Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 1000 feet downstream from South Dakota Highway 42.	None	+1289	
Big Sioux River	Approximately 2500 feet downstream from Burlington Northern Santa Fe Railroad.	+1306	+1305	City of Sioux Falls, Unincorporated Areas of Minnehaha County.
	Approximately 1000 feet downstream from West 60th Street.	+1432	+1431	
Cherry Creek	Approximately 70 feet downstream from South Sertoma Avenue.	+1435	+1434	City of Sioux Falls, Unincorporated Areas of Minnehaha County.
	Approximately 1000 feet upstream from East 266th Street.	None	+1458	
Skunk Creek	2750 feet downstream from Interstate 29	+1417	+1422	City of Sioux Falls, Unincorporated Areas of Minnehaha County.
	Approximately 50 feet downstream from South 467th Avenue.	None	+1459	
Willow Creek	Approximately 1130 feet upstream from North Lamesa Drive.	None	+1438	Unincorporated Areas of Minnehaha County, City of Sioux Falls.
	Approximately 1300 feet upstream from Highway 38	None	+1475	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Sioux Falls

Maps are available for inspection at 224 West 9th Street, P.O. Box 7402, Sioux Falls, SD 57117–7402.

Unincorporated Areas of Minnehaha County

Maps are available for inspection at County Administration Building, 415 N. Dakota Avenue, Sioux Falls, SD 57106.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: May 9, 2008.

Michael K. Buckley,

Deputy Assistant Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–10933 Filed 5–15–08; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 07–294; 06–121; 02–277; 04–228, MM Docket Nos. 01–235; 01–317; 00–244; FCC 07–217]

In the Matter of Promoting Diversification of Ownership in the Broadcasting Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on various proposals to increase participation in the broadcasting industry by new entrants and small businesses, especially minority- and women-owned businesses, with the goal of promoting innovation, diversity of ownership and viewpoints, spectrum efficiency, and competition in media markets.

DATES: Comments for this proceeding are due on or before July 15, 2008. Reply comments are due on or before August 14, 2008.

ADDRESSES: You may submit comments, identified by MB Docket No. 07–294; FCC 07–217, 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.
- *Mail:* 445 12th Street, SW., Washington, DC 20554, with a copy to the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, 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* 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, 202–418–2133.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Report and Order and Third Further Notice of Proposed Rulemaking* (the ''*Notice*'') in MB Docket Nos. 07–294; 06–121; 02–277; 04–228, MM Docket Nos. 01–235; 01–317; 00–244; FCC 07–217, adopted December 18, 2007, and released March 5, 2008. The full text of this document is available for public inspection and

copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs*). The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording and Braille), send an e-mail to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) (202) 418–0432 (TTY).

Summary of the Notice of Proposed Rulemaking

1. It has long been a basic tenet of national communications policy that the widest dissemination of information from diverse and antagonistic sources is essential to the welfare of the public. By broadening participation in the broadcast industry, the Commission seeks to strengthen the diverse and robust marketplace of ideas that is essential to our democracy. As the Supreme Court has recognized, ''Safeguarding the public's right to receive a diversity of views and information over the airwaves is * * * an integral component of the FCC's mission.'' *Metro Broadcasting, Inc.* v. *FCC,* 497 U.S. 547, 567 (1990), overruled in part on other grounds in *Adarand Constructors Inc.* v. *Pena,* 515 U.S. 200, 227 (1995) (''*Adarand*''). Beyond fostering viewpoint diversity, the Commission also believes that taking steps to facilitate the entry of new participants into the broadcasting industry may promote innovation in the field because in many cases, the most potent sources of innovation often arise not from incumbents but from new entrants. The Commission believes that this may be particularly true with respect to small businesses, including those owned by minorities and women. Expanding the pool of potential competitors in media markets to include such businesses should bring new competitive strategies and approaches by broadcast station owners in ways that benefit consumers in those markets.

