



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MB Docket Nos. 18-4, 17-105; FCC 18-145]

Filing of Contracts

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission eliminates a paper filing requirement for broadcast station contracts and documents and instead requires that these same documents are either uploaded or listed in the online public file within 30 days.

DATES: *Effective Date:* **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

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SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 18-145, in MB Docket Nos. 18-4 and 17-105, adopted and released on October 23, 2018. 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/ (https://apps.fcc.gov/edocs_public/). The complete document is available for inspection and copying in the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554 (for hours of operation, see

<https://www.fcc.gov/general/fcc-reference-information-center>). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov (mail to: fcc504@fcc.gov) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Synopsis

1. In this Report and Order (Order), we eliminate the paper filing requirement in § 73.3613 of our rules. § 73.3613 currently requires licensees and permittees of commercial and noncommercial AM, FM, television, and international broadcast stations to file paper copies of certain documents with the Commission within 30 days of execution. Broadcast licensees and permittees have been required to file paper copies of station documents with the Commission since the late 1930s. As part of our Modernization of Media Regulation Initiative, earlier this year we released a Notice of Proposed Rulemaking (NPRM) tentatively concluding that the paper filing requirement for § 73.3613 documents had outlived its usefulness and should be eliminated. We adopt that tentative conclusion herein and eliminate the routine paper filing requirement as discussed below. Our action today advances our goal of eliminating outdated and unnecessary regulatory burdens that can impede competition and innovation in media markets. In addition, our action today is consistent with other steps the Commission has taken to reduce paper submissions and make documents available electronically.

2. Elimination of Routine Paper Filings for Commercial and Noncommercial AM, FM, and Television Stations. Consistent with the NPRM's tentative conclusion, we eliminate the paper filing requirement for § 73.3613 documents for commercial and noncommercial AM, FM, and television stations.¹ Given the ready access afforded by the online public inspection file

¹ Consistent with the proposal in the NPRM, we will require that stations make their § 73.3613 documents available to the Commission and the public via the options set forth in the existing public file rules, as discussed below.

(OPIF), stations already provide easy access to such documents, making routine paper filings redundant and unnecessary. Commenters agree that we can eliminate the 1930s-era paper filing requirement and rely on the OPIF to ensure that the public has access to relevant documents. As currently set forth in §§ 73.3526 and 73.3527 of our regulations,² our existing OPIF rules require that stations retain in the OPIF a copy of their most recent, complete ownership report together with all related material. And under our rules, ownership reports must include a list of all documents currently filed with the Commission pursuant to § 73.3613 for the stations covered by the report. Our present rules require that these documents be made available for public inspection via the OPIF. Specifically, stations are currently required to either (i) upload the documents directly to the OPIF or (ii) maintain an up-to-date list of the documents in the OPIF and provide copies to requesting parties within seven days.³ Accordingly, we eliminate the routine paper filing requirement for such documents, and we rely on our OPIF rules as discussed herein. In addition, we will continue to rely on our long-standing ability to obtain § 73.3613 documents from licensees and permittees upon request, as needed. If the Commission requests a copy of a § 73.3613 document, then, as is currently the case under our existing rules, the licensee or permittee must provide the Commission with a complete, unredacted copy of such document. Currently, LPTV stations are required to file network affiliation agreements with the Commission as specified in § 73.3613(a). Because we are retaining our ability to obtain § 73.3613 documents upon request, LPTV stations will be required to submit network affiliation agreements to the Commission upon request and within seven days of such request.

3. Consistent with the previous practice for paper filings under § 73.3613, we will

² § 73.3526 of our rules contains OPIF requirements for commercial broadcast stations, while § 73.3527 contains OPIF requirements for noncommercial educational broadcast stations.

³ Our public file rules also require licensees and permittees to retain copies of TBAs and JSAs involving a commercial AM, FM, or television station in the station's public file.

require that stations update their inventory of § 73.3613 documents in the public file within 30 days of execution of such documents, including amendments, supplements, and cancellations. Nearly all commenters support such a requirement. While the public broadcasting organizations assert that requiring “periodic updates” would be sufficient for public broadcast stations, we are concerned that such a vague requirement would create uncertainty as to when these stations must update the public file to reflect changes to their inventory of § 73.3613 documents. Accordingly, rather than rely on each station to define the appropriate frequency of updates, we require that all stations, including public broadcast stations, update their inventory of § 73.3613 documents in the OPIF within 30 days of execution of such documents, including amendments, supplements, and cancellations.

