

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

In the Matter of:
Revision of the Public Notice Requirements of
Section 73.3580
MB Docket No: 05-6

NOTICE OF PROPOSED RULE MAKING

Adopted: January 10, 2005

Released: March 15, 2005

Comment Date: 30 days after publication in the Federal Register
Reply Comment Date: 45 days after publication in the Federal Register

By the Commission: Commissioners Copps and Adelstein issuing a joint statement.

I. INTRODUCTION

1. This Notice of Proposed Rulemaking ("NPRM") seeks comment on whether we should modify the notice that radio and television station buyers and sellers are required to provide to the public in connection with proposed assignments and transfers of control. The Commission also seeks comment on whether to eliminate the newspaper publication exemption for non-commercial educational ("NCE") stations and stations that are the only operating station in their broadcast service in their community of license.

II. BACKGROUND

2. Section 309(b) of the Communications Act of 1934, as amended (the "Act")¹ requires the Commission to provide public notice of the filing of applications which propose the assignment or transfer of a broadcast station authorization involving a substantial change in ownership. This section prohibits the Commission from granting any such application prior to thirty days from the date of issuance of the public notice. Section 73.3580 of the Commission's rules requires that applicants for consent to assignment of a construction permit or license for an AM, FM, or TV station or for consent to the transfer of control of an entity holding a construction permit or license for an AM, FM, or TV station,² shall broadcast and publish local notice of the action in a newspaper of general circulation in the community to which the station is licensed. The public notice process must be completed within thirty days of the tendering of the application.³ The print and broadcast announcements must list: (1) the name of the applicant, if the applicant is an individual; the names of all partners, if the applicant is a partnership; or the names of all officers and directors and of those persons holding five per cent or more of the capital stock or other ownership interest if the applicant is a corporation or an unincorporated association (in the case of applications for assignment, information should be included for all parties to the application); (2) the purpose for which the application was or will be filed (such as, construction permit, modification,

¹ 47 U.S.C. § 309(b).

² For ease of exposition, we will refer to both assignments of licenses and transfers of control of licensee entities as "assignments."

³ 47 C.F.R. § 73.3580(c).

assignment); (3) the date when the application or amendment was tendered for filing with the FCC; (4) the call letters, if any, of the station, and the frequency or channel on which the station is operating or proposes to operate; and (5) a statement that a copy of the application, amendment(s), and related material are on file for public inspection at a stated address in the community in which the station is located or is proposed to be located.⁴

3. Section 309 of the Act and Section 73.3580 of the Commission's rules are designed to promote public participation in the broadcast licensing process. This role is particularly critical in the sales context. The Commission has long recognized the connection between ownership and the type and quality of broadcast service provided to a community.⁵ Section 73.3580 is designed to ensure that listeners and viewers will have a meaningful opportunity to participate in the license assignment process. Recently, both listeners and members of Congress have expressed concern about these public notice procedures. Listeners who have opposed proposed broadcast station sales have contended that the public may not fully understand the information which buyers and sellers now provide in print and broadcast notices of pending assignment applications. Complex ownership structures and transactions can substantially increase the amount of information provided in these announcements, and with it, the potential for confusion by the public. Moreover, the public may not in all instances be familiar with the terminology traditionally used by the Commission and applicants to describe transactions, *viz.*, "assignments," "assignors," "assignees," "transfers of control," etc. Finally, we are concerned that the required public notice does not advise the public of the opportunity to file comments, petitions to deny, or informal objections or the deadlines that apply to these filings.

4. Section 73.3580 also specifies the type of newspaper and the frequency of the print notice. Assignment applicants are required to use the same print and broadcast announcements,⁶ but the rules do not recite the specific text that applicants must use. In contrast, the rules do set forth specific public notice texts for applications for either a renewal of license or an application for a Class A television license.⁷ We believe that we could increase the transparency of our licensing process by adopting a similar approach with broadcast station sales. In addition, Section 73.3580(e) of the Commission's rules exempts NCE stations and those stations that are the only operating station in their broadcast service, *i.e.*, AM, FM, or TV, in their community of license from the newspaper publication of notices requirement of Section 73.3580.⁸ The Commission concluded more than forty years ago that a print notice requirement for these classes of stations was not in the public interest and would constitute an unwarranted expense.⁹ Given our strong interest in fostering public participation in the radio and television station application process and the comparatively minor burden imposed by the print publication requirement, we question whether these exemptions continue to serve the public interest.

