

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 98-98; FCC 98-324]

Call Sign Assignments for Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission modifies its practices and procedures regarding the assignment of call signs to radio and television broadcast stations. The document replaces the Commission's existing manual procedures with an on-line system for the electronic preparation and submission of requests for the reservation and authorization of new and modified call signs. Implementation of the on-line call sign system will enhance the speed and certitude of radio and television broadcast station call sign assignments, thereby providing better service to all broadcast licensees and permittees, and will also conserve Commission resources.

EFFECTIVE DATE: December 29, 1998.

FOR FURTHER INFORMATION CONTACT: James J. Brown or Jerianne Timmerman at (202) 418-1600.

SUPPLEMENTARY INFORMATION:

1. In this *Report and Order* adopted December 8, 1998, and released December 16, 1998, the Federal Communications Commission is modifying its practices and procedures regarding the assignment of call signs to radio and television broadcast stations. As proposed in the *Notice of Proposed Rulemaking* in this proceeding, 63 FR 38357 (July 16, 1998), this *Report and Order* replaces the Commission's existing manual procedures for assigning call signs with an on-line system for the electronic preparation and submission of requests for the reservation and authorization of new and modified call signs.

2. As described in detail in the *Report and Order*, implementation of the on-line call sign system will enhance the speed and certitude of radio and television broadcast station call sign assignments, thereby providing better service to all broadcast licensees and permittees, and will also conserve Commission resources. For these reasons, the *Report and Order* requires broadcast licensees and permittees to utilize the new on-line system in making call sign requests. However, as the Commission seeks to avoid any

disruption to broadcast licensees and permittees who may not have ready access to the Internet, the *Report and Order* allows applicants to request a waiver of the Commission's requirement to utilize the on-line system to request new or modified call signs for their stations.

3. The complete text of this *Report and Order* is available for inspection and copying during normal business hours in the Federal Communications Commission Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and it may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857-3800.

Final Regulatory Flexibility Act Analysis (FRFA)

Summary

4. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking (NPRM)* in this proceeding. The Commission sought written public comments on the proposals in the *NPRM*, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this *Report and Order* conforms to the RFA, as amended by the Contract With America Advancement Act of 1996.

Need for and Objectives of Action

5. This *Report and Order* adopts modified procedures regarding the assignment of call signs for radio and television broadcast stations. By replacing its existing manual procedures with a new on-line system for the electronic preparation and submission of requests for new and modified call signs, the Commission will enhance the speed and certitude of radio and television broadcast station call sign assignments, while at the same time conserving Commission resources.

Significant Issues Raised by Public in Response to Initial Analysis

6. No comments were received specifically in response to the IRFA contained in the *NPRM*. However, two commenters did address an issue relating to call signs for low power television (LPTV) stations, whose licensees are generally small businesses. One commenter opposed allowing LPTV permittees to reserve four-letter call signs, but another commenter opposed this position. The Commission concluded that there was no compelling

reason to prevent LPTV permittees from obtaining four-letter call signs via the new electronic system if they wish to replace their Commission-assigned five character alpha-numeric call signs.

Description and Estimate of the Number of Small Entities Involved

7. Definition of a "Small Business."

Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632. 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). 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 SBA 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.**"

8. In the IRFA we stated that we tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not particularly suitable for the purpose of determining the impact of the proposals in the *NPRM* on small television and radio stations. While we utilized the SBA's definition to determine the number of small businesses to which the revised call sign procedures would apply, we reserved the right to adopt a more suitable definition of "small business" as applied to radio and television broadcast stations. We received no comment in response to the IRFA on how to define radio and television broadcast "small businesses." Therefore, we will continue to utilize the SBA's definitions for the purposes of this FRFA.

9. *Issues in Applying the Definition of a "Small Business."* As discussed below, we could not precisely apply the foregoing definition of "small business" in developing our estimates of the number of small entities to which the amended call sign procedures will apply. Our estimates reflect our best judgments based on the data available to us.

10. 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 radio or television station is dominant in its field of operation. Accordingly, the following estimates of small businesses to which the new call sign rules and procedures will apply do not exclude any radio or television station from the definition of a small business on this basis and are therefore overinclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. As discussed further below, we could not fully apply this criterion, and our estimates of small businesses to which the amended call sign procedures may apply may be overinclusive to this extent.

11. With respect to applying the revenue cap, the SBA has defined "annual receipts" specifically in 13 CFR 121.104, and its calculations include an averaging process. We do not currently require submission of financial data from licensees that we could use in applying the SBA's definition of a small business. Thus, for purposes of estimating the number of small entities to which the rules apply, we are limited to considering the revenue data that are publicly available, and the revenue data on which we rely may not correspond completely with the SBA definition of annual receipts.

