



# PUBLIC NOTICE

**Federal Communications Commission**  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

News Media Information: 202-418-0500  
Internet: <http://www.fcc.gov>  
TTY: 888-835-5322

**DA 17-34**

**Released: January 10, 2017**

**THE INCENTIVE AUCTION TASK FORCE AND MEDIA BUREAU RELEASE  
TRANSITION PROGRESS REPORT FORM AND FILING REQUIREMENTS FOR  
STATIONS ELIGIBLE FOR REIMBURSEMENT FROM THE TV BROADCAST  
RELOCATION FUND AND SEEK COMMENT ON THE FILING OF THE REPORT BY  
NON-REIMBURSABLE STATIONS**

**MB Docket No. 16-306**

**GN Docket No. 12-268**

**Comments Due: January 25, 2017**

**Reply Comments Due: February 6, 2017**

## **I. INTRODUCTION**

1. This Public Notice describes the information that must be provided in the periodic progress reports the Commission requires broadcast television stations that are eligible to receive payment of relocation expenses from the TV Broadcast Relocation Fund (Reimbursement Fund) to file during the 39-month post-incentive auction transition period. It also describes when and how the progress reports must be filed.

2. In addition, this Public Notice proposes to require broadcast television stations that are not eligible to receive reimbursement of associated expenses from the Reimbursement Fund, but must transition to new channels as part of the Commission's channel reassignment plan, to provide progress reports in the same manner and on the same schedule as reimbursement-eligible television stations, and seeks comment on that proposal.

## **II. BACKGROUND**

3. Auction 1000 is being conducted pursuant to Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act).<sup>1</sup> The incentive auction is composed of a reverse auction in which broadcasters offer to voluntarily relinquish some or all of their spectrum usage rights, and a forward auction of new, flexible-use licenses suitable for providing mobile broadband services.<sup>2</sup> The

---

<sup>1</sup> Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402 (codified at 47 U.S.C. § 309(j)(8)(G)), 6403 (codified at 47 U.S.C. § 1452), 126 Stat. 156 (2012). The incentive auction is currently in its fourth stage. *Clearing Target of 84 Megahertz Set for Stage 4 of the Broadcast Television Spectrum Incentive Auction; Stage 4 Bidding in the Reverse Auction Will Start on December 13, 2016*, GN Docket No. 12-268, Public Notice, DA 16-1354 (IATF/WTB, rel. Dec. 9, 2016).

<sup>2</sup> See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6569, 6572-73, paras. 1, 9-10 (2014) (*Incentive Auction R&O*) (subsequent citations omitted).

reverse auction incorporates a repacking process to reorganize the broadcast television bands so that the television stations that remain on the air after the transition will occupy a smaller portion of the ultra-high frequency (UHF) band, thereby clearing contiguous spectrum that will be repurposed as the 600 MHz Band for flexible wireless use.<sup>3</sup> During the reverse auction bid processing, the auction system identifies provisional TV channel assignments that satisfy applicable constraints, ensuring that a feasible channel is available for every station that chose not to participate in the auction, is not needed, or elected to drop out of the auction during the bidding.<sup>4</sup> After bidding concludes, the Media and Wireless Telecommunications Bureaus will release the *Auction 1000 Closing and Channel Reassignment Public Notice (Closing and Reassignment Public Notice)*<sup>5</sup> which, among other things, will announce the results of the repacking process and identify the channel reassignments of television channels.<sup>6</sup> The *Closing and Reassignment Public Notice* will also establish the beginning of the 39-month post-auction transition period (transition period).<sup>7</sup> By the end of the transition period, all stations reassigned to new channels as a result of a reverse auction winning bid or the repacking process must complete construction of their post-auction channel facilities, commence operation on their post-auction channel, cease operation on their pre-auction channel, and file a license application.

4. Most stations that incur costs as a result of being reassigned to new channels will be eligible for reimbursement from the Reimbursement Fund. These include full power and Class A stations that are protected during the repacking process and involuntarily assigned to a new channel (full power and Class A stations that are eligible for reimbursement are collectively referred to herein as Reimbursable Stations). Other stations are not eligible for reimbursement. These include stations with a winning reverse auction bid to move to the low or high very-high frequency (VHF) band (Band Changing Stations).<sup>8</sup> Also, in lieu of receiving reimbursement for relocation costs, an otherwise reimbursement-eligible station may request a waiver of the Commission's service rules to allow it to make flexible use of its reassigned spectrum to provide services other than broadcast television services (Service Rule Waiver Stations).<sup>9</sup> Finally, a small number of Class A stations are not protected during the repacking process, and if displaced as a result of repacking will not be eligible for reimbursement (Displaced Class A

---

<sup>3</sup> See *Incentive Auction R&O*, 29 FCC Rcd at 6617–80, paras. 109–257.

