



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 17-289; FCC 17-156]

Rules and Policies to Promote New Entry and Ownership Diversity in the Broadcasting Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document solicits comment on how to design and implement an incubator program to support the entry of new and diverse voices in the broadcast industry. It seeks comment on the structure, review, and oversight of such a program in order to help create new sources of financial, technical, operational, and managerial support for eligible broadcasters, thereby creating ownership opportunities for new entrants and small businesses and promoting competition and new voices in the broadcast industry.

DATES: Comments are due on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and reply comments are due on or before **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by MB Docket No. 17-289, by any of the following methods:

- Federal Communications Commission’s Web Site: <http://apps.fcc.gov/ecfs/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 888-835-5322.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via email to PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Benjamin Arden, Industry Analysis

Division, Media Bureau, FCC, (202) 418-2330. For additional information concerning the PRA proposed information collection requirements contained in the Notice of Proposed Rulemaking, contact Cathy Williams at (202) 418-2918, or via the Internet at PRA@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Notice of Proposed Rulemaking (NPRM), in MB Docket No. 17-289; FCC 17-156, was adopted on November 16, 2017, and released on November 20, 2017. The complete text of this document is available electronically via the search function on the FCC’s Electronic Document Management System (EDOCS) web page at https://apps.fcc.gov/edocs_public/. The complete document is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the FCC’s Consumer and Governmental

Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

The NPRM proposes a new or revised information collection requirement. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the OMB to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. 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; (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; and (e) way to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Synopsis

I. INTRODUCTION

1. With the NPRM, the Commission seeks comment on how to design and implement an incubator program to support the entry of new and diverse voices in the broadcast industry. Specifically, the Commission seeks comment on the structure, review, and oversight of

a comprehensive incubator program that will help create new sources of financial, technical, operational, and managerial support for eligible broadcasters. The Commission believes that such a program can create ownership opportunities for new entrants and small businesses, thus promoting competition and new voices in the broadcast industry.

II. BACKGROUND

2. The Commission has long considered whether to adopt an incubator program to help provide new sources of capital and support to entities that may otherwise lack operational experience or access to financing. Generally, an incubator program would provide an ownership rule waiver or similar benefits to a company that establishes a program to help facilitate station ownership for a certain class of prospective or existing station owners. For example, in exchange for a defined benefit, such as waiver of a broadcast ownership rule, an established company could assist a new owner by providing financial, management, technical, training, and/or business planning assistance. Over the years, a number of parties have proposed or supported recommendations for some type of an incubator program, but the Commission has never developed a comprehensive incubator program. The Commission has adopted a limited program that provides a duopoly preference to parties that agree to incubate or finance an eligible entity, but this limited policy preference does not serve as an effective basis upon which to design a comprehensive incubator program.

3. The history of this issue dates back at least to the early 1990s, but the Commission's goal is to build on its most recent efforts. Notably, in 2010 the Commission's Advisory Committee on Diversity for Communications in the Digital Age recommended that the Commission commence a rulemaking to pursue an incubator program in order to help promote ownership diversity. The committee provided various recommendations on how to structure

such a program. Subsequently, the Commission sought comment during its 2010/2014 quadrennial reviews of its media ownership rules on whether to adopt an incubator program and, if so, how to structure such a program. The Commission highlighted administrative concerns and structural issues that needed to be addressed before such a program could be adopted. The record built in response to the Commission's requests for comment contained continued support for the concept of an incubator program and some suggestions on how to structure certain aspects of such a program. Some commenters, however, expressed concern that an incubator program would create a loophole in the Commission's ownership limits that could potentially harm small and independent station owners. The Commission found that the record failed to address those specific concerns and declined to adopt an incubator program. A couple of commenters urged the Commission to continue its consideration of an incubator program and suggested that additional public comment could help resolve the remaining administrative and structural issues. In an Order on Reconsideration adopted in conjunction with this NPRM, the Commission decided to adopt an incubator program and committed to initiating this proceeding to resolve issues regarding the design and implementation of that program.