12. Under SBA criteria for determining annual receipts, if a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period for determining annual receipts, the annual receipts in determining size status include the receipts of both firms. 13 CFR 121.104(d)(1). The SBA defines affiliation in 13 CFR 121.103. In this context, the SBA's definition of affiliate is analogous to our attribution rules. Generally, under the SBA's definition, concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. 13 CFR 121.103(a)(1). The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. 13 CFR 121.103(a)(2). Instead of making an independent determination of whether television stations were affiliates based on SBA's definitions, we relied on the databases available to us to provide us with that information.

13. *Estimates Based on Census Data.* The amended call sign rules and

procedures will apply to television and LPTV broadcasting licensees and permittees and radio broadcasting licensees and permittees. The SBA defines a television broadcasting station that has no more than \$10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.

14. There were 1,509 television stations operating in the Nation in 1992. That number has remained fairly steady as indicated by the approximately 1,583 operating television broadcasting stations in the Nation as of August 1998. For 1992, the number of television stations that produced less than \$10.0 million in revenue was 1,155 establishments. Thus, the amended call sign procedures will affect some of the approximately 1,583 television stations; approximately 77%, or 1,219, of those stations are considered small businesses. The amended call sign procedures will also apply to LPTV stations that choose to apply for four letter call signs, and we believe that the vast majority of the existing 2088 LPTV stations are small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

15. The amended call sign rules and procedures will also affect radio stations. The SBA defines a radio broadcasting station that has no more than \$5 million in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations that primarily are engaged in radio broadcasting and that produce radio program materials are similarly included. However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number. The 1992 census indicates that 96 percent (5,861 of 6,127) of radio station establishments

produced less than \$5 million in revenue in 1992. Official Commission records indicate that 11,334 individual radio stations were operating in 1992. As of August 1998, official Commission records indicate that 12,365 radio stations were operating. We conclude that a similarly high percentage (96 percent) of current radio broadcasting licensees are small entities, some of which will be affected by the amended call sign procedures. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-radio affiliated companies.

Description of Projected Recording, Recordkeeping, and Other Compliance Requirements

16. The measures adopted in the *Report and Order* will reduce the burdens on broadcast station licensees and permittees applying for or requesting a change in their station call signs. Replacement of the current manual call sign assignment process with an entirely electronic system will reduce the overall administrative burden upon both broadcast licensees and the Commission. Given the expected benefits of the new electronic system, all broadcast licensees and permittees will be required to utilize the system to make call sign requests. We believe that utilization of the new on-line system will, among other things, increase the speed and certitude of the call sign assignment process, conserve Commission resources, and aid licensees and permittees by informing them of errors in their call sign requests before they are actually sent. The measures adopted in the *Report and Order* do not alter the Commission's current rules and policies regarding call signs (such as what constitutes a valid call sign), but modify the procedures by which call signs are assigned.

Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

17. This *Report and Order* implements the Mass Media Bureau's new on-line call sign reservation system. Given the expected benefits of the new electronic system for both broadcast station licensees and the Commission, we determined to require all broadcast licensees and permittees to utilize the system for reserving call signs. No comments were submitted opposing mandatory use of the electronic call sign system, and none contended that use of the system would impose a significant economic impact on small entities, although one

commenter supported a phase in period before use of the system would become mandatory. Given the significant inefficiencies, for both licensees and the Commission, associated with maintaining a manual call sign request system following the implementation of our new electronic system, we declined to adopt a phase in period for the new on-line system. However, as we seek to avoid any disruption to broadcast licensees and permittees (particularly small or rural broadcasters) who may not have ready access to the Internet, we will allow applicants to request a waiver of our requirement to utilize the on-line system to make call sign requests.

Report to Congress

18. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. See 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the SBA.

19. Authority for issuance of this *Report and Order* is contained in Sections 4(i), 4(j) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 303.

List of Subjects in 47 CFR parts 73 and 74

Radio broadcasting, Reporting and recordkeeping requirements, Television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Parts 73 and 74 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

2. Section 73.3550 is revised to read as follows:

§ 73.3550 Requests for new or modified call sign assignments.

(a) All requests for new or modified call sign assignments for radio and television broadcast stations shall be made via the FCC's on-line call sign reservation and authorization system accessible through the Internet's World Wide Web by specifying [http://](http://www.fcc.gov)

www.fcc.gov. Licensees and permittees may utilize this on-line system to determine the availability and licensing status of any call sign; to select an initial call sign for a new station; to change a station's currently assigned call sign; to modify an existing call sign by adding or deleting an "-FM" or "-TV" suffix; to exchange call signs with another licensee or permittee in the same service; or to reserve a different call sign for a station being transferred or assigned.

(b) No request for an initial call sign assignment will be accepted from a permittee for a new radio or full-service television station until the FCC has granted a construction permit. Each such permittee shall request the assignment of its station's initial call sign expeditiously following the grant of its construction permit. All initial construction permits for low power TV stations will be issued with a five-character low power TV call sign, in accordance with § 74.783(d) of this chapter.

