

rulemaking, and the Heroes Stamp funds were distributed without regard to race, color, or national origin; thus the requirements of Executive Order 12898 do not apply to this rule.

#### *F. Congressional Review of Agency Rulemaking*

FEMA has sent this final rule to the Congress and to the Government Accountability Office under the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801–808. The rule is not a “major rule” within the meaning of that Act. This rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have “significant adverse effects” on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

#### *G. Unfunded Mandates Reform Act*

This rule is not an unfunded mandate within the meaning of the Unfunded Mandates Reform Act of 1995, 5 U.S.C. 1531–1538. This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, nor by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no action is required by the provisions of the Unfunded Mandates Reform Act of 1995.

#### *H. Executive Order 13132, Federalism*

Executive Order 13132, “Federalism,” (64 FR 43255, August 10, 1999), sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications. This rule provided for the distribution of funds collected from the sale of the semipostal Heroes Stamp. It had no substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. It did not preempt any State laws. As noted in the interim rule, FEMA determined that this rule did not have sufficient federalism implications sufficient to warrant the preparation of a federalism impact statement. This final action which removes the interim regulations likewise has no federalism implications.

#### *I. Paperwork Reduction Act*

The interim rule contained information collection requirements

subject to the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Under the PRA, a person may not be penalized for failing to comply with an information collection that does not display a currently valid OMB control number. The information collection, which includes FEMA Form 75–14, the 9/11 Heroes Stamp Act of 2001 Eligibility and Application for Benefits form, was approved under OMB number 1660–0091 with an expiration date of July 2008. The Paperwork Reduction Act Collection Discontinuation Form for 1660–0091 was filed on August 15, 2007.

#### *J. Executive Order 13175, Consultation With and Coordination With Indian Tribal Governments*

FEMA has reviewed this rule under Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000). This rule does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### *K. Executive Order 12988, Civil Justice Reform*

FEMA has reviewed this rule under Executive Order 12988, “Civil Justice Reform” (61 FR 4729, February 7, 1996). This rule meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden.

#### **List of Subjects in 44 CFR Part 153**

Disaster assistance, Emergency relief personnel, Terrorism.

■ Accordingly, for the reasons stated in the preamble, and under the authority of 5 U.S.C. 301 and 6 U.S.C. 101 *et seq.*, FEMA amends 44 CFR chapter 1, by removing part 153.

#### **PART 153—[REMOVED AND RESERVED]**

##### **R. David Paulison,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E8–10936 Filed 5–15–08; 8:45 am]

**BILLING CODE 9110–17–P**

## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 73**

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

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

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document adopts rule changes designed to expand opportunities for participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses.

**DATES:** The rule amendments to §§ 73.2090, 73.3555, 73.3598 and 73.5008 adopted in this *Report and Order* will be effective July 15, 2008. Changes to FCC Forms required as the result of the rule amendments adopted herein will become effective 30 days after the Commission publishes a notice in the **Federal Register** announcing approval by the Office of Management and Budget of the forms.

#### **FOR FURTHER INFORMATION CONTACT:**

Mania Baghdadi, (202) 418–2133.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission’s *Report and Order and Third Further Notice of Proposed Rulemaking* (the “Order”) in MB Docket Nos. 07–294; 06–121; 02–277; 04–228, MM Docket Nos. 01–235; 01–317; 00–244; FCC 07–217, adopted December 18, 2007, and released March 5, 2008. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs>). The complete text may be purchased from the Commission’s copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the FCC’s Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice)(202) 418–0432 (TTY).

#### **Summary of the Report and Order**

1. This Order was adopted to expand opportunities for participation in the

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

#### A. Definition of Eligible Entities

2. To define the group intended to receive the benefits of the measures adopted in the Order, the Commission uses the term "eligible entity," defined as an entity that would qualify as a small business consistent with Small Business Administration ("SBA") standards for its industry grouping, based on revenue. At present, the SBA defines as a small business a television broadcasting station that has no more than \$13 million in annual receipts and a radio broadcasting entity that has no more than \$6.5 million in annual receipts. To determine qualifications as a small business, the SBA considers the revenues of the parent corporation and affiliates of the parent corporation, not just the revenues of individual broadcast stations. In addition, in order to ensure that ultimate control rests in an eligible entity that satisfies the revenue criteria, the entity must satisfy one of several control tests. The eligible

entity must hold: (1) 30 percent or more of the stock/partnership shares and more than 50 percent voting power of the corporation or partnership that will hold the broadcast license; or (2) 15 percent or more of the stock/partnership shares and more than 50 percent voting power of the corporation or partnership that will hold the broadcast licenses, provided that no other person or entity owns or controls more than 25 percent of the outstanding stock or partnership interests; or (3) more than 50 percent of the voting power of the corporation if the corporation that holds the broadcast licenses is a publicly traded company. The Commission concludes that use of this definition of "eligible entity" will advance its objectives of promoting diversity of ownership in the broadcast industry by making it easier for small businesses and new entrants—that otherwise might find it difficult or impossible to compete—to acquire a license and attract the capital necessary to compete in the marketplace with larger and better financed companies. In addition, by facilitating entry into the broadcast industry by new entrants, the Commission hopes that these measures will result in a wider array of programming services, including some that are responsive to local needs and interests and audiences that are currently underserved. The Commission anticipates that small businesses will be more likely than large corporations to have ties to the communities that they seek to serve, and thus be more attuned to local needs and interests.

