

FCC FACT SHEET*

FCC Adopts a 10 Application Limit for NCE FM New Stations in Upcoming 2021 Filing Window
Public Notice – MB Docket No. 20-343

Background: Construction permits for new noncommercial educational (NCE) FM stations are awarded using a detailed point system to compare competing mutually exclusive (MX) applications. In an October 19, 2020 Public Notice, the Commission sought comment on its proposal to impose a limit of 10 applications filed by any party in the next NCE FM filing window. This limit is consistent with the 10 application cap the Commission adopted for the 2007 NCE FM filing window. The 10-application limit proved to be an effective procedural safeguard in 2007 and helped restrict the number of MX applications, prevented mass filings, and allowed the Commission to efficiently process and grant thousands of new NCE FM applications.

What the Public Notice Would Do:

- Adopt the Commission's proposal to establish a limit of 10 NCE FM new station applications filed by any party during the upcoming NCE filing window, finding that this proven 10-application cap strikes the best balance of the Commission's multiple objectives of providing a meaningful opportunity for applicants to file for new NCE FM stations and expanding NCE service while, at the same time, deterring speculative applications and procedural delays.
- Clarify that if a party to an application has an attributable interest in more than 10 NCE FM new station applications, the Media Bureau will retain the 10 applications that were filed first – based on the date of application receipt – and dismiss all other applications.

* 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. 20-343, 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.*



PUBLIC NOTICE

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FCC ADOPTS 10-APPLICATION LIMIT FOR NCE FM NEW STATIONS IN UPCOMING 2021 FILING WINDOW*

MB Docket No. 20-343

I. INTRODUCTION

1. The Commission recently announced the intention to open a 2021 filing window for FM reserved band (channels 201 – 220) applications for new noncommercial educational (NCE) FM radio stations and sought comment on a proposed limit of 10 applications filed by any party during the upcoming window.¹ For the reasons stated below, we adopt the proposed 10-application cap on NCE FM new station applications.

II. BACKGROUND AND SUMMARY OF COMMENTS

2. In 2007, before the first NCE FM filing window opened, the Commission sought comment on an application cap² and subsequently established a limit of 10 NCE FM new station applications filed by any party during the October 2007 filing window.³ This application limit helped foster the goals of localism and diversity as reflected in the NCE FM point system, while also restricting the number of speculative or mutually exclusive applications (including “daisy chains” of mutually

* This document has been circulated for tentative consideration by the Commission at its April 2021 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 *See FCC Seeks Comment on Proposed Application Limit for NCE FM New Station Applications in Upcoming 2021 Window*, Public Notice, MB Docket No. 20-343, FCC 20-145 (Oct. 19, 2020) (*Cap Comment Notice*). The Media Bureau will issue a forthcoming public notice to announce the specific dates of the 2021 window. The Media Bureau will also provide detailed information about filing procedures and requirements by a separate public notice during the next several months.

² *See Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386, 7422, para. 86 (2000) (*NCE R&O*), *aff’d*, Memorandum Opinion and Order, 16 FCC Rcd 5074, 5105, para. 92 (2001).

³ *See FCC Seeks Comment on Proposed Application Limit for NCE FM New Station Applications in October 12-October 19, 2007, Window*, Public Notice, 22 FCC Rcd 15910 (2007); *FCC Adopts Limit for NCE FM New Station Applications in October 12-October 19, 2007 Window*, Public Notice, 22 FCC Rcd 18699 (2007).

exclusive applications).⁴ This, in turn, minimized the delay caused by processing complicated application chains. The 10-application cap also allowed the Commission to expeditiously process and grant thousands of applications to a wide range of local and diverse applicants,⁵ therefore promoting the rapid expansion of new NCE FM service throughout the country.⁶ In the recent *Cap Comment Notice*, the Commission tentatively concluded that it should also establish a 10-application limit for the upcoming 2021 NCE FM filing window, finding that the cap supports the goals of localism and diversity reflected in the NCE FM point system. The Commission also found that it remains a reasonable limit to prevent mass filings by speculators and to permit the efficient and expeditious processing of window-filed applications.⁷

