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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 73

[MM Docket Nos. 98-43, 94-149; FCC 98-281]

1998 Biennial Regulatory Review—Streamlining of Mass Media Applications, Rules, and Processes; Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Report and Order, the Commission adopts an electronic filing mandate for 15 Mass Media Bureau broadcast application and reporting forms, including sales forms and applications for new commercial stations and modifications to licensed facilities, after a phase in period. In conjunction with electronic filing, the Commission revises the requirements for extending the construction periods of broadcast stations, for selling unbuilt construction permits and for submitting ownership reports for commercial and noncommercial stations. The Commission also modifies the reporting requirements on the Annual Ownership Report form to include a section on the race and gender of individuals with attributable interests in broadcast licensees. Finally, the Commission institutes a formal program of both pre- and post-application grant random audits. The Commission is implementing the changes to eliminate rules and revise procedures that consume significant staff resources, create excessive filing burdens, and/or do not sufficiently advance key regulatory objectives. The intended effect of the changes is to reduce filing burdens and increase the efficiency of application processing while preserving the public's ability to fully participate in Commission broadcast licensing processes.

This Report and Order contains modified information collections subject to the Paperwork Reduction Act of 1995 ("PRA"), Public Law 104-13, and has been submitted to the Office of Management and Budget ("OMB") for

review under section 3507(d) of the PRA.

EFFECTIVE DATES: February 16, 1999. 47 CFR 73.3615(a) will become effective 120 days after publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Lisa Scanlan, Audio Services Division, Mass Media Bureau, (202) 418-2720; Jerianne Timmerman, Video Services Division, Mass Media Bureau, (202) 418-1600. For additional information concerning the information collections contained in this Report and Order, contact Judy Boley at (202) 418-0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in MM Dockets 98-43 and 94-149, adopted October 22, 1998, and released November 25, 1998. The complete text of this Report and Order is available for inspection and copying during regular business hours in the FCC Reference Center, and may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800 (phone), (202) 857-3805 (facsimile), 1231 20th Street, NW, Washington, DC 20036.

SYNOPSIS OF REPORT AND ORDER:

I. Introduction

1. With this Report and Order, we make fundamental changes in our broadcast application and licensing procedures. In the Notice of Proposed Rulemaking initiating this proceeding, 63 FR 19226 (April 17, 1998), we proposed numerous modifications to those procedures that we believe would serve the public interest by reducing applicant and licensee burdens, increasing the efficiency of application processing, and preserving the public's ability to participate fully in our broadcast licensing processes. After careful consideration of the proposals in the NPRM and the comments received, we now adopt these various measures. Specifically, we adopt an electronic filing mandate for key Mass Media Bureau broadcast application and reporting forms after a phase in period. We also revise our requirements for extending the construction periods of broadcast stations; for selling unbuilt station construction permits; and for submitting ownership reports for commercial and noncommercial educational stations. Additionally, we modify the Annual Ownership Report to require the provision of information on the racial and gender identity of broadcast licensees. To preserve the integrity of our streamlined application processes, we are implementing a two-pronged formal program of audits.

II. Discussion

A. Electronic Filing of Applications

Mandatory Electronic Filing

2. The Mass Media Bureau is currently developing electronic versions of various broadcast applications and reporting forms as part of a wide-ranging effort to computerize and streamline the Mass Media Bureau's processes in order to expedite service to the public. Electronic versions of the following 15 forms are being developed: FCC Forms 301, 302-AM, 302-FM, 302-TV, 302-DTV, 314, 315, 316, 340, 345, 346, 347, 349, 350, and 5072. FCC Form 398, the Children's Television Programming Report, is already available in electronic format. We believe phasing in mandatory electronic filing will provide a period for broadcast licensees, permittees and applicants, including small market broadcasters, to become familiar with, and accustomed to using, the Internet generally and our electronic system specifically to submit their applications. Although we feel that a phase in period should be sufficient for broadcast licensees, permittees and applicants to become accustomed to utilizing our electronic application system, we nonetheless note that an applicant can request a waiver of our mandatory electronic filing requirements, even after the close of the phase in period.

3. With regard to the length of time of the phase in period, we have determined that electronic filing will become mandatory, on a form-by-form basis, six months after each Mass Media Bureau form becomes available for filing electronically. We expect the 15 Mass Media Bureau forms specified above to become available for filing electronically no earlier than March of 1999. Thus, electronic filing of these key broadcast application forms will not become mandatory before the fall of 1999. With regard to the FCC Form 398 (Children's Television Programming Report) specifically, which has been available for submission electronically since the spring of 1997, we will require licensees to file it electronically as of January 10, 1999.

Operation and Security of Electronic System

4. We anticipate that applicants will file their Mass Media Bureau applications electronically via the Commission's site on the World Wide Web. Applicants will not be able to file applications on diskette because the submission of diskettes is not compatible with our Web-based system (HTML), would increase the risk of

virus importation into the Commission's system, and would unduly increase the burdens on the Commission's resources. The Commission's Web-based system will not be hardware or software product or manufacturer specific; all commonly available computer hardware and software will be compatible with the Commission's electronic system.

5. The electronic system will provide immediate notification to applicants that their electronically filed applications have been received. The system will afford applicants the ability to submit amendments, make corrections to electronically filed applications and submit narrative, explanatory exhibits. We note that Mass Media Bureau forms and applications filed electronically pursuant to this Report and Order must be received by the electronic filing system before midnight on the filing date. We believe it unnecessary and burdensome to require applicants to also submit paper copies of electronically filed applications during the phase in period.

6. For any broadcast application for which a fee is required, the electronic system will inform the applicant that a fee is required and an FCC Form 159 (Remittance Advice) must be filed. Fee payments will continue to be made to the Commission's lock-box bank—Mellon Bank in Pittsburgh, Pennsylvania. Applications will be accepted after we have received confirmation electronically from Mellon Bank that the applicant has made the appropriate payment.

7. Security for the Mass Media Bureau's electronic system will be consistent with all other Commission electronic filing systems. Applications will be filed electronically utilizing passwords chosen by the applicants and unique account numbers that are internally generated by the system and assigned to applicants. Applicants and licensees will be obligated to provide TINs so as to fulfill the Commission's obligations under the Debt Collection Improvement Act (DCIA), Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996). Due to security concerns, however, passwords and unique account numbers, rather than TINs, will be used for the filing of applications.

8. The general public will be able to view electronically filed applications through the Commission's site on the World Wide Web. Public access to all electronic submissions will be "read only." We anticipate that electronic access to broadcast applications will enhance the public's ability to view

applications and participate in the Commission's processes.

B. Streamlining Application Processing

Use of Certifications, Instructions and Worksheets

9. In order to obtain the full benefits of electronic filing, we have recast key Mass Media Bureau forms into "yes" or "no" certification formats, supplemented with detailed worksheets and instructions. The revised forms will facilitate application processing, result in more accurate databases and easier public access to information, thus benefiting broadcasters, the public and the Commission. The revised forms will also substantially reduce the amount of information applicants must submit, restricting the use of exhibits to waiver requests or to circumstances where additional information is necessary to support application elements potentially inconsistent with precedent, processing standards, Commission rules and policies, and the Act. Additionally, we will include an "explanation" checkbox beside the "yes" or "no" checkboxes on certain questions on the application form. To facilitate a smooth transition, we will selectively introduce paper versions of the new forms before the development of our electronic filing system is complete. Public notices will detail transition information concerning the use of these revised paper forms.

