

FCC FACT SHEET*

**Modernization of Media Regulation Initiative:
Amendment of Parts 0, 1, 5, 73, and 74 of the Commission's Rules Regarding Posting of Station
Licenses and Related Information**

Report and Order – MB Docket Nos. 17-105 and 18-121

Background: The Commission has numerous rules that require broadcast licensees to maintain and display copies of their licenses, other authorizations, or related materials in specific locations, such as at their transmitter sites. As part of the Commission's *Modernization of Media Regulation Initiative*, the Commission issued a Notice of Proposed Rulemaking seeking comment on whether to eliminate these license posting rules that appear to be redundant and obsolete now that licensing information is readily accessible online through the Commission's databases. Commenters in the proceeding unanimously supported elimination of these license posting and maintenance requirements that apply in some form to all broadcast licensees.

What the Order Would Do:

- Eliminate provisions in Parts 1, 5, 73 and 74 of our rules that require broadcasters to post and maintain copies of their licenses and related information in specific locations.

* 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. 18-121 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 Parts 0, 1, 5, 73, and 74 of the) MB Docket No. 18-121
Commission's Rules Regarding Posting of Station)
Licenses and Related Information)
)
Modernization of Media Regulation Initiative) MB Docket No. 17-105

REPORT AND ORDER*

Adopted: []

Released: []

By the Commission:

I. INTRODUCTION AND BACKGROUND

1. In this Report and Order (Order), we eliminate the provisions in Parts 1, 5, 73 and 74 of our rules that require the posting and maintenance of broadcast licenses and related information in specific locations.1 In May 2018, the Federal Communications Commission (Commission) issued a Notice of Proposed Rulemaking (NPRM) seeking comment on whether to eliminate license posting rules that appeared to be redundant and obsolete now that licensing information is readily accessible online through the Commission's databases.2 Commenters in this proceeding unanimously support the elimination of these rules.3 As detailed below, we find that eliminating these requirements, which apply in some form to all broadcast licensees, will serve the public interest. In doing so, we advance the Commission's goal of modernizing our media rules and remove unnecessary regulatory burdens that impede competition and innovation in the media marketplace.4

* This document has been circulated for tentative consideration by the Commission at its December 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 By this Order, we also eliminate provisions in our rules which reference or cross-reference broadcast license posting rules. Infra note 30.

2 Amendment of Parts 0, 1, 5, 73, and 74 of the Commission's Rules Regarding Posting of Station Licenses and Related Information, Notice of Proposed Rulemaking, FCC 18-61 (May 10, 2018), 2018 WL 2192432 (NPRM).

3 See, e.g., America's Public Television Stations, Corporation for Public Broadcasting, National Public Radio, Inc., and Public Broadcasting Service (APTS) Comments, filed jointly, at 3; HC2 Broadcasting Holdings (HC2) Comments at 2; National Association of Broadcasters (NAB) Comments at 1; Nexstar Broadcasting, Inc. (Nexstar) Comments at 2-3. No reply comments were filed in this proceeding.

4 Commission Launches Modernization of Media Regulation Initiative, 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).

2. Broadcast license posting rules predate the establishment of the Commission. As explained in the *NPRM*, the Federal Radio Commission promulgated the earliest iteration of broadcast license posting requirements on record in 1930.⁵ Subsequent Commission decisions revised and expanded to new broadcast services license posting obligations and requirements to maintain records at specific locations, but provided no explicit rationale for such rules.⁶ Based on the text and history of these rules, the *NPRM* noted that the intended purpose of the rules may have been to ensure that information regarding station authorizations, ownership, and contact information was readily available and easily accessible to the Commission and public.⁷ Commenters in this proceeding do not identify any alternative purpose or use for these rules and maintain that, with the advent of online sources for licensee information, the burdens that compliance with these rules imposes on licensees⁸ clearly outweigh any original benefits they may have provided.⁹

II. DISCUSSION

3. Consistent with our proposals in the *NPRM*, we eliminate the license posting rules applicable to broadcasters and the related rules that require records to be maintained at specific locations.¹⁰ We agree with commenters that “while the posting rule[s] may have made sense almost 90

⁵ *NPRM* at 3, para. 4; U.S. Dept. of Commerce, Radio Division, Radio Service Bull. No. 158, at 23, General Orders of the Federal Radio Commission (May 31, 1930) (stating only “that every station license shall be posted by the licensee in a conspicuous place in the room in which the transmitter is located and the license of every station operator shall be posted in a conspicuous place in the room occupied by said station operator while on duty”).

⁶ *NPRM* at 3, para. 4, n. 13.

⁷ *NPRM* at 3, para. 4; *see, e.g.*, 47 CFR §§ 73.1230(b) (“Posting of the station license and any other instruments of authorization shall be done ... so that the documents will be readily available and easily accessible.”), 74.1265(a) (“The station license and any other instrument of authorization ... shall be kept ... so as to be available for inspection upon request to any authorized representative of the Commission.”), 74.1265(b) (“The call sign of the translator or booster together with the name, address, and telephone number of the licensee or local representative of the licensee ... shall be displayed ... so as to be visible to a person standing on the ground at the transmitter site.”) (emphasis added).

