

List of Subjects*47 CFR Part 0*

Commission Organization.

47 CFR Part 1

Practice and Procedure.

Federal Communications Commission.

Andrew S. Fishel,
Managing Director.

Rule Changes

Parts 0 and 1 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

§ 0.11 Functions of the office.

2. In § 0.11, remove and reserve paragraph (a)(9).

§ 0.231 Authority delegated.

3. In § 0.231, remove and reserve paragraphs (c) and (f).

§ 0.251 Authority delegated.

4. In § 0.251, add new paragraph (i) to read as follows:

* * * * *

(i) The General Counsel is delegated authority to make determinations regarding and waive the applicability of section 4(b) of the Communications Act (47 U.S.C. § 154(b)) and the Federal conflict of interest statutes (18 U.S.C. §§ 203, 205 and 208).

PART 1—PRACTICE AND PROCEDURE

5. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 207, 303 and 309(j) unless otherwise noted.

§ 1.25 [Removed and Reserved]

6. Section 1.25 is removed and reserved.

§ 1.28 [Removed and Reserved]

7. Section 1.28 is removed and reserved.

§ 1.29 [Removed and Reserved]

8. Section 1.29 is removed and reserved.

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FEDERAL COMMUNICATIONS COMMISSION**47 CFR Parts 1, 73, and 74**

[MM Docket No. 96-58, FCC 97-290]

Certain Minor Changes in Broadcast Facilities Without a Construction Permit

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The *Report and Order* (R&O) in MM Docket No. 96-58 adopts proposals made by the Commission in the *Notice of Proposed Rulemaking* (61 FR 15439, April 8, 1996) in this proceeding to streamline the Commission's rules and processes applicable to broadcast stations. These rule and process changes eliminate the construction permit requirement for certain minor changes to broadcast facilities, replacing the present two-step construction permit/license application process with a one-step modification-of-license application, filed after the broadcaster has implemented the permitted changes. The types of modifications permitted under the new process were chosen so that interference to other facilities would not be created by the changes. Additional rules sections were revised to make clarifications and to conform the rules to present policy.

EFFECTIVE DATE: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Dale Bickel, Mass Media Bureau, Audio Services Division, (202) 418-2720, or via the Internet at dbickel@fcc.gov. For additional information concerning the information collections contained in the R&O, contact Judy Boley at (202) 418-0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is the synopsis of the Commission's *Report and Order* in MM Docket No. 96-58, adopted August 14, 1997, and released August 22, 1997. The complete text of this *Report and Order*, is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, DC, and may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., at (202) 857-3800, 1231 20th Street, N.W., Washington, DC 20036. The complete text is also available as a Word Perfect 5.1 file through the Internet at http://www.fcc.gov/Bureaus/Mass__Media/Orders/1997/fcc97290.wp.

Synopsis of the Report and Order

1. The rule and procedure changes adopted in the *Report and Order* in MM Docket 96-58 were enabled by Congress' change, at the Commission's request, of Section 403(m) in the Communications Act in its Telecommunications Act of 1996. Subsequently, in the *Notice of Proposed Rulemaking*, the Commission proposed to eliminate the requirement for a construction permit in certain instances of modifications to broadcast facilities, replacing the two-step construction permit/application process with a single step modification of license application, which would be filed by the permittee or licensee of the station once the permitted modifications had been made.

2. The circumstances in which "one step" modifications may be made through the filing of a license application are as follows, briefly:

(1) Most commercial FM stations which comply with § 73.207 spacing rules with respect to all other stations, and which are not operating with the maximum permitted facilities, may increase effective radiated power (ERP) to the maximum permitted for the station class.

(2) Commercial FM stations and most TV stations presently operating with zero or reduced vertically polarized power, may increase the vertically polarized ERP up to the authorized horizontal ERP without a construction permit.

(3) Noncommercial educational FM stations presently operating with zero or reduced vertically polarized ERP may also increase the vertical ERP up to the authorized horizontal ERP, provided that the FM station is not located within a specified radius of a TV Channel 6 station.

(4) Decreases in ERP will be permitted for FM stations, provided that the required coverage to the community of license is maintained.

(5) The § 73.215 contour protection designation for an FM commercial station may be deleted where a short-spaced station has moved away, allowing the contour protection station to become licensed per § 73.207.

(6) If an FM or TV antenna is replaced, or for installation of a new antenna, the applicant may mount the antenna up to 2 meters above or 4 meters below the value specified on its license or construction permit.

(7) FM and TV directional antennas may be replaced under certain circumstances.

(8) Former licensed main auxiliary applications for FM and TV stations may be relicensed as auxiliary (backup)

facilities without a construction permit, even at changed power or where the auxiliary facility must change frequency to match that of the main station. AM stations may reduce power for an auxiliary facility which was previously licensed on the same frequency as the primary station.

(9) Commercial stations may file a modification-of-license application to become licensed as noncommercial educational. Conversely, some noncommercial educational stations in the commercial FM band or television bands may become licensed as commercial via the same means.

3. The Commission also changed several other rules sections, discussed briefly as follows:

(1) FM directional stations may commence program test operations at half power while awaiting staff review of the license application. This eliminates a 10 day wait between final installation of the antenna and the start of operations.

(2) Requests for waiver of the main studio rule (47 CFR 73.1125) may be submitted by letter, eliminating the requirement for a Form 301 or Form 340 construction permit application.

(3) A new rule 47 CFR 73.316(c)(9) is added to codify the policy which requires that the measured FM directional pattern be at least 85% of the authorized composite FM directional pattern for contour protection stations authorized under §§ 73.215 or 73.509.

(4) A new rule 47 CFR 73.1692 is added which will codify the current conditions imposed on construction permits for AM, FM, and TV stations which are authorized to construct on or near AM stations.

(5) A new rule 47 CFR 73.525(e)(1)(vii) is added to address the matter of FM noncommercial educational stations which propose to locate very near (within the 90 dBu contour) of a TV Channel 6 station.

4. The rules set forth in the *Report and Order* are intended to reduce the amount of processing time, cost, and burden on both applicants and the Commission. By eliminating the construction permit requirement for the circumstances described in the previous paragraph, an applicant can save the 4 months' minor change construction permit application time, as well as several hundred dollars in processing fees in addition to the costs inherent in preparing the application.

Final Paperwork Reduction Act of 1995 Analysis

5. This *Report and Order* contains new or modified information collections subject to the Paperwork Reduction Act

of 1995 ("PRA"). It has been submitted to the Office of Management and Budget ("OMB") for review under the PRA.

6. This *Report and Order* eliminates the requirement for a minor change application in several instances of minor changes to broadcast facilities for which approval was almost automatic under the existing process, and in which the elimination of the construction permit would be unlikely to have an adverse impact on existing broadcast stations. These changes will cause revisions in the following collections:

OMB Approval Number: 3060-0506.

Title: Application for FM Broadcast Station License.

Form No.: FCC 302-FM.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit, not-for-profit institutions.

Number of Respondents: 757.

Estimated time per response: 4 hours—33 hours (This time varies depending on the type of application filed. This collection is contracted out to communications attorneys and consulting engineers for completion of the form.)

Total annual burden: 2,082.

Needs and Uses:

7. Licensees and permittees of FM broadcast stations are required to file FCC Form 302-FM to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities of these stations.

