

**FCC FACT SHEET**\*

**Modernization of Media Regulation Initiative: Amendment of Section 73.3613 of the Commission's Rules Regarding the Filing of Contracts**

Notice of Proposed Rulemaking – MB Docket Nos. 17-105 and 18-4

**Background:** Since the late 1930s, the FCC has required broadcast station licensees and permittees to submit paper copies of certain contracts and other documents relating to ownership and control of stations to the Commission. These documents were then made available to both the Commission staff and the public via the Commission's public reference room. Commenters in the Commission's *Modernization of Media Regulation Initiative* proceeding requested that the Commission eliminate this decades-old paper filing requirement currently set forth in Section 73.3613 of the Commission's rules. These commenters argue that the Commission and the public's information needs can be met through the Commission's existing public file rules, which already require that commercial and noncommercial AM, FM, and television stations make copies of their Section 73.3613 documents available to the public. Specifically, the FCC's current public file rules require that these stations either (1) retain in their public inspection files copies of the Section 73.3613 documents (as listed in their ownership reports) or (2) maintain an up-to-date list of such documents in their public inspection files and provide copies to a requesting party within seven days.

**What the Notice Would Do:**

- Propose to eliminate the Section 73.3613 paper filing requirement for licensees and permittees of commercial and noncommercial AM, FM, and television stations, and rely instead on the FCC's existing public file requirements.
- For licensees and permittees of international broadcast stations, which are currently subject to the Section 73.3613 filing requirements but do not have public file obligations like those applicable to other broadcast stations, the Notice would propose to eliminate the paper filing requirements, but retain the Commission's ability to obtain Section 73.3613 documents upon request.
- Seek comment on other proposed modifications to broadcasters' current obligations under Section 73.3613, including, among other things, eliminating certain redundant filing obligations and providing enhanced confidentiality protections.

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\* This document is being released as part of a "permit-but-disclose" proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in MB Docket No. 18-4, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs/>). Before filing, participants should familiarize themselves with the Commission's *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission's meeting. See 47 CFR § 1.1200 *et seq.*

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
)
Amendment of Section 73.3613 of the ) MB Docket No. 18-4
Commission's Rules Regarding Filing of Contracts )
)
Modernization of Media Regulation Initiative ) MB Docket No. 17-105

NOTICE OF PROPOSED RULEMAKING\*

Adopted: []

Released: []

Comment Date: (30 days after date of publication in the Federal Register)
Reply Comment Date: (45 days after date of publication in the Federal Register)

By the Commission:

I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (NPRM), we seek comment on whether and how to modernize Section 73.3613 of the Commission's rules, which requires each licensee or permittee of a commercial and noncommercial AM, FM, television, or international broadcast station to file certain contracts and other documents with the Commission within 30 days after execution.1 Specifically, we propose to eliminate the paper filing requirement for Section 73.3613 documents. As discussed below, for licensees and permittees of commercial and noncommercial AM, FM, and television stations, we propose to rely instead on our existing public file rules, which already require that these stations make copies of these documents available to the public. While international broadcast stations are not subject to similar public file requirements, we believe that our information needs regarding Section 73.3613 documents can be met by obtaining documents from international stations upon request, as discussed below. We also seek comment on other proposed modifications to broadcasters' current obligations under Section 73.3613, including, among other things, eliminating certain redundant filing obligations and providing enhanced confidentiality protections. With this proceeding, we continue our efforts to modernize our regulations and reduce unnecessary requirements that can impede competition and innovation in the media marketplace.2

\* This document has been circulated for tentative consideration by the Commission at its January 2018 open meeting. The issues referenced in this document and the Commission's ultimate resolutions of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public's ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The Commission's ex parte rules apply and presentations are subject to "permit-but-disclose" ex parte rules. See, e.g., 47 CFR §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission's meeting. See 47 CFR §§ 1.1200(a), 1.1203.

1 47 CFR § 73.3613.

2 In response to a Public Notice launching the Commission's Modernization of Media Regulation Initiative, see Commission Launches Modernization of Media Regulation Initiative, Public Notice, 32 FCC Rcd 4406 (MB 2017) (Modernization Initiative Public Notice), several commenters have asked the Commission to amend Section 73.3613

## II. BACKGROUND

2. *Filing of Documents Pursuant to Section 73.3613.* Since the late 1930s, the Commission has required broadcast station licensees and permittees to file with the Commission copies of certain contracts and other documents relating to ownership and operation of stations.<sup>3</sup> Historically, this filing requirement was intended to keep the Commission and the public informed with respect to the ownership and control of broadcast stations and to enable the Commission to be advised of compliance with its rules relating to those matters.<sup>4</sup> At the time, requiring that broadcast licensees and permittees submit paper copies to the Commission was the most efficient mechanism available for the Commission to obtain copies of the documents and helped ensure that certain documents were also available for public inspection.<sup>5</sup>

3. Beginning in 1965, broadcast licensees and permittees were also required to make copies of these documents available via a local public inspection file.<sup>6</sup> This additional obligation provided another source for public inspection of documents relating to ownership and control of a broadcast station for those able to travel to a station's main studio during regular business hours. In 1998, the Commission amended its public file rules to give broadcast licensees and permittees the option of maintaining an up-to-date list of such documents in the public file and providing copies of the actual documents to requesting parties within seven days, in lieu of maintaining the documents themselves in the file.<sup>7</sup> In 2012, the Commission amended its public file rules in general to require that public file materials be posted to an online database hosted by the Commission rather than maintained in a paper file at the station.<sup>8</sup> The transition to online public inspection files enables greater public access to the contents of

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of our rules because the provision imposes unnecessary burdens on a substantial number of broadcasters. *See, e.g.*, National Association of Broadcasters Comments at 17-18 (NAB Comments); America's Public Television Stations et al. Comments at 13-14; The Named State Broadcasters Associations Reply at 11 (NSBA Reply).