⁸ HC2 Comments at 6 (“The time and money broadcasters spend posting redundant information that can be found equally, if not more accessibly, online can be spent improving programming and viewer experiences”); *see also id.* at 3 (eliminating posting requirements “will reduce time and costs for all broadcasters, including small business entities which encompasses a majority of commercial licensed television stations”).

⁹ *See* NAB Comments at 2-3 (“The most plausible reason for the requirements is that they were intended to ensure that a station’s authorization, ownership and contact information were readily accessible to Commission inspectors and the public” and “[t]here is no evidence that anyone avails themselves of the opportunity afforded by the current rules. Thus, the time and effort spent by station personnel to post and maintain these posting requirements is without any corresponding public benefit”).

¹⁰ *See NPRM* Appendix A. Specifically, we eliminate the following rules, each of which applies specifically to broadcast licensees: 47 CFR §§ 73.1230 (all broadcast licensees), 74.564 (aural broadcast auxiliary stations), 74.664 (television broadcast auxiliary stations), 74.765 (LPTV and TV translator stations), and 74.1265 (FM translator and booster stations). In addition, we amend the following rules to eliminate license posting obligations: 47 CFR §§ 1.62(a)(2) (which currently requires all Commission licensees to post information pertaining to license renewal applications as well as the license itself, so that it applies only to non-broadcast licensees), 5.203(b) (removing the requirement to post experimental licenses), 74.432(j) (removing the requirement that remote pickup station licenses be “posted at the transmitter, or posted at the control point of the station”), 74.832(j) (removing the requirement that low power auxiliary station licenses be “posted at the transmitter, or posted at the control point of the station”). The *NPRM* incorrectly proposed to amend paragraph (a)(3)(viii) of 47 CFR § 74.787, instead of paragraph (a)(5)(viii). This has been corrected in the Final Rules. *See infra* Appendix A. We also note that one additional change not captured in *NPRM* Appendix A is corrected here. *See infra* note 30.

Commenters request revisions to several additional rules that are beyond the scope of this proceeding. Although we decline to address these issues here, they may be ripe for Commission consideration in subsequent proceedings.

(continued....)

years ago” they no longer serve the public interest given that all Commission licenses and related authorizations required to be displayed or maintained are now available “24/7” through publicly accessible online databases.¹¹ Specifically, broadcast station licenses and other authorizations are currently accessible online through several Commission databases, including the Commission’s Consolidated Database System (CDBS), Licensing Management System (LMS), and Universal Licensing Service (ULS).¹² For full power and Class A television stations and AM and FM radio stations, licenses and related authorizations are also accessible through the Commission’s Online Public Inspection File.¹³ In addition, the public may access orders and dispositions regarding station construction or facilities operation, which are required to be physically posted pursuant to two of our existing rules, through the Commission’s online licensing databases.¹⁴

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These include NAB’s request to allow electronic filing of AM applications. *See* NAB Comments at 4-5. Although electronic filing of AM applications is not possible via our current online systems, it will be feasible once the Commission transitions from CDBS to LMS. HC2’s requests to eliminate or modify Section 73.1226 to allow station logs to be posted online and to eliminate Section 73.3526(c)(2) of the public file requirements are also beyond the scope of this proceeding. 47 CFR §§ 73.1226(a) (requiring station records and logs to be “made available for inspection or duplication” and providing such logs and records may be “removed from the licensee’s possession by an FCC representative” or mailed to the Commission upon request), 73.3526(c)(2) (proscribing the methods through which stations should make the contents of their public file accessible); *see* HC2 Comments at 6-8. Similarly, we note that HC2’s request to allow broadcast stations to provide public notice of the filing of applications online rather than in print is being addressed in another proceeding. *See* HC2 Comments at 7; *Amendment of Section 73.624(g) of the Commission’s Ancillary or Supplementary Services*, Notice of Proposed Rulemaking, FCC 18-41 (Oct. 24, 2017), 2018 WL 1782115.

¹¹ Nexstar Comments at 2 (“[T]his requirement is absolutely outdated today when most information, including the FCC’s broadcast licensing and contact information, is readily available online and can be accessed 24/7 from any mobile device, computer, laptop or smart TV with an internet connection.”); *see* APTS Comments at 2 (“Today, these rules remain on the books despite the availability of station authorizations, ownership information, and contact information via the Commission’s electronic database.”).

¹² Specifically, this information is readily available through CDBS, http://licensing.fcc.gov/prod/cdbs/pubacc/prod/app_sear.htm. Similarly, the public may access copies of a station’s license, which includes the station call sign and name, address, and telephone number of the station licensee and point of contact, through LMS, <https://enterpriseefiling.fcc.gov/dataentry/login.html> and/or ULS, <http://wireless.fcc.gov/uls/index.htm?job=home>. While most broadcast licenses are accessible through CDBS and LMS, licenses for aural and television broadcast auxiliary services are accessible through ULS. In addition, information regarding broadcast license renewal applications, which must be posted pursuant to Section 1.62(a) of the rules, is available online via CDBS and LMS. 47 CFR § 1.62(a) (requiring posting of, “in addition to the original license, any acknowledgment received from the Commission that the renewal application has been accepted for filing or a signed copy of the application for renewal of license which has been submitted by the licensee”).

