

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Parts 73 and 74**

[MB Docket No. 20–401, FCC 24–35; FR ID 213399]

Program Originating FM Broadcast Booster Stations**AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) seeks comment on revising Commission rules to establish processing, licensing, and service rules that will enable full power FM and low power FM (LPFM) broadcast stations to originate programming using FM booster stations. In a concurrently adopted Report and Order (R&O), published elsewhere in this issue of the *Federal Register*, the Commission found that it would be in the public interest to provide broadcasters flexibility to use program originating boosters, subject to certain safeguards needed to address concerns raised in the record. This further notice of proposed rulemaking (FNPRM) seeks comment on the details of implementing these safeguards and on a number of proposed rule changes.

DATES: Comments due on or before May 16, 2024; reply comments due on or before June 17, 2024.

ADDRESSES: Pursuant to §§ 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 the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998). You may submit comments, identified by MB Docket No. 20–401, FCC 24–35, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: <https://apps.fcc.gov/ecfs/>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050

Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020).

<https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

- *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT:

Albert Shuldiner, Chief, Media Bureau, Audio Division, (202) 418–2721, Albert.Shuldiner@fcc.gov; Irene Bleiweiss, Attorney, Media Bureau, Audio Division, (202) 418–2785, Irene.Bleiweiss@fcc.gov. For additional information concerning the Paperwork Reduction Act (PRA) information collection requirements contained in this document, contact Cathy Williams at (202) 418–2918, Cathy.Williams@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's FNPRM, FCC 24–35, adopted March 27, 2024 and released April 2, 2024. The full text of this document is available by downloading the text from the Commission's website at: <https://docs.fcc.gov/public/attachments/FCC-24-35A1.pdf>.

Paperwork Reduction Act of 1995 Analysis: This document proposes new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens and pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, invites the general public and the Office of Management and Budget (OMB) to comment on these information collection requirements. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information

collection burden for small business concerns with fewer than 25 employees.

Providing Accountability Through Transparency Act: Consistent with the Providing Accountability Through Transparency Act, Public Law 118–9, a summary of this document will be available on: <https://www.fcc.gov/proposed-rulemakings>.

Synopsis**Background**

1. In a notice of proposed rulemaking (NPRM) adopted on December 1, 2020, and published on January 11, 2021, at 86 FR 1909, the Commission sought public comment on a proposal by GeoBroadcast Solutions, LLC (GBS) to allow a new use for FM booster stations. FM boosters are low power, secondary stations that operate in the FM broadcast band. They must operate on the same frequency as the primary station, and have been limited to rebroadcasting the primary station's signal in its entirety (*i.e.*, no transmission of original content). Historically, the sole use of FM boosters has been to improve signal strength of primary FM stations in areas where reception is poor due to terrain or distance from the transmitter. GBS developed technology designed to allow licensees of primary FM and LPFM broadcast stations to geographically target a portion of their programming by using FM boosters to originate different content for different parts of their service areas. Stations might, for example, use the technology to air hyper-local news and weather reports most relevant to a particular community. Stations also might air advertisements or underwriting acknowledgements from businesses that wish or can only afford to focus their reach on small geographic areas, thereby enhancing the stations' ability to compete for local support. Such program origination over boosters cannot be accomplished on a permanent basis under existing rules.

2. Upon consideration of comments both supporting and opposing the GBS proposal, the Commission concluded that program originating boosters would serve the public interest if properly engineered and subject to various safeguards. In the concurrently adopted R&O, the Commission authorizes program originating boosters in the near term under part 5 of the rules (47 CFR 5.1 to 5.602), which pertains to experimental use of new technologies. FM and LPFM broadcasters will have the flexibility to use FM boosters to originate geographically targeted programming on a voluntary basis for

up to three minutes per hour. However, the R&O notes that permanent use of program originating boosters cannot commence until the Commission adopts additional rule changes and establishes details for implementing safeguards to address concerns raised in the record. Accordingly, the Commission has adopted the FNPRM, which proposes and seeks comments on such rule changes and asks additional related questions.

Program Origination Notification

3. To address concerns in the comments about the potential impact of program originating boosters on existing FM service, the R&O concludes that it is imperative for the Commission to adopt a notification requirement for program originating boosters. This would enable the Media Bureau to keep track of which stations are using boosters to originate content and to respond to any complaints that may arise. The FNPRM proposes to require broadcasters originating programming on a booster to file a notification 15 days prior to commencing origination. The proposed rule would also require broadcasters that permanently discontinue originating programming on a booster to file a notification within 30 days after termination. The Commission seeks comment on this proposal and the proposed text of 47 CFR 74.1206 set out in appendix C of the FNPRM. Would the information collected in the proposed FM Booster Notification constitute “data assets” for purposes of the OPEN Government Data Act, Public Law 115–435 (2019)? If so, would the collected information constitute “public data assets” as defined in 44 U.S.C. 3502 (22)? Is there any reason the Commission should not make such information publicly available?

