

Federal agencies up to \$3 per metric ton (\$900,000).

Since the substance of this rule is identical to that contained in the May 11, 1994 NPRM, which solicited comments that MARAD addressed in its final rule issued on August 8, 1994, and since no commenter opposed a one-season trial period MARAD is allowing a 30-day comment period for this second proposed rule.

If this rule is finalized, MARAD will evaluate the results of the one-season trial period before determining whether to issue a rule to make this arrangement permanent.

This rule has been reviewed by the Office of Management and Budget under Executive Order 12866.

Federalism

The Maritime Administration has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Maritime Administration certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Maritime Administration has considered the environmental impact of this rulemaking and has concluded that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking contains no reporting requirement that is subject to OMB approval under 5 CFR Part 1320, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.)

List of Subjects in 46 CFR Part 381

Freight, Maritime carriers.

Accordingly, MARAD hereby proposes to amend 46 CFR part 381 as follows:

PART 381—[AMENDED]

1. The authority citation for Part 381 continues to read as follows:

Authority: 46 App. U.S.C. 1101, 1114(b), 1122(d) and 1241; 49 CFR 1.66.

2. Section 381.9 would be revised to read as follows:

§ 381.9 Available U.S.-flag service for 1995.

For purposes of shipping bulk agricultural commodities under

programs administered by sponsoring Federal agencies from U.S. Great Lakes ports during the 1995 shipping season, if direct U.S.-flag service, at fair and reasonable rates, is not available at U.S. Great Lakes ports, a joint service involving a foreign-flag vessel(s) carrying cargo no farther than a Canadian port(s) or other point(s) on the Gulf of St. Lawrence, with transshipment via a U.S.-flag privately owned commercial vessel to the ultimate foreign destination, will be deemed to comply with the requirement of "available" commercial U.S.-flag service under the Cargo Preference Act of 1954. Shipper agencies considering bids resulting in the lowest landed cost of transportation based on U.S.-flag rates and service shall include within the comparison of U.S.-flag rates and service, for shipments originating in U.S. Great Lakes ports, through rates (if offered) to a Canadian port or other point on the Gulf of St. Lawrence and a U.S.-flag leg for the remainder of the voyage. The "fair and reasonable" rate for this mixed service will be determined by considering the U.S.-flag component under the existing regulations at 46 CFR Part 382 or 383, as appropriate, and incorporating the cost for the foreign-flag component into the U.S.-flag "fair and reasonable" rate in the same way as the cost of foreign-flag vessels used to lighten U.S.-flag vessels in the recipient country's territorial waters. Alternatively, the supplier of the commodity may offer the Cargo FOB Canadian transshipment point, and MARAD will determine fair and reasonable rates accordingly.

Dated: January 26, 1995.
By Order of the Maritime Administrator.

Joel Richard,

Secretary, Maritime Administration.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket Nos. 94-149 and 91-140; FCC 94-323]

Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The *Notice of Proposed Rule Making* seeks comment on a number of initiatives aimed at increasing minority

and female ownership of mass media facilities. These initiatives include an incubator program whereby existing operators assist minority and female operators in purchasing facilities, an exception to the Commission's attribution rules to permit an individual to hold a larger interest in minority or female-controlled properties than is generally permissible, modifications to the Commission's existing tax certificate policy, and other mechanisms designed to facilitate minority and female ownership. The actions proposed in the *Notice of Proposed Rule Making* are needed to provide greater opportunities for minorities and women to become operators of mass media facilities and, where applicable, to expand their present holdings.

DATES: Comments are due April 17, 1995 and reply comments are due May 17, 1995.

ADDRESSES: Federal Communication Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jane Hinckley Halprin or Diane Conley, Mass Media Bureau, Policy and Rules Division, (202) 418-2130.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making* in MM Docket Nos. 94-149 and 91-140, adopted December 15, 1994, and released January 12, 1995.

The complete text of the *Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Washington, DC 20036, (202) 857-3800.

Synopsis of Notice of Proposed Rule Making

1. The Commission initiates this proceeding to explore ways to provide minorities and women with greater opportunities to enter the mass media industry, specifically including the broadcast, cable, wireless cable and low power television services. Its purpose in doing so is to further the core Commission goal of maximizing the diversity of points of view available to the public over the mass media, and to provide incentives for increased economic opportunity.

2. While the Commission's existing minority ownership incentives (including the tax certificate and distress sale policies and the minority ownership rules) have facilitated the acquisition of broadcast and cable

properties by minorities, the overall representation of minorities among broadcast station or cable owners remains for below their presence in the national population and the civilian labor force. Women have likewise traditionally been underrepresented among mass media owners.

3. The Commission requests that commenters provide current data regarding female ownership of mass media facilities. The Commission invites commenters to discuss whether, if it is ultimately established that women are underrepresented, each of the initiatives proposed below to promote minority ownership should also be applied to women. The Commission notes that, in the past, female owners were eligible for a preference in comparative broadcast hearings, but that policy was invalidated by the U.S. Court of Appeals for the District of Columbia in *Lamprecht v. FCC*, 958 F.2d 382 (DC Cir. 1992). *Lamprecht* found that the Commission had failed to show a nexus between women's ownership of broadcast stations and diversity of programming. The Commission asks commenters to specifically address the extent to which female ownership contributes to diversity of programming distributed by the mass media and to provide evidence.