¹³ Online Public Inspection File, available at <https://publicfiles.fcc.gov/>. *See* 47 CFR § 73.3526 (governing public file obligations of commercial full power AM, FM, and TV stations and Class A television stations); 47 CFR § 73.3527 (governing public file obligations of noncommercial educational broadcast stations).

¹⁴ 47 CFR §§ 74.564(a) (requiring posting by aural broadcast auxiliary stations of “the station license and *any other instrument of authorization or individual order concerning the construction of the equipment or manner of operation of the station*”) (emphasis added), 74.664(a) (same for television broadcast auxiliary stations). Consistent with our proposed rule change in the *NPRM*, we also eliminate requirements in Sections 74.765(a), applicable to various low-power TV licensees, and 74.1265(a), applicable to FM translator and booster stations, respectively, to maintain station licenses and “any other instrument of authorization or individual order concerning the construction of the station or manner of operation” in the station record file as redundant of posting obligations in Sections 74.781 and 74.1281. 47 CFR §§ 74.765(a), 74.1265(a); *see* 47 CFR §§ 74.781 (requiring low power TV, TV translator, and TV booster stations to “maintain adequate station records, including the current instrument of authorization, official correspondence with the FCC, contracts, permission for rebroadcasts, and other pertinent documents” and to make those records available for Commission inspection upon request), 74.1281 (applying the same requirement to FM translator and booster stations). *See also NPRM*, Appendix A, at 14 and 16.

(continued....)

4. We also find the additional posting requirements in Sections 74.765(b) and 74.1265(b) of our rules to be unnecessary for similar reasons. These provisions require that LPTV, translator, and booster stations post at the transmitter site the station's call sign; the name, address, and telephone number of the licensee or local representative of the licensee; and "the name and address of a person and place where the station records are maintained."¹⁵ As Nexstar notes in its comments, much of the information required to be posted under these rules is available on the station licenses or authorizations themselves, which as noted above, the public may easily access online via CDBS, LMS, or ULS.¹⁶ This information includes the station's call sign and the name and address of the station's licensee. Although LPTV, translator, and booster stations are not required to maintain public inspection files, they must include the contact information, including a telephone number, of personnel that may serve as a general point of contact on various Commission forms,¹⁷ which are publicly available via our online licensing databases. We therefore find no continued need for broadcasters to separately identify a local representative or a custodian of station records and display such information.¹⁸ Moreover, no commenter has provided any justification for continuing to require broadcasters to post or maintain at specific locations a physical copy of their licenses, authorizations, or general or local contact information.

5. We further find that requirements to physically display licensing documents at the site of broadcast facilities are often ineffective.¹⁹ As NAB illustrates, requirements that mandate posting at the transmission site can be of little benefit to the public because certain transmission sites, including those of booster and translator stations, "are often in areas surrounded by security fencing, thereby limiting the public access to these facilities and any posted information."²⁰ Further, provisions mandating that

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¹⁵ 47 CFR §§ 74.765(b) and 74.1265(b) ("The call sign of the translator or booster together with the name, address, and telephone number of the licensee or local representative of the licensee if the licensee does not reside in the community served by the translator or booster, and the name and address of a person and place where station records are maintained, shall be displayed at the translator or booster site...").

¹⁶ Nexstar at 3 ("Because these records are available online and readily accessible to the Commission's multiple databases, which also include the licensing and contact information for full power, Class A, LPTV, translators and booster stations, the existing posting requirements for these stations should be immediately eliminated by the Commission.").

¹⁷ See, e.g., FCC 303-S, Application for Renewal of Broadcast Station License, at Section I(2), available at <https://transition.fcc.gov/Forms/Form303-S/303s.pdf>; FCC 315, Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit Or License, at Section I(2), available at <https://transition.fcc.gov/Forms/Form315/315.pdf>; FCC 318, Application for Construction Permit for a Low Power FM Broadcast Station, at Section I(2), available at <https://transition.fcc.gov/Forms/Form318/318.pdf>. See also HC2 Comments at 5 ("While contact information for the custodian of station records is not currently captured in Commission databases, contact people listed online for that station, which often include legal counsel, can easily direct the inquiry to the individual who maintains licensing records for that station."). See also 47 CFR § 1.5 (requiring all licensees to furnish the Commission with a mailing address and designating the most recent application as the default address, unless advised otherwise by the licensee).

¹⁸ Since we do not find that the public interest necessitates separately compiling custodian of records' contact information online, we decline to adopt HC2's proposal to modify existing Commission forms to solicit this information. See HC2 Comments at 5, note 19; see also NAB Comments at 3, note 6 ("this information serves little purpose as station licensee and contact representative information are accessible online. NAB believes that members of the public today seeking such information are much more likely to check FCC databases rather than physical postings on structures that may be located miles away").

