

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.

100. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

101. The SBA defines a radio broadcasting station that has \$5 million or less in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations, which primarily are engaged in radio broadcasting and which produce radio program materials, are similarly included. However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS code. The 1992 Census indicates that 96 percent (5,861 of 6,127) of radio station establishments produced less than \$5 million in revenue in 1992. Official Commission records indicate that 11,334 individual radio stations were operating in 1992. As of June 30, 2001, Commission records indicate that 12,932 radio stations (both commercial and noncommercial) were operating of which 2,216 were noncommercial educational FM radio stations. Applying the 1992 percentage of station establishments producing less than \$5 million in revenue (*i.e.*, 96 percent) to the number of commercial radio stations

in operation, (*i.e.*, 10,716) indicates that 10,287 of these radio stations would be considered "small businesses" or "small organizations." These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-radio affiliated companies.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

102. The *NPRM* proposes no new recordkeeping or other compliance requirements associated with the subject rules and policies. These rules amend the Commission's procedures and review processes and do not change existing documentation and application requirements.

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

103. The RFA requires an agency to describe any significant, specifically small business, 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, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

104. In this *NPRM*, the Commission explores the underpinnings of two principles underlying the regulation of the radio broadcast industry, namely diversity and competition. The principles of diversity and competition are of particular import to small entities. Thus we seek comment on the general advantages and disadvantages of relying on numerical limits or other bright-line rules to guide our public interest determination versus conducting a case-by-case competitive analysis. The framework minimizes the impact on small entities by not subjecting to further competitive analysis transactions below a threshold level.

105. This *NPRM* invites comment on a number of alternative interpretations of the relationship between the revision of local radio ownership rules, embodied in section 202(b) of the Telecommunications Act of 1996 and the Commission's public interest mandate. Specifically, we propose alternative views on that relationship in

the *NPRM* seek comment on these proposals, and invite additional possible interpretations of the relevant statutory provisions. Further, the *NPRM* seeks comment on how the Commission's rules and policies concerning local radio ownership affect our goal of promoting diversity. In light of the fact that a majority of the radio broadcasting stations likely to be affected are small, we seek comment on the impact of industry consolidation on both viewpoint and source diversity.

106. In addition to the principle of diversity, this *NPRM* seeks comment on the principle of competition in the radio broadcast industry, with regard to the definitions of the marketplace and measurement of market share.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

107. None.

List of Subjects in 47 CFR Part 73.

Radio broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01-30526 Filed 12-10-01; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 01-317 and 00-244; FCC 01-329]

RIN 4217

Definition of Radio Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes changes to local ownership rules and policies concerning multiple ownership of radio broadcasting stations. The Commission examines the effect our current rules has had on the public and seeks comment to better serve our communities. This action is also intended to consider possible changes to our current local market radio ownership rules and policies in accordance with the Telecommunications Act of 1996. Because of the similarity of the issues presented in Multiple Ownership of Radio Broadcast Stations in Local Markets to those in the Matter of Definition of Radio Markets, the two actions were, in effect, consolidated.

DATES: Comments are due February 11, 2002. Reply comments are due March 11, 2002.

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

FOR FURTHER INFORMATION CONTACT: Joshi Nandan, Office of General Counsel, (202) 418-1755.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Further Notice of Proposed Rule Making* ("FNPRM") in MM Docket No. 00-244, FCC 01-329, adopted November 8, 2001, and released November 9, 2001. The complete text of this FNPRM is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., Room CY-B-402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via email qualexint@aol.com. This document is also available in alternative formats (computer diskette, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Martha Contee at (202) 4810-0260, TTY (202) 418-2555, or mcontee@fcc.gov. The FNPRM can be found on the Internet at the Commission's website: <http://www.fcc.gov>.

1. The issues presented herein, and the substance of this FNPRM are identical to those presented in the *Notice of Proposed Rule Making*, in the Matter of Rules and Policy Concerning the Multiple Ownership of Radio Broadcast Stations in Local Markets (MM Docket No. 00-317) published elsewhere in this issue of the **Federal Register**.

2. *Comments and Reply Comments.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file. Comments are due February 11, 2002. Reply comments are due March 11, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

3. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In

completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address.>" A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW., TW-A325, Washington, DC 20554.

4. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Wanda Hardy, 445 Twelfth Street, SW., Room, 2-C207, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number in this case, MM Docket Nos. 01-317, 00-244, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554.

5. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 Twelfth Street, SW., CY-A257, Washington, DC 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418-0270, (202) 418-2555 TTY, or bcline@fcc.gov. Comments and reply comments also will be available electronically at the Commission's Disabilities Issues Task Force web site:

www.fcc.gov/df. Comments and reply comments are available electronically in ASCII text, Word 97, and Adobe Acrobat.

6. *Ex Parte Rules.* This is a permit-but-disclose notice and comment proceeding. Ex parte presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. See generally sections 1.1202, 1.1203, and 1.1206(a).

7. *Initial Regulatory Flexibility Analysis* ("IRFA"). As required by section 603 of the Regulatory Flexibility Act ("RFA"), the Commission has prepared an IRFA of the possible significant economic impact on small entities of the proposals contained in this FNPRM. Written public comments are requested on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions in our IRFA regarding the prevalence of small businesses in the radio broadcasting industry. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the FNPRM, but they must have a distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA") in accordance with section 603(a) of the RFA, Public Law 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981), as amended.

8. *Authority.* This FNPRM is issued pursuant to authority contained in sections 4(i), 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 307.

9. Pursuant to the authority contained in sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, and 310 this FNPRM are adopted.

10. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the SBA.

Initial Regulatory Flexibility Analysis

11. As required by the Regulatory Flexibility Act of 1980, as amended, the Commission has prepared this present IRFA of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this FNPRM. 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 on the *FNPRM*. The Commission will send a copy of the *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of SBA. See 5 U.S.C. 603(a). In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

12. Application to and consent by the Commission are required under section 310 of the Communications Act before the sale of any licensed radio broadcast station may be consummated. The Commission may grant its consent only if it determines that "the public interest, convenience and necessity will be served thereby." 47 U.S.C. 310(d). The effects of a proposed transaction on the diversity of voices and economic competition in a given market have long been core considerations in making this public interest determination. The Commission's concern for diversity and competition in broadcast markets has prompted us to adopt and maintain structural ownership rules intended to vindicate these interests. Until recently, these ownership rules have been sufficiently strict that we have not been presented with proposed transactions that comply with the ownership rules but nonetheless present economic concentration issues. The Telecommunications Act of 1996, however, substantially relaxed the Commission's local radio ownership rules. Heretofore, the Commission's radio ownership rules have been based strictly on the number of stations proposed for common ownership, without regard to the power or dominance of the stations that are being combined. This was not a problem under the former Commission rules which strictly circumscribed the number of radio stations that could be commonly owned in a local market. Now, however, under the new rules, which allow greater numbers of radio stations to be commonly owned in local markets, the Commission has encountered sales applications that propose transactions which comply with the numerical station limits but which result in substantial economic concentration in the relevant economic markets. In such cases, the Commission "has an independent obligation to consider whether a proposed pattern of radio ownership that complies with the local ownership limits would otherwise have an adverse competitive effect in a particular radio market and thus, would be inconsistent with the public interest. 47 U.S.C. 309(a) (requiring the Commission to make a determination

that the transfer or assignment of a broadcast license would be in the public interest)." Accordingly, we are adopting this *FNPRM* to consider possible changes to our local radio ownership rules and policies.

Legal Basis

13. This *FNPRM* is adopted pursuant to sections 1, 2(a), 4(i), 303, 307, 309, and 310, of the Communications Act, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, and 310.

Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

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

15. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

16. The SBA defines a radio broadcasting station that has \$5 million or less in annual receipts as a small business. A radio broadcasting station is

an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations, which primarily are engaged in radio broadcasting and which produce radio program materials, are similarly included. However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS code. The 1992 Census indicates that 96 percent (5,861 of 6,127) of radio station establishments produced less than \$5 million in revenue in 1992. Official Commission records indicate that 11,334 individual radio stations were operating in 1992. As of June 30, 2001, Commission records indicate that 12,932 radio stations (both commercial and noncommercial) were operating of which 2,216 were noncommercial educational FM radio stations. Applying the 1992 percentage of station establishments producing less than \$5 million in revenue (*i.e.*, 96 percent) to the number of commercial radio stations in operation, (*i.e.*, 10,716) indicates that 10,287 of these radio stations would be considered "small businesses" or "small organizations." These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-radio affiliated companies.