2. The *Notice* invites comment on several ways to increase participation in the broadcasting industry by new entrants and small businesses, especially minority- and women-owned businesses, with the goal of promoting innovation, diversity of ownership and viewpoints, spectrum efficiency, and competition in media markets. Specifically, the *Notice* invites comment on the following proposals:

3. *Definition of Socially and Economically Disadvantaged Businesses.* The Commission's *Report and Order and Third Further Notice of Proposed Rulemaking* (the ''*Order*'') in MB Docket Nos. 07–294; 06–121; 02–277; 04–228; MM Docket Nos. 01–235; 01–317; 00–244; FCC 07–217, adopted December 18, 2007, and released March 5, 2008 defines the class of entities benefiting from the rule and policy changes set forth in the *Order* as ''eligible entities,'' using the SBA definition of small businesses. The Commission seeks comment on whether it can or should expand that definition. Specifically, the *Notice* invites comment on whether to use a race-conscious definition of socially and economically disadvantaged business (SDB) to define the relevant class of companies. For example, to qualify for participation in Small Business Administration's Small Disadvantaged Business program, a small business must be at least 51 percent owned and controlled by a socially and economically disadvantaged individual or individuals. Under the program, African Americans, Hispanic Americans, Asian Pacific Americans, Subcontinent Pacific Americans, and Native Americans are presumed to qualify, and other individuals can qualify if they can show by a preponderance of the evidence that they are disadvantaged. Because any race conscious measure the Commission might adopt to promote minority ownership would be subject to strict scrutiny under the equal protection component of the Due Process Clause of the Fifth Amendment, parties who contend that a race-conscious classification would be the best approach, or indeed even a permissible approach, to encourage ownership diversity and new entry must explain specifically, using empirical data and legal analysis, how such a classification would not just be tailored, but narrowly tailored, to advance a governmental interest that is not simply important, but compelling.

4. *Other Definitions.* The *Notice* likewise seeks comment on a proposal for ''full file'' review, i.e., a race-neutral, individualized review, similar to that used by Michigan, California, and Texas state university admission departments following the passage of state initiatives and court decisions banning affirmative action. Under this proposal, each applicant would demonstrate (to the satisfaction of an independent, politically insulated professional entity, perhaps modeled after the Universal Service Board) that it has overcome significant social and economic disadvantages, the overcoming of which would be predictive of success in a challenging industry and of the promotion of diversity of information and perspectives and satisfaction of unmet needs in the industry. This disadvantage often, but not necessarily, would be related to race or gender discrimination or their present effects. Hypothetical applicants who might benefit from ''full file'' review include an applicant injured in military service in Iraq who later completed a leadership training program; a rural applicant who put herself through college and successfully ran a previously-bankrupt AM station; and a Spanish language radio company owner who succeeded despite advertiser resistance to program language and format.

5. The *Notice* seeks comment on the ''full file'' proposal generally and poses a number of specific questions regarding the proposal. Would the grant of broadcast licenses to applicants who have overcome social and economic disadvantages likely result in greater diversity of broadcast information and viewpoints? How should ''full file review'' be structured so that it is race-neutral and does not trigger strict scrutiny? Can the ''full file review'' framework applied and upheld in the context of university admissions be applied to the media industry in an effective manner to foster diversity of viewpoints without involving the Commission in content-based decisions that could raise First Amendment concerns? How should the Commission or an ''independent, politically insulated professional entity'' assess whether an applicant has overcome social and economic disadvantage and whether granting the application would increase diversity of viewpoints? How could the concept of ''full file'' review, which in the higher education context is used to compare candidates competing for a limited number of admissions slots, be applied in an administratively feasible manner to a situation where applicants will not be compared to each other (because mutually exclusive license applications are resolved through an auction) but instead will be evaluated to see if they meet a specified standard? Should an applicant bear the burden of proving specifically that it would contribute to diversity of viewpoints as a result of having overcome these disadvantages? When the applicant is a company, which individuals would the Commission evaluate to determine if the company meets the relevant standard under ''full file review''? Would a determination by an independent board be advisory to the