4. In addition, on July 5, 2017, the Commission commissioned the Advisory Committee on Diversity and Digital Empowerment, which held its first meeting on September 25, 2017. The Commission anticipates that the committee's work will help inform its efforts to create an incubator program.

III. DISCUSSION

5. As stated above, the Commission decided to adopt an incubator program to help address the lack of access to capital and technical expertise faced by potential new entrants and small businesses. But while there is general support for an incubator program to help address

these issues, there is little consensus regarding the structure or details of such a program. The Commission anticipates that this NPRM, devoted exclusively to an incubator program, can help generate solutions to these technical and administrative issues. Accordingly, as detailed below, the Commission seeks comment on eligibility criteria for the incubated entity; appropriate incubating activities; benefits to the incubating entity; how such a program would be reviewed, monitored, and enforced; and the attendant costs and benefits. The Commission anticipates that the record will reveal innovative strategies for partnerships between established broadcasters and new entrants.

A. Defining Entities Eligible for Participation

6. The Commission seeks comment on how to determine eligibility for participation in the incubator program. Options include:

- New Entrants. The Commission could create a standard similar to the new entrant bidding credit eligibility definition applicable in the broadcast auction context. Under the auction rules, an auction participant is eligible for bidding credits if it has attributable interests in few or no other media of mass communication. A 35 percent bidding credit is awarded to a qualifying new entrant that has no attributable interest in any other media of mass communication, while a 25 percent bidding credit is awarded to a qualifying new entrant that holds an attributable interest in no more than three mass media facilities.
- Revenue-Based Eligible Entity. The Commission could use its previously adopted revenue-based eligible entity standard to identify those qualified to take advantage of certain preferential regulatory policies. An eligible entity under this definition is any commercial or non-commercial entity that qualifies as a small business consistent

with Small Business Administration (SBA) revenue grouping according to industry. Additionally, the Commission requires a small business eligible entity to hold: (1) 30 percent or more of the stock/partnership shares and more than 50 percent voting power of the corporation or partnership that will hold the broadcast license; (2) 15 percent or more of the stock/partnership shares and more than 50 percent voting power of the corporation or partnership that will hold the broadcast license, providing that no other person or entity owns or controls more than 25 percent of the outstanding stock or partnership interest; or (3) more than 50 percent of the voting power of the corporation if the corporation that holds the licenses is a publicly traded corporation.

- Socially and Economically Disadvantaged Businesses (SDB). The SDB standard is based on the definition employed by the SBA. Pursuant to the SBA's program, persons of certain racial or ethnic backgrounds are presumed to be disadvantaged; all other individuals may qualify for the program if they can show by a preponderance of the evidence that they are disadvantaged. To qualify for this program, a small business must be at least 51 percent owned and controlled by a socially and economically disadvantaged individual or individuals. The SDB standard is explicitly race-conscious and, therefore, subject to heightened constitutional review, a standard that the Commission previously found was insufficiently met by the record at the time.
- Overcoming Disadvantages Preference (ODP). The ODP standard would employ various criteria to demonstrate that an individual or entity has overcome significant disadvantage. The Commission previously declined to adopt an ODP standard, citing

concerns with the approach.

7. The Commission seeks comment on these various standards, including any modifications that would be appropriate in the incubator context. In particular, are there any changes to these standards that would help address previous concerns expressed by the Commission? Which of these standards most closely aligns with the Commission's goal to help facilitate ownership opportunities for entities that lack access to capital and operational experience and thereby promote competition and viewpoint diversity in local markets? In addition, the Commission seeks comment on any other standards that would effectively promote its objectives. Any commenters proposing or supporting a race- and/or gender-specific standard should also provide analysis regarding how such a standard could withstand a constitutional challenge. The Commission also seeks comment on the relative advantages of the various standards. Certain standards are more difficult to define and administer and may raise constitutional concerns. What are the offsetting benefits of these approaches relative to standards that are easier to apply and/or do not raise constitutional concerns?

