Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 17–105, (WRS Reform Second Report and Order)). Of relevance to the information collection at issue here, the Commission required that when portions of geographic licenses are sold, both parties to the transaction have a clear construction obligation and penalty in the event of failure.

In addition, § 1.950(d) requires applicants for geographic partitioning, spectrum disaggregation, or a combination of both, to include, if applicable, a certification with their partial assignment of authorization application stating which party will meet any incumbent relocation requirements, except as otherwise stated in service-specific rules.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–20905 Filed 9–25–20; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 19–282, 17–105; FCC 20–106; FRS 16995]

Use of Common Antenna Site; Modernization of Media Regulation Initiative

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this *Report and Order,* the Commission repeals two rules regarding access to FM and TV broadcast antenna sites. These rules prohibit the grant or renewal of an FM or TV broadcast license to any person who owns, leases, or controls a particular site which is peculiarly suitable for such broadcasting in a particular area, if: The site is not available for use by other such licensees, no other comparable site is available in the area, and the exclusive use of the site would unduly limit the number of such stations that can be licensed or unduly restrict competition among those stations. After review of the record, the Commission concludes that these rules no longer serve any practical purpose in light of the significant broadcast infrastructure development since the rules were first adopted 75 years ago. Therefore, the Commission determines that it is in the public interest to eliminate them.

DATES: Effective September 28, 2020.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact John Cobb, *John.Cobb@fcc.gov,* of the Policy Division, Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MB Docket Nos. 19–282, 17–105; FCC 20–106, adopted on August 4, 2020 and released on August 5, 2020. The full text of this document is available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word, and/or Adobe Acrobat.) To request these documents in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

In this *Report and Order,* we eliminate §§ 73.239 and 73.635 of the Commission's rules regarding access to FM and TV broadcast antenna sites. We conclude that these rules no longer serve any practical purpose in light of the significant broadcast infrastructure development that has taken place since they were first adopted 75 years ago. With this proceeding, we continue our efforts to modernize our media regulations by removing outdated and unnecessary requirements.

Background. Sections 73.239 and 73.635 of our rules prohibit the grant or renewal of an FM or TV broadcast license ''to any person who owns, leases, or controls a particular site which is peculiarly suitable'' for such broadcasting in a particular area, if the site is not available for use by other such licensees, no other comparable site is available in the area, and the exclusive use of the site would unduly limit the number of such stations that can be licensed or unduly restrict competition among those stations. These rules were adopted 75 years ago, at a time when FM and TV broadcasting were emerging industries, and the need to preserve materials for the U.S. military effort in World War II had led the Commission to freeze new broadcast station construction. At that time, there were also far fewer outlets serving emerging local broadcast markets. Since that time, the broadcast market has grown significantly with a corresponding increase in the number of antenna sites available. This is made possible, in part, by the ability to co-locate broadcasters and other providers at a single site and a mature independent communications tower industry that owns and leases tower space to broadcasters.

In October 2019, the Commission issued a *Notice of Proposed Rulemaking (NPRM)* in this proceeding as a part of our continuing Modernization of Media Regulation Initiative. In the *NPRM,* we sought comment on whether the common antenna site rules should be eliminated or revised. Specifically, we sought comment on to what extent broadcasters own their own towers, whether any data suggests the rules remain necessary, whether any broadcasters ever request use of common antenna sites pursuant to these rules, and what effect elimination of these rules would have on the broadcast tower landscape and on FM and TV broadcasting. We only received two comments in response to these inquiries, both of which were filed by consumers.

Discussion. In this *Report and Order,* we repeal §§ 73.239 and 73.635 of our rules. Notably, we received no comment in the record from any broadcast licensees that would be affected most directly by repealing these 75-year-old rules. As a result, there is no evidence in the record that any broadcaster believes that these rules remain necessary for it to secure an antenna site. As mentioned above, the only two comments we received were filed by consumers. Rojas agrees the rules are ''outdated,'' and notes the importance of broadcast services to consumers. Mullik expresses concerns about repealing the rules, emphasizing the importance of preserving the widespread availability of FM and TV broadcasting. We agree that we should ensure that any rule changes do not negatively impact the widespread availability of FM and TV broadcasting. For the reasons stated below, we believe that eliminating these rules is consistent with this goal.

We conclude that eliminating these rules is appropriate for four reasons. First, the apparent rationale for these rules—promoting a fledgling broadcast industry and preserving scarce industrial resources—no longer applies in today's marketplace. FM and TV broadcasting are firmly established industries, and there is no evidence in the record of any shortage of materials and equipment for the construction of new infrastructure. Additionally, the current trend toward co-location of communications towers on antenna farms and the widespread availability of tower capacity for lease from numerous tower companies make it less likely that

a suitable site will be wholly unavailable to a broadcaster seeking to serve a community. Second, publicly available information shows that the communications tower market is dominated by entities that do not hold broadcast licenses, and there is no indication in the record that their broadcast lessees have the intent or ability to restrict these tower owners from denying access to the broadcast lessees' competitors. Third, the current rules apply only in extremely limited circumstances, and no broadcaster claims that these rules are needed to secure access to suitable sites. Thus, we reject Mullik's concern that removal of these rules will affect the availability of FM and TV signals. Finally, we conclude that retaining a rule that has little if any applicability to the current broadcast landscape (emphasized by the fact that no representatives from the broadcast industry filed comments in this proceeding) risks wasting Commission time and resources, as well as the resources of broadcast license holders, on unnecessary adjudications. Simply put, based on our expert judgment and the lack of record received, we find that these 75-year-old rules have outlived their utility. Therefore, we determine that it is in the public interest to eliminate these outdated rules.