3. In the *Cap Comment Notice*, the Commission sought comment on whether 10 applications is the appropriate limit to enable the efficient processing of applications and initiation of new NCE FM service, whether a different number would be more appropriate, or whether it should establish any limit at all. Although the commenters addressing the proposed cap agree that some limit is advisable, they are not in agreement on what specific limit would be most appropriate and beneficial. Specifically, while National Public Radio, Inc. (NPR) endorses the Commission's proposed 10-application cap, REC Networks (REC) proposes a lower five-application limit, and Educational Media Foundation (EMF) recommends allowing parties to file more than 10 applications if the additional applications are for areas outside the home counties of Nielsen Audio markets.⁸

4. REC argues that “due to the limited opportunities in this window,”⁹ it is necessary to set a limit of five applications per organization.¹⁰ According to REC, such a limit is beneficial because “it would be less attractive to national chain broadcasters and increase the opportunities for more local ownership through reducing the number of MX groups as well as the sizes of those groups.”¹¹ According to REC, a smaller number of applicants and MX groups “substantially reduces the burden on staff for processing applications and will bring us closer to the next LPFM filing window.”¹² Common Frequency

⁴ Conflicting NCE applications, which cannot all be granted consistent with the Commission's technical rules, are considered mutually exclusive. A mutually exclusive (MX) group consists of all applications which are MX to at least one other application in the group. A “daisy chain” occurs when two or more proposals contain service areas that do not directly overlap but are linked together into a chain by the overlapping proposals of others. Applications for full-service stations present a prospect of “daisy chains” of conflicting applications due to the size of the proposed service areas and the interference protection provided to full-service stations. A limit on applications reduces the number and complexity of such situations, thereby making it possible to grant a greater number of applications, and in an expedited manner.

⁵ The Media Bureau received over 3,600 applications during the October 2007 window, almost half of which were mutually exclusive with at least one other application.

⁶ See, e.g., *Comparative Consideration of 59 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in the October 2007 Filing Window*, Memorandum Opinion and Order, 25 FCC Rcd 1681 (2010).

⁷ See 47 CFR § 73.7000 *et seq.*; *Cap Comment Notice* at para. 6.

⁸ See NPR Reply Comments at 2; REC Comments at 5; EMF Comments at 2.

⁹ REC Comments at 5. REC explains that it did an extensive nationwide search for available spectrum in the reserved band and found that “there would be no availability within the top-100 Nielsen Audio metropolitan markets.” *Id.* at 1.

¹⁰ *Id.* at 5. In its Comments, REC also raises an issue regarding requiring applicants to use a consistent census block centroid dataset to ensure fairness in the upcoming 2021 filing window. See *Id.* at 6-7. Although the issue is beyond the scope of this specific application limit subject, this issue will be addressed in a forthcoming public notice, which will provide detailed information about filing procedures and requirements.

¹¹ *Id.* at 5.

¹² *Id.*

and three individual commenters also advocate for a five-application limit;¹³ EMF and NPR each oppose REC's proposal.¹⁴

5. EMF instead urges the Commission to adopt the following approach: (1) allow an applicant to designate 10 applications that it asks the Commission consider as its "primary applications"; (2) allow additional "non-primary" applications beyond the 10 primary applications only if those applications are for areas outside the home counties of Nielsen Audio markets; and (3) only dismiss non-primary applications outside a rated Nielsen Audio market if those applications are MX and the MX cannot be cured by a technical amendment during the settlement period.¹⁵ EMF asserts that its approach will help the Commission's stated desire to provide more broadcast program choices to residents of rural areas¹⁶ and has the added benefit of "allowing parties, like EMF, who have shown their interest in serving rural areas through the operations of FM translators to file to convert a translator to a full-power station."¹⁷ According to EMF, a rigid 10-application limit, in contrast, has the disadvantages of hindering "the ability of EMF and other applicants to expand service to rural communities"¹⁸ and causing applications to cluster in larger markets and rarely reach the more rural areas.¹⁹ REC, White, and NPR each oppose EMF's proposal.²⁰