<sup>3</sup> *See, e.g.*, Rules Governing the Filing of Information, Contracts, Periodic Reports, etc., 4 Fed. Reg. 3516 (Aug. 3, 1939).

<sup>4</sup> *See, e.g.*, Filing of Contracts, Broadcast Licensees and Permittees, 18 Fed. Reg. 3495, 3495-96 (June 18, 1953). In the past, the Commission has also used the information contained in some of these agreements to formulate certain broadcasting policies and rules or to enhance its understanding of the broadcast industry. *See, e.g.*, *Amendment of Part 73 of the Commission's Rules Concerning the Filing of Television Network Affiliation Contracts*, Notice of Proposed Rulemaking, 10 FCC Rcd 5677, 5677, para. 2 (1995) (citing *Report on Chain Broadcasting*, Commission Order No. 37; Docket 5060 (May 1941), *modified*, *Supplemental Report on Chain Broadcasting* (Oct. 1942)).

<sup>5</sup> *See, e.g.*, Financial, Ownership and Other Reports of Broadcast Licensees, 10 Fed. Reg. 9718, 9719 (Aug. 7, 1945).

<sup>6</sup> *Report and Order in Docket No. 14864*, 4 R.R.2d 1664 (1965), *recon. granted in part and denied in part*, 6 R.R.2d 1527 (1965).

<sup>7</sup> *Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, Report and Order, 13 FCC Rcd 15691, 15713-14, para. 50 (1998); *see also* 47 CFR § 73.3526(e)(5) (requiring that licensees and permittees of commercial AM, FM, TV, and Class A TV stations retain in the public file either a copy of the Section 73.3613 documents listed in the most recent ownership report or an up-to-date list of such documents and provide a copy of any documents to requesting parties); *id.* § 73.3527(e)(4) (requiring that licensees and permittees of noncommercial AM, FM, and TV stations do the same).

<sup>8</sup> 47 CFR §§ 73.3526(b), 73.3527(b); *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Report and Order, 31 FCC Rcd 526 (2016); *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations et al.*, Second Report and Order, 27 FCC Rcd 4535 (2012) (*Enhanced Disclosure Second Report and Order*). Television stations completed their transition to the online public file in 2014. *Elimination of Main Studio Rule*, Report and Order, FCC 17-137, at 14-15, para. 24 (Oct. 24, 2017). The last group of remaining radio stations to transition must begin using the online file by March 2018. *Id.* at 1, para. 3.

the files, including documents filed pursuant to Section 73.3613—which are either placed directly in the public file or provided on demand based on an up-to-date list—particularly for those who are unable to travel to a station or the Commission during regular business hours.<sup>9</sup>

4. The Commission has periodically re-evaluated the paper filing requirement in Section 73.3613 and revised the rule as necessary to eliminate unnecessary paperwork and reduce administrative burdens on licensees and the Commission. For example, prior to the late 1970s, the Commission revised Section 73.3613 on multiple occasions to eliminate the obligation to routinely submit paper copies of several documents and instead require that certain documents be kept at the station and made available upon request.<sup>10</sup> Beginning in the late 1970s, the Commission took several steps to eliminate unnecessary paperwork burdens resulting from the requirement that stations submit paper copies of certain network affiliation contracts that the Commission no longer needed to collect routinely. For example, the Commission eliminated the requirement that radio stations file network affiliation and transcription contracts with the Commission, and it limited the mandatory filing of television network affiliation contracts to just those agreements with national networks.<sup>11</sup>

5. *Modernization of Media Regulation Initiative.* In May 2017, the Commission issued a Public Notice launching a review of its media regulations to eliminate or modify those that are outdated, unnecessary, or unduly burdensome.<sup>12</sup> In response to that Public Notice, several commenters in the Media Modernization proceeding urged the Commission to eliminate the existing paper filing requirements in Section 73.3613. These commenters generally assert that the Commission's and the public's information needs can be sufficiently met through the existing public file requirements.<sup>13</sup> No commenters opposed these recommendations.

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<sup>9</sup> Under the 2012 amendment to the rules, licensees and permittees that choose to retain a list of Section 73.3613 documents in the public file must continue to provide a copy of any such documents to requesting parties within seven days. 47 CFR §§ 73.3526(e)(5), 73.3527(e)(4).

<sup>10</sup> See, e.g., Filing of Contracts, Broadcast Licensees and Permittees, 18 Fed. Reg. 4952 (Aug. 20, 1953) (adopting revisions to limit documents required to be filed with Commission); *Amendment of Sections 73.35, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations*, Report and Order, 13 F.C.C.2d 357, 375, para. 59 (1968) (amending filing of contracts rule to generally require routine filing only of abstract of trust instrument, rather than complete trust instrument); *Re-Regulation of Radio and Television Broadcasting*, Order, 25 R.R.2d 1719 (1972) (revising filing of contracts rule to exclude from filing requirements contracts as to time brokers, Subsidiary Communications Authorization operations, and time sales over four hours daily to the same sponsor, requiring instead that such contracts be kept at station and made available upon request).