¹⁹ See, e.g., 47 CFR §§ 73.1230, 74.432(j), 74.564, 74.664, 74.765, 74.832, and 74.1265.

²⁰ NAB Comments at 4; Nexstar Comments at 3 ("Nexstar believes that inviting the public to review license information at an unmanned technical facility (i.e. transmitter building, control point or tower), complete with high voltage equipment and regardless of enclosure, is a potential public safety hazard.").

broadcasters post licenses and other authorizations at the “principal [control] point of the transmitter”²¹ have been rendered obsolete by the Internet, which has enabled broadcasters to transition to dial-up or IP systems that manage their transmitter stations remotely through a smartphone or personal computer.²² This trend, in conjunction with the elimination of the broadcast main studio rule,²³ has rendered the physical posting of licenses out of step with technology and our other rules.²⁴ We agree with NAB that “posting physical documents at transmission facilities is redundant and provides no meaningful value to the public,”²⁵ and we eliminate these requirements.

6. There is no evidence in the record suggesting that eliminating license posting and related requirements would undermine any public safety objectives. HC2 explains that posted information “is often barely visible because the posting is well above eye level, or obscured by other equipment, or damaged and faded as a result of weather” and is therefore not useful during emergencies.²⁶ In these circumstances, the contact information first responders need is readily available through the Commission databases.²⁷ Commenters also explain that because licensees typically do not own the towers on which their antennas are placed, eliminating requirements to have licensees’ information physically displayed would not likely impede a first responder’s ability to contact the appropriate person during an emergency.²⁸ In many cases, antenna structure registration numbers allow first responders and others to rapidly identify the owner of a tower structure in the event of a tower lighting outage, collision or other problem, removing the need for licensee contact information.²⁹

7. For the foregoing reasons, we find that the provisions in Parts 1, 5, 73 and 74 of our rules requiring the physical posting and maintenance of broadcast licenses and related information at specific

²¹ See 47 CFR §§ 73.1230(a) (“The station license and any other instrument of station authorization shall be posted ... at the place the licensee considers to be the *principal control point of the transmitter*”) (emphasis added), 74.432(j) (“The license shall be retained in the licensee’s files at the address shown on the authorization, posted at the transmitter, or posted at the *control point of the station*”) (emphasis added), 74.564(a) (“The station license and any other instrument of authorization or individual order concerning the construction of the equipment or manner of operation of the station shall be posted in the room in which the transmitter is located, provided that if the station is operated by remote control pursuant to § 74.533, the station license shall be posted *at the operating position*”) (emphasis added), 74.832(j) (“The license shall be retained in the licensee’s files at the address shown on the authorization, posted at the transmitter, or posted at the *control point of the station*”) (emphasis added); see also 47 CFR § 73.801 (applying Section 73.1230 to LPFM stations).

²² Nexstar Comments at 2.

²³ See *Elimination of Main Studio Rule*, 32 FCC Rcd 8158 (2017) (“The Commission first adopted main studio requirements in 1939 to ensure that community members could provide their local broadcast stations with input and that stations could participate in community activities. The record in this proceeding clearly demonstrates that a local main studio is no longer needed to fulfill these purposes” and “...the need for community members to visit a station’s local main studio to access its public inspection file is quickly becoming a relic of the past.”).

²⁴ See Nexstar Comments at 2 (“Moreover, with the elimination of the main studio rule and its brick and mortar main studio building, the physical act of ‘posting’ licenses may no longer be possible since there may literally not be a wall to which to tape the licenses.”).

²⁵ NAB Comments at 2-3.

²⁶ HC2 Comments at 4-5. HC2 further notes that posted information often is of limited utility because it is in a different location from the site of an emergency. For example, “posted contact information at the transmitter, even if perfectly visible and accessible, is not helpful when the emergency is at the antenna site,” which may be “some distance away,” or vice versa. HC2 Comments at 5 (“For example, a firefighter battling a fire at an antenna site would not have any use for contact information posted at the transmitter quite some distance away.”).

²⁷ *Id.* at 5.

²⁸ See NAB Comments at 4.

²⁹ *Id.*

locations are redundant, obsolete, and unduly burdensome. Accordingly, we find that eliminating these requirements, as well as associated cross-references to them and similar requirements,³⁰ is in the public interest and that the benefits of eliminating these requirements outweigh any costs of doing so.

III. PROCEDURAL MATTERS

8. *Final Regulatory Flexibility Act Analysis.*—As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹²⁶ the Commission has prepared an Final Regulatory Flexibility Analysis (FRFA) relating to this Order. The FRFA is set forth in Appendix B.

9. *Paperwork Reduction Analysis.*—This document eliminates, and thus does not contain new or revised, information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, 44 U.S.C. § 3501-3520. In addition, therefore, it does not contain any new or modified “information burden for small business concerns with fewer than 25 employees” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. § 3506(c)(4).