10. Application worksheets are available to applicants as instruments to provide guidance in completing certification questions. We will not require that applicants retain worksheets at the Commission and/or in their public files. We believe it would be contrary to our goals of easing regulatory burdens and increasing application processing efficiencies to, in essence, treat the worksheets as part of the application and subject them to review by the Commission and the public in all circumstances. In this regard, however, we note that it may be advantageous for licensees to retain the worksheets, as well as other data or documentation used to support certifications, for use in response to Commission audits and inquiries.

Assignment and Transfer Applications: Forms 314 and 315 To fully realize the processing efficiencies obtainable through electronic filing, we determined that significant changes in our sales applications forms (Forms 314 and 315) and license assignment and transfer rules are warranted.

a. Rule Revision: Payment Restrictions on the Sale of Unbuilt Stations

11. We affirm the holding in *Bill Welch*, 3 FCC Rcd 6502 (1988), that

there is no *per se* statutory proscription against the for-profit sales of unbuilt stations. Moreover, we no longer believe that retention of the rule is necessary to maintain the integrity of our licensing processes. Thus, we will, both for outstanding commercial station construction permits and commercial station construction permits that will be issued pursuant to the auction process, eliminate the no profit rule restricting payment upon assignment or transfer of an unbuilt station to reimbursement of a seller's expenses. We also will eliminate the no profit limitation for noncommercial educational station construction permits granted prior to the release of this Report and Order, as well as for those granted subsequent to the release of this Report and Order as "singletons." However, except for those granted as "singletons," we defer deciding on whether we should permit subsequently issued noncommercial educational station construction permits to be sold for a profit.

12. For commercial stations, use of competitive bidding procedures to resolve mutual exclusivity among commercial broadcast applicants will soon replace both the traditional comparative hearing process for full-service radio and television stations and the system of random selection formerly employed to award certain low power television and television translator licenses. Our concern with spectrum speculation in an auction environment, where there are strict bidding and payment requirements and where the winning bidder has paid fair market value for an authorization, is minimal. We also believe that the competitive bidding process itself, where the permittee may be required to make a substantial front end payment, provides a strong impetus for timely station construction. Even in cases where a commercial permit is not issued pursuant to an auction, *e.g.*, because only one application was filed for a frequency and therefore the application was granted as a "singleton," we believe it is appropriate to eliminate reimbursement restrictions. Even assuming that "singleton" commercial station permittees do not have the same impetus to build quickly in order to recoup auction expenditures, we believe that the automatic cancellation and forfeiture provisions adopted in this Report and Order will provide sufficient incentives to construct authorized facilities promptly.

13. Regarding outstanding commercial and noncommercial construction permits issued prior to the release of this Report and Order, we will also eliminate reimbursement restrictions.

Most current permittees filed construction permit applications under rules that prohibited the sale of a permit at a profit. Thus again, our concern that the construction permit was issued merely as the result of a speculative filing is minimal. Furthermore, some commercial station construction permits were recently issued pursuant to settlement agreements facilitated by section 309(i) of the Communications Act, which, *inter alia*, required the Commission to waive the no profit rule with regard to settlements among certain applicants entered into by February 1, 1998. In principle, these authorizations were acquired at fair market value and we see no justification for imposing price restrictions on their sale now. We note, however, that the Commission's current settlement rules will continue to apply to pending mutually exclusive commercial and noncommercial applications, *i.e.*, any pending applicants who did not take advantage of the Commission's prior windows for settling for more than out-of-pocket expenses and who wish to settle now are, absent a waiver of the provisions of 47 CFR 73.3525, restricted to out-of-pocket expenditures.

14. Under current processing rules, we continue to accept applications for FM facilities on the reserved band and to grant permits in circumstances where no mutually exclusive application is timely filed or where a global settlement agreement among all mutually exclusive applicants is approved. With regard to noncommercial station permits granted as "singletons" on or after the release of this Report and Order, we will eliminate the no-profit rule. However, in instances where there are mutually exclusive noncommercial applications filed on or after the release of this Report and Order and a permit is subsequently issued as the result of a settlement, we believe a more cautious approach is required. We recognize that a proceeding is pending to develop a selection process for mutually exclusive noncommercial educational station applicants. See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants, Further Notice of Proposed Rulemaking*, FCC 98-269 (released October 21, 1998). Until the issues in that proceeding are resolved, we will not be in a position to determine whether adopting procedures that would permit settlements among those applicants and subsequent for-profit sales could frustrate the goals of that proceeding.

15. Finally, we address the issue of the for profit sale of permits by permittees who received bidding credits as designated entities in the auction

context. Generally, we will follow the provisions of Part 1 of the auction rules and apply transfer limitations to the extent they are applied in other auctionable services. Thus, where bidding credits are used in a broadcast auction, for a five year period, the Commission will require a designated entity seeking approval of a transfer or an assignment to a non-designated entity, or who proposes to take any other action relating to ownership or control that will result in loss of status as an eligible designated entity, to reimburse the government for the amount of the bidding credit, plus interest, before transfer of the license will be permitted.

b. Requirement to Submit Contracts with Assignment and Transfer Applications

16. Applicants will assess their sales and organizational documents against the series of standards set forth in the expanded instructions to Forms 314 and 315 and will be required to certify that a transaction conforms fully to the instruction standards, the Commission's rules and policies, and the Act, or to disclose those specific aspects of the transaction for which waivers are sought and/or where compliance with the Act, and our rules and policies is uncertain. We emphasize, however, that if an application raises concerns on its face, or presents particularly significant public interest issues, or where an objection is filed, relevant provisions of the sales agreements will be reviewed by the staff on a case-by-case basis. In addition, we will rely on a two-pronged random audit program to enhance the reliability of applicants' certifications. To further reduce filing burdens on licensees, we will also adopt the proposal to eliminate, as duplicative, the § 73.3613(b) requirement that sales agreements and contracts be filed with the Commission within thirty days of execution, where the reporting entity has already filed the sales contract with the assignment or transfer application.

17. Applicants must continue to submit copies of sales agreements so that we can continue our practice of maintaining copies of unredacted sales agreements and contracts in the public reference room. Similarly, if the parties have an oral agreement, a written description of its material terms must be submitted with the application. We will continue to require that contracts submitted for retention in the public reference room disclose sales price. Since contracts and agreements are "material pertaining to" the sales application, they must also, pursuant to the public file rule, be retained in the station's public file until final action has

been taken on the application. If we determine that the documents have not been submitted for use in the public reference room, we will neither accept for filing, nor process the application for assignment or transfer. Similarly, we will suspend application processing if it comes to our attention that the documents have not been placed in the station's public file.

18. Prior to the implementation of electronic filing procedures, we will initially require applicants to file a single paper copy of the sales agreement with the assignment or transfer application, and eliminate duplicate copies which are submitted as part of the current triplicate paper filing procedures. The processing staff will immediately forward this copy of the contract to the public reference room. Upon the implementation of electronic filing procedures for sales applications, the public will have access to electronic copies of sales agreements transmitted with the application and made available in the public reference room. The staff will review the electronic copy of the sales agreement for the proposed transaction only where application responses, exhibits, waiver requests and/or objections raise relevant issues.

c. Requirement to Submit Contour Overlap Maps

19. We modify the sales application processing scheme as it relates to the radio contour overlap map. In lieu of Commission staff reviewing these maps in every instance to ensure that the application complies with our multiple ownership rules, applicants themselves will assess and certify compliance. We have developed instructions and worksheets that will help applicants understand all relevant rules and concepts. With conscientious use of these tools, applicants can accurately determine whether or not they should certify compliance with our current rules. As with the sales contracts, we emphasize that if an application raises concerns on its face, or presents significant public interest issues, or where an objection is filed, the contour overlap maps will be reviewed by the staff on a case by case basis.

