

**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 |

REPORT AND ORDER

Adopted: February 20, 2018

Released: February 20, 2018

By the Commission:

I. INTRODUCTION AND BACKGROUND

1. In this Report and Order (Order), we eliminate rules that require certain broadcast and cable entities to maintain paper copies of the Commission’s regulations. As part of our initiative to modernize our media regulations,¹ we issued a Notice of Proposed Rulemaking (NPRM) proposing to eliminate requirements that regulatees maintain copies of certain portions of the Code of Federal Regulations (CFR).² We received unanimous support for this proposal.³ As set forth below, we conclude that eliminating these requirements, which apply to low power TV, TV and FM translators, TV and FM booster stations, cable television relay station (CARS) licensees, and certain cable operators, will advance the Commission’s goal of reducing outdated regulations and unnecessary regulatory burdens that can impede competition and innovation in media markets.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

2. We adopt the proposal to eliminate the requirement, set forth in Section 74.769 of our rules, that licensees or permittees of low power TV, TV translators, and TV booster stations maintain “a current copy of Volume I and Volume III of the Commission’s rules.”⁴ We also adopt the proposal to eliminate the requirement in Section 74.1269 of our rules that licensees and 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

¹ See *Commission Launches Modernization of Media Regulation Initiative*, MB Docket No. 17-105, Public Notice, 32 FCC Rcd 4406 (MB 2017) (initiating a review of rules applicable to media entities to eliminate or modify regulations that are outdated, unnecessary or unduly burdensome).

² *Amendment of Parts 74, 76 and 78 of the Commission’s Rules Regarding Maintenance of Copies of FCC Rules*, Notice of Proposed Rulemaking, FCC 17-121 (Sept. 26, 2017).

³ See American Cable Association (ACA) Comments, filed Nov. 12, 2017, at 1-7; America’s Public Television Stations, Corporation for Public Broadcasting, and Public Broadcasting Service (APTS) Comments, filed jointly Nov. 13, 2017, at 1-3; National Association of Broadcasters (NAB) Comments, filed Nov. 13, 2017, at 1-3; NCTA – The Internet & Television Association (NCTA) Comments, filed Nov. 13, 2017, at 1-2. No reply comments were filed in this proceeding.

⁴ 47 CFR § 74.769; NPRM at 1-2, para. 3. We note that Section 74.769 is referenced in other Commission rules and made applicable to the services to which those rules apply. See 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). Accordingly, in light of our revisions to Section 74.769, we make conforming revisions to Sections 74.789 and 74.787(a)(5)(viii) of our rules.

74) of the Commission's rules.⁷⁵ As we noted in the NPRM, the Commission adopted these requirements more than 40 years ago as part of its regulation of then recently established broadcast translator services.⁶ We agree with NAB that, "given licensees' ability today to immediately access FCC rules via the Internet, requiring broadcasters to retain hard copies of the rules is no longer necessary."⁷ Indeed, the electronic version of the CFR available on the Internet is often more current than the printed version, which is published only once a year. Removing this requirement also would help small broadcasters in particular by enabling them to cut unnecessary costs.⁸

3. Additionally, as proposed in the NPRM, we eliminate the requirement in Section 76.1714(a) that cable operators serving 1,000 or more subscribers 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, an EAS Operating Handbook.⁹ As noted in the NPRM, we recognize the public safety benefits of keeping the EAS Handbook in close proximity, but we see no need to duplicate the requirement in Section 11.15 – which this order does not impact – 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."¹⁰ We agree with NCTA that this "requirement wastes resources and is unjustified today given that the materials are readily available for free to anyone with access to the Internet."¹¹ Moreover, because the most up-to-date version of the Commission's rules is accessible via the Internet, a requirement to keep a hard copy of Part 76 of the Commission's rules has outlived its usefulness.¹²

4. We also 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, a current copy of Part 17.¹³ The Commission adopted these rules several decades ago as part of a comprehensive regulatory framework to govern then-nascent cable television service.¹⁴ We agree with ACA and other commenters that, because

⁵ 47 CFR § 74.1269; NPRM at 1-2, para. 3.