6. NPR, in contrast, recommends that the Commission adopt the proposed 10-application cap, which it contends will "provide a meaningful opportunity for new NCE service, while deterring speculation and facilitating the expeditious processing of applications."²¹ According to NPR, the "proposals to reduce or increase the application limit fail to offer a demonstrably better balancing of the relevant objectives and should be rejected."²²

III. DISCUSSION

7. We adopt the proposal from the *Cap Comment Notice* to establish a limit of 10 NCE FM

¹³ See Common Frequency Reply Comments at 1-2 (arguing that "multiple, non-local applications [will] pile onto applying for one channel, creating large mutually exclusive processing groups. Given the scarcity of channels, a smaller filing cap should discourage mass filers"); Brent West Comments ("firmly believe a maximum 5 limit cap should be applied (and certainly nothing above 10) if the FCC is genuinely interested in preserving what's left of available spectrum for a diverse, fair, and localized dial"); Jerrell E. Kautz (Kautz) Comments; Steven L. White (White) Reply Comments (agreeing with REC's proposed limit "given the eye-opening showing of lack of NCE opportunity within rated markets essentially making the entire window a rural opportunity window").

¹⁴ See, e.g., EMF Reply Comments at 2 ("REC's argument is built on a major, but seriously flawed assumption, that only stations that are locally owned and operated can properly serve the community"); NPR Reply Comments at 4 ("while a 5-application limit may deter speculation and simplify the processing of mutually exclusive applications to some extent, it would do so only by limiting opportunities to expand NCE service").

¹⁵ See EMF Comments at 2. To allay fears of speculative applications, EMF also suggests that the Commission impose a four-year holding period for all non-primary applications. See EMF Reply Comments at 3.

¹⁶ EMF Comments at 1.

¹⁷ *Id.* at 6.

¹⁸ *Id.* at 4.

¹⁹ See EMF Reply Comments at 4; see also EMF Comments at 5 ("applications proposing service to smaller communities throughout the country will be less likely to be filed when applications are limited").

²⁰ See, e.g., REC Reply Comments at 3 ("EMF's proposal prioritizes national ownership over localism and is not viable"); White Reply Comments at 2 ("cannot support EMF's proposal that reduces the opportunities for future local operators"); NPR Reply Comments at 5 ("EMF's proposal would encourage speculation and tax the Commission's resources for processing applications").

²¹ NPR Reply Comments at 2.

²² *Id.* at 3.

new station applications filed by any party during the upcoming filing window. We find a 10-application cap will best deter speculative filings, permit the expeditious processing of the applications filed in the window, and provide interested parties with a meaningful opportunity to file for and obtain new NCE FM station licenses. We agree with NPR that the alternative REC and EMF proposals “fail to offer a demonstrably better balancing of the relevant objectives.”²³

8. We acknowledge that REC’s proposed five-application cap could theoretically curb the number of MX applications, and therefore, have the benefit of simplifying and expediting the processing of applications.²⁴ We find, however, that this benefit is outweighed by the fact that a five-application limit will also curtail the expansion of new NCE FM service, and therefore, disserve the public interest.²⁵ As NPR notes, “while a 5-application limit may deter speculation and simplify the processing of mutually exclusive applications to some extent, it would do so only by limiting opportunities to expand NCE service.”²⁶ The last NCE FM filing window was over 13 years ago, and accordingly, there is pent-up demand for new NCE FM channels, which is unlikely to be satisfied with a lower five-application cap. Due to the historically long period between NCE FM filing windows, we believe that applicants should have meaningful opportunities in the 2021 window to expand NCE FM service and submit more than five applications.

