

with these equipment authorizations would not be changed by the proposals contained in this Notice. The changes to the regulations would permit operation of radar devices used in specific industrial applications in a higher frequency band (77–81 GHz).

*E. Federal Rules That May Duplicate, Overlap or Conflict With the Proposed Rules*

None.

**List of Subjects in 47 CFR Part 15**

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission

**Marlene H. Dortch,**

*Secretary.*

**Rule Changes**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 15 to read as follows:

**PART 15—RADIO FREQUENCY DEVICES**

1. The authority citation for part 15 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302(a), 303, 304, 307, 336 and 544a.

2. Section 15.205 is amended by revising paragraph (d)(4) to read as follows:

**§ 15.205 Restricted bands of operation.**

\* \* \* \* \*

(d) \* \* \*

(4) Any equipment operated under the provisions of § 15.253, § 15.255, § 15.256 or § 15.257 of this part.

\* \* \* \* \*

3. Section 15.256 is added to read as follows:

**§ 15.256 Operation within the band 77–81 GHz.**

(a) Operation within the 77–81 GHz band is limited to tank level probing radars (TLPR) under the provisions of this section.

(1) TLPR transmitters must be operated only while mounted inside storage tanks or similar structures with antennas directed downward. Such storage structures shall be made of metal, concrete or other material with substantially similar attenuating characteristics. The tank shall be closed during the operation of the intentional radiator. Care shall be taken to ensure that gaskets, flanges, and other openings are sealed to eliminate signal leakage outside of the structure.

(2) Storage tanks or structures housing a TLPR device shall be installed only in

fixed locations and in commercial or industrial environments.

(b) The emission levels shall not exceed the following:

(1) Within the 77–81 GHz band, the equivalent isotropically radiated power (EIRP) of the TLPR transmitter without the storage tank shall not exceed +43 dBm peak and +23 dBm average.

(2) Emissions appearing outside of the 77–81 GHz band shall be attenuated to at least 20 dB below the highest level of the fundamental emission. The –20 dB bandwidth of the device must be contained within the 77–81 GHz band under all conditions of operation including the effects from pulsing or other modulation techniques that may be employed as well as the frequency stability of the transmitter over the temperature range –20 to +50 degrees Celsius and an input voltage variation of 85% to 115% of rated input voltage.

(3) Emissions radiated in any direction from the TLPR while installed in the storage tank or enclosure shall not exceed the general limits in 15.209 of this part.

(4) Compliance measurements for TLPR devices shall be made in accordance with the measurement guidelines specified by the Commission for TLPR devices operating in the 77–81 GHz band.

[FR Doc. 2010–4562 Filed 3–3–10; 8:45 am]

**BILLING CODE 6712–01–P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[MB Docket No. 09–52; FCC 10–24]

**Policies To Promote Rural Radio Service and To Streamline Allotment and Assignment Procedures**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission adopted a Further Notice of Proposed Rulemaking (FNPRM), in which it announced that it was considering, without proposing specific rules, two issues urged by commenters in this proceeding. First, the Commission is considering whether, how, and under what circumstances federally-recognized Native American Tribes and Alaska Native Villages (Tribes) should receive a bidding credit in auctions for new radio stations. Second, the Commission is considering whether and how the Tribal Priority adopted in the First Report and Order (First R&O) in this proceeding might be

claimed by Tribes that do not possess defined tribal lands.

**DATES:** Comments may be filed on or before May 3, 2010 and reply comments may be filed on or before June 2, 2010. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before May 3, 2010.

**ADDRESSES:** You may submit comments, identified by MB Docket No. 09–52, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- *E-mail:* [ecfs@fcc.gov](mailto:ecfs@fcc.gov). Include the docket number in the subject line of the message. See the **SUPPLEMENTARY INFORMATION** section of this document for detailed information on how to submit comments by e-mail.
- *Mail:* 445 12th Street, SW., Washington, DC 20554.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202–418–0530 or TTY: 202–418–0432. For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:**

Peter Doyle, Chief, Media Bureau, Audio Division, (202) 418–2700; Thomas Nessinger, Attorney-Advisor, Media Bureau, Audio Division, (202) 418–2700.

