

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.3613 of the) MB Docket No. 18-4
Commission's Rules Regarding Filing of Contracts)
)
Modernization of Media Regulation Initiative) MB Docket No. 17-105

REPORT AND ORDER

Adopted: October 23, 2018

Released: October 23, 2018

By the Commission: Chairman Pai issuing a statement.

I. INTRODUCTION AND BACKGROUND

1. In this Report and Order (Order), we eliminate the paper filing requirement in Section 73.3613 of our rules. Section 73.3613 currently requires licensees and permittees of commercial and noncommercial AM, FM, television, and international broadcast stations to file paper copies of certain documents with the Commission within 30 days of execution. Broadcast licensees and permittees have been required to file paper copies of station documents with the Commission since the late 1930s. As part of our Modernization of Media Regulation Initiative, earlier this year we released a Notice of Proposed Rulemaking (NPRM) tentatively concluding that the paper filing requirement for Section 73.3613 documents had outlived its usefulness and should be eliminated. We adopt that tentative conclusion

1 47 CFR § 73.3613; see also id. § 74.780 (providing that LPTV stations are subject to the Section 73.3613 filing requirements for network affiliation contracts).

2 Section 73.3613 currently requires that the following documents be filed: network affiliation agreements; articles of incorporation, bylaws, and other documents relating to ownership or control of the licensee or permittee; contracts that relate to management of a station by someone other than a regular employee, officer, or director of the station, or by any person where the contract also provides for both a percentage of profits and sharing in losses; attributable time brokerage agreements (TBAs); and attributable joint sales agreements (JSAs). 47 CFR § 73.3613(a)-(d) (detailing the types of documents that must be filed); see also id. § 74.780 (providing that LPTV stations are subject to the Section 73.3613 filing requirement for network affiliation contracts). Section 73.3613 also requires that the following documents be kept at the station and made available for inspection upon request by the Commission: subchannel leasing agreements for Subsidiary Communications Authorization operation; franchise/leasing agreements for operation of telecommunications services on the television vertical blanking interval and in the visual signal; time sales contracts with the same sponsor for four or more hours per day, except where the length of the events broadcast is not under control of the station; and contracts with chief operators. Id. § 73.3613(e).

3 See Commission Launches Modernization of Media Regulation Initiative, Public Notice, 32 FCC Rcd 4406 (2017) (initiating a review of rules applicable to media entities to eliminate or modify regulations that are outdated, unnecessary, or unduly burdensome).

4 Amendment of Section 73.3613 of the Commission's Rules Regarding Filing of Contracts et al., Notice of Proposed Rulemaking, 33 FCC Rcd 1555 (2018) (NPRM). For licensees and permittees of commercial and noncommercial AM, FM, and television stations, we proposed to rely on our existing public file rules, which already require that such stations make copies of these documents available to the public. Id. at 1588-89, para. 8. For international broadcast stations, we proposed to retain our ability to obtain Section 73.3613 documents upon request, as needed. Id. at 1560-61, paras. 13-14. We also sought comment on other proposed modifications to broadcasters' obligations

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herein and eliminate the routine paper filing requirement as discussed below. Our action today advances our goal of eliminating outdated and unnecessary regulatory burdens that can impede competition and innovation in media markets.⁵

II. DISCUSSION

A. Elimination of Routine Paper Filings for Commercial and Noncommercial AM, FM, and Television Stations

2. Consistent with the *NPRM*'s tentative conclusion, we eliminate the paper filing requirement for Section 73.3613 documents for commercial and noncommercial AM, FM, and television stations.⁶ Given the ready access afforded by the online public inspection file (OPIF), stations already provide easy access to such documents, making routine paper filings redundant and unnecessary.⁷ Commenters agree that we can eliminate the 1930s-era paper filing requirement and rely on the OPIF to ensure that the public has access to relevant documents.⁸ As currently set forth in Sections 73.3526 and 73.3527 of our regulations,⁹ our existing OPIF rules require that stations retain in the OPIF a copy of their most recent, complete ownership report together with all related material.¹⁰ And under our rules,

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under Section 73.3613, including, among other things, providing enhanced confidentiality protections and eliminating a redundant filing requirement for a subset of TBAs and JSAs. *Id.* at 1561-62, paras. 16-18.

⁵ In addition, our action today is consistent with other steps the Commission has taken to reduce paper submissions and make documents available electronically. *See, e.g., Amendment of Parts 74, 76 and 78 of the Commission's Rules Regarding Maintenance of Copies of FCC Rules et al.*, Report and Order, 33 FCC Rcd 2425 (2018) (eliminating rules that required certain broadcast and cable entities to maintain paper copies of the Commission's regulations, which are available online today); *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Report and Order, 31 FCC Rcd 526 (2016) (requiring that cable operators, satellite TV providers, and broadcast and satellite radio licensees post their public file documents to the online public file rather than maintaining paper files locally); *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations et al.*, Second Report and Order, 27 FCC Rcd 4535 (2012) (requiring that broadcast television stations post public file documents to the online public file).

⁶ *NPRM*, 33 FCC Rcd at 1558-59, para. 8 (tentatively concluding that the Section 73.3613 paper filing requirement for commercial and noncommercial AM, FM, and television stations should be eliminated). Consistent with the proposal in the *NPRM*, we will require that stations make their Section 73.3613 documents available to the Commission and the public via the options set forth in the existing public file rules, as discussed below. *See infra* paras. 2-7; *infra* note 16 (discussing revised disclosure requirement for network affiliation agreements between LPTV stations and national networks).

⁷ *See* 47 CFR §§ 73.3526, 73.3527; National Association of Broadcasters Comments at 2-3 (NAB Comments); America's Public Television Stations et al. Comments at 2 (APTS et al. Comments); Gray Television, Inc. Comments at 1 (Gray Television Comments); Nexstar Broadcasting, Inc. Comments at 3-4 (Nexstar Broadcasting Comments).

⁸ NAB Comments at 2; APTS et al. Comments at 2; Gray Television Comments at 1; Nexstar Broadcasting Comments at 3-4. While no commenter outright opposes elimination of the paper filing requirement for Section 73.3613 documents, the American Cable Association (ACA) and a group of advocacy organizations assert that we should require stations to upload their Section 73.3613 documents to the OPIF and eliminate the existing option allowing stations to maintain an up-to-date list of their Section 73.3613 documents in the OPIF and provide copies to requesting parties within seven days. *See* Office of Communication, Inc. of the United Church of Christ et al. Comments at 2-5 (UCC et al. Comments); ACA Comments at 2-5. As discussed below, we decline to do so. *See infra* para. 4.

⁹ Section 73.3526 of our rules contains OPIF requirements for commercial broadcast stations, while Section 73.3527 contains OPIF requirements for noncommercial educational broadcast stations. 47 CFR §§ 73.3526, 73.3527.