Section 74.1204(f)

4. Section 74.1204(f) of the rules (47 CFR 74.1204(f)) addresses claims of predicted interference outside a protected station’s contour when a translator station construction permit application is pending. Unlike the actual interference rule in § 74.1203, which addresses both translator and booster stations, the predicted interference rule in § 74.1204(f) addresses only translator stations. The FNPRM seeks comment on whether to modify § 74.1204(f) to include a mechanism to address predicted interference while booster construction permit applications remain pending. The Commission believes this will help ensure that broadcasters do not invest in developing booster stations that will cause interference that must be resolved

under § 74.1203 once the booster commences broadcasts. It also proposes to apply this new mechanism to any booster applications that are pending at the time the modifications to § 74.1204 are adopted. The Commission seeks comment on these proposals.

Synchronization

5. The FNPRM seeks comment on whether the Commission should adopt a requirement that broadcasters synchronize their primary station and booster signals to reduce and eliminate self-interference. GBS’s engineering consultant emphasized in the comments that synchronization is critical to successful booster implementation. One commenter, Anderson, emphasizes the importance for any booster system, but particularly those in a program originating system, to be synchronized in carrier frequency, pilot phase, and audio frames for analog FM. In the R&O, the Commission concluded that broadcasters have strong economic incentives to avoid self-interference to their primary station’s signal. In light of that conclusion, it believes broadcasters deploying program originating boosters will employ a technology that uses synchronization. Is there any need to adopt a separate synchronization requirement as an additional safeguard? If the Commission were to adopt a synchronization requirement, what level of synchronization would be appropriate? Should the Commission adopt any standards with regard to synchronizing any or all of the elements discussed by Anderson? Would stations require new or specialized equipment to maintain proper synchronization or is that a routine part of existing booster station operations? Do station signals change enough to require constant monitoring and recalibration and if so, how does this affect our ability to develop and apply a standard? Or would a synchronization requirement impose an unnecessary burden on booster station operations? The Commission seeks comment on these questions.

Notification to Emergency Alert System (EAS) Participants

6. The R&O requires program originating boosters to receive and broadcast all emergency alerts in the same manner as their primary station, and codifies this requirement by amending 47 CFR 11.11 to explicitly make all EAS requirements that are applicable to full-service AM and FM stations and LPFM stations equally applicable to program originating FM boosters. In its comments, the Federal Emergency Management Agency

(FEMA) recommended a requirement that FM primary stations implementing program originating boosters must notify all EAS participants monitoring that primary station of the booster’s program origination. The Commission seeks comment on this proposal. Does the Commission’s proposal to require all program originating boosters to broadcast emergency alerts negate the need for this FEMA proposal?

7. As stated in the R&O, the Commission believes its requirement that program originating boosters broadcast all emergency alerts will ensure no disruptions to the EAS, but the Commission will monitor the rollout of program originating boosters to ensure they do not cause interruptions to the EAS. Should the Commission adopt any requirement for broadcasters using program originating boosters to report EAS-related problems or interference to the Commission? What would be the best means for broadcasters to provide this information to the Commission? Should it require that licensees also submit this information to FEMA?

Part 74 Licensing Issues

8. The Commission proposes to clarify certain operational issues for program originating boosters. The FNPRM proposes to reorganize and clarify 47 CFR 74.1231 by changing the current Note to a new paragraph (j), which clarifies grandfathered superpowered FM stations will be able to implement booster stations only within the standard (*i.e.*, non-superpowered) maximum contour for their class of station. We believe this helps to minimize interference risks by further isolating program originating boosters from adjacent FM broadcast stations. Also, the FNPRM proposes to add a new paragraph (k) that requires booster stations to suspend operations any time their primary stations are not broadcasting and to file notices of suspended operations pursuant to § 73.1740 of the rules (47 CFR 73.1740). This change codifies more explicitly existing requirements. Finally, the Commission proposes to modify 47 CFR 74.1232 to clarify that a booster station may not broadcast programming that is not permitted by its FM primary station’s authorization. This will ensure that program originating boosters are not used in a manner that is inconsistent with the primary station. The Commission seeks comment on the proposed rule changes. The FNPRM also takes this opportunity to remind broadcasters that licensees of noncommercial FM stations may not use

booster stations for commercial broadcasts.