9. Although EMF presents a novel proposal, which might ultimately allow us to license more NCE FM stations to rural and underserved areas, we find that the logistical and administrative challenges of implementing EMF’s two-tiered approach are simply too cumbersome and create the potential for extraordinary procedural delays and the ultimate delay of new NCE FM service to the public.²⁷ We find that adopting EMF’s approach, which would allow an applicant to designate 10 “primary” applications and file an unlimited number of additional applications beyond the 10 “primary” if the applications are for areas outside the home counties of all Nielsen Audio markets, is not administratively feasible at this time.²⁸ The time required to further revise our rules and forms to adopt the EMF proposal would significantly delay the initiation of the filing window and service to the public

²³ *Id.*

²⁴ Some of the commenters advocating for a five-application limit also claim that it will better promote diversity and localism. *See, e.g.*, REC Comments at 5; West Comments; REC Reply Comments at 4. We find that diversity and localism are best advanced through our comparative selection procedures, regardless of the size of the application cap. Significantly, our comparative criteria for resolving mutually exclusive NCE applications are specifically designed to favor local and diverse applicants. *See* 47 CFR § 73.7003.

²⁵ We believe that a five-application cap could impede the growth of new NCE FM service throughout the country, but particularly, in underserved, rural areas. This is because if restricted to just five applications, applicants may gravitate to larger markets and be disinclined to file an application for the smaller, rural areas. In contrast, we find a 10-application cap will better facilitate the growth of NCE FM service to *all* areas of the country.

²⁶ NPR Reply Comments at 4 (also emphasizing that “[w]hile the universe of NCE stations is diverse, so are the needs served by NCE stations.”).

²⁷ EMF proposes that the Commission: (1) provide any mutually exclusive non-primary application the opportunity to submit a technical amendment to remove the conflict, and (2) only dismiss a non-primary application that cannot be detached from its MX group. Although the Commission often designates a specific period for MX applicants to file settlements and technical amendments, our rules permit parties to settle or file technical amendments at any time. *See* 47 CFR § 73.7003(d). It takes significant engineering resources to analyze settlements and technical amendments and then approve or deny them.

²⁸ The current NCE FM construction permit application (Form 2100, Schedule 340) does not require applicants to distinguish between “primary” and “non-primary” applications nor does it require NCE applicants to distinguish between Nielsen and unranked markets. Under the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 et seq. (the PRA), modifying our proposed application cap rule to incorporate EMF’s proposal and amending the Schedule 340 to incorporate this additional information would require Federal Register notice and an opportunity for public comment, as well as OMB approval, thereby unnecessarily delaying the filing window.

and outweigh any benefit from the EMF proposal.²⁹ Moreover, we are concerned that this expansion of filing opportunities will undercut our goal of deterring speculative applications.³⁰

10. We recognize EMF's claim that its proposal would increase NCE FM service to rural areas and allow parties to file more applications to upgrade FM translators serving rural areas to protected full-power stations. We note, however, that EMF's proposal, which was not endorsed by any of the commenters,³¹ also has the drawback of increasing the potential for more MX groups, created by the secondary application filings, larger MX groups, and complicated application chains,³² which could lead to processing delays,³³ and ultimately, delay the initiation of new NCE FM service to the public. We also agree with NPR that "EMF's arguments in support of its proposal do little to address the prospect of the Commission again being overwhelmed by an avalanche of applications."³⁴

11. After reviewing and considering the comments in this proceeding, we find that the proven 10-application cap strikes the best balance of our multiple objectives of providing a meaningful opportunity for applicants to file for new NCE FM stations and expanding service while, at the same time, deterring speculative applications and procedural delays. Although we acknowledge that there are indeed benefits to both REC's five-application proposal and EMF's two-tiered approach, they are outweighed by the drawbacks noted above. The 10-application cap, employed during the 2007 NCE FM filing window, has proven, in practice, to be very effective. The 10-application limit facilitated the processing and grant of thousands of new NCE FM applications to a wide range of local applicants, discouraged speculation, and forced applicants with a large number of potential applications to concentrate on proposals and markets where they had legitimate service plans.³⁵

12. Accordingly, we adopt the proposal that an applicant may file no more than a total of 10 applications in the 2021 NCE FM filing window. Under existing precedent, this means that a party to an application filed in the 2021 NCE FM filing window may hold attributable interests in no more than a

²⁹ See note 28, *supra*.

³⁰ The adoption of EMF's proposal could also potentially enable applicants to game the system by choosing which market to designate to determine whether its application qualifies as primary or secondary.

³¹ NPR, REC, and White each oppose EMF's approach. See *supra* note 20.