B. Defining Qualifying Incubation Activities

8. The Commission also seeks comment on the activities that would qualify as incubation. Such activities would need to provide the incubated entity with support that it otherwise lacks and that is essential to its operation and ability to serve its community. As traditionally conceived, a comprehensive program could include management or technical assistance, loan guarantees, direct financial assistance through loans or equity investment, and training and business planning assistance. Should the Commission consider other activities, such as donating stations to certain organizations or arrangements whereby the new entrant gains operational experience without first acquiring a station, such as programming a station and

selling advertising time under a local marketing agreement?

9. What combination of activities (financial and operational) should be required to qualify as an incubation relationship? Should there be any conditions on the financial aspects of the relationship? For example, should there be any limitations on the incubating entity holding an option to acquire the incubated station? Should the Commission adopt time limitations on technical assistance? For example, should the Commission impose a minimum amount of time to ensure that the incubated station acquires sufficient technical expertise to operate the station independently of the established broadcaster? Should the Commission impose a maximum amount of time to ensure that the incubated station actually does become independent? What role should sharing agreements (e.g., local marketing agreements, joint sales agreements, and shared service agreements) play, if any, in the incubation relationship? The Commission seeks comment on these issues.

10. How can the Commission ensure that use of the incubation program is necessary to promote new entry? For example, should the proposed incubated station certify that it lacks the access to capital and technical expertise necessary to acquire and operate the station? Should participation in an incubator program be limited to new station acquisitions? Alternatively, should participation extend to existing station owners that are struggling and may need financing or other support to continue operation? Are there any justifications for limiting participation differently based on the eligibility standard selected?

11. While the Commission's rules already prohibit unauthorized transfers of control, including de facto transfers of control, should it adopt any additional safeguards as part of an incubation program to ensure that the incubated station licensee retains control of its station?

C. Benefit to Incubating Station

12. In order to encourage an established broadcaster to engage in incubating activities, the incubation program must provide a meaningful benefit to the incubating entity. In general, the potential benefit suggested has been a waiver of the Commission's local broadcast ownership rules. How should the Commission structure the waiver program? For example, should the waiver be limited to the market in which the incubating activity is occurring? Alternatively, should waiver be permissible in any similarly sized market? How would the Commission determine which markets are similar in size? Should the Commission review these waivers in the future to determine whether they continue to be justified? On what grounds would the Commission evaluate the waivers? Should the waiver be tied to the success of the incubation relationship? Should the waiver continue even if the incubator program ends and, if so, for how long? What should be considered a successful relationship? Should the waiver be transferrable if the incubating entity sells a cluster of stations that does not comply with the ownership limits at the time?

13. Instead of a waiver to acquire a different station in the market (or a similarly sized market), should the Commission allow the incubating entity to obtain an otherwise impermissible non-controlling, attributable interest in the incubated station? This would allow the incubating entity to obtain financial benefits that accrue from successful operation of the incubated station and would limit the impact on competition, both by ensuring that the incubated entity retains control of the station and by tying the ownership waiver to the period of time the incubated entity owns the station. Would such an approach dilute the contributions of the incubated station as an independent market participant?

14. Should the Commission limit any incubator program to radio, as the proposal was initially conceived, or should the program apply to both radio and television? Should the

Commission adopt a phased approach, whereby it institutes the program on a trial basis in radio and then evaluate its success and operation before expanding to television, and if so, how long should such a trial period last? What steps should the Commission take to evaluate the trial period and whether to expand the program?

D. Review of Incubation Proposals

15. The Commission seeks comment on the review process for incubation proposals. It expects that most incubation proposals will accompany an assignment or transfer of control application. These applications would be subject to petitions to deny and informal comments under the Commission's rules. Does this provide the public with sufficient opportunity to comment on the proposal? What public concerns should the Commission consider in its evaluation? Are there other situations beyond an assignment or transfer of control application in which an incubator proposal could be applied, and if so, how should the review process work in such circumstances?