⁴ See 47 C.F.R. § 73.3580(f)(1)-(4) and (9); *see also* 47 C.F.R. § 73.3580(d)(1)-(5).

⁵ See, *e.g.*, *Broadcast Localism*, 19 FCC Rcd 12425, 12427 (2004); *see also, e.g., Clay Television, Inc.*, 52 Rad. Reg.2d 406, 409 (1982).

⁶ See 47 C.F.R. § 73.3580(d)(3).

⁷ See 47 C.F.R. § 73.3580(d)(4)(i)(ii) and (5)(i)(A)(B).

⁸ See 47 C.F.R. § 73.3580(e).

⁹ See 27 FR 9947 (rel. Oct. 5, 1962).

III. DISCUSSION

A. Local Public Notice Filing Announcement of Assignments

5. We propose to add the italicized words, “*Filing Announcements*” as a new heading for Section 73.3580(d)(3)(i).¹⁰ We also propose to add the following language at the end of Section 73.3580(d)(3)(i):

For applicants who file for an assignment or transfer of a broadcast license, the following announcement shall be broadcast in accordance with the terms outlined above in this section and published in a newspaper as described in paragraph (c) of this section:

On (*date of filing application*), (insert name of assignor or transferor here), the owners of (call sign), filed an application with the FCC for consent to sell (call sign) to (insert name of assignee or transferee here). A copy of this application will be available for public inspection during our regular business hours at (*address of location of the station’s public inspection file*). It contains additional information concerning the proposed buyer and the agreement for the sale of the station.

Individuals who wish to advise the FCC of facts relating to this application may file comments and informal objections prior to FCC action on the application. Petitions to deny the application must be filed no later than (*date the 30th day after issuance of the public notice of the acceptance for filing of the application*).

A copy of the application, including the agreement for the sale of the station, may be accessed through the FCC website at www.fcc.gov/e-file. After accessing this webpage, users should click on the “CDBS Public Access” link and follow instructions found there.

We request comment on this proposed addition to our rules. Assignment applicants are currently required to list, as applicable, the names of the partners, officers, directors, and five percent or more shareholders of the applicant entities in their print and broadcast notices.¹¹ We seek comment on whether to expand the proposed text, above, to include this information. We seek comment on whether applicants should include any other information in the proposed text, above. We seek comment on an alternative approach under which the ownership information would be limited to the name of the controlling corporate or partnership entity. We seek comment on whether the notice that new construction permit applicants¹² are required to provide to the public should conform to the notice requirements that we are proposing here for radio and television station buyers and sellers in connection with proposed assignments. Finally, we seek comment on other approaches that would convey critical application and filing information in a way that would best promote public participation.

6. The rules require the local public notice process to begin “immediately”¹³ and to be completed within thirty days of the tendering of an application.¹⁴ The proposed filing announcement for assignment

¹⁰ All proposed rule changes are listed in Appendix A.

¹¹ 47 C.F.R. § 73.3580(f)(1).

¹² See 47 C.F.R. § 73.3580(c)(3).

¹³ 47 C.F.R. § 73.3580(g).

applications, however, includes the deadline for the filing of petitions to deny, a date that is determined by the release date of the Commission's public notice of an application's acceptance. The Commission typically releases this notice from three business days to two weeks following the tendering of an application. We seek comment on whether to delay the start of the thirty-day period for print and broadcast local notice to coincide with the release of the Commission's public notice of acceptance. The modest extension of the publication deadline is designed to provide reasonable time to applicants to complete the public notice process. We solicit other suggestions on ways to enhance the transparency of and public participation in the sales application review and licensing process.

B. Newspaper Publication Exemption for NCE Stations and Stations that are the Only Operating Station in their Broadcast Service in their Community of License

7. Section 73.3580(e) currently exempts NCE stations and any station that is the only operating station in its service from the print public notice requirements. This exemption covers all types of applications.¹⁵ We tentatively conclude that the current exemptions for these two classes of licensees are unwarranted. Rather, we believe that the potential benefit of expanded public notice through newspaper publication far outweighs any additional expenses and other burdens, which we believe would be minimal.¹⁶ We seek comment on our proposal to eliminate this exemption given to NCE stations and those stations that are the only operating station in their broadcast service in their community of license. We also solicit suggestions on alternative non-broadcast publication approaches, such as Internet postings, print publication requirements that are different from those currently in our rules, and other possible approaches that fairly balance our interests in promoting public awareness of important application filings and minimizing burdens on these types of broadcasters.