³² Although EMF proposes that we ultimately dismiss non-primary mutually exclusive applications that cannot be cured by a technical amendment, these applications would still be initially assigned to an MX group. See also REC Notice of *Ex Parte* Presentation, MB Docket No. 20-343, dated December 14, 2020 ("Even with EMF's proposal, an MX group would need to be created that involved the 'over the limit' application and even if that application is dismissed, a single, large MX group would still exist").

³³ As we noted in the *Cap Comment Notice*, we expect there will be a large volume of NCE FM applications filed in the forthcoming window. See *Cap Comment Notice* at para. 5. We therefore disagree with EMF's prediction that there will not be a flood of NCE applications given its belief that "there simply is not the demand for new broadcast stations, particularly in rural areas, that there once was." See *EMF Notice of Ex Parte Presentation*, MB Docket No. 20-343, dated December 11, 2020. To the contrary, based upon the prior demand, we anticipate that there will continue to be a robust demand for spectrum.

³⁴ NPR Reply Comments at 5.

³⁵ We acknowledge the concerns, expressed by some commenters, that national owners will dominate the filing field, or that national groups will file applications under the guise of a local outlet. See, e.g., Aaron Read Comments; REC Comments at 5; Kautz Comments; Common Frequency Reply Comments. We note, however, that our comparative criteria for resolving mutual exclusivity are designed to favor local applicants. See 47 CFR § 73.7003 *et seq.* Further, the Bureau has the discretion to conduct investigations, and if a substantial and material question exists regarding the real party in interest, the Commission can designate an application for hearing to determine whether it complies with our rules and policies.

total of 10 applications filed in the window.³⁶ If it is determined that any party to an application has an attributable interest in more than 10 applications, the Media Bureau will retain the 10 applications that were filed first – based on the date of application receipt – and dismiss all other applications.

IV. PROCEDURAL MATTERS

13. *Statement of Legal Authority.* The Commission’s legal authority for limiting the number of applications a party may file during a broadcast filing window is found in 47 U.S.C. §§ 151, 152(a), 154(i) and (j), 301, 303(g) and (r), 308(b), and 309(j).

14. *Effective Date.* The Commission’s rules are amended as set forth in Appendix A, effective thirty (30) days after publication of the text or a summary thereof in the Federal Register.

15. *Final Regulatory Flexibility Act.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA),³⁷ the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Public Notice. The FRFA is set forth in Appendix B.

16. The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Public Notice, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

17. *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).

18. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget concurs, that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Public Notice to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

19. For further information, contact Amy Van de Kerckhove, Amy.Vandekerckhove@fcc.gov; James Bradshaw, James.Bradshaw@fcc.gov; or Lisa Scanlan, Lisa.Scanlan@fcc.gov, of the Media Bureau, Audio Division, (202) 418-2700. Direct press inquiries to Janice Wise, Janice.Wise@fcc.gov, (202) 418-8165.

Action by the Commission, MONTH __, 2021.

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³⁶ *See NCE R&O*, 15 FCC Rcd at 7418-20, paras. 74-77 (extending commercial attribution principles to NCE applications).

³⁷ *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).

APPENDIX A**Rule Changes****Part 73 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:**

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 73.503 is amended by adding a new paragraph (g) to read as follows:

§ 73.503 Licensing requirements and service.

* * * * *

(g) *Application Limit.* An applicant may file no more than a total of 10 applications in the 2021 NCE FM filing window. A party to an application filed in the 2021 NCE FM filing window may hold attributable interests, as defined in § 73.7000, in no more than a total of 10 applications filed in the window. If it is determined that any party to an application has an attributable interest in more than 10 applications, the Media Bureau will retain the 10 applications that were filed first – based on the date of application receipt – and dismiss all other applications.

