when we begin authorizing Class A service. Our proposal that Class A applicants protect authorized NTSC stations would apply to any now-pending station proposals that would be earlier-authorized. We invite comment and analyses on the extent to which new NTSC service could affect the viability of a new Class A service.[32]

28. There is also the question of interference protection rights for any NTSC application and allotment proposals still pending at the time Class A applications are filed, if we were to adopt a Class A service. There are NTSC station proposals in applications that have remained pending for several years through no fault of the applicants.[33] Many other applications were submitted in response to our decision in the DTV proceeding to permit a last filing opportunity for new-station proposals that were then already under development.[34] We also maintained and

[29] Section 3003 of the Balanced Budget Act of 1997 mandates that the Commission auction recaptured broadcast channels between channels 2–59. Citation at footnote 18, *supra*.

[30] 47 CFR 74.703(b). The Report and Order establishing the LPTV service allows consideration of certain mitigating circumstances in the event of interference caused beyond a TV station's Grade B contour; for example, the programming of the signal being degraded can be received from another station or interference occurs due to anomalous reception conditions such as a viewer's use of a taller than normal outdoor receiving antenna. Report and Order in BC Docket No. 78–253, *supra*.

[31] See Reallocation of Television Channels 60–69, the 746–806 MHz Band, Report and Order, 12 FCC Rcd 22953, 63 FR 06669 (1998) and see also Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders, 64 FR 4322, January 28, 1999.

[32] A number of mutually exclusive LPTV and TV translator applications, including displacement relief applications, will participate in the September broadcast auction. We strongly advise applicants to consider the likelihood of any channel displacement that could result from the authorization of new NTSC stations or channel changes by applicants and petitioners eligible to file in the NTSC amendment opportunity window.

[33] Processing of these applications was frozen as the result of a court decision invalidating the Commission's comparative policy in *Bechtel* v. *FCC*, 10 F.3d 875 (D.C. Cir. 1993). Some of these pending applications have since been involved in settlements among the parties.

[34] In the DTV proceeding, we established July 25, 1996 as the last date for filing rule making petitions

Continued

protected vacant NTSC allotments outside of the freeze areas that are the subject of pending applications, and avoided creating DTV allotments that would conflict with these proposed new NTSC allotments.[35] And, as we noted above, new NTSC service would increase competition and enhance broadcast diversity.

29. We also recognize that hundreds of new NTSC full power stations could potentially jeopardize the continued operations of prospective Class A LPTV stations, perhaps including LPTV stations that began operating long before many of the NTSC proposals were even conceived. Failure to protect Class A stations from later-authorized new-station NTSC proposals could affect the extent of relief and stability offered by a Class A service, thereby minimizing its potential value to viewers. The number of mutually exclusive LPTV and translator displacement applications filed to date suggests that additional replacement channels may not be available in some areas.

30. We seek comment on how we should balance this difficult policy issue. Should Class A applicants be required to protect new NTSC TV station proposals in pending applications or allotment petitions? If not, should operating Class A stations be required to protect the actual service of later-authorized facilities? Alternatively, should applicants and allotment petitioners for new NTSC stations be required to protect earlier-authorized Class A stations? Are there measures we could adopt that, in some instances, could accommodate both new NTSC stations and prospective Class A stations? We invite comments on this difficult issue.

31. *NTSC Facilities Modifications.* An issue also arises regarding Class A protection rights and responsibilities with respect to NTSC TV facilities modifications (minor changes); for example, stations site relocation or increased power. Considering that both facilities would be ''primary'' under part 73 of our rules, we are inclined to favor a ''first-in'' approach for affording protection priority. Under this approach, protection rights between proposed NTSC TV facility modifications and initial and modified Class A stations would be given to the earlier-filed application. We would be disinclined to consider NTSC minor change and Class A applications to be mutually exclusive in the event one was filed before grant of the other. Priority to the earlier-filed application in such situations could result in much faster authorization of service. We invite comments on this proposal and whether the triggering event for interference protection rights should be the application filing date. We also ask in what manner NTSC proposals should protect earlier-filed Class A proposals. Should such protection be based on minimum distance separations between the stations or should such NTSC station proposals be required to provide contour protection to Class A stations in the manner that LPTV stations protect NTSC stations?