Commission? Would an affirmative determination qualify the entity as an eligible entity for all future transactions or for a specified period of time or would it have to seek a new determination for each transaction? How would ''full file'' review or a similar standard compare to an ''eligible entity'' or SDB standard in promoting viewpoint and/or ownership diversity? Should the Commission substitute the ''full file review'' approach for the ''eligible entity'' approach until it can adopt an SDB standard or should the Commission adopt it in lieu of an SDB standard? The Commission also invites commenters to propose any alternative definition of ''eligible entity'' that they believe would better advance our goals of promoting ownership diversity and new entry. With respect to any proposed definition that is race conscious, commenters should address the constitutionality of such definition.

6. *Share-Time Proposals.* The *Notice* also invites comment on a proposal that the Commission afford FM licensees that broadcast in HD using IBOC technology the voluntary option of assigning the right to operate an HD radio stream to an SDB. As proposed by a commenter, the SDB operating the HD radio stream would receive a license under the Commission's share-time rules. The commenter further proposes that the Commission use its share-time procedures to permit the bifurcation of a single-channel, analog FM station into an ''Entertainment Station'' and a ''Free Speech Station.'' Such a ''Free Speech Station'' would be independently owned by an SDB, have at least 20 non-nighttime hours per week of airtime, and be primarily devoted to non-entertainment programming. The Commission seeks specific comment on these proposals. In particular, the Commission seeks comment on the extent to which, if the SDB (or eligible entity) becomes a Commission licensee, these proposals may provide the non-SDB entity a way to circumvent FCC ownership restrictions.

7. *Retention On Air of AM Expanded Band Owners' Stations if One of the Stations Is Sold to an Eligible Entity.* In 1987, the Commission began a comprehensive review of numerous technical, legal, and policy issues relating to AM broadcasting in an effort to identify and address its most pressing problems. The allotment of additional spectrum (1605–1705 kHz) for broadcasting provided the Commission with a ''unique opportunity'' to address these problems, most importantly the channel congestion and interference that had significantly degraded the technical quality of the service. Accordingly, the Commission limited initial applications for expanded band authorizations to existing AM broadcasters in the standard band and gave the highest priority to those fulltime stations that would most reduce congestion and interference by moving their operations to one of the new channels. To ensure that this process achieved its intended goals, the Commission further provided that the license for an expanded band station would issue conditioned upon the surrender of one of the paired frequencies, preferably the standard band frequency, following a five-year transition period during which dual operations would be permissible. On reconsideration, the Commission reordered its priorities in light of Congress's recent amendment of the Act to add section 331(b) and gave first priority to a special class of four AM stations—those daytime-only stations licensed to serve communities with populations of more than 100,000 persons that lacked a fulltime aural service. A total of 54 expanded band stations were licensed through this process. Two construction permit applications and one license application remain pending. To date, 19 licensees have surrendered their lower band licenses, and one licensee has surrendered its expanded band license at the end of each of these licensees' five-year dual-operating authority period. In March 2006, eleven licensees and four public interest groups petitioned the Commission to waive the surrender requirement in order to allow the transfer of one of the stations to a recognized small business, or its retention by the licensee if the licensee is a small business.

