(k) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: December 2, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–29285 Filed 12–10–08; 8:45 am]

BILLING CODE 4410–10–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MM Docket No. 93–177; FCC 08–228]

An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission requests comment on proposed new rules to protect AM stations from the potential effects of nearby tower construction. The Commission seeks comment on new rules that consolidate disparate rules in separate sections regarding tower construction near AM stations, and also update these rules by incorporating computer modeling techniques.

DATES: Submit comments on or before January 12, 2009 and reply comments on or before February 9, 2009.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, *http://www.fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Peter H. Doyle, Audio Division, Media Bureau (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Further Notice of Proposed Rule Making* (*Second FNPRM*) in MM Docket No. 93–177, adopted September 24, 2008, and released September 26, 2008. The Commission adopted the Second FNPRM in response to comments received regarding an earlier *Further Notice of Proposed Rule Making* (FNPRM) in this proceeding [*See* 66 FR 20779, April 25, 2001]. The complete text of this *Second FNPRM* is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC, and may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., (800) 378–3160, 445 12th Street, SW., Room CY–402, Washington, DC 20554. The complete text is also available on the Internet at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-08-228A1.pdf*.

Synopsis of Second Further Notice of Proposed Rule Making

In AM radio, the tower itself functions as the antenna. Consequently, a nearby tower may become an unintended part of the AM antenna system, reradiating the AM signal and distorting the authorized AM radiation pattern. Thus, our rules contain several sections concerning tower construction near AM antennas that are intended to protect AM stations from the effects of such tower construction, specifically, §§ 73.1692, 22.371, and 27.63. These existing rule sections impose differing requirements on broadcast and wireless entities, although the issue is the same regardless of the types of antennas mounted on a tower. Other rule parts, such as Part 90 and Part 24, entirely lack provisions for protecting AM stations from possible effects of nearby tower construction. An *ad hoc* coalition of radio broadcasters, equipment manufacturers, and broadcast consulting engineers (''the Coalition'') has proposed that the Commission adopt rules to ''harmonize the disparate treatment'' regarding tower construction near AM stations, and also to incorporate moment method techniques in the analysis of the impact of nearby structures on the AM station.

Existing AM proximity rules governing wireless licensees specify fixed distances within which tower construction is presumed to affect the AM station. The Coalition's proposal, in contrast, would specify critical distances from an AM station in terms of wavelengths at the AM frequency, albeit limiting the distance to a maximum of three kilometers, as specified in existing rules for wireless licensees. The Coalition's proposal designates moment method modeling as the principal means of determining whether a nearby tower affects an AM pattern. The proposal would, however, allow traditional partial proof measurements taken before and after tower construction as an alternative procedure when the AM station in question was licensed pursuant to field strength measurements. The Coalition proposes to eliminate short towers from consideration, with critical tower heights also defined in terms of the AM wavelength. Existing rules apply to modification of towers, as well as to new tower construction near AM stations. The Coalition's proposal would define the types of tower modification that may affect AM stations, and would exclude many routine cases in which antennas are added to existing towers.

The *Second FNPRM* seeks comment on proposed new rules based on those suggested by the Coalition, and on the types of towers to which the new rules would apply. Specifically, the *Second FNPRM* asks whether the new rules should apply to all towers, including structures that are not otherwise subject to Commission licensing processes, i.e., with regard to structures such as towers that do not require registration and which no Commission licensee or applicant uses or proposes to use. The *Second FNPRM* seeks comment on a number of issues that could establish limits on the scope of the new rules, and the technical and/or policy grounds for such limits. For example, the *Second FNPRM* requests comment on the criteria used for the exclusion of short towers, and on the incorporation in the new rule of a provision requiring tower proponents to protect the AM station upon submission of a credible demonstration that the tower affects the AM pattern.

Paperwork Reduction Act Analysis

This document contained proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. Public and agency comments are due February 9, 2009. 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 information collection techniques or other forms of information technology. The information collection will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. In addition, pursuant to the Small Business Paperwork Relief Act of 202, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it may ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–XXXX.

Title: Sections 1.30002 and 1.30003, Disturbance of AM Broadcast Station Antenna Patterns.

Form Number: Not applicable.

Type of Review: New Collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents and Responses: 1,040 respondents; 1,040 responses.