¹⁰ *Id.* §§ 73.3526(e)(5), 73.3527(e)(4).

ownership reports must include a list of all documents currently filed with the Commission pursuant to Section 73.3613 for the stations covered by the report.¹¹ Our present rules require that these documents be made available for public inspection via the OPIF.¹² Specifically, stations are currently required to either (i) upload the documents directly to the OPIF or (ii) maintain an up-to-date list of the documents in the OPIF and provide copies to requesting parties within seven days.¹³ Accordingly, we eliminate the routine paper filing requirement for such documents,¹⁴ and we rely on our OPIF rules¹⁵ as discussed herein. In addition, we will continue to rely on our long-standing ability to obtain Section 73.3613 documents from licensees and permittees upon request, as needed.¹⁶

3. Consistent with the previous practice for paper filings under Section 73.3613, we will require that stations update their inventory of Section 73.3613 documents in the public file within 30 days of execution of such documents, including amendments, supplements, and cancellations.¹⁷ Nearly all commenters support such a requirement.¹⁸ While the public broadcasting organizations assert that requiring “periodic updates” would be sufficient for public broadcast stations,¹⁹ we are concerned that such a vague requirement would create uncertainty as to when these stations must update the public file to reflect changes to their inventory of Section 73.3613 documents. Accordingly, rather than rely on each station to define the appropriate frequency of updates,²⁰ we require that all stations, including public broadcast stations, update their inventory of Section 73.3613 documents in the OPIF within 30 days of execution of such documents, including amendments, supplements, and cancellations.

¹¹ FCC Form 323, Ownership Report for Commercial Broadcast Stations (Nov. 2017), <https://transition.fcc.gov/Forms/Form323/323.pdf>; FCC Form 323-E, Ownership Report for Noncommercial Broadcast Stations (Nov. 2017), <https://transition.fcc.gov/Forms/Form323-E/323e.pdf>. As stated in the instructions for Form 323 and Form 323-E, all Form 323 and Form 323-E filings must be submitted electronically. *See also* 47 CFR § 73.3615 (requiring electronic submission of Forms 323 and 323-E).

¹² 47 CFR §§ 73.3526(e)(5), 73.3527(e)(4).

¹³ *Id.* §§ 73.3526(e)(5) (requiring that licensees and permittees of commercial AM, FM, TV, and Class A TV stations retain in the public file either a copy of the Section 73.3613 documents listed in the most recent ownership report or an up-to-date list of such documents and provide a copy of any documents to requesting parties); *id.* § 73.3527(e)(4) (requiring that licensees and permittees of noncommercial AM, FM, and TV stations do the same). Our public file rules also require licensees and permittees to retain copies of TBAs and JSAs involving a commercial AM, FM, or television station in the station’s public file. *Id.* § 73.3526(e)(14), (e)(16).

¹⁴ *See id.* § 73.3613.

¹⁵ *Id.* §§ 73.3526, 73.3527.

¹⁶ If the Commission requests a copy of a Section 73.3613 document, then, as is currently the case under our existing rules, the licensee or permittee must provide the Commission with a complete, unredacted copy of such document. *See* NAB Reply at 3 (“[T]he Commission retains the right to request unredacted copies of any such agreements at any time.”). Currently, LPTV stations are required to file network affiliation agreements with the Commission as specified in Section 73.3613(a). 47 CFR §§ 73.3613(a), 74.780 (requiring the filing of “[a]ll network affiliation contracts, agreements, or understandings between a TV broadcaster or low power TV station and a national network”). Because we are retaining our ability to obtain Section 73.3613 documents upon request, LPTV stations will be required to submit network affiliation agreements to the Commission upon request and within seven days of such request.

¹⁷ *See* 47 CFR § 73.3613 (requiring that copies of specified contracts and other documents be filed with the Commission within 30 days of execution).

¹⁸ Gray Television Comments at 2; *see also* ACA Comments at 6 (asserting that the timeframe for updating OPIF to reflect new or revised Section 73.3613 documents should be no more than 30 days); UCC et al. Comments at 4-5 (supporting 30-day timeframe for uploading new and revised Section 73.3613 documents to OPIF).

¹⁹ APTS et al. Comments at 2.

²⁰ *Id.*

4. We decline to require that all Section 73.3613 documents, rather than simply a list of such documents, be uploaded directly to the OPIF.²¹ Since 1998, our public file rules have allowed stations the option of retaining either copies or a list of Section 73.3613 documents in the public file,²² and no commenter asserts that the option to retain a list in the file has deprived the public of information that is relevant to station ownership or assessing renewal applications.²³ In addition, we note that the public has direct access to information about station owners via ownership reports, which are also retained in the OPIF.²⁴ Thus, contrary to some commenters' assertions,²⁵ retaining the option for stations to list Section 73.3613 documents in the public file and provide them upon request will not deprive the Commission and the public of information relevant to station ownership.

5. We agree with Gray Television that a station that lists its Section 73.3613 documents in the OPIF should be required to include the execution and expiration dates, if any, for each such document.²⁶ No commenter opposes this proposal. Accordingly, we require stations that list Section 73.3613 documents in the OPIF to include on their list all of the information required for such documents on ownership reports.²⁷ This will provide the information necessary to keep track of expiring documents

²¹ 47 CFR §§ 73.3526(e)(5), 73.3527(e)(4). As discussed above, our OPIF rules require that stations provide a requesting party with a copy of the Section 73.3613 documents listed in the OPIF within seven days of the request. *See supra* para. 2; 47 CFR §§ 73.3526(e)(5), 73.3527(e)(4).

²² *Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, Report and Order, 13 FCC Rcd 15691, 15713-14, para. 50 (1998); *see also* 47 CFR § 73.3526(e)(5) (requiring that licensees and permittees of commercial AM, FM, TV, and Class A TV stations retain in the public file either a copy of the Section 73.3613 documents listed in the most recent ownership report or an up-to-date list of such documents and provide a copy of any documents to requesting parties); *id.* § 73.3527(e)(4) (requiring that licensees and permittees of noncommercial AM, FM, and TV stations do the same).

²³ As discussed below, *see infra* para. 6, we reject assertions that eliminating paper filings and allowing stations to provide access to Section 73.3613 documents via the options set forth in our existing OPIF rules will decrease transparency and delay access to such documents by the public. *See* UCC et al. Comments at 4 (“The Commission should not place the burden on the public and itself to have to request specific documents and follow up on those requests should a station owner be unresponsive. In addition, in preparing a petition to deny, time is of the essence to meet the deadlines established by statute.”). Under the approach we adopt herein, interested parties will be able to obtain Section 73.3613 documents either directly from the OPIF or within seven days of submitting a request to a station that lists the documents in the OPIF, without having to travel to the Commission's Reference Information Center (RIC) to request a copy of a document filed with the Commission in paper. Rather than delaying access to Section 73.3613 documents and increasing burdens on the Commission and the public, we believe that the OPIF reduces the time and expense for interested parties to obtain copies of Section 73.3613 documents. Indeed, as discussed below, today only a limited number of people visit the RIC to view Section 73.3613 documents filed with the Commission in paper.

²⁴ 47 CFR §§ 73.3526(e)(5), 73.3527(e)(4); FCC, Public Inspection Files, <https://publicfiles.fcc.gov/>.

²⁵ UCC et al. Comments at 4 (“Only the actual copies of [Section 73.3613] documents, would enable the public and the FCC to effectively monitor station owners, and challenge and deny license renewals when necessary.”); ACA Comments at 3 (asserting that eliminating the paper filing requirement without requiring that all Section 73.3613 documents be uploaded directly to the OPIF would reduce the transparency of stations' ownership-related contracts); *see also* UCC et al. Comments at 2 (asserting that retaining this list option would deny prompt access to “certain important ownership documents and contracts”).

²⁶ Gray Television Comments at 1-2.

²⁷ *See* FCC Form 323, Ownership Report for Commercial Broadcast Stations, Instructions for Section II-B at 10 (Nov. 2017), <https://transition.fcc.gov/Forms/Form323/323.pdf> (requiring description of document, listing of parties, month and year of execution, month and year of expiration, and agreement type); FCC Form 323-E, Ownership Report for Noncommercial Broadcast Stations, Instructions for Section II-B at 6 (Nov. 2017), <https://transition.fcc.gov/Forms/Form323-E/323e.pdf> (requiring same information).

and thereby help ensure that stations maintain a current inventory of their Section 73.3613 documents in the OPIF.