10. *Congressional Review Act.*—The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

11. *Additional Information.*—For additional information on this proceeding, contact Jonathan Mark, Jonathan.Mark@fcc.gov, of the Media Bureau, Policy Division, (202) 418-3634.

IV. ORDERING CLAUSES

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

13. **IT IS FURTHER ORDERED** that the Commission’s rules **ARE HEREBY AMENDED** as set forth in Appendix A, effective as of the date of publication of a summary in the Federal Register.³¹

³⁰ 47 CFR §§ 0.408 (cross-referencing the license posting rules); 73.158(b) (requiring any updated descriptions of directional antenna monitoring points to be “posted with the existing station license”); 73.801 (applying § 73.1230 to LPFM stations); 73.1715(a) (requiring broadcast licensees authorized to share time to file written agreements with the Commission and post with the station license); 73.1725(c) (requiring “the licensee of a secondary station which is authorized to operate limited time” to post approval of its limited time operating schedule with the station license); 73.1870(b)(3) (“the designation of the chief operator [for full power and Class A stations] must be in writing with a copy of the designation *posted with the station license.*”) (emphasis added); 74.733(i) (“The provisions of § 74.765 concerning posting of station license shall apply to a UHF translator signal booster . . .”); 74.781(c) (“The name of the person keeping [LPTV, TV translator, and TV booster] station records, together with the address of the place where the records are kept, shall be posted in accordance with §74.765(c) of the rules.”); 74.787(a)(5)(viii) (applying § 74.765 to digital low power television and television translator stations); 74.789 (same); 74.1281 (referencing §74.1265(b)). With respect to 47 CFR § 74.789, while eliminating the cross-reference to posting and maintenance requirements in Section 74.765 was proposed in the text of the *NPRM*, this proposed amendment was not reflected in Appendix A of the *NPRM*. *NPRM* at 6, note 32. Appendix A (Final Rules) of this Order corrects that omission. *Infra* Appendix A, at 10-11. In addition to amending provisions in Sections 74.432 and 74.733 to remove license posting obligations, we find good cause to remove the notes accompanying these rules and conclude that notice and comment procedures are unnecessary and would not serve any useful purpose. 5 U.S.C. § 553(b)(3)(B). First, we find that the note accompanying Section 74.432, referencing renewal applications for remote pickup broadcast stations filed on or around August 31, 1976, is moot because all such license renewal periods have now passed. See 47 CFR § 74.432 and accompanying note. Similarly, we find good cause to remove the note in Section 74.733, addressing UHF TV translator booster stations, which are analog-only services that are now obsolete following the digital television transition.

³¹ These rules serve to “reliev[e] a restriction.” 5 U.S.C. § 553(d)(1).

14. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

15. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of the Report and Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

Parts 0, 1, 5, 73, and 74 of the Commission’s rules are amended as follows:

PART 0 – COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: 47 U.S.C. 155, 225, unless otherwise noted.

§ 0.408 [Amended]

2. Amend § 0.408 paragraph (b) by revising the entry for 3060-0633 to read as follows:

§ 0.408 OMB control numbers and expiration dates assigned pursuant to the Paperwork Reduction Act of 1995.

* * * * *

(b) Display. * * *

3060-0633	Secs. 74.165, 74.432, and 74.832.	04/30/18
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PART 1 – PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i) and (j), 155, 157, 160, 201, 224, 225, 227, 303, 309, 310, 332, 1403, 1404, 1451, 1452, and 1455.

§ 1.62 [Amended]

4. Amend § 1.62 by revising paragraph (a)(2) to read as follows:

§ 1.62 Operation pending action on renewal application.

(a)***

(2) A non-broadcast licensee operating by virtue of this paragraph shall, after the date of expiration specified in the license, post, in addition to the original license, any acknowledgment received from the Commission that the renewal application has been accepted for filing or a signed copy of the application for renewal of license which has been submitted by the licensee, or in services other than common carrier, a statement certifying that the licensee has mailed or filed a renewal application, specifying the date of mailing or filing.

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PART 5 – EXPERIMENTAL RADIO SERVICE

5. The authority citation for Part 5 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 336.

§ 5.203 **[Amended]**

6. Amend § 5.203 by revising paragraph (b) to read as follows:

§ 5.203 Experimental authorizations for licensed broadcast stations.

(b) Experimental authorizations for licensed broadcast stations may be requested by filing an informal application with the FCC in Washington, DC, describing the nature and purpose of the experimentation to be conducted, the nature of the experimental signal to be transmitted, and the proposed schedule of hours and duration of the experimentation.

PART 73 – RADIO BROADCAST SERVICES

7. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

§ 73.158 **[Amended]**

8. Amend § 73.158 by revising paragraph (b) to read as follows:

§ 73.158 Directional antenna monitoring points.

* * * * *

(b) When the description of the monitoring point as shown on the station license is no longer correct due to road or building construction or other changes, the licensee must prepare and file with the FCC, in Washington, DC, a request for a corrected station license showing the new monitoring point description. The request shall include the information specified in paragraphs (a)(3) and (a)(4) of this section, and a copy of the station's current license.