Cap on Program Originating FM Boosters and Other LCRA Issues

9. The FNPRM proposes to amend 47 CFR 74.1232(g) to limit full-service FM stations to 25 program originating booster stations. This cap on the number of program originating FM booster stations would represent a change from the current rule, which imposes no numerical limit on FM booster stations. The Commission is bound by Section 5 of the Local Community Radio Act of 2010, Public Law 111–371 (LCRA), to ensure when licensing new FM booster stations that “licenses are available” to FM translators and LPFM stations. The ability of other secondary service applicants to locate within an existing full-service FM station’s service contour is ordinarily constrained by the full-service FM primary station itself. Despite this, the Commission does not yet know the extent of demand for program originating FM booster stations, nor the impact that potentially large numbers of such stations in a market could have on spectrum availability on adjacent channels where new FM translators and LPFM stations might conceivably wish to locate. Accordingly, it concludes in the R&O that a limit on the number of program originating boosters a station can operate may be needed to ensure that an increase in booster stations resulting from the decision to authorize program originating boosters is consistent with the LCRA.

10. The R&O notes that some commenters have expressed concern about the effect of additional boosters on the FM noise floor. Would a program originating FM booster cap address such concerns? The Commission tentatively concludes that a limit of 25 program originating boosters per full-service FM primary station is a reasonable compromise. In seeking comment on this number, the Commission also notes that imposing an artificially low number of program originating boosters could make it harder for licensees to design and deploy boosters in a way that minimizes the risks of interference. It does not propose an overall per market limit. The Commission seeks comment on these tentative conclusions as well as any alternative number for the cap. GBS studies evaluated geotargeting deployments with up to nine boosters. Thus, the Commission tentatively concludes that a 25 program originating booster station cap should not impose an undue burden on the rollout of this technology while at the same time ensuring consistency with the LCRA. It

also seeks input on any alternatives. The Commission asks that any alternative proposals be accompanied by detailed justifications, as well as a discussion of the effect any alternative program originating booster cap or alternative approach to limiting program originating boosters might have on other stations, both full-service and secondary, and on the local FM noise floor generally.

11. The FNPRM also seeks comment on whether there are other requirements needed to ensure compliance with the LCRA. The R&O concluded that authorization of program originating boosters is consistent with the LCRA. However, the FNPRM seeks input on any remaining concerns about compliance with the LCRA. Currently, LPFM stations are permitted to originate programming 100 percent of the time, while FM translators and boosters do not originate programming. What difference, if any, does allowing some FM boosters to originate programming for five percent of each broadcast hour make to the relative status of the secondary services? The Commission seeks comment on these matters.

12. Additionally, in discussing any proposed LCRA-based requirements in licensing program originating FM booster stations, the Commission asks commenters specifically to enumerate the costs and benefits of their proposals or any alternatives set forth by commenters. This should include the costs of preparing any proposed application showings, or of licensing an FM booster in such a manner as to comply with the LCRA. Commenters should also quantify projected costs and benefits, identify supporting evidence and any underlying assumptions, and explain any difficulties faced in trying to quantify benefits and costs of the proposals and how the Commission might nonetheless evaluate them.

Political Broadcasting and Advertising

13. If program originating boosters are widely adopted, candidates and issue advertisers may seek to use program originating booster stations to target their message to particular subsets of a market, which has political broadcasting and recordkeeping implications. As an initial matter, the Commission tentatively concludes that, to the extent an FM booster station originates programming, it should be subject to the full array of political programming requirements that are applicable to full power broadcast stations. These obligations ensure that candidates for elective office have access to broadcast facilities and certain other media platforms and foster transparency about

entities sponsoring advertisements. The FNPRM therefore proposes to adopt a new provision (47 CFR 74.1290) to make all political programming requirements applicable to program originating FM booster stations. It also proposes to require broadcasters originating programming on a booster to maintain a political file for the booster in the same political file as the booster’s primary station. Thus, the Commission proposes to amend 47 CFR 73.3526 (online public inspection file of commercial stations) and 47 CFR 73.3527 (online public inspection file of noncommercial educational stations) to appropriately reflect the obligation of licensees of program originating FM booster stations to maintain an online political file for each such station. LPFM stations operating program originating boosters will need to maintain a physical political file consistent with existing requirements. The FNPRM invites comment on this proposal.

14. *Political Files.* Applying the full array of political programming requirements to program originating FM booster stations raises several additional issues on which the FNPRM seeks comment. First, it asks how licensees should comply with the political file requirements in 47 CFR 73.1943 and 47 U.S.C. 315(e) for program originating booster stations. For example, these sections require commercial licensees to maintain online political files for requests for the purchase of broadcast time by or on behalf of all legally qualified candidates for public office and by or on behalf of issues advertisers whose ads communicate a message relating to any political matter of national importance. The requirement applies to both full service noncommercial stations and LPFM stations to the extent that they make time available without charge for use by a candidate. What is the best location for records of such commercial and noncommercial use of broadcast time on a program originating booster station? The FNPRM notes that booster stations are not required to maintain a public file. Should records of political use of broadcast time on a program originating booster station be commingled with records of requests for the use of broadcast time on the licensee’s primary station so long as they are appropriately labeled to identify the station on which the use was made? Alternatively, should licensees be required to create a political file subfolder for each of its booster stations into which it would place records of requests for the purchase or free use of broadcast time?