8. To implement these changes, we propose deleting the following words from Section 73.3580(c): “. . . and applications subject to paragraph (e) of this section.” Next, we propose to add a comma and the words: “non-commercial educational, those stations that are the only operating station in their broadcast service in their community of license, . . .” following “Class A TV” in the second sentence of Section 73.3580(c). We also propose deleting the words, “. . . (1) and (2) and (e) . . .” from Section 73.3580(f) and adding the words, “. . . and applications for assignment or transfer of license. . . .” to Section 73.3580(f). Finally, we propose that Section 73.3580(e) be deleted in its entirety, with the current Section 73.3580(f)-(g)-(h)-(i) becoming the new Section 73.3580(e)-(f)-(g)-(h).¹⁷ We seek comment on these proposed changes to our rules.

¹⁴ *Id.* § 73.3580(c)(3) and (d)(3).

¹⁵ We note that the print publication requirement does not apply to renewal applications. *See* 47 C.F.R. § 73.3580(c) and (d)(1).

¹⁶ *See, e.g., Northwest Broadcasting, Inc., Assignor and Western Pacific, Inc., Assignee and Radio Broadcasting, Inc., Assignor and Capital West, Inc., Assignee*, 6 Communications Reg. (P&F) 685 (1997) (Commission must reject petitioner's claim of improper notice because, pursuant to Section 73.3580(e), licensee falls within a small category of stations exempt from the newspaper publication requirement).

¹⁷ We also note that the mention in Section 73.3580(d)(1) of paragraph “(g)” will become paragraph “(f),” and the mention in the current Section 73.3580(i) (the future “Section 73.3580(h)”) of “paragraphs (a) through (h)” will become “paragraphs (a) through (g).”

IV. ADMINISTRATIVE MATTERS

9. *Ex Parte Rules*. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's Rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

10. *Paperwork Reduction Act*. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due 30 days after the date of publication in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

11. *Comments and Reply Comments*. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules,¹⁸ interested parties may file comments on the notice of proposed rulemaking on or before 30 days after date of publication in the *Federal Register*, and reply comments on or before 45 days after date of publication in the *Federal Register*. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998). All comments should reference MB Docket No. 04-256.

12. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, M.D. 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

13. Parties must also serve either one copy of each filing via e-mail or two paper copies to Best

¹⁸ 47 C.F.R. §§ 1.415 and 1.419.

Copy and Printing, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C., 20554, telephone (800) 378-3160 or (202) 488-5300, or via email to fcc@bcpiweb.com. In addition, parties should serve one copy of each filing via email or three paper copies to Brenda Lewis, 445 12th Street, S.W., 2-C266, Washington, D.C., 20554. Parties should also serve one copy of each filing via email or one paper copy to Stephen Svab, Media Bureau, 445 12th Street, S.W., 2-B418, Washington, D.C., 20554.

14. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C. 20554. These documents also will be available electronically from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII text, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C., 20554, telephone (800) 378-3160 or (202) 488-5300, facsimile (202) 488-5563, or via e-mail at fcc@bcpiweb.com. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

15. *Regulatory Flexibility Act.* As required by the Regulatory Flexibility Act,¹⁹ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this *Notice of Proposed Rulemaking*. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *Notice*, and they should have a separate and distinct heading designating them as responses to the IRFA.

16. *Additional Information.* For additional information on this proceeding, please contact Stephen Svab, Audio Division, Media Bureau at (202) 418-2700.

V. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED that pursuant to the authority contained in Sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152(a), 154(i), 303, 307, 309, and 310 and Section 202(h) of the Telecommunications Act of 1996, this *Notice of Proposed Rule Making* IS ADOPTED.

18. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.²⁰

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁹ See 5 U.S.C. § 603.

²⁰ See 5 U.S.C. § 603(a).

APPENDIX A

Rule Changes

The Federal Communications Commission proposes to amend 47 C.F.R. Part 73 as set forth below:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154 and 303.