8. On August 14, 1997 the Commission adopted a *Report and Order* in MM Docket No. 96-58 which adopted the changes as proposed in the *NPRM* and as approved by OMB on July 2, 1996. Additionally, the Commission adopted revisions to the FCC Form 302-FM. The revisions for FCC 302-FM are contained in Appendix C of the *Report and Order*. Until such times as the forms are revised to incorporate this information, applicants using the one-step licensing process must file this supplement with the FCC 302-FM.

9. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit, and to update FCC station files. Data is then extracted from FCC 302-FM for inclusion in the subsequent license to operate the station. Applications using the new one-step process will be reviewed to ensure that the minor changes made by the station will not have any significant impact on other stations and the public.

OMB Approval Number: 3060-0029.

Title: Application for TV Broadcast Station License.

Form No.: FCC 302-TV.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit, not-for-profit institutions.

Number of Respondents: 83.

Estimated time per response: 21 hours—29 hours (This time varies depending of the type of application filed. This collection is contracted out to communications attorneys and consulting engineers for completion of the form.)

Total annual burden: 210.

Needs and Uses:

10. Licensees and permittees of FM broadcast stations are required to file FCC Form 302-TV to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities of these stations.

11. On August 14, 1997 the Commission adopted a *Report and Order* in MM Docket No. 96-58 which adopted the changes as proposed in the *NPRM* and as approved by OMB on July 2, 1996. Additionally, the Commission adopted revisions to the FCC Form 302-TV. The revisions for FCC 302-TV are contained in Appendix D of the *Report and Order*. Until such times as the forms are revised to incorporate this information, applicants using the one-step licensing process must file this supplement with the FCC 302-TV.

12. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit, and to update FCC station files. Data is then extracted from FCC 302-TV for inclusion in the subsequent license to operate the station. Applications using the new one-step process will be reviewed to ensure that the minor changes made by the station will not have any significant impact on other stations and the public.

OMB Approval Number: 3060-0171.

Title: Section 73.1125—Station main studio location.

Form No.: None.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit, not-for-profit institutions.

Number of Respondents: 155.

Estimated time per response: 0.5 hours—5 hours (This time varies depending of the type of application filed. The waiver request is contracted out to communications attorneys and consulting engineers for completion of the form.)

Total annual burden: 108.

Needs and Uses:

13. Section 73.1125(a) requires AM, FM or TV licensees to locate their main studio at any point within the station's

principal community contours. If the station relocates its main studio from one point to another within the principal community contour or from a point outside the principal community contour to one within it, the licensee is required to notify the FCC pursuant to § 73.1125(b)(1).

14. On August 14, 1997 the Commission adopted a *Report and Order* in MM Docket No. 96-58 which adopted the changes as proposed in the *NPRM* and as approved by OMB on July 2, 1996. The revision to § 73.1125(b)(2) will eliminate the delay and expense of completing the construction permit application and will enable licensees/permittees to make this change with minimal delay.

15. The notification required by § 73.1125(b)(1) is used by FCC staff to assure that the station main studio is located within the principal community contour and many times serves to notify us of a change in the mailing address. The data received as justification for waiver of § 73.1125(b)(2) will enable FCC staff to determine whether the circumstances are sufficient to warrant waiver of the Commission's main

Final Regulatory Flexibility Analysis

16. As required by the *Regulatory Flexibility Act*, 5 U.S.C. Section 603 ("RFA"),¹ an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in *Amendment of Parts 73 and 74 of the Commission's Rules to Permit Certain Minor Changes Without A Construction Permit*.² The Commission sought written public comments on the proposals in the *NPRM*, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this *Report and Order* conforms to the RFA as amended.³

A. Need For and Objectives of the Proposed Rules:

17. The Commission's Rules currently require a construction permit for virtually all minor changes to AM, FM, and TV broadcast stations. This procedure was required by Section 319(d) of the Communications Act. In 1996, at the request of the Commission, Congress modified Section 319(d) in the *Telecommunications Act of 1996*, Pub.

L. 104-104, 110 Stat. 56 (1996), to eliminate the prohibition against waiving the permit requirement for applicants wanting to make minor changes to broadcast station facilities.⁴ The Commission therefore proposed revisions to its broadcast regulations to replace, in certain instances, the two step construction permit-license process with a single step licensing procedure.

18. By making these changes, the present four month period presently required to process and grant a construction permit will be eliminated for those applicants choosing to use these new procedures. In addition, the present minor change application filing fee (presently \$690.00) will not be required from applicants for one-step license applications, thereby easing the financial burden for simple changes. The changes will also expedite new and improved service to the public, with minimal impact on existing stations. The specified changes may be made without prior authorization from the Commission; however, it is the licensee's or permittee's responsibility to determine whether the particular installation complies with the Commission's rules and regulations. The circumstances in which the Commission will permit the filing of one-step licensing applications are listed in 47 CFR 73.1690(c).

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

19. No comments were received specifically in response to the IRFA contained in the *Notice of Proposed Rulemaking*. However, commenters did address the effects of the proposed rule changes on FM and TV licensees, including small businesses. Generally, commenters favored the rule changes proposed, with minor changes, some of which have been incorporated into the rules specified in the Appendix. See Comments at paragraphs 8, 14, 17, 23, 26, 28-29, 34, 38, 43-46, 48, 52, 55-58, 66, 68, 73, 75, 77, 80, 83 and 85 of the *Report and Order*.

C. Description and Estimate of the Number of Small Entities To Which Rules Will Apply.

20. *Definition of a "Small Business"*. The RFA generally defines "small entity" as having the same meaning as

the terms "small organizations", "small businesses", and "small governmental jurisdictions", and the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities.⁵ 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 Small Business Administration ("SBA").⁶ According to the SBA's regulations, entities engaged in radio or television broadcasting (Standard Industrial Classification ("SIC") Code 4833 for television and 4832 for radio) may have a maximum of \$5.0 million or \$10.5 million, respectively, in annual receipts in order to qualify as a small business concern.⁷ 13 CFR 121.201. This standard also applies in determining whether an entity is a small business for purposes of the RFA.

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

21. Pursuant to 5 U.S.C. Section 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA 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**."⁸ While we believe that the

⁵ *Small Business Act*, 15 U.S.C. Section 632 (1996).

⁶ 5 U.S.C. Section 601(b) (incorporating by reference the definition of "small business concern" in 15 U.S.C. Section 632). Pursuant to 5 U.S.C. Section 601(b), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy if 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 This revenue cap appears to apply to noncommercial educational television stations, as well as to commercial television stations. See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes "Television Broadcasting Stations (SIC Code 4833) as:

⁸ While we believe that the SBA's definition of "small business" greatly overstates the number of

¹ See 47 U.S.C. Section 603.

² *Notice of Proposed Rulemaking* in MM Docket No. 96-58, 11 FCC Rcd 8800, 61 FR 15439 (April 8, 1996).

³ See 5 U.S.C. Section 604. The *Regulatory Flexibility Act*, see 5 U.S.C. Section 601 *et. seq.* has been amended by the *Contract With America Advancement Act of 1996*, Public Law 104-104, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the *Small Business Regulatory Enforcement Act of 1996* ("SBREFA").

⁴ Section 319(d) has been modified to read in relevant part as follows: "With respect to any broadcasting station, the Commission shall not have authority to waive the requirement of a permit for construction, except that the Commission may by regulation determine that a permit shall not be required for minor changes in the facilities of authorized broadcast stations." Public Law 104-104, Section 403(m), 110 Stat 56 (1996).

foregoing definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the new rules on small business, we did not propose an alternative definition in the IRFA. Accordingly, for purposes of this *Report and Order*, we utilize the SBA's definition in determining the number of small businesses to which the rules apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to radio and television broadcast stations and to consider further the issue of the number of small entities that are radio and television broadcasters in the future. Further, in this RFA, we will identify the different classes of small radio and television stations that may be impacted by the rules adopted in this *Report and Order*.

