

Executive Order, we specifically solicited comments from State and local government officials on this interim final rule. We will seriously consider these comments in developing the final rule.

List of Subjects in 45 CFR Part 286

Carry over, Reserve, Prior fiscal years, Federal TANF funds.

(Catalog of Federal Domestic Assistance Program Number 93.558, Temporary Assistance for Needy Families Program)

Dated: March 30, 2009.

Curtis L. Coy,

Acting Assistant Secretary for Children and Families.

Approved: April 28, 2009.

Charles E. Johnson,

Acting Secretary, Department of Health and Human Services.

■ For the reasons stated in the preamble, we are amending 45 CFR chapter II by amending part 286 as set forth below:

PART 286—TRIBAL TANF PROVISIONS

■ 1. The authority citation for part 286 is revised to read as follows:

Authority: 42 U.S.C. 601, 604, and 612; Public Law 111–5.

■ 2. Revise § 286.60 to read as follows:

§ 286.60 Must Tribes obligate all Tribal Family Assistance Grant funds by the end of the fiscal year in which they are awarded?

No. A Tribe may reserve amounts awarded to it, without fiscal year limitation, to provide assistance, benefits, and services in accordance with the requirements under § 286.35 or § 286.40, if applicable.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MB Docket Nos. 07–294, 06–121, 02–277, 04–228; MM Docket Nos. 01–235, 01–317, 00–244; FCC 09–33]

Promoting Diversification of Ownership in the Broadcasting Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The *Report and Order* adopts changes to the reporting requirements on FCC Form 323, “Ownership Report for Commercial Broadcast Stations” to

improve Form 323 data collection in order to obtain an accurate, reliable, and comprehensive assessment of minority and female broadcast ownership in the United States. The FCC also is broadening Form 323 reporting requirements to require low power television station licensees, including Class A stations, to file biennially.

DATES: The amendments to §§ 73.3615, 73.6026, and 74.797 contain information collection requirements that have not been approved by OMB. The FCC will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Mania Baghdadi, (202) 418–2330, Amy Brett (202) 418–2703.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s *Report and Order* (R&O) adopted April 8, 2009, and released May 5, 2009. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs>). The complete text may be purchased from the Commission’s copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Summary of the Report and Order

1. In the (R&O) (1) the FCC enlarges the class of licensees required to file ownership reports biennially to include LPTV stations, including Class A stations, as well as commercial broadcast stations licensed to sole proprietors and partnerships composed of natural persons; (2) for purposes of defining the class of interests that are reportable, the FCC will not apply two attribution exemptions—the single majority shareholder exemption and the exemption for interests held in eligible entities that would be attributable but for the higher Equity/Debt Plus (“EDP”) thresholds adopted in the *Diversity Order*; (3) the FCC set a uniform biennial filing date in place of the filing date tied to stations’ renewal anniversaries; and (4) the FCC set an initial filing date of no later than November 1, 2009. To effectuate these changes, as discussed more fully below, the FCC delegates authority to staff to (1) revise the FCC Form 323 according to the parameters adopted in the (R&O); (2) revise the electronic interface so that the ownership data is incorporated into the database, is searchable, and can be aggregated and cross-referenced; (3) build additional checks into Form 323 to perform verification and review

functions and to preclude the filing of incomplete or inaccurate data; and (4) conduct audits on a random basis to ensure accuracy of Form 323 Reports.

2. Currently, full power broadcast stations are required to periodically file Form 323 Ownership Reports to identify their organizational and ownership structures. Form 323 also requires stations to provide information on owners’ race, ethnicity, and gender. Currently, full power commercial broadcast licensees are required to file Form 323: (1) When filing the station’s license renewal application; (2) following the consummation of an assignment or transfer of control of the station license; (3) within 30 days after the grant of a construction permit for a new commercial radio or television station; and (4) at two-year intervals on the anniversary date of the station’s renewal application filing date. The biennial reporting requirement does not apply, however, where the licensee is a sole proprietor or a partnership that is composed entirely of natural persons. In lieu of filing a new report, a licensee with a current and unamended report may certify that it has reviewed its current report and that it is accurate. The Commission does not require LPTV stations, including Class A stations, to file Form 323. If a full power commercial licensee or permittee is directly or indirectly controlled by another entity or if another entity holds an attributable interest in such licensee or permittee, a separate Form 323 is required to be submitted for such entity. To determine which interests are reportable on Form 323, the Commission uses its broadcast attribution rules, including the multiplier, which applies when an interest in a licensee is held indirectly by any party through one or more intervening entities in a vertical ownership chain. Form 323 defines the term “respondent” as either the licensee or permittee or an entity controlling or holding an attributable interest in the licensee or permittee. Each respondent, other than a natural person, is required to list its officers, directors, stockholders, and other entities with attributable interests, its non-insulated partners, and/or its members.