20. We will retain our practice of maintaining copies of contour overlap maps in the Commission's public reference room. We will require applicants to file a single copy of the contour overlap map (or submit an electronic version) with the application for assignment or transfer. The processing staff will not review the map unless application responses, exhibits, or waiver requests raise multiple ownership issues, but the public will be able to access the map and bring any

concerns or objections to the attention of the Commission staff.

21. Since the radio contour overlap map constitutes "material related to" the application, it must, pursuant to the public file rule, also be maintained in the public inspection file along with the application for assignment or transfer for review by the general public until final action has been taken. As with sales contracts, we will refrain from processing any application when contour maps are not submitted with the application, or when we become aware that they have not been retained in the local public file according to the provisions of the local public file rule.

3. *New Commercial Station and Facility Change Applications: Form 301 a. Rule Revisions*

22. We modify 47 CFR 73.316 to shift the filing requirements regarding certain directional antenna information to the license application stage of the FM authorization process. Elimination of the requirement under 47 CFR 73.316(c) to file directional antenna information with the construction permit application would provide applicants maximum flexibility in choosing an antenna manufacturer when constructing a facility. Should the absence of definitive information concerning a specific directional antenna preclude grant of a construction permit application, the Commission can request the appropriate antenna information prior to grant. We also modify 47 CFR 73.1675(a) to eliminate the map requirement for auxiliary facilities for the FM and TV services and 47 CFR 73.1030(a) by eliminating the application disclosure requirement regarding the date of radio astronomy and research installation notification. These revisions will reduce filing burdens without endangering the technical integrity of the broadcast services. The staff will continue to afford the radio astronomy installations a 20 day comment period regarding applicable proposals. Furthermore, the staff will verify compliance with 47 CFR 73.1675(a) using technical data submitted in FCC Form 301.

b. *Form Revisions*

23. We will revise FCC Form 301 to decrease the number of required technical exhibits and significantly reduce applicant filing burdens. Exhibits will be required only in connection with the most critical technical and public safety matters, such as FM spacing, contour protection, and radio frequency electromagnetic exposure guidelines. We will employ a "Tech Box" to incorporate all critical technical data required for engineering review. In the event of any

discrepancies between data in the "Tech Box" and data submitted elsewhere in the application, the data in the "Tech Box" will be used. We are confident that our revised form and the few associated exhibits yield core technical data. As with other forms, we will also provide a detailed set of instructions to ensure that applicants can correctly determine compliance with Commission rules and policies and will employ our audit program to ensure that questions have been answered accurately.

24. Specifically, we have reorganized the AM section of Form 301 to provide individual "Tech Boxes" for Daytime, Nighttime and critical hours operations. We have also eliminated references to blanketing interference and cross-modulation from the FM technical portion of the form because these rules are only applicable once a station is operating and are therefore not practically considered at the construction permit application stage.

25. We will no longer require the submission of tower sketches to inform the Commission of co-located antennas. The information provided in the "Tech Box," concerning the proposed facility, in conjunction with information from the Commission's engineering database regarding co-located and nearby existing broadcast facilities, are sufficient to enable the staff to make accurate determinations about compliance with radiofrequency electromagnetic exposure guidelines and to determine if a proposed antenna may disrupt other nearby facilities.

26. Except for AM station applicants, the Commission will no longer require the filing of site maps with FCC Form 301. Technology such as Global Positioning Satellite receivers is now readily available and allows applicants to accurately determine coordinates without the use of site maps. However, site maps for AM stations retain their importance, because AM facilities, with their longer wavelengths, are much more susceptible to undesirable effects from nearby structures, such as buildings, antenna towers and water towers. Therefore, we will retain the requirement for AM applicants to submit transmitter site maps to evaluate the proposed site with respect to the surrounding electromagnetic environment. Finally, various cosmetic changes, corrections for typographical errors, and form congruence suggestions have been incorporated into the new Form 301.

C. *Enforcement*

27. A strong enforcement program, including random audits, is necessary to insure the integrity of the application

process under our new streamlined procedures. Petitions to deny and informal objections will remain as adjuncts to audits. We believe that these complementary factors, along with a formal audit program, will deter abuse of the application process.

28. Specifically, we will adopt a formal program of random audits, which will subject selected broadcast applications to heightened scrutiny prior to grant and will additionally subject selected applications to audit after grant. The pre-grant audit program will be applicable to commercial and noncommercial radio and television station applications that will be selected randomly by computer. Over the course of a year, the computer will randomly select up to a total of approximately five percent of all applications filed in the radio and television services. The applicants who filed these applications will then be notified of their selection for an audit, and will be directed by letter to provide certain additional documentation and information for our review. This documentation should be readily available to the selected applicants, and, if promptly furnished to the Commission, the processing of the applications subject to audit should not be unduly impeded. We expect that any pre-grant review will be conducted during the 30-day period for the filing of petitions to deny against the applications. Although we will choose applications for audit on a random basis, if an application raises concerns on its face or presents particularly significant public interest concerns, we may decide to conduct an audit even if the application did not fall into the group chosen by random selection. As to the concern that, under the proposed audit system, innocent, careless mistakes will be elevated to serious offenses, we note that the staff will continue its current practice of considering all the circumstances surrounding the submission of inaccurate or incomplete information in determining the need for and the severity of a sanction. We anticipate that clear guidance provided in the instructions, worksheets and forms will result in fewer mistakes.

29. After receiving the requested information from an audited applicant, we will examine the documentation and analyze it for consistency with the certifications and representations in the streamlined application and for compliance with all Commission rules and policies. Applicants may be required to provide further information to explain any discrepancies between the application filed and the supporting documentation submitted, and will be

given an opportunity to respond to all Commission questions and concerns. In pre-grant audit cases where we find that an applicant has made inaccurate certifications, the Commission may dismiss the application and require the resubmission of a corrected application, may also impose a forfeiture, or may defer action for further investigation and possible designation for hearing.

30. We will also randomly subject up to five percent of all applications to more extensive post-grant audits. Post-grant audits may include comparison of the application being audited with all relevant Commission files and databases as well as other available sources of pertinent information. Upon analysis of the above-described information, the staff may issue a letter of inquiry requiring submission of all the application's supporting and background documentation not found in its independent search. The staff will also allow the applicants an opportunity to explain any apparent discrepancies. Upon receipt and analysis of all relevant information, the staff will prepare either a close-out letter, instructions to correct any violations, if appropriate, admonition, forfeiture, hearing designation order, or an order to show cause why an order of revocation should not be issued. We retain the discretion to reexamine this audit program after it has been in operation for a reasonable period of time and to make any changes that are needed to address problems or to enhance the program's effectiveness.

