

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

In the Matter of)
)
Amendment of Parts 74, 76 and 78 of the) MB Docket No. 17-231
Commission's Rules Regarding Maintenance of)
Copies of FCC Rules)
)
Modernization of Media Regulation Initiative) MB Docket No. 17-105

NOTICE OF PROPOSED RULEMAKING

Adopted: September 26, 2017

Released: September 26, 2017

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

By the Commission: Chairman Pai and Commissioners Clyburn and Carr issuing separate statements.

I. INTRODUCTION AND BACKGROUND

1. In this Notice of Proposed Rulemaking (NPRM), we propose to eliminate rules that require certain broadcast and cable entities to maintain paper copies of Commission regulations. In response to a recent Public Notice launching the Commission's Modernization of Media Regulation Initiative, parties have asked the Commission to consider eliminating these rules because they are outdated and unnecessary.

2. Based on these arguments, we propose to eliminate our existing requirements, set forth in Parts 74, 76 and 78 of the Commission's rules, that regulatees maintain copies of certain portions of the Code of Federal Regulations (CFR). As explained below, these rules apply to low power TV, TV and FM translator, TV and FM booster stations, cable television relay station (CARS) licensees, and cable operators. We tentatively conclude that eliminating these requirements will advance the Commission's goal of reducing outdated regulations and unnecessary regulatory burdens that can impede competition and innovation in media markets.

II. DISCUSSION

3. We propose to eliminate the requirement, set forth in Section 74.769 of our rules, that licensees or permittees of low power TV, TV translator, and TV booster stations maintain "a current copy of Volume I and Volume III of the Commission's rules." In addition, we propose to eliminate a similar

1 Commission Launches Modernization of Media Regulation Initiative, MB Docket No. 17-105, Public Notice, FCC 17-58 (MB May 18, 2017) (initiating a review of rules applicable to media entities to eliminate or modify regulations that are outdated, unnecessary or unduly burdensome).

2 47 CFR §§ 74.769, 74.1269, 76.1714, 78.67. We note that Section 74.769 is referenced in other Commission rules and made applicable to the services to which those rules apply. 47 CFR § 74.789 (applying Section 74.769 to digital LPTV); 47 CFR § 74.787(a)(5)(viii) (applying Section 74.769 to digital replacement translators). In addition, Section 76.1714 is referenced in Section 76.1700(d) of the Commission's rules. 47 CFR § 76.1700(d) (providing that cable operators that have fewer than 1000 subscribers are exempt from the requirements of Section 76.1714). We propose to make conforming changes to Sections 74.789, 74.787(a)(5)(viii) and 76.1700(d) if the Commission eliminates Sections 74.769 and 76.1714.

3 Id. § 74.769.

requirement, codified in Section 74.1269 of our rules, that licensees or permittees of FM translator and FM booster stations maintain “a current copy of Volumes I (parts 0, 1, 2 and 17) and III (parts 73 and 74) of the Commission’s rules.”⁴ The Commission adopted these requirements more than forty years ago as part of its regulation of then recently established broadcast translator services.⁵ As NAB asserts, such obligations no longer appear necessary given the immediate availability of Commission rules online.⁶ NAB maintains that “[b]roadcasters can easily access and review the rules online, and download and print copies of any rules as needed.”⁷ We agree with NAB and tentatively conclude that the requirement to maintain paper copies of rules, which the publisher of the CFR updates annually, no longer remains necessary. We seek comment on this tentative conclusion.

4. We also tentatively conclude that we should eliminate the requirement, set forth in Section 76.1714(a), that certain cable operators maintain a current copy of part 76 of the Commission’s rules and, if subject to the Emergency Alert System (EAS) rules contained in part 11 of those rules, an EAS Operating Handbook.⁸ Although we recognize the public safety importance of having the EAS Handbook in close proximity, we note that Section 11.15 requires that a copy of the handbook “be located at normal duty positions or EAS equipment locations when an operator is required to be on duty and be immediately available to staff responsible for authenticating messages and initiating actions.”⁹ Given this separate requirement, we see no need for a duplicate EAS requirement in Section 76.1714(a). We seek comment on this tentative conclusion. In addition, we tentatively conclude that we should eliminate from Sections 76.1714(c) and 78.67 of the Commission’s rules the requirement that CARS licensees maintain a current copy of part 78 of the Commission’s rules and, in cases where aeronautical obstruction markings of antennas are required, part 17 of such rules.¹⁰ The Commission adopted these requirements decades ago when it established a comprehensive regulatory framework to govern then-nascent cable television service.¹¹ Like the rules applicable to broadcasters discussed above, we believe these rules have outlived their usefulness and no longer serve the public interest because, as ACA notes, the Commission’s rules are available online in the electronic CFR.¹² Thus, we tentatively conclude that these obligations are no longer necessary. We seek comment on this tentative conclusion.