4. We decline to require that all § 73.3613 documents, rather than simply a list of such documents, be uploaded directly to the OPIF. Since 1998, our public file rules have allowed stations the option of retaining either copies or a list of § 73.3613 documents in the public file, and no commenter asserts that the option to retain a list in the file has deprived the public of information that is relevant to station ownership or assessing renewal applications. In addition, we note that the public has direct access to information about station owners via ownership reports, which are also retained in the OPIF. Thus, contrary to some commenters’ assertions, retaining the option for stations to list § 73.3613 documents in the public file and provide them upon request will not deprive the Commission and the public of information relevant to station ownership. As discussed below, we reject assertions that eliminating paper filings and allowing stations to provide access to § 73.3613 documents via the options set forth in our existing OPIF rules will decrease transparency and delay access to such documents by the public. Under the approach we adopt herein, interested parties will be able to obtain § 73.3613

documents either directly from the OPIF or within seven days of submitting a request to a station that lists the documents in the OPIF, without having to travel to the Commission's Reference Information Center (RIC) to request a copy of a document filed with the Commission in paper. Rather than delaying access to § 73.3613 documents and increasing burdens on the Commission and the public, we believe that the OPIF reduces the time and expense for interested parties to obtain copies of § 73.3613 documents. Indeed, as discussed below, today only a limited number of people visit the RIC to view § 73.3613 documents filed with the Commission in paper.

5. We agree with Gray Television that a station that lists its § 73.3613 documents in the OPIF should be required to include the execution and expiration dates, if any, for each such document. No commenter opposes this proposal. Accordingly, we require stations that list § 73.3613 documents in the OPIF to include on their list all of the information required for such documents on ownership reports. This will provide the information necessary to keep track of expiring documents and thereby help ensure that stations maintain a current inventory of their § 73.3613 documents in the OPIF.

6. We conclude that eliminating the paper filing requirement and relying on our OPIF rules as discussed herein will reduce burdens on broadcasters while preserving transparency and ensuring that the Commission and the public can obtain relevant information in a timely fashion. As a result of our decision today, stations will no longer have to spend time and money preparing paper copies of § 73.3613 documents and having them mailed or hand-delivered to the Commission, often by outside legal counsel. Importantly, the Commission and the public will still have easy access to § 73.3613 documents via the OPIF as discussed above. Furthermore, the Commission will continue to have the ability to obtain unredacted copies of such documents from stations upon request. Therefore, contrary to some commenters'

assertions, we do not believe that eliminating routine paper filings will meaningfully impact the ability of the Commission and other interested parties to review § 73.3613 documents for commercial and noncommercial AM, FM, and television stations. Because § 73.3613 documents are either contained in the OPIF or available upon request to the station, there is no longer a need for the public to travel to the Commission's RIC to view these documents. Indeed, based on a review of the Commission's internal records, just over 500 people—or an average of 2 people per business day—visited the RIC from September 2017 through August 2018, including Commission staff and people viewing other available files. The RIC files include not only § 73.3613 documents filed with the Commission but also a lot of information on licensing applications, as well as Commission proceedings, programs, and activities. Thus, the total number of visitors to the RIC cannot be equated to the number of people who viewed the broadcast station paper files made available in the RIC, or more specifically, the § 73.3613 documents contained in those files, which is unknown but could be much fewer than the total number of visitors to the RIC. Moreover, the total number of visitors to the RIC includes Commission staff, and it is unknown how many visitors were members of the public.

7. To effectuate the changes we adopt today, we will revise the relevant public file rules by replacing the current reference to the documents listed on ownership reports (i.e., § 73.3613 documents) with a direct reference to the list of documents in § 73.3613. We agree with the National Association of Broadcasters that this approach will clarify the relevant public file requirements in §§ 73.3526(e)(5) and 73.3527(e)(4) of our rules and also avoid the need to attempt to incorporate the lengthy, detailed list of § 73.3613 documents into two distinct sections of our rules. Incorporating the list of § 73.3613 documents into our public file rules would significantly increase the length and complexity of those rules. While one commenter asserts in

general terms that we should eliminate § 73.3613 from our rules entirely, no commenter has proposed a specific method of doing so in a manner that addresses our concerns. In addition to significantly increasing the length and complexity of our public file rules, we also raised other concerns about eliminating § 73.3613 of our rules entirely. Specifically, in the *NPRM* we sought comment on how we would address the documents currently specified in § 73.3613(e), which licensees and permittees currently are not required to file with the Commission but must keep at the station and make them available for inspection upon request by the Commission. We also sought comment on how we would address § 73.3613(a)(1), which currently includes a definition of “network” that is cross referenced in the Telecommunications Act of 1996 and in our Dual Network Rule. No commenter has offered a proposal for addressing these issues. Accordingly, we conclude that retaining the list of documents in § 73.3613 and revising our public file rules to refer directly to that list is best for clarity and will most effectively keep stations informed of their obligations.