3. LPTV and TV Translator Station Protection Issues

32. We believe that Class A stations should protect the service contours of previously authorized LPTV and TV translator stations and must continue to accept interference from such stations. In this regard, we note that any ''primary'' service classification that would be given Class A stations would be a hybrid of current concepts of primary and secondary services. This is because we agree with CBA that Class A stations should have to protect existing LPTV and translator stations, which would not be the case with a full primary service. With this hybrid, Class A stations could have primary status with regard to translator and other secondary service applications filed in the future but not against existing secondary facilities. We envision carrying over the current contour protection standards (section 74.707 of the LPTV rules) for interference protection among Class A stations and also between Class A stations and LPTV and TV translator stations; *i.e.*, Class A stations would continue to provide the same protection to translators and non-Class A LPTV stations as they did when regulated under part 74. LPTV and translator stations would protect previously authorized Class A stations in the same manner. We further propose that Class A, LPTV and TV translators licensees, permittees and applicants be permitted to negotiate interference agreements in the manner now permitted in the LPTV service. Inasmuch as Class A stations would come from the LPTV service (at the least the initial stations), the transition to Class A would appear to be the least disruptive by continuing the use of LPTV protection standards.

33. We invite comments as to how these standards should be applied. Should applications to modify Class A facilities be required to protect previously filed LPTV and TV translator applications? Should applications for new stations and major changes in the two services be filed in the same windows and participate in the same auctions—excluding the initial applications for Class A status of stations that were first authorized in the LPTV service? What criteria should govern interference protection to and from digital Class A stations? In this regard, would it be appropriate to use the protection ratios applicable to DTV station facilities modifications?[36]

4. Land Mobile Radio and Other Services

34. As indicated in the comments, land mobile radio services, including public safety services, now operate on designated channels in the channel 14–20 band in several major cities.[37] Public safety services will also be operating on reallocated TV channels 63, 64, 68 and 69 and other yet to be determined primary services will eventually occupy the remaining spectrum from channel 60 to channel 69.[38] Congress has mandated that all broadcast operations on channels 60–69 cease at the end of the DTV transition period.[39] In reply comments, CBA indicates that compliance with Part 73 rules would ensure protection to land mobile operations on channels 14–20. We concur that spectrum allocated for land mobile operations and authorized land mobile service should continue to be protected, and we propose to apply to Class A stations the protection requirements currently contained in section 74.709 of the Commission's Rules. We also would continue the requirements in this rule concerning protection of the Off Shore Radio Service in the Gulf of Mexico region.[40] Finally, we are inclined to carry over to the Class A service the ''earliest user'' provisions for protecting cable television and the other services listed in section 74.703(d), to which we would add ''earlier used'' TV translator input

to add new channel allotments to the TV Table of Allotments and September 20, 1996 as the last date to file applications for new NTSC TV stations (except for applications filed in response to application cutoff lists). See Sixth Further Notice of Proposed Rulemaking in MM Docket No. 87–268, 11 FCC Rcd 10968, 61 FR 43209 (1996).

[35] Sixth Report and Order in MM Docket No. 87–268, *supra*, at paragraph 112.

[36] 47 CFR 73.623(c).

[37] See 47 CFR 74.709.

[38] See generally Report and Order in ET Docket No. 97–157, 12 FCC Rcd 22953, 63 FR 06669 (1998), recon den. Memorandum Opinion and Order in ET Docket No. 97–157, FCC 98–261, 63 FR 63798 (1998).

[39] See section 3004 of the Balanced Budget Act of 1997, *supra* at footnote 20.

[40] Section 74.709(e) of the Commission's Rules provides that LPTV or TV translator applications for channels 15–18 will not be accepted for specified locations in the area of the Gulf of Mexico.

channels. We invite comment on these matters.

5. Class A Protected Service Area

35. LPTV stations protect other LPTV and TV translator stations to the following signal contours: 62 dBu for stations on channels 2–6, 68 dBu for stations on channels 7–13, and 74 dBu for stations on channels 14 and above, in combination with the Commission's F(50,50) propagation curves.[41] We find merit in continuing for Class A television the protected areas now afforded LPTV stations. This would fit well with our primary purposes of preserving existing service provided by LPTV stations and minimizing disruption or preclusion of other services. We have no readily available contour values for digital stations other than those values that define DTV noise-limited service: 28 dBu for channels 2–6, 36 dBu for channels 7–13, and 41 dBu for channels 14 and above, in combination with the locations of the predicted F(50,90) field strength.[42] We invite comment on the protected service area of Class A stations and, in particular, on whether other field strength values might be better suited for analog and digital Class A service.