⁶ *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).

⁷ NAB Comments at 2. *See also* NCTA Comments at 1-2; ACA Comments at 2-4; APTS Comments at 1-3.

⁸ NAB Comments at 2; *see also* APTS Comments at 3 (stating that eliminating the requirement would "result[] in significant efficiency for stations, including public stations that may operate under significant budgetary restraints").

⁹ 47 CFR § 76.1714(a). Section 76.1714 is referenced in Section 76.1700(d) of the Commission's rules. *See* 47 CFR § 76.1700(d) (providing that cable operators that have fewer than 1000 subscribers are exempt from the requirements of Section 76.1714). Accordingly, we revise Section 76.1700(d) of the Commission's rules to conform with our revisions to Section 76.1714.

¹⁰ 47 CFR § 11.15; *see* ACA Comments at 6 ("Because the Part 76 rule is needlessly duplicative of the Part 11 rule, its removal is in the public interest").

¹¹ NCTA Comments at 2.

¹² *See* ACA Comments at 5-6; NCTA Comments at 1-2.

¹³ 47 CFR §§ 76.1714(c), 78.67.

¹⁴ *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 id.* at 257, Appendix A (adopting Section 78.67 of the Commission's rules).

the Commission's rules are now easily accessible via the Internet, requirements to keep hard copies of those rules have outlived their purpose.¹⁵

5. For these reasons, we find that these pre-Internet era rules requiring certain broadcast and cable entities to keep hard copies of Commission rules are outdated and impose an unnecessary burden on regulatees.¹⁶ As such, we find that removing them is in the public interest. At the same time, we note that our action today does not eliminate the portions of 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.¹⁷

III. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

6. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹⁸ the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Order. The FRFA is set forth in Appendix B.

B. 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. Congressional Review Act

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

D. Additional Information

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

IV. ORDERING CLAUSES

10. 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 Report and Order **IS HEREBY ADOPTED**.

11. **IT IS FURTHER 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), the

¹⁵ ACA Comments at 4. *See also* APTS Comments at 2; NCTA Comments at 1-2; NAB Comments at 2.

¹⁶ We note that regulatees may presently access current versions of the Commission's rules from a variety of free online sources, including the Government Publishing Office (GPO) Electronic Code of Federal Regulations (e-CFR), <https://www.ecfr.gov>. The annual edition of the CFR is also available on the GPO website, <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>, or by requesting a hard copy from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at nominal cost.

¹⁷ *See* Appendix A.

¹⁸ *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).

Commission's rules **ARE AMENDED** as set forth in Appendix A, effective as of the date of publication of a summary in the Federal Register.¹⁹

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

13. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

14. **IT IS FURTHER ORDERED** that, should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 17-231 shall be **TERMINATED** and its docket closed.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁹ These rules serve to "reliev[e] a restriction." 5 U.S.C. § 553(d)(1).

APPENDIX A

Final Rules

The Federal Communications Commission amends 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 Familiarity with FCC Rules.

Each licensee or permittee of a station authorized under this subpart shall be familiar with those rules relating to stations authorized under this subpart. Copies of the Commission's rules may be obtained from the Superintendent of Documents, Government Publishing Office, Washington, DC 20401, or accessed online at <https://www.ecfr.gov> or <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.

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 Familiarity with 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 Familiarity with FCC Rules.

* * * * *

5. Amend § 74.1269 to read as follows:

§ 74.1269 Familiarity with FCC Rules.

Each licensee or permittee of a station authorized under this subpart shall be familiar with those rules relating to stations authorized under this subpart. Copies of the Commission's Rules may be obtained from the Superintendent of Documents, Government Publishing Office, Washington, DC 20401, or accessed online at <https://www.ecfr.gov> or <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.

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, 338, 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 (Familiarity with FCC Rules); and § 76.1715 (sponsorship identification).