§ 73.801 **[Amended]**

9. Amend § 73.801 by removing the reference for Section 73.1230.

§ 73.1230 **[Removed]**

10. Remove § 73.1230.

§ 73.1715 **[Amended]**

11. Amend § 73.1715 by revising paragraph (a) to read as follows:

§ 73.1715 Share Time.

(a) If the licenses of stations authorized to share time do not specify hours of operation, the licensees shall endeavor to reach an agreement for a definite schedule of periods of time to be used by each. Such agreement shall be in writing and each licensee shall file it in duplicate original with each application to the FCC in Washington, DC for renewal of license. If and when such written agreements are properly

filed in conformity with this Section, the file mark of the FCC will be affixed thereto, one copy will be retained by the FCC, and one copy returned to the licensee and will be considered as part of the station’s license. If the license specifies a proportionate time division, the agreement shall maintain this proportion. If no proportionate time division is specified in the license, the licensees shall agree upon a division of time. Such division of time shall not include simultaneous operation of the stations unless specifically authorized by the terms of the license

* * * * *

§ 73.1725 [Amended]

12. Amend § 73.1725 by revising paragraph (c) to read as follows:

§ 73.1725 Limited time.

* * * * *

(c) The licensee of a secondary station which is authorized to operate limited time and which may resume operation at the time the Class A station (or stations) on the same channel ceases operation shall, with each application for renewal of license, file in triplicate a copy of its regular operating schedule. It shall bear a signed notation by the licensee of the Class A station of its objection or lack of objection thereto. Upon approval of such operating schedule, the FCC will affix its file mark and return one copy to the licensee authorized to operate limited time. Such approved operating schedule shall be considered part of the station’s license. Departure from said operating schedule will be permitted only pursuant to § 73.1715 (Share time).

§ 73.1870 [Amended]

13. Amend § 73.1870 by revising paragraph (b)(3) to read as follows:

§ 73.1870 Chief operators.

* * * * *

(b)***

(3) The designation of the chief operator must be in writing. Agreements with chief operators serving on a contract basis must be in writing with a copy kept in the station files.

* * * * *

PART 74 – EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

14. The authority citation for Part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 336 and 554.

§ 74.432 [Amended]

15. Amend § 74.432 by revising paragraph (j) and removing Note to § 74.432 to read as follows:

§ 74.432 Licensing requirements and procedures.

* * * * *

(j) The license shall be retained in the licensee's files at the address shown on the authorization.

* * * * *

§ 74.564 **[Removed]**

16. Remove § 74.564.

§ 74.664 **[Removed]**

17. Remove § 74.664.

§ 74.733 **[Amended]**

18. Amend § 74.733 by removing paragraph (i), redesignating paragraph (j) as new paragraph (i), and removing Note to § 74.733.

§ 74.765 **[Removed]**

19. Remove § 74.765.

§ 74.781 **[Amended]**

20. Amend § 74.781 by revising paragraph (c) to read as follows:

§ 74.781 Station Records.

* * * * *

(c) The station records shall be maintained for inspection at a residence, office, or public building, place of business, or other suitable place, in one of the communities of license of the translator or booster, except that the station records of a booster or translator licensed to the licensee of the primary station may be kept at the same place where the primary station records are kept. The station records shall be made available upon request to any authorized representative of the Commission.

* * * * *

§ 74.787 **[Amended]**

21. Amend § 74.787 by removing the reference for Section 74.765 in paragraph (a)(5)(viii)

§ 74.789 **[Amended]**

22. Amend § 74.789 by removing the reference for Section 74.765.

§ 74.832 **[Amended]**

23. Amend § 74.832 by revising paragraph (j) to read as follows:

§ 74.832 Licensing requirements and procedures.

* * * * *

(j) The license shall be retained in the licensee's files at the address shown on the authorization.

§ 74.1265 **[Removed]**

24. Remove § 74.1265.

§ 74.1281 **[Amended]**

25. Amend § 74.1281 by revising paragraph (c) to read as follows:

§ 74.1281 Station Records.

* * * * *

(c) The station records shall be maintained for inspection at a residence, office, or public building, place of business, or other suitable place, in one of the communities of license of the translator or booster, except that the station records of a booster or translator licensed to the licensee of the primary station may be kept at the same place where the primary station records are kept. The station records shall be made available upon request to any authorized representative of the Commission.

* * * * *

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking (NPRM)* in MB Docket 18-121.² The Commission sought written public comments on proposals in the *NPRM*, including comment on the IRFA. The Commission received no direct comments on the IRFA. The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Report and Order

2. The *Report and Order (Order)* arises from a Public Notice issued by the Commission in May 2017, launching an initiative to modernize the Commission's media regulations, and the subsequent *NPRM*.³ It eliminates provisions of the Commission's rules which require the posting and maintenance of broadcast licenses and related information in specific locations. Numerous parties in those proceedings argued for the elimination of these rules on the basis that they are redundant and obsolete.