22. Commercial Radio and Television Services: The proposed rules and policies adopted in this *Report and Order* will apply to full service television broadcasting licensees, radio broadcasting licensees, potential licensees of either service and may have an effect on FM and TV translators stations as well as low power TV

radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small radio and television stations. However, for purposes of this *Report and Order*, we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to the rules adopted in this *Report and Order* and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities in the future. See *Report and Order* in MM Docket 93-48 (*Children's Television Programming*), 11 FCC Rcd 10660, 10737-38, 61 FR 43981 (August 27, 1996), citing 5 U.S.C. 601 (3). In our *Notice of Inquiry* in GN Docket No. 96-113B, *In the Matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses*, 11 FCC Rcd 6280, 61 FR 33066 (June 26, 1996), we requested commenters to provide profile data about small telecommunications businesses in particular services, including television and radio, and the market entry barriers they encounter, and we also sought comment as to how to define small businesses for purposes of implementing Section 257 of the Telecommunications Act of 1996, which requires us to identify market entry barriers and to prescribe regulations to eliminate those barriers. Additionally, in our *Order and Notice of Proposed Rulemaking* in MM Docket 96-16, *In the Matter of Streamlining Broadcast EEO Rules and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines*, 11 FCC Rcd 5154, 61 FR 9964 (March 12, 1996), we invited comment as to whether relief should be afforded to stations: (1) based on small staff and what size staff would be considered sufficient for relief, e.g., 10 or fewer full-time employees; (2) based on operation in a small market; or (3) based on operation in a market with a small minority work force.

stations ("LPTV"). The rules will also apply to full service television stations and may have an effect on TV translator facilities and low power TV stations ("LPTV"). The SBA defines a television broadcasting station that has no more than \$10.5 million in annual receipts as a small business.⁹ Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.¹⁰ Included in this industry are commercial, religious, educational, and other television stations.¹¹ Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.¹² Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.¹³ There were 1,509 television stations operating in the nation in 1992.¹⁴ That number has remained fairly constant as indicated by the approximately 1,560 operating television broadcasting stations in the nation as of June, 1997.¹⁵ For 1992¹⁶ the number of television stations that produced less than \$10.0 million in revenue was 1,155 establishments.¹⁷

⁹ 13 CFR 121.201, Standard Industrial Code (SIC) 4833 (1996).

¹⁰ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995).

¹¹ *Id.* See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes "Television Broadcasting Stations (SIC Code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

¹² Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995).

¹³ *Id.* SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services (producers of live radio and television programs).

¹⁴ FCC News Release No. 31327, January 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 78, Appendix A-9.

¹⁵ FCC News Release No. 75604, July 31, 1997.

¹⁶ Census for Communications' establishments are performed every five years ending with a "2" or "7". See Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 78, III.

¹⁷ The amount of \$10 million was used to estimate the number of small business establishments because the relevant Census

23. Additionally, the SBA defines a radio broadcasting station that has no more than \$5 million in annual receipts as a small business.¹⁸ A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.¹⁹ Included in this industry are commercial religious, educational, and other radio stations.²⁰ Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.²¹ However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.²² The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than \$5 million in revenue in 1992.²³ Official Commission records indicate that 11,334 individual radio stations were operating in 1992.²⁴ As of June, 1997 official Commission records indicate that 12,177 radio stations were operating.²⁵

24. Thus, the proposed rules will affect approximately 1,560 television stations; approximately 1,201 of those stations are considered small businesses.²⁶ Additionally, the proposed rules will affect 12,177 radio stations, approximately 11,689 of which are small businesses.²⁷ These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. We recognize that the proposed rules may also impact minority and women owned stations, some of which may be small entities. In 1995, minorities owned and

categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

¹⁸ 13 CFR 121.201, SIC 4832.

¹⁹ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 78, Appendix A-9.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

²⁴ FCC News Release No. 31327, January 13, 1993.

²⁵ FCC News Release No. 77504, July 31, 1997.

²⁶ We use the 77 percent figure of TV stations operating at less than \$10 million for 1992 and apply it to the 1997 total of 1551 TV stations to arrive at 1,194 stations categorized as small businesses.

²⁷ We use the 96% figure of radio station establishments with less than \$5 million revenue from the Census data and apply it to the 12,135 individual station count to arrive at 11,649 individual stations as small businesses.

controlled 37 (3.0%) of 1,221 commercial television stations and 293 (2.9%) of the commercial radio stations in the United States.²⁸ According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and non-commercial television stations and 394 (3.8%) of 10,244 commercial and non-commercial radio stations in the United States.²⁹ We recognize that the numbers of minority and women broadcast owners may have changed due to an increase in license transfers and assignments since the passage of the 1996 Act.

25. It should also be noted that the foregoing estimates do not distinguish between network-affiliated³⁰ stations and independent stations. As of April 1996, the BIA Publications, Inc. Master Access Television Analyzer Database indicates that about 73% of all commercial television stations were affiliated with the ABC, CBS, NBC, Fox, UPN, or WB networks. Moreover, 7% of those affiliates have secondary affiliations.³¹

26. There are currently 4991 TV translators, and 2001 LPTV stations which may be affected by the new rules, if they decide to convert to digital

²⁸ *Minority Commercial Broadcast Ownership in the United States*, U.S. Dep't of Commerce, National Telecommunications and Information Administration, The Minority Telecommunications Development Program ("MTDP") (April 1996). MTDP considers minority ownership as ownership of more than 50% of a broadcast corporation's stock, voting control in a broadcast partnership, or ownership of a broadcasting property as an individual proprietor. *Id.* The minority groups included in this report are Black, Hispanic, Asian, and Native American.

²⁹ See Comments of American Women in Radio and Television, Inc. in MM Docket No. 94-149 and MM Docket No. 91-140, at 4 n.4 (filed May 17, 1995), citing 1987 Economic Censuses, *Women-Owned Business*, WB87-1, U.S. Dep't of Commerce, Bureau of the Census, August 1990 (based on 1987 Census). After the 1987 Census report, the Census Bureau did not provide data by particular communications services (four-digit Standard Industrial Classification (SIC) Code), but rather by the general two-digit SIC Code for communications (#48). Consequently, since 1987, the U.S. Census Bureau has not updated data on ownership of broadcast facilities by women, nor does the FCC collect such data. However, we sought comment on whether the Annual Ownership Report Form 323 should be amended to include information on the gender and race of broadcast license owners. *Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities, Notice of Proposed Rulemaking*, 10 FCC Rcd 2788, 2797, 61 FR 6068 (February 1, 1995).

³⁰ In this context, "affiliation" refers to any local broadcast television station that has a contractual arrangement with a programming network to carry the network's signal. This definition of affiliated station includes both stations owned and operated by a network and stations owned by other entities.

³¹ Secondary affiliations are secondary to the primary affiliation of the station and generally afford the affiliate additional choice of programming.

television.³² The FCC does not collect financial information of any broadcast facility and the Department of Commerce does not collect financial information on these broadcast facilities. We will assume for present purposes, however, that most, if not all, LPTV stations and translator stations, could be classified as small businesses, if considered by themselves. Thus, translator stations generally can be considered affiliates, as that term is defined in the SBA regulations, with full service stations. Given this situation, these stations would likely have annual revenues that exceed the SBA maximum to be designated as small businesses.