For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams at 202–418–2918, or via the Internet at [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further Notice of Proposed Rulemaking, FCC 10–24, adopted January 28, 2010, and released February 3, 2010.

**Initial Paperwork Reduction Act of 1995 Analysis**

The FNPRM contains potential information collection requirements subject to the PRA, Public Law 104–13. OMB, the general public, and other Federal agencies are invited to comment on the potential new and modified information collection requirements

contained in this FNPRM. If the information collection requirements are adopted, the Commission will submit the appropriate documents to OMB for review under Section 3507(d) of the PRA and OMB, the general public, and other Federal agencies will again be invited to comment on the new and modified information collection requirements adopted by the Commission.

Public and agency comments on the potential proposed information collection requirements are due May 3, 2010. 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. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

In addition to filing comments with the Secretary, a copy of any Paperwork Reduction Act comments on the 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 [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov), and to Nicholas A. Fraser, Office of Management and Budget (OMB), via the Internet to [Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov) or by fax to 202-395-5167.

### Summary of Further Notice of Proposed Rule Making

Some commenters noted that tribal applicants applying the Tribal Priority at the FM allotment rule making stage might still lose at auction to non-tribal bidders. It was suggested that a remedy for this problem would be to implement a bidding credit for qualified tribal applicants.

Given the paucity of tribal-owned radio stations, it might be expected that the vast majority of tribal applicants for commercial facilities would qualify for new entrant bidding credits, negating the need for a special tribal bidding credit over and above the new entrant

bidding credits. Moreover, the Commission has previously rejected the implementation of "finder's" or "pioneer's" bidding credits for applicants that add allotments to the FM Table of Allotments. The Commission nevertheless believes it appropriate to consider various proposals for a special bidding credit for tribal applicants.

While not proposing any one such proposal as a rule at this time, the Commission seeks comment to assist its consideration as to whether to offer such a new bidding credit, either in lieu of or in addition to the existing new entrant bidding credits. One option would be to establish a 35 percent bidding credit for tribal applicants, as long as they own no commercial facilities in the "same area" as the proposed new facility (as defined in 47 CFR 73.5007(b)). Another would be the equivalent of a new entrant credit, rather than the Tribal Priority. The Commission would also consider whether to give tribal applicants the option to claim either the appropriate 25 or 35 percent new entrant bidding credit or, as long as an applicant owns no other commercial stations in the same area, a 25 or 35 percent tribal bidding credit. Still another alternative would be to offer a choice of either the appropriate new entrant bidding credit or a lesser credit, perhaps 15 or 20 percent, to tribal applicants who are not new entrants. In all of the above cases, the Commission would consider whether to limit the tribal bidding credit to allotments added using the Tribal Priority, and further, whether to limit the credit to the Tribe(s) or entity adding the allotment to the Table of Allotments. Should a qualifying bidder be able to employ a tribal bidding credit in addition to a new entrant bidding credit (at least for qualifying tribal allotments) rather than in lieu of the new entrant credit? Additionally, applicants using new entrant bidding credits are subject to the unjust enrichment provisions of our Rules, which require that all or a portion of the bidding credit be reimbursed if the authorization is assigned or transferred within five years of issuance to a party not qualifying for the credit. What impact would a tribal bidding credit have on the unjust enrichment rules, and what adjustments (if any) should the Commission make to those rules to accommodate a tribal bidding credit? The Commission seeks comment on these proposals, or any other proposals forwarded by commenters for a potential tribal bidding credit.

The Tribal Priority as adopted in the First R&O is by its terms limited to Tribes possessing tribal lands that can

be served. Commenters to the Rural NPRM pointed out that many Tribes do not have their own reservations or defined tribal lands. It was urged that the Commission seek comment on ways in which "landless" Tribes may nonetheless avail themselves of the Tribal Priority.

The Tribal Priority proposed in the Rural NPRM was principally designed to enable Tribes to aid the development, and perpetuate the language and culture of their members, not merely to give Tribes a blanket priority over other applicants for facilities that may not provide service targeted at Tribal citizens or communities. Two commenters stated that other federal agencies use different concepts, such as "service areas," rather than strict definitions of tribal lands. It was further suggested that provision could be made for tribal applicants to show that the proposed principal community contour serves the functional equivalent of tribal lands, using factors such as Native American population density, cultural links between the community of license and the Tribe or Tribes, or other factors.