6. We conclude that eliminating the paper filing requirement and relying on our OPIF rules as discussed herein will reduce burdens on broadcasters while preserving transparency and ensuring that the Commission and the public can obtain relevant information in a timely fashion. As a result of our decision today, stations will no longer have to spend time and money preparing paper copies of Section 73.3613 documents and having them mailed or hand-delivered to the Commission, often by outside legal counsel.²⁸ Importantly, the Commission and the public will still have easy access to Section 73.3613 documents via the OPIF as discussed above.²⁹ Furthermore, the Commission will continue to have the ability to obtain unredacted copies of such documents from stations upon request.³⁰ Therefore, contrary to some commenters' assertions,³¹ we do not believe that eliminating routine paper filings will meaningfully impact the ability of the Commission and other interested parties to review Section 73.3613 documents for commercial and noncommercial AM, FM, and television stations.³²

7. To effectuate the changes we adopt today, we will revise the relevant public file rules³³ by replacing the current reference to the documents listed on ownership reports (i.e., Section 73.3613 documents) with a direct reference to the list of documents in Section 73.3613. We agree with the National Association of Broadcasters that this approach will clarify the relevant public file requirements in Sections 73.3526(e)(5) and 73.3527(e)(4) of our rules and also avoid the need to attempt to incorporate the lengthy, detailed list of Section 73.3613 documents into two distinct sections of our rules.³⁴ Incorporating the list of Section 73.3613 documents into our public file rules would significantly increase the length and complexity of those rules. While one commenter asserts in general terms that we should eliminate Section 73.3613 from our rules entirely,³⁵ no commenter has proposed a specific method of doing so in a manner that addresses our concerns.³⁶ Accordingly, we conclude that retaining the list of

²⁸ See Nexstar Broadcasting Comments at 3; NAB Reply at 2.

²⁹ See *supra* para. 2.

³⁰ See *supra* para. 2 & note 16.

³¹ See *supra* notes 23 & 25.

³² Because Section 73.3613 documents are either contained in the OPIF or available upon request to the station, there is no longer a need for the public to travel to the Commission's RIC to view these documents. Indeed, based on a review of the Commission's internal records, just over 500 people—or an average of 2 people per business day—visited the RIC from September 2017 through August 2018, including Commission staff and people viewing other available files. The RIC files include not only Section 73.3613 documents filed with the Commission but also a lot of information on licensing applications, as well as Commission proceedings, programs, and activities. FCC Reference Information Center, <https://www.fcc.gov/general/fcc-reference-information-center> (last visited Sept. 25, 2018). Thus, the total number of visitors to the RIC cannot be equated to the number of people who viewed the broadcast station paper files made available in the RIC, or more specifically, the Section 73.3613 documents contained in those files, which is unknown but could be much fewer than the total number of visitors to the RIC. Moreover, the total number of visitors to the RIC includes Commission staff, and it is unknown how many visitors were members of the public.

³³ 47 CFR §§ 73.3526(e)(5), 73.3527(e)(4).

³⁴ NAB Comments at 2-3, n.6.

³⁵ Nexstar Broadcasting Comments at 3, n.10, 4.

³⁶ In addition to significantly increasing the length and complexity of our public file rules, we also raised other concerns about eliminating Section 73.3613 of our rules entirely. Specifically, in the *NPRM* we sought comment on how we would address the documents currently specified in Section 73.3613(e), which licensees and permittees currently are not required to file with the Commission but must keep at the station and make them available for inspection upon request by the Commission. *NPRM*, 33 FCC Rcd at 1559, para. 10. We also sought comment on how we would address Section 73.3613(a)(1), which currently includes a definition of "network" that is cross

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documents in Section 73.3613 and revising our public file rules to refer directly to that list is best for clarity and will most effectively keep stations informed of their obligations.³⁷

B. Streamlining Disclosure Requirements for TBAs and JSAs

8. In order to avoid overlap and duplication in our rules, we adopt the *NPRM*'s tentative conclusion to eliminate the filing requirement for attributable time brokerage agreements (TBAs) and attributable joint sales agreements (JSAs) in Section 73.3613(d) of our rules.³⁸ This provision duplicates an existing OPIF disclosure requirement; therefore, it is no longer necessary to retain Section 73.3613(d) following the elimination of the paper filing requirement.³⁹ Because Section 73.3613(d) also contains important definitional information describing the subset of TBAs and JSAs that must be included on ownership reports which remain undisturbed by this item, we find it necessary to incorporate this definitional information elsewhere, as discussed below.⁴⁰

9. Section 73.3613(d) currently defines attributable TBAs and attributable JSAs and requires that they be filed with the Commission by the brokering station.⁴¹ As discussed above, stations must also disclose these and other Section 73.3613 documents on ownership reports and make the

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referenced in the Telecommunications Act of 1996 and in our Dual Network Rule. *Id.* No commenter has offered a proposal for addressing these issues.

³⁷ The text of the revised rules can be found in Appendix A hereto. In addition to the specific rule changes discussed above, we are also eliminating Section 73.1226(c) of our rules, which currently requires that certain documents be kept at the station and made available for inspection by any authorized representative of the FCC upon request. 47 CFR § 73.1226(c). Because Section 73.3613(e) currently contains a similar list of documents that must be kept at the station and made available for inspection upon request by the FCC, we conclude that we can eliminate Section 73.1226(c) and revise the relevant subsection of Section 73.3613 to include every document that is currently listed in Section 73.1226(c), except for “contracts relating to the sale of broadcast time to ‘time brokers’ for resale,” which are already required to be made available for inspection pursuant to our OPIF rules. *See id.* §§ 73.1226(c), 73.3526(e)(14), 73.3613(e). In addition, we are also eliminating Section 73.3613(a)(3) of our rules, which currently requires that stations notify the Commission in writing when a network affiliation agreement is cancelled or terminated. *Id.* § 73.3613(a)(3). Because we are no longer requiring that stations file network affiliation agreements with the Commission in paper routinely, it does not make sense to continue requiring routine written notifications whenever such an agreement is cancelled or terminated. Further, such written notifications are no longer necessary given that (i) the expiration date of the affiliation agreement will be available either through the copy uploaded to the OPIF or in the document list; and (ii) the documents in the OPIF or the list must be updated within 30 days of a cancellation of an agreement. *See supra* paras. 3, 5 (requiring expiration dates to be included in the document list and updates within 30 days of executing Section 73.3613 documents, including cancellations, etc.). We also reformat the notes to Sections 73.3526 and 73.3527 to conform to the requirements of the Office of the Federal Register and make additional, conforming edits as shown in Appendix A. *See NPRM*, 33 FCC Rcd at 1560, para. 11 (seeking comment on other modifications or conforming changes to Section 73.3613, or any other Commission rule, that are necessary or appropriate to implement the proposals discussed in the *NPRM*). We direct the Media Bureau to make all form modifications and take any other steps necessary to implement all the rule changes and other decisions adopted herein.

³⁸ 47 CFR § 73.3613(d) (requiring that paper copies of attributable TBAs and attributable JSAs be filed with the Commission by the brokering station). *See NPRM*, 33 FCC Rcd at 1561, para. 16.

³⁹ 47 CFR § 73.3526(e)(14) (requiring that all TBAs involving commercial stations be uploaded to the OPIF for all participating stations); *id.* § 73.3526(e)(16) (requiring same for all JSAs involving commercial stations).

⁴⁰ *See infra* para. 10.