B. Class A Eligibility

36. *Opportunity Period to Apply for Class A Status.* Under its proposed section 73.627(a), qualifying stations in the LPTV service would be able to apply for Class A status only within one year after the effective date of the rules adopting a Class A service. Some commenters object to this aspect of the proposal and believe that Class A eligibility ought to be ongoing as LPTV stations become qualified. On the one hand, we believe that there may be practical limits on the number of LPTV stations that could become Class A stations. Based on our findings in the DTV proceeding, we believe there is insufficient spectrum to provide primary status on a wholesale basis to the more than 2,200 LPTV stations. On the other hand, is it unduly restrictive to limit the opportunity to convert to Class A status to only those stations that could qualify in the twelve month period following conclusion of this proceeding, ignoring other LPTV stations that provide similar local service but at a later date? Accordingly, we seek comment on the correct balance to strike between these competing considerations.

37. *Qualifying Criteria.* Another issue is the qualifying criteria for Class A status. We seek comment on whether Class A applicants should be required to meet the definition of ''Small Business''[43] and provide a certain amount of local programming as more fully discussed below. We note that many LPTV stations operate as small businesses and that this would be consistent with our ongoing obligation to consider barriers affecting small businesses (for example, in the areas of spectrum and financing).[44] Commenters should address whether broader service eligibility criteria are needed to afford Class A opportunities to other types of LPTV licensees, such as educational organizations.

38. CBA proposed that Class A applicants be required to show that for the three months preceding filing they have (1) provided three hours per week of programming produced within the city grade service contour of the station, or produced within the city grade service contour of any of a group of commonly controlled stations operating in contiguous or closely grouped areas that carry common local or specialized programming not otherwise available to their communities and (2) have complied with the minimum operating schedule required for television stations.

39. Given the benefits that would accrue to an LPTV station converting to Class A status, and the difficulty in balancing the stability of qualifying LPTV stations with the preclusive impact on other services, we seek comment on whether these proposals are appropriate or whether more stringent or well-defined qualifications would be in order. For example, is ''locally produced'' too vague a criteria, as opposed to programming aired live or filmed in the community? We ask commenters to address this question. Should we require that some or all of the qualifying programming be informational in nature? In this regard, is it sufficient to rely on applicants' certifications of compliance with pertinent content regulations applicable to full service stations, also proposed by the CBA? Is three hours per week out of a potential 168 hours of broadcasting per week sufficient or should we require more (*e.g.*, a minimum of seven hours per week or at least one hour per day of locally originated programming?) Should repeated programming or locally produced commercials count? Should local production requirements continue after the application has been filed? To ensure continued eligibility for Class A status, should licensees be required to certify annually as to their compliance with the local programming, children's informational programming and commercialization regulations and minimum operating hours? If a Class A station is to be sold, should the buyer be required to certify continued compliance with these provisions? Is three months a sufficient period in which to determine the commitment of an LPTV station to local origination to warrant awarding it Class A status? Are there alternative, possibly more objective, criteria that we could use to determine which LPTV stations have made particular efforts to respond to the needs of their communities so as to justify an upgrade to Class A status? Would signal coverage or audience ratings provide such criteria?[45] Is there some other qualification criteria that would not involve the Commission in content regulation?

40. Statutory requirements that now apply to LPTV stations must also apply to Class A stations; for example, the prohibitions on the broadcasting of obscene material. In creating the LPTV service, the Commission determined that the ''equal time'' and ''lowest unit charge'' provisions in sections 312(a)(7) and 315 of the Communications Act would apply to LPTV stations ''to the extent their origination capacity permits * * * [T]he reasonable requests of legally qualified candidates for federal elective office who seek to purchase reasonable amounts of time or respond to their opponents messages must be acceded to, so long as they provide program material that is compatible with the station's origination equipment.''[46] We believe that these statutory provisions should apply to all Class A stations, which, we expect, would be equipped with or have access to the necessary origination equipment.

41. Are there part 73 rules with which Class A stations should not have to

[41] 47 CFR 74.707(a).

[42] 47 CFR 73.622(e).

[43] The general definition of the term ''small business'' is given in the Initial Regulatory Flexibility Analysis, *infra*.

[44] Under section 257 of the Telecommunications Act of 1996, the Commission is required to identify and eliminate ''market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and informational services * * * and must promote the policies and purposes of this Act favoring diversity of media voices, vigorous economic competition, technological advancement, promotion of the public interest, convenience and necessity.'' See Telecommunications Act of 1996, Public Law 104, section 257, 110 Stat. 56 (1996).

[45] We realize that, often, LPTV stations are not rated by national audience rating services. This would not, however, preclude an LPTV licensee desiring Class A status from undertaking its own study of audience share or public acceptance.

[46] Report and Order in BC Docket No. 78–253 at para 105. Citation given in footnote 5, *supra*.

comply, including certain rules identified in the CBA petition or others such as the public inspection file [47] and main studio rules? [48] If we do not apply the public inspection file rule to Class A stations, should we nevertheless apply the issue responsive programming requirement inherent in itto Class A licensees? Should Class A stations have to comply with the part 73 requirements for informational and educational children's' programming [49] and the limits on commercialization during children's programming? [50] Are there current LPTV rules in part 74, other than interference protection provisions, which should be carried over to a Class A service? Finally, what process should we use for Class A licensees who wish to revert to LPTV status?