Estimated Time per Response: 1–2 hours.

Frequency of Response: On occasion reporting requirement; third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 1,670 hours.

Total Annual Cost: $601,800.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: On September 24, 2008, the Commission adopted the Second Report and Order and Second Further Notice of Proposed Rulemaking in the matter of An Inquiry into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification, MM Docket No. 93–177, FCC 08–228. The Second Further Notice of Proposed Rulemaking proposes new rules concerning tower construction near AM stations.

In AM radio, the tower itself functions as the antenna. Consequently, a nearby tower may become an unintended part of the AM antenna system, reradiating the AM signal and distorting the authorized AM radiation pattern. Thus, our rules contain several sections concerning tower construction near AM antennas that are intended to protect AM stations from the effects of such tower construction, specifically, Sections 73.1692, 22.371, and 27.63. These existing rule sections impose differing requirements on the broadcast and wireless entities, although the issue is the same regardless of the types of antennas mounted on a tower. Other rule parts, such as Part 90 and Part 24, entirely lack provisions for protecting AM stations from possible effects of nearby tower construction. The proposed new rules would consolidate existing rules regarding tower construction near AM stations, and would also incorporate moment method techniques in the analysis of the impact of nearby structures on the AM station.

The Commission proposes information collection requirements as follows:

47 CFR 1.30002(a) requires a proponent of construction or alteration of a tower within a specified distance of a nondirectional AM station, and also exceeding a specified height, to notify the AM station at least 30 days in advance of the construction or alteration. If the tower construction or alteration would distort the AM pattern, the proponent shall be responsible for the installation and maintenance of detuning equipment.

47 CFR 1.30002(b) requires a proponent of construction or alteration of a tower within a specified distance of a directional AM station, and also exceeding a specified height, to notify the AM station at least 30 days in advance of the construction or alteration. If the tower construction or alteration would distort the AM pattern, the proponent shall be responsible for the installation and maintenance of detuning equipment.

47 CFR 1.30002(c) states that proponents of tower construction or alteration near an AM station shall use moment method modeling, described in § 73.151(c), to determine the effect of the construction or alteration on an AM radiation pattern.

47 CFR 1.30002(f) states that, with respect to an AM station that was authorized pursuant to a directional proof of performance based on field strength measurements, the proponent of the tower construction or modification may, in lieu of the study described in § 1.30002 (c), demonstrate through measurements taken before and after construction that field strength values at the monitoring points do not exceed the licensed values. In the event that the pre-construction monitoring point values exceed the licensed values, the proponent may demonstrate that post-construction monitoring point values do not exceed the pre-construction values. Alternatively, the AM station may file for authority to increase the relevant monitoring point value after performing a partial proof of performance in accordance with § 73.154 to establish that the licensed radiation limit on the applicable radial is not exceeded.

47 CFR 1.30002(g) states that tower construction or modification that falls outside the criteria described in paragraphs § 1.30002(a) and (b) is presumed to have no significant effect on an AM station. In some instances, however, an AM station may be affected by tower construction notwithstanding the criteria set forth in paragraphs § 1.30002(a) and (b). In such cases, an AM station may submit a showing that its operation has been affected by tower construction or alteration. If necessary, the Commission shall direct the tower proponent to install and maintain any detuning apparatus necessary to restore proper operation of the AM antenna.

47 CFR 1.30003(a) states that when antennas are installed on a nondirectional AM tower the AM station shall determine operating power by the indirect method (see § 73.51). Upon the completion of the installation, antenna impedance measurements on the AM antenna shall be made. If the resistance of the AM antenna changes, an application on FCC Form 302–AM (including a tower sketch of the installation) shall be filed with the Commission for the AM station to return to direct power measurement. The Form 302–AM shall be filed before or simultaneously with the filing of any license application covering a broadcast station installation.

47 CFR 1.30003(b) requires that, before antennas are installed on a tower in a directional AM array, the proponent shall notify the AM station so that, if necessary, the AM station may determine operating power by the indirect method (see § 73.51) and request special temporary authority pursuant to § 73.1635 to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. For AM stations licensed via field strength measurements (see § 73.151(a)), a partial proof of performance (as defined by § 73.154) shall be conducted both prior to the commencement of construction and upon completion of construction to establish that the AM array has not been adversely affected. For AM stations licensed via a moment method proof (see § 73.151(c)), the proof procedures set forth in § 73.151(c) shall be repeated. The results of either the partial proof of performance or the moment method proof shall be filed with the Commission on Form 302–AM before or simultaneously with any broadcast license application associated with the installation.