⁴¹ 47 CFR § 73.3613(d). A TBA, also referred to as local marketing agreement (LMA), involves “the sale by a licensee of discrete blocks of time to a ‘broker’ that supplies the programming to fill that time and sells the commercial spot announcements in it.” *Id.* § 73.3555, Note 2(j). A JSA is an agreement that authorizes a broker to sell some or all of the advertising time on the brokered station. *Id.* § 73.3555, Note 2(k).

documents available via the OPIF pursuant to Section 73.3526(e)(5).⁴² However, as discussed in the *NPRM*,⁴³ our existing OPIF rule for commercial stations contains another provision that specifically requires stations to upload *all* TBAs and JSAs directly to the OPIF for both the brokering and brokered stations, regardless of whether or not such agreements are attributable.⁴⁴ Thus, we do not need to retain Section 73.3613(d) to ensure that the Commission and the public have access to this subset of TBAs and JSAs. Accordingly, we eliminate Section 73.3613(d) of our rules to streamline our disclosure requirements for TBAs and JSAs.⁴⁵

10. Despite the elimination of the paper filing requirement, we continue to require that attributable TBAs and attributable JSAs be disclosed by the licensee of the brokering station on its ownership report.⁴⁶ The Commission has previously determined that such agreements permit a degree of influence or control that is cognizable as an attributable ownership interest in the brokered station for purposes of determining the brokering licensee's compliance with our broadcast ownership rules.⁴⁷ As such, the Commission included attributable TBAs and attributable JSAs in the list of agreements that must be disclosed on ownership reports.⁴⁸ Because our decision today does not change these prior determinations,⁴⁹ licensees brokering time under an attributable TBA or an attributable JSA must continue listing such agreements on ownership reports. We will make this clear in the instructions to FCC Form 323.

C. Redaction of Confidential or Proprietary Information

11. We adopt our tentative conclusion to extend the explicit redaction allowance for TBAs and JSAs to all Section 73.3613 documents to the extent they contain confidential or proprietary information, and require that unredacted copies be provided to the Commission upon request.⁵⁰ No commenter asserts that we should not extend this explicit redaction allowance for confidential or

⁴² See *supra* para. 2.

⁴³ *NPRM*, 33 FCC Rcd at 1561, para. 16.

⁴⁴ 47 CFR § 73.3526(e)(14), (e)(16).

⁴⁵ *Id.* § 73.3613(d). Consistent with our decision above to require updates to the OPIF within 30 days of executing a Section 73.3613 document, we will require that stations update the OPIF to reflect new or amended TBAs and JSAs within 30 days of execution of such documents, including amendments, supplements, and cancellations. See *supra* para. 3.

⁴⁶ FCC Form 323, Ownership Report for Commercial Broadcast Stations (Nov. 2017), <https://transition.fcc.gov/Forms/Form323/323.pdf>.

⁴⁷ *Revision of Radio Rules and Policies*, Report and Order, 7 FCC Rcd 2755, 2787-89, paras. 63-67 (1992); *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests et al.*, Report and Order, 14 FCC Rcd 12559, 12597-600, paras. 83-89 (1999); *2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 et al.*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13742-46, paras. 316-24 (2003).

⁴⁸ See 47 CFR § 73.3613(d); FCC Form 323, Ownership Report for Commercial Broadcast Stations (Nov. 2017), <https://transition.fcc.gov/Forms/Form323/323.pdf>.

⁴⁹ We also note that the *NPRM* did not propose to eliminate the requirement that these agreements be disclosed on ownership reports and that any such change is beyond the scope of this proceeding.

⁵⁰ *NPRM*, 33 FCC Rcd at 1562, para. 18. See 47 CFR § 73.3613(d)(1)-(d)(2). A similar rule applies to TBAs and JSAs required to be placed in the public inspection file. See *id.* §§ 73.3526(e)(14), (e)(16).

proprietary information to all Section 73.3613 documents, although some commenters urge us to clarify what constitutes “confidential or proprietary information” and the procedure for indicating redactions.⁵¹

12. We clarify that, for purposes of the redaction allowance, confidential or proprietary information is information that would be accorded confidential treatment pursuant to our general rules for seeking non-disclosure of information submitted to the Commission.⁵² However, we emphasize that the redaction allowance applies to Section 73.3613 documents only to the extent they contain confidential or proprietary information.⁵³ Thus, we expect that licensees and permittees will redact only such information that is actually confidential or proprietary, if any, and leave all other information unredacted in the copy of the Section 73.3613 document they make available to the Commission and the public.⁵⁴ Moreover, we require that each copy of a Section 73.3613 document containing confidential or proprietary information have the same material redacted and that licensees and permittees must not provide different redacted versions of the same document to requesting parties.⁵⁵ Licensees and permittees must clearly indicate where redactions are being made.⁵⁶ A station that provides a redacted

⁵¹ UCC et al. Comments at 5 (stating that the Commission should “clarify what constitutes ‘confidential’ and ‘proprietary’ information and how station owners can make and indicate redactions to ensure that the public obtains necessary information to evaluate these documents”); ACA Comments at 6 (“If the Commission does not require broadcast stations to post their contracts in their online public file, it should also prohibit broadcasters from providing different redactions to its contracts to different parties requesting them.”). *But see* ACA Comments at 5 (“[A]llow[] redaction without prior approval, but requir[e] broadcasters to post contracts in their online public file.”). As discussed above, *see supra* para. 4, we decline to eliminate the existing option for stations to maintain an up-to-date list of Section 73.3613 documents in the public file and provide copies to requesting parties within seven days.

⁵² Sections 0.457(d) and 0.459 of our rules provide for confidential treatment of trade secrets and commercial or financial information obtained from any person and privileged or confidential. *See* 47 CFR §§ 0.457, 0.459; *see also Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 13 FCC Rcd 24816, 24818-20, paras. 3-4 & n.7 (1998) (discussing the meaning of “trade secret” and “commercial or financial information”) (*Confidential Information Policy Statement*). Because an individualized determination is required to decide whether confidential or proprietary information not specified in Section 0.457 of our rules is to be withheld from routine public inspection, *see* 47 CFR §§ 0.457(d)(2), 0.451(b)(2), 0.461, we reject the American Cable Association’s assertion that information related in any way to retransmission consent should never be redacted. *See* ACA Comments at 2, 6; *but see* NAB Reply at 4 (asserting that ACA does not explain why such information could never be considered confidential or proprietary).

⁵³ *See Confidential Information Policy Statement*, 13 FCC Rcd at 24818-20, paras. 3-4 & n.7 (discussing meaning of “trade secrets and commercial or financial information obtained from a person and privileged or confidential”).

⁵⁴ *See* UCC et al. Comments at 2 (“[T]he Commission should make clear that licensees must not redact information that is not confidential or proprietary . . .”).