16. If the program is extended to incubation opportunities for existing station owners that are facing financial and/or technical difficulties, how should the parties submit the proposal to the Commission for review and approval? For example, should the Commission require electronic filing of such requests in the Commission's Electronic Comment Filing System? Should these filings then be subject to the same public comment requirements as those filed as part of an assignment or transfer of control application?

17. The Commission notes that so long as the arrangement is permissible under existing Commission rules, parties do not need prior approval to enter into agreements regarding finances or station operations. However, for the arrangement to count as incubation, such that the incubating entity is entitled to the benefits of the program (e.g., an ownership waiver), the

Commission would need to find that the relationship satisfies the incubation criteria. In such circumstances, should Commission approval be required prior to the initiation of the incubation relationship or should the parties be permitted to request recognition of a previous or ongoing incubation relationship, perhaps as part of an application from the incubating entity requesting an ownership waiver for the acquisition of another station? Should there be a time limit on such subsequent requests for approval?

E. Compliance Assessment

18. As evidenced by the foregoing, an incubation relationship may involve complex agreements between the parties regarding financing, programming, and operations. How should the Commission monitor compliance with the terms of incubation? Should the Commission require periodic reports to be filed by one or both parties or placed in their online public files? If so, how frequently should the reports be filed? Should these reports be available to the public? What information should the reports contain? Should the Commission instead conduct its own periodic review of the incubation activities and compliance with the relevant agreements? What other compliance measures should the Commission consider?

19. If compliance lapses, for any reason, what are the consequences? Should the incubating party be required to divest itself of the benefits it received for engaging in incubation activities? For example, if the incubating party was granted a waiver of a local broadcast ownership rule, should it be forced to come into compliance with the relevant ownership limit if it does not fulfill the terms of the incubation program? Should the Commission allow the incubating party to seek to be relieved of its obligations and retain the benefits (e.g., ownership waiver) if the incubated station fails to comply with the terms of the agreement? Are there other appropriate enforcement responses, such as fines? Should the Commission establish a time limit

on the benefits granted under the incubation program based on the premise that the purpose of the program is to enable incubated entities to operate independently after some period of assistance?

F. Costs and Benefits

20. The Commission seeks comment on the costs and benefits associated with the proposals in this NPRM. In particular, the Commission encourages broadcasters and other industry participants to submit any relevant data regarding the potential costs associated with the various application, recordkeeping, and compliance requirements proposed herein. Are there ways to structure the program to reduce costs, particularly for small businesses? How does the Commission define and quantify the expected benefits of an incubator program?

IV. PROCEDURAL MATTERS

A. Ex Parte Rules

21. The proceeding for the NPRM shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other

filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with Section 1.1206(b). In proceedings governed by Section 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

B. Filing Requirements

22. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Commenting parties may file comments in response to this NPRM in MB Docket No. 17-289; interested parties are not required to file duplicate copies in the additional dockets associated with the Order on Reconsideration adopted at the same time as the NPRM.
- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, D.C. 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, D.C. 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

V. INITIAL REGULATORY FLEXIBILITY ACT ANALYSIS

23. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Act Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the

Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.

A. Need for, and Objectives of, the Proposed Rules

24. In the NPRM, the Commission seeks comment on the structure and implementation of an incubator program. Broadly speaking, an incubator program would provide an ownership rule waiver or similar benefits to a company that establishes a program to help facilitate station ownership for a certain class of new owners. Under such a program, an established company could assist a new owner by providing financial, management, technical, training, and/or business planning assistance. The primary purpose of such a program would be to help provide new sources of capital and support to entities that may otherwise lack operational experience or access to financing and thereby promote diversity. Over the years, a number of parties have proposed or supported recommendations for some type of an incubator program; however, substantive and administrative issues need to be resolved before an incubator program can be adopted. This NPRM seeks comment on these issues.