4. As an alternative legal justification for providing incentives for greater ownership of mass media facilities by both minorities and women, apart from diversity of programming, the Commission solicits comment on whether it should instead rely on an economic rationale. This concept was espoused by Congress in 1993 when it adopted Section 309(j) of the Communications Act, 47 U.S.C. § 309(j), in which Congress specifically recognized that it is consistent with the public interest to adopt competitive bidding procedures that promote economic opportunity for a wide variety of applicants, including minorities and women. The Commission seeks comment on economic disadvantages faced by minorities and women.

5. The *Notice* proposes specific mechanisms intended to increase minority and female ownership of mass media facilities, and particularly seeks to increase those groups' access to capital. The suggestions presented in the *Notice* are not intended to be exhaustive; the Commission encourages commenters to propose other ways to advance minority and female ownership of mass media outlets.

Incubator Programs

6. First, the Commission discusses ways to refine the Commission's previous proposal to create an "incubator" program whereby existing mass media entities would be encouraged, through ownership-based incentives, to assist new entrants to the communications industry. In return for providing certain types of assistance to a minority or female entrepreneur seeking to acquire a mass media facility, the incubating entity would be permitted to exceed the otherwise applicable ownership limits.

7. The Commission seeks comment on the structure of an acceptable incubator program. The Commission proposes that an acceptable incubator program must include, at a minimum, three elements: (1) substantial financial assistance (*e.g.*, direct equity participation, loan guarantees or long-term low interest loans at, for example, one-half the market rate); (2) operational assistance (such as technical advice or assistance with station operations and management); and (3) training programs for new broadcasters and/or station personnel.

8. The Commission also asks commenters to discuss at what point the incubating owner should be permitted to acquire additional facilities. For example, should the Commission adopt a one-year waiting period *i.e.*, an incubator program must have been in place for one year before the incubating entity may purchase additional facilities? In the alternative, given that the purpose of an incubator program is to enable the incubated entity to purchase a facility, the incubating entity could be permitted to acquire an additional facility as soon as the incubated facility is purchased and operational, subject to a one-year holding requirement on the part of the incubated owner.

9. In addition, the Commission seeks comment on how many mass media properties a group owner participating in such a program should be permitted to acquire above the applicable ownership limit. Should a TV licensee, for example, be allowed to acquire one additional TV station for every two TV stations it incubates? Further, the Commission proposes to require that the additional facilities acquired by the incubating owner are of comparable value to the incubated station. It would not permit, for example, an owner incubating an FM radio station to acquire an additional VHF TV station. It also proposes that the facility acquired by the incubating entity must be within five markets above the incubated

facility's market rank, or must be in a market ranked below the incubated facility's market. A parallel formulation would also be needed in the cable television context so that the additional facilities or "households" passed in excess of what is ordinarily permitted by the rules has comparable size or value in relationship to the incubated facility. The Commission also asks whether broadcasters participating in the incubator program should be allowed to exceed both the national and local multiple ownership limits.

Attribution Rules

10. Next, the Commission seeks comment on whether and how to modify its ownership attribution rules to increase investment in minority and female-controlled properties and further to benefit minority and female owners. The Commission's broadcast attribution rules, set forth in the notes to 47 CFR 73.3555, are used to determine whether particular media holdings will be considered ownership interests for purposes of applying the Commission's multiple ownership rules. Parallel provisions appear in the cable television rules, 47 CFR 76.501. In general, any interest that represents five percent or more of the outstanding voting stock of a company is an attributable ownership interest and thus is counted in determining compliance with the multiple ownership limits.

11. The Commission suggests that one of the options made available to "designated entities" bidding for PCS licenses could be adapted as follows: If a minority or female individual or entity or group of individuals or entities holds more than 50 percent of the voting stock of a corporate broadcast licensee or other mass media entity, with at least 15 percent of the company's equity, then no other interests in that entity will be attributable. The Commission asks whether the rule should apply locally as well as nationally, and, if so, whether the rule should be limited to large markets with a specified number of outlets and independent voices.

12. The above rule, as proposed, would permit an investor to hold 49.9 percent of the voting stock in an unlimited number of minority or female-controlled entities. The Commission seeks comment on whether to adopt a numerical limit on the number of interests in minority or female-controlled stations that would, under this exception, be considered not attributable to the investor.

13. Further, this proposed rule would require that the minority or female owner or owners actually control the licensee. The Commission questions

how control should be determined. The Commission proposes to require, as a safeguard against misuse, that each licensee wishing to qualify for the benefits of the rule certify on its application for transfer, assignment or renewal that investors taking advantage of this exception (*i.e.*, non-minority or male investors holding shares above the applicable attribution benchmark who seek to have their interests deemed non-attributable) do not exercise control over the day-to-day operations of the broadcast station.