⁵⁵ *See* ACA Comments at 6 (urging the Commission to prohibit stations “from providing different redactions to its contracts to different parties requesting them”). We note that TBAs and JSAs have been subject to the redaction allowance for over 15 years, and no commenter has cited a specific instance in which a licensee or permittee has provided different redacted versions of a single TBA or JSA to requesting parties. ACA urges the Commission to clarify that interested parties have a mechanism for challenging redactions. *See id.* at 2, 6. If a person believes that a Section 73.3613 document has been inappropriately redacted, he or she may file a response in opposition under Section 0.459(d) of our rules if the licensee or permittee of the station filed a request for confidentiality pursuant to Section 0.459. 47 CFR § 0.459(d). Otherwise, the person may file a complaint with the Commission if he or she believes that the station has violated our public file rules or redacted information that is not actually confidential or proprietary. *See also* UCC Comments at 6 (“[A]ny member of the public who reviews these documents should know what is redacted to be able to judge whether the redaction is appropriate. However, some broadcasters’ current practice is to obliterate or remove an entire paragraph including the headings, which gives the reviewing party no idea what was redacted.”)

version of a Section 73.3613 document to a requesting party must provide the party with the redacted document within seven days of the party's request for a copy of the document.⁵⁷

D. Elimination of Routine Paper Filings for International Broadcast Stations

13. We adopt our tentative conclusion to eliminate the requirement that licensees and permittees of international broadcast stations routinely file Section 73.3613 documents with the Commission and retain our ability to obtain these documents from licensees and permittees upon request, as needed.⁵⁸ No commenter opposes elimination of the Section 73.3613 paper filing requirement for international broadcast stations.

14. We conclude that the current justifications for requiring disclosure of Section 73.3613 documents by commercial and noncommercial AM, FM, and television stations do not apply to international broadcast stations. As discussed in the *NPRM*, the routine disclosure of Section 73.3613 documents by commercial and noncommercial AM, FM, and television stations supplements the information that these stations are required to provide in their ownership reports.⁵⁹ However, the same is not true for international broadcast stations, which are not subject to the routine ownership reporting obligations that apply to the other broadcast services.⁶⁰ Moreover, international broadcast stations are not subject to the ownership rules applicable to commercial AM, FM, and television stations,⁶¹ nor are they subject to the relevant operational provisions applicable to noncommercial FM and television stations.⁶² For purposes of enforcing the statutory bar against de facto transfers of control of international broadcast

(Continued from previous page) _____

⁵⁶ See UCC et al. Comments at 6 (urging the Commission to “specify how station owners can indicate redactions” and asserting that sometimes “broadcasters just delete a sentence or a paragraph without clear indication that those items were redacted in the filed copy”); *but see* NAB Reply at 3 (asserting that “it is unnecessary to adopt prophylactic measures based merely on UCC et al.’s suspicion that broadcasters will redact more than necessary”).

⁵⁷ 47 CFR §§ 73.3526(e)(5), 73.3527(e)(4). Thus, contrary to ACA’s assertions and consistent with our existing public file rules, we will not permit stations that choose to retain a list of Section 73.3613 documents in the public file to wait months before providing a copy of those documents to a requesting party. See ACA Comments at 5 (“If broadcasters need only provide ownership related contracts ‘upon request’ and *then* engage in inappropriate redactions, it could take MVPDs months to receive information to which they are unquestionably entitled.” (emphasis in original)); *but see* NAB Reply at 3 (stating that ACA’s argument is misguided because it assumes that broadcasters would violate the Commission’s rules). To the extent ACA asserts that extending the explicit redaction allowance to all Section 73.3613 documents would delay parties’ access to information in those documents, we note that under our existing rules, information submitted to the Commission under a request for confidentiality is treated as confidential until the Commission acts on the request and all subsequent appeal and stay proceedings have been exhausted. 47 CFR §§ 0.459, 0.461; *Confidential Information Policy Statement*, 13 FCC Rcd at 24821-22, para. 7. Thus, even absent an explicit redaction allowance, broadcasters would still be able to redact information submitted to the Commission under a request for confidentiality, and the Commission would withhold that information from third parties in accordance with its existing rules. Therefore, we reject the notion that the explicit redaction allowance will delay parties’ access to relevant information.

⁵⁸ *NPRM*, 33 FCC Rcd at 1560-61, paras. 12-15. International broadcast stations, which are authorized on a seasonal basis, employ frequencies allocated to the broadcasting service between 5900 and 26100 kHz, the transmissions of which are intended to be received in foreign countries. 47 CFR §§ 73.701(a), 73.702. These stations, which are often operated by churches and other religious organizations, do not serve local communities in the United States. See *NPRM*, 33 FCC Rcd at 1560, para. 12.

⁵⁹ *NPRM*, 33 FCC Rcd at 1560, para. 13.

⁶⁰ See 47 CFR § 73.3615; FCC Form 323, Ownership Report for Commercial Broadcast Stations (Nov. 2017), <https://transition.fcc.gov/Forms/Form323/323.pdf>; FCC Form 323-E, Ownership Report for Noncommercial Broadcast Stations (Nov. 2017), <https://transition.fcc.gov/Forms/Form323-E/323e.pdf>.

⁶¹ See 47 CFR § 73.3555.

⁶² See *id.* §§ 73.503, 73.621.

stations without prior Commission authorization, we believe it is sufficient to retain our ability to obtain Section 73.3613 documents from licensees and permittees of international broadcast stations upon request, as needed. Because the record provides no basis for continuing to require that international broadcast stations routinely file Section 73.3613 documents with the Commission, we eliminate the routine paper filing requirement for Section 73.3613 documents for international broadcast stations.⁶³

III. PROCEDURAL MATTERS

15. *Final Regulatory Flexibility Analysis.*—As required by the Regulatory Flexibility Act of 1980, as amended (RFA),⁶⁴ the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Order. The FRFA is set forth in Appendix B.

16. *Paperwork Reduction Act Analysis.*—This document contains a non-substantive and non-material modification of information collection requirements that were previously reviewed and approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. §§ 3501-3520). In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. § 3506(c)(4), the Commission previously sought specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. In the present document, we have assessed the effects of our decision to eliminate the paper filing requirement for Section 73.3613 documents and rely instead on our public file rules and our ability to obtain Section 73.3613 documents from broadcast licensees and permittees upon request. We find that the rule changes adopted herein will relieve broadcast licensees and permittees of the time and expense associated with filing paper copies of Section 73.3613 documents with the Commission, and that affected small entities, including those with fewer than 25 employees, will only benefit from the actions taken in this document.

17. *Congressional Review Act.*—The Commission will send a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

IV. ORDERING CLAUSES

18. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 1, 4(i), 4(j), 303(r), 309, 310, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303(r), 309, 310, and 336, this Report and Order **IS ADOPTED**.

19. **IT IS FURTHER ORDERED** that, pursuant to the authority found in sections 1, 4(i), 4(j), 303(r), 309, 310, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303(r), 309, 310, and 336, the Commission's rules **ARE AMENDED** as set forth in Appendix A. The amendments to 47 CFR §§ 73.1226(c), 73.3613(a)(3), and 73.3613(d) shall become effective thirty (30) days after publication of the text of this Report and Order or a summary thereof in the *Federal Register*, and the remaining amendments set forth in Appendix A, which involve Paperwork Reduction Act burdens, shall become effective on the effective date announced in the *Federal Register* notice announcing OMB approval.

20. **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.

⁶³ *Id.* § 73.3613.

⁶⁴ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

21. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

22. **IT IS FURTHER ORDERED** that, should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 18-4 shall be **TERMINATED** and its docket closed.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

Appendix A

Final Rule Changes

Part 73 of Title 47 of the Code of Federal Regulations is amended 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. Amend § 73.1226 by removing paragraph (c).

3. Amend § 73.3526 by removing the note to paragraph (e)(3) and notes 1 and 2 to paragraph (e), revising paragraphs (e)(3), (e)(5), (e)(14), and (e)(16), and adding new paragraph (f) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(e) * * *

(3)(i) *Citizen agreements.* A copy of every written citizen agreement. These agreements shall be retained for the term of the agreement, including any renewal or extension thereof.

