

**FCC FACT SHEET**<sup>\*</sup>  
**Use of Common Antenna Site – Sections 73.239 and 73.635;**  
**Modernization of Media Regulation Initiative**  
Report and Order – MB Docket Nos. 19-282, 17-105

**Background:** Sections 73.239 and 73.635 of the Commission’s rules prohibit the grant or renewal of an FM or TV broadcast license “to any person who owns, leases, or controls a particular site which is peculiarly suitable” for such broadcasting in a particular area, if: (1) the site is not available for use by other such licensees, (2) no other comparable site is available in the area, and (3) the exclusive use of the site would unduly limit the number of such stations that can be licensed or unduly restrict competition among those stations. These rules were adopted 75 years ago, at a time when FM and TV broadcasting were emerging industries, and the need to preserve materials for the U.S. military effort in World War II had led the Commission to freeze new broadcast station construction. Since that time, the broadcast industry has witnessed tremendous growth with a corresponding increase in the number of non-broadcast-owned antenna sites.

In October 2019, the Commission issued a *Notice of Proposed Rulemaking (NPRM)* as a part of our ongoing Modernization of Media Regulation Initiative. The *NPRM* sought comment on whether the common antenna site rules should be eliminated or revised. Specifically, it sought comment on: (1) to what extent broadcasters own their own towers, (2) whether any data suggests the rules remain necessary, (3) whether any broadcasters ever request use of common antenna sites pursuant to these rules, and (4) how elimination of these rules would affect the broadcast tower landscape and FM and TV broadcasting. We received few comments in response to the *NPRM*, and no broadcaster commented in favor of retaining these rules.

**What the Report and Order Would Do:**

- Repeal sections 73.239 and 73.635 of the Commission’s rules regarding access to FM and TV broadcast antenna sites because these rules no longer serve any practical purpose in light of the significant broadcast infrastructure development since the rules were first adopted.

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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. 19-282, 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
Use of Common Antenna Site – Sections 73.239
and 73.635
Modernization of Media Regulation Initiative
MB Docket No. 19-282
MB Docket No. 17-105

REPORT AND ORDER\*

Adopted: []

Released: []

By the Commission:

I. INTRODUCTION

1. In this Report and Order, we eliminate sections 73.239 and 73.635 of the Commission’s
rules regarding access to FM and TV broadcast antenna sites.1 We conclude that these rules no longer
serve any practical purpose in light of the significant broadcast infrastructure development that has taken
place since they were first adopted 75 years ago. With this proceeding, we continue our efforts to
modernize our media regulations by removing outdated and unnecessary requirements.2

II. BACKGROUND

2. Sections 73.239 and 73.635 of our rules prohibit the grant or renewal of an FM or TV
broadcast license “to any person who owns, leases, or controls a particular site which is peculiarly
suitable” for such broadcasting in a particular area, if the site is not available for use by other such
licensees, no other comparable site is available in the area, and the exclusive use of the site would unduly
limit the number of such stations that can be licensed or unduly restrict competition among those
stations.3 These rules were adopted 75 years ago, at a time when FM and TV broadcasting were

\* This document has been circulated for tentative consideration by the Commission at its August 2020 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 §§ 73.239, 73.635.

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

3 Section 73.239 provides: “No FM broadcast station license or renewal of FM broadcast station license will be
granted to any person who owns, leases, or controls a particular site which is peculiarly suitable for FM broadcasting
in a particular area and (a) which is not available for use by other FM broadcast station licensees; and (b) no other
comparable site is available in the area; and (c) where the exclusive use of such site by the applicant or licensee
would unduly limit the number of FM broadcast stations that can be authorized in a particular area or would unduly
restrict competition among FM broadcast stations.” 47 CFR § 73.239. Notably, the rules governing AM stations

(continued....)