15. Would candidates and members of the public know that a political message

that they have heard originated on a booster station (as opposed to the licensee's primary station) and know where to locate records of the message in the station's political file? How should LPFM stations, which are not currently required to have an online public inspection file, keep publicly available records of political use of their program originating boosters? For example, should they keep a physical file for the booster with the LPFM station's files consistent with requirements for political use of the LPFM station? The Commission invites comment on all of these questions and any additional issues that follow from requiring licensees to maintain records of requests for the purchase of political time and of time made available without charge for use by a candidate on their program originating booster stations.

16. *Equal Opportunities*. Targeted advertising also raises questions about how licensees should comply with obligations related to equal opportunities. Under 47 CFR 73.1941 and 47 U.S.C. 315(a), if a licensee permits a legally qualified candidate for any public office to use its station, it must, with some exceptions, permit all other legally qualified candidates for the same office to also use its station. Should candidates who are requesting equal opportunities in response to an advertisement or noncommercial announcement that was broadcast on a particular program originating booster station be entitled to use only that booster station, essentially treating individual booster stations and a licensee's primary station as separate facilities for equal opportunities purposes?

17. *Reasonable Access*. Similar questions arise with respect to how licensees should entertain requests for reasonable access by Federal candidates on program originating booster stations. Under 47 CFR 73.1944 and 47 U.S.C. 312(a)(7), commercial broadcast stations must permit candidates for Federal office to purchase reasonable amounts of advertising time. In determining what is "reasonable" for reasonable access purposes, should licensees treat their program originating booster and primary stations as separate facilities? For example, should the amount of time that a Federal candidate has purchased on a licensee's primary station affect the amount of time to which the same candidate is entitled to purchase on one of the licensee's program originating booster stations, and vice versa?

18. *Candidate Rates*. Program originating booster stations raise additional questions about how licensees should apply candidate rates.

Pursuant to 47 CFR 73.1942 and 47 U.S.C 315(b), during the 45-day period preceding a primary or primary run-off election, and the 60 day period preceding a general or special election, stations must charge candidates in connection with their campaigns no more than the station's lowest unit charge for the same class and amount of time during the same period. In determining lowest unit charges, should licensees treat their program originating booster stations and primary stations as separate facilities? Is it reasonable to expect that the lowest unit rates on a licensee's program originating booster station would be different from the lowest unit rates on its primary station?

Licensing Issues

19. The FNPRM also seeks comment on whether to require vendors of program originating technology and patent owners in program originating technology to abide by the Commission's patent policy or any other guidelines common to open standards, which require that licenses be available to all parties on fair, reasonable and nondiscriminatory terms. Would such a step be necessary or an appropriate exercise of Commission authority in light of the fact that the Report and Order does not endorse a particular technical approach? Parties suggesting that we do consider any requirements should provide detailed information, including how long such requirements should last and our authority to adopt such requirements.

Other Safeguards

20. Are there any other non-technical safeguards on program originating boosters that might be useful? For example, two members of Congress who support geo-targeted content, nevertheless suggest that the Commission should consider requiring licensees of program originating boosters to certify that they are being responsive to needs and issues of their service areas, especially minority communities. This appears to be a response to concerns of a non-technical nature, such as the potential for redlining by advertisers or licensees. Although the Commission finds no current evidence of factors to cause redlining, it seeks comment on whether a safeguard in the form of a reporting condition might generally be useful to address non-technical concerns. If so, what information should licensees certify to, and how often?

Digital Equity and Inclusion

21. The Commission, as part of its continuing effort to advance digital

equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, it seeks comment on how the FNPRM's proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well as the scope of the Commission's relevant legal authority.

22. The Commission will send a copy of the FNPRM including the IRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this FNPRM and IRFA (or summaries thereof) will also be published in the **Federal Register**.

Initial Regulatory Flexibility Act Analysis

23. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Act Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the 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 specified in the **DATES** section of this FNPRM. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

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

24. The FNPRM seeks further comment on processing, licensing, and service rules for program originating FM booster stations, or program originating boosters, which provide targeted programming to specific areas within their primary FM stations' service areas. Through the FNPRM, the Commission sets out a number of proposed changes to the rules, detailed in Appendix C, and seeks comment on these proposed rule changes.

25. In the FNPRM, the Commission proposes to retain the requirement that a booster station may cause only limited interference to its primary station's signal, but also proposes to eliminate the current rule provision barring any interference to the primary station's

signal within the boundaries of the community of license. Additionally, the Commission proposes a notification requirement in which licensees of authorized booster stations will be required to file a notification of their intention to originate programming rather than implementing a separate application process for boosters that originate programming that could introduce greater delay for broadcasters seeking to operate such booster stations. The Commission also asks whether it should codify technical specifications for synchronization of the program originating booster's signal with that of the FM primary station, as well as whether imposing such a requirement would be an unnecessary burden on broadcasters.