C. Class A Applications

42. *Initial Class A Licenses.* Although CBA proposed that initial applications for Class A status should not include changes in channel or facilities changes that would increase a station's coverage area, that initial Class A applications not be subject to the filing of mutually exclusive applications, and that Class A applicants be allowed to pursue a changes of channel or extensions of coverage area in separate applications filed simultaneously with initial Class A status applications, we do not believe that applicants should be permitted to file Class A facilities modification applications at the same time. The authorization process would be quicker and less complicated if modification applications were filed only after Class A status had been initially authorized. We therefore seek comment on whether initial Class A applications should be limited to the conversion of existing facilities to Class A status, with no accompanying changes in those facilities. Moreover, by protecting all existing facilities, including those of LPTV and translator stations, there should be no possibility of mutual exclusivity between or among Class A conversion applications. Accordingly, we propose that initial Class A applications be filed as ''minor changes'' and be processed in a manner consistent with such status.

43. We propose that all Class A applications would be filed on FCC Form 301, including all required exhibits. In the interest of streamlining the process, we seek comment on whether certifications of compliance with filing requirements would suffice in lieu of application exhibits? Should applicants certify that their stations comply with relevant interference standards in lieu of detailed analyses? Should a special application form be developed to expedite the process? Development of a new form for Class A TV could help to expedite application processing. In this regard, we contemplate that, consistent with our streamlining actions,[51] we would require electronic filing of Class A applications irrespective of the particular form to be used.

44. *Class A Facilities Changes.* The definition of major and minor facilities changes is another important issue to be considered. The LPTV service rules define ''minor'' changes to be changes to existing facilities such as an antenna site relocation of less than 200 meters or, more generally, any changes (other than a channel change) that do not extend a station's protected signal contour in any direction.[52] This definition has ensured that LPTV minor change applications are not mutually exclusive with other applications. However, it has often hindered stations from making desired or needed changes such as power increases, antenna changes, or site relocations. These changes often must be requested in application filing windows and are subject to competing mutually exclusive applications and the auction process. As a result, stations are finding it difficult to improve their facilities or respond to urgent situations, such as loss of their transmitter site. Stations with critical needs have been forced to seek operation under special temporary authority.

45. We agree that the current minor change provisions in the LPTV service may be too restrictive. We seek a ''minor change'' definition that would permit additional flexibility to change facilities, including changes to improve coverage, but also would assure that such changes would not cause interference to existing service. As one way of striking a balance, we could routinely grant Class A facilities changes that meet the current LPTV definition, but permit other more expansive changes on a first-come first-served basis provided the proposed facilities would not conflict with previously authorized or proposed facilities. Under this approach, Class A stations could seek authorization for increased power, up to the limits of the service, outside of the window and auction procedures, provided their proposals met all interference protection requirements. This approach would be more consistent with the minor change provisions for full service radio and TV stations, and we propose it for Class A stations.[53]

46. One important distinction between full power TV service and the proposed Class A service exists, however, which may warrant a somewhat different process for Class A modifications. TV minor change applications are not subject to a 30-day petition to deny period, but are subject to the filing of informal objections. However, unlike Class A stations, analog full-power analog TV interference is governed through channel allotments based on mileage separation requirements which serve to ensure facilities changes will not result in interference problems.[54] Because we do not propose specific separation requirements for Class A stations, we invite comment on whether we should subject the ''more expansive'' Class A minor change applications to a 30-day petition to deny period. The opportunity to file petitions to deny could serve to give some assurance that Class A facilities increases would not result in interference to existing service. This approach would essentially duplicate the process we now use in considering LPTV displacement applications.

47. We contemplate further requiring that the station be able to continue to serve at least part of the community identified on its authorization. Any of the above provisions could also be used for digital Class A stations. Facilities changes for analog or digital Class A stations that would not meet the definition for minor changes would be subject to filing windows and the auction process. We invite comment on how we should define major and minor Class A TV facilities changes and on other ways to streamline the authorization of Class A TV service. If we were to adopt a more inclusive definition of minor facilities changes for Class A stations, should it also apply to television translator and non Class A LPTV stations? We would be inclined to do so because of the technical and application processing similarities

[47] 47 CFR 73.3526 and 73.3527.

[48] 47 CFR 73.1125.

[49] 47 CFR 73.671.

[50] 47 CFR 73.670.