#### B. Actions To Expand Opportunities for Eligible Entities

3. *Revision of Rules Regarding Construction Permit Deadlines.* The Order revises § 73.3598 of the Commission's rules to afford eligible entities that acquire an expiring construction permit additional time to build out the facility. Specifically, the Commission allows eligible entities the time remaining on the original construction permit or 18 months, whichever is greater. Section 73.3598 requires that each construction permit for the construction of a new TV, AM, FM, international broadcast, low power TV, TV translator, TV booster, FM translator or FM booster station must specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and an application for license filed. Construction permits for new LPFM stations allow permittees 18 months to complete construction and file a license application. Generally, any construction permit for which construction has not

been completed, and for which an application for license has not been filed, is automatically forfeited upon expiration without any further affirmative cancellation by the Commission. The Commission believes that the extra time the Order provides to eligible entities acquiring an expiring construction permit will advance diversity of ownership, as broadcasters that otherwise would forfeit their construction permits would be motivated to sell them to eligible entities as an alternative. Moreover, it will serve as an appropriate accommodation of the capital constraints and other financial issues that small businesses often confront. The Commission believes that service to the public would be expedited by providing eligible entities up to 18 months additional time to complete construction of an expiring permit, rather than allowing the permit to expire and auctioning the allotment a second time.

4. *Modification of Attribution Rule.* The Order revises the Commission's equity/debt plus ("EDP") attribution standard to facilitate investment in eligible entities. The Commission's broadcast attribution rules define which financial or other interests in or relationships with a licensee are counted in applying the broadcast ownership rules. The rules "seek to identify those interests in or relationships to licensees that confer on their holders a degree of influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions." At the same time, the attribution rules are designed to "permit arrangements in which a particular ownership or positional interest involves minimal risk of influence, in order to avoid unduly restricting the means by which investment capital may be made available to the broadcast industry." With regard to corporate entities, the broadcast attribution rules generally attribute voting stock interests of five percent or more. Minority stock interests in a corporation with a single-majority shareholder, non-voting stock interests, warrants, debt, properly insulated limited partnership and LLC interests, and unexercised options are not attributable, unless the EDP rule is triggered.

5. The EDP rule is designed to resolve concerns that multiple non-attributable interests could be combined to allow the holders to exert significant influence over licensees such that these interests should be counted in applying the multiple ownership rules. Under the

EDP rule, where an investor is either (1) a major program supplier (providing programming constituting over 15 percent of a broadcast station's total weekly broadcast programming hours); or (2) a same-market media entity subject to the broadcast multiple ownership rules, its interest in a licensee or other media entity will be attributed if that interest, aggregating both debt and equity holdings, exceeds 33 percent of the total assets (equity plus debt) of the licensee or media entity. In other words, attribution results where the financial interest exceeds 33 percent and there is a triggering relationship, i.e., either the investor is a major program supplier or a same-market media entity subject to the broadcast multiple ownership rules. The EDP rule limits the single majority shareholder attribution exemption, as well as the exemptions from attribution applicable to non-voting stock, debt, and properly insulated interests in limited partnerships and LLCs. The EDP rule applies to all of the broadcast ownership rules.

6. Under the revision adopted in the Order, the Commission will allow the holder of an equity or debt interest in a media outlet subject to the media ownership rules to exceed the 33 percent threshold set forth in Note 2(i) to § 73.3555 of the rules without triggering attribution where such investment would enable an eligible entity to acquire a broadcast station, provided that: (1) The combined equity and debt of the interest holder in the eligible entity is less than 50 percent, or (2) the total debt of the interest holder in the eligible entity does not exceed 80 percent of the asset value of the station being acquired by the eligible entity and the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the eligible entity or any related entity. These higher investment limits in eligible entities also apply for purposes of determining eligibility for the new entrant bidding credit in broadcast auctions, as the standards for determining attribution in a winning bidder parallel the attribution standards in § 73.3555, Note 2, which the Commission revises in this Order.

7. The Commission finds sufficient evidence in the record to show that difficulty in accessing capital investment currently is inhibiting diversity of ownership of broadcast stations and new entry. Moreover, the Commission thinks it is reasonable to conclude that modification of the EDP rule could alleviate or, at the least, minimize this problem. The Commission believes that this

modification will further its goal of improving access to capital in order to foster diversity of ownership, new entry, and, ultimately, the provision of new programming and other services to the public. The Commission finds sufficient evidence in the record warrants a change in its policy. The Commission also believes that the changes it is making in the Order will retain regulatory certainty for entities in planning their financial transactions, an important goal of the attribution rules, which are designed as bright line tests. Finally, it believes that the public interest weighs in favor of allowing existing broadcasters to acquire a minority equity ownership interest in an eligible entity in order to provide the opportunity for such a new entrant to enter the broadcasting market.

8. *Distress Sale Policy.* The Commission's distress sale policy permits "a licensee whose license has been designated for revocation hearing, or whose renewal application has been designated for hearing on basic qualifications issues, to assign its license prior to commencement of the hearing to a minority controlled entity" at a price that is substantially below its fair market value. Under this policy, a licensee facing the possible loss of its license can sell the station in a "distress sale." The licensee faces a substantial financial penalty as a result of the "distress" sale but recoups a portion of the value of its station and avoids the revocation or renewal hearing. The Commission saves the time and expense of conducting a revocation or renewal hearing and subsequent appeals. Most important, the station is placed expeditiously in the hands of a qualified operator that might otherwise have few opportunities to acquire a station, and the public does not lose service from a local broadcast station. In the Order, the Commission decided to place the distress sale policy on a sound constitutional and administrative footing by allowing a licensee whose license has been designated for a revocation hearing or whose renewal application has been designated for a hearing on basic qualifications issues to sell its station prior to the commencement of the hearing to an "eligible entity," as defined in the Order. The Commission believes that this action will promote diversity of ownership in the broadcast industry by making it easier for small businesses and new entrants, including minority-owned businesses, to purchase stations. This, in turn, may result in a greater diversity of program services, including services that are responsive to local

needs and interests and the interests of underserved audiences. Similar to the Commission's new rule facilitating the transfer of expiring construction permits to eligible entities, the modified distress sale policy can expedite new service or facilitate the continuation of existing service to the public by avoiding lengthy revocation or renewal hearings and subsequent appeals, and it also conserves substantial private and Commission resources that would otherwise be devoted to such proceedings. The Commission believes this action will serve the public interest by aiding the swift delivery of new services to the public, and the conservation of public and private resources.