Tax Certificates

14. The Commission next explores ways to expand its existing tax certificate policy to encourage entities to sell their mass media holdings to minorities and women, and to make it easier for minority and female operators to upgrade their facilities.

15. Exercising the authority conferred upon it by Section 1071 of the Internal Revenue Code, 26 U.S.C. 1071, the Commission has, since 1978, issued tax certificates to promote minority ownership of broadcast stations. Under the current policy, tax certificates are available to (1) individuals and entities that sell a broadcast station or cable system to a minority-controlled purchaser and (2) equity holders in a minority-controlled broadcasting or cable entity upon the sale of their equity, provided that their interest assisted in financing the acquisition of a broadcast or cable property or was purchased within the first year after broadcast license issuance, thus contributing to the stabilization of the entity's capital base.

16 A tax certificate enables the seller to defer for two years the gain realized by (1) treating it as an involuntary conversion, under 26 U.S.C. 1033, with the recognition of gain avoided by the acquisition of qualified replacement property; or (2) electing to reduce the basis of certain depreciable property, under 26 U.S.C. 1071, or both.

17. Over the past several years, a number of parties have suggested that the policy could be of even greater benefit to minority owners if the Commission and the Internal Revenue Service set up a working group to change certain IRS rules regarding tax certificates. They proposed, for example, that the Commission ask the IRS to revise its 1966 ruling that requires a holder of a tax certificate to reinvest the proceeds of a sale in a corporation that directly operates a communications business, as opposed to a holding company. They also proposed that the Commission ask the IRS to revisit revenue rulings holding

that the purchase of interests in a partnership does not qualify as replacement property. In addition, they urge the Commission to ask the IRS to increase the deferred period from two years to at least four years. Another suggestion that has come up in informal discussion with minority mass media operators in that the Commission seek to expand the definition of suitable reinvestment property for a mass media seller to include any communications business. The Commission seeks comment on these proposals and invite commenters to suggest other ways the tax certificate policy could be used to further the goals set out in the *Notice*.

18. Further, the Commission notes that it has been suggested that the tax certificate policy be extended to investors that provide start-up capital for minority-controlled cable programmers, and seeks comment on this proposal. The Commission also asks whether it should grant tax certificates to minority MMDS operators or minority video programmers. The Commission also raises the issue of making a tax certificate available to a minority operator that sells its facility to a non-minority buyer if the minority seller uses the proceeds to invest in a controlling interest in a more valuable mass media property. In addition, commenters are requested to discuss how the tax certificate policy could be modified to increase female ownership of mass media facilities.

Other Mechanisms

19. The Commission discusses other ideas that might also contribute to greater minority and female ownership of mass media facilities, including (1) proposing legislation regarding an investment tax credit for investors in minority-controlled communications corporations; (2) streamlining certain aspects of its broadcast application procedures for applicants funded by Specialized Small Business Investment Companies (SSBICs); and (3) adopting a local radio ownership cap that would permit a minority-controlled entity to own up to three AM stations of any type and up to three Class A FM stations in markets with at least 15 stations, subject to a combined audience share limitation of 30 percent. The Commission seeks comment on these proposals, and specifically asks whether it should adopt a national ownership cap for women similar to its national TV and radio ownership caps for minority, or any other parallel proposal.

Data Collection

20. Finally, the Commission seeks comment on whether to revise its

Annual Ownership Report form, FCC Form 323, to include a section requiring owners to identify their race or ethnicity and their gender. The Commission also asks commenters to submit relevant data regarding any apparent impact that increased consolidation of facilities resulting from relaxation of the multiple ownership rules has had on minority and female owners, including the impact of local marketing agreements (LMAs) between stations.

21. *Ex Parte Rules—Non-Restricted Proceeding.* This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's Rules. See 47 CFR 1.1202, 1.1203, 1.1206.

22. *Comment Information.* Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before April 17, 1995, and reply comments on or before May 17, 1995. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

23. Initial Regulatory Flexibility Analysis.

I. Reason for the Action

This proceeding was initiated to explore ways to increase minority and female ownership of broadcasting facilities.

II. Objective of This Action

The actions proposed in the *Notice* are intended to facilitate minority and female entry into mass media services, and are particularly aimed at increasing those groups' access to capital.

III. Legal Basis

Authority for the actions proposed in this *Notice* may be found in sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 303.

IV. Reporting, Recordkeeping and Other Compliance Requirements Inherent in the Proposed Rule

The *Notice* seeks comment as to whether to add to the Commission's annual ownership report form a section in which owners would disclose their gender and their race or ethnicity.

V. Federal Rules Which Overlap, Duplicate or Conflict With the Proposed Rule

None.

VI. Description, Potential Impact and Number of Small Entities Involved

Approximately 11,000 existing television and radio broadcasters, approximately 11,000 cable television operators and approximately 150 MMDS

operators of all sizes may be affected by the proposals contained in this decision.

VII. Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent With the Stated Objectives

The proposals contained in this *Notice* do not impose additional burdens on small entities.

As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must

have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this *Notice* of Proposed Rule Making, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981)).

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

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