[51] ''Streamlining of Mass Media Applications, Rules and Processes'', Report and Order in MM Docket Nos. 98–43, 13 FCC Rcd 23056, 63 FR 70040 (1998).

[52] 47 CFR 73.3572(a).

[53] We recently altered the definitions of ''major'' and ''minor'' facilities changes for the AM, Noncommercial FM and FM translator services so that fewer changes are regarded as major. See Report and Order in MM Docket 98–93, 64 FR 19498 (1999). Most facilities modifications in the FM and TV services are now considered minor.

[54] This approach is also applicable for DTV allotments not included in the initial allotment table (See 47 CFR 73.623(d).

between the LPTV and proposed Class A services.

48. *Class A Channel Displacement Relief.* Through additional protections for Class A stations, we hope to reduce their risk of channel displacement or termination. However, it could be necessary for a Class A station to seek operations on a different channel, as a way to avoid or eliminate interference conflicts. In that event, we propose that Class A stations be permitted to apply for new channels on a first-come, first-served basis, not subject to mutually exclusive applications. We believe there is a need for displacement relief procedures in a Class A service, and we propose to adopt procedures similar to those used in the LPTV service, which have worked well over the years.[55] Class A stations causing or receiving interference with NTSC TV, DTV or any other service or predicted to cause such interference would be entitled to apply for a channel change and/or other related facilities changes on a first-come first-served basis. We propose that displacement applications filed by Class A licensees be treated as major changes, with the specific exception that such applications would be permitted to be filed at any time that displacement status could be demonstrated. Thus, Class A displacement applications would not have to be filed in a window. Applications of Class A stations would not be mutually exclusive unless filed on the same day. We tentatively conclude that mutually exclusive applications would be subject to the auction procedures pursuant to section 309(j) of the Communications Act. We seek comment on these matters. Commenters may also address whether Class A applications could be excluded from the auction requirements consistent with legislative intent, and the basis on which we would resolve mutual exclusivity when it arises.

49. We note that in the LPTV service, displacement applications related to DTV conflicts or channel relocations from channels 60–69 are given priority over all other types of nondisplacement applications, regardless of when these were filed. We seek comment on whether we should adopt a similar policy for prioritizing Class A facilities modification applications, and whether some or all of the LPTV displacement relief provisions should apply to Class A television. Should there be any different or special provisions for Class A TV conflicts with DTV stations? Should there be a limitation on how far a station should be permitted to relocate its antenna site to avoid or eliminate an interference conflict or would some form of a minimum coverage requirement provide a natural limit on this distance?[56] Should we consider reasons for displacement other than electromagnetic interference, such an unavoidable loss of antenna site? We ask whether Class A displacement applications should have priority over Part 74 LPTV or TV translator non-displacement applications filed earlier or on the same day? If a Class A station and a non-Class A LPTV station file mutually exclusive displacement applications, should we favor the Class A application? We invite comment on these issues.

50. *Channels 60–69.* In the Balanced Budget Act of 1997 (''Budget Act''),[57] Congress required that the Commission ''seek to assure'' that a qualifying LPTV station authorized on a channel from channel 60 to channel 69 be assigned a channel below channel 60 to permit its continued operation.[58] In the DTV proceeding, we amended our rules to permit all LPTV stations on channels 60 to 69 to file displacement relief applications requesting a channel below channel 60, even where there is no predicted or actual interference conflict.[59] On June 1, 1998, we received 116 applications from LPTV stations and 187 applications from TV translator stations operating on these channels. We note that these applications have a higher priority than all other nondisplacement applications for LPTV and TV translators, regardless of when the applications were filed. Other LPTV and TV translator stations on channels 60—69 who have so far not elected to file displacement applications, may do so at any time provided they protect the proposed facilities of earlier-filed displacement applications. The Commission has not selected channels for qualifying LPTV stations; however, it has provided the opportunity for affected stations to seek channels below channel 60 on a priority basis. We invite comment on whether any and if so, what further actions should be taken to meet this Congressional mandate. Should we give special consideration to the processing of displacement applications from qualifying stations in the LPTV service seeking to vacate use of a channel above channel 59? Should these applications be given priority where they are mutually exclusive with other displacement applications that do not qualify under the terms of the Budget Act?

D. Other Technical Issues

51. *Television Channels for Class A Stations.* We propose not to authorize Class A service on channels 52–59. In the DTV proceeding, channels 2–51 were established as the permanent ''core'' spectrum, permitting the recovery of channels 52–59 at the end of the DTV transition period.[60] In the interest of providing long term stability for Class A stations, we believe it would be best not to authorize Class A status on these channels, only to subject stations to future displacement. Accordingly, we propose to grant Class A status only to qualifying stations already authorized to operate on channels 2–51.