8. The text of the revised rules can be found in Appendix A hereto. In addition to the specific rule changes discussed above, we are also eliminating § 73.1226(c) of our rules, which currently requires that certain documents be kept at the station and made available for inspection by any authorized representative of the FCC upon request. Because § 73.3613(e) currently contains a similar list of documents that must be kept at the station and made available for inspection upon request by the FCC, we conclude that we can eliminate § 73.1226(c) and revise the relevant subsection of § 73.3613 to include every document that is currently listed in § 73.1226(c), except for “contracts relating to the sale of broadcast time to ‘time brokers’ for resale,” which are already required to be made available for inspection pursuant to our OPIF rules. In addition, we are also eliminating § 73.3613(a)(3) of our rules, which currently requires

that stations notify the Commission in writing when a network affiliation agreement is cancelled or terminated. Because we are no longer requiring that stations file network affiliation agreements with the Commission in paper routinely, it does not make sense to continue requiring routine written notifications whenever such an agreement is cancelled or terminated. Further, such written notifications are no longer necessary given that (i) the expiration date of the affiliation agreement will be available either through the copy uploaded to the OPIF or in the document list; and (ii) the documents in the OPIF or the list must be updated within 30 days of a cancellation of an agreement. We also reformat the notes to §§ 73.3526 and 73.3527 to conform to the requirements of the Office of the Federal Register and make additional, conforming edits as shown in Appendix A. We direct the Media Bureau to make all form modifications and take any other steps necessary to implement all the rule changes and other decisions adopted herein.

9. Streamlining Disclosure Requirements for TBAs and JSAs. In order to avoid overlap and duplication in our rules, we adopt the NPRM's tentative conclusion to eliminate the filing requirement for attributable time brokerage agreements (TBAs) and attributable joint sales agreements (JSAs) in § 73.3613(d) of our rules. This provision duplicates an existing OPIF disclosure requirement; therefore, it is no longer necessary to retain § 73.3613(d) following the elimination of the paper filing requirement. Because § 73.3613(d) also contains important definitional information describing the subset of TBAs and JSAs that must be included on ownership reports which remain undisturbed by this item, we find it necessary to incorporate this definitional information elsewhere, as discussed below.

10. § 73.3613(d) currently defines attributable TBAs and attributable JSAs and requires that they be filed with the Commission by the brokering station. A TBA, also referred to as local marketing agreement (LMA), involves "the sale by a licensee of discrete blocks of

time to a ‘broker’ that supplies the programming to fill that time and sells the commercial spot announcements in it.” A JSA is an agreement that authorizes a broker to sell some or all of the advertising time on the brokered station. As discussed above, stations must also disclose these and other § 73.3613 documents on ownership reports and make the documents available via the OPIF pursuant to § 73.3526(e)(5). However, as discussed in the NPRM, our existing OPIF rule for commercial stations contains another provision that specifically requires stations to upload all TBAs and JSAs directly to the OPIF for both the brokering and brokered stations, regardless of whether or not such agreements are attributable. Thus, we do not need to retain § 73.3613(d) to ensure that the Commission and the public have access to this subset of TBAs and JSAs. Accordingly, we eliminate § 73.3613(d) of our rules to streamline our disclosure requirements for TBAs and JSAs. Consistent with our decision above to require updates to the OPIF within 30 days of executing a § 73.3613 document, we will require that stations update the OPIF to reflect new or amended TBAs and JSAs within 30 days of execution of such documents, including amendments, supplements, and cancellations.

11. Despite the elimination of the paper filing requirement, we continue to require that attributable TBAs and attributable JSAs be disclosed by the licensee of the brokering station on its ownership report. The Commission has previously determined that such agreements permit a degree of influence or control that is cognizable as an attributable ownership interest in the brokered station for purposes of determining the brokering licensee’s compliance with our broadcast ownership rules. As such, the Commission included attributable TBAs and attributable JSAs in the list of agreements that must be disclosed on ownership reports. Because our decision today does not change these prior determinations,⁴ licensees brokering time under

⁴ We also note that the NPRM did not propose to eliminate the requirement that these agreements be disclosed on ownership reports and that any such change is beyond the scope of this proceeding.

an attributable TBA or an attributable JSA must continue listing such agreements on ownership reports. We will make this clear in the instructions to FCC Form 323.

12. Redaction of Confidential or Proprietary Information. We adopt our tentative conclusion to extend the explicit redaction allowance for TBAs and JSAs to all § 73.3613 documents to the extent they contain confidential or proprietary information, and require that unredacted copies be provided to the Commission upon request. No commenter asserts that we should not extend this explicit redaction allowance for confidential or proprietary information to all § 73.3613 documents, although some commenters urge us to clarify what constitutes “confidential or proprietary information” and the procedure for indicating redactions.