<sup>11</sup> *Network Broadcasting by AM and FM Stations*, Report, Statement of Policy, and Order, 40 R.R.2d 80 (1977) (amending filing of contracts rule to require filing of radio network affiliation agreements only if agreement is between commercial station and network furnishing programming at least five days a week during eight or more months per year); *Filing of Network Affiliation Agreements*, Report and Order, 58 R.R.2d 815 (1985) (eliminating affiliation contract filing requirement for all radio licensees and retaining requirement only for television licensees affiliated with national networks). The Commission subsequently proposed to eliminate the routine filing requirement for national television network affiliates as well and instead require that television licensees make their national network affiliation agreements available to the Commission upon request. *Amendment of Part 73 of the Commission's Rules Concerning the Filing of Television Network Affiliation Contracts*, Notice of Proposed Rulemaking, 10 FCC Rcd 5677 (1995). This proposal remained pending until the Commission terminated the proceeding in 2011. See *Termination of Certain Proceedings as Dormant*, Order, 26 FCC Rcd 15312 (CGB 2011).

<sup>12</sup> *Modernization Initiative Public Notice*, 32 FCC Rcd at 4406.

<sup>13</sup> See, e.g., NAB Comments at 17-18; NSBA Reply at 11; see also 47 CFR §§ 73.3526(e)(13), 73.3527(e)(4).

### III. DISCUSSION

#### A. Elimination or Modification of Filing Requirement

6. *AM, FM, and Television Stations.* We tentatively conclude that the Section 73.3613 paper filing requirement for licensees and permittees of commercial and noncommercial AM, FM, and television stations should be eliminated.<sup>14</sup> While paper filings may have previously been the most efficient mechanism for ensuring that the Commission and the public had ready access to these materials, we believe that is no longer the case. The vast majority of Commission forms are now filed electronically, and the Commission has taken many recent steps to eliminate or streamline paper submissions and other document retention obligations. For example, the transition to online public files, which is largely complete and will be finalized in March 2018, has significantly reduced burdens on stations and provided both the Commission and the public with easy access to station information and documents retained in the public inspection file.<sup>15</sup>

7. Indeed, the Section 73.3613 documents of commercial and noncommercial AM, FM, and television stations are already available via their public inspection files, and such access will continue even without the Section 73.3613 paper filing requirement. Licensees and permittees of these stations currently file ownership reports electronically on FCC Forms 323 and 323-E, and on these ownership reports licensees and permittees are required to list all documents required to be filed pursuant to Section 73.3613 for all of the stations covered by the report.<sup>16</sup> Our public file rules, contained in Sections 73.3526 and 73.3527 of our rules,<sup>17</sup> require that the licensees and permittees of these stations make the documents listed in their ownership reports—i.e., their Section 73.3613 documents—available for public inspection via their public files.<sup>18</sup> Specifically, the public file rules require these licensees and permittees, at their discretion, to either (i) retain in their public inspection files copies of the documents listed in their ownership reports or (ii) maintain an up-to-date list of such documents in their public inspection files and provide copies to a requesting party within seven days.<sup>19</sup> In light of this existing requirement and after evaluating our own document needs, we believe that eliminating the paper filing requirement as discussed herein will not meaningfully impact the ability of the Commission and other interested parties to review

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<sup>14</sup> 47 CFR § 73.3613 (requiring that each licensee or permittee of a commercial or noncommercial AM, FM, TV, or international broadcast station file with the FCC copies of specified contracts and other documents within 30 days of execution). As discussed below, we also seek comment on whether to eliminate the paper filing requirement for international broadcast stations as well, or whether there is a continuing need for a paper filing requirement for these stations since they are not subject to our existing public file rules. *See infra* Section III.A.

<sup>15</sup> *See supra* note 8 and accompanying text.

<sup>16</sup> FCC Form 323, Ownership Report for Commercial Broadcast Stations (Nov. 2017), <https://transition.fcc.gov/Forms/Form323/323.pdf>; FCC Form 323-E, Ownership Report for Noncommercial Broadcast Stations (Nov. 2017), <https://transition.fcc.gov/Forms/Form323-E/323e.pdf>. As stated in the instructions for Form 323 and Form 323-E, all Form 323 and Form 323-E filings must be submitted electronically. *See also* 47 CFR § 73.3615 (requiring electronic submission of Forms 323 and 323-E).

<sup>17</sup> Section 73.3526 of our rules contains local public inspection file requirements for commercial broadcast stations, while Section 73.3527 contains similar requirements for noncommercial educational broadcast stations. 47 CFR §§ 73.3526, 73.3527.

<sup>18</sup> *Id.* §§ 73.3526(e)(5), 73.3527(e)(4); *see also supra* para. 3 & note 7 (discussing public file requirements contained in Sections 73.3526(e)(5) and 73.3527(e)(4)).

<sup>19</sup> 47 CFR §§ 73.3526(e)(5), 73.3527(e)(4). Our public file rules also require licensees and permittees to retain copies of time brokerage agreements and joint sales agreements involving a commercial AM, FM, or television station in the station's public file. *Id.* § 73.3526(e)(14), (e)(16).

Section 73.3613 documents, and will reduce burdens on licensees.<sup>20</sup>

8. Accordingly, consistent with comments to the *Modernization Initiative Public Notice*,<sup>21</sup> we tentatively conclude that relying on the existing public file rules—subject to the proposed modifications discussed herein—will provide the Commission and the public with sufficient access to Section 73.3613 documents for commercial and noncommercial AM, FM, and television stations. We seek comment on this tentative conclusion. Our existing public file rules provide these stations with flexibility to select the disclosure method that is less burdensome with respect to Section 73.3613 documents. We therefore propose to eliminate the Section 73.3613 requirement that licensees and permittees of commercial and noncommercial AM, FM, and television stations file paper copies of such documents with the Commission. Instead, we propose that stations make such documents available to the Commission and the public via the options set forth in the existing public file requirement.<sup>22</sup> We seek comment on this proposal.