* * * * *

3. Amend § 76.1714 to read as follows:

§ 76.1714 Familiarity with FCC Rules.

(a) The operator of a cable television system 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 rules. Copies of the Commission's rules may be obtained from the Superintendent of Documents, Government Publishing Office, Washington, DC 20401, at nominal cost, or accessed online at <https://www.ecfr.gov> or <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>. Copies of the EAS Operating Handbook may be accessed online at <https://www.fcc.gov/general/eas-test-reporting-system>.

* * * * *

(c) 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 Publishing Office, Washington, DC 20401, at nominal cost, or accessed online at <https://www.ecfr.gov> or <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.

PART 78 — CABLE TELEVISION RELAY SERVICE

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

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

2. Amend § 78.67 to read as follows:

§ 78.67 Familiarity with FCC Rules.

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 Publishing Office, Washington, DC 20401, at nominal cost, or accessed online at <https://www.ecfr.gov> or <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM) in MB Docket 17-231.² The Commission sought written public comments on proposals in the NPRM, including comment on the IRFA. The Commission received no comments on the IRFA, although some commenters discussed the effect of the proposals on smaller entities, as discussed below. The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

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

2. The Report and Order (Order) stems from a Public Notice issued by the Commission in May 2017, launching an initiative to modernize the Commission's media regulations.³ The parties that filed comments in the proceeding unanimously agree that the recordkeeping requirements at issue are outdated and unnecessary and should be eliminated. The Order adopts the NPRM's proposal 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 Order eliminates: (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;⁴ (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;⁵ (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;⁶ 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.⁷ The Order finds that eliminating these recordkeeping requirements will remove an outdated and unnecessary regulatory burden that may impede competition and innovation in media markets.

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

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

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 *Amendment of Parts 74, 76 and 78 of the Commission's Rules Regarding Maintenance of Copies of FCC Rules, Notice of Proposed Rulemaking*, FCC 17-121, Appendix B (Sept. 26, 2017).

³ *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).

⁴ 47 CFR § 74.769.

⁵ *Id.* § 74.1269.

⁶ *Id.* § 76.1714(a).

⁷ *Id.* §§ 76.1714(c), 78.67. As proposed in the NPRM, the Order also makes conforming changes to Sections 74.789, 74.787(a)(5)(viii) and 76.1700(d) of the Commission's rules as a result of the revisions to Sections 74.769 and 76.1714.

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

5. 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.⁸ The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

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

6. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted in the Order.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 Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

7. *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

⁸ 5 U.S.C. § 604(a)(3).

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),

Based on this data, we estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

8. 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 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.

9. 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.

10. 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.

11. *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

(Continued from previous page) _____

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>.

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.*

the majority of television broadcast stations were small under the applicable SBA size standard.

12. 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 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.

13. *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.

14. 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.

15. *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

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).

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).

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.

16. *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 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.

17. 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.

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

18. The *Report and Order* eliminates rules that require certain broadcast and cable entities to maintain paper copies of sections of the Commission’s regulations. Accordingly, the *Report and Order* does not impose any new reporting, recordkeeping, or other compliance requirements.

19. 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 rule revisions adopted in the Order will

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.*

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.

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. Additionally, as NAB notes, removing this obligation will also help small entities in particular to cut unnecessary costs related to maintaining updated paper copies of Commission rules.⁴³ 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 outweigh any costs.

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

20. The RFA requires an agency to describe any significant, 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.⁴⁴

21. The *Report and Order* eliminates 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. Under the revised rules, affected entities no longer will need to expend time and resources maintaining and updating hard copies of Commission rules, but rather, will be able to stay familiar with Commission rules by accessing those rules online. As noted, no party has opposed the rule revisions we adopt in the Order. Thus, we anticipate that affected small entities will benefit from such revisions.

G. Report to Congress

22. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.⁴⁵ In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register.

⁴³ NAB Comments at 2.

⁴⁴ 5 U.S.C. § 603(c)(1)-(c)(4).

⁴⁵ See 5 U.S.C. § 801(a)(1)(A).