§ 73.3580(d)(3) Local public notice of filing of broadcast applications.

20. Section 73.3580(d)(3) is revised to read as follows:

(3) *Filing Announcements.* An applicant who files for modification, assignment or transfer of a broadcast station license (except for International broadcast, low power TV, TV translator, TV booster, FM translator and FM booster stations) shall give notice of the filing in a newspaper as described in paragraph (c) of this section, and also broadcast the same notice over the station as follows:

**** *Filing Announcements.* . . .

21. The following language is added to the last sentence of § 73.3580(d)(3)(i) to read as follows:

(d) ***

(3)***

(i) *** For applicants who file for an assignment or transfer of a broadcast license, the following announcement shall be broadcast in accordance with the terms outlined above in this section and published in a newspaper as described in paragraph (c) of this section:

On (*date of filing application*), the owners of (*call sign*), (*insert assignor or transferor here*), filed an application with the FCC for consent to sell (*call sign*) to (*insert assignee or transferee here*). A copy of this application will be available for public inspection during our regular business hours. It contains additional information concerning the proposed buyer and the agreement for the sale of the station.

Individuals who wish to advise the FCC of facts relating to this application may file comments and informal objections prior to Commission action on the application. Petitions to deny the application must be filed no later than (*date the 30th day after issuance of the public notice of the acceptance for filing of the application*).

Further information concerning the FCC's station sale process is available at (*address of location of the station's public inspection file*) or may be obtained from the FCC,

Washington, DC 20554 or the FCC website, at www.fcc.gov/e-file. After accessing this webpage, users should click on the “CDBS Public Access” link and follow instructions found there.

22. Section 73.3580(c) is revised to read as follows:

An applicant who files an application or amendment thereto which is subject to the provisions of this section, must give notice of this filing in a newspaper. Exceptions to this requirement are applications for renewal of AM, FM, TV, Class A TV, non-commercial educational, those stations that are the only operating station in their broadcast service in their community of license and international broadcasting stations; low power TV stations; TV and FM translator stations; TV boosters stations; and FM boosters stations. The local public notice must be completed within 30 days of the tendering of the application. In the event the FCC notifies the applicant that a major change is involved, requiring the applicant to file public notice pursuant to §§73.3571, 73.3572, 73.3573 or 73.3578, this filing notice shall be given in a newspaper following this notification.

23. Section § 73.3580(f) is revised to read as follows:

(f) The notice required by paragraphs (c) and (d) of this section shall contain, when applicable, the following information, except as otherwise provided in paragraph (d) of this section in regard to renewal applications and applications for assignment or transfer of license:

24. Section 73.3580 is amended by removing (e) and re-designating paragraphs (f) through (i) as (e) through (h).

25. Section 73.3580(d)(1), is amended by revising the last sentence to read as follows:

(d)***

(i) *** An applicant who files for renewal of a low power TV station license not locally originating programming as defined by §74.701(h), an FM translator station or a TV translator station license will comply with (f) below.

26. Section 73.3580(i) is revised to read as follows:

(i) Paragraphs (a) through (g) of this section apply to major amendments to license renewal applications. See §73.3578(a).

APPENDIX B

INITIAL REGULATORY FLEXIBILITY ANALYSIS

27. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules considered in the Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to this IRFA and must be filed by the deadlines for comments on the NPRM provided in paragraph 10 of this decision. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the NPRM and the IRFA (or summaries thereof) will be published in the Federal Register.³

C. Need for, and Objectives of, the Proposed Rules

28. The NPRM seeks comment on whether the Commission should modify the notice requirement that radio and television station buyers and sellers are required to provide to the public in connection with proposed assignments and transfers of control. The NPRM also seeks comment on whether to eliminate the newspaper publication exemption for non-commercial educational (NCE) stations and stations that are the only operating station in their broadcast service in their community of license.

29. Section 309(b) of the Communications Act of 1934, as amended, requires the Commission to provide public notice of the filing of applications which propose the assignment or transfer of a broadcast station authorization involving a substantial change in ownership. This section also prohibits the Commission from granting any such application prior to thirty days from the date of issuance of the public notice. Section 73.3580 of the Commission's rules requires that applicants for consent to assignment of a construction permit or license for an AM, FM, or TV station or for consent to the transfer of control of an entity holding a construction permit or license for an AM, FM, or TV station, shall broadcast and publish local notice of the action in a newspaper of general circulation in the community to which the station is licensed. Section 73.3580(c) provides that the public notice process must be completed within thirty days of the tendering of the application. These rules are intended to promote public participation in the broadcast licensing process and to ensure that listeners and viewers have a meaningful opportunity to participate in the license assignment process.