9. *Ban on Discrimination in Broadcast Transactions.* The Order adopts a rule that bars discrimination on the basis of race or gender and related protected categories in broadcast transactions. Specifically, the rule states that, "No qualified person or entity shall be discriminated against on the basis of race, color, religion, national origin or sex in the sale of commercially operated AM, FM, TV, Class A TV or international broadcast stations (as defined in this part)." Adoption of a nondiscrimination rule with respect to sales is consistent with the Commission's statutory mandate under 47 U.S.C. 257, which directs the Commission to identify and eliminate, through regulatory action, market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications and information services, in order to promote the policies and purposes of the Act favoring diversity of media voices, vigorous economic competition, technological advancement, and the promotion of the public interest, convenience and necessity. The new rule will also advance the statutory goal of fostering minority and female ownership in the provision of commercial spectrum-based services and will advance the Commission's public-interest mandate to foster viewpoint diversity by promoting the dissemination of licenses to a wide variety of applicants. The new rule will require sellers to certify compliance with this rule against discrimination by checking a box on Form 314 or 315 applications, which will be amended accordingly.

10. *"Zero Tolerance" Policy for Ownership Fraud.* The Commission adopts a "zero tolerance" policy for ownership fraud and reaffirms its principle that applicants' representations to the Commission must be complete and correct. A commenter

notes that ownership fraud occurs when real-parties-in-interest structure transactions so that the principals of the putative applicant entity have no real voice in practice. The commenter states that such fraud may be relatively common. Ownership fraud could impede the Commission's efforts to assess or increase media ownership diversity. The Commission recognizes that rules granting preferences to qualified applicants encourage applicants to qualify for the preference and that some potential applicants will try to claim the preference by creating an appearance of qualification that does not accord with reality. Because the risk of such fraud arises whenever some applicants can obtain a preference, the Commission concludes that adopting a "zero tolerance" policy will help deter and detect ownership fraud. Accordingly, the Order adopts a "zero-tolerance" policy for ownership fraud and states that the Commission should "fast-track" ownership-fraud claims and seek to resolve them within 90 days.

11. *Non-Discrimination Provisions in Advertising Sales Contracts.* The Commission adopts a proposal to require broadcasters renewing their licenses to certify that their advertising sales contracts contain nondiscrimination clauses that prohibit all forms of discrimination. The Commission adopts this requirement in light of reports that some advertising contracts contain "no urban/no Spanish dictates" that are intended to minimize the proportion of African American or Hispanic customers patronizing an advertiser's venue—or that presume that African Americans or Hispanics cannot be persuaded to buy an advertiser's product or service. The Order observes that such clauses may violate U.S. nondiscrimination laws. For over 20 years, the Commission has been aware of the insidious practices of certain advertisers, rep firms and advertising agencies of imposing written or unwritten "no urban/no Spanish" dictates. The Commission finds that discriminatory practices have no place in broadcasting and concludes that it is appropriate for the Commission to require broadcasters renewing their licenses to certify that their advertising contracts do not discriminate on the basis of race or gender and that such contracts contain nondiscrimination clauses. Broadcasters will be required to certify compliance with the new rule on their renewal applications prepared on Form 303-S. The Commission declined to dictate the specific language that advertising contracts can or should contain, given that serious First

Amendment concerns could arise were the Commission to do so.

12. *Longitudinal Research on Minority and Women Ownership Trends.* Commenters argue that the Commission should conduct annual longitudinal studies of minority and female ownership. The Order agrees with these concerns, and the Commission will commence such research once it has resolved the data-gathering issues raised in the Third Further Notice accompanying the Order. The Commission agrees that longitudinal studies could help the Commission track ownership trends over time and that such studies could help scholars and other interested parties assess the impact of rule changes on minority and female ownership. It agrees that this, in turn, could help provide real-time feedback on the impact of the Commission's rules and policies on access to capital, the availability of spectrum and opportunity to minority and female-owned entities, and the ability of such entities to serve the public. It also agrees that conducting such studies annually would help it build a more robust database that could better illuminate the optimal intervals for conducting future studies. Once the Commission has collected improved information on FCC Form 323, it will conduct longitudinal studies as suggested by the commenters.

13. *Local and Regional Bank Participation in SBA Guaranteed Loan Programs.* The Commission adopts a proposal to increase Commission efforts to encourage local and regional banks to participate in SBA-guaranteed loan programs to facilitate broadcast and telecommunications-related transactions. Through its Office of Communications Business Opportunities, the Commission will work closely with the SBA to educate and encourage more local and regional banks (which historically have not been heavily involved in broadcast and telecommunications lending) to make loans through the SBA's 7(a) or 504 programs. The Commission believes that by increasing outreach to local and regional banks and to the SBA, the Commission can better assist both local banks and SBA programs to facilitate such transactions and provide potential lenders with special expertise regarding transactions. Absent such efforts, uncertainty about asset valuation could cause local and regional banks to refuse to facilitate otherwise viable transactions. Because such outcomes could frustrate Commission efforts to promote ownership and viewpoint diversity, the Commission concludes that this action is appropriate.