9. As discussed above, our existing public file rules currently give stations the option of either (i) retaining copies of the documents listed in their ownership reports in the public file or (ii) maintaining an up-to-date list of such documents in the public file and providing copies to a requesting party within seven days.<sup>23</sup> In order to preserve the current level of access to these documents, we propose to clarify that a station must maintain an up-to-date inventory of its Section 73.3613 documents in its public file, regardless of whether the station chooses to retain copies or a list of documents in the public file, and provide copies of its Section 73.3613 documents to the Commission and the public within seven days upon request. We seek comment on this proposal.

10. For additional clarity, we also seek comment on whether to revise the relevant public file rules<sup>24</sup> to refer specifically to Section 73.3613, instead of referencing the documents listed in ownership reports (which are the same as the Section 73.3613 documents). In the alternative, we seek comment on whether to eliminate Section 73.3613 of the rules entirely—subject to the discussion of international broadcast stations below—and instead list these same documents in Sections 73.3526 and 73.3527 of our rules. Which approach would most effectively keep licensees informed of their obligations? If we eliminate Section 73.3613, how should we address the documents currently specified in Section 73.3613(e), which need not be filed with the Commission but must be kept at the station and made available for inspection upon request by the Commission under the current rule? Similarly, how should we address Section 73.3613(a)(1), which currently includes a definition of “network” that is cross-

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<sup>20</sup> As discussed below, we propose to revise our existing public file rules to clarify that a licensee or permittee that chooses to place a copy of each document in its public file must keep such copies up-to-date in the file. *See infra* note 22.

<sup>21</sup> *See* NAB Comments at 17-18; Nexstar Broadcasting, Inc. Comments at 6-7; Edward A. Schober Comments at 4; ABC Television Affiliates Association et al. Reply at 10; NSBA Reply at 11.

<sup>22</sup> The types of documents that must be filed with the Commission under the current rule include network affiliation agreements between a television station and a national network; documents that relate to ownership or control of the licensee or permittee; contracts that relate to management of a station by someone other than a regular employee, officer, or director of the station, or by any person where the contract also provides for both a percentage of profits and sharing in losses; attributable time brokerage agreements; and attributable joint sales agreements. 47 CFR § 73.3613(a)–(d). In addition, the current rule also requires that the following documents be kept at the station and made available for inspection upon request by the Commission: subchannel leasing agreements for Subsidiary Communications Authorization operation; franchise/leasing agreements for operation of telecommunications services on the television vertical blanking interval and in the visual signal; time sales contracts with the same sponsor for four or more hours per day, except where the length of the events broadcast is not under control of the station; and contracts with chief operators. *Id.* § 73.3613(e).

<sup>23</sup> *Id.* §§ 73.3526(e)(5), 73.3527(e)(4).

<sup>24</sup> *Id.*

referenced in the Telecommunications Act of 1996 and in the Commission's Dual Network Rule. We seek comment on these issues.

11. Under Section 73.3613, documents are required to be filed within 30 days after execution.<sup>25</sup> By contrast, the public file rules do not explicitly state how quickly licensees and permittees must add the documents listed in their most recent ownership report or update the list of such documents,<sup>26</sup> though licensees and permittees are expected to update their files in a timely fashion and to maintain orderly files.<sup>27</sup> Is the existing practice for public file updates sufficient or should we adopt a specific timeframe for updating the Section 73.3613 documents in the station's public file? If so, how long (e.g., continue to require updates within 30 days after execution, consistent with the current practice under Section 73.3613)? In addition to the specific issues discussed in Section B of this *NPRM*, we invite comment on any other modifications or conforming changes to Section 73.3613, or any other Commission rule, that are necessary or appropriate to implement the proposals discussed in this *NPRM* and on any alternative proposals for making these documents available in a less costly and more effective manner.<sup>28</sup>

12. *International Broadcast Stations.* Unlike AM, FM, and television stations, international broadcast stations do not serve local communities in the United States. These stations, which are authorized on a seasonal basis, employ frequencies allocated to the broadcasting service between 5900 and 26100 kHz, the transmissions of which are intended to be received in foreign countries.<sup>29</sup> International broadcast stations, which are often operated by churches and other religious organizations, typically do not have network affiliations and do not enter into time brokerage arrangements or joint sales agreements. As of December 13, 2017, there were 16 international broadcast stations operating.<sup>30</sup> These stations are subject to the Section 73.3613 filing requirements but do not have public file obligations like those applicable to AM, FM, and television stations. Similarly, these stations are not currently subject to the routine ownership reporting obligations applicable to other broadcast services.<sup>31</sup>

13. Based upon our review, we tentatively conclude that the current justifications for requiring disclosure of Section 73.3613 documents by commercial and noncommercial AM, FM, and television stations do not apply to international broadcast stations. As mentioned above, for example, licensees and permittees of commercial and noncommercial AM, FM, and television stations are required to list Section 73.3613 documents in the broadcast ownership reports they file with the Commission and make copies of such documents available via a public inspection file, but international broadcast stations are not subject to such obligations.<sup>32</sup> While the disclosure of Section 73.3613 documents by commercial and noncommercial AM, FM, and television stations supplements the ownership information that they

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<sup>25</sup> *Id.* § 73.3613.

<sup>26</sup> *Id.* §§ 73.3526, 73.3527.

<sup>27</sup> *See, e.g., Enhanced Disclosure Second Report and Order*, 27 FCC at 4852, para. 102.

<sup>28</sup> *See, e.g.*, 47 CFR §§ 73.1226(c), 73.1210(b)(1), 74.780.

<sup>29</sup> *Id.* §§ 73.701(a), 73.702. Currently, two seasons exist: a summer season and a winter season. *See id.* § 73.701.