emerging industries,<sup>4</sup> and the need to preserve materials for the U.S. military effort in World War II had led the Commission to freeze new broadcast station construction.<sup>5</sup> At that time, there were also far fewer outlets serving emerging local broadcast markets.<sup>6</sup> Since that time, the broadcast market has grown significantly with a corresponding increase in the number of antenna sites available.<sup>7</sup> This is made possible, in part, by the ability to co-locate broadcasters and other providers at a single site and a mature independent communications tower industry that owns and leases tower space to broadcasters.<sup>8</sup>

3. In October 2019, the Commission issued a *Notice of Proposed Rulemaking (NPRM)* in this proceeding as a part of our continuing Modernization of Media Regulation Initiative.<sup>9</sup> In the *NPRM*, we sought comment on whether the common antenna site rules should be eliminated or revised.<sup>10</sup> Specifically, we sought comment on to what extent broadcasters own their own towers, whether any data suggests the rules remain necessary, whether any broadcasters ever request use of common antenna sites pursuant to these rules, and what effect elimination of these rules would have on the broadcast tower

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and noncommercial educational FM stations do not contain a comparable provision requiring access to peculiarly suitable antenna sites in such circumstances.

Section 73.635, which contains language almost identical to Section 73.239, provides: “No television license or renewal of a television license will be granted to any person who owns, leases, or controls a particular site which is peculiarly suitable for television broadcasting in a particular area and (a) which is not available for use by other television licensees; and (b) no other comparable site is available in the area; and (c) where the exclusive use of such site by the applicant or licensee would unduly limit the number of television stations that can be authorized in a particular area or would unduly restrict competition among television stations.” 47 CFR § 73.635.

<sup>4</sup> In 1945, there were 46 licensed FM broadcast stations. See *Eleventh Annual Report, Federal Communications Commission, Fiscal Year Ended June 30, 1945 (1946) (FCC Eleventh Annual Report)* at 19, available online at <https://www.fcc.gov/reports-research/reports/annual-reports-congress/11th-annual-report-congress-1945>. Today, there are 6,706 FM commercial stations and 4,197 FM educational stations. See *Broadcast Station Totals as of June 30, 2020 (June 2020 Broadcast Station Totals)*, available online at <https://www.fcc.gov/document/broadcast-station-totals-june-30-2020>. TV broadcasting was at a similarly nascent stage in 1945, with nine licensed TV broadcast stations nationwide. See *FCC Eleventh Annual Report* at 21. Today, there are 1,758 commercial and noncommercial educational full power television stations, 387 Class A television stations, 1,937 low power television (LPTV) stations, and more than 3,500 TV translator stations that retransmit the signal of a parent TV station. See *June 2020 Broadcast Station Totals*.

<sup>5</sup> See *Supplemental Statement of Policy Concerning Applications for Permits to Construct New Radio Stations or Make Changes in Existing Radio Facilities*, Public Notice, FCC, Jan. 16, 1945, available online at <https://www.fcc.gov/media/radio/radio-history-documents>.

<sup>6</sup> See *Use of Common Antenna Site – Sections 73.239 and 73.635; Modernization of Media Regulation Initiative*, MB Docket Nos. 19-282, 17-105, Notice of Proposed Rulemaking, 34 FCC Rcd 10181, 10182-83, paras. 3-4 (2019) (*Common Antenna Site NPRM*).

<sup>7</sup> See *supra* note 4 (showing the growth in the number of licensed FM and TV broadcast stations from 1945 to present that rationally must have been accompanied by growth in broadcast infrastructure).

<sup>8</sup> See *Common Antenna Site NPRM*, 34 FCC Rcd at 10183-84, paras. 5-6. Technological advances and widespread adoption of consumer technology also likely contributed to the growth in the FM and TV broadcast market, as higher demand created an environment that could sustain new entrants in the broadcast market. See, e.g., *The New York Times Guide to Essential Knowledge*, 412 (Elizabeth Pub. ed., 1st ed. 2004) (discussing the rapid adoption of television technology by American consumers, as demonstrated by the increase from fewer than 2% of all American households owning a television set in 1949 to 86% of all households by 1959).