D. Modifying Construction Permit Extension Procedures

31. We conclude that a three-year construction period would provide all permittees an adequate and realistic time to construct and amend 47 CFR 73.3598 to provide each permittee with a total of three unencumbered years during which it may construct its broadcast facility. Under these new procedures, the Commission will toll the construction period only when construction is encumbered due to an act of God, or when a construction permit is the subject of administrative or judicial review. An act of God is defined in terms of natural disasters (e.g., floods, tornados, hurricanes, or earthquakes), will be narrowly construed, and include only those periods where the permittee demonstrates that construction progress was impossible, notwithstanding its diligent efforts. Covered administrative and judicial review falls into two categories. The first consists of petitions for reconsideration and applications for review within the Commission of the grant of a construction permit or a permit extension, and any appeal of any

Commission action thereon. The second category consists of any cause of action pending before any court of competent jurisdiction relating to any necessary local, state, or federal requirement for the construction or operation of the station, including any environmental requirement. Thus, a permit would not qualify for tolling on the basis of the pendency of a zoning application before a local zoning board. In light of these new procedures, we eliminate the current practice of providing additional time for construction after a permit has been modified or assigned.

32. The lengthened three year construction period will also apply to modifications of licensed facilities. Likewise, the grounds for tolling a construction period will apply to modifications of licensed facilities. The lengthened three-year construction period will apply to NTSC permittees to construct either analog or digital new station facilities. This Report and Order does not impact DTV build-out requirements, the deadline for which remains 2006.

33. In lieu of FCC Form 307, the current form by which a permittee may apply for an extension, we adopt a notification procedure under which a permittee must inform the Commission of the circumstances that it believes should toll its construction period. A permittee must notify the Commission as promptly as possible and, in any event, within 30 days, of the act of God that has blocked construction, or the initiation of a relevant administrative or judicial review. The construction period will be tolled for the length of time that a diligent permittee will need to recover from the effects of the event. A permittee must also notify the Commission promptly when the relevant administrative or judicial review is resolved. A permittee that needs more than six months to resume construction after a natural disaster must submit additional supporting information at six-month intervals explaining construction progress, and the steps it has taken and proposes to take to resolve any remaining impediments. The burden is upon the permittee to show that any further tolling of the construction period is warranted. Notification must be in the form of a letter submitted in triplicate to the Secretary. The letter notification must also be placed by the permittee in the local public file of the station(s) concerned.

34. Construction permits granted pursuant to these rules are subject to automatic forfeiture, without further Commission action, upon expiration of an unencumbered three-year

construction period. Additionally, we eliminate that part of 47 CFR 73.3535(a) that requires that "[b]efore such an application can be granted, the permittee or assignee must certify that it will immediately begin building after the modification is granted or the assignment is consummated." We also eliminate the requirement that permittees who modify unbuilt stations certify that construction will commence immediately upon grant. See 47 CFR 73.3535(b). The analogous certification requirement for assignees and transferees will likewise be eliminated. No additional time will be granted when the permittee has had, in all, at least three unencumbered years to construct.

E. Modification of Pro Forma Assignments and Transfers

35. In the Notice of Proposed Rulemaking, we raised a question and invited comment as to whether 47 U.S.C. 310(d) would afford the Commission the flexibility to give a blanket consent to certain pro forma broadcast station assignments and transfers of control. We have determined that it would not be prudent to make such a fundamental change in our interpretation of 47 U.S.C. 310(d) without Congressional guidance. Therefore, we decline at this time to adopt the notification process suggested in the Notice.

F. Streamlined Ownership Reporting Requirements

36. We modify our existing ownership reporting rules to require commercial and noncommercial broadcast licensees to file Ownership Reports (FCC Form 323 or 323-E) when they file their stations' license renewal applications and every two years thereafter. For commercial licensees, we will delay the effective date of this rule modification until our new Ownership Report, which will include questions concerning minority and female ownership is available. Thus, commercial licensees should continue to file FCC Form 323 according to their current schedule until they have filed the revised form one time. Thereafter, they may file under the relaxed requirements. We also formalize the Commission's current practice of requesting an Ownership Report within 30 days of consummation of an approved assignment or transfer by amending 47 CFR 73.3615 to specifically require that commercial and noncommercial licensees and permittees file Ownership Reports within 30 days of consummating authorized assignments or transfers of licenses. We also eliminate the Commission's existing supplemental

reporting requirement, under which a noncommercial educational licensee or permittee must file an Ownership Report within 30 days after any change in previously reported information.

G. Information on Minority and Female Ownership

37. To develop more precise information on minority and female ownership of mass media facilities, we amend FCC Form 323 to include a section on the race and gender of individuals with attributable interests in broadcast licensees. Our revised Annual Ownership Report form will provide annual information on the state and progress of minority and female ownership and enable both Congress and the Commission to assess the need for, and success of, programs to foster opportunities for minorities and females to own broadcast facilities. In this regard, our information collection is consistent with our mandate under 47 U.S.C. 309(j) and 47 U.S.C. 257. Pursuant to 47 CFR 73.3615(a), sole proprietorships and partnerships composed solely of natural persons are exempt from the filing requirement. However, we encourage these licensees to file information voluntarily regarding gender and racial identity, so that we may more accurately measure minority and female broadcast ownership. The modified reporting requirement will only apply to the FCC Form 323, Annual Ownership Report, required of commercial broadcasters. We will consider at a later date whether to apply the requirement to the FCC Form 323-E required of noncommercial stations. The groups on which we will seek information are those to which our minority and female ownership policies have historically applied. In addition to females, these classifications are Black, Hispanic, Native American, Alaska Native, Asian, and Pacific Islander. Thus, we will amend Section 73.3615 of the Commission's Rules to require the provision of information on the gender and racial identity of all parties with attributable interests in commercial broadcast licensees.

III. Administrative Matters

38. The complete text of this Report and Order, including any statements, is available for inspection and copying during normal business hours in the Federal Communications Commission Reference Center (Room 239), 1919 M Street NW, Washington DC, and it may be purchased from the Commission's copy contractor, International Transcription Service Inc., 1231 20th Street NW, Washington, DC 20036, (202) 857-3800.

39. Paperwork Reduction Act of 1995 Analysis. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act. The new or modified paperwork requirements contained in this Report and Order (which are subject to approval by the Office of Management and Budget) will go into effect upon OMB approval.

Final Regulatory Flexibility Analysis (FRFA)

40. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking for each of the dockets in this proceeding, MM Docket Nos. 98-43 and 94-149. The Commission sought written public comments on the proposals set forth in each Notice, including comment on each IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996, Public Law 104-121, 110 Stat. 847 (1996).

Need For and Objectives of Action

41. Specifically, this Report and Order: (1) Streamlines broadcast application procedures, (2) speeds introduction of new and expanded services to the public, (3) reduces administrative burden on regulatees, (4) increases public access to information about the Bureau's actions and processing activities, and (5) maximizes efficiency in the use of Commission resources. The Report and Order maintains the technical integrity of broadcast services while fostering the Commission's goals of competition and diversity, continuing enforcement of the Commission's core rules and policies, and permitting members of the public a continued opportunity to monitor station performance. This action is taken in conjunction with the Commission's 1998 biennial regulatory review. Although Congress did not mandate this area of review, the Commission nonetheless undertook it to assure that its rules and processes are no more regulatory than necessary to achieve Commission goals.