26. In the Report and Order, we required program originating boosters to receive and broadcast all emergency alerts in the same manner as their primary station, by codifying this requirement through an amendment of § 11.11 of the rules (47 CFR 11.11). The FNPRM seeks comment regarding whether any additional requirements will be needed regarding the interaction of program originating boosters and the Emergency Alert System (EAS).

27. Additionally, the Commission proposes to add a new section to the rules (47 CFR 74.1206) requiring that a program originating booster formally notify the Commission through the Media Bureau's Licensing and Management System (LMS) of the commencement and suspension of operations. Other proposed rule additions and amendments include a requirement that a program originating booster suspend operations when its FM primary station suspends operations, and to so notify the Commission. The FNPRM also proposes that the programming originated by an FM booster station must conform to that broadcast by the FM primary station, e.g., a booster re-transmitting a noncommercial educational (NCE) FM station may also only broadcast NCE content. The FNPRM also seeks comment on whether information collected in the proposed FM Booster Notification constitutes "data assets" for purposes of the OPEN Government Data Act and, if so, whether the collected information constitutes "public data assets."

28. The Commission further proposes to amend 47 CFR 74.1232(g) to limit each full-service FM station to using up to 25 FM booster stations. This cap represents a change from the current rule, which imposes no numerical limit on FM booster stations. This proposal is based on the decision in the Report and

Order that a limit on the number of boosters a station can operate is needed to ensure that an increase in booster stations resulting from our decision to authorize program originating boosters is consistent with the Local Community Radio Act of 2010 (LCRA).

29. The FNPRM also addresses issues regarding political broadcasting. To the extent that political advertising may be broadcast over a program originating booster, the Commission proposes that such a booster station must follow all of the Commission's political broadcasting rules. These would include rules requiring the maintenance of an online political file, provision of equal opportunity and reasonable access to political candidates, and limiting the rates charged to political candidates for airtime. Finally, the FNPRM also asks whether vendors of these technologies should abide by the Commission's patent policy or any other guidelines common to open standards, which require that licenses be available to all parties on fair, reasonable, and nondiscriminatory terms.

B. Legal Basis

30. The proposed action is authorized pursuant to sections 1, 2, 4(i), 7, 301, 302, 303, 307, 308, 309, 316, 319, 324, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 157, 301, 302, 303, 307, 308, 309, 316, 319, 324, and 403.

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

31. 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 generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act (SBA). 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.

32. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore, describe three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for

small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.

33. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

34. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." U.S. Census Bureau data from the 2017 Census of Governments indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,931 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 12,040 special purpose governments— independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of "small governmental jurisdictions."

35. *Radio Stations.* This industry is comprised of "establishments primarily engaged in broadcasting aural programs by radio to the public." Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies firms having \$41.5 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year. Of this number, 1,879 firms operated with revenue of less than \$25 million per year. Based on this data and the SBA's small business size standard, we estimate a majority of such entities are small entities.

36. The Commission estimates that as of September 30, 2023, there were 4,452 licensed commercial AM radio stations and 6,670 licensed commercial FM radio stations, for a combined total of 11,122 commercial radio stations. Of this total, 11,120 stations (or 99.98%) had revenues of \$41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Database (BIA) on October 4, 2023, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates that as of September 30, 2023, there were 4,263 licensed noncommercial (NCE) FM radio stations, 1,978 low power FM (LPFM) stations, and 8,928 FM translators and boosters. The Commission however does not compile, and otherwise does not have access to financial information for these radio stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of radio station licensees, we presume all of these entities qualify as small entities under the above SBA small business size standard.

37. We note, however, that in assessing whether a business concern qualifies as "small" under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of "small business" requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and is therefore possibly over-inclusive. An additional element of the definition of "small business" is that the entity must be independently owned and operated. Because it is difficult to assess these criteria in the context of media entities, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and similarly may be over-inclusive.

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

38. The FNPRM proposes modified reporting requirements that, if adopted, may impact compliance requirements for small entities. The Commission seeks comment on whether FM licensees and permittees employing program originating boosters should provide notice through the Licensing and Management System (LMS) prior to commencing program origination, and whether it should similarly provide LMS notice when suspending operations. Should the Commission ultimately decide to adopt these requirements, they would likely result in a modified paperwork obligation for small and other entities. The Commission will have to consider the benefits and costs of allowing program originating booster licensees to submit certain notifications in LMS. If adopted, the Commission will seek approval of and submit the corresponding burden estimates to account for this modified reporting requirement. Additionally, small entities may determine they will need to hire professionals to comply with the rule changes proposed in the FNPRM, if adopted. We expect the comments we receive from the parties in the proceeding, including cost and benefit analyses, will help the Commission to identify and evaluate compliance costs and burdens for small businesses that may result from the proposed rules and additional matters discussed in the FNPRM.