⁴ *Id.* § 74.1269.

⁵ *Amendment of Part 74 and Other Parts of the Commission’s Rules and Regulations Pertaining to Television Broadcast Translator Stations*, Notice of Proposed Rulemaking, 27 FCC 2d 94, para. 1 (1971) (proposing to revise and harmonize rules governing FM and television translator stations). *See also id.* at 98, para. 12 (adopting Section 74.769); *id.* at 101, Appendix, para. 8 (same); *Amendment of Part 74 of the Commission’s Rules and Regulations to Permit the Operation of Low Power FM Broadcast Translator and Booster Stations*, Report and Order, 35 FR 15383, 15388 (1970) (adopting Section 74.1269).

⁶ NAB Comments at 23-24.

⁷ *Id.* at 24.

⁸ 47 CFR § 76.1714(a). The requirements of Section 76.1714(a) do not apply to any cable television system serving fewer than 1000 subscribers. *Id.* § 76.1714(b).

⁹ *Id.* § 11.15.

¹⁰ *Id.* §§ 76.1714(c), 78.67.

¹¹ *Amendment of Part 74, Subpart K, of the Commission’s Rules and Regulations Relative to Community Antenna Television Systems*, Cable Television Report and Order, 36 FCC 2d 141, 242, Appendix A (1972) (adopting a requirement that cable television system operators maintain a copy of Part 76 of the Commission’s rules). *See also id.* at 257, Appendix A (adopting Section 78.67 of the Commission’s rules).

¹² ACA Comments at 12.

5. Parties opposing elimination of any rules discussed in this NPRM should explain how the benefits derived from such rules, if any, outweigh the costs.¹³ We note that no party in the media modernization proceeding has asserted that any of these rules should be retained.

III. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Act Analysis

6. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹⁴ the Commission has prepared an Initial Regulatory Flexibility Act Analysis (IRFA) relating to this NPRM. The IRFA is set forth in Appendix B.

B. Initial Paperwork Reduction Act Analysis

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

C. *Ex Parte* Rules

8. Permit-But-Disclose. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁵ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

D. Filing Requirements

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

¹³ We are not proposing to eliminate the provisions in Sections 74.769, 74.1269, 76.1714, and 78.67 that obligate the subject broadcast and cable entities to be familiar with the rules governing their respective operations.

¹⁴ 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. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

¹⁵ 47 CFR §§ 1.1200 *et seq.*

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

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

10. 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 will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

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

E. Additional Information

12. For additional information on this proceeding, contact Raelynn Remy of the Policy Division, Media Bureau, at raelynn.remy@fcc.gov or (202) 418-2120.

IV. ORDERING CLAUSES

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

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Proposed Rule Changes

Note: For ease of review, the proposed rule changes are noted below with additions in bold underlined text.

The Federal Communications Commission proposes to amend Parts 74, 76 and 78 of Title 47 of the Code of Federal Regulations (CFR) as set forth below:

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

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

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

2. Amend § 74.769 to read as follows:

§ 74.769 ~~Copies of~~ **FCC** Rules.

~~The licensee or permittee of a station authorized under this subpart shall have a current copy of Volume I and Volume III of the Commission's Rules. Each such licensee or permittee~~ **of a station authorized under this subpart** shall be familiar with ~~those~~ rules relating to stations **governed by authorized under** this subpart. ~~Copies of the Commission's rules may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.~~

3. Amend § 74.787 as follows:

§ 74.787 Digital Licensing.

* * * * *

(a)(5)(viii) The following sections are applicable to analog-to-digital and digital-to-digital replacement television translator stations:

* * * * *

§ 74.769 ~~Copies of~~ **FCC** Rules.

* * * * *

4. Amend § 74.789 to read as follows:

§ 74.789 Broadcast regulations applicable to digital low power television and television translator stations.

The following sections are applicable to digital low power television and television translator stations:

* * * * *

§ 74.769 ~~Copies of~~ **FCC** Rules.

