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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 16-306, GN Docket No. 12-268; DA 17-484]

Transition Progress Report Form and Filing Requirements for Stations Not Eligible for Reimbursement from the TV Broadcast Relocation Fund

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) describes the information that must be provided in periodic progress reports (FCC Form 2100 – Schedule 387 (Transition Progress Report)) by full power and Class A television stations that are not eligible to receive payment of relocation expenses from the TV Broadcast Relocation Fund in connection with their being assigned to a new channel through the Incentive Auction.

DATES: Effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Joyce.Bernstein@fcc.gov, (202) 418-1647, or Kevin Harding, Kevin.Harding@fcc.gov, (202) 418-7077.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, DA 17-484, MB Docket No. 16-306, GN Docket No. 12-268, adopted and released May 18, 2017. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. The complete text of this document is also available for download at http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0518/DA-17-484A1.pdf.

Synopsis

The Incentive Auction Task Force and Media Bureau (collectively, the Commission) previously determined that stations that are eligible for reimbursement from the TV Broadcast Relocation Fund in connection with their being assigned to a new channel through the Incentive Auction must file reports showing how the disbursed funds have been spent and what portion of the stations' construction in complete, and sought comment on whether non-reimbursable stations should also file reports to show what portion of the stations' construction is complete. These Transition Progress Reports will help the Commission, broadcasters, those involved in construction of broadcast facilities, other interested parties, and the public to monitor the construction of stations.

The Commission announces that each full power and Class A television station that will be changing channels during the post-incentive auction transition and is not eligible for reimbursement of its relocation costs from the TV Broadcast Relocation Fund established by the Middle Class Tax Relief and Job Creation Act of 2012 must follow the same progress reporting requirements as reimbursable stations and periodically file an FCC Form 2100 – Schedule 387 (Transition Progress Report) that is attached as Appendix A to the Public Notice DA 17-34. The appendix is available at https://apps.fcc.gov/edocs_public/attachmatch/DA-17-34A1.docx. Non-Reimbursable stations must file Transition Progress Reports using the Commission's electronic filing system starting with first full calendar quarter after close of the Incentive Auction, which occurred on April 13, 2017, and on a quarterly basis thereafter. In addition to these quarterly reports, Non-Reimbursable stations must file the reports: (1) 10 weeks before the end of their assigned construction deadline; (2) 10 days after they complete all work related to construction of their post-auction facilities; and (3) five days after they cease broadcasting on their pre-auction channel. Once a station has filed a Transition Progress Report certifying that it has completed all work related to construction of its post-auction facilities and has ceased operating on its pre-auction channel, it will no longer be required to file reports. The Commission will automatically line the Transition Progress Reports to non-reimbursable stations' online local public inspection file on the Commission's website.

Some commenters proposed changes to questions in the Transition Progress Report Form adopted for reimbursable stations and certain filing procedures, which the Commission treated as requests for reconsideration and declined to adopt. The Commission declined to incorporate the response of "unknown at this time" into the form for each question, to change the wording of a question dealing with auxiliary antenna systems, to require a more detailed level of reporting with respect to a number of questions, to require reports to be filed on a less frequent basis, or to allow group owners to file a single report for all of their stations.

Paperwork Reduction Act of 1995 Analysis: This document contains new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, has invited the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document in a separate Federal Register Notice, as required by the Paperwork Reduction Act of 1995, Public Law 104-13, see 44 U.S.C. § 3507.

The Commission will send a copy of the document, DA 17-484, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Appendix B: Final Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the Transition Progress Report Public Notice. The Incentive Auction Task Force and Media Bureau sought written public comments on the proposals in the Transition Progress Report Public Notice, including comment on the IRFA. Because we adopt filing requirements for stations in the Public Notice, we have included this Final Regulatory Flexibility Analysis ("FRFA"), which conforms to the RFA.

Need for, and Objectives of, the Rule Changes. The Federal Communications

Commission (Commission) adopted a 39-month transition period during which television stations that are assigned to new channels in the incentive auction must construct their new facilities. The Commission determined that reassigned television stations that are eligible for reimbursement from the TV Broadcast Relocation Fund are required, on a regular basis, to provide progress reports to the Commission showing how the disbursed funds have been spent and what portion of construction is complete. In the Transition Progress Report Public Notice, the Media Bureau adopted a form for such progress reports and set the filing deadlines for such reports. The Public Notice requires that that reassigned television stations that are not eligible for reimbursement from the TV Broadcast Relocation Fund (Non-Reimbursable Stations) provide the same progress reports to the Commission on the same schedule as that specified for stations eligible for reimbursement. The Transition Progress Report Form requires all reassigned stations to certify that certain steps toward construction of their post-auction channel either have been completed or are not required, and to identify potential problems which they believe may make it difficult for them to meet their construction deadlines. The information in the progress reports will be used by the Commission, stations, and other interested parties to monitor the status of reassigned stations' construction during the 39-month transition period.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA. No formal comments were filed on the IRFA.

Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration. No comments were filed on the IRFA by the Small Business Administration.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply. 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 generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 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. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

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

The Commission has estimated the number of licensed commercial television stations to be 1,384. Of this total, 1,264 stations (or about 91 percent) had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on February 24, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 394. Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

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

Class A TV Stations. The same SBA definition that applies to television broadcast stations would apply to licensees of Class A television stations. As noted above, the SBA has created the following small business size standard for this category: those having $38.5 million or less in annual receipts. The Commission has estimated the number of licensed Class A television stations to be 417. Given the nature of these services, we will presume that these licensees qualify as small entities under the SBA definition.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements. The Public Notice adopted the following new reporting requirements. Non-Reimbursable Stations must file the Transition Progress Report on a quarterly basis, with the first Report being filed beginning for the first full quarter after the release of a public notice announcing the completion of the incentive auction. The deadline for filing the first Report is October 10, 2017. We further require that Non-Reimbursable Stations file Transition Progress Reports: (1) 10 weeks before the end of their assigned construction deadline; (2) 10 days after they complete all work related to construction of their post-auction facilities; and (3) five days after they cease broadcasting on their pre-auction channel. The Transition Progress Reports will be filed electronically using the Commission's electronic filing system, and the Commission will make the filings viewable in stations' online public inspection files. All reassigned stations are assigned to one of 10 Post-Auction Transition Plan Phase with construction deadline requirements ranging from November 30, 2018 to July 3, 2020. Once a station has ceased operating on its pre-auction channel, it no longer needs to file reports.

Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered. 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 or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standard; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

The reporting requirement adopted in the Public Notice will allow the Commission, broadcasters (including those filing the Reports), and other interested parties to more closely monitor that status of construction during the transition, and focus resources on ensuring successful completion of the transition by all reassigned stations and continuity of over-the-air television service. In addition, the burdens of the reporting requirements are minimal and we believe the benefits of the reporting requirements, which will facilitate the successful post-incentive auction transition, outweigh any burdens associated with compliance.

Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule. None.

Report to Congress. The Commission will send a copy of the Public Notice, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. A copy (or summary thereof) will also be published in the Federal Register.

Report to Small Business Administration. The Commission will send a copy of the Public Notice, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Thomas Horan,
Chief of Staff.
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