<sup>4</sup> See *Broadcast Auction Scheduled to Begin March 29, 2016; Procedures for Competitive Bidding in Auction 1000, Including Initial Clearing Target Determination, Qualifying to Bid, and Bidding in Auctions 1001 (Reverse) and 1002 (Forward)*, Public Notice, 30 FCC Rcd 8975, 8982, para. 8 (2015). See also *Incentive Auction R&O*, 29 FCC Rcd at 6621, para. 119.

<sup>5</sup> The *Auction Closing and Channel Reassignment Public Notice* is the same public notice referred to as the *Channel Reassignment Public Notice* in prior public notices and orders released in this proceeding. See, e.g., *Incentive Auction R&O*, 29 FCC Rcd at 6782, para. 525; *Application Procedures for Broadcast Incentive Auction Scheduled to Begin on March 29, 2016; Technical Formulas for Competitive Bidding*, Public Notice, 30 FCC Rcd 11034, 11088, para. 167 (WTB 2015); 47 CFR § 73.3700(a)(2).

<sup>6</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6782, para. 525.

<sup>7</sup> 47 CFR § 27.4. In order to balance “the need for a post-incentive auction transition timetable that is flexible for broadcasters and that minimizes disruption to viewers” with the need for a schedule that “provide[s] certainty to wireless providers and [is] completed as expeditiously as possible,” and so that it coincides with the statutory three-year reimbursement period, the Commission established a 39-month post-incentive auction transition period. *Incentive Auction R&O*, 29 FCC Rcd at 6796, 6799-80, paras. 559, 568. See also Spectrum Act §§ 6403(b)(4)(D), (d)(4). The transition period includes (1) the three-month period beginning on release of the *Closing and Reassignment Public Notice* during which broadcasters will file their construction permit applications, followed by (2) a 36-month period consisting of varied construction deadlines. *Incentive Auction R & O*, 29 FCC Rcd at 6796, para. 559. While some stations will be given 36 months to complete construction, others will be given shorter deadlines. *Id.* at para. 560.

<sup>8</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6813-14, paras. 601-02.

<sup>9</sup> *Id.* at 6827, para. 637; 47 U.S.C. § 1452(b)(4)(B); 47 CFR § 73.3700(f).

Stations). (Band Changing Stations, Service Rule Waiver Stations, and Displaced Class A Stations are collectively referred to herein as Non-Reimbursable Stations.)

5. In the *Incentive Auction R&O*, the Commission determined that Reimbursable Stations will be required, on a regular basis, to provide progress reports to the Commission showing how the disbursed funds have been spent and what portion of their construction is complete.<sup>10</sup> The Commission directed the Media Bureau to develop a form for such progress reports<sup>11</sup> and set the filing deadlines for such reports.<sup>12</sup>

### III. DISCUSSION

#### A. Transition Progress Report Content and Timing for Reimbursable Stations

6. As described below, the Media Bureau has developed the attached FCC Form 2100 - Schedule 387 (Transition Progress Report) at Appendix A pursuant to the Commission's direction to develop a form for progress reports.<sup>13</sup> Pursuant to the Commission's direction that the Bureau develop filing deadlines for such reports,<sup>14</sup> the Bureau has determined that Reimbursable Stations must file the Transition Progress Report quarterly and at other specified intervals using the Commission's electronic filing system.

7. *Content of Transition Progress Reports:* The Transition Progress Report requires Reimbursable Stations to certify that certain steps towards construction of their post-auction facilities either have been completed or are not required. Some questions/items are meant to gather information regarding stations' completion of tasks necessary to meet major expenditure and construction milestones, such as taking delivery of specific pieces of equipment or completing all necessary permitting and tower work. Other questions require broadcasters to identify potential problems which they believe may make it difficult for them to meet their construction deadlines. These Transition Progress Reports will help the Commission, broadcasters, those involved in the construction of broadcast facilities, and other interested parties to assess how disbursed funds have been spent and to monitor the construction of stations.