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

39. The RFA requires an agency to describe any significant alternatives, specifically for small businesses, 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 such 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 such small entities."

40. The Commission has sought to minimize the economic impact on small entities, as well as consider significant alternatives and weigh their potential impact to those entities. In the FNPRM,

we take the step of proposing to modify rules to facilitate limited program origination by FM booster stations.

41. In addition, the FNPRM seeks to avoid imposing additional burdens on small radio stations where practicable. For example, the FNPRM proposes to add a new § 74.1206 to the rules, which would prescribe LMS notification of the commencement or suspension of program originating booster service. The majority of Commission notifications in the media services are delivered through LMS, which is less burdensome than requiring separate mail or electronic mail notification. Further, our proposed rule also simplifies notification and certification requirements for broadcasters that permanently discontinue originating programming on a booster to file a notification of termination within 30 days. We believe that unlike other alternatives for compliance, this approach will provide adequate notice to the Commission while minimizing the regulatory burden for broadcast stations.

42. At this time, the Commission does not have supporting data to determine if there will or will not be an economic impact on small businesses as a result of the proposed rule amendments and/or additions. To assist in the Commission's evaluation of the economic impact on small entities, as a result of actions that have been proposed in the FNPRM, and to better explore options and alternatives, the Commission has sought comment from the parties. In particular, the Commission seeks comment on whether any of the burdens associated with the filing, recordkeeping and reporting requirements described above can be minimized for small entities.

Additionally, the Commission seeks comment on whether any potential costs associated with our FM Booster Station requirements can be alleviated for small entities. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments filed in response to the FNPRM.

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

43. None.

Ordering Clauses

44. *It is further ordered* that, pursuant to sections 1, 2, 4(i), 7, 301, 302, 303, 307, 308, 309, 316, 319, 324, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 157, 301, 302, 303, 307, 308, 309, 316, 319, 324,

and 403, the Further Notice of Proposed Rule Making *is adopted*.

44. *It is further ordered* that, pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the further notice of proposed rulemaking in MB Docket No. 20–401 on or before thirty (30) days after publication in the **Federal Register** and reply comments on or before sixty (60) days after publication in the **Federal Register**.

List of Subjects in 47 CFR Part 73 and 74

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene Dortch,
Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 73 and 74 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. Revise § 73.801 to read as follows:

§ 73.801 Broadcast regulations applicable to LPFM stations.

The following rules are applicable to LPFM stations:

(a) Part 11—Emergency Alert System (EAS).

(1) Section 11.11 The Emergency Alert System (EAS).

(2) [Reserved]

(b) Part 73—Radio Broadcast Services.

(1) Section 73.201 Numerical definition of FM broadcast channels.

(2) Section 73.220 Restrictions on use of channels.

(3) Section 73.267 Determining operating power.

(4) Section 73.277 Permissible transmissions.

(5) Section 73.297 FM stereophonic sound broadcasting.

(6) Section 73.310 FM technical definitions.

(7) Section 73.312 Topographic data.

(8) Section 73.318 FM blanketing interference.

(9) Section 73.322 FM stereophonic sound transmission standards.

(10) Section 73.333 Engineering charts.

(11) Section 73.503 Licensing requirements and service.

(12) Section 73.508 Standards of good engineering practice.

(13) Section 73.593 Subsidiary communications services.

(14) Section 73.1015 Truthful written statements and responses to Commission inquiries and correspondence.

(15) Section 73.1030 Notifications concerning interference to radio astronomy, research and receiving installations.

(16) Section 73.1201 Station identification.

(17) Section 73.1206 Broadcast of telephone conversations.

(18) Section 73.1207 Rebroadcasts.

(19) Section 73.1208 Broadcast of taped, filmed, or recorded material.

(20) Section 73.1210 TV/FM dual-language broadcasting in Puerto Rico.

(21) Section 73.1211 Broadcast of lottery information.

(22) Section 73.1212 Sponsorship identification; list retention; related requirements.

(23) Section 73.1213 Antenna structure, marking and lighting.

(24) Section 73.1216 Licensee-conducted contests.

(25) Section 73.1217 Broadcast hoaxes.

(26) Section 73.1250 Broadcasting emergency information.

(27) Section 73.1300 Unattended station operation.

(28) Section 73.1400 Transmission system monitoring and control.

(29) Section 73.1520 Operation for tests and maintenance.

(30) Section 73.1540 Carrier frequency measurements.

(31) Section 73.1545 Carrier frequency departure tolerances.

(32) Section 73.1570 Modulation levels: AM, FM, and TV aural.

(33) Section 73.1580 Transmission system inspections.

(34) Section 73.1610 Equipment tests.