<sup>30</sup> FCC High Frequency Stations, <https://www.fcc.gov/general/fcc-high-frequency-stations> (last visited Dec. 13, 2017).

<sup>31</sup> *See* 47 CFR § 73.3615; FCC Form 323, Ownership Report for Commercial Broadcast Stations (Nov. 2017), <https://transition.fcc.gov/Forms/Form323/323.pdf>; FCC Form 323-E, Ownership Report for Noncommercial Broadcast Stations (Nov. 2017), <https://transition.fcc.gov/Forms/Form323-E/323e.pdf>.

<sup>32</sup> Previously, international broadcast stations were subject to the ownership reporting requirements that applied to AM, FM, and television stations, but this is no longer the case. *Compare* 47 CFR § 1.343(a) (1953) ("The licensee or permittee of each broadcast station (Standard, FM, television and international) shall file [an Ownership Report (FCC Form 323)] on or before April 1 . . . ."), *with id.* § 73.3615(a) ("[Form 323] must be filed electronically every two years by each licensee of a commercial AM, FM, or TV broadcast station . . . .").

must routinely report to the Commission, the same is not true for international broadcast stations. Furthermore, these stations are not subject to the ownership rules applicable to commercial AM, FM, and television stations,<sup>33</sup> nor are they subject to the relevant operational provisions applicable to noncommercial stations.<sup>34</sup> Moreover, it does not appear that the Section 73.3613 documents that international broadcast stations are required to file with the Commission have been reviewed by Commission staff in the recent past. Accordingly, we tentatively conclude that there is no need to continue requiring the licensees and permittees of international broadcast stations to routinely file Section 73.3613 documents with the Commission.

14. Instead, we believe that the Commission's information needs can be met by retaining our ability to obtain these documents from licensees and permittees of international broadcast stations upon request, as needed. For example, if there are concerns about the ownership or control of an international broadcast station, the Commission could request copies of the relevant Section 73.3613 documents as part of an investigation. We seek comment on how to implement this requirement. Should the Commission's rules continue to delineate the documents subject to disclosure (either in Section 73.3613 or in a new rule section relevant only to international broadcast stations) or is the Commission's general authority to request relevant information during an investigation or to otherwise fulfill its statutory obligations sufficient?

15. We seek comment on these proposals. Is there a continuing need for these licensees and permittees to routinely file paper copies of Section 73.3613 documents with the Commission? What is the value, if any, of retaining the Section 73.3613 paper filing requirement for international broadcast stations for the Commission and the public? Would eliminating the requirement and retaining our ability to obtain Section 73.3613 documents upon request adequately ensure that the Commission will have access to information concerning ownership and control of international broadcast stations and compliance with our rules? Are there any reasons that would support a requirement that international broadcast stations make these documents available to members of the public?<sup>35</sup> If so, what is the least costly and most effective manner of doing so?

#### **B. Other Modifications to Section 73.3613**

16. *Time Brokerage Agreements and Joint Sales Agreements.* Pursuant to Section 73.3613(d), attributable time brokerage agreements (TBAs) and attributable joint sales agreements (JSAs) must be filed with the Commission by the brokering station.<sup>36</sup> In addition, our existing public file rule for commercial stations requires that all TBAs and JSAs involving commercial stations, regardless of their attribution status, also be placed in the public inspection file for all participating stations; that is, under the current rules commercial broadcast stations cannot elect merely to list these agreements in their public

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<sup>33</sup> See *id.* § 73.3555.

<sup>34</sup> See *id.* §§ 73.503, 73.621. For purposes of enforcing the statutory bar against *de facto* transfers of control of an international broadcast station without prior Commission authorization, we believe that it is sufficient to retain our ability to obtain Section 73.3613 documents from licensees and permittees of international broadcast stations upon request, as discussed below.

<sup>35</sup> We note that these stations transmit programming that is intended to be received in foreign countries and are not required to have public inspection files, and thus do not currently make Section 73.3613 documents available to the U.S. public in that manner. And, considering the very small number of stations operating nationally, Section 73.3613 documents of international broadcast stations may be of little relevance to the U.S. public. We seek comment on these issues.

<sup>36</sup> 47 CFR § 73.3613(d). A TBA, also referred to as local marketing agreement (LMA), involves "the sale by a licensee of discrete blocks of time to a 'broker' that supplies the programming to fill that time and sells the commercial spot announcements in it." *Id.* § 73.3555, Note 2(j). A JSA is an agreement that authorizes a broker to sell some or all of the advertising time on the brokered station. *Id.* § 73.3555, Note 2(k).



files.<sup>37</sup> Because Section 73.3613(d) duplicates an existing public file requirement for a limited subset of TBAs and JSAs, we tentatively conclude that we may eliminate this requirement as it applies to commercial stations. We believe that elimination is appropriate, regardless of the disclosure requirement that may ultimately be selected.<sup>38</sup> We seek comment on this issue.

17. Unlike commercial stations, noncommercial stations are not currently required to maintain copies of all TBAs or JSAs in their public inspection files; rather, under our public file rules, these stations have the option of only maintaining a list of all Section 73.3613 documents, including certain TBAs and JSAs, and must provide a copy of these documents to requesting parties.<sup>39</sup> Accordingly, no change to Section 73.3613(d) is necessary with respect to noncommercial stations, which are already required to list these agreements in their public files and make them available upon request. We seek comment on this issue.