(ii) For purposes of this section, a citizen agreement is a written agreement between a broadcast applicant, permittee, or licensee, and one or more citizens or citizen groups, entered for primarily noncommercial purposes. This definition includes those agreements that deal with goals or proposed practices directly or indirectly affecting station operations in the public interest, in areas such as—but not limited to—programming and employment. It excludes common commercial agreements such as advertising contracts; union, employment, and personal services contracts; network affiliation, syndication, program supply contracts, etc. However, the mere inclusion of commercial terms in a primarily noncommercial agreement—such as a provision for payment of fees for future services of the citizen-parties (see “Report and Order,” Docket 19518, 57 FCC 2d 494 (1976))—would not cause the agreement to be considered commercial for purposes of this section.

* * * * *

(5) *Ownership reports and related materials.* A copy of the most recent, complete ownership report filed with the FCC for the station, together with any statements filed with the FCC certifying that the current report is accurate, and together with all related material. These materials shall be retained until a new, complete ownership report is filed with the FCC, at which time a copy of the new report and any related materials shall be placed in the file. The permittee or licensee must retain in the public file either a copy of the station documents listed in §73.3613(a)–(c) or an up-to-date list of such documents. If the permittee or licensee elects to maintain an up-to-date list of such documents, the list must include all the information that the permittee or licensee is required to provide on ownership reports for each document, including, but not limited to, a description of the document, the parties to the document, the month and year of execution, the month and year of expiration, and the document type (e.g., network affiliation agreement, articles of incorporation, bylaws, management consultant agreement with independent contractor). Regardless of which of these two options the permittee or licensee chooses, it must update the inventory of §73.3613 documents in the public file to reflect newly executed §73.3613 documents, amendments, supplements, and cancellations within 30 days of execution thereof. Licensees and

permittees that choose to retain a list of §73.3613 documents must provide a copy of any §73.3613 document(s) to requesting parties within 7 days. In maintaining copies of such documents in the public file or providing copies upon request, confidential or proprietary information may be redacted where appropriate.

* * * * *

(14) *Radio and television time brokerage agreements.* For commercial radio and television stations, a copy of every agreement or contract involving time brokerage of the licensee's station or of another station by the licensee, whether the agreement involves stations in the same markets or in differing markets, with confidential or proprietary information redacted where appropriate. These agreements shall be placed in the public file within 30 days of execution and retained in the file as long as the contract or agreement is in force.

* * * * *

(16) *Radio and television joint sales agreements.* For commercial radio and commercial television stations, a copy of agreement for the joint sale of advertising time involving the station, whether the agreement involves stations in the same markets or in differing markets, with confidential or proprietary information redacted where appropriate. These agreements shall be placed in the public file within 30 days of execution and retained in the file as long as the contract or agreement is in force.

* * * * *

(f)(1) For purposes of this section, action taken on an application tendered with the FCC becomes final when that action is no longer subject to reconsideration, review, or appeal either at the FCC or in the courts.

(2) For purposes of this section, the term "all related material" includes all exhibits, letters, and other documents tendered for filing with the FCC as part of an application, report, or other document, all amendments to the application, report, or other document, copies of all documents incorporated therein by reference and not already maintained in the public inspection file, and all correspondence between the FCC and the applicant pertaining to the application, report, or other document, which according to the provisions of §§0.451 through 0.461 of this part are open for public inspection at the offices of the FCC.

4. Amend § 73.3527 by removing notes 1 and 2 to paragraph (e), revising paragraph (e)(4), and adding new paragraph (f) to read as follows:

§ 73.3527 Local public inspection file of noncommercial educational stations.

* * * * *

(e) * * *

(4) *Ownership reports and related materials.* A copy of the most recent, complete ownership report filed with the FCC for the station, together with any subsequent statement filed with the FCC certifying that the current report is accurate, and together with all related material. These materials shall be retained until a new, complete ownership report is filed with the FCC, at which time a copy of the new report and any related materials shall be placed in the file. The permittee or licensee must retain in the public file either a copy of the station documents listed in §73.3613(a)–(c) or an up-to-date list of such documents. If the permittee or licensee elects to maintain an up-to-date list of such documents, the list must include all the information that the permittee or licensee is required to provide on ownership reports for each

document, including, but not limited to, a description of the document, the parties to the document, the month and year of execution, the month and year of expiration, and the document type (e.g., network affiliation agreement, articles of incorporation, bylaws, management consultant agreement with independent contractor). Regardless of which of these two options the permittee or licensee chooses, it must update the inventory of §73.3613 documents in the public file to reflect newly executed §73.3613 documents, amendments, supplements, and cancellations within 30 days of execution thereof. Licensees and permittees that choose to maintain a list of §73.3613 documents must provide a copy of any §73.3613 document(s) to requesting parties within 7 days. In maintaining copies of such documents in the public file or providing copies upon request, confidential or proprietary information may be redacted where appropriate.

* * * * *

(f)(1) For purposes of this section, a decision made with respect to an application tendered with the FCC becomes final when that decision is no longer subject to reconsideration, review, or appeal either at the FCC or in the courts.

(2) For purposes of this section, the term “all related material” includes all exhibits, letters, and other documents tendered for filing with the FCC as part of an application, report, or other document, all amendments to the application, report, or other document, copies of all documents incorporated therein by reference and not already maintained in the public inspection file, and all correspondence between the FCC and the applicant pertaining to the application, report, or other document, which according to the provisions of §§0.451 through 0.461 of the rules are open for public inspection at the offices of the FCC.

4. Amend § 73.3613 by revising the section heading, revising the introductory text of § 73.3613 and of paragraph (a), removing paragraph (a)(3), and revising paragraphs (a)(2), (b)(3)(iii), (b)(4), and (d) to read as follows:

§ 73.3613 Availability to FCC of station contracts.

Each licensee or permittee of a commercial or noncommercial AM, FM, TV or International broadcast station shall provide the FCC with copies of the following contracts, instruments, and documents together with amendments, supplements, and cancellations (with the substance of oral contracts reported in writing), within 7 days of a request by the FCC.

(a) *Network service*: Network affiliation contracts between stations and networks will be reduced to writing and filed upon request as follows:

* * * * *

(2) Each such filing shall consist of all of the terms and conditions of such contract, agreement or understanding, including any other paper or document incorporated by reference or otherwise.

(b) * * *

(3) * * *

(iii) Agreements for the acquisition of licensee’s or permittee’s stock by the issuing licensee or permittee corporation, pledges, trust agreements or abstracts thereof, options to purchase stock and other executory agreements. Should the FCC request an abstract of the trust agreement in lieu of the trust agreement, the licensee or permittee will submit the following information concerning the trust:

* * * * *

(4) Proxies with respect to the licensee's or permittee's stock running for a period in excess of 1 year, and all proxies, whether or not running for a period of 1 year, given without full and detailed instructions binding the nominee to act in a specified manner. With respect to proxies given without full and detailed instructions, a statement showing the number of such proxies, by whom given and received, and the percentage of outstanding stock represented by each proxy shall be submitted by the licensee or permittee if the stock covered by such proxies has been voted. However, when the licensee or permittee is a corporation having more than 50 stockholders, such complete information need be filed only with respect to proxies given by stockholders who are officers or directors, or who have 1% or more of the corporation's voting stock. When the licensee or permittee is a corporation having more than 50 stockholders and the stockholders giving the proxies are not officers or directors or do not hold 1% or more of the corporation's stock, the only information required to be filed is the name of any person voting 1% or more of the stock by proxy, the number of shares voted by proxy by such person, and the total number of shares voted at the particular stockholders' meeting in which the shares were voted by proxy.