14. *Duopoly Priority for Companies That Finance or Incubate an Eligible Entity.* The Order adopts a proposal to give any entity that is financing or incubating an "eligible entity" (as that term is defined in the Order) priority if it files for a duopoly simultaneously with non-eligible entities in a market that can only support one additional duopoly. Commenters argue that "when the local television ownership rules permit only one additional duopoly in a market, a 'race to the courthouse,' could determine which duopoly application is processed first." The Order agrees that one way to cure this problem is to create an incentive plan under which a company financing or incubating an eligible entity would be guaranteed a priority if it files for a duopoly simultaneously with other entities in a market that can support only one additional duopoly. This vested priority in a duopolization queue would reward the large broadcaster that had incubated or financed an eligible entity if it filed simultaneously for a duopoly with a non-incubating entity. Moreover, such a priority in the duopolization queue could have substantial value and therefore provide the added benefit of an incentive for eligible entity financing. The Commission agrees that in this situation, a general statement of policy that grants priority to entities funding or incubating eligible entities would promote ownership diversity.

15. *Extension of Divestiture Deadlines in Certain Mergers.* The Order adopts a proposal to consider requests to extend divestiture deadlines in mergers in which applicants have actively solicited bids for divested properties from eligible entities. The Commission has encouraged companies undertaking major transactions to assist small businesses, including those owned by minority and female entrepreneurs interested in purchasing divested properties. But such efforts may take time, and such entities may need additional time to secure funding to complete potential transactions. Consequently, while rigidly enforced divestiture deadlines might be intended to increase minority ownership and viewpoint diversity, they could sometimes have the perverse effect of disadvantaging potential minority owners. Because divestiture deadlines are intended to prevent undue concentration of media ownership, requests to extend these deadlines in order to facilitate acquisition of divested properties by small businesses could promote both diversity in media ownership and the objective that

divestiture seeks to achieve. Consequently, the Commission will adopt a policy of considering requests to extend divestiture deadlines when applicants have actively solicited bids for divested properties from eligible entities. The Order also adopts a proposal requiring that entities availing themselves of an extension must either sell a given property to an eligible entity within the extended deadline or have the property placed in an irrevocable trust for sale by an independent trustee to an eligible entity. This action is designed to prevent potential abuse of the extensions and ensure that the extensions will actually result in sales to eligible entities.

16. *Transfer of Grandfathered Radio Station Combinations to Non-Eligible Entities.* The Order adopts a proposal that the Commission permit the assignment or transfer of grandfathered radio station combinations intact to any buyer, not just an eligible entity as currently permitted, provided that such a buyer files an application to assign the excess stations to an eligible entity, or to an irrevocable divestiture trust for purposes of ultimate assignment to an eligible entity, within 12 months after consummation of the purchase of the grandfathered cluster. The Commission agrees with commenting parties that this proposal will promote small business investment in broadcasting by providing additional time and flexibility to raise the capital necessary to purchase the excess stations. In order to ensure that this proposal will not undermine the Commission's local radio ownership rule, the rules will require non-eligible entities seeking to acquire a grandfathered radio station group to file the divestiture trust agreement with its initial application to allow the Commission to evaluate the proposed trust at the outset.

17. *"Access to Capital" Conference.* The Order also adopts a proposal that the Commission convene an access-to-capital conference. This conference will focus on the investment banking and private equity communities, and the opportunities for small businesses, new entrants, and designated entities to acquire access to financing and thereby facilitate entry to ownership in the communications sector. Moreover, the Commission will seek to facilitate the creation of educational conferences whenever a significant ownership transaction is proposed to the Commission.

18. *Guidebook on Diversity.* The Commission adopts a proposal to create a guidebook on diversity that will focus on what companies can do to promote diversity in ownership and contracting

in order to provide the public with more information and guidance on this subject.

### C. Other Proposals

19. *Transfers of Grandfathered Station Combinations to SDBs.* The Commission declines to adopt a proposal to permit the licensee of a grandfathered station combination to sell the cluster intact to a socially disadvantaged business ("SDB"). In the 2002 Biennial Review Order, the Commission permitted the sale of grandfathered station combinations to "eligible entities," which were defined as entities that would qualify as a small business consistent with SBA standards for its industry grouping. The Order adopts the same definition for the class of entities that benefit initially from the actions taken in the Order. Should the Commission adopt a definition of SDB at the conclusion of the proceeding initiated by the Third Further Notice accompanying the Order, by operation of the existing rule such SDBs would be permitted to acquire grandfathered combinations.

20. *Structural Rule Waiver for Selling a Station to an SDB; Staged Implementation of Deregulation.* The Commission declines to adopt a "structural" waiver of its broadcast ownership rules, under which an applicant selling a station to an SDB would be permitted to complete a transaction that otherwise would be barred by an ownership rule. This proposal is linked to another, which urges the Commission, should it decide to relax its broadcast ownership rules, to implement such deregulation in stages, measuring its impact and adopting "mid-course corrections" as needed. A commenter suggests that the confluence of these two proposals would have the effect of permitting an applicant selling a station to an SDB to have its transaction evaluated under the more liberal ownership rules that would take effect later in the staged deregulation process. The Commission states that the short-term benefit of the waiver proposal—an immediate increase in the number of stations owned by SDBs—would likely be offset by the public interest harms resulting from the approval of station combinations that exceed the ownership rules. The Commission states that it has no current plans to implement the type of deregulation envisioned by proponents of a staged approach and finds the proposal to be premature.