Comments on the PRA information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *PRA@fcc.gov* or *Cathy.Williams@fcc.gov*, and to Nicholas A. Fraser, Office of Management and Budget (OMB), Desk Office via the Internet to *Nicholas_A._Fraser@omb.eop.gov*, or via fax at (202) 395–5167.

Supplementary Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, as amended (''RFA''),[1] the Commission has prepared this Supplemental Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on a substantial number of small entities by the policies and rules considered in the *Second FNPRM*. Written public comments are requested on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the deadline for comments on the *Second FNPRM*. The Commission will send a copy of the *Second FNPRM*, including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA'').[2]

Need For and Objectives of the Proposed Rules

In May 2007, a coalition of broadcasters, consulting engineers, and equipment manufacturers (''Coalition'') submitted a proposal that the Commission update and consolidate its disparate rule sections concerning tower construction near AM stations. The Coalition's proposed new rules for tower construction near AM stations would also incorporate moment method modeling techniques similar to those proposed for AM proofs of performance. The proposed rules regarding tower construction near AM stations, which would apply to all Commission licensees who construct towers, would simplify procedures and reduce costs. The *Second FNPRM* seeks additional comment on these proposed rules.

Legal Basis

This Notice is adopted pursuant to Sections 4(i), 303, 612, and 616 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, 532 and 536.

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

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[3] The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental entity'' under Section 3 of the Small Business Act.[4] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[5] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[6]

Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.[7] A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[8] Nationwide, as of 2002, there were approximately 1.6 million small organizations.[9] The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.''[10] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[11] We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.''[12] Thus, we estimate that most governmental jurisdictions are small.

Wireless Telecommunications Carriers (except Satellite). Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[13] Prior to that time, such firms were within the now-superseded categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.''[14] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[15] Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.[16] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[17] For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.[18] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[19] Thus, we estimate that the majority of wireless firms are small.

Non-Licensee Tower Owners. Many communications towers, while used to support multiple antennas for Commission licensees in various services, are owned by entities which are not themselves Commission licensees. Thus, non-licensee tower owners may be subject to any new or additional requirements adopted in this proceeding. Communications towers fall into two categories: Those requiring antenna structure registration, and those exempt from registration. The Commission's rules require that any entity proposing to construct an antenna structure over 200 feet or within the glide slope of an airport must register the antenna structure with the

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104–121, 110 Stat. 857 (1996).

[2] *See* 5 U.S.C. 603(a).

[3] 5 U.S.C. 603(b)(3).

[4] *Id.* section 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, 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 the term where appropriate to the activities of the agency and publishes the definition(s) in the **Federal Register**.''

[5] *Id.*

[6] 15 U.S.C. 632.

[7] *See* SBA, Programs and Services, SBA Pamphlet No. CO–0028, at page 40 (July 2002).

[8] 5 U.S.C. 601(4).

[9] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[10] 5 U.S.C. 601(5).

[11] U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, page 272, Table 415.

[12] We assume that the villages, school districts, and special districts are small, and total 48,558. *See* U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

[13] U.S. Census Bureau, 2007 NAICS Definitions, ''517210 Wireless Telecommunications Categories (Except Satellite)''; *http://www.census.gov/naics/2007/def/ND517210.HTM#N517210.*

[14] U.S. Census Bureau, 2002 NAICS Definitions, ''517211 Paging''; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM*; U.S. Census Bureau, 2002 NAICS Definitions, ''517212 Cellular and Other Wireless Telecommunications''; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*

[15] 13 CFR 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[16] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization,'' Table 5, NAICS code 517211 (issued Nov. 2005).

[17] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''1000 employees or more.''

[18] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization,'' Table 5, NAICS code 517212 (issued Nov. 2005).

[19] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''1000 employees or more.''