27. In addition to owners of operating radio and television stations, any entity who seeks or desires to obtain a television or radio broadcast license may be affected by the proposals contained in this item. The number of entities that may seek to obtain a television or radio broadcast license is unknown.

28. Additionally, the proposed changes to the cable/MDS cross-ownership attribution rule will apply to cable and MDS entities. The SBA has developed a definition of small entities for cable and other pay television services under Standard Industrial Classification 4841 (SIC 4841), which covers subscription television services, which includes all such companies with annual gross revenues of \$11 million or less.³³ This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,323 such cable and other pay television services generating less than \$11 million in revenue that were in operation for at least one year at the end of 1992.³⁴ This figure is overinclusive since it includes other pay television services, not only cable and MDS.

29. *Alternative Classification of Small Stations*. An alternative way to classify small radio and television stations is the number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment

³² FCC News Release No. 72712, March 6, 1997, Broadcast Station Totals as of February 28, 1997.

³³ 13 CFR 121.201.

³⁴ 1992 Census, *supra*, at Firm Size 1-123. See *Memorandum Opinion and Order and Notice of Proposed Rule Making* in MM Docket No. 92-266 and CS Docket No. 96-157, 11 FCC Rcd 9517, 953, 61 FR 45356 (1996).

Opportunity (EEO) for broadcasting.³⁵ Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and record-keeping requirements.³⁶

30. *Cable Systems*. The Communications Act contains a definition of a small cable system operator, 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 \$250,000,000."³⁷ The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers is deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.³⁸ Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450.³⁹ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would

³⁵ The Commission's definition of a small broadcast station for purposes of applying its EEO rules was adopted prior to the requirement of approval by the SBA pursuant to Section 3(a) of the *Small Business Act*, 15 U.S.C. Section 632, as amended by Section 222 of the *Small Business Credit and Business Opportunity Enhancement Act of 1992*, Public Law 102-366, Section 222(b)(1), 106 Stat. 999 (1992), as further amended by the *Small Business Administration Reauthorization and Amendments Act of 1994*, Public Law 103-403, Section 301, 108 Stat. 4187 (1994). However, this definition was adopted after public notice and opportunity for comment. See *Report and Order* in Docket No. 18244, 23 FCC 2d 430 (1970), 35 FR 8925 (June 6, 1970).

³⁶ See, e.g., 47 CFR Section 73.3612 (Requirement to file annual employment reports on FCC Form 395 applies to licensees with five or more full-time employees); *First Report and Order* in Docket No. 21474 (*Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395*), 70 FCC 2d 1466 (1979), 50 FR 50329 (December 10, 1985). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. *Order and Notice of Proposed Rule Making in MM Docket 96-16 (Streamlining Broadcast EEO Rules and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines)*, 11 FCC Rcd 5154 (1996), 61 FR 09964 (March 12, 1996). One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees.

³⁷ 47 U.S.C. § 543(m)(2).

³⁸ 47 CFR 76.1403(b).

³⁹ Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

qualify as small cable operators under the definition in the Communications Act.

31. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide.⁴⁰ Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.⁴¹ Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the proposal adopted in this Notice. Under the Commission's rules, a small cable system is a cable system with 15,000 or fewer subscribers owned by a cable company serving 400,000 or fewer subscribers over all of its cable systems.

32. *MDS*. The Commission redefined the definition of "small entity" for the auction of MDS as an entity that together with its affiliates has average gross annual revenues that are not more than \$40 million for the preceding three calendar years.⁴² This definition of a small entity in the context of MDS auctions has been approved by the SBA.⁴³

33. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MDS is a service heavily encumbered with approximately 1,573 previously authorized and proposed MDS facilities and information available to us indicates that no MDS facility generates

revenue in excess of \$11 million annually. We conclude that for purposes of this FRFA, there are approximately 1,634 small MDS providers as defined by the SBA and the Commission's auction rules.

34. *Newspapers*. Some of the proposals delineated above may also apply to daily newspapers that hold or seek to acquire an interest in a broadcast station that would be treated as attributable under the proposals. A newspaper is an establishment that is primarily engaged in publishing newspapers, or in publishing and printing newspapers.⁴⁴ The SBA defines a newspaper that has 500 or fewer employees as a small business.⁴⁵ Based on data from the U.S. Census Bureau, there are a total of approximately 6,715 newspapers, and 6,578 of those meet the SBA's size definition.⁴⁶ However, we recognize that some of these newspapers may not be independently owned and operated and, therefore, would not be considered a "small business concern" under the Small Business Act.⁴⁷ We are unable to estimate at this time how many newspapers are affiliated with larger entities. Moreover, the proposal would apply only to daily newspapers, and we are unable to estimate how many newspapers that meet the SBA's size definition are daily newspapers. Consequently, we estimate that there are fewer than 6,578 newspapers that may be affected by the proposed rules.

D. Description of Recordkeeping and Other Projected Compliance Requirements

35. Applicants filing a one-step license application will be required to provide a reduced amount of information as compared to that currently required for a construction permit. This information may consist of a radiofrequency radiation analysis to insure public safety, directional antenna information to insure protection to other stations, etc. as set forth Appendices C and D of the *Report and Order*. The information required in Appendices C and D with a one-step license application generally is the minimum necessary for the Commission to verify compliance with its rules and regulations.

36. It must be noted that a permittee or licensee is not required to subject itself to the new one-step license

requirements if it chooses not to do so. Any permittee or licensee may, at its option, use the present two-step process of obtaining a construction permit, followed by the filing of a license application once construction is complete. However, in many instances, the new procedures will reduce the time and expense required to implement certain minor changes to broadcast stations.

37. Most permittees and licensees retain professional consulting engineers or legal counsel, or both in preparing construction permit applications. We do not expect this to change significantly by the adoption of the new rules and procedures. However, the time needed for the preparation of the simplified one-step applications will be reduced, translating into time and money savings for the broadcast applicant.

E. Steps Taken To Minimize Burden on Small Entities and Significant Alternatives Considered and Rejected

38. Pursuant to the RFA, 5 U.S.C. § 603(c), we have considered whether there is a significant economic impact on a substantial number of small entities. The action taken does not impose additional burdens on small entities. Indeed, the opposite is true. The minor change application filing fee will be eliminated for applicants which meet the criteria for eligibility for applicants which meet the criteria for eligibility in 47 CFR 73.1690 as set forth below. One-step license applications also require that lesser amounts of information be submitted to the Commission as compared to a construction permit application. The rule and policy changes will have a positive economic impact, as eligible entities, including small entities, will be able to increase their service or make certain modifications without prior Commission authorization and with fewer legal challenges. All entities will still be able to file informal objections against a one-step license application, just as they may do now against a construction permit application. This should address the concerns of those commenters who sought a special notice and comment period for each one-step license application.

F. Report to Congress

39. The Commission shall send a copy of this Final Regulatory Flexibility Analysis along with this *Report and Order* in a report to Congress pursuant to Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, codified at 5 U.S.C. Section 801(a)(1)(A). A copy of this RFA will

⁴⁰ 47 CFR 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of \$100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393, 60 FR 10534 (February 27, 1995).

⁴¹ Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

⁴² 47 CFR 21.961(b)(1).

⁴³ See *Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, MM Docket No. 94-31 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589, 60 FR 36524 (July 17, 1995).

⁴⁴ 13 CFR 121.201 (SIC 2711).

⁴⁵ *Id.*

⁴⁶ U.S. Small Business Administration 1992 Economic Census Industry and Enterprise Report, Table 3, SIC Code 2711 (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

⁴⁷ 15 U.S.C. § 632.

also be published in the **Federal Register**.