<sup>9</sup> *Common Antenna Site NPRM*, 34 FCC Rcd at 10181, para. 1.

<sup>10</sup> *Common Antenna Site NPRM*, 34 FCC Rcd at 10181, para. 1.

landscape and on FM and TV broadcasting.<sup>11</sup> We only received two comments in response to these inquiries, both of which were filed by consumers.<sup>12</sup>

### III. DISCUSSION

4. In this Report and Order, we repeal sections 73.239 and 73.635 of our rules. Notably, we received no comment in the record from any broadcast licensees that would be affected most directly by repealing these 75-year-old rules. As a result, there is no evidence in the record that any broadcaster believes that these rules remain necessary for it to secure an antenna site. As mentioned above, the only two comments we received were filed by consumers. Rojas agrees the rules are “outdated,” and notes the importance of broadcast services to consumers.<sup>13</sup> Mullik expresses concerns about repealing the rules, emphasizing the importance of preserving the widespread availability of FM and TV broadcasting.<sup>14</sup> We agree that we should ensure that any rule changes do not negatively impact the widespread availability of FM and TV broadcasting. For the reasons stated below, we believe that eliminating these rules is consistent with this goal.

5. We conclude that eliminating these rules is appropriate for four reasons. First, the apparent rationale for these rules—promoting a fledgling broadcast industry and preserving scarce industrial resources—no longer applies in today’s marketplace. FM and TV broadcasting are firmly established industries, and there is no evidence in the record of any shortage of materials and equipment for the construction of new infrastructure.<sup>15</sup> Additionally, the current trend toward co-location of communications towers on antenna farms and the widespread availability of tower capacity for lease from numerous tower companies make it less likely that a suitable site will be wholly unavailable to a broadcaster seeking to serve a community.<sup>16</sup> Second, publicly available information shows that the

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<sup>11</sup> *Common Antenna Site NPRM*, 34 FCC Rcd at 10185-87, paras. 7-11.

<sup>12</sup> See Jason Mullik Comment at 1 (Mullik Comment); Julio Rojas Comment at 1 (Rojas Comment).

<sup>13</sup> Rojas Comment at 1.

<sup>14</sup> See Mullik Comment at 1.

<sup>15</sup> See *Common Antenna Site NPRM*, 34 FCC Rcd at 10183-84, para. 5. As discussed in the *NPRM*, the apparent rationale of the rule concerned promoting competition in the nascent FM and TV broadcast market. *Common Antenna Site NPRM*, 34 FCC Rcd at 10182-3, para. 3. Given the exponential increase in the number of FM and TV broadcast licensees in the intervening years and the current saturation of FM and TV broadcast services nationwide, we believe that the risk of any applicant or licensee attempting to leverage the exclusive use of a peculiarly suitable site in any given local market to “unduly limit the number of [FM or TV] stations . . . in a particular area or [] unduly restrict competition . . .” is exceedingly small. 47 CFR §§ 73.239, 73.635.

<sup>16</sup> See *Common Antenna Site NPRM*, 34 FCC Rcd at 10184-85, para. 6. One commenter suggested that “current law” limits the number of individuals or entities who may own communications towers. See Rojas Comment at 1. While communications towers and antennas are subject to a variety of technical, historical, environmental, and safety statutes and regulations administered by the Commission, the Federal Aviation Administration, and state and local governments, we are unaware of any specific rules explicitly limiting the number of individuals or entities that can own towers. See, e.g., 47 CFR § 1.1307 (FCC regulation governing Environmental Assessments for proposed towers); 47 CFR § 73.211 (FCC regulation establishing power and antenna height requirements for FM broadcast stations); 47 CFR § 73.614 (FCC regulation establishing power and antenna height requirements for TV broadcast stations); 14 CFR § 77.9 (FAA regulation requiring registration of towers that meet certain height and location criteria). Further, as we noted in the *NPRM*, because there is limited opportunity for new full-power FM or TV channels to be allotted today since the bands are largely occupied in most areas and no new Class A TV channels are being allotted, “new entrants into FM or TV broadcasting would likely operate on existing channels using existing broadcast infrastructure and existing broadcasters, with the exception of stations subject to the Incentive Auction repack, are unlikely to be changing channels such that they will require new towers.” *Common Antenna Site NPRM*, 34 FCC Rcd at 10185, para. 8. It is not a shortage of tower space that is the limitation on new entrants into FM and TV broadcasting, but rather the limited number of available channels that can be added to our table of allotments. With regard to stations switching channels due to the post-Incentive Auction repack, that period has just ended. See