13. We clarify that, for purposes of the redaction allowance, confidential or proprietary information is information that would be accorded confidential treatment pursuant to our general rules for seeking non-disclosure of information submitted to the Commission. §§ 0.457(d) and 0.459 of our rules provide for confidential treatment of trade secrets and commercial or financial information obtained from any person and privileged or confidential. Because an individualized determination is required to decide whether confidential or proprietary information not specified in § 0.457 of our rules is to be withheld from routine public inspection, we reject the American Cable Association’s assertion that information related in any way to retransmission consent should never be redacted. However, we emphasize that the redaction allowance applies to § 73.3613 documents only to the extent they contain confidential or proprietary information. Thus, we expect that licensees and permittees will redact only such information that is actually confidential or proprietary, if any, and leave all other information unredacted in the copy of the § 73.3613 document they make available to the Commission and the public.

14. Moreover, we require that each copy of a § 73.3613 document containing confidential or proprietary information have the same material redacted and that licensees and permittees must not provide different redacted versions of the same document to requesting parties. Licensees and permittees must clearly indicate where redactions are being made. If a person believes that a § 73.3613 document has been inappropriately redacted, he or she may file a response in opposition under § 0.459(d) of our rules if the licensee or permittee of the station filed a request for confidentiality pursuant to § 0.459. Otherwise, the person may file a complaint with the Commission if he or she believes that the station has violated our public file rules or redacted information that is not actually confidential or proprietary.

15. A station that provides a redacted version of a § 73.3613 document to a requesting party must provide the party with the redacted document within seven days of the party's request for a copy of the document. Thus, we will not permit stations that choose to retain a list of § 73.3613 documents in the public file to wait months before providing a copy of those documents to a requesting party. We note that under our existing rules, information submitted to the Commission under a request for confidentiality is treated as confidential until the Commission acts on the request and all subsequent appeal and stay proceedings have been exhausted. Thus, even absent an explicit redaction allowance, broadcasters would still be able to redact information submitted to the Commission under a request for confidentiality, and the Commission would withhold that information from third parties in accordance with its existing rules. Therefore, we reject the notion that the explicit redaction allowance will delay parties' access to relevant information

16. Elimination of Routine Paper Filings for International Broadcast Stations.
International broadcast stations, which are authorized on a seasonal basis, employ frequencies

allocated to the broadcasting service between 5900 and 26100 kHz, the transmissions of which are intended to be received in foreign countries. These stations, which are often operated by churches and other religious organizations, do not serve local communities in the United States. We adopt our tentative conclusion to eliminate the requirement that licensees and permittees of international broadcast stations routinely file § 73.3613 documents with the Commission and retain our ability to obtain these documents from licensees and permittees upon request, as needed. No commenter opposes elimination of the § 73.3613 paper filing requirement for international broadcast stations.

17. We conclude that the current justifications for requiring disclosure of § 73.3613 documents by commercial and noncommercial AM, FM, and television stations do not apply to international broadcast stations. As discussed in the NPRM, the routine disclosure of § 73.3613 documents by commercial and noncommercial AM, FM, and television stations supplements the information that these stations are required to provide in their ownership reports. However, the same is not true for international broadcast stations, which are not subject to the routine ownership reporting obligations that apply to the other broadcast services. Moreover, international broadcast stations are not subject to the ownership rules applicable to commercial AM, FM, and television stations, nor are they subject to the relevant operational provisions applicable to noncommercial FM and television stations. For purposes of enforcing the statutory bar against de facto transfers of control of international broadcast stations without prior Commission authorization, we believe it is sufficient to retain our ability to obtain § 73.3613 documents from licensees and permittees of international broadcast stations upon request, as needed. Because the record provides no basis for continuing to require that international broadcast stations routinely file § 73.3613 documents with the Commission, we eliminate the

routine paper filing requirement for § 73.3613 documents for international broadcast stations.

18. Paperwork Reduction Act Analysis.—This document contains a non-substantive and non-material modification of information collection requirements that is subject to approval by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995, Pub. Law 104-13 (44 U.S.C. 3501-3520). In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Pub. Law 107-198, 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. In the present document, we have assessed the effects of our decision to eliminate the paper filing requirement for § 73.3613 documents and rely instead on our public file rules and our ability to obtain § 73.3613 documents from broadcast licensees and permittees upon request. We find that the rule changes adopted herein will relieve broadcast licensees and permittees of the time and expense associated with filing paper copies of § 73.3613 documents with the Commission, and that affected small entities, including those with fewer than 25 employees, will only benefit from the actions taken in this document.

