

policies and rules must distinguish between commercial station and NCE stations in terms of how it allocates and licenses this spectrum. Thus, the Commission cannot distinguish between "small" and "non-small" entities in applying the relevant statutory standards.

44. Although it is not necessarily true that more applicants for NCE stations would qualify as "small entities" than applicants for commercial stations, the Commission has attempted, within the applicable legal constraints, to maximize the opportunities for applicants for NCE stations to obtain licenses to use non-reserved spectrum, consistent with the mandate in section 604(a)(5) of the RFA that an agency consider alternatives to minimize significant economic impact on small entities. For example, in the *2FNPRM*, the Commission proposed two alternatives for licensing non-reserved spectrum: Hold applicants for NCE stations ineligible for the spectrum, or permit them to apply for this spectrum, subject to the Commission returning their applications as unacceptable for filing if any mutually exclusive applications for commercial stations remained after the expiration of any settlement period. In the *2R&O*, the Commission has adopted the second of these alternatives, which permits NCE stations to obtain licenses for non-reserved spectrum, while the first one did not. This alternative is equally beneficial to both large and small entities, because it permits all entities the opportunity to acquire licenses for non-reserved spectrum. Moreover, the Commission has also reaffirmed its process that permits would-be applicants for NCE stations, both large and small, to reserve more FM and TV channels for their exclusive use upon showing that an already-reserved channel is not available for use, and there is a need for NCE service in a given area. The Commission will allow interested parties an opportunity to apply these criteria to future allocation proceedings, and to channels already in the Table of Allotments for which the Commission initiated an allocation proceeding before the effective date of the criteria, and for which it never accepted applications.

Report to Congress

45. The Commission will send a copy of the *2R&O*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *2R&O*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy

of the *2R&O* and this FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

46. Pursuant to the authority contained in sections 1, 2(a), 4(i), 303, 307, and 309 of the Communications Act, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, and 309 of this *2R&O* is adopted, and parts 73 and 74 of the Commission's rules are amended, effective June 16, 2003.

47. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *2R&O*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

48. This proceeding is *terminated*.

List of Subjects in 47 CFR Parts 73 and 74

Radio, Television.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 73 and 74 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

■ 2. Section 73.3571 is amended by revising paragraphs (h)(1)(i), (h)(2)(i), and (h)(3) to read as follows:

§ 73.3571 Processing of AM broadcast station applications.

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(h) * * *

(1)(i) The FCC will specify by Public Notice, pursuant to § 73.5002, a period for filing AM applications for a new station or for major modifications in the facilities of an authorized station. AM applications for new facilities or for major modifications, whether for commercial broadcast stations or noncommercial educational broadcast stations, as described in 47 U.S.C. 397(6), will be accepted only during these specified periods. Applications submitted prior to the appropriate filing period or "window" opening date identified in the Public Notice will be returned as premature. Applications submitted after the specified deadline will be dismissed with prejudice as untimely.

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(2) * * *

(i) Identifying the short-form applications received during the window filing period which are found to be mutually exclusive, including any applications for noncommercial educational broadcast stations, as described in 47 U.S.C. 397(6), as well as the procedures the FCC will use to resolve the mutually exclusive applications;

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(3) After the close of the filing window, the FCC will also release a Public Notice identifying any short-form applications received which are found to be non-mutually exclusive, including any applications for noncommercial educational broadcast stations, as described in 47 U.S.C. 397(6). All non-mutually exclusive applicants will be required to submit an appropriate long form application within 30 days of the Public Notice and, for applicants for commercial broadcast stations, pursuant to the provisions of § 73.5005(d). Non-mutually exclusive applications for commercial broadcast stations will be processed and the FCC will periodically release a Public Notice listing such non-mutually exclusive applications determined to be acceptable for filing and announcing a date by which petitions to deny must be filed in accordance with the provisions of §§ 73.5006 and 73.3584. Non-mutually exclusive applications for noncommercial educational broadcast stations, as described in 47 U.S.C. 397(6), will be processed and the FCC will periodically release a Public Notice listing such non-mutually exclusive applications determined to be acceptable for filing and announcing a date by which petitions to deny must be filed in accordance with the provisions of §§ 73.7004 and 73.3584. If the applicant is duly qualified, and upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of the non-mutually exclusive long form application, the same will be granted.

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■ 3. Section 73.3572 is amended by revising the section heading and paragraph (e) to read as follows:

§ 73.3572 Processing of TV broadcast, Class A TV broadcast, low power TV, TV translators, and TV booster applications.

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