8. *Frequency of Filing:* Reimbursable Stations must file Transition Progress Reports starting with the first full calendar quarter after release of the *Closing and Reassignment Public Notice* announcing the completion of the incentive auction,<sup>15</sup> and on a quarterly basis thereafter. The Transition Progress Reports must be filed by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October-December, April 10 for the quarter January-March, etc.). This timeframe is consistent with other reports which broadcasters are required to file<sup>16</sup> and will allow organized monitoring of station expenditures and construction progress. In addition to these quarterly reports, we also require that Reimbursable Stations file Transition Progress Reports: (1) 10 weeks before the end of their assigned construction deadline; (2) 10 days after they complete all work related to construction of their post-

---

<sup>10</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6825, para. 634; see also 47 CFR § 73.3700(e)(5) ("Broadcast television station licensees and MVPDs that receive payment from the TV Broadcaster Relocation Fund are required to submit progress reports at a date and frequency to be determined by the Media Bureau.").

<sup>11</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6825 n.1768.

<sup>12</sup> 47 CFR §§ 73.3700(e)(5), 73.3700(e)(7).

<sup>13</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6825 n.1768. FCC Form 2100 - Schedule 387 (Transition Progress Report) will be submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act.

<sup>14</sup> 47 CFR §§ 73.3700(e)(5), 73.3700(e)(7).

<sup>15</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6782, para. 525.

<sup>16</sup> See 47 CFR § 73.3526.

auction facilities; and (3) five days after they cease broadcasting on their pre-auction channel.<sup>17</sup> These filing deadlines will allow the Commission, broadcasters, and other interested parties to more closely monitor the status of construction during the 39-month transition period, and focus resources on ensuring successful completion of the transition and continuity of over-the-air television service.

9. *Electronic Filing:* The Transition Progress Reports will be filed electronically using the Commission's electronic filing system.<sup>18</sup> All information provided in the reports will be publicly available through the Commission's electronic filing system. Broadcasters, tower companies, equipment providers, engineering consultants, other interested parties, and the public will be able to retrieve information regarding broadcast station construction progress by construction deadline, Designated Market Area (DMA), or community of license.

10. *Online Local Public Inspection File:* In addition, consistent with the Commission's practice of automatically linking electronically filed applications and reports to stations' online local public inspection files on the Commission's web site,<sup>19</sup> the Commission will make Reimbursable Stations' Transition Progress Reports viewable in the stations' online local public inspection files. Many station viewers are more familiar with accessing stations' online local public inspection files than the Commission's electronic filing system for FCC licensees. Making the Transition Progress Reports available in stations' online public inspection files will therefore assist the public to more easily track the transition status of stations that they view.

## **B. Transition Progress Report and Filing Requirements For Non-Reimbursable Stations**

### **1. Request for Comment**

11. As noted above, the Commission has determined that Reimbursable Stations must report to the Commission regularly on the progress of the station's transition. We tentatively conclude that a similar mechanism is needed to monitor Non-Reimbursable Stations' progress towards meeting construction deadlines during the 39-month transition period.<sup>20</sup> We believe that data that includes only Reimbursable Stations and excludes Non-Reimbursable Stations will not completely capture the progress of all stations, and therefore may compromise the ability of the Commission, broadcasters, tower companies, equipment providers, engineering consultants, other interested parties, and the public to monitor the progress of the transition during the 39-month transition period. We seek comment on this tentative conclusion.

12. We believe that requiring Non-Reimbursable Stations to file regular progress reports using the same form as Reimbursable Stations, the FCC Form 2100 – Schedule 387 (Transition Progress Report), and at the same intervals, in the Commission's electronic filing system, will provide information to the Commission, broadcasters, vendors, other industry participants, and the public in a way that will allow tracking of stations' resource requirements and construction progress during the transition period for all stations subject to reassignment during the period.<sup>21</sup> In addition, using the information submitted

---

<sup>17</sup> Once a station has filed Transition Progress Reports certifying that it has completed all work related to construction of its post-auction facilities and that it has ceased operating on its pre-auction channel, it will no longer be required to file quarterly Transition Progress Reports.

<sup>18</sup> Detailed instructions on how to file Form 2100 – Schedule 387 using the Commission's electronic filing system will be provided at a later date.

<sup>19</sup> See 47 CFR §§ 73.3526(b)(4), 73.3527(b)(3).

<sup>20</sup> In the *Incentive Auction R&O*, the Commission delegated authority to the Media Bureau to "establish construction periods" that ensure that broadcasters transition within the 39-month period mandated by the Commission. *Incentive Auction R&O*, 29 FCC Rcd at 6797, para. 563. See also 47 CFR § 73.3700(b)(1)(vi).