3. In 1998, the Commission began collecting data on minority and female broadcast ownership to fulfill the Commission’s statutory mandate under Section 257 of 1996 Telecom Act of 1996 and Section 309(j) of the Communications Act of 1934 to promote opportunities for small businesses and businesses owned by women and minorities in the broadcasting industry. The Commission revised Form 323 to

require filers to identify the gender and race or ethnicity of individuals with attributable interests in the licensee. The Commission concluded that the information was needed to “determine accurately the current state of minority and female ownership of broadcast facilities, to determine the need for measures designed to promote ownership by minorities and women, and to chart the success of any such measures that the Commission may adopt.”

4. It became apparent that the current collection methodology is inadequate and incomplete and cannot accurately be used to determine the state of minority and female broadcast ownership. Study authors who attempted to use the data contend that the data are incomplete, inaccurate, duplicative, and subject to significant measurement error. Specific problems cited include ownership percentages exceeding 100%, inconsistent racial classifications from year to year, missing and inaccurate information, and missing filings. The authors also note that because the biennial filing deadlines are tied to the station’s renewal application filing date, it is impossible to obtain a snapshot of broadcast ownership at any one particular moment in time to use as a benchmark or for analytical purposes. The authors recommend that the Commission collect race and gender data on a regular basis not only from commercial broadcasters that are currently exempt from the biennial reporting requirement, but also from non-commercial licensees. Researchers object to the use of attachments for submitting ownership data because the attachments cannot be electronically searched in the database or cross-referenced with other forms. Researchers also state that the filing of multiple forms by separate entities for a single station creates additional difficulties for performing analysis.

5. *GAO Study*. In March 2008, the United States Government Accountability Office (“GAO”) released a report recommending that the FCC identify processes and procedures to improve the reliability of its data on gender, race, and ethnicity so that it can more effectively monitor and report on the status of female and minority broadcast ownership. The GAO identifies three weaknesses of the data: (1) Exemptions from the biennial filing requirement for certain types of broadcast stations, (2) inadequate data quality procedures, and (3) problems with data storage and retrieval. First, the GAO concludes that because individuals, partnerships of natural persons, low power stations, and non-

commercial broadcast stations are exempt from filing Form 323 biennially, it is not possible to identify the full universe of broadcast stations owned by minorities and women.

The GAO criticizes the Commission for not verifying or periodically reviewing the gender, race, and ethnicity data submitted on Form 323. The GAO finds that reporting of ownership data on attachments is problematic because the data are not entered into the database, which renders the database unreliable and unusable for electronic queries. The GAO also criticizes the Commission for retaining outdated ownership forms in its database, even when a form has been updated. The GAO commends the Commission for taking several measures to address these concerns, noting, for instance, that the Commission now allows owners to modify information on a previously submitted Form 323, instead of requiring modifications to be submitted on a new form, and it precludes electronic submissions of incomplete forms. However, the GAO faults the Commission for continuing to allow respondents to file ownership information on attachments to Form 323, for not having any regular review process, and for not imposing consequences for misfiling that would encourage accurate, complete, and timely submission of Form 323.