8. The Commission has received comments arguing that the technical benefits that the Commission anticipated from the surrender of lower band AM licenses are now outweighed by continued service to the listening public. Commenters claim that ''numerous'' AM licensees have specifically targeted the programming on the lower band paired station to serve the needs of minorities and niche audiences. They propose that the Commission extend the dual operating period authorization and the temporary exemption of the expanded band authorization for multiple ownership purposes. As proposed, licensees would be permitted, prior to a specified disposition date, to assign or transfer control of one the paired AM stations to a qualifying ''small business'' as that term applies to radio broadcasters in the Small Business Administration's Regulations. Under the proposal, the consideration that a licensee could receive for one of its paired AM stations could not exceed 75 percent of the station's fair market value. Further, in the event that the licensee is itself a small business, it would be permitted to retain permanently both authorizations. The Commission seeks comment on this proposal. In particular, the Commission seeks comment on how to properly balance the competing goals of improving the technical viability of the AM service and promoting ownership diversity. In the event that the Commission adopts this proposal, the Commission also seeks comment on the length of time licensees operating paired stations should be given to dispose of one station to a qualifying small business. The Commission tentatively concludes that any licensee, that itself is not a qualifying small business and that fails to consummate the sale of one station by the disposition date must surrender one of the two licenses by the disposition date. Moreover, the Commission tentatively concludes that in the event that a licensee fails to take any action by the disposition date, the lower band station shall automatically expire on that date. The Commission seeks comment on these procedures.

9. In a related matter, the Commission seeks comment on a proposal to reinstate 20 licenses that were unconditionally surrendered by licensees in accordance with the terms of their authorizations. The Commission notes that subsequent licensing activity may preclude reinstatement and that certain circumstances, such as the sale of a former transmitter site and station equipment, may make resumption of operations by a formerly paired station infeasible or impossible. The Commission seeks comment on whether the Commission should accept construction permit applications from these licensees and the technical standards that the Commission should use to process these applications. The Commission seeks comment on whether the acceptance of such applications without providing an opportunity for competing applications complies with *Ashbacker* principles, *Ashbacker Radio Corp.* v. *FCC,* 326 U.S. 327 (1945). Lastly, the Commission seeks comment on whether a successor licensee should be permitted to seek reinstatement of a surrendered license.

10. *Modifications to FCC Form 323.* As part of the Commission's quadrennial media ownership review, several commenters and FCC study authors expressed concern about the Commission's data collection process and have proposed revisions to FCC

Form 323 to enhance its utility in measuring current levels of minority and female broadcast ownership. FCC Form 323 is filed by commercial AM, FM and television stations at two-year intervals on the anniversary date of the station's renewal application filing date. Partnerships composed entirely of natural persons and sole proprietorships are not required to file the FCC Form 323 on a biennial basis. In addition to gender information, the racial/ethnic origin categories include American or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or Other Pacific Islander. The Commission periodically posts its compilation of data derived from these forms on its website. Commenters have criticized the form as an inadequate basis upon which to develop effective minority ownership policies, regardless of whether such policies are race conscious, and note that the authors of several media ownership studies indicated that the Commission's most recent research study on minority ownership is ''not sufficient'' to validate a race conscious initiative. Other commenters state that problems with the Form 323 derive from the process the Commission uses to automate and cull the data from the forms. Areas of concern include the filing of multiple forms for a single station; the practice of some filers of providing racial/gender information in a separate attachment to the form; the lack of questions regarding gender/racial classifications on the Form 323–E, which is used by noncommercial educational stations; and filers who write ''no change—info on file'' as opposed to electronically validating or completing the information previously submitted, including race, gender, and ethnicity data. The *Notice* seeks initial comment on issues related to the Commission's collection of information on the racial and gender identity of radio and television licensees. The Commission tentatively concludes that it should make changes to Form 323 to increase the accuracy of the data collected and the potential uses for the form. Sole proprietorships and partnerships composed entirely of natural persons have not routinely been required to complete Form 323. The Commission solicits input from the public on whether expansion of the scope of parties required to file the biennial ownership report would enhance the race, gender, and ethnicity data collection. Further, the Commission seeks comment on whether it should establish a uniform filing date for all radio and television station licensees and eliminate the current practice of permitting licensees to file on the anniversary of their renewal date. Would a single filing date pose a burden on licensees? What are the benefits of a single filing date requirement? Would the data collection be improved with such a change? Under current procedures, if the licensee or permittee is directly or indirectly controlled by another entity, or if another entity has an attributable interest in such licensee or permittee, a separate Form 323 must be submitted for such entity. Does this practice make the race, gender and ethnicity data more, or less, reliable? What other changes to Form 323 would make use of the data more reliable? Are there reasons that justify maintaining the current collection process, such as streamlining, paperwork burdens, or administrative efficiencies? The Commission is likewise concerned about the accuracy of data submitted by licensees, as this information may form the basis for Commission policy and rulemaking. Should the Commission adopt a new form to more accurately collect information from licensees on race, gender, and ethnicity, and delete these questions from the Form 323? The Commission requests comments addressing whether the Commission should conduct audits to assess the accuracy of the information filed in the annual ownership report. Would the data collection be enhanced if the Commission imposed an audit process? If so, what type of audit should the Commission conduct? Should the Commission periodically audit a random sample of filers? How often should the audit be conducted? What penalties should be imposed for licensees that file inaccurate information on Form 323?