21. *Structural Rule Waivers for Creating Incubator Programs.* The Commission declines to adopt a proposal that it waive its broadcast

ownership rules to allow an applicant to acquire stations in a market beyond the permissible limit if it establishes and implements an "incubator" program designed to promote ownership by disadvantaged businesses. While it appreciates the value that incentives-based programs such as this can have, the Commission is concerned that companies participating in such a program will expend only the barest minimum in financial and other support required to qualify for the waiver. Moreover, the Commission is concerned that, by allowing the incubating party to acquire stations in excess of local ownership caps, the proposal could create a significant potential for undermining its broadcast ownership restrictions.

22. *Opening FM Spectrum for New Entrants.* The Commission declines to take three steps to open FM spectrum for new entrants proposed by a commenter. First, it does not relax the current limit on the filing of contingent applications set forth in § 73.3517(e) of the rules, which provides that the Commission will accept up to four contingent applications filed by FM licensees or permittees for minor modification of facilities. Second, it does not repeal the third adjacent channel requirements found in § 73.215(a) of the rules. Finally, it does not relax its FM service and allotment rules and policies: (1) By replacing the community of license coverage requirement for commercial FM stations, set forth in § 73.315(a) of the rules, with the less stringent coverage requirement for noncommercial FM stations, set forth in § 73.515 of the rules; or (2) by authorizing stations to change their community of license to any community located within the same market, as defined by § 73.3555(a) of the rules.

23. In amending § 73.3517 of the rules to permit the filing of contingent applications, the Commission concludes that a limit of four struck the proper balance between the desire of broadcasters for additional flexibility in proposing coordinated changes and the limited staff resources that are available to review the substantially more complex facilities change applications that the revised rule permits. Commenters have not presented evidence sufficient to persuade the Commission to upset this balance. With respect to the second proposed step, the Commission notes that the third adjacent channel requirements are statutory. The Commission issued a report to Congress in 2004, based on the FCC-commissioned Mitre Study, advising that, because LPFM stations do

not pose a significant risk of causing interference to existing full service FM stations or FM translator and FM booster stations, Congress should eliminate the third adjacent channel protection requirement. The Commission states that it will continue to recommend such legislation. Finally, the Commission concludes that relaxing community of license coverage requirements for commercial FM stations and increasing the ability of radio stations to change their communities of license to any community within the same market will undermine its broadcast regulatory policy of enhancing localism. Such actions would result in the licensing of stations that technically cannot serve their communities of license, a result antithetical to the concept of localism. Furthermore, the Commission notes that it recently declined to abandon its policy against removing the sole local transmission service at a community in order to allow it to become the first local transmission service at another community. It also notes, however, that a commenter revised this last proposal in accordance with a recent recommendation of the federal advisory committee on diversity, and it seeks comment on this revised proposal in the Third Further Notice that accompanies the Order.

24. *Advocacy of Tax Deferral Legislation; Promotion of Minority Ownership in All General Media Rulemaking Proceedings.* The Commission believes it already satisfied a proposal that the Commission recommend to Congress that it reinstate the Commission's authority to adopt the former Tax Certificate Policy. That policy, originally adopted by the Commission in 1978, allowed a seller to defer capital gains taxes on the sale of a media property to a minority-controlled firm. The Commission recommended reinstatement of the necessary statutory authority in its recently adopted Section 257 Triennial Report to Congress. The Commission therefore declines to commit to further action in the Order.

25. The Commission also believes it has satisfied a proposal that the Commission consider, as part of all general media rulemaking proceedings (except for individual FM or TV allotment proceedings), how the proposed rules would impact minority ownership. The Commission's Office of Communications Business Opportunities currently provides outreach services to assist small businesses and new entrants into the communications industry and input on how proposed rules impact minority

ownership. The Commission therefore declines to commit to further action in the Order.

26. *Extension of the Community Reinvestment Act.* The Commission declines to adopt a proposal that it work with the Treasury Department to expand application of the Community Reinvestment Act ("CRA") credit to encourage institutions to place capital in minority-focused private equity funds. The Commission notes that the CRA already encourages debt financing to small broadcasters and, to the extent that the proposal advocates adding a race-based dimension to the CRA, it concludes that judicial precedent constrains the Commission from enacting it.

27. *Establish a "Fund of Funds."* The Commission declines to adopt at this time a proposal that it initiate discussions with the major pension funds to encourage the establishment of a special fund to place capital with minority-focused private equity funds. The Commission concludes that it lacks statutory authority to hold such discussions and, while it recognizes that eligible entities, as defined in the Order, have difficulty accessing capital, it has taken action that will help mitigate that difficulty and does not believe that the additional measures proposed are appropriate Commission functions.

28. *Relax Ownership Restrictions.* The Commission declines to adopt a proposal that it relax restrictions on foreign ownership to permit non-controlling foreign investment where such investment would help eliminate a barrier to access to capital for domestic, minority-owned broadcasters. Commenters do not explain why the Commission's concerns about foreign ownership of broadcast interests generally would not apply in this context. At a minimum, the Commission would be required to undertake a significant rulemaking proceeding to examine this issue in greater depth. The Commission is not convinced, on the basis of the record before it, that taking the extraordinary step of relaxing its foreign ownership rules would promote diversification among broadcast licensees, including women and minorities.

29. *Permit AM Stations To Use FM Translators.* The Commission concludes that it is not necessary to take action in the Order to permit AM stations to rebroadcast their signals on FM translator stations. It notes that it already has released a Notice of Proposed Rulemaking to seek comment on such a rule change and expects to issue an order resolving that proceeding soon.

30. *Repeal Radio Subcaps.* The Commission takes no action in the Order on a proposal that it repeal the subcaps on ownership of same-service (AM or FM) stations contained in the local radio ownership rule. It notes that it retains the subcaps as a component of the local radio ownership rule in its Report and Order in the 2006 Quadrennial Review proceeding.