52. We recognize that this spectrum limitation could adversely affect stations above channel 51. LPTV and TV translator operators on channels 60–69 have a presumption of displacement and may seek replacement channels at any time without further qualification. However, operators on channels 52–59 may seek displacement relief only where there is an actual or potential interference conflict, including a conflict with a DTV co-channel allotment. Nonetheless, these operators face displacement when channels 52–59 are reclaimed, and would be barred from becoming Class A stations if they could not secure a replacement channel below channel 52. Thus, we ask if the presumption of displacement should be extended to LPTV and TV translator stations authorized on these channels, giving these operators an immediate opportunity to seek replacement channels while such channels might still be available. We recognize this could lead to additional competition for replacement channels, channels which may be needed now by some LPTV and translator stations facing imminent displacement. We invite comment on spectrum issues for Class A stations and, in particular, on whether we should extend a presumption of channels displacement to LPTV and TV

[55] 47 CFR 73.3572(a)(2).

[56] See paragraph 54, *infra.* LPTV stations displaced by interference conflicts with analog TV service are permitted to relocate their sites within 16 kilometers; there is no relocation restriction to resolve DTV conflicts.

[57] See Public Law 105–33, 111 Stat. 251, section 3004 (1997), adding new section 337(e) to the Communications Act.

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

[59] Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, *supra,* at paragraph 116.

[60] Sixth Report and Order in MM Docket No. 87–268, *supra,* at paragraph 83.

translator stations authorized for channels 52–59.

53. *Power Levels.* We believe the current power levels are sufficient to preserve existing service, and we believe that further increases could hinder the implementation of digital television and could limit the number of Class A stations that could be authorized. CBA has proposed maximum levels of effective radiated power (ERP) for Class A stations that exceed the ERP limits in the LPTV service rules.[61] However, we note that our primary purpose in this proceeding is to provide additional stability for qualifying LPTV stations, and this by itself is a formidable undertaking. Our current belief is that any further power increases for Class A stations should await a fuller understanding of the coverage and interference potential of full service digital television stations. We invite comment on this aspect of the proposed Class A service.

54. *Coverage Requirements.* Another issue to be resolved is whether to require Class A stations to provide some requisite level of coverage over their community. We question whether a minimum coverage requirement should be imposed on Class A stations. Such stations may not operate with sufficient power to serve large communities, and we have expressed reservations about increasing power limits for Class A stations beyond the current limits in the LPTV service. Those Class A stations that are intended to serve an entire community that is otherwise unserved or underserved would appear to have ample incentive to provide a requisite level of service to the residents of the whole of that community without a Commission requirement to do so. Other stations, by their very nature, might intend to serve only a narrow segment of their community.

55. We seek comment on whether to require any certain signal level or other measure of Class A reception quality to any particular geographical area or population. Alternatively, if we do adopt a coverage requirement, should it be couched in terms of a certain proportion of the Class A station's signal contour having to be placed over at least some part of its community of license?[62] This type of requirement would serve to maintain a connection between the Class A station and its community of license without requiring it to serve any requisite portion of that community. This would be particularly beneficial where the community of license is large and the Class A station is intended to serve only a part of it. We seek comment on this issue and on what portion of a Class A station's signal contour, if any, should have to be placed over some part of its community of license.

E. Ownership Restrictions

56. A principal objective of any proposal to elevate certain LPTV stations to Class A status is to recognize their contribution to local diversity. Accordingly, our preliminary view is that, if we create a Class A service, these rules should apply to Class A licensees to the same extent they apply to full service licensees, at least with regard to local ownership limits. At the present time, we do not believe it appropriate to apply the national audience reach cap to Class A stations. That reach cap is premised on the ability of a full service station to reach the entire market (or, in the case of UHF stations, to actually reach half of the entire market). As noted above, we do not anticipate that Class A stations would be required to reach or, in many instances, would be able to reach an appreciable portion of the markets in which they are located. Thus, it would be inequitable to charge a Class A station with reaching its entire market, and to cap Class A stations under common ownership to reaching a theoretical 35% of the national TV audience, when, in actuality, such a group of stations might reach only a small proportion of that figure. We seek comment on these issues. In this regard, there are several questions we would like addressed by commenters. First, to what degree would application of part 73 multiple and cross-ownership limitations limit the ability of LPTV stations to upgrade to Class A? Second, if we do decide to impose these ownership limitations, should we grandfather existing combinations that would be prohibited by the rule and, if so, should grandfathered status terminate at some point? Third, on the local level, what should be the triggering threshold for any applicable ownership restraints? For example, should the duopoly rule for Class A stations prohibit common ownership of stations whose protected service contours overlap?