Final Regulatory Flexibility Analysis

19. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM) in MB Docket 18-4. The Commission sought written public comments on proposals in the NPRM, including comment on the IRFA. The Commission received no direct comments on the IRFA. The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

20. Need for, and Objectives of, the Report and Order. The Report and Order (Order) eliminates the requirement that licensees and permittees of commercial and noncommercial AM, FM, television, and international broadcast stations routinely file paper copies of station contracts and other documents with the Commission as currently specified in § 73.3613 of the Commission's rules. Given that the Commission's existing public file rules now require that licensees and permittees of commercial and noncommercial AM, FM, and televisions stations make copies of their § 73.3613 documents available online, the Order finds that § 73.3613's requirement that licensees and permittees also file copies of such documents in paper with the Commission to be outdated and unnecessary. Rather than retaining this antiquated paper filing requirement, the Commission will rely on its existing public file rules to ensure access to § 73.3613 documents as discussed in the Order and retain the ability to obtain these documents from licensees and permittees upon request, as needed. The Commission's existing public file rules require licensees and permittees to either (i) upload the documents directly to the OPIF or (ii) maintain an up-to-date list of the documents in the OPIF and provide copies to requesting parties within seven days.

21. In addition to eliminating the paper filing requirement for § 73.3613 documents, the Order also eliminates a redundant disclosure requirement pertaining to certain § 73.3613 documents and expands an existing redaction allowance for confidential or proprietary information in § 73.3613 documents. The Order requires that unredacted copies the documents be provided to the Commission upon request and that any confidential or proprietary information that is redacted must be marked consistently throughout the document.

22. The Order arises from a Public Notice issued by the Commission in May 2017, launching an initiative to modernize the Commission's media regulations. The majority of the

parties that filed comments in this proceeding agree that the routine paper filing requirement at issue is redundant and should be eliminated. The Order concludes that eliminating this requirement is consistent with other actions the Commission has taken to reduce paper submissions and advances the Commission's goal of eliminating outdated and unnecessary regulatory burdens that can impede competition and innovation in media markets.

23. Summary of Significant Issues Raised by Public Comments in Response to the IRFA. No comments were filed in direct response to the IRFA.

24. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the SBA and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to this proceeding.

25. Description and Estimate of the Number of Small Entities to Which Rules Will Apply. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules 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. The final rules adopted herein affect small television and radio broadcast stations. A description of these small entities, as well as an estimate of the number of such small entities, is provided below.

26. Television Broadcasting. This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.” These establishments operate television broadcast 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 reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of less than \$25,000,000, and 95 had annual receipts of \$25,000,000 or more. Based on this data, we estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

27. In addition, the Commission has estimated the number of licensed commercial television stations to be 1,349. Of this total, 1,277 stations 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 October 1, 2018. Such entities, therefore, qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 412. The Commission, however, does not compile and 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.

28. 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, another element of the definition of “small business” requires that an 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 broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the proposed rules would apply does not exclude any television station from the definition of a small business on this basis and therefore could be over-inclusive.

29. There are also 1,911 LPTV stations and 389 Class A stations. Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

30. Radio Stations. This economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public.” The SBA has created the following small business size standard for this category: those having \$38.5 million or less in annual receipts. Census data for 2012 shows that 2,849 firms in this category operated in that year. Of this number, 2,806 firms had annual receipts of less than \$25,000,000, and 43 firms had annual receipts of \$25,000,000 or more. Therefore, based on the SBA’s size standard, the majority of such entities are small entities.

31. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial AM radio stations to be 4,626 stations and the number of commercial FM radio stations to be 6,737, for a total number of 11,363. Of this total, 11,362 stations 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 October 1, 2018. In addition, the Commission has estimated the number of noncommercial educational FM radio stations to be 4,130. NCE

stations are non-profit, and therefore considered to be small entities. Therefore, we estimate that the majority of radio broadcast stations are small entities.

32. International Broadcast Stations. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to international broadcast stations. The closest applicable SBA size standards and U.S. Census Bureau category is Radio Stations. Establishments in this industry are primarily engaged in broadcasting aural programs by radio to the public with programming that may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this category is firms having \$38.5 million or less in annual receipts. U.S. Census Bureau data for 2012 shows that 2,849 radio station firms operated during that year. Of this number, 2,806 firms had annual receipts of less than \$25,000,000, and 43 firms had annual receipts of \$25,000,000 or more. Therefore, based on the SBA's size standard the majority of entities in this industry are small entities.

33. According to the Commission's records there were 16 international broadcast stations operating as of September 13, 2018. The Commission however does not request nor collect annual revenue information; therefore, the Commission is unable to estimate the number of international broadcast stations that would constitute a small business under the SBA definition.

34. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements. In this section, we identify the reporting, recordkeeping, and other compliance requirements in the Order and consider whether small entities are affected disproportionately by any such requirements.

35. Reporting Requirements. The Order requires licensees and permittees to update the § 73.3613 documents in their online public file or the list of such documents within 30 days

of executing such documents. This 30-day timeframe for updating the inventory of § 73.3613 documents in the public file is consistent with the previous rule, which required licensees and permittees to file the documents with the Commission in paper within 30 days of execution.

36. **Recordkeeping Requirements.** The existing public file rules give stations the option of either (i) retaining copies of their § 73.3613 documents in the public file or (ii) maintaining an up-to-date list of such documents in the public file and providing copies to a requesting party within seven days. The Order retains these existing options for disclosing § 73.3613 documents in the public file. To preserve the current level of access to § 73.3613 documents, the Order clarifies that stations must ensure that their inventory of such documents in the public file is up to date, regardless of whether the station chooses to retain copies or a list of § 73.3613 documents in the public file, and provide copies of their § 73.3613 documents to the Commission and the public within seven days upon request. Stations that upload a list of § 73.3613 documents to the public file must include on that list all of the information that the Commission requires for such documents on broadcast ownership reports, including a description of each document, the parties to the document, the month and year of execution, the month and year of expiration, and the document type. This will provide the information necessary for the public to keep track of expiring documents and help ensure that stations maintain a current record of their § 73.3613 documents in the public file.

37. **Other Compliance Requirements.** The Order does not adopt new compliance requirements.

38. **Steps Taken to Minimize Significant Economic 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 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, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

39. The Order eliminates the paper filing requirement for § 73.3613 documents and adopts other rule changes to streamline disclosure requirements and explicitly allow for the redaction of confidential or proprietary information in such documents. These actions are intended to modernize the Commission's regulations and reduce costs and recordkeeping burdens for affected entities, including small entities. Under the revised rules, affected entities no longer will need to expend time and resources filing paper copies of § 73.3613 documents with the Commission.

40. For commercial and noncommercial AM, FM, and television stations, the Commission will rely on its existing public file rules, which already require that these stations make copies of § 73.3613 documents available to the public online. The existing public file rules provide these stations with flexibility to select the disclosure method that is less burdensome with respect to § 73.3613 documents, while still ensuring timely access to the documents by the public and the Commission. In the Order, the Commission declines to eliminate this flexibility by requiring that stations upload all their § 73.3613 documents directly to the online public file, as suggested by certain commenters. Eliminating the existing option allowing these stations to maintain an up-to-date list of § 73.3613 documents in the public file and to provide copies to requesting parties within seven days would impose unnecessary burdens on broadcast licensees and permittees, including small businesses. For international broadcast stations, the Commission

retains its ability to obtain § 73.3613 documents from licensees and permittees upon request, as needed.

41. The Order also eliminates a redundant disclosure obligation pertaining to certain § 73.3613 documents and expands an existing redaction allowance for confidential or proprietary information in § 73.3613 documents. Currently, § 73.3613 explicitly allows the redaction of confidential or proprietary information for attributable TBAs and JSAs, provided that unredacted versions of the agreements shall be provided to the Commission upon request. The Order concludes that § 73.3613's specific provision allowing the redaction of TBAs and JSAs, including the requirement that unredacted copies shall be made available to the Commission upon request, should apply to all § 73.3613 documents to the extent that they contain confidential or proprietary information. Redaction would be necessary only when a document is posted to the online public file or provided to the Commission or the public upon request.

42. The rule amendments adopted in the Order will relieve affected broadcast stations, including smaller stations, of the obligation to file paper copies of certain information with the Commission. We find it reasonable to conclude that the benefits of adopting the amendments discussed in the Order will outweigh any associated costs, and we anticipate that affected entities, including small entities, will benefit from the actions taken in the Order.

Ordering Clauses

43. Accordingly, IT IS ORDERED that, pursuant to the authority found in sections 1, 4(i), 4(j), 303(r), 309, 310, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), 309, 310, and 336, this Report and Order IS ADOPTED.

44. IT IS FURTHER ORDERED that, pursuant to the authority found in sections 1, 4(i), 4(j), 303(r), 309, 310, and 336 of the Communications Act of 1934, as amended, 47 U.S.C.

151, 154(i), 154(j), 303(r), 309, 310, and 336, the Commission's rules ARE AMENDED as set forth in Appendix A. The amendments in this final rule shall become effective thirty (30) days after publication of the text of this Report and Order or a summary thereof in the Federal Register.

45. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Report and Order 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).

46. IT IS FURTHER ORDERED that, should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 18-4 shall be TERMINATED and its docket closed.