Commission on FCC Form 854.[20] As of September 3, 2008, there were 97,617 registration records in a 'Constructed' status and 13,047 registration records in a 'Granted, Not Constructed' status in the Antenna Structure Registration (ASR) database. This includes both towers registered to licensees and towers registered to non-licensee tower owners. The Commission does not keep information from which we can easily determine how many of these towers are registered to non-licensees or how many non-licensees have registered towers.[21] Regarding towers that do not require antenna structure registration, we do not collect information as to the number of such towers in use and therefore cannot estimate the number of tower owners who would be subject to the proposed new rules. Moreover, the SBA has not developed a size standard for small businesses in the category ''Tower Owners.'' Therefore, we are unable to estimate the number of non-licensee tower owners that are small entities. We assume, however, that nearly all non-licensee tower companies are small businesses under the SBA's definition for cellular and other wireless telecommunications services.[22]

Radio Broadcasting. The Small Business Administration defines a radio broadcasting entity that has $6.5 million or less in annual receipts as a small business.[23] Business concerns included in this industry are those ''primarily engaged in broadcasting aural programs by radio to the public. According to Commission staff review of the BIA Financial Network, Inc. Media Access Radio Analyzer Database as of May 1, 2008, 13,457 (about 96 percent) of 13,977 radio stations in the United States have revenues of $6.5 million or less. We note, however, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations[24] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the ownership rules, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

In this context, the application of the statutory definition to radio stations is of concern. An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time and in this context to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any radio station from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

FM Translator Stations and Low Power FM Stations. The proposed rule could affect licensees of FM translator and booster stations and low power FM (LPFM) stations, as well as potential licensees in these radio services. The same SBA definition that applies to radio broadcast licensees would apply to these stations. The SBA defines a radio broadcast station as a small business if such station has no more than $6.5 million in annual receipts.[25] Currently, there are approximately 5904 licensed FM translator and booster stations and 831 licensed LPFM stations.[26] Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition.

Television Broadcasting. The proposed rule could affect licensees of full power, low power, and television translator stations, as well as potential licensees in these services. In this context, the application of the statutory definition to television stations is of concern. The Small Business Administration defines a television broadcasting station that has no more than $13 million in annual receipts as a small business. Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.''[27] According to Commission staff review of the BIA Financial Network, Inc. Media Access Pro Television Database as of May 1, 2008, 1,350 (about 77 percent) of the 1,759 full power television stations in the United States have revenues of $13 million or less. However, in assessing whether a business entity qualifies as small under the above definition, business control affiliations[28] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the attribution rules, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies. Currently, there are approximately 4,271 licensed TV translator and booster stations, 556 Class A television stations, and 2,295 licensed LPTV stations.[29] Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition.

An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The Commission is unable at this time and in this context to define or quantify the criteria that would establish whether a specific television station is dominant in its market of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any television stations from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

[20] 47 CFR 17.4(a), 17.7(a).

[21] We note, however, that approximately 13,000 towers are registered to 10 cellular carriers with 1,000 or more employees.

[22] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517212. Under this category, a business is small if it has 1,500 or fewer employees.

[23] *See* NAICS Code 515112.

[24] ''[Business concerns] are affiliates of each other when one business concern controls or has the power to control the other or a third party or parties controls or has the power to control both.'' 13 CFR 121.103(a)(1).

[25] *See* 13 CFR 121.201, NAICS Code 515112.

[26] *See News Release,* ''Broadcast Station Totals as of December 31, 2007'' (rel. March 18, 2008) (''*Broadcast Station Totals*'') (*http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-280836A1.doc*).

[27] OMB, North American Industry Classification System: United States, 1997, at 508–09 (1997) (NAICS Code 51320 which was changed to 51520 in October 2002). This category description continues, ''These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources.'' Separate census categories pertain to businesses primarily engaged in produced programming. *See id.* at 502–505, NAICS code 512110. Motion Picture and Video Production; Code 512120, Motion Picture and Video Distribution, code 512191, 19 FCC Rcd 15238 (2004). Teleproduction and Other Post-Production Services, and code 512199, Other Motion Picture and Video Industries.

[28] ''[Business concerns] are affiliates of each other when one business concern controls or has the power to control the other or a third party or parties controls or has the power to control both.'' 13 CFR 121.103(a)(1).