6. On March 5, 2008, the Commission released the *Diversity Order* to increase participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses, which historically have not been well represented in the broadcasting industry. The Commission adopted a number of new rules and policies intended to encourage ownership diversity and new entry in broadcasting. The Commission discussed the benefits of conducting “longitudinal studies” of minority and female ownership in order to track ownership trends over time and agreed to begin research once the Commission improved the data collection process and gathered the necessary data. The Commission concluded that such studies could help parties to assess the impact of changes in the media ownership rules on minority and female ownership and provide real-time feedback on the impact of the Commission’s rules and policies on licensing, access to capital, availability of spectrum, and opportunities for minority and female ownership. The Commission stated that it would modify Form 323 Ownership Report to improve the quality and

usefulness of the data and sought comment on specific proposals.

7. *Form 323*. In the *Third Further Notice*, the Commission sought comment on whether to create a new form to collect data on minority and female ownership or to modify the existing Form 323. The Commission tentatively concluded that it should modify the existing Form 323 and not create a new form for this purpose and commenters agreed. The FCC continues to believe that use of Form 323 is the most efficient and least burdensome method of collecting minority and female broadcast ownership data. Broadcasters are familiar with the form and how to complete it. In the R&O, the FCC decides to continue to use Form 323 to collect data on minority and female ownership and will retain the existing biennial reporting interval for the form. Commission staff is directed to modify the existing FCC Form 323 consistent with the discussion in the R&O. The FCC delegates to staff the authority to modify the format, structure, content, and placement of questions designed to elicit empirical information as to minority and female ownership within the boundaries of the policies adopted in the R&O. In designing the appropriate questions to elicit the information, the R&O states that staff should balance the goals of increasing data quality and comprehensiveness with that of minimizing burdens on respondents wherever possible.

8. *Enlarging the Class of Stations Required to File Biennially*. In order to obtain comprehensive, up-to-date ownership data, the FCC is requiring all full power commercial broadcast stations and all low power television stations, including Class A stations, to file FCC Form 323 every two years. Therefore, the FCC is eliminating the exemption from the biennial reporting requirement that currently applies to sole proprietorships and partnerships of natural persons that are licensees of commercial broadcast stations. The R&O finds that any additional filing burdens imposed by this action are counterbalanced by the need to ensure the completeness and accuracy of the data collection efforts. Because the FCC is modifying the form to include additional requests for information and establishing a uniform filing date, the FCC will require all licensees and respondents to file a complete Form 323 by the initial filing date established in the Order. This will allow the first snapshot to be complete and provide a baseline of comparison for later filings every two years. The Commission staff

is directed to revise Form 323 as indicated in the R&O.

9. *Reportable Interests.* Currently, Form 323 requires respondents to provide information, including gender, race, and ethnicity, for all entities with attributable interests in any station that is subject to the reporting requirement. The R&O finds that there are certain areas in which the comprehensiveness of the FCC's minority and female ownership data collection efforts will be materially advanced by deviating from the attribution rules, and the FCC believes that it can do so without unreasonably burdening respondents. While the Commission considers only attributable interest holders in determining whether licensees are in compliance with the media ownership rules, the balance struck in defining what interests should be counted for purposes of implementing the ownership rules may not be appropriate for collecting data on interests held by minorities and women. Specifically, the FCC believes it is important to collect information from holders of equity interests in a licensee that would be attributable but for the single majority shareholder exemption and from holders of interests that would be attributable but for the higher Equity/Debt Plus ("EDP") thresholds adopted in the *Diversity Order* for purposes of determining attribution of certain interests in eligible entities. The single majority shareholder exemption provides that a minority shareholder's voting interests will not be attributed where a single shareholder owns more than 50 percent of the outstanding voting stock. Accordingly, shareholders holding voting stock interests of 5 percent or more in corporations with a single majority shareholder are required to be reported. Under the Commission's equity/debt plus ("EDP") standard, an interest is held attributable under the Commission's rules if, aggregating both equity and debt, the interest exceeds 33 percent of the total asset value (all equity plus all debt) of a broadcast station licensee, cable television system, daily newspaper or other media outlet subject to the Commission's broadcast multiple ownership or cross-ownership rules—and the interest holder also (1) holds an attributable interest in another media outlet in the same market that is subject to the multiple or cross-ownership rules, or (2) supplies over 15 percent of the total weekly broadcast programming hours of the station in which the interest is held. The *Diversity Order* adopted a mechanism to allow an interest holder to exceed the 33 percent threshold without triggering attribution