The Commission therefore considers, without proposing a specific rule, whether and how Tribes without tribal lands as defined in the First R&O and in the Rural NPRM can qualify for the Tribal Priority. For example, the Commission considers whether a threshold tribal population, or tribal population density, could be taken into account in determining whether a tribal applicant meets the tribal coverage and community of license criteria of the Tribal Priority. Another possibility would be to consider whether historical or contemporary cultural links could be taken into account in making the tribal coverage and community determinations. Should the fact that a currently landless Tribe or Tribes previously occupied the coverage area or proposed community of license be taken into account? Are there other factors that should be considered? The Commission invites comment on these issues, and seek suggestions as to whether and how it might institute such a procedure.

Comments and Reply Comments. Pursuant to §§ 1.415 and 1.419 of the Commission's Rules (47 CFR 1.415, 1.419), interested parties must file comments on or before May 3, 2010, and must file reply comments on or before June 2, 2010. *Comments may be filed using:* (1) The Commission's Electronic Comment Filing System (ECFS); (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.

Comments may be filed electronically using the Internet by accessing the

ECFS: <http://www.fcc.gov/cbg/ecfs>, or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web sites for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. 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](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

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 appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Contact the FCC to request materials in accessible formats (Braille, large print, electronic files, audio format, etc.) by e-mail at [FCC504@fcc.gov](mailto:FCC504@fcc.gov), or call the Consumer & Governmental Affairs Bureau at 202-418-0531 (voice), 202-418-7365 (TTY).

The full text of the Further Notice of Proposed Rulemaking is available for inspection and copying during normal

business hours in the FCC Reference Information Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-09-30.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-30.pdf). Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418-0260 or TTY (202) 418-2555.

*Ex Parte Rules.* This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under § 1.1206(b) of the Commission's Rules (47 CFR 1.1206(b)). *Ex parte* presentations are permissible if disclosed in accordance with Commission Rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's Rules.

*Initial Regulatory Flexibility Analysis.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 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).

As required by the RFA (5 U.S.C. 603), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies

and rules proposed in the FNPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided in paragraph 75 of the FNPRM. The Commission will send a copy of this entire FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and the IRFA (or summaries thereof) will be published in the **Federal Register**.

*Need For, and Objectives of, the Proposed Rules.* This further rulemaking proceeding is initiated to obtain comments concerning commenters' request that the Commission consider providing a bidding credit to Native American Indian Tribes and Alaska Native Villages (Tribes) and entities owned by Tribes, and also to obtain comments concerning a commenter's proposal to provide a Tribal Priority, as adopted in the First R&O in this proceeding, to Tribes that do not possess their own tribal lands. The Commission has put out for consideration several proposals for a potential tribal bidding credit: to grant Tribes the maximum permissible 35 percent bidding credit provided they do not own any other facility in the "same area" as the proposed new facility; to give Tribes the option to claim either the appropriate 25 or 35 percent new entrant bidding credit or, as long as the applicant owns no stations in the same area as the proposed new station, a 25 or 35 percent tribal bidding credit; or to offer Tribes a choice of either the appropriate new entrant bidding credit or a lesser credit, perhaps 15 or 20 percent, to tribal applicants who are not new entrants. In all of the above cases, the Commission also considers whether to limit the tribal bidding credit, in FM auctions, to allotments added using the Tribal Priority, and further, whether to limit the credit to the Tribe(s) or entity adding the allotment to the Table of Allotments. In other words, should the bidding credit be available to otherwise qualifying applicants that did not participate in the Tribal allotment reservation process? The Commission also considers herein whether a tribal bidding credit should be available in addition to a new entrant bidding credit (at least for qualifying tribal FM allotments) or in lieu of the new entrant bidding credit. The Commission believes these proposals, if adopted, will provide opportunities for Tribes and tribal entities proposing new FM allotments better to compete at auction for those allotments.