11. *Structural Rule Waivers for Creating Incubator Programs.* The *Notice* seeks comment on a proposal advanced by one of the commenting parties advocating the grant of a structural rule waiver for parties that create and maintain an incubator program for SDBs. The proposed ''Trial Incubation Plan'' would operate for two years, at which point the Commission would analyze its effects before renewing or expanding it. The Trial Incubation Plan would apply only to the local radio ownership rule in large markets and would permit the incubating party to acquire only one additional station beyond the applicable local cap, including any same-service subcap. That additional station must be in the same service (AM or FM) and in the same market, or a market of approximately the same size, as the newly SDB-controlled station. Furthermore, the proposal would require that the two transactions be contingent, such that the SDB transaction would close prior to or simultaneously with the incubating party's transaction. The Commission seeks comment on the proposal.

12. *Opening FM Spectrum for New Entrants.* The *Notice* seeks comment on a proposal that FM stations be permitted to change their community of license to any community located in the same radio market, provided that ''if the community of license being vacated (the ''Original Community'') has no other full power AM or FM or LPFM station licensed to it and which originates local programming for at least 15% of its airtime (a ''Local Service LPFM''), the licensee vacating the Original Community must underwrite the cost of licensing, construction and one full year of operation of a new Local Service LPFM to be licensed to the Original Community.'' The Commission seeks comment on this proposal.

13. *Must-Carry for Class A Television Stations.* Commenters propose that the Commission actively support cable must-carry legislation for Class A stations. The Commission agrees that cable carriage of Class A television stations could promote both programming diversity and localism, given that all such stations are required to originate local content, and seeks comment on whether the FCC has authority under the Act to adopt rules requiring such carriage.

14. *Re-allocation of TV Channels 5 and 6 for FM Service.* Certain commenters have urged the Commission to give a ''hard look'' to a proposal that the Commission re-allocate TV Channels 5 and 6 for FM broadcasting, thereby substantially expanding the existing FM band. The Commission agrees that the proposal could yield tremendous opportunities for new entrants, and the *Notice* seeks comment on it.

15. *Other Proposals.* The *Notice* further invites comment on a number of proposals advanced by the National Association of Black Owned Broadcasters (''NABOB'') and Rainbow/PUSH in their comments submitted January 2, 2003 in the course of the 2002 Biennial Review proceeding. The Commission believes that the record with respect to these proposals should be refreshed. Specifically, NABOB and Rainbow/PUSH propose that the Commission: (1) Examine assignment and transfer applications to discern the potential impact of the proposed transaction on minority ownership; (2) decline to grant temporary waivers of

the local ownership rules to parties proposing a transaction that would create station combinations exceeding the ownership caps; (3) treat local marketing agreements as attributable interests; and (4) allow minorities to own station combinations equal to the largest combination in a market to counterbalance the economic impact of grandfathered holdings. The *Notice* seeks comment on these proposals. In particular, the Commission asks parties to address the Commission's authority to enact the proposals, the extent to which the proposals would apply, and whether the proposals contradict any of the proposals the FCC adopted in the *Order.*

Notice of Proposed Rulemaking

Initial Regulatory Flexibility Act Analysis

16. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA''), set forth in an Appendix to the *Notice,* concerning the possible significant economic impact on small entities by the policies and rules proposed in the Notice. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing procedures and deadlines for comments and reply comments in response to the *Notice,* and should have a distinct heading designating them as responses to the IRFA. The Commission will send a copy of the *Notice,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). 5 U.S.C. 603(a). In addition, the *Notice* and IRFA (or summaries thereof) are here published in the **Federal Register**.