Ordering Clauses

40. Accordingly, it is ordered that pursuant to the authority contained in Sections 4(i), 303(r), and 307(c) of the Communications Act of 1934, as amended, 47 CFR Parts 1, 73, and 74 are amended as set forth below.

41. It is further ordered that the requirements and regulations established in this *Report and Order* will become effective December 1, 1997 or upon receipt by Congress of a report in compliance with the Contract with America Advancement Act of 1996, Public Law 104-121, whichever date is later.

42. For further information contact Dale Bickel of the Audio Services

Division, Mass Media Bureau at (202) 418-2720, or by e-mail at dbickel@fcc.gov.

List of Subjects

47 CFR Part 1

Practice and procedure.

47 CFR Part 73

Radio broadcasting, Television broadcasting.

47 CFR Part 74

Experimental Radio, Auxiliary, Special Broadcast and Other Program Distributional Services.

Federal Communications Commission
Shirley Suggs,
Chief, Publications Branch.

Rule Changes

Parts 1, 73, and 74 of title 47 are amended to read as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 154, 158.

2. Section 1.1104 is amended by adding entries in the table for 1. b.(1), 2. b.(1), and 3. b.(1) to read as follows:

§ 1.1104 Schedule of charges for applications and other filings in the mass media services.

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|--------------------|------------|-------------------|---|
| 1. * * * b. * * * (1) Main Studio Re-quest. | 159 & Corres. | 690 | MPT | Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251-5165. |
| 2. * * * b. * * * (1) Main Studio Re-quest. | 159 & Corres. | 690 | MPT | Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251-5190. |
| 3. * * * b. * * * (1) Main Studio Re-quest. | 159 & Corres. | 690 | MPT | Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251-5195. |

PART 73—RADIO BROADCAST SERVICES

3. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

4. Section 73.14 is amended by adding the following new definition in alphabetical order to read as follows:

§ 73.14 AM Broadcast definitions.

* * * * *

Auxiliary facility. An auxiliary facility is an AM antenna tower(s) separate from the main facility's antenna tower(s), permanently installed at the same site or at a different location, from which an AM station may broadcast for short periods without prior Commission authorization or notice to the Commission while the main facility is not in operation (e.g., where tower work necessitates turning off the main antenna or where lightning has caused

damage to the main antenna or transmission system) (See § 73.1675).

* * * * *

5. Section 73.310(a) is amended by adding the following definitions in alphabetical order to read as follows:

§ 73.310 FM technical definitions.

* * * * *

Auxiliary facility. An auxiliary facility is an antenna separate from the main facility's antenna, permanently installed on the same tower or at a different location, from which a station may broadcast for short periods without prior Commission authorization or notice to the Commission while the main facility is not in operation (e.g., where tower work necessitates turning off the main antenna or where lightning has caused damage to the main antenna or transmission system) (See § 73.1675).

* * * * *

Composite antenna pattern. The composite antenna pattern is a relative field horizontal plane pattern for 360

degrees of azimuth, for which the value at a particular azimuth is the greater of the horizontally polarized or vertically polarized component relative field values. The composite antenna pattern is normalized to a maximum of unity (1.000) relative field.

* * * * *

6. Section 73.316 is amended by adding new paragraph (c)(9), revising paragraph (e), and removing paragraphs (f), (g), (h), and (i) to read as follows:

§ 73.316 FM antenna systems.

* * * * *

(c) * * *

(9) In the case of an application for license upon completion of antenna construction for a station authorized pursuant to § 73.215 or § 73.509, a showing that the root mean square (RMS) of the measured composite antenna pattern (encompassing both the horizontally and vertically polarized radiation components (in relative field)) is at least 85% of the RMS of the

authorized composite directional antenna pattern (in relative field). The RMS values, for a composite antenna

pattern specified in relative field values, may be determined from the following formula:

RMS = the square root of:

$$\frac{[(\text{relative field value } 1)^2 + (\text{relative field value } 2)^2 + \dots + (\text{last relative field value})^2]}{\text{number of relative field values summed}}$$

where the relative field values are taken from at least 36 evenly spaced radials for the entire 360 degrees of azimuth. The application for license must also demonstrate that coverage of the community of license by the 70 dBu contour is maintained for stations authorized pursuant to § 73.215 on Channels 221 through 300, as required by § 73.315(a), while noncommercial educational stations operating on Channels 201 through 220 must show that the 60 dBu contour covers at least a portion of the community of license.

(e) Where an FM licensee or permittee proposes to mount its antenna on an AM antenna tower, or locate within 3.2 km of an AM antenna tower, the FM licensee or permittee must comply with § 73.1692.

7. Section 73.525 is amended by adding new paragraph (e)(1)(vii) to read as follows:

§ 73.525 TV Channel 6 protection.

* * * * *

(e) * * *

(1) * * *

(vii) In cases where the predicted interference area to Channel 6 television from a noncommercial educational FM station will be located within the 90 dBu F(50,50) contour of the television Channel 6 station, the location of the FM interfering contour must be determined using the assumption that the Channel 6 field strength remains constant at 90 dBu everywhere within the 90 dBu TV contour. The FM to Channel 6 U/D signal strength ratio specified in § 73.599 corresponding to the Channel 6 TV field strength of 90 dBu shall be used.

* * * * *

8. Section 73.681 is amended by adding the following new definition in alphabetical order to read as follows:

§ 73.681 Definitions.

* * * * *

Auxiliary facility. An auxiliary facility is an antenna separate from the main facility's antenna, permanently installed on the same tower or at a different location, from which a station may broadcast for short periods without prior Commission authorization or notice to the Commission while the

main facility is not in operation (e.g., where tower work necessitates turning off the main antenna or where lightning has caused damage to the main antenna or transmission system) (See § 73.1675).

* * * * *

9. Section 73.685 is amended by revising paragraph (h) to read as follows:

§ 73.685 Transmitter location and antenna system.

* * * * *

(h) Where a TV licensee or permittee proposes to mount an antenna on an AM antenna tower, or locate within 3.2 km of an AM antenna tower, the TV licensee or permittee must comply with § 73.1692.

10. Section 73.1125 is amended by revising paragraph (b)(2) to read as follows.

§ 73.1125 Station main studio location.

* * * * *

(b) * * *

(2) Written authority to locate a main studio outside a station's principal community contour for the first time must be obtained from the Audio Services Division, Mass Media Bureau for AM and FM stations, or the Television Branch, Video Services Division, Mass Media Bureau for television stations before the studio may be moved to that location. Where the main studio is already authorized at a location outside the station's principal community contour, and the licensee or permittee desires to specify a new location also located outside the station's principal community contour, written authority must also be received from the Commission prior to the relocation of the main studio. Authority for these changes may be requested by filing a letter with an explanation of the proposed changes with the appropriate division. Licensees or permittees should be aware that the filing of a letter request for written authority to locate the main studio outside the principal community contour does not imply approval of the relocation request, because each request is addressed on a case-by-case basis. A filing fee is required for commercial AM, FM, or TV licensees or permittees filing a letter request under this section (see § 1.1104).

* * * * *

11. Section 73.1620 is amended by revising paragraph (a)(2), adding paragraphs (a)(3) and (a)(4), and revising paragraph (b) to read as follows:

§ 73.1620 Program tests.