(35) Section 73.1620 Program tests.

(36) Section 73.1650 International agreements.

(37) Section 73.1660 Acceptability of broadcast transmitters.

(38) Section 73.1665 Main transmitters.

(39) Section 73.1692 Broadcast station construction near or installation on an AM broadcast tower.

(40) Section 73.1745 Unauthorized operation.

(41) Section 73.1750 Discontinuance of operation.

(42) Section 73.1920 Personal attacks.

(43) Section 73.1940 Legally qualified candidates for public office.

(44) Section 73.1941 Equal opportunities.

(45) Section 73.1943 Political file.

(46) Section 73.1944 Reasonable access.

(47) Section 73.3511 Applications required.

(48) Section 73.3512 Where to file; number of copies.

(49) Section 73.3513 Signing of applications.

(50) Section 73.3514 Content of applications.

(51) Section 73.3516 Specification of facilities.

(52) Section 73.3517 Contingent applications.

(53) Section 73.3518 Inconsistent or conflicting applications.

(54) Section 73.3519 Repetitious applications.

(55) Section 73.3520 Multiple applications.

(56) Section 73.3525 Agreements for removing application conflicts.

(57) Section 73.3539 Application for renewal of license.

(58) Section 73.3542 Application for emergency authorization.

(59) Section 73.3545 Application for permit to deliver programs to foreign stations.

(60) Section 73.3550 Requests for new or modified call sign assignments.

(61) Section 73.3561 Staff consideration of applications requiring Commission consideration.

(62) Section 73.3562 Staff consideration of applications not requiring action by the Commission.

(63) Section 73.3566 Defective applications.

(64) Section 73.3568 Dismissal of applications.

(65) Section 73.3580 Local public notice of filing of broadcast applications.

(66) Section 73.3584 Procedure for filing petitions to deny.

(67) Section 73.3587 Procedure for filing informal objections.

(68) Section 73.3588 Dismissal of petitions to deny or withdrawal of informal objections.

(69) Section 73.3589 Threats to file petitions to deny or informal objections.

(70) Section 73.3591 Grants without hearing.

(71) Section 73.3593 Designation for hearing.

(72) Section 73.3598 Period of construction.

(73) Section 73.3599 Forfeiture of construction permit.

(74) Section 73.3999 Enforcement of 18 U.S.C. 1464 (restrictions on the transmission of obscene and indecent material).

(c) Part 74—Experimental Radio, Auxiliary, Special Broadcast and Other Program Distributional Services.

(1) Section 74.1201 Definitions.

(2) Section 74.1203 Interference.

(3) Section 74.1206 Program originating FM booster station notifications.

(4) Section 74.1231 Purpose and permissible service.

(5) Section 74.1232 Eligibility and licensing requirements.

(6) Section 74.1290 Political programming rules applicable to program originating FM booster stations.
■ 3. Amend § 73.3526 by adding paragraph (a)(3) to read as follows:

§ 73.3526 Online public inspection file of commercial stations.

(a) * * *

(3) Every permittee or licensee of a program originating FM booster station, as defined in § 74.1201(f)(2) of this chapter, shall maintain in the political file of its primary station the records required in § 73.1943 of this part for each such program originating FM booster station.

* * * * *

■ 4. Amend § 73.3527 by adding paragraph (a)(3) to read as follows:

§ 73.3527 Online public inspection file of noncommercial educational stations.

(a) * * *

(3) Every permittee or licensee of a program originating FM booster station, as defined in § 74.1201(f)(2) of this chapter, in the noncommercial educational broadcast service shall maintain in the political file of its primary station the records required in § 73.1943 of this part for each such program originating FM booster station.

* * * * *

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

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

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 325, 336, and 554.

■ 6. Amend § 74.1204 by

- a. Removing the Note to paragraph (a)(4);
■ b. Adding paragraph (a)(5); and
■ c. Revising paragraphs (f) and (i).

The revisions and addition read as follows:

§ 74.1204 Protection of FM broadcast, FM Translator and LP100 stations.

(a) * * *

(5) For the purposes of determining overlap pursuant to this paragraph, LP100 stations, LPFM applications, and LPFM permits that have not yet been licensed must be considered as operating with the maximum permitted facilities. All LPFM TIS stations must be protected on the basis of a nondirectional antenna.

* * * * *

(f)(1) An application for an FM translator station will not be granted even though the proposed operation would not involve overlap of field strength contours with any other station, as set forth in paragraph (a) of this section, if grant of the authorization will result in interference to the reception of a regularly used, off-the-air signal of any authorized co-channel, first, second or third adjacent channel broadcast station, including previously authorized secondary service stations within the 45 dBµ field strength contour of the desired station.