42. Further, the Order revises our Ownership Report form, FCC Form 323,

to include a section requiring each owner to identify the race or ethnicity and the gender of each person holding an attributable ownership interest in its broadcast facility. Doing so will allow the Commission to determine accurately the current state of minority and female ownership of broadcast facilities and to chart the success of any measures that we may eventually adopt in this proceeding in promoting ownership by minorities and women. Information about the status of minority and female broadcast ownership will also help us to fulfill our responsibilities under section 257 of the Telecommunications Act of 1996 to identify and eliminate market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services. 47 U.S.C. 257. In implementing Section 257, the Commission is mandated to "promote the policies and purposes of this Act favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience and necessity."

Significant Issues Raised by Public Comments in Response to the IRFAs

43. No comments were received specifically in response to the IRFA in MM Docket No. 98-43. However, some comments in that proceeding did address certain small business issues. Primarily, commenters were concerned that not all small businesses are currently connected to the Internet and therefore would be unable to immediately participate in the electronic filing initiative adopted herein without additional expense. Commenters were also concerned that eliminating the requirement that permittees file sales contracts will hurt small business because lending institutions will be unable to access necessary sales price information. One commenter, Cumulus Media, commented that streamlining the application process will inevitably decrease the cost of doing business for small broadcasters and that broadcasters could then shift their resources into benefits for the public, such as more local programming and sponsorship of community events.

44. Four commenters endorsed our proposed amendment to FCC Form 323, which would require a broadcaster to provide information regarding the race or ethnicity and the gender of any individual with an attributable ownership interest in its broadcast facility. All four commenters stated that the collection of such information is essential in order to monitor the

effectiveness of minority and female ownership programs. One commenter points out that race and gender-based remedies must be narrowly tailored and terminate once fair representation has been achieved and, therefore, the collection of such data is necessary to these ends. The commenter asserts that the collection of statistical information on the race and gender of station employees to monitor equal employment opportunity compliance has been useful and the burden of its collection minimal. While another commenter urges that the revised form include a designation of the gender and race of the owner of the station, the first commenter suggests that we add questions concerning whether women or members of racial or ethnic minority groups hold ownership interests in the station and, if so, the percentage interest held by each group, the minority total, the female total, whether either total constitutes a controlling interest, whether women or minorities otherwise exercise control, and whether any minority ownership policies or devices were used by the current owners in acquiring the station.

45. Another issue raised by commenters concerning amendment of FCC Form 323 concerns how the Commission should define relevant groups. One commenter, Press Broadcasting Company, Inc., argues that the Commission has not clearly defined "minorities" beyond "Black, Hispanic, Native American, Alaska Native, Asian and Pacific Islander," and that the Commission's definition of minorities is arbitrary and inconsistent with its definition in other proceedings.

Description and Estimate of the Number of Small Entities to which Rules will Apply

46. Under the RFA, small entities include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632. 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). 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 SBA and after opportunity for public comment, establishes one or more definitions of such term that are appropriate to the

activities of the agency and publishes such definition(s) in the **Federal Register.**" We received no comment in response to either IRFA on how to define radio and television broadcast "small businesses." Therefore, we will continue to utilize SBA's definitions for the purpose of this FRFA.

47. The rules and policies adopted in the Report and Order will apply to all broadcast licensees. The SBA defines a television broadcasting station that has no more than \$10.5 million in annual receipts as a small business. Television broadcasting stations consist of 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 are establishments primarily engaged in television broadcasting and which produce taped television program materials. For 1992, the number of television stations that produced less than \$10.0 million in revenue was 1,155 establishments. There were approximately 1,583 operating television broadcasting stations in the nation as of September 30, 1998, of which approximately 1,219 are considered small businesses.

48. The SBA defines a radio broadcasting station that has no more than \$5 million in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial religious, educational, and other radio stations. Radio broadcasting stations that primarily are engaged in radio broadcasting and that produce radio program materials are similarly included. As of September 30, 1998, Commission records indicate that 12,373 radio stations were operating, of which 11,878 were considered small businesses.

49. Thus, the measures adopted here will affect the approximately 1,583 television stations, approximately 1,219 of which are considered small businesses. Additionally, the measures adopted here will also affect the 12,373 radio stations, approximately 11,878 of which are small businesses. 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. 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 rules and procedures adopted in this item. The number of entities that may seek to obtain a television or radio broadcast license is unknown.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

50. The measures adopted in the Report and Order will reduce the reporting required of prospective and current applicants, permittees and licensees. All measures aim to reduce the overall administrative burden upon both the public and the Commission. For example, we have adopted a phase-in period for mandatory electronic filing. We note that such a phase-in procedure has been used elsewhere to benefit small businesses. For example, the Securities and Exchange Commission incorporated its mandatory filing rules in stages. While most companies were phased into the electronic filing system in 1993, small businesses were not completely phased in until May 1996. We believe that electronic filing will, among other things, speed the processing of applications, save Commission resources, and make filing easier for regulatees by informing them of certain errors in their applications before they are actually sent.

51. The full benefits of electronic filing and processing would not be realized simply by converting the current version of each form into an electronic format. Accordingly, we have deleted or narrowed overly burdensome questions and will now rely more extensively on applicant certifications. These changes will both reduce applicant filing burdens and streamline our processing of sales, new station, and facility modification applications. The Report and Order revises Commission requirements for extending the construction periods of broadcast stations; for selling unbuilt construction permits; and for submitting ownership reports for commercial and noncommercial stations. To preserve the integrity of our streamlined application process, the Report and Order implements a formal program of both pre- and post-application grant random audits.

52. In addition, many broadcast licensees will need to file modified FCC Form 323, and include information on the race or ethnicity and gender of individuals with attributable interests in the broadcast license. However, not all broadcast licensees are required to file ownership forms. Specifically, pursuant to 47 CFR 73.3615(a), sole proprietorships and partnerships

composed solely of natural persons are exempt from the filing requirement. We encourage those licensees to file information voluntarily regarding gender and racial identity, so that we may more accurately measure minority and female broadcast ownership. In addition, our modified reporting requirement will apply only to commercial broadcast stations. The reporting requirements of noncommercial broadcasters as set forth in 47 CFR 73.3615(d) will remain unchanged.

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

53. This Order sets forth the Commission's new streamlined rules and procedures. The streamlined rules and procedures are intended to reduce applicant and licensee burdens, realize fully the benefits of the Mass Media Bureau's electronic filing initiative, and preserve the public's ability to participate fully in the Commission's broadcast licensing processes. These streamlined rules and procedures are designed to reduce filing burdens and increase the efficiency of application processing. All significant alternatives presented in the comments were considered, and some were adopted herein, including the addition of an explanation checkbox and the provision of accompanying narrative exhibits to the certification forms, under specific circumstances, in order to reduce the number of application amendments and thereby further preserve staff resources while reducing the paperwork burden on applicants.

54. As noted in the Report and Order, the development of electronic filing procedures will also greatly increase efficiencies to applicants, while increasing the speed of the licensing process. We expect that these changes will benefit all, including small entities. Electronic filing should be easier for applicants than the current system because the electronic filing system will prompt the applicant for the necessary information and will provide interactive error messages if information is not filed correctly. The electronic filing system will allow the applicant to correct its applications prior to submitting it. This system will allow all interested parties, including small entities, easy access to pleadings that are filed in connection with applications and licenses.