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 initial Public Notice, *FCC Seeks Comment on Proposed Application Limit for NCE FM New Station Applications in Upcoming 2021 Window*, FCC 20-145, in this proceeding (Public Notice).² The Commission sought written public comment on the proposal in the Public Notice, including comment on the IRFA. We received no comments specifically directed toward the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objectives of, the 10-Application Limit

2. In this Public Notice, the Commission adopts a limit of 10 noncommercial educational (NCE) FM radio station applications filed by any party during the upcoming 2021 filing window. The Commission has determined that, absent a limit on the number of applications that a party may file in the upcoming filing window, some parties may file a large number of speculative applications, including applications that are mutually exclusive with each other, resulting in procedural delays and the delay of new NCE FM service to the public. The Commission has concluded that a limit of 10 applications for new NCE FM construction permits in the filing window is an appropriate procedural safeguard to deter speculation and permit the expeditious processing of the NCE FM applications while still allowing applicants meaningful opportunities to expand NCE FM service. The Commission believes that the adopted limit will benefit small entities, as defined below.

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.⁴ The Chief Counsel did not file any comments in response to the proposed rule in this proceeding.

D. Description and Estimate of the Number of Small Entities To Which the Proposed Procedures Will Apply

5. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed procedures, if adopted.⁵ The RFA defines the term “small entity” as having the same meaning as the terms “small business,” “small

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 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 See *FCC Seeks Comment on Proposed Application Limit for NCE FM New Station Applications in Upcoming 2021 Window*, MB Docket No. 20-343, FCC 20-145 (Oct. 19, 2020).

³ See 5 U.S.C. § 604.

⁴ 5 U.S.C. § 604(a)(3).

⁵ 5 U.S.C. § 603(b)(3).

organization,” and “small governmental entity” under Section 3 of the Small Business Act.⁶ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁷ 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.⁸

6. *NCE FM Radio Stations.* The application limit applies to potential licensees of the NCE FM radio service. This Economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public.”⁹ The SBA has created the following small business size standard for this category: those having \$41.5 million or less in annual receipts.¹⁰ Census data for 2012 show that 2,849 firms in this category operated in that year.¹¹ Of this number, 2,806 firms had annual receipts of less than \$25 million, and 43 firms had annual receipts of \$25 million or more.¹² Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded \$41.5 million in that year, we conclude that the majority of radio broadcast stations were small entities under the applicable SBA size standard. In addition, the Commission has estimated the number of NCE FM radio stations to be 4,195.¹³ Because NCE licensees must be non-profit, we will presume that all are small entities.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

7. We anticipate that none of the changes adopted as a result of the Public Notice will result in an increase to the reporting and recordkeeping requirements of broadcast stations or applicants for NCE FM authorizations.

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

8. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (a) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (c) the use of performance, rather than design, standards; and (d) an exemption from coverage of the rule, or any part thereof, for small

⁶ *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the 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.”

⁷ *Id.*

⁸ 15 U.S.C. § 632.

⁹ 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.”

¹⁰ 13 CFR § 121.201; NAICS code 515112.

¹¹ 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.

¹² *Id.*

¹³ See *Broadcast Station Totals as of December 31, 2020*, available online at <https://www.fcc.gov/document/broadcast-station-totals-december-31-2020>.

entities.¹⁴

9. We are directed under law to describe any alternatives we considered, including alternatives not explicitly listed above.¹⁵ The adopted 10-application limit is intended to benefit all small NCE entities seeking to establish a new NCE FM service on a local or regional basis by preventing mass filings of speculative applications. This limit should benefit all applicants by expediting the review and processing of applications filed during the window. Based on the record in this proceeding, we have concluded that a lower limit would not effectively meet the demand for new NCE FM channels, whereas a higher limit would impose unacceptable processing delays on all applicants, overriding any potential benefits to the few applicants interested in filing more than 10 applications in this window. The adopted limit does not impose any significant compliance or reporting requirements because it would merely set a limit on the number of applications for new NCE FM authorizations that a party could file during the window. Accordingly, we are not aware of any alternatives that would benefit small entities.

G. Report to Congress

10. The Commission will send a copy of the Public Notice, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.¹⁶ In addition, the Commission will send a copy of the Public Notice, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Public Notice and FRFA (or summaries thereof) will also be published in the Federal Register.

¹⁴ 5 U.S.C. § 603(c).

¹⁵ 5 U.S.C. § 603(b).

¹⁶ 5 U.S.C. § 801(a)(1)(A)..