## Report and Order

### *Final Paperwork Reduction Act of 1995 Analysis:*

31. This Order contains modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the modified information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. The Commission will publish a separate **Federal Register** Notice seeking those comments. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

## Final Regulatory Flexibility Analysis

32. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM) in MB Docket No. 02-277. The Commission sought written public comment on the proposals in the NPRM including comment on the IRFA. The Commission also prepared a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) and a Second Supplemental Initial Regulatory Flexibility Analysis (Second Supplemental IRFA) of the possible significant economic impact on small entities of the proposals in the *Further Notice of Proposed Rulemaking (Further Notice)* and the *Second Further Notice of Proposed Rulemaking (Second Further Notice)*, respectively. The Commission sought written public comment on the *Further Notice*, including comment on the Supplemental IRFA, and written public comment on the *Second Further Notice*, including comment on the Second Supplemental IRFA. This present Final

Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

*A. Need for, and Objectives of, the Report and Order and Order on Reconsideration (Order)*

33. The Order takes several steps to increase participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses, which historically have not been well-represented in the broadcasting industry. The Order sets forth the Commission's objectives, defines the entities that will benefit initially from the Commission's actions, and adopts a number of measures modifying certain Commission rules and policies to encourage ownership diversity and new entry in broadcasting.

*B. Legal Basis*

34. This Order is adopted pursuant to sections 1, 2(a), 4(i), 257, 303, and 307–310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 257, 303, and 307–310.

*C. Summary of Significant Issues Raised by Public Comments in Response to the IRFA and the Supplemental IRFA*

35. The Commission received no comments in direct response to the IRFA, the Supplemental IRFA, or the Second Supplemental IRFA. However, the Commission received comments that discuss issues of interest to small entities. These comments were taken into account during the Commission's decision-making process to adopt certain rule modifications to promote broadcast ownership among new entrants and small businesses, including minority- and women-owned businesses. These rule modifications are summarized in the section of this FRFA discussing the steps taken to minimize a significant impact on small entities, and the significant alternatives considered.

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

36. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental entity" under section 3 of the Small Business Act. In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern

is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

37. Television Broadcasting. In this context, the application of the statutory definition to television stations is of concern. The Small Business Administration defines a television broadcasting station that has no more than \$13 million in annual receipts as a small business. Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound." According to Commission staff review of the BIA Financial Network, Inc. Media Access Pro Television Database as of December 7, 2007, about 825 (66 percent) of the 1,250 commercial television stations in the United States have revenues of \$13 million or less. However, in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the ownership rules, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

38. An element of the definition of "small business" is that the entity not be dominant in its field of operation. The Commission is unable at this time and in this context to define or quantify the criteria that would establish whether a specific television station is dominant in its market of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any television stations from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

39. Radio Broadcasting. The Small Business Administration defines a radio broadcasting entity that has \$6.5 million or less in annual receipts as a small business. Business concerns included in this industry are those "primarily engaged in broadcasting aural programs by radio to the public." According to Commission staff review of the BIA Financial Network, Inc. Media Access Radio Analyzer Database as of December 7, 2007, about 10,500 (95 percent) of 11,050 commercial radio stations in the United States have revenues of \$6.5

million or less. We note, however, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the ownership rules, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

40. In this context, the application of the statutory definition to radio stations is of concern. An element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time and in this context to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any radio station from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

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



these entities are also likely to have revenues of less than \$13.0 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

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

43. International Broadcast Stations. Commission records show that there are approximately 24 international high frequency broadcast station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of international high frequency broadcast stations that would constitute small businesses under the SBA definition.

44. Daily Newspapers. The SBA has developed a small business size standard for the census category of Newspaper Publishers; that size standard is 500 or fewer employees. Census Bureau data for 2002 show that there were 5,159 firms in this category that operated for the entire year. Of this total, 5,065 firms had employment of 499 or fewer employees, and an additional 42 firms had employment of 500 to 999 employees. Therefore, we estimate that the majority of Newspaper Publishers are small entities that might be affected by our action.

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

45. Licensees engaged in the sale of a commercially operated AM, FM, TV, Class A TV, or international broadcast station will be required to certify on Form 314 or 315 that they did not discriminate on the basis of race, color, religion, national origin, or sex in the sale of their station. Broadcasters that are renewing their licenses will have to certify on Form 303-S that their advertising sales contracts do not contain discriminatory clauses.

46. The Commission revised its rules to afford eligible entities that acquire an

expiring construction permit additional time to build out the facility (either the time remaining on the original construction permit or 18 months, whichever is greater). To obtain this benefit, eligible entities will have to demonstrate that they meet the eligibility criteria. In addition, the Commission relaxed its equity/debt plus attribution standard for interest holders in eligible entities in order to encourage investment in smaller companies. For both these rule changes, there will be revisions to application forms or the forms' instructions.

#### *F. Steps Taken To Minimize Significant Impact on Small Entities and Significant Alternatives Considered*

47. 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, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

48. The Commission's intent in adopting the rule modifications in the Order was to expand broadcast ownership opportunities for new entrants and small businesses, including minority- and women-owned businesses. Therefore, it is anticipated that the adopted rule changes will benefit small businesses, not burden them. Although the Commission adopted numerous proposals to benefit small businesses, it declined to adopt certain other proposals after considering the various ramifications involved. The Order describes in detail the Commission's reasoning for each proposal adopted or declined.