B. Legal Basis

25. The proposed action is authorized pursuant to sections 1, 2(a), 4(i), 257, 303, 307, 309, 310, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 257, 303, 307, 309, 310, and 403.

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

26. 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. A description of such small entities is provided below, as well as an estimate of the number of such small entities, where feasible.

27. Television Broadcasting. This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.” These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. 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 data reports that 751 such 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 the Commission therefore estimates that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

28. The Commission has estimated the number of licensed commercial television stations to be 1,382. Of this total, 1,262 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 May 9, 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 television stations to be 393. 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.

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

30. Radio Stations. This Economic Census category "comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources." The SBA has established a small business size standard for this category as firms having \$38.5 million or

less in annual receipts. Economic Census data for 2012 shows that 2,849 radio station firms operated during that year. Of that number, 2,806 operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999 million and 26 with annual receipts of \$50 million or more. Therefore, based on the SBA's size standard the majority of such entities are small entities.

31. According to Commission staff review of the BIA/Kelsey, LLC's Media Access Pro Radio Database on May 9, 2017, about 11,392 (or about 99.9 percent) of 11,401 of commercial radio stations had revenues of \$38.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed commercial radio stations to be 11,401. It is important to note that the Commission has also estimated the number of licensed noncommercial radio stations to be 4,111. Nevertheless, 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.

32. It is important to note, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by its 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. It is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these basis. The Commission's estimate of small businesses may therefore be over-

inclusive. Also, as noted above, an additional element of the definition of “small business” is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

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

33. Certain options, if adopted, may result in new reporting, recordkeeping, and compliance obligations for those broadcasters that participate in an incubator program. For example, parties could be required to submit the incubation proposal to the Commission for approval, file periodic compliance reports with the Commission or place the reports in their online public files, or submit requests for relief if the terms of the incubator proposal are not adhered to. In order to evaluate any new or modified reporting, recordkeeping or other compliance requirements that may result from the actions proposed in this NPRM, the Commission has sought input from the parties on various matters. The NPRM seeks comment on how to structure an incubation program, including a requirement that the parties file the incubation proposal with the Commission for the purpose of seeking the Commission’s approval of the arrangement. The Commission seeks comment on the method for filing the agreement in circumstances in which the parties seek Commission approval of the incubation relationship, such as whether it should be filed as part of an application for assignment or transfer of control of a broadcast license or, in the absence of such an application, via the Commission’s Electronic Comment Filing System. The NPRM also seeks comment on how to structure reporting, recordkeeping, and compliance requirements, which could also result in increased requirements for parties to an incubation arrangement. For example, the NPRM seeks comment on whether to

require periodic certifications that the parties remain in compliance with the incubation proposal approved by the Commission.

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

34. 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.

35. To evaluate options and alternatives should there be a significant economic impact on small entities as a result of actions that have been proposed in this NPRM, the Commission has sought comment from the parties. The NPRM seeks comment on the costs and benefits associated with various proposals and alternatives such as how to structure the administration and oversight of an incubator program and specifically seeks comment on ways to reduce the burdens on small entities. Overall, however, the Commission believes that small entities will benefit from their participation in an incubator arrangement by getting access to capital and/or operational assistance that they may otherwise lack, which may minimize any economic impact that may be incurred by small entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

36. None.

VI. ORDERING CLAUSES

37. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2(a), 4(i), 257, 303, 307, 309, 310, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 257, 303, 307, 309, 310, and 403, and section 202(h) of the Telecommunications Act of 1996, the Notice of Proposed Rulemaking IS ADOPTED.

38. IT IS FURTHER ORDERED that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the NPRM in MB Docket No. 17-289 on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and reply comments on or before **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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

FEDERAL COMMUNICATIONS COMMISSION.

Katura Jackson,
Federal Register Liaison Officer.
Office of the Secretary.

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