<sup>21</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6796, para. 559.

in the reports, the Commission and broadcast-related industries will be able to promptly identify potential resource bottlenecks and stations that may have difficulty meeting their construction deadlines, or are experiencing other problems, and take steps to mitigate any adverse impact on the completion of the transition. Consistent with our approach with respect to Reimbursable Stations, we propose to automatically link the Transition Progress Reports to Non-Reimbursable Stations' online local public inspection files on the Commission's web site,<sup>22</sup> in order to assist the public to track the transition status of stations that they view.

13. We seek comment on the proposed Transition Progress Report as it relates to Non-Reimbursable Stations, including whether there are any questions that should not be required for Non-Reimbursable Stations, and whether there are any additional questions that should be required for Non-Reimbursable Stations in order to gather necessary information. We also seek comment on whether different filing intervals or different filing mechanisms would be advisable for Non-Reimbursable Stations.

## 2. Administrative Matters

### a. Comment Filing Procedures

14. Pursuant to sections 1.415 and 1.419 of the Commission's rules,<sup>23</sup> interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).<sup>24</sup>

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

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

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, D.C. 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington D.C. 20554.

16. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0423 (TTY).

---

<sup>22</sup> See 47 CFR §§ 73.3526(b)(4), 73.3527(b)(3).

<sup>23</sup> 47 CFR §§ 1.415, 1.419.

<sup>24</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).



**b. Ex Parte Presentations**

17. The proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>25</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies).<sup>26</sup> Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the rules. In proceedings governed by section 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

**c. Initial Regulatory Flexibility Analysis**

18. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix B.

**d. Initial Paperwork Reduction Act Analysis**

19. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

**IV. ADDITIONAL INFORMATION**

20. For additional information on this proceeding, contact Joyce Bernstein, [Joyce.Bernstein@fcc.gov](mailto:Joyce.Bernstein@fcc.gov), (202) 418-1647, or Kevin Harding, [Kevin.Harding@fcc.gov](mailto:Kevin.Harding@fcc.gov), (202) 418-7077. Press contact: Charles Meisch, [Charles.Meisch@fcc.gov](mailto:Charles.Meisch@fcc.gov), (202) 418-2943.

---

<sup>25</sup> 47 CFR §§ 1.1200 *et seq.*

<sup>26</sup> *See* 47 CFR § 1.1203.

## APPENDIX A

## FCC Form 2100 - Schedule 387 (Transition Progress Report)

## Transition Progress Certification (Must Answer All Items)

To be completed by full power and Class A television licensees with stations that are transitioning to a new channel as a result of the Broadcast Incentive Auction:

Licensee hereby certifies that the following steps towards constructing the Station's post-auction facility are not required or have been completed:

1. Does the Station require FAA approval (e.g., completion of FAA Form 7460-1 and a "No Hazard Determination") in order to construct its post-auction facility? (Y/N) (If No, go to Item 2; if Yes, go to sub items)
  - a. The Station has requested FAA approval for its post-auction facility (Y, N)
  - b. The Station has received FAA approval for its post-auction facility (Y, N)
2. Does the Station require Federal, State, and/or local permits, and/or a review of environmental impact, for its post-auction facility? (Y, N) (If No, go to Item 3; if Yes, go to sub items)
  - a. Station has requested necessary Federal, State and/or local permits and/or review of environmental impact for its post-auction facility. (Y, N) (If No, explain)
  - b. Station has received necessary Federal, State, and/or local permits and/or review of environmental impact for its post-auction facility. (Y, N) (If No, explain)
3. Are radio frequency (RF) tower studies required in order for the Station to construct its post-auction facility? (Y, N) (If No, go to Item 4)
  - a. RF tower studies have been started (Y, N)
  - b. RF tower studies have been completed (Y, N)
4. Are structural tower studies required in order for the Station to construct its post-auction facility? (Y, N) (If No, go to Item 5)
  - a. Structural tower studies have been started (Y, N)
  - b. Structural tower studies have been completed (Y, N)
5. The Station has placed orders for the following equipment, if required:
  - a. Main Facility Antenna (Y, N, NA)
  - b. Main Facility Transmitter (Y, N, NA)
  - c. Main Facility Transmission line (Y, N, NA)
  - d. Main Facility Mask Filter and/or RF Combiner (Y, N, NA)
  - e. Auxiliary antenna and related equipment (Y, N, NA)
6. Does the Station anticipate that it will receive all necessary equipment in time to meet the construction deadline for the Station's main facility? (Y, N, NA) (If No, explain)
7. Has Station received all required new broadcast equipment (antenna, transmitter, etc.) necessary to begin construction? (Y, N, NA)
8. Does the Station's post-auction facility require tower construction/modification work? (Y, N) (If No, go to Item 9)