List of Subjects

47 CFR Part 73

Radio, Reporting and recordkeeping requirements, Television.

47 CFR Part 74

Reporting and recordkeeping requirements, Television.

FEDERAL COMMUNICATIONS COMMISSION

Katura Jackson,

Federal Register Liaison Officer

Office of the Secretary.

Final Rules

For the reasons discussed 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, 155, 301, 303, 307, 309, 310, 334, 336, 339.

§ 73.1226 [Amended]

2. Amend § 73.1226 by removing paragraph (c).

3. Amend § 73.3526 by removing the note to paragraph (e)(3) and notes 1 and 2 to paragraph (e), revising paragraphs (e)(3), (5), (14), and (16), and adding paragraph (f) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(e) * * *

(3)(i) Citizen agreements. A copy of every written citizen agreement. These agreements shall be retained for the term of the agreement, including any renewal or extension thereof.

(ii) For purposes of this section, a citizen agreement is a written agreement between a broadcast applicant, permittee, or licensee, and one or more citizens or citizen groups, entered for primarily noncommercial purposes. This definition includes those agreements that deal with goals or proposed practices directly or indirectly affecting station operations in the public interest, in areas such as—but not limited to—programming and employment. It excludes common commercial agreements such as advertising contracts; union, employment, and personal services contracts; network affiliation, syndication, program supply contracts, etc. However, the mere inclusion of commercial terms in a primarily noncommercial agreement—such as a provision for payment of fees for future services of the citizen-parties (see “Report and Order,” Docket 19518, 57 FCC 2d 494 (1976))—would not cause the agreement to be considered commercial for purposes of this section.

* * * * *

(5) Ownership reports and related materials. A copy of the most recent, complete ownership report filed with the FCC for the station, together with any statements filed with the FCC certifying that the current report is accurate, and together with all related material. These materials shall be retained until a new, complete ownership report is filed with the FCC, at which time a copy of the new report and any related materials shall be placed in the file. The permittee or licensee must retain in the public file either a copy of the station documents listed in §73.3613(a) through (c) or an up-to-date list of such documents. If the permittee or licensee elects to maintain an up-to-date list of such documents, the list must include all the information

that the permittee or licensee is required to provide on ownership reports for each document, including, but not limited to, a description of the document, the parties to the document, the month and year of execution, the month and year of expiration, and the document type (e.g., network affiliation agreement, articles of incorporation, bylaws, management consultant agreement with independent contractor). Regardless of which of these two options the permittee or licensee chooses, it must update the inventory of §73.3613 documents in the public file to reflect newly executed §73.3613 documents, amendments, supplements, and cancellations within 30 days of execution thereof. Licensees and permittees that choose to retain a list of §73.3613 documents must provide a copy of any §73.3613 document(s) to requesting parties within 7 days. In maintaining copies of such documents in the public file or providing copies upon request, confidential or proprietary information may be redacted where appropriate.

* * * * *

(14) Radio and television time brokerage agreements. For commercial radio and television stations, a copy of every agreement or contract involving time brokerage of the licensee's station or of another station by the licensee, whether the agreement involves stations in the same markets or in differing markets, with confidential or proprietary information redacted where appropriate. These agreements shall be placed in the public file within 30 days of execution and retained in the file as long as the contract or agreement is in force.

* * * * *

(16) Radio and television joint sales agreements. For commercial radio and commercial television stations, a copy of agreement for the joint sale of advertising time involving the station, whether the agreement involves stations in the same markets or in differing markets, with confidential or proprietary information redacted where appropriate. These agreements shall be

placed in the public file within 30 days of execution and retained in the file as long as the contract or agreement is in force.

* * * * *

(f)(1) For purposes of this section, action taken on an application tendered with the FCC becomes final when that action is no longer subject to reconsideration, review, or appeal either at the FCC or in the courts.

(2) For purposes of this section, the term “all related material” includes all exhibits, letters, and other documents tendered for filing with the FCC as part of an application, report, or other document, all amendments to the application, report, or other document, copies of all documents incorporated therein by reference and not already maintained in the public inspection file, and all correspondence between the FCC and the applicant pertaining to the application, report, or other document, which according to the provisions of §§0.451 through 0.461 of this chapter are open for public inspection at the offices of the FCC.

4. Amend § 73.3527 by removing notes 1 and 2 to paragraph (e), revising paragraph (e)(4), and adding paragraph (f) to read as follows:

§ 73.3527 Local public inspection file of noncommercial educational stations.