(a) * * *

(2) The permittee of an FM station with a directional antenna system must file an application for license on FCC Form 302-FM requesting authority to commence program test operations at full power with the FCC in Washington, D.C. This license application must be filed at least 10 days prior to the date on which full power operations are desired to commence. The application for license must contain any exhibits called for by conditions on the construction permit. The staff will review the license application and the request for program test authority and issue a letter notifying the applicant whether full power operation has been approved. Upon filing of the license application and related exhibits, and while awaiting approval of full power operation, the FM permittee may operate the directional antenna at one half (50%) of the authorized effective radiated power. Alternatively, the permittee may continue operation with its existing licensed facilities pending the issuance of program test authority at the full effective radiated power by the staff.

(3) FM licensees replacing a directional antenna pursuant to § 73.1690 (c)(2) without changes which require a construction permit (see § 73.1690(b)) may immediately commence program test operations with the new antenna at one half (50%) of the authorized ERP upon installation. If the directional antenna replacement is an EXACT duplicate of the antenna being replaced (i.e., same manufacturer, antenna model number, AND measured composite pattern), program tests may commence with the new antenna at the full authorized power upon installation. The licensee must file a modification of license application on FCC Form 302-FM within 10 days of commencing operations with the newly installed antenna, and the license application must contain all of the exhibits required by § 73.1690(c)(2). After review of the modification-of-license application to cover the antenna change, the

Commission will issue a letter notifying the applicant whether program test operation at the full authorized power has been approved for the replacement directional antenna.

(4) The permittee of an AM station with a directional antenna system must file an application for license on FCC Form 302-AM requesting program test authority with the FCC in Washington, DC at least ten (10) days prior to the date on which it desires to commence program test operations. The application must provide an AM directional antenna proof of performance, containing the exhibits required by § 73.186. After review of the application to cover the construction permit, the Commission will issue a letter notifying the applicant whether program test operations may commence. Program test operations may not commence prior to issuance of staff approval.

(b) The Commission reserves the right to revoke, suspend, or modify program tests by any station without right of hearing for failure to comply adequately with all terms of the construction permit or the provisions of § 73.1690(c) for a modification of license application, or in order to resolve instances of interference. The Commission may, at its discretion, also require the filing of a construction permit application to bring the station into compliance the Commission's rules and policies.

* * * * *
12. Section 73.1675 is amended by revising paragraph (c) to read as follows:

§ 73.1675 Auxiliary facilities.

* * * * *
(c) (1) Where an FM or TV licensee proposes to use a formerly licensed main facility as an auxiliary facility, or proposes to modify a presently authorized auxiliary facility, and no changes in the height of the antenna radiation center are required in excess of the limits in § 73.1690(c)(1), the FM or TV licensee may apply for the proposed auxiliary facility by filing a modification of license application. The modified auxiliary facility must operate on the same channel as the licensed main facility. An exhibit must be provided with this license application to demonstrate compliance with § 73.1675(a). All FM and TV licensees may request a decrease from the authorized facility's ERP in the license application. An FM or TV licensee may also increase the ERP of the auxiliary facility in a license modification application, provided the application contains an analysis demonstrating compliance with the Commission's radiofrequency radiation guidelines, and an analysis showing that the

auxiliary facility will comply with § 73.1675(a). Auxiliary facilities mounted on an AM antenna tower must also demonstrate compliance with § 73.1692 in the license application.

(2) Where an AM licensee proposes to use a former licensed main facility as an auxiliary facility with an ERP less than or equal to the ERP specified on the former main license, the AM station may apply to license the proposed auxiliary facility by filing a modification of license application on Form 302-AM. The proposed auxiliary facilities must have been previously licensed on the same frequency as the present main facility. The license application must contain an exhibit to demonstrate compliance with § 73.1675(a).

13. Section 73.1690 is amended by revising paragraphs (b) and (c) to read as follows:

§ 73.1690 Modification of transmission systems.

* * * * *
(b) The following changes may be made only after the grant of a construction permit application on FCC Form 301 for commercial stations or Form 340 for noncommercial educational stations:

(1) Any construction of a new tower structure for broadcast purposes, except for replacement of an existing tower with a new tower of identical height and geographic coordinates.

(2) Any change in station geographic coordinates, including coordinate corrections. FM and TV directional stations must also file a construction permit application for any move of the antenna to another tower structure located at the same coordinates.

(3) Any change which would require an increase along any azimuth in the composite directional antenna pattern of an FM station from the composite directional antenna pattern authorized (see § 73.316), or any increase from the authorized directional antenna pattern for a TV station (see § 73.685).

(4) Any change in the directional radiation characteristics of an AM directional antenna system. See § 73.45 and § 73.150.

(5) Any decrease in the authorized power of an AM station or the ERP of a TV station, or any decrease or increase in the ERP of an FM commercial station, which is intended for compliance with the multiple ownership rules in § 73.3555.

(6) For FM noncommercial educational stations, any of the following:

(i) Any increase in the authorized maximum ERP, whether horizontally or vertically polarized, for a

noncommercial educational FM station operating on Channels 201 through 220, or a Class D FM station operating on Channel 200..

(ii) For those FM noncommercial educational stations on Channels 201 to 220, or a Class D FM station operating on Channel 200, which are within the separation distances specified in Table A of § 73.525 with respect to a Channel 6 television station, any increase in the horizontally or vertically polarized ERP from the presently authorized ERP.

(iii) For those FM noncommercial educational stations on Channels 201 through 220 which are located within the separation distances in § 73.525 with respect to a Channel 6 television station, or a Class D FM station operating on Channel 200, any decrease in the presently authorized horizontal effective radiated power which would eliminate the horizontal ERP to result in use of vertical ERP only.

(iv) For those FM noncommercial educational stations which employ separate antennas for the horizontal ERP and the vertical ERP, mounted at different heights, the station may not increase or decrease either the horizontal ERP or the vertical ERP without a construction permit.

(7) Any increase in the authorized ERP of a television station, FM commercial station, or noncommercial educational FM station, except as provided for in §§ 73.1690(c)(4), (c)(5), or (c)(7), or § 73.1675(c)(1) in the case of auxiliary facilities.

(8) A commercial TV or noncommercial educational TV station operating on Channels 14 or Channel 69 may increase its horizontally or vertically polarized ERP only after the grant of a construction permit. A television station on Channels 15 through 21 within 341 km of a cochannel land mobile operation, or 225 km of a first-adjacent channel land mobile operation, must also obtain a construction permit before increasing the horizontally or vertically polarized ERP (see Part 74, § 74.709(a) and (b) for tables of urban areas and corresponding reference coordinates of potentially affected land mobile operations).

(c) The following FM and TV station modifications may be made without prior authorization from the Commission. A modification of license application must be submitted to the Commission within 10 days of commencing program test operations pursuant to § 73.1620. With the exception of applications filed solely pursuant to Sections (c)(6), (c)(9), or (c)(10), the modification of license application must contain an exhibit demonstrating compliance with the

Commission's radiofrequency radiation guidelines. In addition, except for applications solely filed pursuant to Sections (c)(6) or (c)(9), where the installation is located within 3.2 km of an AM tower or is located on an AM tower, an exhibit demonstrating compliance with § 73.1692 is also required.

(1) Replacement of an omnidirectional antenna with one of the same or different number of antenna bays, provided that the height of the antenna radiation center is not more than 2 meters above or 4 meters below the authorized values. Any concurrent change in ERP must comply with § 73.1675(c)(1), 73.1690(4), (c)(5), or (c)(7). Program test operations at the full authorized ERP may commence immediately upon installation pursuant to § 73.1620(a)(1).