- a. Does construction of the Station's post-auction facility require construction of a new tower or substantial modification of an existing tower? (Y, N)
  - b. Has all necessary tower work been scheduled? (Y, N) (If No, explain)
  - c. Has all necessary tower work been completed? (Y, N) (If No, explain)
9. Does the Station anticipate that all tower work, including antenna installation, will be completed in time to meet its construction deadline? (Y, N, NA) (If No, explain)
10. Does the Station require use of a new auxiliary antenna system? (Y, N) (If No, go to Item 11)
  - a. Has the Station started all outside tower work and made all necessary equipment upgrades to commence testing of its new auxiliary antenna system? (Y, N)
  - b. Has the Station completed all outside tower work and made all necessary equipment upgrades to commence testing of its new auxiliary antenna system? (Y, N)
  - c. Has the Station started testing on its new auxiliary antenna system? (Y, N) (If Yes, answer Question 10.d.)
  - d. Has the Station completed all testing on its new auxiliary antenna system such that it may now cease broadcasting on its pre-auction channel? (Y, N)
11. Has the Station completed all work, including construction, modification and/or installation, related to construction of its post-auction facility such that it is ready to begin testing on its post-auction facility? (Y, N) (If Yes, go to Item 12)
  - a. Has the Station completed all tower work? (Y, N)
  - b. Has the Station completed all in-building (equipment) work? (Y, N)
12. Does the Station have other issues that must be addressed before it can fully construct and/or operate its post-auction facility? (Y, N) (If Yes, explain)
13. Has the Station completed all construction work on its post-auction facility that is necessary to complete an application for a license to cover that facility? (Y, N)
14. Has the Station ceased broadcasting on its pre-auction channel? (Y, N)



## APPENDIX B

## Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”)<sup>27</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (“IRFA”) concerning the possible significant economic impact on small entities of the policies and rules proposed in the this PN (*Progress Report Form PN*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *Progress Report Form PN*. The Commission will send a copy of the *Progress Report Form PN*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (“SBA”).<sup>28</sup> In addition, the *Progress Report Form PN* and IRFA (or summaries thereof) will be published in the Federal Register.<sup>29</sup>

2. The Regulatory Flexibility Act of 1980, as amended (“RFA”),<sup>30</sup> requires that a regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>31</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>32</sup> 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 Small Business Administration (SBA).

**A. Need for, and Objectives of, the Proposed Rule Changes**

3. The Federal Communications Commission (Commission) adopted a 39-month transition period during which television stations that are assigned to new channels in the incentive auction must construct their new facilities. The Commission determined that reassigned television stations that are eligible for reimbursement from the TV Broadcast Relocation Fund are required, on a regular basis, to provide progress reports to the Commission showing how the disbursed funds have been spent and what portion of construction is complete. The Commission directed the Media Bureau (Bureau) to develop a form for such progress reports and set the filing deadlines for such reports. The *Progress Report Form PN* describes the information that must be provided by these stations, and when and how the progress reports must be filed.

4. The Bureau proposes to require that reassigned television stations that are not eligible for reimbursement from the TV Broadcast Relocation Fund provide the same progress reports to the Commission on the same schedule as that specified for stations eligible for reimbursement. The Transition Progress Report in Appendix A requires reassigned stations to certify that certain steps toward construction of their post-auction channel either have been completed or are not required, and to identify potential problems which they believe may make it difficult for them to meet their construction deadlines. The information in the progress reports will be used by the Commission, stations, and other interested parties to monitor the status of reassigned stations’ construction during the 39-month

---

<sup>27</sup> See 5 U.S.C. § 603. The RFA, see 5 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).

<sup>28</sup> See 5 U.S.C. § 603(a).

<sup>29</sup> See *id.*

<sup>30</sup> See 5 U.S.C. § 603.

<sup>31</sup> See 5 U.S.C. § 601(6).

<sup>32</sup> See 5 U.S.C. § 601(3).

transition period.

**B. Legal Basis**

5. The proposed action is authorized pursuant to Sections 1, 4, 301, 303, 307, 308, 309, 310, 316, 319, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 301, 303, 307, 308, 309, 310, 316, 319, and 403.