The Commission is also considering, without proposing a specific rule, whether and how Tribes without tribal lands can qualify for the Tribal Priority. The proposals offered for consideration by commenters are (1) Whether an applicant or proponent is deemed to provide tribal area coverage if it covers a certain threshold tribal population or population density, (2) whether historical or contemporary cultural links between a Tribe and land or population covered should be taken into account in making the tribal coverage and community of license determinations, and (3) whether the fact that a currently landless Tribe or Tribes previously occupied the coverage area or proposed community of license should be taken into account. The Commission considers these proposals, and seeks comment and suggestions as to other ways to extend the benefits of the Tribal Priority to those Tribes that do not have reservations or other tribal lands, allowing such "landless" Tribes to acquire radio stations to achieve the goals of aiding tribal development, and perpetuating tribal language and culture.

**Legal Basis.** The authority for this proposed rulemaking is contained in Sections 1, 2, 4(i), 303, 307, and 309(j) of the Communications Act of 1934, 47 U.S.C 151, 152, 154(i), 303, 307, and 309(j).

**Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.** The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term "small entity" as encompassing the terms "small business," "small organization," and "small governmental entity." In addition, the term "small Business" has the same meaning as the term "small business concern" under the Small Business Act. 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.

**Radio Stations.** The proposed rules and policies potentially will apply to all AM and FM radio broadcasting applicants, and proponents for new FM allotments, who qualify for the Tribal Priority adopted in the First R&O in this proceeding. The "Radio Stations" Economic Census category "comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources. The

SBA has established a small business size standard for this category, which is: such firms having \$7 million or less in annual receipts. According to BIA Advisory Services, LLC, MEDIA Access Pro Database on March 17, 2009, 10,884 (95%) of 11,404 commercial radio stations have revenue of \$6 million or less. Therefore, the majority of such entities are small entities. We note, however, that in assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included. In addition, to be determined to be a "small business," the entity may not be dominant in its field of operation. We note that it is difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

**Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.** The proposed rule and procedural changes may, in some cases, impose different reporting requirements on existing and potential radio licensees and permittees, insofar as they would require or allow certain applicants to file new technical and population coverage information on or after filing the short form application (FCC 175) or in the noncommercial educational long form application (FCC 340). However, the information to be filed is already familiar to broadcasters, and the information requested to claim the Tribal Priority is similar to current Section 307(b) showings, so any additional burdens would be minimal.

To the extent that other applicants would be disadvantaged by Tribes qualifying for the Tribal Priority, the Commission believes that such burdens would be offset by the fact that the Tribal Priority is designed to redress inequities in the number of tribal radio licensees, compared to the population of tribal citizens in the United States and the fact that some of these citizens were deprived of their original tribal lands. The Tribal Priority, then, not only helps the Commission to meet its goals of ownership and program diversity, but also furthers the federal government's obligations toward Tribes to assist them in promulgating tribal languages and cultures, and to support tribal self-government.

**Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.** The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which 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. In the FNPRM, the Commission seeks to provide additional opportunities for participation by Tribes in broadcast auctions, especially FM auctions, and to open up the Tribal Priority to those Tribes who do not currently have tribal lands, and who therefore cannot qualify under the Tribal Priority's tribal coverage criterion. The Commission is open to consideration of alternatives to the proposals under consideration, as set forth herein, including but not limited to alternatives that will minimize the burden on broadcasters, most of whom are small businesses. There may be unique circumstances these entities may face, and we will consider appropriate action for small broadcasters when preparing a Report and Order in this matter.

**Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals.** None.

This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact Brian Millin at (202) 418-7426 (voice), (202) 418-7365 (TTY), or via e-mail at [Brian.Millin@fcc.gov](mailto:Brian.Millin@fcc.gov).

Federal Communications Commission.

**Marlene H. Dortch,**  
Secretary.

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**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 10-307; MB Docket No. 10-49; RM-11593]

### Television Broadcasting Services; Beaumont, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission has before it a petition for rulemaking filed by Freedom Broadcasting of Texas ("Freedom Broadcasting"), the licensee of KFDM(TV), channel 21, Beaumont, Texas. Freedom Broadcasting requests