[29] *See Broadcast Station Totals.*

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The *Second FNPRM* seeks comment on proposed rules that, if adopted and implemented, may affect compliance requirements for small entities. As noted above, we invite small entities to comment in response to the proposed rules. Specifically, the *Second FNPRM* seeks comment on the use of moment method modeling techniques to assess the effect of nearby towers on AM radio stations. In AM radio, the tower itself functions as the antenna. Consequently, a communications tower erected near an AM station may inadvertently become part of the AM antenna system, distorting the authorized AM pattern. The *Second FNPRM* seeks comment on new rules which would consolidate the disparate rule sections currently in place, simplify the requirements of existing rules, and extend the rule to all Commission licensees constructing towers.

Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered:

The RFA requires an agency to describe any significant alternatives that might minimize any significant economic impact on small entities. Such alternatives may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[30]

As noted, we are directed under law to describe any such alternatives we consider, including alternatives not explicitly listed above.[31] The *Second FNPRM* seeks comment on a new method of assessing the effects of nearby tower construction on AM stations. We tentatively conclude that adoption of these proposed rules would reduce the compliance burden on most Commission licensees, and that this reduction would be particularly beneficial to small entities. We invite commenters to propose steps that the Commission may take to minimize any significant economic impact on small entities.

[30] 5 U.S.C. 603(c).

[31] 5 U.S.C. 603(b).

The Commission will send a copy of the *Second Report and Order and Second Further Notice of Proposed Rulemaking,* including the Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Second Report and Order and Second Further Notice of Proposed Rulemaking,* including the FRFA (or summaries thereof), will also be published in the **Federal Register**.[32]

List of Subjects in 47 CFR Part 1

Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend part 1 of title 47 of the Code of Federal Regulations as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

2. Subpart AA is added to part 1 to read as follows:

Subpart AA—Disturbance of AM Broadcast Station Antenna Patterns

Sec.

§ 1.30000 Purpose.

This rule part protects the operations of AM broadcast stations from nearby tower construction which may distort the AM antenna pattern. All parties proposing to construct or make a significant modification to an antenna tower or support structure in the immediate vicinity of an AM antenna, or proposing to install an antenna on an AM tower, are responsible for measures necessary to correct disturbances of the AM radiation pattern, if such disturbances occurred as a result of the tower construction or modification.

§ 1.30001 Definitions.

For purposes of this subpart:

(a) *Wavelength at the AM frequency.* In this subpart, critical distances from an AM station are described in terms of the AM wavelength. The AM wavelength, expressed in meters, is computed as follows:

(300 meters)/(AM frequency in megahertz) = AM wavelength in meters.

For example, at the AM frequency of 1000 kHz, or 1 MHz, the wavelength is (300/1 MHz) = 300 meters.

(b) *Electrical degrees at the AM frequency.* This term describes the height of a proposed tower as a function of the frequency of a nearby AM station. To compute tower height in electrical degrees, first determine the AM wavelength in meters as described in paragraph (a) of this section. Tower height in electrical degrees is computed as follows:

[(Tower height in meters)/AM wavelength in meters)] × 360 degrees = Tower height in electrical degrees.

For example, if the AM frequency is 1000 kHz, then the wavelength is 300 meters, per paragraph (a) of this section. A nearby tower 75 meters tall is therefore [75/300] × 360 = 90 electrical degrees tall at the AM frequency.

(c) *Proponent.* The term proponent refers in this section to the party proposing tower construction or modification.

§ 1.30002 Tower construction or modification near AM stations.

(a) *Construction near a nondirectional AM station.* Proponents of construction or significant modification of a tower which is within one wavelength of the AM station, and is taller than 60 electrical degrees at the AM frequency, must notify the AM station at least 30 days in advance. The proponent shall examine the potential impact of the construction or modification as described in paragraph (c) of this section. If the construction or modification would distort the radiation pattern by more than 2 dB, the licensee shall be responsible for the installation and maintenance of any detuning apparatus necessary to restore proper operation of the nondirectional antenna.

(b) *Construction near a directional AM station.* Proponents of the construction or significant modification of a tower which is within the lesser of 10 wavelengths or 3 kilometers of the AM station, and is taller than 36 electrical degrees at the AM frequency, must notify the AM station at least 30 days in advance. The proponent shall examine the potential impact of the construction or modification as described in paragraph (c) of this section. If the construction or modification would result in radiation in excess of the AM station's licensed standard pattern or augmented standard pattern values, the licensee shall be

[32] *See* 5 U.S.C. 604(b).

responsible for the installation and maintenance of any detuning apparatus necessary to restore proper operation of the directional antenna.