55. We do not believe that the modified race and gender reporting requirement will impose an undue economic burden on licensees because they will not be required to obtain information from anyone whose interests are not already reportable. We

have attempted to keep burdens on broadcast television and radio stations to a minimum by grafting this information collection onto an existing collection requirement rather than imposing an entirely new requirement. Additionally, the information being requested is simply the race and gender of persons with an attributable interest in the broadcast license. The Commission rejected requests made by some commenters for the collection of additional information. The significant alternatives the Commission considered were: (1) To collect more information than the race and gender of those with attributable interests (e.g., whether any minority ownership policies or devices were used by the current owners in acquiring the station); or (2) collect no information on the race and gender of persons with attributable interests. The first alternative could significantly increase the information-gathering and reporting burden on licensees with little benefit, while the information we require can be submitted by interested parties during the course of this proceeding. The second alternative, to collect no race or gender information, would force the Commission to make important policy decisions without relevant and important information.

Report to Congress

56. The Commission will send a copy of the *1998 Biennial Regulatory Review—Streamlining of Mass Media Applications, Rules, and Processes; Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities* Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

57. Authority for issuance of the Report and Order is contained in Sections 4, 301, 303, 307, 308 and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 301, 303, 307, 308 and 309. Sections 1.4, 73.316, 73.1030, 73.1675, 73.3500, 73.3526, 73.3534, 73.3535, 73.3597, 73.3598, 73.3599, 73.3613 and 73.3615 of the Commission's Rules, are amended.

58. The rule amendments will become effective 60 days after their publication in the **Federal Register**, and the information collection contained in these rules, with the exception of 47 CFR 73.3526(e)(11)(iii) and 73.3615(a), will become effective 60 days after publication in the **Federal Register**,

following OMB approval, unless a notice is published in the **Federal Register** stating otherwise. The Commission will publish a notice setting the effective date of 47 CFR 73.3526(e)(11)(iii) and 73.3615(a) upon OMB's approval of these sections.

59. It is further ordered that the proceeding in MM Docket No. 98-43 is terminated.

List of Subjects in 47 CFR parts 1 and 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission

Shirley S. Suggs

Chief, Publications Branch

Rule Changes

Parts 1 and 73 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. 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.

2. Section 1.4 is amended by adding a sentence to paragraph (f) to read as follows:

§ 1.4 Computation of time.

* * * * *

(f) * * * Mass Media Bureau applications and reports filed electronically pursuant to § 73.3500 of this Chapter must be received by the electronic filing system before midnight on the filing date.

PART 73—RADIO BROADCAST SERVICES

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

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

4. Section 73.316 is amended by revising paragraph (c) to read as follows:

§ 73.316 FM Antenna systems

* * * * *

(c) *Applications for directional antennas.* (1) Applications for construction permit proposing the use of directional antenna systems must include a tabulation of the composite antenna pattern for the proposed directional antenna. A value of 1.0 must be used to correspond to the direction of maximum radiation. The pattern must be tabulated such that 0° corresponds to the direction of maximum radiation or alternatively, in

the case of an asymmetrical antenna pattern, the pattern must be tabulated such that 0° corresponds to the actual azimuth with respect to true North. In the case of a composite antenna composed of two or more individual antennas, the pattern required is that for the composite antenna, not the patterns for each of the individual antennas. Applications must include valuations tabulated at intervals of not greater than ten (10) degrees. In addition, tabulated values of all maximas and minimas, with their corresponding azimuths, must be submitted.

(2) Applications for license upon completion of antenna construction must include the following:

(i) A complete description of the antenna system, including the manufacturer and model number of the directional antenna. It is not sufficient to label the antenna with only a generic term such as "dipole." In the case of individually designed antennas with no model number, or in the case of a composite antenna composed of two or more individual antennas, the antenna must be described as a "custom" or "composite" antenna, as appropriate. A full description of the design of the antenna must also be submitted.

(ii) A plot of the composite pattern of the directional antenna. A value of 1.0 must be used to correspond to the direction of maximum radiation. The plot of the pattern must be oriented such that 0° corresponds to the direction of maximum radiation or alternatively, in the case of an asymmetrical antenna pattern, the plot must be oriented such that 0° corresponds to the actual azimuth with respect to true North. The horizontal plane pattern must be plotted to the largest scale possible on unglazed letter-size polar coordinate paper (main engraving approximately 18 cm x 25 cm (7 inches x 10 inches)) using only scale divisions and subdivisions of 1, 2, 2.5, or 5 times 10-nth. Values of field strength less than 10% of the maximum field strength plotted on that pattern must be shown on an enlarged scale. In the case of a composite antenna composed of two or more individual antennas, the composite antenna pattern should be provided, and not the pattern for each of the individual antennas.

(iii) A tabulation of the measured relative field pattern required in paragraph (c)(1) of this section. The tabulation must use the same zero degree reference as the plotted pattern, and must contain values for at least every 10 degrees. Sufficient vertical patterns to indicate clearly the radiation characteristics of the antenna above and below the horizontal plane. Complete information and patterns must be

provided for angles of -10 deg. from the horizontal plane and sufficient additional information must be included on that portion of the pattern lying between +10 deg. and the zenith and -10 deg. and the nadir, to conclusively demonstrate the absence of undesirable lobes in these areas. The vertical plane pattern must be plotted on rectangular coordinate paper with reference to the horizontal plane. In the case of a composite antenna composed of two or more individual antennas, the composite antenna pattern should be used, and not the pattern for each of the individual antennas.

(iv) A statement that the antenna is mounted on the top of an antenna tower recommended by the antenna manufacturer, or is side-mounted on a particular type of antenna tower in accordance with specific instructions provided by the antenna manufacturer.

(v) A statement that the directional antenna is not mounted on the top of an antenna tower which includes a top-mounted platform larger than the nominal cross-sectional area of the tower in the horizontal plane.

(vi) A statement that no other antenna of any type is mounted on the same tower level as a directional antenna, and that no antenna of any type is mounted within any horizontal or vertical distance specified by the antenna manufacturer as being necessary for proper directional operation.

(vii) A statement from an engineer listing such individual engineer's qualifications and certifying that the antenna has been installed pursuant to the manufacturer's instructions.

(viii) A statement from a licensed surveyor that the installed antenna is properly oriented.

(ix)(A) For a station authorized pursuant to § 73.215 or Sec. § 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 percent of the RMS of the authorized composite directional antenna pattern (in relative field). The RMS value, for a composite antenna pattern specified in relative field values, may be determined from the following formula:

RMS=the square root of:

$$[(\text{relative field value } 1)^2 + (\text{relative field value } 2)^2 + \dots + (\text{last relative field value})^2]$$

total number of relative field values

(B) 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.

* * * * *

5. Section 73.1030 is amended by revising paragraph (a) as follows:

§ 73.1030 Notifications concerning interference to radio astronomy, research and receiving installations.