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

6. 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.<sup>33</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>34</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>35</sup> 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.<sup>36</sup> Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

7. *Television Broadcasting.* This economic census category “comprises establishments primarily engaged in broadcasting images together with sound.”<sup>37</sup> The SBA has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts.<sup>38</sup> The 2007 U.S. Census indicates that 808 firms in this category operated in that year. Of that number, 709 had annual receipts of \$25,000,000 or less, and 99 had annual receipts of more than \$25,000,000.<sup>39</sup> Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded \$38.5 million in that year, we conclude that the majority of television broadcast stations were small under the applicable SBA size standard.

8. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial television stations to be 1,386 stations.<sup>40</sup> Of this total, 1,221 stations (or about 88 percent)

<sup>33</sup> 5 U.S.C. § 603(b)(3).

<sup>34</sup> 5 U.S.C. § 601(6).

<sup>35</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in 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.” 5 U.S.C. § 601(3).

<sup>36</sup> 15 U.S.C. § 632.

<sup>37</sup> U.S. Census Bureau, 2012 NAICS Definitions, “515120 Television Broadcasting,” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>. This category description continues, “These establishments operate television broadcasting 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 studios, from an affiliated network, or from external sources.”

<sup>38</sup> 13 CFR § 121.201; 2012 NAICS code 515120.

<sup>39</sup> U.S. Census Bureau, Table No. EC0751SSSZ4, *Information: Subject Series – Establishment and Firm Size: Receipts Size of Firms for the United States: 2007* (515120), [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2007\\_US\\_51SSSZ4&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ4&prodType=table).

<sup>40</sup> See *Broadcast Station Totals as of December 31, 2016*, Press Release (MB rel. Jan. 5, 2016) (*Broadcast Station*

(continued....)

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 July 2, 2014. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 395.<sup>41</sup> NCE stations are non-profit, and therefore considered to be small entities.<sup>42</sup> Therefore, we estimate that the majority of television broadcast stations are small entities.

9. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations<sup>43</sup> 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, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television 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 to that extent.

10. *Class A TV Stations.* The same SBA definition that applies to television broadcast stations would apply to licensees of Class A television stations. As noted above, the SBA has created the following small business size standard for this category: those having \$38.5 million or less in annual receipts.<sup>44</sup> The Commission has estimated the number of licensed Class A television stations to be 418.<sup>45</sup> Given the nature of these services, we will presume that these licensees qualify as small entities under the SBA definition.

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

11. The Bureau proposes that reassigned stations that are not eligible for reimbursement file the Transition Progress Report in Appendix A on a quarterly basis, beginning for the first full quarter after the release of a public notice announcing the completion of the incentive auction, as well as 10 weeks before their construction deadline, 10 days after they complete construction of their post-auction facility, and five days after they cease broadcasting on their pre-auction channel. Once a station has ceased operating on its pre-auction channel, it would no longer need to file reports. We seek comment on the possible burdens the reporting requirement would place on small entities. Entities, especially small businesses, are encouraged to quantify, if possible, the costs and benefits of the proposed reporting requirement.

#### **E. Steps Taken to Minimize Significant Impact on Small Entities and Significant Alternatives Considered**

12. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance,

(Continued from previous page) \_\_\_\_\_  
Totals) at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-340211A1.docx](https://apps.fcc.gov/edocs_public/attachmatch/DOC-340211A1.docx).

<sup>41</sup> See *Broadcast Station Totals*, *supra*.

<sup>42</sup> See generally 5 U.S.C. §§ 601(4), (6).

<sup>43</sup> “[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 to power to control both.” 13 CFR § 21.103(a)(1).

<sup>44</sup> 13 CFR § 121.201; NAICS code 515120.

<sup>45</sup> See *Broadcast Station Totals*, *supra*.

rather than design, standard; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>46</sup>

13. In general, alternatives to proposed rules or policies are discussed only when those rules pose a significant adverse economic impact on small entities. We believe the burdens of the proposed reporting requirement are minimal and, in any event, are outweighed by the potential benefits of allowing for monitoring of the post-auction transition. In particular, the intent is to allow the Commission, broadcasters, and other interested parties to more closely monitor that status of construction during the transition, and focus resources on ensuring successful completion of the transition by all reassigned stations and continuity of over-the-air television service. Although the proposal to require reassigned stations that are not eligible for reimbursement to file regular progress reports during the transition may impose additional burdens on these stations, we believe the benefits of the proposal (such as further facilitating the successful post-incentive auction transition) outweigh any burdens associated with compliance.

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule**

14. None.

---

<sup>46</sup> 5 U.S.C. § 603(c).