18. *Redaction of Confidential or Proprietary Information.* Section 73.3613 explicitly allows the redaction of confidential or proprietary information for attributable TBAs and JSAs, provided that unredacted versions of the agreements shall be provided to the Commission upon request.<sup>40</sup> The rule does not currently provide for redaction of other agreements filed pursuant to the provision. However, the Commission's general rules provide a procedure for seeking such redactions,<sup>41</sup> and other agreements filed pursuant to this section that contain confidential or proprietary information are routinely submitted to the Commission in both redacted and unredacted forms along with a request for confidential treatment. We have no evidence that this practice—both the specific provisions allowing the redaction of TBAs and JSAs and the routine submission of redacted and unredacted versions of other 73.3613 documents pursuant to Section 0.459 of the Commission's rules—has impaired the ability of the Commission or other interested parties to evaluate these agreements. Accordingly, we tentatively conclude that Section 73.3613's specific provision allowing the redaction of TBAs and JSAs, including the requirement that unredacted copies shall be made available to the Commission upon request, should apply to all Section 73.3613 documents to the extent that they contain confidential or proprietary information. Under our proposal herein, redaction would only be necessary when a document is posted to the online public file or provided to the Commission or the public upon request. We seek comment on this tentative conclusion.

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<sup>37</sup> *Id.* § 73.3526(e)(14), (e)(16).

<sup>38</sup> Under the current rule, attributable TBAs and attributable JSAs—like all other Section 73.3613 documents—must be filed with the Commission within 30 days of execution. However, our existing public file rules do not explicitly state how quickly licensees and permittees must add these documents to their public file. As noted above, however, we are seeking comment on whether to adopt a specific timeframe for updating Section 73.3613 documents. *See supra* para. 11.

<sup>39</sup> *See* 47 CFR § 73.3527(e)(4). When the Commission adopted the public file rules requiring that all TBAs and/or JSAs involving commercial stations be placed in the public inspection file, it did not discuss a similar requirement for noncommercial stations. *See Revision of Radio Rules and Policies*, Report and Order, 7 FCC Rcd 2755 (1992), *recon.* Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd 6387 (1994); *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests et al.*, Report and Order, 14 FCC Rcd 12559 (1999). Given the nature of and rules applicable to the noncommercial service, it is likely that TBAs and JSAs involving noncommercial stations are not as prevalent as those involving commercial stations.

<sup>40</sup> 47 CFR § 73.3613(d)(1)-(d)(2). A similar rule applies to TBAs and JSAs required to be placed in the public inspection file. *See id.* §§ 73.3526(e)(14), (e)(16).

<sup>41</sup> *See id.* § 0.459(a)(1).

#### IV. PROCEDURAL MATTERS

##### A. Initial Regulatory Flexibility Act Analysis

19. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>42</sup> the Commission has prepared an Initial Regulatory Flexibility Act Analysis (IRFA) relating to this NPRM. The IRFA is set forth in Appendix A.

##### B. Initial Paperwork Reduction Act Analysis

20. This document contains proposed modified 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 of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

##### C. Ex Parte Rules

21. Permit-But-Disclose. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>43</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

##### D. Filing Requirements

22. Comments and Replies. Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.

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<sup>42</sup> 5 U.S.C. § 603. The RFA, *id.* §§ 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

<sup>43</sup> 47 CFR §§ 1.1200 *et seq.*

- Paper Filers: Parties who choose to file by paper must file an original and one copy 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 mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes 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 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington, DC 20554.

23. Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., CY-A257, Washington, D.C. 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

24. People with Disabilities. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

#### **E. Additional Information**

25. For additional information on this proceeding, contact Christopher Clark of the Industry Analysis Division, Media Bureau, at (202) 418-2609.

#### **V. ORDERING CLAUSES**

26. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 1, 4(i), 4(j), 303(r), 309, 310, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303(r), 309, 310, and 336, this Notice of Proposed Rulemaking **IS ADOPTED**.

27. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA)<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Act Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking (NPRM)*. 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 provided on the first page of the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**A. Need for, and Objectives of, the Proposed Rules**

2. In this *NPRM*, the Commission seeks comment on how to modernize Section 73.3613 of the Commission's rules, which requires each licensee or permittee of a commercial and noncommercial AM, FM, television, or international broadcast station to file certain contracts and other documents with the Commission within 30 days after execution.<sup>4</sup> The potential rule changes discussed in the *NPRM* stem from a Public Notice issued by the Commission in May 2017 launching an initiative to modernize the Commission's media regulations.<sup>5</sup> Several commenters in the proceeding have argued that the Commission should amend Section 73.3613 to eliminate the paper filing requirement and other duplicate or unnecessary filing requirements.<sup>6</sup>

3. The *NPRM* proposes to eliminate the Section 73.3613 paper filing requirement for licensees and permittees of commercial and noncommercial AM, FM, television, and international broadcast stations. In addition, the *NPRM* also seeks comment on other proposed modifications to broadcasters' current obligations under Section 73.3613, including, among other things, eliminating certain redundant filing obligations and providing enhanced confidentiality protections. The rule

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<sup>1</sup> 5 U.S.C. § 603. The RFA, 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> 5 U.S.C. § 603(a).

<sup>3</sup> *Id.*

<sup>4</sup> 47 CFR § 73.3613. The types of documents that must be filed with the Commission under the current rule include network affiliation agreements between a television station and a national network; documents that relate to ownership or control of the licensee or permittee; contracts that relate to management of a station by someone other than a regular employee, officer, or director of the station, or by any person where the contract also provides for both a percentage of profits and sharing in losses; attributable time brokerage agreements; and attributable joint sales agreements. *Id.* § 73.3613(a)–(d). In addition, the current rule also requires that the following documents be kept at the station and made available for inspection upon request by the Commission: subchannel leasing agreements for Subsidiary Communications Authorization operation; franchise/leasing agreements for operation of telecommunications services on the television vertical blanking interval and in the visual signal; time sales contracts with the same sponsor for four or more hours per day, except where the length of the events broadcast is not under control of the station; and contracts with chief operators. *Id.* § 73.3613(e).