(continued....)

communications tower market is dominated by entities that do not hold broadcast licenses,<sup>17</sup> and there is no indication in the record that their broadcast lessees have the intent or ability to restrict these tower owners from denying access to the broadcast lessees' competitors.<sup>18</sup> Third, the current rules apply only in extremely limited circumstances, and no broadcaster claims that these rules are needed to secure access to suitable sites.<sup>19</sup> Thus, we reject Mullik's concern that removal of these rules will affect the availability of FM and TV signals.<sup>20</sup> Finally, we conclude that retaining a rule that has little if any applicability to the current broadcast landscape (emphasized by the fact that no representatives from the broadcast industry filed comments in this proceeding) risks wasting Commission time and resources, as well as the resources of broadcast license holders, on unnecessary adjudications.<sup>21</sup> Simply put, based on our expert judgment and the lack of record received, we find that these 75-year-old rules have outlived their utility. Therefore, we determine that it is in the public interest to eliminate these outdated rules.

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*Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, GN Docket No. 12-268 et al., Public Notice, 32 FCC Rcd 2786, 6797-6802, paras. 563-573 (WTB & MB 2017). Specifically, nearly all of the 987 stations have vacated their pre-auction channels, more than 830 have completed construction, and construction work for final facilities is well under way for the rest.

<sup>17</sup> See *Common Antenna Site NPRM*, 34 FCC Rcd at 10185, para. 7. American Tower currently operates more than 40,000 telecommunications towers in the United States. See Wireless Estimator, *Top 100 Tower Companies in the U.S.*, <http://wirelessestimator.com/top-100-us-tower-companies-list/> (last visited June 24, 2020). According to the American Tower website, the company works with over 200 television broadcasters and over 700 radio broadcasters and has over 1,500 sites currently in use by broadcasters. See American Tower, *Broadcast Towers*, <https://www.americantower.com/us/solutions/towers/broadcast-towers.html> (last visited June 24, 2020). Crown Castle also operates 40,000 telecommunications towers. See Crown Castle, *Company Overview, May 2020*, <https://investor.crowncastle.com/static-files/e2d9530c-7a09-4247-8e63-449ea2bc3926> (last visited June 24, 2020). Of InSite's total of 2,000 towers, 180 have broadcasters as tenants. See J. Sharpe Smith, *InSite Grows Broadcast Tower Portfolio with TEGNA Agreement*, <https://www.aglmediagroup.com/insite-grows-broadcast-tower-portfolio/> (last visited June 24, 2020). See also Vertical Bridge, *Broadcast*, <https://www.verticalbridge.com/our-partners/broadcast> (last visited June 24, 2020) (discussing Vertical Bridge's portfolio of over 4,000 broadcast towers).

<sup>18</sup> While one commenter cautioned that the lack of towers directly owned by broadcasters may limit the availability and affordability of towers for broadcasters, no rationale was offered to substantiate this claim, and no FM or TV broadcast licensee raised any similar concerns. See Rojas Comment at 1. Given the considerable infrastructure costs and regulatory hurdles associated with tower siting and construction, we believe that it is generally more cost effective for broadcasters to lease space from companies that specialize in tower construction rather than to build and maintain their own towers. See *Common Antenna Site NPRM*, 34 FCC Rcd at 10184-85, para. 6.