(2) Replacement of a directional FM antenna, where the measured composite directional antenna pattern does not exceed the licensed composite directional pattern at any azimuth, where no change in effective radiated power will result, and where compliance with the principal coverage requirements of § 73.315(a) will be maintained by the measured directional pattern. The antenna must be mounted not more than 2 meters above or 4 meters below the authorized values. The modification of license application on Form 302-FM to cover the antenna replacement must contain all of the data in the following sections (i) through (v). Program test operations at one half (50%) power may commence immediately upon installation pursuant to § 73.1620(a)(3). However, if the replacement directional antenna is an exact replacement (i.e., no change in manufacturer, antenna model number, AND measured composite antenna pattern), program test operations may commence immediately upon installation at the full authorized power.

(i) A measured directional antenna pattern and tabulation on the antenna manufacturer's letterhead showing both the horizontally and vertically polarized radiation components and demonstrating that neither of the components exceeds the authorized composite antenna pattern along any azimuth.

(ii) Contour protection stations authorized pursuant to § 73.215 or § 73.509 must attach a showing that the RMS (root mean square) of the composite measured directional antenna pattern is 85% or more of the RMS of the authorized composite antenna pattern. See § 73.316(c)(9). If this requirement cannot be met, the licensee

may include new relative field values with the license application to reduce the authorized composite antenna pattern so as to bring the measured composite antenna pattern into compliance with the 85% requirement.

(iii) A description from the manufacturer as to the procedures used to measure the directional antenna pattern. The antenna measurements must be performed with the antenna mounted on a tower, tower section, or scale model equivalent to that on which the antenna will be permanently mounted, and the tower or tower section must include transmission lines, ladders, conduits, other antennas, and any other installations which may affect the measured directional pattern.

(iv) A certification from a licensed surveyor that the antenna has been oriented to the proper azimuth.

(v) A certification from a qualified engineer who oversaw installation of the directional antenna that the antenna was installed pursuant to the manufacturer's instructions.

(3) A directional TV station on Channels 2 through 13 or 22 through 68, or a directional TV station on Channels 15 through 21 which is in excess of 341 km (212 miles) from a cochannel land mobile operation or in excess of 225 km (140 miles) from a first-adjacent channel land mobile operation (see Part 74, § 74.709(a) and (b) for tables of urban areas and reference coordinates of potentially affected land mobile operations), may replace a directional TV antenna by a license modification application, if the proposed horizontal theoretical directional antenna pattern does not exceed the licensed horizontal directional antenna pattern at any azimuth and where no change in effective radiated power will result. The modification of license application on Form 302-TV must contain all of the data set forth in § 73.685(f).

(4) Commercial and noncommercial educational FM stations operating on Channels 221 through 300 (except Class D), NTSC TV stations operating on Channels 2 through 13 and 22 through 68, and TV stations operating on Channels 15 through 21 that are in excess of 341 km (212 miles) from a cochannel land mobile operation or in excess of 225 km (140 miles) from a first-adjacent channel land mobile operation [see Part 74, § 74.709(a) and (b) for tables of urban areas and reference coordinates of potentially affected land mobile operations], which operate omnidirectionally, may increase the vertically polarized effective radiated power up to the authorized horizontally polarized effective radiated

power in a license modification application. Noncommercial educational FM licensees and permittees on Channels 201 through 220, that do not use separate antennas mounted at different heights for the horizontally polarized ERP and the vertically polarized ERP, and are located in excess of the separations from a Channel 6 television station listed in Table A of § 73.525(a)(1), may also increase the vertical ERP, up to (but not exceeding) the authorized horizontally polarized ERP via a license modification application. Program test operations may commence at full power pursuant to § 73.1620(a)(1).

(5) Those Class A FM commercial stations which were permitted to increase ERP pursuant to MM Docket No. 88-375 by a modification of license application remain eligible to do so, provided that the station meets the requirements of § 73.1690 (c)(1) and is listed on one of the Public Notices as authorized to increase ERP, or by a letter from the Commission's staff authorizing the change. These Public Notices were released on November 3, 1989; November 17, 1989; December 8, 1989; March 2, 1990; and February 11, 1991. The increased ERP must comply with the multiple ownership requirements of § 73.3555. Program test operations may commence at full power pursuant to § 73.1620(a)(1).

(6) FM contour protection stations authorized pursuant to § 73.215 which have become fully spaced under § 73.207 may file a modification of license application to delete the § 73.215 contour protection designation with an exhibit to demonstrate that the station is fully spaced in accordance with § 73.207. The contour protection designation will be removed upon grant of the license application. Applications filed under this rule section will be processed on a first come / first served basis with respect to conflicting FM commercial minor change applications and modification of license applications (including those filed pursuant to § 73.1690 (b) and (c)(6) and (c)(7)).

(7) FM omnidirectional commercial stations, and omnidirectional noncommercial educational FM stations operating on Channels 221 through 300 (except Class D), which are not designated as contour protection stations pursuant to § 73.215 and which meet the spacing requirements of § 73.207, may file a license modification application to increase ERP to the maximum permitted for the station

class, provided that any change in the height of the antenna radiation center remains in accordance with § 73.1690(c)(1). Program test operations may commence at full power pursuant to § 73.1620(a)(1). All of the following conditions also must be met before a station may apply pursuant to this section:

(i) The station may not be a "grandfathered" short-spaced station authorized pursuant to § 73.213 or short-spaced by a granted waiver of § 73.207;

(ii) If the station is located in or near a radio quiet zone, radio coordination zone, or a Commission monitoring station (see § 73.1030 and § 0.121(c)), the licensee or permittee must have secured written concurrence from the affected radio quiet zone, radio coordination zone, or the Commission's Compliance and Information Bureau in the case of a monitoring station, to increase effective radiated power PRIOR to implementation. A copy of that concurrence must be submitted with the license application to document that concurrence has been received;

(iii) The station does not require international coordination as the station does not lie within the border zones, or clearance has been obtained from Canada or Mexico for the higher power operation within the station's specified domestic class and the station complies with § 73.207(b)(2) and (3) with respect to foreign allotments and allocations;

(iv) The increased ERP will not cause the station to violate the multiple ownership requirements of § 73.3555.

(8) FM commercial stations and FM noncommercial educational stations may decrease ERP on a modification of license application provided that exhibits are included to demonstrate that all six of the following requirements are met:

(i) Commercial FM stations must continue to provide a 70 dBu principal community contour over the community of license, as required by § 73.315(a). Noncommercial educational FM stations must continue to provide a 60 dBu contour over at least a portion of the community of license. The 60 and 70 dBu contours must be predicted by use of the standard contour prediction method in § 73.313(b), (c), and (d).

(ii) For both commercial FM and noncommercial educational FM stations, the location of the main studio remains within the 70 dBu principal community contour, as required by § 73.1125, or otherwise complies with that rule. The 70 dBu contour must be predicted by use of the standard contour prediction method in § 73.313(b), (c), and (d).

(iii) For commercial FM stations only, there is no change in the authorized station class as defined in § 73.211.

(iv) For commercial FM stations only, the power decrease is not necessary to achieve compliance with the multiple ownership rule, § 73.3555.

(v) Commercial FM stations, noncommercial educational FM stations on Channels 221 through 300, and noncommercial educational FM stations on Channels 200 through 220 which are located in excess of the distances in Table A of § 73.525 with respect to a Channel 6 TV station, may not use this rule to decrease the horizontally polarized ERP below the value of the vertically polarized ERP.