if the investment would enable an "eligible entity" (as that term is defined in the *Diversity Order*) to acquire a broadcast station provided that (1) the combined equity and debt of the interest holder in the eligible entity is less than 50 percent, or (2) the total debt of the interest holder in the eligible entity does not exceed 80 percent of the asset value of the station being acquired by the eligible entity and the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the eligible entity or any related entity. In order to obtain a broader scope of ownership data, the FCC will require entities holding interests in licensees that would otherwise be deemed non-attributable by virtue of the "eligible entity" exemption to be reported. Accordingly, Commission staff is directed to modify Form 323 so that these two attribution exemptions will not apply for purposes of defining the class of interests that are reportable and the entities that are required to file Form 323.

10. *Database Functionality.* To address criticism of the Commission's current data storage and retrieval system, Commission staff is directed to modify Form 323 so that ownership data is incorporated into the database, is searchable, and can be aggregated and cross-referenced electronically. To further improve the ability of researchers and other users of the data to cross-reference information and construct complete ownership structures, the FCC will require each attributable entity above the licensee in the ownership chain to list on Form 323, the FCC Registration Number (FRN) of the entity in which it holds an attributable interest. In other words, each filing entity must identify by FRN the entity below it in the chain. For example, Licensee A is wholly owned by Corp. B, and Corp. B is wholly owned by Corp. C. Corp. C is required to include on its Form 323, Corp. B's FRN. Corp. B is required to include on its Form 323 the Licensee's FRN. The R&O directs staff to revise Form 323 accordingly. While the FCC believes that these measures will resolve concerns regarding the usefulness of the data, the FCC delegates authority to the staff to revisit this issue if additional modifications of the form are determined to be necessary.

11. *Uniform Reporting Date.* The Commission sought comment on whether to establish a uniform filing date for all respondents. Currently, filing and reporting requirements are tied to stations' renewal cycles, and new data are continually incorporated into the database as it is filed, mixing new

data and old data. The FCC's experience with the data has made it apparent that the current use of rolling filing dates has impeded the ability to perform time-related comparisons using its database. None of the commenters opposes a uniform filing date. To make the data easier to work with, to address the problems created by the staggered ownership report filing deadlines currently in effect, and to facilitate studies of ownership, the FCC establishes a uniform filing date and a uniform date on which respondents must biennially identify ownership information as it exists on that date. Therefore, on or before November 1, 2009, and every two years thereafter, all commercial, full power broadcast licensees, LPTV, and Class A licensees, and entities with attributable interests in those licensees are required to file the revised Form 323. The reported ownership information must be current as of October 1 of the year in which the filing is being made. Therefore, for the first filing, all ownership information must be current as of October 1, 2009. The provision of ownership information on a uniform filing date every two years, instead of on a rolling or ad hoc basis, will facilitate comparisons among stations and rigorous analysis.

12. To address additional quality control issues, Commission staff is directed to build additional checks into Form 323 to perform verification and review functions and to preclude the filing of incomplete or inaccurate data. In addition, as discussed above, staff is directed to modify the form to ensure that all ownership data will be filed in a format that can be electronically searched, aggregated, and cross-referenced. As another measure to improve the quality of the ownership data, the Commission directs the Media Bureau to conduct audits on a random basis to ensure the accuracy of the Ownership Reports. The FCC authorizes the Bureau to make revisions to Form 323, its instructions, and the electronic database, as necessary in order to conduct random audits.

13. The Commission sought comment on the penalties to be imposed for licensees that file inaccurate information. The GAO Report recommends that the Commission adopt additional penalties for entities that fail to file the form or that file inaccurate information. NAB opposes the adoption of such penalties. The FCC concludes that current policies and rules are adequate to assure the accuracy of the information reported and that additional penalties are unnecessary. The truthfulness, accuracy, and completeness of information submitted

on a Form 323 must be certified by the individual permittee or licensee, a general partner in the licensee or permittee partnership, or an appropriate officer in the licensee or permittee corporation or association. Licensees are required to exercise reasonable due diligence before certifying to the accuracy of any information that is submitted to the Commission. The FCC determined that the current enforcement procedures are sufficient to ensure that licensees comply with its rules and procedures.