Final Regulatory Flexibility Analysis. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Order. The FRFA is set forth below.

Paperwork Reduction Act Analysis. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Congressional Review Act. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that, this rule is ''non-major'' under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this *Report & Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Final Regulatory Flexibility Act Analysis. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM* in this proceeding. The Federal Communications Commission (Commission) sought written public comment on the proposals in the NPRM, including comment on the IRFA. We received no comments specifically directed toward the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objective of, the Report and Order. The *Report and Order* eliminates the requirements in §§ 73.239 and 73.635 of the Commission's rules, regarding access to FM or TV broadcast antenna sites. These rules prohibit the grant of a license for a broadcast FM or TV station, or a license renewal, to an entity that owns, leases, or controls a site that ''is peculiarly suitable'' for FM or TV broadcasting in a particular area unless the site is available for use by other FM or TV licensees or there is another comparable site available in the area, and where the exclusive use of the site by the applicant or licensee ''would unduly limit the number of'' FM or TV stations that can be authorized in a particular area or would ''unduly restrict competition among'' FM and TV stations. We conclude in the *Report and Order* that these requirements are outdated and unnecessary in light of the significant changes in the broadcast marketplace, including substantial growth in the availability of broadcast infrastructure that has occurred since these restrictions were first adopted nearly 75 years ago. With this proceeding, we continue our efforts to modernize our rules and eliminate outdated and unnecessary regulations.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA. There were no comments filed in response to the IRFA.

Response to comments by the Chief Counsel for Advocacy of the Small Business Administration. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.

The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA 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. 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. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

Radio Stations. This Economic Census category ''comprises 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 has established a small business size standard for this category as firms having $41.5 million or less in annual receipts. Economic Census data for 2012 shows that 2,849 radio station firms operated during that year. Of that number, 2,806 firms operated with annual receipts of less than $25 million per year, 17 with annual receipts between $24,999,999 and $50 million, and 26 with annual receipts of $50 million or more. Therefore, based on the SBA's size standard the majority of such entities are small entities.

According to Commission staff review of the BIA/Kelsey, LLC's Media Access Pro Radio Database on January 8, 2018, about 11,372 (or about 99.9 percent) of 11,383 commercial radio stations had revenues of $41.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated that there are 6,706 licensed FM commercial stations. We note the Commission has also estimated the number of licensed noncommercial (NCE) FM radio stations to be 4,197. However, the Commission does not compile or have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

We also note, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. The Commission's estimate therefore likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, to be

determined a ''small business,'' an entity may not be dominant in its field of operation. We further note that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these basis; thus, our estimate of small businesses may therefore be over-inclusive. Also, as noted above, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities, and the estimates of small businesses to which they apply may be over-inclusive to this extent.

Television Broadcasting. This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having $41.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of this number, 656 had annual receipts of $25 million or less, 25 had annual receipts between $24,999,999 and $50 million, and 70 had annual receipts of $50 million or more. Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

The Commission has estimated the number of licensed full power commercial television stations to be 1,368. Of this total, 1,257 stations had revenues of $41.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on January 8, 2018, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 390. These stations are non-profit, and therefore considered to be small entities.

There are also 386 Class A stations. Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

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 television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive. Also, as noted above, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities. This *Report and Order* eliminates two rules which prohibit the grant or renewal of a license for an FM or TV station under extremely limited circumstances. Accordingly, the *Report and Order* does not impose any new reporting, recordkeeping, or other compliance requirements for any small entities. Elimination of these rules should reduce compliance requirements for FM radio and full power and Class A TV stations, as they are currently obligated to comply with these rules.

Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered. The RFA requires an agency to describe any significant alternatives that it has considered in developing its 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 an 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.''

The *Report and Order* eliminates two rules which prohibit the grant or renewal of a license for an FM or TV station under extremely limited circumstances. As a part of the Commission's Media Modernization Initiative, the intent of eliminating these requirements is to reduce the costs of compliance with the Commission's rules, including any related managerial, administrative, legal, and operational costs. We anticipate that small entities, as well as larger entities, will benefit from this deletion.

Report to Congress. The Commission will send a copy of the *Report and Order,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Report and Order,* including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 4(i), 4(j), 303(r), 307, and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), 307, and 309, the Report and Order *is adopted. It is further ordered* that the Commission's rules *are hereby amended* as set forth in Appendix A, effective as of the date of publication of a summary in the **Federal Register**. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration. *It is further ordered* that the Commission will send a copy of the Report and Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA). *It is further ordered* that should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 19–282 *shall be terminated* and its docket closed.

List of Subjects in 47 CFR Part 73

Communications equipment, Radio, Television.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications

Commission amends 47 CFR part 73 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.

§§ 73.239 and 73.635 [Removed]

■ 2. Remove §§ 73.239 and 73.635.

[FR Doc. 2020–17806 Filed 9–25–20; 8:45 am]

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