<sup>5</sup> *Commission Launches Modernization of Media Regulation Initiative*, MB Docket No. 17-105, Public Notice, 32 FCC Rcd 4406 (MB 2017) (initiating a review of rules applicable to media entities to eliminate or modify regulations that are outdated, unnecessary, or unduly burdensome).

<sup>6</sup> America's Public Television Stations et al. Comments at 13-14; CBS Corporation et al. Comments at 3-5; Edward A. Schober Comments at 4; National Association of Broadcasters Comments at 17-18; Nexstar Broadcasting, Inc. Comments at 6-7; ABC Television Affiliates Association et al. Reply at 10; The Named State Broadcasters Associations Reply at 11; Nexstar Broadcasting, Inc. Reply at 1-2.

revisions on which the NPRM seeks comment are intended to reduce unnecessary regulation and regulatory burdens that can impede competition and innovation in the media marketplace.

**B. Legal Basis**

4. The proposed action is authorized pursuant to Sections 1, 4(i), 4(j), 303(r), 309, 310, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303(r), 309, 310, and 336.

**C. Description and Estimates of the Number of Small Entities to Which the Proposed Rules Will Apply**

5. 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.<sup>7</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>8</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>9</sup> 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.<sup>10</sup>

6. The rules proposed herein will directly affect small radio, television, and international broadcast stations. Below, we provide a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

7. *Radio Stations.* This 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.”<sup>11</sup> The SBA has established a small business size standard for this category as firms having \$38.5 million or less in annual receipts.<sup>12</sup> Economic Census data for 2012 shows that 2,849 radio station firms operated during that year.<sup>13</sup> Of that number, 2,806 firms operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999 million and 26 with annual receipts of \$50 million or more.<sup>14</sup> Therefore, based on the SBA’s size standard the majority of such entities are small entities.

8. According to Commission staff review of the BIA/Kelsey, LLC’s Media Access Pro Radio Database on November 16, 2017, about 11,378 (or about 99.9 percent) of 11,387 commercial radio

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<sup>7</sup> 5 U.S.C. § 603(b)(3).

<sup>8</sup> *Id.* § 601(6).

<sup>9</sup> *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). 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 Small Business Administration 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.”

<sup>10</sup> *Id.* § 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission’s statistical account of television stations may be over-inclusive.

<sup>11</sup> U.S. Census Bureau, 2017 NAICS Definitions, “515112 Radio Stations,” <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515112&search=2017+NAICS+Search&search=2017>.

<sup>12</sup> 13 CFR § 121.201; NAICS code 515112.

<sup>13</sup> U.S. Census Bureau, Table No. EC0751SSSZ4, *Information: Subject Series – Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515112), [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ4//naics~515112](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~515112).

<sup>14</sup> *Id.*

stations had revenues of \$38.5 million or less and thus qualify as small entities under the SBA definition.<sup>15</sup> The Commission has estimated the number of licensed commercial AM radio stations to be 4,639 stations and the number of commercial FM radio stations to be 6,748, for a total number of 11,387.<sup>16</sup> We note the Commission has also estimated the number of licensed noncommercial (NCE) FM radio stations to be 4,116.<sup>17</sup> Nevertheless, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

9. We also note, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included.<sup>18</sup> The Commission's estimate therefore likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, to be determined a "small business," an entity may not be dominant in its field of operation.<sup>19</sup> We further note, that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these basis, thus our estimate of small businesses may therefore be over-inclusive. Also, as noted above, an additional element of the definition of "small business" is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

10. *Television Broadcasting.* This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound."<sup>20</sup> These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.<sup>21</sup> 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. The SBA has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts.<sup>22</sup> The 2012 Economic Census reports that 751 firms in this category operated in that year. Of this number, 656 had annual receipts of \$25 million or less, 25 had annual receipts between \$25 million and \$49,999,999, and 70 had annual receipts of \$50 million or more.<sup>23</sup> Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

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<sup>15</sup> Broadcast Station Totals as of September 30, 2017, Press Release (MB Oct. 2, 2017) (September 30, 2017 Broadcast Station Totals), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-346998A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-346998A1.pdf).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has power to control both." 13 C.F.R. § 121.103(a)(1).

<sup>19</sup> 13 C.F.R. § 121.102(b).

<sup>20</sup> U.S. Census Bureau, 2017 NAICS Definitions, "515120 Television Broadcasting," <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515120&search=2017+NAICS+Search&search=2017>.

<sup>21</sup> *Id.*

<sup>22</sup> 13 CFR § 121.201; 2012 NAICS Code 515120.

<sup>23</sup> U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515120 Television Broadcasting), [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ4//naics~515120](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~515120).

11. The Commission has estimated the number of licensed commercial television stations to be 1,378.<sup>24</sup> Of this total, 1,258 stations had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on November 16, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 395.<sup>25</sup> Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

12. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations<sup>26</sup> must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive. Also, as noted above, an additional element of the definition of “small business” is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent.

13. *International Broadcast Stations.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to International Broadcast Stations. The closest applicable SBA size standards and U.S. Census Bureau category is Radio Stations.<sup>27</sup> Establishments in this industry are primarily engaged in broadcasting aural programs by radio to the public with programming that may originate in their own studio, from an affiliated network, or from external sources.<sup>28</sup> The SBA small business size standard for this category is firms having \$38.5 million or less in annual receipts.<sup>29</sup> U.S. Census Bureau data for 2012 shows that 2,849 radio station firms operated during that year.<sup>30</sup> Of that number, 2,806 firms operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999 million and 26 with annual receipts of \$50 million or more.<sup>31</sup> Therefore, based on the SBA’s size standard the majority of entities in this industry are small entities.