F. Digital Class A Stations

57. We propose to allow Class A stations at any time to request authority to convert from analog to digital operation on their existing channels, provided interference protection standards are met. However, we will not, as CBA proposed, permit Class A stations to apply for a second channel for digital operations. We invite comments on this issue.

58. Digital operation by Class A stations presents the issue of compliance with the technical and service rules applicable to full service DTV stations.[63] We invite comment on rules that should or should not apply to digital Class A stations. We currently believe that, at a minimum, these stations should have some broadcast requirement, and we seek comment on this view. What supplementary and ancillary fees regulatory approach should apply to Class A broadcasters providing feeable services? Should it be the same as we apply to full service DTV stations? We also believe primary stations should be required to use the transmission standard adopted for DTV stations and seek comment on this issue. Within what period of time after receiving digital authority, such as CBA's proposal of 18 months, should we require stations to commence digital operation?

G. Remaining Issues

59. Three remaining issues should also be addressed. One issue concerns the format of call signs to be issued to Class A stations? LPTV stations may request use of four-letter call signs, which must be appended by the suffix ''–LP''. Should Class A stations be assigned four-letter call signs without a designating suffix other than ''–TV,'' for example, in the manner of Class A FM radio stations? If not, what is an appropriate suffix? Another issue, which is not mentioned in the CBA petition, is the issue of whether Class A transmitters should be certified (similar to the previous ''type acceptance'' requirement) or should the less stringent part 73 ''verification'' requirement or some other criteria apply? Finally, what class of fees should apply to Class A applicants? We believe it appropriate to classify Class A applications as minor

[61] In the DTV proceeding, section 74.735 of the LPTV rules was amended to replace transmitter power output limits with limits for effective radiated power. The limits for analog LPTV and TV translator stations are 3 kW and 150 kW for VHF and UHF channels, respectively. For digital operations, the limits are 300 watts for VHF and 15 kW for UHF stations.

[62] We recognize that, in effect, LPTV stations are licensed to serve particular areas rather than particular communities. This type of requirement would require that Class A stations be licensed to a particular community even though they would not have to serve a requisite percentage of the entire community or its population.

[63] See Fourth Report and Order in MM Docket 87–268, 11 FCC Rcd 17771, 62 FR 14006 (1996); Fifth Report and Order in MM Docket No. 87–268, 12 FCC Rcd. 12809, 62 FR 26966 (1997), recon. granted in part and denied in remainder Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order in MM Docket No. 87–268, supra; Sixth Report and Order in MM Docket 87–658, supra, recon. granted in part and denied in remainder 13 FCC Rcd 7418, 63 FR 13546 (1998).

modifications for fee purposes. How should Class A stations be considered for the purposes of regulatory fees assessed pursuant to section 9 of the Communications Act of 1934, as amended?[64] We seek comment on these and other issues.

IV. Conclusion

60. In this document, we seek comment on the creation of a Class A low power television service, which would afford stability to LPTV stations providing local service, while also considering the needs of other services, foremost among these the transition to digital television service. Creation of such a service will require the balancing of a number of factors, which will not be easy to strike. Accordingly, we seek comment on all of the issues raised herein to assist us in achieving that balance.

V. Administrative Matters

61. *Comments and Reply Comments.* Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments on before 60 days after publication in the **Federal Register** and reply comments on or before 90 days after publication in the **Federal Register**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121 (1998).

62. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address.'' A sample form and directions will be sent in reply.

63. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W.; TW–A325, Washington, D.C. 20554.

64. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Wanda Hardy, 445 Twelfth Street, S.W.; 3–C221, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the lead docket number in this case (MM Docket No. 99–292), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 445 Twelfth Street, S.W.; CY–B402, Washington, D.C. 20554.

65. *Ex Parte Rules.* This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

66. *Initial Regulatory Flexibility Analysis.* With respect to this document, an Initial Regulatory Flexibility Analysis (''IRFA'') is provided. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an IRFA of the expected impact on small entities of the proposals contained in this document. Written public comments are requested on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions in our IRFA regarding the prevalence of small businesses in the television broadcasting industry. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the document, but they must be filed in accordance with the same filing deadlines as comments on the document, but they must have a distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this document, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981), as amended.

67. *Authority.* This document is issued pursuant to authority contained in sections 4(i), 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 307.