49. To promote and expand media ownership diversity, the Commission: (1) Changed the construction permit deadlines to allow eligible entities that acquire expiring construction permits additional time to build out the facility; (2) revised the equity/debt plus attribution standard to facilitate investment in eligible entities; (3) modified the distress sale policy to allow certain licensees—those whose license has been designated for a revocation hearing or whose renewal application has been designated for a hearing on basic qualifications issues—to sell the station to an eligible entity

prior to the commencement of the hearing; (4) adopted an Equal Transactional Opportunity rule that bars race or gender discrimination in broadcast transactions; (5) adopted a "zero-tolerance" policy for ownership fraud and agreed to "fast-track" ownership-fraud claims; (6) required broadcasters renewing their licenses to certify that their advertising sales contracts do not discriminate on the basis of race or gender; (7) resolved to conduct annual longitudinal studies of minority and female ownership after the Commission improves its data gathering process; (8) encouraged local and regional banks to participate in SBA-guaranteed loan programs in order to facilitate broadcast and telecommunications-related transactions; (9) adopted modifications to give priority to any entity financing or incubating an eligible entity in certain duopoly situations; (10) permitted the consideration of requests to extend divestiture deadlines in mergers in which applicants have actively solicited bids for divested properties from eligible entities; (11) revised the exception to the prohibition on the assignment or transfer of grandfathered radio station combinations; (12) agreed to convene an access-to-capital conference; and (13) decided to create a guidebook on increasing diversity in the media and telecom industries.

#### **Congressional Review Act**

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

#### **Ordering Clauses**

51. Accordingly, *it is ordered*, that pursuant to the authority contained in sections 1, 2(a), 4(i), 257, 303(r), and 307–310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 257, 303(r), and 307–310, this *Report and Order is adopted*.

52. *It is further ordered*, that pursuant to the authority contained in sections 1, 2(a), 4(i), 257, 303(r), and 307–310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 257, 303(r), and 307–310, the Commission's rules *are hereby amended* as set forth in Appendix A.



53. *It is further ordered*, that the rule amendments adopted herein *will become effective* July 15, 2008. Changes to FCC Forms required as the result of the rule amendments adopted herein *will become effective* 30 days after the Commission publishes a notice in the **Federal Register** announcing approval by the Office of Management and Budget of the forms.

54. *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.

55. *It is further ordered*, that the Commission *shall send* a copy of this Report and Order and Third Further Notice of Proposed Rulemaking 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).

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

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

58. *It is further ordered*, that the Petition for Rulemaking of Entravision Holdings, LLC, RM–9567, *is granted in part*.

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

#### List of Subjects in 47 CFR Part 73

Radio, Television.

Federal Communications Commission.

Marlene H. Dortch,  
Secretary.

#### Final Rules

■ For the reasons discussed in the preamble, the Federal Communications

Commission amends 47 CFR part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

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

**Authority:** 47 U.S.C. 154, 303, 334, 336, and 339.

■ 2. Section 73.2090 is added to read as follows:

##### § 73.2090 Ban on discrimination in broadcast transactions.

No qualified person or entity shall be discriminated against on the basis of race, color, religion, national origin or sex in the sale of commercially operated AM, FM, TV, Class A TV or international broadcast stations (as defined in this part).

■ 3. Section 73.3555 is amended by revising paragraph i. to “Note 2”, § 73.3555 to read as follows:

##### § 73.3555 Multiple ownership.

\* \* \* \* \*

i. Notwithstanding paragraphs e. and f. of this note, the holder of an equity or debt interest or interests in a broadcast licensee, cable television system, daily newspaper, or other media outlet subject to the broadcast multiple ownership or cross-ownership rules (“interest holder”) shall have that interest attributed if:

1. Where the entity in which the interest is held is not an eligible entity, the equity (including all stockholdings, whether voting or nonvoting, common or preferred) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value, defined as the aggregate of all equity plus all debt, of that media outlet, or where the entity in which the interest is held is an eligible entity, the combined equity and debt of the interest holder in the eligible entity is less than 50 percent or the total debt of the interest holder in the eligible entity does not exceed 80 percent of the asset value of the station being acquired by the eligible entity and the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the eligible entity or any related entity; and

2. i. The interest holder also holds an interest in a broadcast licensee, cable television system, newspaper, or other media outlet operating in the same market that is subject to the broadcast multiple ownership or cross-ownership rules and is attributable under paragraphs of this note other than this paragraph i.; or

ii. The interest holder supplies over 15 percent of the total weekly broadcast

programming hours of the station in which the interest is held. For purposes of applying this paragraph, the term, “market,” will be defined as it is defined under the specific multiple or cross-ownership rule that is being applied, except that for television stations, the term “market,” will be defined by reference to the definition contained in the local television multiple ownership rule contained in paragraph (b) of this section.

iii. For purposes of paragraph i. 1. of this note, an “eligible entity” shall include any entity that qualifies as a small business under the Small Business Administration's size standards for its industry grouping, as set forth in 13 CFR 121 through 201, at the time the transaction is approved by the FCC, and holds.

A. 30 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet; or

B. 15 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet, provided that no other person or entity owns or controls more than 25 percent of the outstanding stock or partnership interests; or

C. More than 50 percent of the voting power of the corporation that will own the media outlet if such corporation is a publicly traded company.