(2) An application for an FM broadcast booster station will not be granted even though the proposed operation would not involve overlap of field strength contours with any other station, as set forth in paragraph (i) of this section, if grant of the authorization will result in interference to the reception of a regularly used, off-the-air signal of any authorized co-channel, first, second or third adjacent channel broadcast station, other than the booster's primary station, but including previously authorized secondary service stations within the 45 dBµ field strength contour of the desired station.

(3) Interference, with regard to either an FM translator station or an FM broadcast booster station application, is demonstrated by:

(i) The required minimum number of valid listener complaints as determined using Table 1 to § 74.1203(a)(3) of this part and defined in § 74.1201(k) of this part;

(ii) A map plotting the specific location of the alleged interference in relation to the complaining station's 45 dBµ contour;

(iii) A statement that the complaining station is operating within its licensed parameters;

(iv) A statement that the complaining station licensee has used commercially reasonable efforts to inform the relevant translator or booster licensee of the claimed interference and attempted private resolution; and

(v) U/D data demonstrating that at each listener location the undesired to desired signal strength exceeds -20 dB for co-channel situations, -6 dB for first-adjacent channel situations or 40 dB for second- or third-adjacent channel situations, calculated using the methodology set out in paragraph (b) of this section.

* * * * *

(i) FM broadcast booster stations shall be subject to the requirement that the signal of any first adjacent channel station must exceed the signal of the booster station by 6 dB at all points

within the protected contour of any first adjacent channel station, except that in the case of FM stations on adjacent channels at spacings that do not meet the minimum distance separations specified in § 73.207 of this chapter, the signal of any first adjacent channel station must exceed the signal of the booster by 6 dB at any point within the predicted interference free contour of the adjacent channel station.

* * * * *

■ 7. Add § 74.1206 to read as follows:

§ 74.1206 Program originating FM booster station notifications.

(a) A program originating FM booster station must electronically file an FM Booster Program Origination Notification with the Commission in LMS, before commencing or after terminating the broadcast of booster-originated content subject to the provisions of § 74.1201(f)(2) of this part. Such a notification must be filed within 15 days before commencing origination, or within 30 days after terminating origination.

(b) Every FM Booster Program Origination Notification must include the following information in machine-readable format:

(1) The call sign and facility identification number of the program originating FM booster station;

(2) If applicable, the date on which the program originating FM booster station will commence or has terminated originating content;

(3) The name and telephone number of a technical representative the Commission or the public can contact in the event of interference;

(4) A certification that the program originating FM booster station complies with all Emergency Alert System (EAS) requirements in part 11 of this chapter;

(5) A certification that the program originating FM booster station will originate programming for no more than three minutes of each broadcast hour; and

(6) A certification that the program originating FM booster station has been properly synchronized to minimize interference to the primary station.

■ 8. Amend § 74.1231 by revising paragraph (j) and adding paragraph (k) to read as follows:

§ 74.1231 Purpose and permissible service.

* * * * *

(j) In the case of a superpowered FM broadcast station, authorized with facilities in excess of those specified by § 73.211 of this chapter, an FM booster station will only be authorized within the protected contour of the class of

station being rebroadcast as predicted based on the maximum facilities set forth in § 73.211 for the applicable class of FM broadcast station being rebroadcast.

(k) An FM broadcast booster station, as defined in § 74.1201(f)(1) or (f)(2) of this part, must suspend operations at any time its primary station is not operating. If a full-service FM broadcast station suspends operations, in addition to giving the notification specified in § 73.1740(a)(4) of this chapter, each FM broadcast booster station and program originating FM booster station must also file a notification under § 73.1740(a)(4) of this chapter that it has suspended operations.

■ 9. Amend § 74.1232 by revising the first sentence of paragraph (g), redesignating paragraph (h) as paragraph (i), and adding new paragraph (h). The revision and addition read as follows:

§ 74.1232 Eligibility and licensing requirements.

* * * * *

(g) No numerical limit is placed upon the number of FM booster stations which may be licensed to a single licensee. No more than twenty five (25) program originating FM booster stations may be licensed to a single full-service FM broadcast station. * * *

(h) A program originating FM booster station, when originating programming pursuant to the limits set forth in § 74.1201(f)(2) of this part, may not broadcast programming that is not permitted by its primary station's authorization (e.g., a program originating FM booster station licensed to a noncommercial educational primary station may only originate programming consistent with § 73.503 of this chapter).

* * * * *

■ 10. Add § 74.1290 to read as follows:

§ 74.1290 Political programming rules applicable to program originating FM booster stations.

To the extent a program originating FM booster station originates programming different than that broadcast by its primary station, pursuant to the limits set forth in § 74.1201(f)(2) of this part, it shall comply with the requirements in §§ 73.1212 (Sponsorship identification), 73.1940 (Legally qualified candidates for public office), 73.1941 (Equal opportunities), 73.1942 (Candidate rates), 73.1943 (Political file), and 73.1944 (Reasonable access), of this chapter.

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