<sup>19</sup> See *Common Antenna Site NPRM*, 34 FCC Rcd at 10186, para. 10. To successfully invoke section 73.635 or 73.239, a party must demonstrate that a particular broadcast site "is peculiarly suitable" for broadcasting in a particular area "and (a) ...is not available for use" by other TV or FM licensees; "and (b) no other comparable site is available in the area; and (c) ... the exclusive use of such site by the applicant or licensee would unduly limit the number of" TV or FM stations "that can be authorized in a particular area or would unduly restrict competition among" such stations. 47 CFR §§ 73.635, 73.239 (emphasis added).

<sup>20</sup> See Mullik Comment at 2. In particular, Mullik raised specific concerns that the transition to the ATSC 3.0 broadcast television transmission standard could potentially increase demand for antenna site availability and disadvantage smaller broadcasters because of the significant cost associated with converting to ATSC 3.0. *Id.* at 5. However, there is no indication in the record that there are insufficient towers and antenna sites available or that maintaining our rules regarding access to common antenna sites is needed to ensure continued availability of such sites during the voluntary transition to the ATSC 3.0 standard. Further, it does not appear that sections 73.635 or 73.239 would help alleviate concerns about the financial impact on smaller broadcasters of upgrading technology given the extremely limited circumstance in which they apply. See *supra* note 9.

<sup>21</sup> See *Common Antenna Site NPRM*, 34 FCC Rcd at 10185, para. 9, n.23.

#### IV. PROCEDURAL MATTERS

6. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>22</sup> the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Order. The FRFA is set forth in Appendix B.

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

8. *Congressional Review Act.* [The Commission will submit this draft Report & Order to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for concurrence as to whether this rule is “major” or “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2).] The Commission will send a copy of this Report & Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

#### V. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in sections 1, 4(i), 4(j), 303(r), 307, and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303(r), 307, and 309, the Report and Order **IS ADOPTED**.

10. **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.<sup>23</sup>

11. **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.

12. **IT IS FURTHER ORDERED** that the Commission will 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).

13. **IT IS FURTHER ORDERED** that should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 19-282 **SHALL BE TERMINATED** and its docket closed.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>22</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 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>23</sup> These rules serve to “reliev[e] a restriction.” 5 U.S.C. § 553(d)(1).

**APPENDIX A**

**Final Rules**

Part 73 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

**PART 73 – RADIO BROADCAST SERVICES**

1. The Authority citation for Part 73 continues to read as follows:

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

2. Section 73.239 is removed.

3. Section 73.635 is removed.

## APPENDIX B

## Final Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking in this proceeding.<sup>2</sup> The Federal Communications Commission (Commission) sought written public comment on the proposals in the NPRM, including comment on the IRFA. We received no comments specifically directed toward the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>3</sup>

**A. Need for, and Objective of, the Report and Order**

2. The Report and Order eliminates the requirements in sections 73.239 and 73.635 of the Commission's rules, regarding access to FM or TV broadcast antenna sites.<sup>4</sup> These rules prohibit the grant of a license for a broadcast FM or TV station, or a license renewal, to an entity that owns, leases, or controls a site that "is peculiarly suitable" for FM or TV broadcasting in a particular area unless the site is available for use by other FM or TV licensees or there is another comparable site available in the area, and where the exclusive use of the site by the applicant or licensee "would unduly limit the number of" FM or TV stations that can be authorized in a particular area or would "unduly restrict competition among" FM and TV stations. We conclude in the Report and Order that these requirements are outdated and unnecessary in light of the significant changes in the broadcast marketplace, including substantial growth in the availability of broadcast infrastructure that has occurred since these restrictions were first adopted nearly 75 years ago. With this proceeding, we continue our efforts to modernize our rules and eliminate outdated and unnecessary regulations.<sup>5</sup>

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

3. There were no comments filed in response to the IRFA.

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

4. 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 Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.<sup>6</sup>

5. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 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>2</sup> See *Use of Common Antenna Site – Sections 73.239 and 73.635; Modernization of Media Regulation Initiative*, MB Docket Nos. 19-282, 17-105, Notice of Proposed Rulemaking, 34 FCC Rcd 10181, 10191, Appendix B (2019).