* * * * *

5. Amend § 74.1269 to read as follows:

§ 74.1269 ~~Copies of~~ FCC Rules.

~~The licensee or permittee of a station authorized under this subpart shall have a current copy of Volumes I (parts 0, 1, 2 and 17) and III (parts 73 & 74) of the Commission's Rules and shall make the same available for use by the operator in charge. Each such licensee or permittee~~ **of a station authorized under this subpart** shall be familiar with ~~those~~ rules relating to stations **governed by** ~~authorized under this subpart. Copies of the Commission's Rules may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.~~

PART 76 — MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572 and 573.

2. Amend § 76.1700 to read as follows:

§ 76.1700 Records to be maintained by cable system operators.

* * * * *

(d) Exceptions to the public inspection file requirements. The operator of every cable television system having fewer than 1,000 subscribers is exempt from the online public file and from the public record requirements contained in § 76.1701 (political file); § 76.1702 (EEO records available for public inspection); § 76.1703 (commercial records for children's programming); § 76.1704 (proof-of-performance test data); § 76.1706 (signal leakage logs and repair records); § 76.1714 (FCC rules ~~and regulations~~); and § 76.1715 (sponsorship identification).

* * * * *

3. Amend § 76.1714 to read as follows:

§ 76.1714 FCC Rules.

(a) ~~The operator of a cable television system shall have a current copy of part 76 and, if subject to the Emergency Alert System (EAS) rules contained in part 11 of this chapter, an EAS Operating Handbook, and is expected to be familiar with the rules governing cable television systems and, if subject to the Emergency Alert System (EAS) rules contained in part 11 of this chapter, the EAS. Copies of the Commission's rules may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at nominal cost. Copies of the EAS Operating Handbook may be obtained from the Commission's EAS staff, in Washington, DC.~~

* * * * *

(c) ~~The licensee of a cable television relay station (CARS) shall have a current copy of part 78 of this chapter, and, in cases where aeronautical obstruction markings of antennas is required, part 17 of this~~

~~chapter shall be available for use by the operator in charge. Both the licensee of a cable television relay station (CARS) and the operator or operators responsible for the proper operation of the station are expected to be familiar with the rules governing cable television relay stations. Copies of the Commission's rules may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at nominal cost.~~

PART 78 — CABLE TELEVISION RELAY SERVICE

1. The authority citation for Part 78 continues to read as follows:

Authority: 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

2. Amend § 78.67 to read as follows:

§ 78.67 ~~FCC Copies of Rules.~~

~~The licensee of a CARS station shall have a current copy of this part 78, and, in cases where aeronautical obstruction marking of antennas is required, part 17 of this chapter shall be available for use by the operator in charge. Both the licensee of a cable television relay station (CARS) and the operator or operators responsible for the proper operation of the station are expected to be familiar with the rules governing CARS stations. Copies of the Commission's rules may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at nominal cost.~~

APPENDIX B**Initial Regulatory Flexibility Act Analysis**

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

A. Need for, and Objectives of, the Proposed Rule Changes

2. The proposed rule changes stem from a Public Notice issued by the Commission in May 2017 launching an initiative to modernize the Commission's media regulations.⁴ Two parties in the proceeding, the National Association of Broadcasters (NAB) and the American Cable Association (ACA), have argued for elimination of the recordkeeping requirements at issue as outdated and unnecessary. The NPRM proposes to eliminate provisions of the Commission's rules that obligate certain broadcasters and cable entities to maintain paper copies of Commission rules.

3. Specifically, the NPRM proposes to eliminate: (i) the requirement that licensees or permittees of low power TV, TV translator, and TV booster stations maintain a copy of Volume I and Volume III of the Commission's rules;⁵ (ii) the requirement that licensees or permittees of FM translator and FM booster stations maintain a copy of Volumes I (parts 0, 1, 2 and 17) and III (parts 73 and 74) of the Commission's rules;⁶ (iii) the requirement that certain cable operators maintain a copy of part 76 of the Commission's rules and, if subject to the Emergency Alert System (EAS) rules contained in part 11 of such rules, an EAS Operating Handbook;⁷ and (iv) the requirements that cable television relay station (CARS) licensees maintain a copy of part 76 of the Commission's rules and, in cases where aeronautical obstruction markings of antennas are required, part 17 of such rules.⁸ These proposals are intended to reduce outdated regulations and unnecessary regulatory burdens that can impede competition and innovation in media markets.