■ 4. Section 73.3598 is amended by revising paragraph (a) to read as follows:

##### § 73.3598 Period of construction.

(a) Except as provided in the last two sentences of this paragraph, each original construction permit for the construction of a new TV, AM, FM or International Broadcast; low power TV; TV translator; TV booster; FM translator; or FM booster station, or to make changes in such existing stations, shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed. Except as provided in the last two sentences of this paragraph, each original construction permit for the construction of a new LPFM station shall specify a period of eighteen months from the date of issuance of the construction permit within which construction shall be completed and application for license filed. A LPFM permittee unable to complete construction within the time frame specified in the original construction permit may apply for an eighteen month extension upon a showing of good cause. The LPFM

permittee must file for an extension on or before the expiration of the construction deadline specified in the original construction permit. An eligible entity that acquires an issued and outstanding construction permit for a station in any of the services listed in this paragraph shall have the time remaining on the construction permit or eighteen months from the consummation of the assignment or transfer of control, whichever is longer, within which to complete construction and file an application for license. For purposes of the preceding sentence, an "eligible entity" shall include any entity that qualifies as a small business under the Small Business Administration's size standards for its industry grouping, as set forth in 13 CFR 121 through 201, at the time the transaction is approved by the FCC, and holds

(1) 30 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will hold the construction permit; or

(2) 15 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will hold the construction permit, provided that no other person or entity owns or controls more than 25 percent of the outstanding stock or partnership interests; or

(3) More than 50 percent of the voting power of the corporation that will hold the construction permit if such corporation is a publicly traded company.

\* \* \* \* \*

■ 5. Section 73.5008 is amended by revising paragraph (c) to read as follows:

**§ 73.5008 Definitions applicable for designated entity provisions.**

\* \* \* \* \*

(c) An attributable interest in a winning bidder or in a medium of mass communications shall be determined in accordance with § 73.3555 and Note 2. In addition, the attributable mass media interests, if any, held by an individual or entity with an equity and/or debt interest(s) in a winning bidder shall be attributed to that winning bidder for purposes of determining its eligibility for the new entrant bidding credit, if the equity (including all stockholdings, whether voting or nonvoting, common or preferred) and debt interest or interests, in the aggregate, exceed thirty-three (33) percent of the total asset value (defined as the aggregate of all equity plus all debt) of the winning bidder, or where the winning bidder is an eligible entity, the combined equity and debt of the interest holder in the winning

bidder is less than 50 percent or the total debt of the interest holder in the winning bidder does not exceed 80 percent of the asset value of the winning bidder and the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the winning bidder or any related entity. For purposes of the preceding sentence, an "eligible entity" shall include any entity that qualifies as a small business under the Small Business Administration's size standards for its industry grouping, as set forth in 13 CFR 121 through 201, at the time the transaction is approved by the FCC, and holds

(1) 30 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet; or

(2) 15 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet, provided that no other person or entity owns or controls more than 25 percent of the outstanding stock or partnership interests; or

(3) More than 50 percent of the voting power of the corporation that will own the media outlet if such corporation is a publicly traded company.

[FR Doc. E8-11039 Filed 5-15-08; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 565

[Docket No. NHTSA 2008-0022]

RIN 2127-AJ99

### Vehicle Identification Number Requirements; Correction

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).  
**ACTION:** Final rule; correction.

**SUMMARY:** NHTSA published in the *Federal Register* of April 30, 2008, a final rule making certain changes in the 17-character vehicle identification number (VIN) system so that the system will remain viable for at least another 30 years. The regulatory text of the final rule contained several typographical errors, which this document corrects. In addition, this document makes clear that all motor vehicles identified by their manufacturer as model year (MY) 2009 or earlier vehicles must comply

with the current Part 565 VIN requirements (which are set forth in subpart C of Part 565 of the final rule).

**DATES:** *Effective Date:* May 16, 2008.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may contact Mr. Kenneth O. Hardie, Office of Crash Avoidance Standards (NVS-120), NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (Telephone: 202-366-6987) (FAX: 202-366-7002).

For legal issues, you may contact Ms. Deirdre Fujita, Office of the Chief Counsel, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (Telephone: 202-366-2992) (FAX: 202-366-3820).

**SUPPLEMENTARY INFORMATION:** NHTSA published a final rule in the *Federal Register* of April 30, 2008, (73 FR 23367; NHTSA Docket 2008-0022) that made certain changes in the 17-character vehicle identification number (VIN) system so that there will be a sufficient number of unique manufacturer identifiers and VINs to use for at least another 30 years.<sup>1</sup> The regulatory text of the final rule contained several typographical errors which this document corrects. In addition, this document makes clear that all motor vehicles identified by their manufacturer as model year (MY) 2009 or earlier vehicles must comply with the current Part 565 VIN requirements (which are set forth in subpart C of Part 565 of the final rule).<sup>2</sup>

### Correction of Publication

■ In rule FR Doc. 08-1197 published on April 30, 2008, (73 FR 23367), make the following corrections.

■ 1. On page 23379, in the second column, § 565.2 is correctly revised to read as follows:

<sup>1</sup> The bulk of the changes in 49 CFR Part 565 applied to passenger cars and multipurpose passenger vehicles and trucks with a gross vehicle weight rating of 4536 kilograms (10,000 pounds) or less. There were relatively few changes to the regulation that impact the manufacturers of other vehicles. However, NHTSA urges all manufacturers to read the new regulation carefully to determine the specific changes that apply to them, such as the new requirement that the vehicle make now be communicated in and decipherable from the second section of the VIN as opposed to the first section of the VIN as previously required.

<sup>2</sup> In the *Federal Register* document at page 23376, middle column under the heading "Agency Analysis and Response" (which related to "14. Effective Date of the Rule") there is a discussion relating to the effective date that focuses on the letters "A" and "B" in the 10th VIN position. The entire thrust of that discussion was intended to make clear that the application of the new regulation begins with the 2010 model year. However, while the agency intended that the application of the old regulation was to end with the completion of the 2009 model year, this application was not clearly stated. This correction addresses the lack of clarity in establishing the end of the old regulation.