(vi) Noncommercial educational FM stations on Channels 201 through 220 which are within the Table A distance separations of § 73.525, or Class D stations on Channel 200, may not use the license modification process to eliminate an authorized horizontally polarized component in favor of vertically polarized-only operation. In addition, noncommercial educational stations operating on Channels 201 through 220, or Class D stations on Channel 200, which employ separate horizontally and vertically polarized antennas mounted at different heights, may not use the license modification process to increase or decrease either the horizontal ERP or vertical ERP without a construction permit.

(9) The licensee of an AM, FM, or TV commercial station may propose to change from commercial to noncommercial educational on a modification of license application, provided that the application contains completed Sections II and IV of FCC Form 340. In addition, a noncommercial educational AM licensee, a TV licensee on a channel not reserved for noncommercial educational use, or an FM licensee on Channels 221 to 300 (except Class D FM) on a channel not reserved for noncommercial educational use, may apply to change from educational to commercial via a modification of license application, and no exhibits are required with the application. The change will become effective upon grant of the license application.

(10) Replacement of a transmission line with one of a different type or length which changes the transmitter operating power (TPO) from the authorized value, but not the ERP, must be reported in a license modification application to the Commission.

* * * * *

14. New § 73.1692 is added to read as follows:

§ 73.1692 Broadcast station construction near or installation on an AM broadcast tower.

Where a broadcast licensee or permittee proposes to mount a broadcast antenna on an AM station tower, or where construction is proposed within 0.8 km of an AM nondirectional tower or within 3.2 km of an AM directional station, the broadcast licensee or permittee is responsible for ensuring that the construction does not adversely affect the AM station, as follows:

(a) *Installations on an AM nondirectional tower.* During installation of the broadcast antenna and related equipment, the AM station shall determine operating power by the indirect method (see § 73.51). Upon the completion of the installation, antenna impedance measurements on the AM antenna shall be made, and, prior to or simultaneously with the filing of the license application covering the broadcast station installation, an application on FCC Form 302-AM (including a tower sketch of the installation) shall be filed with the Commission for the AM station to return to direct power measurement.

(b) *Installations on an AM directional array.* Prior to commencing construction, the broadcast permittee or licensee shall notify the AM station so that, if necessary, the AM station may determine operating power by the indirect method (see § 73.51) and request special temporary authority pursuant to § 73.1635 to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Both prior to the commencement of construction and upon completion of construction, a partial proof of performance (as defined by § 73.154) shall be conducted to establish that the AM array has not been adversely affected. Prior to or simultaneously with filing of the license application to cover the broadcast station construction, the results of the partial proof of performance shall be filed with the Commission on Form 302-AM.

(c) *Tower erections or modifications within 0.8 km of an AM nondirectional tower.* Prior to commencing the construction of tower modifications, or the erection of a new tower, within 0.8 km of an AM nondirectional tower, the broadcast permittee or licensee is required to notify the AM station so that the AM station may commence determining operating power by the indirect method (see § 73.51). The broadcast licensee or permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse

effects on the radiation pattern of the AM station. Both prior to construction of the tower modifications and upon completion of construction, antenna impedance measurements of the AM station shall be made. In addition, sufficient field strength measurements taken at a minimum of 10 locations along each of 8 equally spaced radials, shall be made to establish that the AM radiation pattern is essentially omnidirectional. Prior or simultaneously with the filing of the application for license to cover this permit, the results of the impedance measurements and the field strength measurements shall be filed with the Commission on FCC Form 302-AM for the AM station to return to the direct method of power determination.

(d) *Tower erections or modifications within 3.2 km of an AM directional station.* Prior to commencing construction of tower modifications, or the erection of a new tower structure, within 3.2 km of an AM directional array, the broadcast permittee or licensee shall notify the AM station so that, if necessary, the AM station may determine operating power by the indirect method (see § 73.51) and request special temporary authority pursuant to § 73.1635 to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. The broadcast licensee or permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to the commencement of construction and upon completion of construction, a partial proof of performance (as defined by § 73.154) shall be conducted to establish that the AM array has not been adversely affected. Prior to or simultaneously with filing of the license application to cover the broadcast station construction, the results of the partial proof of performance shall be filed with the Commission on Form 302-AM.

15. Section 73.3500 is amended by removing the entry for "Form 302" and adding the following entries in the order of the form number to read as follows:

§ 73.3500 Application and report forms.

* * * * *

Form 302-AM—Application for AM Broadcast Station License
Form 302-TV—Application for Television Broadcast Station License

* * * * *

16. Section 73.3536 is amended by revising paragraph (b)(1) to read as follows:

§ 73.3536 Application for license to cover construction permit.

* * * * *

(b) * * *

(1)(i) Form 302-AM for AM stations, "Application for New AM Station Broadcast License."

(ii) Form 302-FM for FM stations, "Application for FM Station License."

(iii) Form 302-TV for television stations, "Application for TV Station Broadcast License."

* * * * *

17. Section 73.3537 is amended to read as follows:

§ 73.3537 Application for license to use former main antenna as an auxiliary.

See § 73.1675, *Auxiliary facility.*

18. Section 73.3538 is amended by revising the introductory text, the introductory text of paragraph (a), paragraphs (a)(1), (a)(2), and (a)(3), and by removing paragraphs (a)(5), (a)(6) and (a)(7) and adding paragraph (b)(3) to read as follows:

§ 73.3538 Application to make changes in an existing station.

Where prior authority is required from the FCC to make changes in an existing station, the following procedures shall be used to request that authority:

(a) An application for construction permit using the forms listed in § 73.3533 must be filed for authority to:

(1) Make any of the changes listed in § 73.1690(b).

(2) Change the hours of operation of an AM station, where the hours of operation are specified on the license or permit.

(3) Install a transmitter which has not been approved (type accepted) by the FCC for use by licensed broadcast stations.

* * * * *

(b) * * *

(3) Relocation of a main studio outside the principal community contour may require the filing and approval of a letter request for authority to make this change prior to implementation. See § 73.1125.

19. Section 73.3544 is amended by revising paragraph (a) to read as follows:

§ 73.3544 Application to obtain a modified station license.

* * * * *

(a) The changes specified in § 73.1690(c) may be made by the filing of a license application using the forms listed in § 73.3536(b)(1).

* * * * *

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

20. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 307, 554.

21. Section 74.780 is amended by adding the following entry in numerical order to read as follows:

§ 74.780 Broadcast regulations applicable to translators, low power, and booster stations.

* * * * *

Section 73.1692—Construction near or installation on an AM broadcast tower.

* * * * *

22. Section 74.1235 is amended by revising paragraph (h) to read as follows:

§ 74.1235 Power limitations and antenna systems.

* * * * *

(h) All applications must comply with § 73.316, paragraphs (d) and (e) of this chapter.

* * * * *

23. Section 74.1237 is amended by adding paragraph (e) to read as follows:

§ 74.1237 Antenna location.

* * * * *

(e) A translator or booster station to be located on an AM antenna tower or located within 3.2 km of an AM antenna tower must comply with § 73.1692 of this chapter.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32, 43, and 64

[CC Docket No. 96-193; FCC 97-145]

Reform of Filing Requirements and Carrier Classifications; Anchorage Telephone Utility, Petition for Withdrawal of Cost Allocation Manual; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule, Correction.

SUMMARY: This document contains a correction to the final rule which was published Thursday, July 24, 1997, (62 FR 39776). This rule defined the "Indexed revenue threshold for a given year" in § 32.9000.

EFFECTIVE DATE: August 25, 1997.