(a)(1) *Radio astronomy and radio research installations.* In order to minimize harmful interference at the National Radio Astronomy Observatory site located at Green, Pocahontas County, West Virginia, and at the Naval Radio Research Observatory at Sugar Grove, Pendleton County, West Virginia, a licensee proposing to operate a short-term broadcast auxiliary station pursuant to Section 74.24, and any applicant for authority to construct a new broadcast station, or for authority to make changes in the frequency, power, antenna height, or antenna directivity of an existing station within the area bounded by 39° 15' N on the north, 78° 30' W on the east, 37° 30' N on the south, and 80° 30' W on the west, shall notify the Interference Office, National Radio Astronomy Observatory, P.O. Box 2, Green Bank, West Virginia 24944. Telephone: (304) 456-2011. The notification shall be in writing and set forth the particulars of the proposed station, including the geographical coordinates of the antenna, antenna height, antenna directivity if any, proposed frequency, type of emission and power. The notification shall be made prior to, or simultaneously with, the filing of the application with the Commission. After receipt of such applications, the FCC will allow a period of 20 days for comments or objections in response to the notifications indicated. If an objection to the proposed operation is received during the 20-day period from the National Radio Astronomy Observatory for itself, or on behalf of the Naval Radio Research Observatory, the FCC will consider all aspects of the problem and take whatever action is deemed appropriate.

(2) Any applicant for a new permanent base or fixed station authorization to be located on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra, or for a modification of an existing authorization to change the frequency,

power, antenna height, directivity, or location of a station on these islands shall notify the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically, of the technical parameters of the proposal. Applicants shall consult interference guidelines, which will be provided by Cornell University. Applicants who choose to transmit information electronically should e-mail to: prcz@naic.edu

(i) The notification to the Interference Office, Arecibo Observatory shall be made prior to, or simultaneously with, the filing of the application with the Commission. The notification shall state the geographical coordinates of the antenna (NAD-83 datum), antenna height above ground, ground elevation at the antenna, antenna directivity and gain, proposed frequency and FCC Rule Part, type of emission, and effective radiated power.

(ii) After receipt of such applications, the Commission will allow the Arecibo Observatory a period of 20 days for comments or objections in response to the notification indicated. The applicant will be required to make reasonable efforts to resolve or mitigate any potential interference problem with the Arecibo Observatory and to file either an amendment to the application or a modification application, as appropriate. The Commission shall determine whether an applicant has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference.

* * * * *

6. Section 73.1675 is amended by revising paragraph (a) as follows:

§ 73.1675 Auxiliary antennas.

(a)(i) An auxiliary antenna is one that is permanently installed and available for use when the main antenna is out of service for repairs or replacement. An auxiliary antenna may be located at the same transmitter site as the station's main antenna or at a separate site. The service contour of the auxiliary antenna may not extend beyond the following corresponding contour for the main facility:

(i) AM stations: The 0.5 mV/m field strength contours.

(ii) FM stations: The 1.0 mV/m field strength contours.

(iii) TV stations: The Grade B coverage contours.

(a)(2) An application for an auxiliary antenna for an AM station filed pursuant to paragraphs (b) or (c) of this section must contain a map showing the

0.5 mV/m field strength contours of both the main and auxiliary facilities.

* * * * *

7. Section 73.3500 is amended by adding an (a) paragraph designation to the introductory text and adding paragraph (b) to read as follows:

§ 73.3500 Application and report forms.

(a) Following are the FCC broadcast application and report forms, listed by number.

* * * * *

(b) Following are the FCC broadcast application and report forms, listed by number, that must be filed electronically in accordance with the filing instructions set forth in the application and report form.

(1) Form 398, in electronic form as of January 10, 1999.

8. Section 73.3526 is amended by revising paragraph (e)(11)(iii) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(e)(11)(iii) *Children's Television Programming Reports.* For commercial TV broadcast stations, on a quarterly basis, a completed Children's Television Programming Report ("Report"), on FCC Form 398, reflecting efforts made by the licensee during the preceding quarter, and efforts planned for the next quarter, to serve the educational and informational needs of children. The Report for each quarter is to be filed by the tenth day of the succeeding calendar quarter. The Report shall identify the licensee's educational and informational programming efforts, including programs aired by the station that are specifically designed to serve the educational and informational needs of children, and it shall explain how programs identified as Core Programming meet the definition set forth in § 73.671(c). The Report shall include the name of the individual at the station responsible for collecting comments on the station's compliance with the Children's Television Act, and it shall be separated from other materials in the public inspection file. These Reports shall be retained in the public inspection file until final action has been taken on the station's next license renewal application. Licensees shall publicize in an appropriate manner the existence and location of these Reports. For an experimental period of three years, licensees shall file these Reports with the Commission on an annual basis, *i.e.* four quarterly reports filed jointly each year, in electronic form as of January 10, 1999. These Reports shall be filed with the

Commission on January 10, 1998, January 10, 1999, and January 10, 2000.

* * * * *

9. Section 73.3534 is revised to read as follows:

§ 73.3534 Period of construction for Instructional TV Fixed station construction permit and requests for extension thereof.

(a) Each original construction permit for the construction of a new Instructional TV Fixed station, or to make changes in such existing stations, shall specify a period of 18 months from the date of issuance of the original construction permit within which construction shall be completed and application for license filed.

(b) Requests for extension of time within which to construct an Instructional TV Fixed station shall be filed at least 30 days prior to the expiration date of the construction permit if the facts supporting such request for extension are known to the applicant in time to permit such filing. In other cases, a request will be accepted upon a showing satisfactory to the FCC of sufficient reasons for filing within less than 30 days prior to the expiration date.

(c) Requests for extension of time to construct Instructional TV Fixed stations will be granted upon a specific and detailed narrative showing that the failure to complete construction was due to causes not under the control of the permittee, or upon a specific and detailed showing of other sufficient justification for an extension.

(d) If a request for extension of time within which to construct an Instructional TV Fixed station is approved, such an extension will be limited to a period of no more than 6 months.

(e) A construction permit for an Instructional TV Fixed station shall be declared forfeited if the station is not ready for operation within the time specified therein or within such further time as the FCC may have allowed for completion, and a notation of the forfeiture of any construction permit under this provision will be placed in the records of the FCC as of the expiration date.

§ 73.3535 [Removed]

10. Section 73.3535 is removed.

11. Section 73.3597 is amended by adding paragraph (c)(1)(iii) as follows:

§ 73.3597 Procedures on transfer and assignment applications.

* * * * *

(c) (1) * * *

(i) * * *

(ii) * * *

(iii) The provisions of paragraphs (c) and (d) of this section apply only to mutually exclusive noncommercial educational applications filed on or after the release of the Report and Order in MM Docket 98-43, where the construction permit is issued pursuant to settlement agreement.

* * * * *

12. Section 73.3598 is revised to read as follows:

§ 73.3598 Period of construction.

(a) Each original construction permit for the construction of a new TV, AM, FM or International Broadcast; low power TV; TV translator; TV booster; FM translator; FM booster; or broadcast auxiliary station, or to make changes in such existing stations, shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed.

(b) The period of construction for an original construction permit shall toll when construction is prevented by the following causes not under the control of the permittee:

(i) Construction is prevented due to an act of God, defined in terms of natural disasters (e.g., floods, tornados, hurricanes, or earthquakes) or

(ii) the grant of the permit is the subject of administrative or judicial review (i.e., petitions for reconsideration and applications for review of the grant of a construction permit pending before the Commission and any judicial appeal of any Commission action thereon), or construction is delayed by any cause of action pending before any court of competent jurisdiction relating to any necessary local, state or federal requirement for the construction or operation of the station, including any zoning or environmental requirement.

(c) A permittee must notify the Commission as promptly as possible and, in any event, within 30 days, of any pertinent event covered by paragraph (b) of this section, and provide supporting documentation. All notifications must be filed in triplicate with the Secretary and must be placed in the station's local public file.