3. Specifically, the *Order* eliminates: Section 73.1230, which requires broadcast stations to post their station license and other authorizations at "the principal control point of the transmitter" and prescribes the manner of such posting;⁴ Section 73.801, which applies Section 73.1230 to low power stations;⁵ Section 74.1265, which requires FM booster and translator stations to physically display their call sign and other information at the antenna site;⁶ Sections 74.564 and 74.664, applicable to aural and television broadcast auxiliary stations,⁷ respectively, which require stations to post licenses and any other authorizations "in the room in which the transmitter is located" and prescribes the manner of such posting;⁸ Sections 74.432(j) and 74.832(j), which require remote pickup station and low power auxiliary station licensees to post licenses either at the transmitter or station control point;⁹ Section 5.203(b),¹⁰ which requires broadcast licensees to post experimental authorizations along with their station license; Section 1.62(a)(2),¹¹ which requires all Commission licensees, including broadcast entities, to post information pertaining to license renewal applications as well as the license itself; and Section 74.765, which requires LPTV and TV translator to physically display their call sign together with the name, address, and telephone number of the licensee or local representative of the licensee and the name and address of a person and place where station records are maintained at the antenna site. Sections 74.765(a)

¹ See 5 U.S.C. § 603. The RFA, see 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). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

² *Amendment of Parts 0, 1, 5, 73, and 74 of the Commission's Rules Regarding Posting of Station Licenses and Related Information*, Notice of Proposed Rulemaking, FCC 18-61 (May 10, 2018), 2018 WL 2192432 (*NPRM*).

³ See *id.*; *Commission Launches Modernization of Media Regulation Initiative*, Public Notice, 32 FCC Rcd 4406 (2017) (initiating a review of rules applicable to media entities to eliminate or modify regulations that are outdated, unnecessary or unduly burdensome).

⁴ 47 CFR § 73.1230.

⁵ 47 CFR § 73.801.

⁶ 47 CFR § 74.1265.

⁷ 47 CFR §§ 74.564, 74.664.

⁸ 47 CFR § 74.565; 47 CFR § 74.664.

⁹ 47 CFR §§ 74.432(j), 74.832(j).

¹⁰ 47 CFR § 5.203(b).

¹¹ 47 CFR § 1.62(a)(2).

and 74.1265(a) also contain record maintenance obligations that this *Order* eliminates because they are duplicative of Sections 74.781 and 74.1281, respectively.

4. The *Order* also removes similar requirements and cross-references to licenses posting rules as follows: Section 0.408 (cross-referencing the license posting rules); 73.158(b), which requires any updated descriptions of directional antenna monitoring points to be “posted with the existing station license”; Section 73.801, which applies Section 73.1230 to LPFM stations; Section 73.1715(a), which requires broadcast licensees authorized to share time to file written agreements with the Commission and post with the station license; Section 73.1725(c), requiring “the licensee of a secondary station which is authorized to operate limited time” to post approval of its limited time operating schedule with the station license); Section 73.1870(b)(3), which states that “the designation of the chief operator [for full power and Class A stations] must be in writing with a copy of the designation *posted with the station license*.”; Section 74.733(i), which states that “[t]he provisions of Section 74.765 concerning posting of station license shall apply to a UHF translator signal booster . . .”; Section 74.781(c), which states that “[t]he name of the person keeping [LPTV and TV translator] station records, together with the address of the place where the records are kept, shall be posted in accordance with §74.765(c) of the rules.”; Section 74.787(a)(5)(viii), which applies Section 74.765 to digital low power television and television translator stations; Section 74.789; and Section 74.1281, which references Section 74.1265(b). These rule changes are intended to reduce outdated regulations and unnecessary regulatory burdens that can impede competition and innovation in media markets.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

5. No comments were filed in response to the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

6. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the SBA and to provide a detailed statement of any change made to the proposed rules as a result of those comments.¹² The Chief Counsel did not file any comments in response to this proceeding.

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

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted.¹³ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction”¹⁴ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹⁵ 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.¹⁶ The final rules adopted herein affect small television and

¹² 5 U.S.C. § 604(a)(3).

¹³ *Id.*

¹⁴ 5 U.S.C. § 601(6).

¹⁵ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 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.”

¹⁶ 15 U.S.C. § 632.

radio broadcast stations. A description of these small entities, as well as an estimate of the number of such small entities, is provided below.

8. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.”¹⁷ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.¹⁸ 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.¹⁹ The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of less than \$25,000,000, and 95 had annual receipts of \$25,000,000 or more.²⁰ Based on this data, we estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

9. In addition, the Commission has estimated the number of licensed commercial television stations to be 1,349.²¹ Of this total, 1,277 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 October 1, 2018. Such entities, therefore, qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 412.²² The Commission, however, does not compile and 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.

10. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations²³ 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 the proposed rules would apply does not exclude any television station from the definition of a small business on this basis and therefore could be over-inclusive.