B. Legal Basis

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

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

² 5 U.S.C. § 603(a).

³ *Id.*

⁴ *Commission Launches Modernization of Media Regulation Initiative*, MB Docket No. 17-105, Public Notice, FCC 17-58 (MB May 18, 2017) (initiating a review of rules applicable to media entities to eliminate or modify regulations that are outdated, unnecessary or unduly burdensome).

⁵ 47 CFR § 74.769.

⁶ *Id.* § 74.1269.

⁷ *Id.* § 76.1714(a).

⁸ *Id.* §§ 76.1714(c), 78.67. The NPRM also proposes to make conforming changes to Sections 74.789, 74.787(a)(5)(viii) and 76.1700(d) if the Commission eliminates the specified requirements in Sections 74.769 and 76.1714.

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

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁹ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹⁰ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹¹ 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.¹² The rules proposed herein will directly affect certain small television and radio broadcast stations, and cable entities. Below is a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

6. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.”¹³ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.¹⁴ These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts.¹⁵ The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of \$25,000,000 or less, 25 had annual receipts between \$25,000,000 and \$49,999,999, and 70 had annual receipts of \$50,000,000 or more.¹⁶ Based on this data, we estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

7. In addition, the Commission has estimated the number of licensed commercial television stations to be 1,384.¹⁷ Of this total, 1,264 stations had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on

⁹ 5 U.S.C. § 603(b)(3).

¹⁰ 5 U.S.C. § 601(6).

¹¹ 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).

¹² 15 U.S.C. § 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission’s statistical account of television stations may be over-inclusive.

¹³ U.S. Census Bureau, 2012 North American Industry Classification System (NAICS) Definitions, “515120 Television Broadcasting,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

¹⁴ *Id.*

¹⁵ 13 CFR § 121.201; 2012 NAICS Code 515120.

¹⁶ U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515120 Television Broadcasting), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

¹⁷ FCC News Release, *Broadcast Station Totals as of December 31, 2016* (rel. Jan. 5, 2017), <https://www.fcc.gov/document/broadcast-station-totals-december-31-2016>.

February 24, 2017. Such entities, therefore, qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 394.¹⁸ The Commission, however, does not compile and does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

8. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations¹⁹ must be included. Our estimate, therefore likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the proposed rules would apply does not exclude any television station from the definition of a small business on this basis and therefore could be over-inclusive.

9. There are also 1,968 LPTV stations, 417 Class A stations, and 3,776 TV translator stations.²⁰ 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.

10. *Radio Stations.* This economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public.”²¹ The SBA has created the following small business size standard for this category: those having \$38.5 million or less in annual receipts.²² Census data for 2012 shows that 2,849 firms in this category operated in that year.²³ Of this number, 2,806 firms had annual receipts of less than \$25,000,000, and 43 firms had annual receipts of \$25,000,000 or more.²⁴ Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded \$38.5 million in that year, we conclude that the majority of television broadcast stations were small under the applicable SBA size standard.

11. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial AM radio stations to be 4,486 stations²⁵ and the number of commercial FM radio stations to

¹⁸ *Id.*

¹⁹ “[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).

²⁰ See FCC News Release, *Broadcast Station Totals as of June 30, 2017* (rel. July 11, 2017).

²¹ 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.”

²² 13 CFR § 121.201; NAICS code 515112.

²³ 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.

²⁴ *Id.*

²⁵ This number is derived from subtracting the total number of noncommercial educational stations (204) from the total number of licensed AM stations (4690). See <https://transition.fcc.gov/fcc-bin/amq?freq=530&fre2=1700&type=2&edu=1&list=1&ThisTab=Results+to+This+Page%2FTab&size=9>; <https://transition.fcc.gov/fcc-bin/amq?freq=530&fre2=1700&type=2&edu=0&list=1&country=US&ThisTab=Results+to+This+Page%2FTab&size=9> (visited on Aug. 30, 2017).

be 6,755, for a total number of 11,241.²⁶ Of this total, 9,898 stations had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) in October 2014. In addition, the Commission has estimated the number of noncommercial educational FM radio stations to be 4,111.²⁷ NCE stations are non-profit, and therefore considered to be small entities.²⁸ Therefore, we estimate that the majority of radio broadcast stations are small entities.