30. As discussed in paragraphs 2-3 of the NPRM, the Commission is concerned that the public may not fully understand the information which buyers and sellers now provide in print and broadcast notices of pending assignment applications, and that the required public notice does not advise the public of the opportunity to file comments, petitions to deny, or informal objections of the deadlines that apply to these filings. The NPRM suggests modifications to Section 73.3580 to rectify these potential concerns. Paragraphs 4-5 of the NPRM discusses these proposed modifications.

31. Additionally, Section 73.3580(e) of the Commission's rules exempts non-commercial educational stations and those stations that are the only operating station in their broadcast service in their community of license from the newspaper publication of notices requirement of Section 73.3580. The

¹ See 5 U.S.C. § 603. The RFA, 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. 847 (1996).

² See 5 U.S.C. § 603(a).

³ 5 U.S.C. § 603(a).

exemption was provided more than forty years ago based on the Commission's conclusion at that time that a print notice requirement for these classes of stations was not in the public interest and would constitute an unwarranted expense. Given the Commission's strong interest in fostering public participation in the radio and television station application process and the comparatively minor burden imposed by the print publication requirement, the NPRM questions whether these exemptions continue to serve the public interest. The issue is discussed in paragraphs 4 and 6-7 of the NPRM.

Legal Basis

32. The authority for the action proposed in this rulemaking is contained in Sections 2(a), 4(i), 303, 307, 309, 310, and 613 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 152(a), 154(i), 303, 307, 309, 310, 533.

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

33. 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.⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁶ 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.⁷

34. *Television:* The Small Business Administration defines a television broadcasting station that has no more than \$12 million in annual receipts as a small business.⁸ Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound."⁹ According to Commission staff review of the BIA Financial Network, Inc. Media Access Pro Television Database as of June 26, 2004, about 860 (68%) of the 1,270 commercial television stations in the United States have revenues of \$12 million or less. We note, however, that in assessing whether a business entity qualifies as

⁴ 5 U.S.C. § 603(b)(3).

⁵ 5 U.S.C. § 601(6).

⁶ 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."

⁷ 15 U.S.C. § 632.

⁸ See OMB North American Industry Classification System: United States, 1997 at 509 (1997) (NAICS code 513120, which was changed to code 515120 in October 2002).

⁹ OMB, North American Industry Classification System: United States, 1997, at 508 (1997) (NAICS code 51320 which was changed to 51520 in October 2002). This category description continues, "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." Separate census categories pertain to businesses primarily engaged in producing programming. See *id.* at 502-505, NAICS code 512110. Motion Picture and Video Production; code 512120, Motion Picture and Video Distribution, code 512191, Teleproduction and Other Post-Production Services, and code 512199, Other Motion Picture and Video Industries.

small under the above definition, business control affiliations¹⁰ must be included. Our estimates, therefore, likely overstate the number of small entities that might be affected by any changes to the rules, because the revenue figures on which these estimates are based do not include or aggregate revenues from affiliated companies. In addition, the Commission estimates that there are 382 UHF and VHF Educational TV stations, most of which are non-profit organizations. The Commission is not aware of any source which contains information on the annual receipts of non-commercial, educational TV stations. We therefore, for the sake of this analysis, assume that all 382 stations are small entities.

35. *Radio:* The SBA has developed a small businesses size standard for radio stations, which consists of all such firms having \$6 million or less in annual receipts. Business concerns included in this industry are those “primarily engaged in broadcasting aural programs by radio to the public.” According to the Commission staff review of BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,989 commercial radio stations in the United States had revenues of \$6 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue, and, that in assessing whether a business concern qualifies as small under the above definition, such business (control) affiliations are included. Our estimate, therefore, likely overstates the number of small businesses that might be affected by our action. There are also approximately 2,497 FM educational radio stations. The Commission is not aware of any source which contains information as to these stations’ annual receipts. For purposes of this analysis, the Commission assumes that all 2,497 FM educational stations are small entities.