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

17. The *Notice* invites comment on several ways to increase participation in the broadcasting industry by new entrants and small businesses, especially minority- and women-owned businesses, with the goal of promoting innovation, diversity of ownership and viewpoints, spectrum efficiency, and competition in media markets. The *Notice* first invites comment on how to define the class of eligible entities that will be entitled to benefit from the Commission's proposals. The *Notice* then invites comment on a range of proposals to stimulate ownership diversity, including permitting share-time arrangements between FM licensees and SDBs; extension of the dual-operating period authorization and temporary exemption of expanded-band authorization in the AM radio context; and reinstatement of 20 AM licenses that were voluntarily surrendered. In addition, the Commission seeks comment on proposed revisions to FCC Form 323 to enhance the ability of the Commission to collect information on the racial and gender identity of radio and television licensees. The *Notice* further requests comment on a proposal to grant structural rule waivers for parties that create and maintain incubator programs for SDBs and on a proposal that the FCC permit FM licensees to change their station community of license to any community located in the same radio market under certain conditions, and the Commission seeks input on whether the Commission has authority to require cable operators to carry Class A television stations and whether the Commission should reallocate TV Channels 5 and 6 for FM broadcasting. Finally, the Commission requests refreshed comments on certain proposals advanced by NABOB and the Rainbow/PUSH Coalition during the 2002 Biennial Review of the Commission's media ownership rules.

B. Legal Basis

18. This *Notice* is adopted pursuant to sections 1, 2(a), 3, 4(i, j), 257, 301, 303(r), 307–10, and 614–15 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 153, 154(i, j), 257, 301, 303(r), 307–10, 534–35.

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

19. 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.

20. *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 December 7, 2007, about 825 (66 percent) of the 1,250 commercial television stations in the United States have revenues of $13 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.

21. 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.

22. *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 December 7, 2007, about 10,500 (95 percent) of 11,050 commercial radio stations in the United States have revenues of $6.5 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.

23. 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.

24. *Class A TV, LPTV, and TV translator stations.* The rules and policies adopted herein may also apply to licensees of Class A TV stations, low power television (''LPTV'') stations, and TV translator stations, as well as to potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than $13.0 million in annual receipts. Currently, there are approximately 567 licensed Class A stations, 2,227 licensed LPTV stations, and 4,518 licensed TV translators. Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities, since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than $13.0 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

25. *FM Translator Stations and Low Power FM Stations.* The proposed rules and policies could affect licensees of FM translator and booster stations and low power FM (LPFM) stations, as well as potential licensees in these radio services. The same SBA definition that applies to radio broadcast licensees would apply to these stations. The SBA defines a radio broadcast station as a small business if such station has no more than $6.5 million in annual receipts. Currently, there are approximately 5,540 licensed FM translator and 262 booster stations and 820 licensed LPFM stations. Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition.

26. *Cable and Other Subscription Programming.* The Census Bureau recently updated the NAICS so that these firms are included in the Wired Telecommunications Carriers category, which is described as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has updated the small business size standards to accord with the revised NAICS. The size standard for Wired Telecommunications Carriers is all firms having an average of 1,500 or fewer employees. The Census Bureau has not collected information on the size distribution of firms in the revised classification of Wired Telecommunications Carriers. Accordingly, we will apply the new size standard to Census Bureau data for 2002 regarding the size distribution of Cable and Other Program Distribution. There were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,178 firms had fewer than 1,000 employees. Thus, under this size standard, the majority of firms can be considered small.

27. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 653,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 994 cable operators nationwide, all but thirteen are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

28. *Open Video Systems.* Open Video Systems (''OVS'') provide subscription services, including cable services. In 2007, the SBA created a small business size standard for Cable and Other Subscription Programming. The Census Bureau has not collected information on the size distribution of firms in the new standard. Accordingly, we will apply the new size standard to Census Bureau data for 2002 regarding the size distribution of Cable and Other Program Distribution. This standard provides that a small entity is one with $13.5 million or less in annual receipts. The Commission has certified a large number of OVS operators, and some of these are currently providing service. Affiliates of RCN Corporation (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that it does not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS. Given this fact, the Commission concludes that those entities might qualify as small businesses, and therefore may be affected by the rules and policies adopted herein.

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

29. Depending on the rules adopted as a result of this *Notice,* the Report and Order (R&O) ultimately adopted in this proceeding may contain new information collections for eligible entities and/or modified ones for incumbent broadcasters. Any changes in recording or recordkeeping would result from changes in the Commission's forms necessary to implement any rules

adopted to promote new entry of small businesses and eligible entities. As noted above, we invite small entities to comment on any such recordkeeping issues in response to the *Notice*.

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

30. The Commission is required by law to describe any significant alternatives that might minimize any significant economic impact on small entities. Such alternatives 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.

31. As noted, we are directed under law to describe any such alternatives we consider, including alternatives not explicitly listed above. The *Notice* describes and seeks comment on several possible ways to ease entry into the broadcasting business by small entities that have traditionally faced significant difficulties in entering broadcasting. The *Notice* seeks comment on how the proposals herein will achieve that goal. The Commission especially encourages small entities to comment on the proposals in the *Notice* in this proceeding. The Commission welcomes comment on how to minimize any burdens on small cable system operators that might result from eligible entities being entitled to carriage on such systems under the must carry statute and rules.

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

32. None.

Ex Parte Restrictions

33. This proceeding has been designated ''permit but disclose'' for purposes of the Commission's ex parte rules, 47 CFR 1.1200–1.1216. Ex parte presentations will be governed by the procedures set forth in 47 CFR 1.1206 applicable to non-restricted proceedings.

Filing Requirements

34. *Comments and Replies.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 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: (1) By using the Commission's Electronic Comment Filing System (ECFS), (2) by using the Federal Government's eRulemaking Portal, or (3) by filing paper copies.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing 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.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. 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, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- *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 must be addressed to 445 12th Street, SW., Washington DC 20554.

35. *Availability of Documents.* Comments, reply comments, and ex parte submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Word 97 and/or Adobe Acrobat.

36. *Accessibility Information.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the FCC's Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Paperwork Reduction Act Analysis

37. The *Notice* seeks comment on potential information collection requirements. The Commission will invite the general public to comment at a later date on any rules developed as a result of this proceeding that require the collection of information, as required by the Paperwork Reduction Act of 1995, Public Law 104.13. The Commission will publish a separate notice seeking these comments from the public. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we will seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Ordering Clauses

It is ordered, that pursuant to the authority contained in sections 1, 2(a), 4(i, j), 257, 303(r), 307–10, 336, and 614–15 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i, j), 257, 303(r), 307–310, 336, 534–35, *notice is hereby given* of the proposals described in this *Third Further Notice of Proposed Rule Making.*

It is further ordered that the Reference Information Center, Consumer Information Bureau, shall send a copy of this *Notice of Proposed Rule Making,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 73

Radio, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–11043 Filed 5–15–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3, 9, 12, and 52

[FAR Case 2007–006; Docket 2007–0001; Sequence 11]

RIN 9000–AK80

Federal Acquisition Regulation; FAR Case 2007–006, Contractor Compliance Program and Integrity Reporting (2nd Proposed Rule)

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

ACTION: Proposed rule; additional changes proposed.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are seeking comments on changes to the proposed rule, FAR Case 2007–006, Contractor Compliance Program and Integrity Reporting, published in the **Federal Register** at 72 FR 64019, November 14, 2007, for which the initial comment period has closed, that may be included in the final rule. The Councils do not contemplate publishing a final or interim rule until public comments are received and considered on the specific changes discussed further in this document.