12. *Low Power FM Stations.* The same SBA definition that applies to radio stations would apply to low power FM stations. As noted above, the SBA has created the following small business size standard for this category: those having \$38.5 million or less in annual receipts.²⁹ The Commission has estimated the number of licensed low power FM stations to be 1,966.³⁰ In addition, as of June 30, 2017, there were a total of 7,453 FM translator and FM booster stations.³¹ Given the nature of these services, we will presume that these licensees qualify as small entities under the SBA definition.

13. We note again, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations³² must be included. Because we do not include or aggregate revenues from affiliated companies in determining whether an entity meets the applicable revenue threshold, our estimate of the number of small radio broadcast stations affected is likely overstated. In addition, as noted above, one element of the definition of “small business” is that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio broadcast station is dominant in its field of operation. Accordingly, our estimate of small radio stations potentially affected by the proposed rules includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

14. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide.³³ In addition, under the Commission's rate regulation rules, a “small system” is a cable system serving 15,000 or fewer subscribers.³⁴ Industry data indicate that there are currently 4,300 active cable systems in the United States.³⁵ Of this total, 3,550 cable systems have fewer than 15,000 subscribers, and 750 systems have 15,000 or more subscribers.³⁶ Thus, we estimate that most cable systems are small entities.

15. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the

²⁶ *Broadcast Station Totals as of June 30, 2017*, Press Release (MB rel. July 11, 2017) (*Broadcast Station Totals*) at https://apps.fcc.gov/edocs_public/attachmatch/DOC-328096A1.pdf.

²⁷ *Broadcast Station Totals*, *supra*.

²⁸ 5 U.S.C. §§ 601(4), (6).

²⁹ 13 CFR § 121.201, NAICS Code 515112.

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

³¹ *News Release*, “Broadcast Station Totals as of June 30, 2017” (rel. July. 11, 2017).

³² “[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).

³³ 47 CFR § 76.901(e).

³⁴ 47 CFR § 76.901(c).

³⁵ August 24, 2017 Report from the Media Bureau based on data contained in the Commission’s Cable Operations and Licensing System (COALS). See www.fcc.gov/coals.

³⁶ *Id.*

United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250 million.”³⁷ There are approximately 52,107,104 cable video subscribers in the United States today.³⁸ Accordingly, an operator serving fewer than 521,071 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.³⁹ Based on available data, we find that all but six incumbent cable operators are small entities under this size standard.⁴⁰ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.⁴¹ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

16. We also note that there currently are 182 cable antenna relay service (CARS) licensees.⁴² The Commission, however, neither requests nor collects information on whether CARS licensees are affiliated with entities whose gross annual revenues exceed \$250 million. Although some CARS licensees may be affiliated with entities whose gross annual revenues exceed \$250 million, we are unable at this time to estimate with greater precision the number of CARS licensees that would qualify as small cable operators under the definition in the Communications Act.

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

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

18. *Reporting Requirements.* The NPRM does not propose to adopt reporting requirements.

19. *Recordkeeping Requirements.* The NPRM does not propose to adopt recordkeeping requirements.

20. *Other Compliance Requirements.* The NPRM does not propose to adopt other compliance requirements.

21. Because no commenter provided information specifically quantifying the costs and administrative burdens of complying with the existing recordkeeping requirements, we cannot precisely estimate the impact on small entities of eliminating them. The proposed rule revisions, if adopted, will afford all affected Commission regulatees, including small entities, greater flexibility in the manner by which they access and stay familiar with Commission rules governing their services. No party in the proceeding has opposed the proposals set forth in the NPRM. We thus find it reasonable to conclude that the benefits of eliminating the rules at issue will outweigh any costs.

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

³⁷ 47 U.S.C. § 543(m)(2); see 47 CFR § 76.901(f) & nn.1-3.

³⁸ See SNL Kagan, *Multichannel Industry Benchmarks*, <https://www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx> (last visited Oct. 25, 2016).

³⁹ See 47 § CFR 901(f), nn.1-3.

⁴⁰ See SNL Kagan, *Top Cable MSOs*, <https://www.snl.com/Interactivex/TopCableMSOs.aspx> (last visited Oct. 25, 2016).

⁴¹ The Commission receives such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator. See 47 CFR § 76.901(f).

⁴² August 24, 2017 report from Media Bureau staff based on data contained in the Commission’s Cable Operations and Licensing System (COALS). See www.fcc.gov/coals.