Final Paperwork Reduction Analysis

14. The R&O contains both new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 ("PRA"), Public Law 104-13. OMB, the general public, and other Federal agencies are invited to comment on the new and modified information collection requirements contained in this R&O. The Commission will submit the information collection requirements to the Office of Management and Budget (OMB) for review and approval under Section 3507(d) of the PRA and OMB, the general public, and other Federal agencies will again be invited to comment on the new and modified information collection requirements contained in this R&O. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Submit PRA comments on or before July 27, 2009 to Nicholas A. Fraser, Office of Management and Budget, via Internet at Nicholas_A_Fraser@omb.eop.gov or via fax at (202) 395-5167 and to Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW., Washington, DC or via Internet at Cathy.Williams@fcc.gov or PRA@fcc.gov.

Pursuant to the Small Business Paperwork Relief Act of 2002, Ex. Public Law 107-98, *see* 44 U.S.C. 3506(c)(4), the FCC has considered how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees." The FCC finds that the modified requirements must apply fully

to small entities (as well as to others) to protect consumers and further other goals, as described in the R&O.

Final Regulatory Flexibility Analysis

15. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Third Further Notice of Proposed Rulemaking (FNPRM)* in MB Docket No. 07-294. The Commission sought written public comment on the proposals in the *FNPRM* including comment on the IRFA. The Commission also prepared a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) and a Second Supplemental Initial Regulatory Flexibility Analysis (Second Supplemental IRFA) of the possible significant economic impact on small entities of the proposals in the Further Notice of Proposed Rulemaking (Further Notice) and the Second Further Notice of Proposed Rulemaking (Second Further Notice), respectively. The Commission sought written public comment on the Further Notice, including comment on the Supplemental IRFA, and written public comment on the Second Further Notice, including comment on the Second Supplemental IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

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

16. The R&O adopts changes to FCC Form 323, Ownership Report for Commercial Broadcast Stations, and the filing requirements for Form 323, to improve the Commission's collection of data on minority and female broadcast ownership so that the Commission can more accurately assess and effectively promote diversity of ownership in the broadcast industry. The R&O broadens the reporting requirements to require low power television stations ("LPTV") licensees, Class A television station licensees, and full power commercial broadcast licensees that are sole proprietors and partnerships comprised of natural persons, to file the form biennially. The R&O also requires entities with financial interests that would be attributable (1) but for the single majority shareholder attribution exemption or (2) the higher Equity/Debt Plus threshold adopted in the *Diversity Order* for purposes of attributing certain interests in eligible entities, to file Form 323 every two years. To ensure that the entire collection of minority and female ownership data is current as of a single date for each filing cycle, the R&O states that filers must file Form 323 no later than November 1, with reported

ownership information to be current as of October 1 of filing year. The first filings using the new Form 323 will be due on or before November 1, 2009. To address quality control issues, the R&O delegates authority to the Media Bureau staff to perform random audits, and to improve the electronic interface process in order to perform verification and review functions and preclude the filing of incomplete or inaccurate data. The R&O revises 47 CFR 73.3615 and adds 47 CFR 74.797 to implement these changes.

B. Legal Basis

17. The R&O is adopted pursuant to sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, and 310.

C. Summary of Significant Issues Raised by Public Comments in Response to the IRFA and the Supplemental IRFAs

18. The Commission received no comments in direct response to the IRFA, the Supplemental IRFA, or the Second Supplemental IRFA. However, the Commission received comments that discuss the additional burdens on broadcast licensees, including small entities. The National Association of Broadcasters and American Women in Radio and Television opposed requiring full power commercial broadcast licensees that are sole proprietors to file FCC Form 323 on a biennial basis. Instead, the commenters asked the Commission to retrieve the ownership data for minorities and women from either applications to request an assignment or transfer control of a broadcast station, or to require currently exempt entities to file Form 323 once, and not on a biennial basis. The Commission considered other ways to collect the ownership data, instead of a biennial filing, but determined that the biennial filings from the broader class of entities is needed to collect complete and accurate data, and ultimately to promote broadcast ownership among new entrants and small businesses, including minority- and women-owned businesses.