* * * * *

(e) * * *

(4) Ownership reports and related materials. A copy of the most recent, complete ownership report filed with the FCC for the station, together with any subsequent statement filed with the FCC certifying that the current report is accurate, and together with all related material. These materials shall be retained until a new, complete ownership report is filed with the FCC, at which time a copy of the new report and any related materials shall be placed in the file. The permittee

or licensee must retain in the public file either a copy of the station documents listed in §73.3613(a) through (c) or an up-to-date list of such documents. If the permittee or licensee elects to maintain an up-to-date list of such documents, the list must include all the information that the permittee or licensee is required to provide on ownership reports for each document, including, but not limited to, a description of the document, the parties to the document, the month and year of execution, the month and year of expiration, and the document type (e.g., network affiliation agreement, articles of incorporation, bylaws, management consultant agreement with independent contractor). Regardless of which of these two options the permittee or licensee chooses, it must update the inventory of §73.3613 documents in the public file to reflect newly executed §73.3613 documents, amendments, supplements, and cancellations within 30 days of execution thereof. Licensees and permittees that choose to maintain a list of §73.3613 documents must provide a copy of any §73.3613 document(s) to requesting parties within 7 days. In maintaining copies of such documents in the public file or providing copies upon request, confidential or proprietary information may be redacted where appropriate.

* * * * *

(f)(1) For purposes of this section, a decision made with respect to an application tendered with the FCC becomes final when that decision is no longer subject to reconsideration, review, or appeal either at the FCC or in the courts.

(2) For purposes of this section, the term “all related material” includes all exhibits, letters, and other documents tendered for filing with the FCC as part of an application, report, or other document, all amendments to the application, report, or other document, copies of all documents incorporated therein by reference and not already maintained in the public inspection file, and all correspondence between the FCC and the applicant pertaining to the application, report, or other

document, which according to the provisions of §§0.451 through 0.461 of this chapter are open for public inspection at the offices of the FCC.

5. Amend § 73.3613 by revising the section heading, the section introductory text and paragraph (a) introductory text, removing paragraphs (a)(3) and (e), and revising paragraphs (a)(2), (b)(3)(iii) introductory text, (b)(4), and (d) to read as follows:

§ 73.3613 Availability to FCC of station contracts.

Each licensee or permittee of a commercial or noncommercial AM, FM, TV or International broadcast station shall provide the FCC with copies of the following contracts, instruments, and documents together with amendments, supplements, and cancellations (with the substance of oral contracts reported in writing), within 7 days of a request by the FCC.

(a) Network service: Network affiliation contracts between stations and networks will be reduced to writing and filed upon request as follows:

* * * * *

(2) Each such filing shall consist of all of the terms and conditions of such contract, agreement or understanding, including any other paper or document incorporated by reference or otherwise.

(b) * * *

(3) * * *

(iii) Agreements for the acquisition of licensee's or permittee's stock by the issuing licensee or permittee corporation, pledges, trust agreements or abstracts thereof, options to purchase stock and other executory agreements. Should the FCC request an abstract of the trust agreement in lieu of the trust agreement, the licensee or permittee will submit the following information concerning the trust:

* * * * *

(4) Proxies with respect to the licensee's or permittee's stock running for a period in excess of 1 year, and all proxies, whether or not running for a period of 1 year, given without full and detailed instructions binding the nominee to act in a specified manner. With respect to proxies given without full and detailed instructions, a statement showing the number of such proxies, by whom given and received, and the percentage of outstanding stock represented by each proxy shall be submitted by the licensee or permittee if the stock covered by such proxies has been voted. However, when the licensee or permittee is a corporation having more than 50 stockholders, such complete information need be filed only with respect to proxies given by stockholders who are officers or directors, or who have 1% or more of the corporation's voting stock. When the licensee or permittee is a corporation having more than 50 stockholders and the stockholders giving the proxies are not officers or directors or do not hold 1% or more of the corporation's stock, the only information required to be filed is the name of any person voting 1% or more of the stock by proxy, the number of shares voted by proxy by such person, and the total number of shares voted at the particular stockholders' meeting in which the shares were voted by proxy.

* * * * *

(d) Other agreements: Subchannel leasing agreements for Subsidiary Communications Authorization operation; franchise/leasing agreements for operation of telecommunications services on the television vertical blanking interval and in the visual signal; time sales contracts with the same sponsor for 4 or more hours per day, except where the length of the events (such as athletic contests, musical programs and special events) broadcast pursuant to the contract is not under control of the station; and contracts with chief operators or other engineering personnel.

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

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

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 336 and 554.

§ 74.780 [Amended]

7. Section 74.780 is amended by revising the entry for “Section 73.3613—Filing of contracts (network affiliation contracts for low power TV stations only)” to read “Section 73.3613—Availability to FCC of station contracts (network affiliation contracts for low power TV stations only)”.

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