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

36. Compliance requirements will naturally vary depending on the Commission’s final decision in this proceeding. If the Commission decides at the final rules stage of this proceeding to modify the public notice regulations as proposed, applicants for consent to assignment of a construction permit or license for an AM, FM, or TV station or for consent to transfer control of an entity holding a construction permit or license for an AM, FM, or TV station would have to broadcast and publish public notice using the template proposed for inclusion in Section 73.3580(d) of the Commission’s rules (found in paragraph 5 of the NPRM). Additionally, if the Commission ultimately eliminates the current Section 73-3580(e) exemption from the public notice requirements offered to noncommercial educational stations and stations that are the only operating station in their broadcast service in their community of license, applicants in these categories who file for assignment or transfer of a broadcast license would need to publish local notice of action in a newspaper of general circulation in the community to which the station is licensed. The Commission seeks comment on these proposals and their impact on small entities and on other ways to enhance the transparency of, and public participation in, the sales application review and licensing process.

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

37. The RFA requires an agency to describe any significant alternatives specifically affecting small entities, that it has considered in proposing regulatory approaches, which may include, among others, the following four alternatives: (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

¹⁰ “[Business concerns] are affiliates of each other when one business 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 C.F.R. § 121.103(a)(1).

coverage of the rule, or any part thereof, for small entities.¹¹

38. The NPRM, in paragraph 5, states that the current rules provide that the public notice process must be completed within thirty days of the tendering of applications. However, the NPRM notes further that in cases of assignments applicants would need to wait for the public notice of the acceptance of an assignment application to calculate the petition to deny deadline as mandated in the proposed template for the public notice. Thus, the NPRM solicits comment on whether instead such applicants should be allowed to complete the public notice process within thirty days of the Commission's acceptance for filing of the application. This modest extension of the publication deadline would allow reasonable time to applicants to complete the public notice process.

39. Regarding proposed elimination of the Section 73.3580(e) exemption of noncommercial education (NCE) stations and any station that is the only operating station in its service in its community of license from the newspaper publication requirement, the Commission recognizes that most NCE stations are small entities. Elimination of the publication exemption would place the additional financial and work burden on these entities of preparing and publishing the required public notice. In reaching its decision in this regard, the Commission will weigh the negative aspect of placing additional requirements on these small entities against the prospective benefits to consumers of enhancing their opportunity to play a meaningful role in the license assignment process. The Commission invites comment in this proceeding on ways to minimize the possible burden on small entities which might result from eliminating the exemption and that also facilitate public participation in this process.

G. Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals

40. None.

¹¹ 5 U.S.C. § 603(c).

**JOINT STATEMENT OF
COMMISSIONER MICHAEL J. COPPS
AND COMMISSIONER JONATHAN S. ADELSTEIN**

RE: In the Matter of Revision of the Public Notice Requirements of Section 75.3580

We support this item because it's designed to enhance public participation in the Commission's review of the assignment and transfer of control of broadcast licenses, albeit at a time that the Commission is providing less public scrutiny of transactions that result in high levels of media concentration. We license radio and TV stations locally for a reason: to serve their communities. It's therefore especially important that the public is alerted in a meaningful way when these important media are about to change hands, and that citizens understand their stake in the process and their right to influence the result.

In terms of exposing the public to potential changes involving their broadcast stations, we are especially pleased that the language of the notice we suggest applicants publish in the newspaper refers listeners and viewers to our website to view the complete application. The item also asks whether there are other ways we could use the Internet to enhance public awareness of the application. Our current rules just require applicants to make the filing available for public inspection, but in this day and age both the Commission and broadcasters alike ought to make as much use as possible of the Internet to educate local citizens about the activities of the stations that are required to serve them. In that same vein, we urge the Commission to complete as soon as possible its proceeding to enhance disclosure of broadcasters' public files.

We are somewhat concerned, however, that the item does not contain any specific proposals to provide notice in languages other than English. This issue takes on particular significance if the stations involved on either end of the transaction broadcast in different languages. We invite comment on how we might address this concern.

We note that the item seeks comment on additional language that should be included in the public filing announcement. For example, would it benefit public participation to include a list of other stations in the same market owned by the buyer or seller? We look forward to a full record on these questions, as well as other suggestions of a more general nature on how to enhance the transparency of our review of assignment and transfer of control applications.