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

19. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental entity" under

Section 3 of the Small Business Act. In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

20. *Television Broadcasting.* In this context, the application of the statutory definition to television stations is of concern. The Small Business Administration defines a television broadcasting station that has no more than \$14 million in annual receipts as a small business. Business concerns included in this industry are those “primarily engaged in broadcasting images together with sound.” According to Commission staff review of the BIA Financial Network, Inc. Media Access Pro Television Database as of February 19, 2009, about 918 (71 percent) of the 1,292 commercial television stations in the United States have revenues of \$14 million or less. About 180 (14 percent) of the 1,292 commercial television stations are owned by sole proprietorships or partnerships and would be subject to new reporting requirements. However, these figures take into account all partnerships, and only partnerships comprised of natural persons are subject to new reporting requirements. Therefore, the FCC’s estimate likely overstates the number of small entities that might be affected. In addition, the FCC notes that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. Its estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the filing requirements for FCC Form 323, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

21. An element of the definition of “small business” is that the entity not be dominant in its field of operation. The Commission is unable at this time and in this context to define or quantify the criteria that would establish whether a specific television station is dominant in its market of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any television stations from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of “small business” is that the entity must be independently owned and operated. It is difficult at times to assess these criteria

in the context of media entities, and the FCC’s estimate of small businesses to which the rules may apply may be over-inclusive to this extent.

22. *Radio Broadcasting.* The Small Business Administration defines a radio broadcasting entity that has \$7 million or less in annual receipts as a small business. Business concerns included in this industry are those “primarily engaged in broadcasting aural programs by radio to the public.” According to Commission staff review of the BIA Financial Network, Inc. Media Access Radio Analyzer Database as of February 19, 2009, about 10,600 (96 percent) of 11,050 commercial radio stations in the United States have revenues of \$7 million or less. About 1,440 (13 percent) of the 11,050 commercial radio stations are owned by sole proprietors or partnerships, and would be subject to the new reporting requirements. However, these figures take into account all partnerships, and only partnerships comprised of natural persons are subject to new filing requirements. Therefore, the FCC’s estimate likely overstates the number of small entities that would be affected. In addition, the FCC notes that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. The FCC’s estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the ownership rules, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

23. In this context, the application of the statutory definition to radio stations is of concern. An element of the definition of “small business” is that the entity not be dominant in its field of operation. The FCC is unable at this time and in this context to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any radio station from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of “small business” is that the entity must be independently owned and operated. The FCC notes that it is difficult at times to assess these criteria in the context of media entities, and its estimate of small businesses to which the rules may apply may be over-inclusive to this extent.

24. *Class A TV and LPTV stations.* The rules and policies adopted herein apply to licensees of Class A TV stations

and low power television (“LPTV”) stations, as well as to potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than \$14.0 million in annual receipts. Currently, there are approximately 554 licensed Class A stations and 2,300 licensed LPTV stations. Given the nature of these services, the FCC will presume that all of these licensees qualify as small entities under the SBA definition. The FCC notes, however, that under the SBA’s definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. The FCC’s estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies.

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

25. Currently, the Commission requires certain full power commercial radio and television broadcast stations to periodically file Form 323 Ownership Report to identify their organizational and ownership structures, including information on owners’ race, ethnicity, and gender. Licensees of full power commercial stations that are sole proprietors and partnerships comprised of natural persons, and licensees of low power broadcast stations are not required to file Form 323 biennially. The R&O expands the class of entities that are required to file the Form 323 biennially to include all commercial licensees. Thus, sole proprietorships, partnerships of natural persons, and LPTV licensees, including, Class A licensees, must file the Form 323 biennially. In addition, the R&O broadens the filing requirements to include holders of two classes of nonattributable ownership interests: (1) Equity interests in a licensee that would be attributable but for the single majority shareholder exemption and (2) interests that would be attributable but for the higher Equity/Debt Plus thresholds adopted in the *Diversity Order* for purposes of determining attribution of certain interests in eligible entities. The R&O sets a deadline of no later than November 1, 2009, and every two years thereafter, as the biennial filing deadline for Form 323. The R&O also states that ownership data must be current as of October 1 of the filing year.