* * * * *

(d) *Other agreements:* Subchannel leasing agreements for Subsidiary Communications Authorization operation; franchise/leasing agreements for operation of telecommunications services on the television vertical blanking interval and in the visual signal; time sales contracts with the same sponsor for 4 or more hours per day, except where the length of the events (such as athletic contests, musical programs and special events) broadcast pursuant to the contract is not under control of the station; and contracts with chief operators or other engineering personnel.

5. Amend § 73.3613 by removing paragraph (e).

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

3. The authority citation for Part 74 continues to read as follows:

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

4. Section 74.780 is amended by revising the entry for “Section 73.3613—Filing of contracts (network affiliation contracts for low power TV stations only)” to read “Section 73.3613—Availability to FCC of station contracts (network affiliation contracts for low power TV stations only).”

Appendix B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking (NPRM)* in MB Docket 18-4.² The Commission sought written public comments on proposals in the *NPRM*, including comment on the IRFA. The Commission received no direct comments on the IRFA. The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Report and Order

2. The *Report and Order (Order)* eliminates the requirement that licensees and permittees of commercial and noncommercial AM, FM, television, and international broadcast stations routinely file paper copies of station contracts and other documents with the Commission as currently specified in Section 73.3613 of the Commission's rules.³ Given that the Commission's existing public file rules now require that licensees and permittees of commercial and noncommercial AM, FM, and televisions stations make copies of their Section 73.3613 documents available online, the *Order* finds that Section 73.3613's requirement that licensees and permittees also file copies of such documents in paper with the Commission to be outdated and unnecessary.⁴ Rather than retaining this antiquated paper filing requirement, the Commission will rely on its existing public file rules to ensure access to Section 73.3613 documents as discussed in the *Order* and retain the ability to obtain these documents from licensees and permittees upon request, as needed.⁵ The Commission's existing public file rules require licensees and permittees to either (i) upload the documents directly to the OPIF or (ii) maintain an up-to-date list of the documents in the OPIF and provide copies to requesting parties within seven days.

3. In addition to eliminating the paper filing requirement for Section 73.3613 documents, the *Order* also eliminates a redundant disclosure requirement pertaining to certain Section 73.3613 documents and expands an existing redaction allowance for confidential or proprietary information in Section 73.3613 documents.⁶ The *Order* requires that unredacted copies the documents be provided to the Commission upon request and that any confidential or proprietary information that is redacted must be marked consistently throughout the document.⁷

4. The *Order* arises from a Public Notice issued by the Commission in May 2017, launching an initiative to modernize the Commission's media regulations.⁸ The majority of the parties that filed

¹ See 5 U.S.C. § 603. The RFA, see U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

² *FCC Form 325 Data Collection*, Notice of Proposed Rulemaking, 32 FCC 9916 (2017), Appx. A.

³ *Report and Order*, para. 1.

⁴ *Report and Order*, Section II.A.

⁵ *Report and Order*, Sections II.A, II.D.

⁶ *Report and Order*, Sections II.B, II.C.

⁷ If a person believes that a Section 73.3613 document has been inappropriately redacted, he or she may file a response in opposition under Section 0.459(d) of our rules if the licensee or permittee of the station filed a request for confidentiality pursuant to Section 0.459. Otherwise, the person may file a complaint with the Commission if he or she believes that the station has violated our public file rules or redacted information that is not actually confidential or proprietary. *Report and Order*, Section II.C.

⁸ See *Commission Launches Modernization of Media Regulation Initiative*, Public Notice, 32 FCC Rcd 4406 (2017) (initiating a review of rules applicable to media entities to eliminate or modify regulations that are outdated, unnecessary or unduly burdensome).

comments in this proceeding agree that the routine paper filing requirement at issue is redundant and should be eliminated. The *Order* concludes that eliminating this requirement is consistent with other actions the Commission has taken to reduce paper submissions and advances the Commission's goal of eliminating outdated and unnecessary regulatory burdens that can impede competition and innovation in media markets.⁹

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

5. No comments were filed in direct response to the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

6. 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 SBA and to provide a detailed statement of any change made to the proposed rules as a result of those comments.¹⁰ The Chief Counsel did not file any comments in response to this proceeding.

D. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted.¹¹ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction"¹² In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹³ 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.¹⁴ The final rules adopted herein affect small television and radio broadcast stations. A description of these small entities, as well as an estimate of the number of such small entities, is provided below.

8. *Television Broadcasting.* This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound."¹⁵ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.¹⁶ 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 \$38.5

⁹ *Report and Order*, para. 1.

¹⁰ 5 U.S.C. § 604(a)(3).

¹¹ *Id.*

¹² 5 U.S.C. § 601(6).

¹³ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

¹⁴ 15 U.S.C. § 632.

¹⁵ U.S. Census Bureau, 2012 North American Industry Classification System (NAICS) Definitions, "515120 Television Broadcasting," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

¹⁶ *Id.*

million or less in annual receipts.¹⁷ The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of less than \$25,000,000, and 95 had annual receipts of \$25,000,000 or more.¹⁸ Based on this data, we estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

9. In addition, the Commission has estimated the number of licensed commercial television stations to be 1,349.¹⁹ Of this total, 1,277 stations had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on October 1, 2018. Such entities, therefore, qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 412.²⁰ The Commission, however, does not compile and does not 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.

10. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations²¹ 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 the proposed rules would apply does not exclude any television station from the definition of a small business on this basis and therefore could be over-inclusive.

11. There are also 1,911 LPTV stations and 389 Class A stations.²² 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.

12. *Radio Stations.* This economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public.”²³ The SBA has created the following small business size standard for this category: those having \$38.5 million or less in annual receipts.²⁴ Census data for 2012 shows that 2,849 firms in this category operated in that year.²⁵ Of this number,

¹⁷ 13 CFR § 121.201; 2012 NAICS Code 515120.

¹⁸ U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515120 Television Broadcasting), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

¹⁹ FCC News Release, *Broadcast Station Totals as of September 30, 2018* (rel. Oct. 3, 2018) (*Broadcast Station Totals*), <https://www.fcc.gov/document/broadcast-station-totals-september-30-2018>.

²⁰ *Id.*

²¹ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.” 13 CFR § 21.103(a)(1).

²² *Broadcast Station Totals supra* note 19.

²³ U.S. Census Bureau, 2012 NAICS Definitions, “515112 Radio Stations,” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>. This category description continues, “Programming may originate in their own studio, from an affiliated network, or from external sources.”

²⁴ 13 CFR § 121.201; NAICS code 515112.

²⁵ U.S. Census Bureau, Table No. EC0751SSSZ4, *Information: Subject Series – Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515112), http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ4&prodType=table.

2,806 firms had annual receipts of less than \$25,000,000, and 43 firms had annual receipts of \$25,000,000 or more.²⁶ Therefore, based on the SBA's size standard, the majority of such entities are small entities.

13. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial AM radio stations to be 4,626 stations²⁷ and the number of commercial FM radio stations to be 6,737, for a total number of 11,363.²⁸ Of this total, 11,362 stations had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on October 1, 2018. In addition, the Commission has estimated the number of noncommercial educational FM radio stations to be 4,130.²⁹ NCE stations are non-profit, and therefore considered to be small entities.³⁰ Therefore, we estimate that the majority of radio broadcast stations are small entities.