(d) A permittee must notify the Commission promptly when a relevant administrative or judicial review is resolved. Tolling resulting from an act of God will automatically cease six months from the date of the notification described in paragraph (c) of this section, unless the permittee submits additional notifications at six month intervals detailing how the act of God continues to cause delays in

construction, any construction progress, and the steps it has taken and proposes to take to resolve any remaining impediments.

(e) Any construction permit for which construction has not been completed and for which an application for license has not been filed, shall be automatically forfeited upon expiration without any further affirmative cancellation by the Commission.

§ 73.3599 [Removed]

13. Section 73.3599 is removed:

14. Section 73.3613 is amended by adding paragraph (b)(7) as follows:

§ 73.3613 Filing of contracts.

* * * * *

(b) * * *

(7) Agreements providing for the assignment of a license or permit or agreements for the transfer of stock filed in accordance with FCC application Forms 314, 315, 316 need not be resubmitted pursuant to the terms of this rule provision.

15. Section 73.3615 is amended by revising paragraphs (a) and (a)(1); the first sentence of paragraph (a)(2); paragraph (a) (3) (i) (A); paragraph (c); paragraph (d) introductory text and paragraphs (e) and (f) as follows:

§ 73.3615 Ownership Reports.

(a) With the exception of sole proprietorships and partnerships composed entirely of natural persons, each licensee of a commercial AM, FM, or TV broadcast station shall file an Ownership Report on FCC Form 323 when filing the station's license renewal application and every two years thereafter on the anniversary of the date that its renewal application is required to be filed. Licensees owning multiple stations with different anniversary dates need file only one Report every two years on the anniversary of their choice, provided that their Reports are not more than two years apart. A licensee with a current and unamended Report on file at the Commission may certify that it has reviewed its current Report and that it is accurate, in lieu of filing a new Report. Ownership Reports shall provide the following information as of a date not more than 60 days prior to the filing of the Report:

(1) In the case of an individual, the name, race or ethnicity, and gender of such individual;

(2) In the case of a partnership, the name, race or ethnicity, and gender of each partner and the interest of each partner. * * *

(a) * * *

(3) * * *

(i) * * *

(A) The name, residence, citizenship, race or ethnicity, gender, and stockholding of every officer, director, trustee, executor, administrator, receiver and member of an association, and any stockholder which holds stock accounting for 5 percent or more of the votes of the corporation, except that an investment company, insurance company, or bank trust department need be reported only if it holds stock amounting to 10 percent or more of the votes, provided that the licensee certifies that such entity has made no attempt to influence, directly or indirectly, the management or operation of the licensee, and that there is no representation on the licensee's board or among its officers by any person professionally or otherwise associated with the entity.

* * * * *

(c) Before any change is made in the organization, capitalization, officers, directors, or stockholders of a corporation other than licensee or permittee, which results in a change in the control of the licensee or permittee, prior FCC consent must be received under § 73.3540. A transfer of control takes place when an individual or group in privity, gains or loses affirmative or negative (50%) control. See instructions on FCC Form 323 (Ownership Report). Each permittee or licensee of a commercial AM, FM or TV Broadcast station shall file an Ownership Report on FCC Form 323 within 30 days of consummating authorized assignments or transfers of permits and licenses. The Ownership Report of the permittee or licensee shall give the information required by the applicable portions of paragraph (a) of this section.

(d) Each licensee of a noncommercial educational AM, FM or TV broadcast station shall file an Ownership Report on FCC Form 323-E when filing the station's license renewal application and every two years thereafter on the anniversary of the date that its renewal application is required to be filed. Licensees owning more than one noncommercial educational AM, FM or TV broadcast station with different anniversary dates need file only one Report every two years on the anniversary of their choice, provided that their Reports are not more than two years apart. A licensee with a current and unamended Report on file at the Commission may certify that it has reviewed its current Report and that it is accurate, in lieu of filing a new Report. Ownership reports shall give the following information as of a date not

more than 60 days prior to the filing of the Ownership Report:

* * * * *

(e) Each permittee of a noncommercial educational AM, FM or TV broadcast station shall file an Ownership Report on FCC Form 323-E:

(1) Within 30 days of the date of grant by the FCC of an application for original construction permit and;

(2) On the date that it applies for a station license. The Ownership Report of the permittee shall give the information required by the applicable form. A permittee with a current and unamended Report on file at the Commission may certify that it has reviewed its current Report and it is accurate, in lieu of filing a new Report.

(f) Each permittee or licensee of a noncommercial educational AM, FM or TV Broadcast station shall file an Ownership Report on FCC Form 323-E within 30 days of consummating authorized assignments or transfers of permits and licenses. The Ownership Report of the noncommercial educational permittee or licensee shall give the information required by the applicable form.

* * * * *

[FR Doc. 98-33486 Filed 12-17-98; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No.: 98-001; Notice 02]

RIN 2127-AH05

Insurer Reporting Requirements; List of Insurers Required To File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule updates the list in Appendices A, B, and C of Part 544 of passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences, pursuant to 49 U.S.C. 33112. Under 49 CFR Part 544, each insurer listed would be required to file a report for the 1995 calendar year not later than October 25, 1998. In this final rule, the agency extends the time for filing to a date not later than 30 days from the publication of this notice in the **Federal Register**. Further, as long as it remains listed, each company must submit reports by each subsequent October 25.

DATES: The final rule on this subject is effective December 18, 1998.

Reporting Date: Insurers listed in this final rule must submit their CY 1995 reports not later than 30 days from the publication of this notice in the **Federal Register**. Previously listed insurers whose names are removed by this notice need not submit reports for CY 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Proctor's telephone number is (202) 366-0846. Her fax number is (202) 493-2739.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 49 U.S.C. 33112, Insurer reports and information, NHTSA requires certain passenger motor vehicle insurers to file an annual report with the agency. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the insurer to reduce or deter theft. Under the agency's implementing regulation, 49 CFR Part 544, the following insurers are subject to the reporting requirements: (1) Those issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States; (2) Those issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one State; and (3) Rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity. Pursuant to its statutory exemption authority, the agency has exempted smaller passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a State-by-State basis. The agency may not, however, exempt an insurer under this section if it is considered an insurer only because of Section 33112(b)(1); that is, if it is a self-insurer. The term *small*

insurer is defined in Section 33112(f)(1)(A) and (B) as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under State law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a *small insurer*, but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular State, the insurer must report about its operations in that State.

As provided in 49 CFR Part 544, NHTSA exercises its exemption authority by listing in Appendix A each insurer which must report because it had at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally is administratively simpler since the former group is much smaller than the latter. In Appendix B, NHTSA lists those insurers that are required to report for particular States because each insurer had a 10 percent or a greater market share of motor vehicle premiums in those States. In establishing Part 544 (52 FR 59, January 2, 1987), the agency stated that Appendices A and B will be updated annually. It has been NHTSA's practice to update the appendices based on data voluntarily provided by insurance companies to A.M. Best, and made available for the agency each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-Insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA is authorized to grant exemptions to self-insurers, defined in 49 U.S.C. 33112(b)(1) as any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) which are used primarily for rental or lease and which are not covered by theft insurance policies issued by insurers of passenger motor vehicles. Under 49 U.S.C. 33112(e)(1) and (2), NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and