

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[MB Docket No 06–121; MB Docket No 02–277; FCC 06–93]

**2006 Quadrennial Regulatory Review; 2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; correction.

**SUMMARY:** On August 9, 2006 the Commission published the Further Notice of Proposed Rule Making which sought comment on how to address issues raised by the U.S. Court of Appeals for the Third Circuit with respect to rules, as adopted or revised in the 2002 Biennial Review of the Commission's broadcast ownership rules. The Further Notice of Proposed Rule Making also initiated the next quadrennial review of the broadcast ownership rules. The Commission inadvertently omitted the Supplemental Initial Regulatory Flexibility Analysis, which was part of the item adopted by the Commission, in the **Federal Register** publication. This document corrects the **Federal Register** as it appeared.

**DATES:** Comments on the Supplemental Initial Regulatory Flexibility Analysis are due on or before September 22, 2006, and reply comments on or before November 21, 2006.

**ADDRESSES:** You may submit comments, identified by MB Docket No 06–121 and/or MB Docket No 06–277, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications Commission's Web site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- *E-mail:* [ecfs@fcc.gov](mailto:ecfs@fcc.gov). Include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- *Mail:* Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov)

or phone: 202–418–0530 or TTY: 202–418–0432.

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

**FOR FURTHER INFORMATION CONTACT:** Mania Baghdadi, Industry Analysis Division, Media Bureau, Federal Communications Commission, (202) 418–2330.

**SUPPLEMENTARY INFORMATION:** Following is the Supplemental Initial Regulatory Flexibility Act analysis to be associated with the Further Notice of Proposed Rule Making that was published in the **Federal Register** on August 9, 2006 (71 FR 45511).

*Supplemental Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act (RFA), the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) in the Notice of Proposed Rulemaking (NPRM), 67 FR 65751 (October 28, 2002), in MB Docket No. 02–277. Additionally, the Commission has prepared this Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on small entities of the proposals in the Further Notice of Proposed Rulemaking (NPRM), 71 FR 45511, August 9, 2006. Written public comments are requested on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the deadlines for comments on the Further Notice. The Commission has sent a copy of the Further Notice, including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

*Need for, and Objectives of, the Proposed Rules.* The NPRM invites comment on how to address the issues raised by the opinion of the U.S. Court of Appeals for the Third Circuit in *Prometheus Radio Project v. FCC*, and, pursuant to section 202(h) of the Telecommunications Act of 1996, on whether the media ownership rules are "necessary in the public interest as the result of competition." In the *Prometheus Remand Order*, the court affirmed some Commission decisions and remanded others for further Commission justification or modification. This Supplemental IRFA is issued due to the passage of time since the release of the NPRM in this proceeding and in order to invite comment on the effect on small entities of the proposals in the NPRM. We particularly solicit comment from all small business entities, including

minority-owned and women-owned small businesses. We especially solicit comment on whether, and if so, how, the particular interests of these small businesses may be affected by the rules. The NPRM discusses the local TV ownership rule, the local radio ownership rule, Cross-Media Limits and the Dual Network rule; details the issues raised in the *Prometheus Order* regarding the Commission's decision with respect to each of these rules; and invites comment on how to address those issues.

*Legal Basis.* This NPRM is adopted pursuant to sections 1, 2(a), 4(i), 303, 307, 309, 310, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, and Section 202(h) of the Telecommunications Act of 1996.

*Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental entity" under Section 3 of the Small Business Act. 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.

*Television Broadcasting.* In this context, the application of the statutory definition to television stations is of concern. The Small Business Administration defines a television broadcasting station that has no more than \$13 million in annual receipts as a small business. Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound." According to Commission staff review of the BIA Financial Network, Inc. Media Access Pro Television Database as of June 6, 2005, about 852 (66 percent) of the 1,286 commercial television stations in the United States have revenues of \$12 million or less. However, in assessing whether a business entity 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 any changes to the attribution rules, because the revenue figures on which this estimate

is based do not include or aggregate revenues from affiliated companies. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. The Commission is unable at this time and in this context to define or quantify the criteria that would establish whether a specific television station is dominant in its market of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any television stations from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

**Radio Broadcasting.** The Small Business Administration defines a radio broadcasting entity that has \$6.5 million or less in annual receipts as a small business. Business concerns included in this industry are those "primarily engaged in broadcasting aural programs by radio to the public." According to Commission staff review of the BIA Financial Network, Inc. Media Access Radio Analyzer Database as of June 6, 2005, about 10,425 (95 percent) of 11,000 commercial radio stations in the United States have revenues of \$6 million or less. We note, however, that in assessing whether a business entity 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 any changes to the ownership rules, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies. In this context, the application of the statutory definition to radio stations is of concern. An element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time and in this context to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any radio station from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and

operated. We note that it is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

**Daily Newspapers.** The SBA has developed a small business size standard for the census category of Newspaper Publishers; that size standard is 500 or fewer employees. Census Bureau data for 2002 show that there were 5,159 firms in this category that operated for the entire year. Of this total, 5,065 firms had employment of 499 or fewer employees, and an additional 42 firms had employment of 500 to 999 employees. Therefore, we estimate that the majority of Newspaper Publishers are small entities that might be affected by our action.

**Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.** Depending on the rules adopted as a result of this Notice of Proposed Rule Making, the Report and Order (R&O) ultimately adopted in this proceeding may contain new or modified information collections. We anticipate that none of the changes would result in an increase to the reporting and recordkeeping requirements of broadcast stations, newspapers, or applicants for licenses. As noted above, we invite small business entities to comment in response to the NPRM.

**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 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. We are directed under law to describe any alternatives we consider, including alternatives not explicitly listed above. This NPRM initiates the next quadrennial review of the media ownership rules and seeks public comment on the issues raised by the Prometheus Remand Order. Thus, it invites comment on how to address the court's decisions in the Prometheus Remand Order with respect to the local TV ownership rule, the local radio ownership rule, and the cross-media

limits. In addition, the NPRM asks for comment on whether the dual network rule remains necessary in the public interest as a result of competition. The NPRM also seeks comment on the minority ownership proposals made by Minority Media and Telecommunications Council in comments in the 2002 biennial ownership proceeding. Parties' discussions of alternatives that are in their submitted comments will be fully considered. We especially encourage small entity comment.

**Federal Rules that May Duplicate, Overlap, or Conflict with the Commission's Proposals.** None.

**Comment Information.** Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments. **Paper Filers:** 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 appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445

12th Street, SW., Washington DC 20554. People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Federal Communications Commission.

**Marlene H. Dortch,**

Secretary.

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 3, 12, and 52

[FAR Case 2005-035; Docket 2006-0020; Sequence 8]

RIN: 9000-AD76

#### **Federal Acquisition Regulation; FAR Case 2005-035, Changes to Lobbying Restrictions**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to be consistent with the Lobbying Disclosure Act of 1995 and the OMB Interim Final Guidance, and to improve clarity of the regulation through improved use of plain language and compliance with FAR drafting conventions.

**DATES:** Interested parties should submit written comments to the FAR Secretariat on or before November 13, 2006 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAR case 2005-035 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Search for this document at the "Federal Acquisition Regulation" agency and review the "Document Title" column; click on the Document ID number. Click on "Add Comments".

You may also search for any document using the "Advanced search/

document search" tab, selecting from the agency field "Federal Acquisition Regulation", and typing the FAR case number in the keyword field.

- Fax: 202-501-4067.
- Mail: General Services

Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

**Instructions:** Please submit comments only and cite FAR case 2005-035 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT** For clarification of content, contact Mr. Ernest Woodson, Procurement Analyst, at (202) 501-3775. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755. Please cite FAR case 2005-035.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

The Byrd Amendment was enacted as section 319 of the Department of Interior and Related Agencies Appropriations Act (Pub. L. 101-121), which added a new section 1352 to title 31, United States Code, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions". Section 1352 prohibits the recipient of a Federal contract from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of the executive or legislative branches in connection with the awarding of any Federal contract, the making of any Federal grant or loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. It required OMB to issue guidance for agency implementation.

- On December 18, 1989, OMB's published interim final guidance.
- On January 30, 1990, OMB's interim final guidance was implemented in the FAR as an interim rule in FAC 84-55. FAC 84-55 added FAR Subpart 3.8, the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and the clause at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions.
- On June 12, 1990, the Administrator for Federal Procurement Policy and the Acting Assistant Director for Financial

Management issued clarifications of the interim guidance. This clarification was subsequently published as a notice in the **Federal Register** at 55 FR 24540, June 15, 1990.

- On December 19, 1995, Congress enacted the Lobbying Disclosure Act of 1995 (Pub. L. 104-65).

• On January 19, 1996, OMB issued interim final amendments to its Governmentwide guidance (61 FR 1412).

The Lobbying Disclosure Act of 1995 provided rules on disclosure of lobbying activities to influence the Federal Government, codified at 2 U.S.C. 1601 *et seq.*, and also simplified the disclosure and reporting requirements of 31 U.S.C. 1352.

- Under the revised statute, the person must identify the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of the person, but need not provide information with regard to amounts paid or descriptions of services performed, including identification of who was contacted.

• Agency head semi-annual compilations to Congress and Inspector General (IG) annual reports to Congress were eliminated.

The interim final amendments to OMB's Governmentwide Guidance on Lobbying made changes to the Standard Form (SF) LLL Disclosure of Lobbying Activities, changing "Name and Address of Lobbying Entity" to "Name and Address of Lobbying Registrant" in item 10a, removing the reference to a continuation sheet in block 10, and deleting blocks 12-15. The agency head and Inspector General reporting requirements were not included in the FAR, so no FAR change was necessary to implement their elimination. The interim final amendment did not provide any suggested rewording of the lobbying disclosure provision or clause.

A rule was published in the **Federal Register** at 70 FR 57455, September 30, 2005, under FAR case 1989-093 to finalize the interim rule that was published in the **Federal Register** at 55 FR 3190, January 30, 1990, to implement the Byrd Amendment. The final rule only made minor corrections to the interim rule, recognizing that a new case might be required to consider further changes to implement the OMB clarifications of 1990, the Lobbying Disclosure Act of 1995, OMB's Interim Final Amendments of 1996, and other clarifications.

In reviewing the need for further changes, the Councils reviewed the Lobbying Disclosure Act of 1995, OMB Guidance, comments on the prior case,