¹⁷ U.S. Census Bureau, 2012 North American Industry Classification System (NAICS) Definitions, “515120 Television Broadcasting,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

¹⁸ *Id.*

¹⁹ 13 CFR § 121.201; 2012 NAICS Code 515120.

²⁰ 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/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

²¹ FCC News Release, *Broadcast Station Totals as of September 30, 2018* (rel. Oct. 3, 2018) (*Broadcast Station Totals*), <https://www.fcc.gov/document/broadcast-station-totals-september-30-2018>.

²² *Id.*

²³ “[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).

11. There are also 1,911 LPTV stations and 389 Class A stations.²⁴ Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

12. *Radio Stations.* This economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public.”²⁵ The SBA has created the following small business size standard for this category: those having \$38.5 million or less in annual receipts.²⁶ Census data for 2012 shows that 2,849 firms in this category operated in that year.²⁷ Of this number, 2,806 firms had annual receipts of less than \$25,000,000, and 43 firms had annual receipts of \$25,000,000 or more.²⁸ Therefore, based on the SBA’s size standard, the majority of such entities are small entities.

13. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial AM radio stations to be 4,626 stations²⁹ and the number of commercial FM radio stations to be 6,737, for a total number of 11,363.³⁰ Of this total, 11,362 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 October 1, 2018. In addition, the Commission has estimated the number of noncommercial educational FM radio stations to be 4,130.³¹ NCE stations are non-profit, and therefore considered to be small entities.³² Therefore, we estimate that the majority of radio broadcast stations are small entities.

14. *Low Power FM Stations.* The same SBA definition that applies to radio stations would apply to low power FM stations. As noted above, the SBA has created the following small business size standard for this category: those having \$38.5 million or less in annual receipts.³³ The Commission has estimated the number of licensed low power FM stations to be 1,966.³⁴ In addition, as of June 30, 2017, there were a total of 7,453 FM translator and FM booster stations.³⁵ Given the nature of these services, we will presume that these licensees qualify as small entities under the SBA definition.

15. We note again, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations³⁶ must be included. Because we do not

²⁴ *Broadcast Station Totals supra* note 21.

²⁵ U.S. Census Bureau, 2012 NAICS Definitions, “515112 Radio Stations,” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>. This category description continues, “Programming may originate in their own studio, from an affiliated network, or from external sources.”

²⁶ 13 CFR § 121.201; NAICS code 515112.

²⁷ U.S. Census Bureau, Table No. EC0751SSSZ4, *Information: Subject Series – Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515112), http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ4&prodType=table.

²⁸ *Id.*

²⁹ *Broadcast Station Totals supra* note 21.

³⁰ *Id.*

³¹ *Id.*

³² 5 U.S.C. §§ 601(4), (6).

³³ 13 CFR § 121.201, NAICS Code 515112.

³⁴ *News Release*, “Broadcast Station Totals as of June 30, 2017” (rel. July 11, 2017) (http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-304594A1315231A1.pdf).

³⁵ *News Release*, “Broadcast Station Totals as of June 30, 2017” (rel. July. 11, 2017).

³⁶ “[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).

include or aggregate revenues from affiliated companies in determining whether an entity meets the applicable revenue threshold, our estimate of the number of small radio broadcast stations affected is likely overstated. In addition, as noted above, one element of the definition of “small business” is 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 radio broadcast station is dominant in its field of operation. Accordingly, our estimate of small radio stations potentially affected by the proposed rules includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

E. Description of Reporting, Record Keeping, and Other Compliance Requirements for Small Entities

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

17. *Reporting Requirements.* The *Order* does not adopt new reporting requirements.

18. *Recordkeeping Requirements.* The *Order* does not adopt new recordkeeping requirements.

19. *Other Compliance Requirements.* The *Order* does not adopt new compliance requirements. Because no commenter provided information specifically quantifying the costs and administrative burdens of complying with the existing recordkeeping requirements, we cannot precisely estimate the impact on small entities of eliminating them. The adopted rule revisions remove certain record keeping requirements for all affected broadcast licensees, including small entities. Numerous parties in the Modernization of Media Regulation Initiative, including all parties which commented on the *NPRM* have requested that the Commission remove broadcast license posting requirements and related record keeping requirements and no parties in this proceeding opposed such proposals.

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

20. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its 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.³⁷

21. The *Order* eliminates recordkeeping obligations requiring the posting of broadcast stations’ license and other authorizations.³⁸ These actions are intended to modernize the Commission’s regulations and reduce costs and recordkeeping burdens for affected entities, including small entities. Under the revised rules, affected entities no longer will need to expend time and resources posting licenses and related information already available to the Commission, and most of which is publicly accessible by electronic means.

G. Report to Congress

The Commission will send a copy of the *Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.³⁹ In addition, the Commission will send a copy of the *Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Order* and FRFA (or summaries thereof) will also be published in the Federal Register.

³⁷ 5 U.S.C. § 603(c)(1)-(4).

³⁸ See *supra* Section A.

³⁹ See 5 U.S.C. § 801(a)(1)(A).