DATES: Interested parties should submit written comments to the FAR Secretariat on or before July 15, 2008 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2007–006 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2007–006'' under the heading ''Comment or Submission''. Select the link ''Send a Comment or Submission'' that corresponds with FAR Case 2007–006. Follow the instructions provided to complete the ''Public Comment and submission Form''. Please include your name, company name (if any), and ''FAR Case 2007–006'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2007–006 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: Ernest Woodson, Procurement Analyst, at (202) 501–3775 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAR case 2007–006.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published FAR Case 2007–006, Contractor Compliance Program and Integrity Reporting, as a proposed rule in the **Federal Register** at 72 FR 64019, November 14, 2007. The proposed rule was published, at the request of the Department of Justice (DOJ), in order to—

- Require contractors to have a code of ethics and business conduct;
- Establish and maintain specific internal controls to detect and prevent improper conduct in connection with the award or performance of Government contracts or subcontracts; and
- Notify contracting officers without delay whenever they become aware of violations of Federal criminal law with regard to such contracts or subcontracts.

The proposed rule was a follow-on case to FAR Case 2006–007, published as a final rule in the **Federal Register** on November 23, 2007 (72 FR 65873).

Thirty three respondents commented on the proposed rule. The Councils currently are reviewing the comments and are considering changes to the proposed rule.

- The public and other interested parties have expressed concerns about—
  - The proposed exemption for contracts to be performed entirely outside the United States; and
  - The proposed exemption for contracts for the acquisition of commercial items.
- In addition, the Department of Justice (DOJ) proposes to add a requirement for contractors to report violations of the civil False Claims Act, and add knowing failure to timely report such violations as an additional cause for debarment or suspension to FAR Subpart 9.4.

Therefore, the Councils are seeking comments and recommendations regarding the changes to the proposed rule FAR text listed later in this notice. This notice includes only the sections of the proposed rule affected by these changes, summarized as follows:

(1) *Require inclusion of the clause FAR 52.203–13 in contracts and subcontracts that will be performed outside the United States (see FAR 3.1004 and 52.203–13(d) in the initial proposed rule*). This change would result in making the clause requirements for a contractor code of business ethics and conduct, business ethics awareness and compliance program, and internal control system applicable to contracts performed outside the United States.

The exemption from the requirement to include the clause 52.203–13 in contracts and subcontracts to be performed entirely outside the United States was a carry-over from the proposed and final rules under FAR Case 2006–007, which addressed both contractor code of business ethics and conduct and the use of fraud hotline posters. The final rule under FAR case 2006–007 relied heavily on the Defense Acquisition Regulations System (DFARS) coverage of contractor business ethics and hotline posters (see 48 CFR 203.70 and 48 CFR 252.203–7002). The DFARS clause on hotline posters does not apply to overseas contracts or to commercial items. There is no DFARS clause on contractor code of business ethics and conduct, just recommended guidelines. When the Councils added the clause at FAR 52.203–13 to contractually require a contractor code of business ethics and conduct, the same exemptions as applied to the hotline posters were perpetuated. The proposed rule under 2007–006, which was issued on an extremely expedited basis, did not propose change to the exemption for overseas contracts that was initiated under FAR case 2006–007. After publication of the proposed rule under 2007–006, DOJ and other respondents expressed concern about the overseas exemption.

The Councils note that the proposed rule did not exempt contracts that will be performed entirely outside the United States from all the requirements of the proposed rule. The proposed rule—

- Applied the proposed debarment/suspension for knowing failure to timely disclose an overpayment on a Government contract or violations of Federal criminal law in connection with the award or performance of any