Initial Regulatory Flexibility Act Analysis

68. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603 (''RFA''), the Commission is incorporating an Initial Regulatory Flexibility Analysis (''IRFA'') of the expected impact on small entities of the policies and proposals as an Appendix to this Notice of Proposed Rule Making. Written public comments concerning the effect of the proposals in this document, including the IRFA, on small businesses are required. Comments must be filed in accordance with the same filing deadlines as comments on the document, but they must have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this document, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act.[65]

69. *Reason Why Agency Action is Being Considered:* The Community Broadcasters Association filed a Petition for Rule Making asking that the Commission create a ''Class A'' broadcast service consisting of low-power television stations that had provided at least three hours per week of locally produced programming during the three months immediately preceding the filing of their application for Class A status and met other eligibility criteria. Public Notice of that Petition was given on April 21, 1998. Comments and reply comments were filed. On the basis of those comments, the Commission believes that a *Notice of Proposed Rule Making,* considering creation of such a class of television broadcast stations is appropriate. Creation of such a class of television stations would provide qualifying low power television stations primary status

[64] 47 U.S.C. 159.

[65] Public Law 96–354, 94 Stat. 1164. 5 U.S.C. 601 *et seq.* (1981), as amended.

that should help them survive the transition to digital television, which will require, during the transition, a doubling of the number of authorized primary full service stations that will otherwise displace numerous low power stations and eliminate a number of these stations. The document considers creation of the Class A service and asks specific questions on issues on which a further record is necessary and appropriate.

70. *Need For and Objectives of the Proposed Rule Changes:* The document in this proceeding is seeking comment on whether and how the Commission should create a Class A service that will give qualifying low power television broadcast stations primary status. This will allow the continued development of locally produced programming aired on these stations to the benefit of the informational and entertainment needs of the audiences they serve notwithstanding the transition to digital broadcast television service.

71. *Legal Basis:* Authority for the actions proposed in this document may be found in sections 4(i), 303 and 307 of the Commissions Act of 1934, as amended, 47 U.S.C. 154(i), 303, 307 and 307.

72. *Reporting, Recordkeeping, and Other Compliance Requirements:* The Commission is not proposing any new or modified reporting, recordkeeping, information collection, or compliance requirements in this proceeding.

73. *Federal Rules that Overlap, Duplicate, or Conflict with the Proposed Rules:* The initiatives and proposed rules raised in this proceeding do not overlap, duplicate or conflict with any other rules.

74. *Description and Estimate of the Number of Small Entities to Which the Rules Would Apply:* Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**. There are approximately 2,200 LPTV stations that potentially could be affected by decisions reached it this proceeding. The impact of actions taken in this proceeding on small entities would ultimately depend on the final decisions taken by the Commission and the number of LPTV stations that would qualify and apply for Class A status. However, the impact of the decisions taken in this proceeding on LPTV stations should be a positive one, enabling those qualifying for Class A status to gain a greater degree of security in the continuation of their existence without the potential for continuing displacement during the transition to digital television.

75. *Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives:* This document solicits comment on a variety of alternatives discussed herein. Any significant alternatives presented in the comments will be considered. This proposal will ultimately provide benefits all qualifying low power television stations by facilitating means for them to survive the transition to digital television. We seek comment on the alternatives proposed in this document, on any other alternatives that commenters feel would provide benefits to such stations as they go through the period of transition to digital television, and on whether there is a significant economic impact on any class of small licensees or permittees as a result of any of our proposed approaches.

Initial Paperwork Reduction Act Analysis

76. This document explores the potential creation of a Class A service of television broadcasters. In this Notice of Proposed Rule Making, we solicit comment on the possibility of creating a new application form for LPTV licensees applying for Class A status. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (''OMB'') to take this opportunity to comment on the information collection contained in the Notice of Proposed Rule Making. Public and agency comments are due at the same time as other comments on this document; OMB comments are due 60 days from the date of publication of this document in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street, S.W.; 1–C8004., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Virginia Huth, OMB Desk Officer, 725 17th St., N.W. Room 10236 NEOB, Washington, DC 20503 or via the Internet to VHuth@omb.eop.gov.

77. *Additional Information.* For additional information on this proceeding, please contact Keith Larson, Office of the Bureau Chief, Mass Media Bureau, (202) 418–2600 or Roger Holberg, Policy and Rules Division, Mass Media Bureau, (202) 418–2134.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–27530 Filed 10–21–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 990901241–9247–01; I.D. 123198B]

RIN 0648–AM09

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Construction and Operation of Offshore Oil and Gas Platforms in the Beaufort Sea

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a revised application for a Letter of Authorization (LOA) from BP Exploration (Alaska), 900 East Benson Boulevard, Anchorage, AK 99519 (BPXA) to take small numbers of marine mammals incidental to construction and operation of offshore oil and gas platforms at the Northstar development in the Beaufort Sea in state and Federal waters and a petition from