(c) Proponents of construction or significant modification of a tower within the distances defined in paragraphs (a) and (b) of this section of an AM station shall examine the potential effects thereof using a moment method analysis. The moment method analysis shall consist of a model of the AM antenna together with the potential reradiating tower in a lossless environment. The model shall employ a simplified version of the methodology specified in § 73.151(c) of this chapter. The AM antenna elements may be modeled as a series of thin wires driven to produce the required radiation pattern, without any requirement for measurement of tower impedances.

(d) A significant modification of a tower in the immediate vicinity of an AM station is defined as follows:

(1) Any change that would alter the structure's physical height by 5 electrical degrees or more at the AM frequency.

(2) The addition of one or more antennas or a transmission line to a tower that has been detuned or base-insulated.

(e) The addition or modification of an antenna or antenna supporting structure on a building shall not be considered significant.

(f) With respect to an AM station that was authorized pursuant to a directional proof of performance based on field strength measurements, the proponent of the tower construction or modification may, in lieu of the study described in paragraph (c) of this section, demonstrate through measurements taken before and after construction that field strength values at the monitoring points do not exceed the licensed values. In the event that the pre-construction monitoring point values exceed the licensed values, the proponent may demonstrate that post-construction monitoring point values do not exceed the pre-construction values. Alternatively, the AM station may file for authority to increase the relevant monitoring point value after performing a partial proof of performance in accordance with § 73.154 of this chapter to establish that the licensed radiation limit on the applicable radial is not exceeded.

(g) Tower construction or modification that falls outside the criteria described in the preceding paragraphs is presumed to have no significant effect on an AM station. In some instances, however, an AM station may be affected by tower construction notwithstanding the criteria set forth above. In such cases, an AM station may submit a showing that its operation has been affected by tower construction or alteration. If necessary, the Commission shall direct the tower proponent to install and maintain any detuning apparatus necessary to restore proper operation of the AM antenna.

§ 1.30003 Installations on an AM antenna.

(a) *Installations on a nondirectional AM tower.* When antennas are installed on a nondirectional AM tower the AM station shall determine operating power by the indirect method (see § 73.51 of this chapter). Upon the completion of the installation, antenna impedance measurements on the AM antenna shall be made. If the resistance of the AM antenna changes, an application on FCC Form 302–AM (including a tower sketch of the installation) shall be filed with the Commission for the AM station to return to direct power measurement. The Form 302–AM shall be filed before or simultaneously with the filing of any license application covering a broadcast station installation.

(b) *Installations on a directional AM array.* Before antennas are installed on a tower in a directional AM array, the proponent shall notify the AM station so that, if necessary, the AM station may determine operating power by the indirect method (see § 73.51 of this chapter) and request special temporary authority pursuant to § 73.1635 of this chapter to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. For AM stations licensed via field strength measurements (see § 73.151(a) of this chapter), a partial proof of performance (as defined by § 73.154 of this chapter) shall be conducted both prior to the commencement of construction and upon completion of construction to establish that the AM array has not been adversely affected. For AM stations licensed via a moment method proof (see § 73.151(c) of this chapter), the proof procedures set forth in § 73.151(c) of this chapter shall be repeated. The results of either the partial proof of performance or the moment method proof shall be filed with the Commission on Form 302–AM before or simultaneously with any broadcast license application associated with the installation.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2571; MB Docket No. 08–233; RM–11505]

Television Broadcasting Services; Waco, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by Comcorp of Texas License Corp. (''Comcorp''), the permittee of KWKT–DT, post-transition DTV channel 44, Waco, Texas. Comcorp requests the substitution of DTV channel 25 for post-transition DTV channel 44 at Waco.

DATES: Comments must be filed on or before January 12, 2009, and reply comments on or before January 26, 2009.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Kevin P. Latek, Esq., Dow Lohnes PLLC, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036–6802.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, *adrienne.denysyk@fcc.gov*, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–233, adopted November 25, 2008, and released November 26, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432