<sup>3</sup> See 5 U.S.C. § 604.

<sup>4</sup> 47 CFR §§ 73.239, 73.635.

<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> 5 U.S.C. § 604(a)(3).



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

6. 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> Below, we provide a description of such 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 \$41.5 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 \$24,999,999 and \$50 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 January 8, 2018, about 11,372 (or about 99.9 percent) of 11,383 commercial radio stations had revenues of \$41.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated that there are 6,706 licensed FM commercial stations.<sup>15</sup> We note the Commission has also estimated the number of licensed noncommercial (NCE) FM radio stations to be 4,197.<sup>16</sup> However, the Commission does not compile or 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.

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<sup>7</sup> 5 U.S.C. § 603(b)(3).

<sup>8</sup> 5 U.S.C. § 601(6).

<sup>9</sup> 5 U.S.C. § 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.” 5 U.S.C. § 601(3).

<sup>10</sup> 15 U.S.C. § 632.

<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://data.census.gov/cedsci/table?q=EC1251SSSZ4&hidePreview=false&tid=ECNSIZE2012.EC1251SSSZ4&vintage=2012>.

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

<sup>15</sup> See *Broadcast Station Totals as of June 30, 2020*, Press Release, FCC (*June 2020 Broadcast Station Totals*), available online at <https://www.fcc.gov/document/broadcast-station-totals-june-30-2020>.

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

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>17</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>18</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>19</sup> These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.<sup>20</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 \$41.5 million or less in annual receipts.<sup>21</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 \$24,999,999 and \$50 million, and 70 had annual receipts of \$50 million or more.<sup>22</sup> Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

11. The Commission has estimated the number of licensed full power commercial television stations to be 1,368.<sup>23</sup> Of this total, 1,257 stations had revenues of \$41.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on January 8, 2018, 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 390.<sup>24</sup> These stations are non-profit, and therefore considered to be small entities.<sup>25</sup>

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<sup>17</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>18</sup> 13 C.F.R. § 121.102(b).

<sup>19</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>20</sup> *Id.*

<sup>21</sup> 13 CFR § 121.201; 2012 NAICS Code 515120.

<sup>22</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://data.census.gov/cedsci/table?q=EC1251SSSZ4&hidePreview=false&tid=ECNSIZE2012.EC1251SSSZ4&vintage=2012>.

<sup>23</sup> *See June 2020 Broadcast Station Totals.*

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

<sup>25</sup> *See generally* 5 U.S.C. § 601(4), (6).

12. There are also 386 Class A stations.<sup>26</sup> 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.

13. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations<sup>27</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.

**E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

14. This Report and Order eliminates two rules which prohibit the grant or renewal of a license for an FM or TV station under extremely limited circumstances. Accordingly, the Report and Order does not impose any new reporting, recordkeeping, or other compliance requirements for any small entities. Elimination of these rules should reduce compliance requirements for FM radio and full power and Class A TV stations, as they are currently obligated to comply with these rules.

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

15. The RFA requires an agency to describe any significant alternatives that it has considered in developing 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 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 such small entities.”<sup>28</sup>

16. The Report and Order eliminates two rules which prohibit the grant or renewal of a license for an FM or TV station under extremely limited circumstances. As a part of the Commission’s Media Modernization Initiative, the intent of eliminating these requirements is to reduce the costs of compliance with the Commission’s rules, including any related managerial, administrative, legal, and operational costs. We anticipate that small entities, as well as larger entities, will benefit from this deletion.

**G. Report to Congress**

17. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>29</sup> In addition, the Commission

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<sup>26</sup> See *June 2020 Broadcast Station Totals*.

<sup>27</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>28</sup> 5 U.S.C. § 603(c)(1) – (c)(4).

<sup>29</sup> 5 U.S.C. § 801(a)(1)(A).

will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.