Significant Alternatives Considered

22. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁴³

23. The NPRM proposes to eliminate the obligation, imposed on certain broadcasters and cable regulatees, to maintain paper copies of Commission rules. Eliminating these requirements is intended to modernize the Commission's regulations and reduce costs and recordkeeping burdens for affected entities, include small entities. Whereas under the current rules, affected entities must expend time and resources maintaining and updating hard copies of Commission rules, such entities will be able to maintain their familiarity with Commission rules by accessing those rules online. As noted, the proposed rule revisions are unopposed. Thus, we anticipate that affected small entities only stand to benefit from such revisions, if adopted.

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

24. None.

⁴³ 5 U.S.C. § 603(c)(1)-(c)(4).

**STATEMENT OF
CHAIRMAN AJIT PAI**

Re: *Amendment of Parts 74, 76 and 78 of the Commission's Rules Regarding Maintenance of Copies of FCC Rules*, MB Docket No. 17-231; *Modernization of Media Regulation Initiative*, MB Docket No. 17-105.

Today's *Notice* is the first outgrowth of the *Modernization of Media Regulation Initiative* the FCC launched in May. It will be far from the last. The strong public input we received highlighted numerous media regulations that are outdated or unnecessary. So going forward, the Commission will issue at least one *Notice* each month proposing to modify or eliminate these rules.

We start here with rules that many were surprised to learn are still on the books—literally.

Today, many of us have swapped traditional paperback books for Kindles, mixtapes for streaming services, and thick Sunday morning newspapers for their online equivalents. In doing so, we realize daily the benefits and efficiencies new technologies can provide.

The FCC should enable those it regulates to do the same by keeping its rules up to date to reflect the times. This *Notice* proposes to do just that. We seek to eliminate rules implemented more than 40 years ago that require certain broadcast and cable entities to maintain hard copies of portions of the FCC's regulations. These rules were initially put in place to ensure that these entities could easily access and stay familiar with those regulations. But now that all of this is readily available online, many see these requirements as outdated and unnecessary. We're inclined to agree.

Under our proposal, licensees would still have to remain familiar with the rules. They'd simply be given the option of doing so online, and wouldn't be mandated to maintain paper copies that hardly anybody uses anymore. Every dollar that broadcast and cable entities don't have to spend keeping paper copies of something that's an Internet search away can be spent on providing better service to the public.

Thank you to Michelle Carey, Martha Heller, Mary Beth Murphy, and Raelynn Remy of the Media Bureau for your work on this *Notice*, and thank you in advance for your work on the many *Notices* to come as we go about modernizing our media regulations.

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *Amendment of Parts 74, 76 and 78 of the Commission's Rules Regarding Maintenance of Copies of FCC Rules*, MB Docket No. 17-231; *Modernization of Media Regulation Initiative*, MB Docket No. 17-105.

Earlier this year, when the Commission's majority launched what they call a "Modernization of Media Regulation Initiative," I dissented but indicated that I had no objection to undertaking a review of the Commission's rules, as long as it does not come at the expense of the American consumer. If a rule or a regulation has outlived its usefulness or is now unnecessary, I will be among the first in line endorsing its elimination, that is if the public interest standard is not compromised.

Today's NPRM, which proposes to remove the requirement that certain broadcasters and cable operators maintain paper copies of Commission rules, is such an example. While I remain admittedly skeptical that the overarching modernization initiative will leave consumers better off, I am in support of this amendment.

Thanks to the Media Bureau staff for your thorough review of the record and for preparing a proposal that could garner the support of all Commissioners.

**STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *Amendment of Parts 74, 76 and 78 of the Commission's Rules Regarding Maintenance of Copies of FCC Rules*, MB Docket No. 17-231; *Modernization of Media Regulation Initiative*, MB Docket No. 17-105

Earlier this month, when I cast my first vote as a Commissioner, I noted that the telecom section of the Code of Federal Regulations now spans five volumes and more than 4,000 pages. In too many cases, the rules codified in that set have long outlived their usefulness. In fact, as today's Notice shows, we actually have rules on the books whose only purpose is to make sure that our licensees keep those books on their shelves. These requirements were adopted in the 1970s, a decade that gave us advances like the floppy disk, the VCR, and the Walkman, and an era long before virtually everything—including FCC regulations—became available online. As times change, our rules should change with them. So I am glad that the Notice proposes to eliminate these obsolete regulations. And more importantly, I support the larger effort that we are undertaking to modernize our media regulations and remove or streamline those rules that hinder competition, innovation, and entrepreneurship. I look forward to working with my colleagues in that broader effort.