14. *International Broadcast Stations.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to international broadcast stations. The closest applicable SBA size standards and U.S. Census Bureau category is Radio Stations.³¹ Establishments in this industry are primarily engaged in broadcasting aural programs by radio to the public with programming that may originate in their own studio, from an affiliated network, or from external sources.³² The SBA small business size standard for this category is firms having \$38.5 million or less in annual receipts.³³ U.S. Census Bureau data for 2012 shows that 2,849 radio station firms operated during that year.³⁴ Of this number, 2,806 firms had annual receipts of less than \$25,000,000, and 43 firms had annual receipts of \$25,000,000 or more.³⁵ Therefore, based on the SBA's size standard the majority of entities in this industry are small entities.

15. According to the Commission's records there were 16 international broadcast stations operating as of September 13, 2018.³⁶ The Commission however does not request nor collect annual revenue information; therefore, the Commission is unable to estimate the number of international broadcast stations that would constitute a small business under the SBA definition.

E. Description of Reporting, Record Keeping, and Other Compliance Requirements for Small Entities

16. In this section, we identify the reporting, recordkeeping, and other compliance requirements in the *Order* and consider whether small entities are affected disproportionately by any such requirements.

²⁶ *Id.*

²⁷ *Broadcast Station Totals supra* note 19.

²⁸ *Id.*

²⁹ *Id.*

³⁰ 5 U.S.C. §§ 601(4), (6).

³¹ 13 CFR § 121.201; NAICS code 515112.

³² U.S. Census Bureau, 2017 NAICS Definitions, "515112 Radio Stations," <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515112&search=2017+NAICS+Search&search=2017>

³³ 13 CFR § 121.201; NAICS code 515112.

³⁴ U.S. Census Bureau, Table No. EC0751SSSZ4, *Information: Subject Series – Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515112), https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4/naics~515112.

³⁵ *Id.*

³⁶ FCC High Frequency Stations, <https://www.fcc.gov/general/fcc-high-frequency-stations> (last visited Sept. 13, 2018).

17. *Reporting Requirements.* The *Order* requires licensees and permittees to update the Section 73.3613 documents in their online public file or the list of such documents within 30 days of executing such documents.³⁷ This 30-day timeframe for updating the inventory of Section 73.3613 documents in the public file is consistent with the previous rule, which required licensees and permittees to file the documents with the Commission in paper within 30 days of execution.

18. *Recordkeeping Requirements.* The existing public file rules give stations the option of either (i) retaining copies of their Section 73.3613 documents in the public file or (ii) maintaining an up-to-date list of such documents in the public file and providing copies to a requesting party within seven days. The *Order* retains these existing options for disclosing Section 73.3613 documents in the public file.³⁸ To preserve the current level of access to Section 73.3613 documents, the *Order* clarifies that stations must ensure that their inventory of such documents in the public file is up to date, regardless of whether the station chooses to retain copies or a list of Section 73.3613 documents in the public file, and provide copies of their Section 73.3613 documents to the Commission and the public within seven days upon request.³⁹ Stations that upload a list of Section 73.3613 documents to the public file must include on that list all of the information that the Commission requires for such documents on broadcast ownership reports, including a description of each document, the parties to the document, the month and year of execution, the month and year of expiration, and the document type.⁴⁰ This will provide the information necessary for the public to keep track of expiring documents and help ensure that stations maintain a current record of their Section 73.3613 documents in the public file.

19. *Other Compliance Requirements.* The *Order* does not adopt new compliance requirements.

F. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

20. The RFA requires an agency to describe any significant alternatives that it has considered in reaching 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 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.⁴¹

21. The *Order* eliminates the paper filing requirement for Section 73.3613 documents and adopts other rule changes to streamline disclosure requirements and explicitly allow for the redaction of confidential or proprietary information in such documents.⁴² These actions are intended to modernize the Commission's regulations and reduce costs and recordkeeping burdens for affected entities, including small entities. Under the revised rules, affected entities no longer will need to expend time and resources filing paper copies of Section 73.3613 documents with the Commission.

22. For commercial and noncommercial AM, FM, and television stations, the Commission will rely on its existing public file rules, which already require that these stations make copies of Section 73.3613 documents available to the public online.⁴³ The existing public file rules provide these stations

³⁷ *Report and Order*, Section II.A.

³⁸ *Report and Order*, Section II.A.

³⁹ *Report and Order*, Section II.A.

⁴⁰ *Report and Order*, Section II.A.

⁴¹ 5 U.S.C. § 603(c)(1)-(4).

⁴² *See supra* Section A.

⁴³ *Report and Order*, Section II.A.

with flexibility to select the disclosure method that is less burdensome with respect to Section 73.3613 documents, while still ensuring timely access to the documents by the public and the Commission.⁴⁴ In the *Order*, the Commission declines to eliminate this flexibility by requiring that stations upload all their Section 73.3613 documents directly to the online public file, as suggested by certain commenters.⁴⁵ Eliminating the existing option allowing these stations to maintain an up-to-date list of Section 73.3613 documents in the public file and to provide copies to requesting parties within seven days would impose unnecessary burdens on broadcast licensees and permittees, including small businesses. For international broadcast stations, the Commission retains its ability to obtain Section 73.3613 documents from licensees and permittees upon request, as needed.⁴⁶

23. The *Order* also eliminates a redundant disclosure obligation pertaining to certain Section 73.3613 documents and expands an existing redaction allowance for confidential or proprietary information in Section 73.3613 documents.⁴⁷ Currently, Section 73.3613 explicitly allows the redaction of confidential or proprietary information for attributable TBAs and JSAs, provided that unredacted versions of the agreements shall be provided to the Commission upon request. The *Order* concludes that Section 73.3613's specific provision allowing the redaction of TBAs and JSAs, including the requirement that unredacted copies shall be made available to the Commission upon request, should apply to all Section 73.3613 documents to the extent that they contain confidential or proprietary information.⁴⁸ Redaction would be necessary only when a document is posted to the online public file or provided to the Commission or the public upon request.

24. The rule amendments adopted in the *Order* will relieve affected broadcast stations, including smaller stations, of the obligation to file paper copies of certain information with the Commission. We find it reasonable to conclude that the benefits of adopting the amendments discussed in the *Order* will outweigh any associated costs, and we anticipate that affected entities, including small entities, will benefit from the actions taken in the *Order*.

G. Report to Congress

25. The Commission will send a copy of the *Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.⁴⁹ In addition, the Commission will send a copy of the *Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Order* and FRFA (or summaries thereof) will also be published in the Federal Register

⁴⁴ *Report and Order*, Section II.A.

⁴⁵ *Report and Order*, Section II.A.

⁴⁶ *Report and Order*, Section II.D.

⁴⁷ *Report and Order*, Sections II.B, II.C.

⁴⁸ *Report and Order*, Section II.C.

⁴⁹ See 5 U.S.C. § 801(a)(1)(A).

**STATEMENT OF
CHAIRMAN AJIT PAI**

Re: *Amendment of Section 73.3613 of the Commission's Rules Regarding Filing of Contracts*, MB Docket No. 18-4; *Modernization of Media Regulation Initiative*, MB Docket No. 17-105.

I'll keep it simple. 1939: The FCC requires broadcasters to file paper copies of certain contracts with the Commission. 2018: There's this thing called the Internet. Broadcasters now have the option of either posting these documents online in their public inspection file or maintaining an up-to-date list in their online file and providing copies to any requesting party within seven days. Therefore anyone who cares to access these documents (and virtually nobody does) can easily do so. This regulation is no longer necessary—in fact, it's burdensome—so we're repealing it.

I'd like to thank the staff who worked on this *Order*. From the Media Bureau: Ty Bream, Michelle Carey, Chris Clark, Martha Heller, Brendan Holland, Tom Horan, Varsha Mangal, Holly Saurer, and Sarah Whitesell. And from the Office of General Counsel: Dave Konczal.