14. According to the Commission’s records there were 16 international broadcast stations operating as of December 13, 2017.<sup>32</sup> The Commission however does not request nor collect annual

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<sup>24</sup> September 30, 2017 Broadcast Station Totals.

<sup>25</sup> *Id.*

<sup>26</sup> “[Business concerns] are affiliates of each other when one 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 § 21.103(a)(1).

<sup>27</sup> 13 CFR § 121.201; NAICS code 515112.

<sup>28</sup> U.S. Census Bureau, 2017 NAICS Definitions, “515112 Radio Stations,” <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515112&search=2017+NAICS+Search&search=2017>

<sup>29</sup> 13 CFR § 121.201; NAICS code 515112.

<sup>30</sup> U.S. Census Bureau, Table No. EC0751SSSZ4, *Information: Subject Series – Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515112), [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ4/naics~515112](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4/naics~515112).

<sup>31</sup> *Id.*

<sup>32</sup> FCC High Frequency Stations, <https://www.fcc.gov/general/fcc-high-frequency-stations> (last visited Dec. 13, 2017).

revenue information therefore the Commission is unable to estimate the number of international broadcast stations that would constitute a small business under the SBA definition.

**D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

15. In this section, we identify the reporting, recordkeeping, and other compliance requirements proposed in the NPRM and consider whether small entities are affected disproportionately by any such requirements.

16. *Reporting Requirements.* The NPRM seeks comment on how quickly licensees and permittees must update the Section 73.3613 documents in their public file or update the list of such documents. Presently, licensees and permittees are expected to update their files in a timely fashion and to maintain orderly files. The NPRM seeks comment on whether to retain the existing practice for public file updates or to adopt a specific timeframe for updating the Section 73.3613 documents in the station's public file (e.g., continue to require updates within 30 days after execution, consistent with the current practice under Section 73.3613).

17. *Recordkeeping Requirements.* The existing public file rules currently give stations the option of either (i) retaining copies of the documents listed in their ownership reports in the public file or (ii) maintaining an up-to-date list of such documents in the public file and providing copies to a requesting party within seven days. To preserve the current level of access to these documents, the NPRM proposes to clarify that a station must maintain an up-to-date inventory of its Section 73.3613 documents in its public file, regardless of whether the station chooses to retain copies or a list of documents in the public file, and provide copies of its Section 73.3613 documents to the Commission and the public within seven days upon request.

18. *Other Compliance Requirements.* Section 73.3613 explicitly allows the redaction of confidential or proprietary information for attributable TBAs and JSAs, provided that unredacted versions of the agreements shall be provided to the Commission upon request. The rule does not currently provide for redaction of other agreements filed pursuant to the provision. The NPRM tentatively concludes that Section 73.3613's specific provision allowing the redaction of TBAs and JSAs, including the requirement that unredacted copies shall be made available to the Commission upon request, should apply to all Section 73.3613 documents to the extent that they contain confidential or proprietary information. Under this proposal, redaction would only be necessary when a document is posted to the online public file or provided to the Commission or the public upon request.

19. The proposed revisions to Section 73.3613 will relieve affected broadcast stations, including smaller stations, of the obligation to file certain information with the Commission. And although there were not any comments filed providing specific information quantifying the costs and administrative burdens of complying with the existing Section 73.3613 filing requirements, and we cannot precisely estimate the impact on small entities of eliminating those requirements, no party in the Media Modernization proceeding, including smaller entities, has opposed the proposals discussed in the NPRM. We therefore find it reasonable to conclude that the benefits of adopting the proposals discussed therein would outweigh any costs.

**E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

20. The RFA requires an agency to describe any significant, specifically small business, 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 and reporting requirements under the rule for such 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.<sup>33</sup>

21. The *NPRM* proposes to amend Section 73.3613 to eliminate the paper filing requirement for Section 73.3613 documents, and seeks comment on other proposed modifications to broadcasters' current obligations under Section 73.3613, including, among other things, eliminating certain redundant filing obligations and providing enhanced confidentiality protections. Under the proposal in the *NPRM*, redaction of confidential or proprietary information would only be necessary when a document is posted to the online public file or provided to the Commission or the public upon request. The rule changes proposed in the *NPRM*, if adopted, would relieve broadcast licensees and permittees, including small entities, of the time and expense associated with filing paper copies of Section 73.3613 documents with the Commission.

22. For licensees and permittees of commercial and noncommercial AM, FM, and television stations, the *NPRM* proposes to rely instead on the Commission's existing public file rules, which already require that these licensees and permittees make copies of Section 73.3613 documents available to the public. The existing public file rules provide these licensees and permittees with flexibility to select the disclosure method that is less burdensome with respect to Section 73.3613 documents, while still ensuring timely access to the documents by the public and the Commission. For international broadcast stations, the *NPRM* proposes that the Commission retain its ability to obtain Section 73.3613 documents from licensees and permittees of these stations upon request, as needed.

23. We anticipate that affected small entities will only benefit from the revisions proposed in the *NPRM*. However, in an effort to better understand the impact and identify alternative actions that can be taken to minimize any significant economic impact on small entities, the Commission has invited comment on modifications or conforming changes to Section 73.3613, or any other Commission rule, that are necessary or appropriate to implement the proposals discussed in the *NPRM* and on any alternative proposals for making these documents available in a less costly and more effective manner. The Commission will review and analyze any information received in promulgating any final rules in this proceeding.

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule**

24. None.

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<sup>33</sup> 5 U.S.C. § 603(c)(1)-(4).