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17. The *FNPRM* proposes no new recordkeeping or other compliance requirements associated with the subject rules and policies. These rules amend the Commission's procedures and review processes and do not change existing documentation and application requirements.

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

18. The RFA requires an agency to describe any significant, specifically small business, 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,

standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

19. In this *FNPRM*, the Commission explores the underpinnings of two principles underlying the regulation of the radio broadcast industry, namely diversity and competition. The principles of diversity and competition are of particular import to small entities. Thus we seek comment on the general advantages and disadvantages of relying on numerical limits or other bright-line rules to guide our public interest determination versus conducting a case-by-case competitive analysis. The framework minimizes the impact on small entities by not subjecting to further competitive analysis transactions below a threshold level.

20. This *FNPRM* invites comment on a number of alternative interpretations of the relationship between the revision of local radio ownership rules, embodied in section 202(b) of the Telecommunications Act of 1996 and the Commission's public interest mandate. Specifically, we propose alternative views on that relationship in the *FNPRM*, seek comment on these proposals, and invite additional possible interpretations of the relevant statutory provisions. Further, the *FNPRM* seeks comment on how the Commission's rules and policies concerning local radio ownership affect our goal of promoting diversity. In light of the fact that a majority of the radio broadcasting stations likely to be affected are small, we seek comment on the impact of industry consolidation on both viewpoint and source diversity.

21. In addition to the principle of diversity, this *FNPRM* seeks comment on the principle of competition in the radio broadcast industry, with regard to the definitions of the marketplace and measurement of market share.

Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

22. None.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01-30527 Filed 12-10-01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. FRA 2001-11068, Notice No. 1]

RIN 2130-AB39

Control of Alcohol and Drug Use: Proposed Application of Random Testing and Other Requirements to Employees of a Foreign Railroad Who Are Based Outside the United States and Perform Train or Dispatching Service in the United States; Request for Comment on Even Broader Application of Rules and on Implementation Issues

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of proposed rulemaking (NPRM) and request for comments.

SUMMARY: In general, FRA's regulation on the control of alcohol and drug use (49 CFR part 219) currently applies to all railroads that operate on the general railroad system of transportation in the United States. However, part 219 presently exempts certain operations by foreign railroads and certain small railroads from certain subparts. In this NPRM, FRA proposes to narrow the scope of these exemptions.

This NPRM also seeks to reopen a discussion of part 219 implementation issues, many of which were first raised in FRA's 1992 advance notice of proposed rulemaking on this subject. Finally, FRA invites comment on whether it should expand the basis for requiring post-accident testing (subpart C) and testing for cause (subpart D) of part 219 to include events that occur outside the United States.

DATES: (1) *Written Comments:* Written comments must be received by February 11, 2002. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) *Public Hearing:* FRA will conduct a public hearing to provide interested parties an opportunity to comment on this proposed rule. FRA will issue a separate document in the **Federal Register** informing interested parties of the date and location of the hearing.

ADDRESSES: Anyone wishing to file a comment should refer to the FRA docket and notice numbers (FRA Docket No. FRA 2001-11068, Notice No. 1). You may submit your comments and related material by only one of the following methods:

By mail to the Docket Management System, U.S. Department of Transportation, room PL-401, 400 7th Street, SW., Washington, DC 20590-0001; or

Electronically through the Web site for the Docket Management System at <http://dms.dot.gov>. For instructions on how to submit comments electronically, visit the Docket Management System web site and click on the "Help" menu.

The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL-401 on the plaza level of the Nassif Building at the same address during regular business hours. You may also obtain access to this docket on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: For technical issues, Lamar Allen, Alcohol and Drug Program Manager, FRA Office of Safety, RRS-11, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (telephone 202-493-6313). For legal issues, Patricia V. Sun, Trial Attorney, Office of the Chief Counsel, RCC-11, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone 202-493-6038).