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

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

27. In order to minimize the administrative burdens on licensees, including small businesses, the Commission considered and declined to create a new form to collect the data on minority and female ownership. Instead, the Commission concluded that collecting the information on the current FCC Form 323 is the most efficient and least burdensome method of collecting minority and female broadcast ownership data. The R&O considered as an alternative whether to enlarge the class of stations that are required to file Form 323 biennially and concluded that the most effective way to obtain comprehensive ownership data is to require all full power commercial broadcast stations, LPTV, and Class A stations to file the revised Form 323 biennially. Currently, if a licensee is directly or indirectly controlled by another entity, or if another entity has an attributable interest in such licensee or permittee, a separate Form 323 must be submitted for each such entity. As suggested by NAB, the Commission considered the alternative of revising the reporting requirement so that a single form could be filed for all of the entities ultimately controlled by the same parent company or a single form for each licensee. The Commission did not revise the current reporting requirement because it was not convinced that requiring broadcasters to obtain all ownership data for parent corporations and attributable entities on a single form would be less burdensome. For instance, the Commission stated that licensees may find it burdensome to collect ownership information as to certain entities that hold interests in the licensee indirectly through a vertical ownership chain. However, to further improve the ability of researchers and other users of the data to cross-reference information and

construct complete ownership structures, the Commission is requiring each attributable entity above the licensee in the ownership chain to list, on Form 323, the FCC Registration Number of the entity in which it holds an attributable interest. The Commission considered the alternative of modifying the existing rolling filing schedule which is tied to a station's renewal cycle. In order to permit rigorous analysis based on data that is current as of the same date for all filers, the Commission concluded that it is necessary to establish a uniform submission date for the biennial filings. Therefore, the R&O states that files must file Form 323 no later than November 1, 2009, and every two years thereafter. The R&O also states that ownership data must be current as of October 1 of the filing year.

G. Report to Congress

28. The Commission will send a copy of this R&O, including this FRFA, in a report to Congress and the Government Accountability Office, pursuant to the Congressional Review Act. In addition, the Commission will send a copy of this R&O, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 73 and 74

Radio, Television.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Final Rules

■ For the reasons stated in the preamble, the Federal Communications Commission amends 47 CFR parts 73 and 74 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

■ 2. Section 73.3615 is amended by revising paragraph (a) introductory text to read as follows:

§ 73.3615 Ownership reports.

(a) The Ownership Report FCC Form 323 must be electronically filed no later than November 1, 2009, and every two years thereafter by each licensee of a commercial AM, FM, or TV broadcast station ("Licensee") and each entity that holds an interest in the licensee that is attributable for purposes of determining compliance with the Commission's

multiple ownership rules (see Notes 1–3 to 47 CFR 73.3555) or would be attributable but for the single majority shareholder exemption (see former Note 2(b) of 47 CFR 73.3555 and Order 16 FCC Rcd 22310 (2001)) or the higher threshold for attribution of certain interests in eligible entities under the Equity Debt Plus attribution standard (see Note 2(i) to 47 CFR 73.3555) ("Respondent"). A Licensee or Respondent with a current and unamended Report on file at the Commission, which was filed on or by the November 1, 2009 initial filing date or thereafter, may electronically 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 October 1 of the year in which the report is filed:

* * * * *

■ 3. Section 73.6026 is amended by adding the following entry to the end of the list as follows:

§ 73.6026 Broadcast regulations applicable to Class A television stations.

* * * * *

§ 73.3615(a) and (g) Ownership reports.

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

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

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

■ 5. Add § 74.797 to subpart G to read as follows:

§ 74.797 Biennial Ownership Reports.

The Ownership Report FCC Form 323 must be electronically filed no later than November 1, 2009, and every two years thereafter by each licensee of a low power television station or Respondent (as defined in § 73.3615(a) of this chapter). Beginning with the 2011 filing, a licensee or Respondent with a current and unamended Report on file at the Commission may certify electronically that it has reviewed its current Report and that it is accurate, in lieu of filing a new Report. Ownership Reports shall provide information as of October 1 of the year in which the report is filed. For information on filing requirements, filers should refer to § 73.3615(a) of this chapter.

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