(c) Following the filing of a transfer or assignment application, the proposed assignee/transferee may request a new call sign for the station whose license or construction permit is being transferred or assigned. No change in call sign assignment will be effective until such transfer or assignment application is granted by the FCC and notification of consummation of the transaction is received by the FCC.

(d) Where an application is granted by the FCC for transfer or assignment of the construction permit or license of a station whose existing call sign conforms to that of a commonly-owned station not part of the transaction, the new licensee of the transferred or assigned station shall expeditiously request a different call sign, unless consent to retain the conforming call sign has been obtained from the primary holder and from the licensee of any other station that may be using such conforming call sign.

(e) Call signs beginning with the letter "K" will not be assigned to stations located east of the Mississippi River, nor will call signs beginning with the letter "W" be assigned to stations located west of the Mississippi River.

(f) Only four-letter call signs (plus an LP suffix or FM or TV suffixes, if used) will be assigned. However, subject to the other provisions of this section, a call sign of a station may be conformed to a commonly owned station holding a three-letter call sign assignment (plus FM, TV or LP suffixes, if used).

(g) Subject to the foregoing limitations, applicants may request call signs of their choice if the combination

is available. Objections to the assignment of requested call signs will not be entertained at the FCC. However, this does not hamper any party from asserting such rights as it may have under private law in some other forum. Should it be determined by an appropriate forum that a station should not utilize a particular call sign, the initial assignment of a call sign will not serve as a bar to the making of a different assignment.

(h) Stations in different broadcast services (or operating jointly in the 535–1605 kHz band and in the 1605–1705 kHz band) which are under common control may request that their call signs be conformed by the assignment of the same basic call sign if that call sign is not being used by a non-commonly owned station. For the purposes of this paragraph, 50% or greater common ownership shall constitute a prima facie showing of common control.

(i) The provisions of this section shall not apply to International broadcast stations or to stations authorized under part 74 of this chapter (except as provided in § 74.783).

(j) A change in call sign assignment will be made effective on the date specified in the postcard acknowledging the assignment of the requested new call sign and authorizing the change. Unless the requested change in call sign assignment is subject to a pending transfer or assignment application, the requester is required to include in its on-line call sign request a specific effective date to take place within 45 days of the submission of its electronic call sign request. Postponement of the effective date will be granted only in response to a timely request and for only the most compelling reasons.

(k) Four-letter combinations commencing with "W" or "K" which are assigned as call signs to ships or to other radio services are not available for assignment to broadcast stations, with or without the "-FM" or "-TV" suffix.

(l) Users of nonlicensed, low-power devices operating under part 15 of this chapter may use whatever identification is currently desired, so long as propriety is observed and no confusion results with a station for which the FCC issues a license.

(m) Where a requested call sign, without the "-FM," "-TV" or "-LP" suffix, would conform to the call sign of any other non-commonly owned station(s) operating in a different service, an applicant utilizing the on-line reservation and authorization system will be required to certify that consent to use the secondary call sign has been obtained from the holder of the primary call sign.

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

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

Authority: 47 U.S.C. 154, 303, 307, and 554.

4. Section 74.783 is amended by revising paragraph (e) to read as follows:

§ 74.783 Station identification.

* * * * *

(e) Low power TV permittees or licensees may request that they be assigned four-letter call signs in lieu of the five-character alpha-numeric call signs described in paragraph (d) of this section. Parties requesting four-letter call signs are to follow the procedures delineated in § 73.3550 of this chapter. Such four-letter call signs shall begin with K or W; stations west of the Mississippi River will be assigned an initial letter K and stations east of the Mississippi River will be assigned an initial letter W. The four-letter call sign will be followed by the suffix “-LP.”

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[FR Doc. 98-34237 Filed 12-28-98; 8:45 am]

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1871

Administrative Revisions to the NASA FAR Supplement, MidRange Procurement Procedures

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule to conform NASA FAR Supplement MidRange Procurement Procedures with FAR 19.10 and 13.5.

DATES: This final rule is effective December 29, 1998.

ADDRESSES: Celeste Dalton, NASA Headquarters Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, (202) 358-1645.

SUPPLEMENTARY INFORMATION:

Background

NASA MidRange Procurement Procedures require that all acquisitions be reserved for small business concerns with specific exceptions noted. FAR

Subpart 19.10, Small Business Competitiveness Demonstration Program, requires acquisitions in four designated industry groups be conducted on an unrestricted basis as long as specific goals for small business are achieved. This rule will add acquisitions subject to FAR Subpart 19.10 to the list of MidRange exceptions. Also, FAR Subpart 13.5, Test Program for Certain Commercial Items, allows for use of simplified acquisition procedures for commercial item acquisition of \$5M or less. NASA MidRange Procurement Procedures require that commercial items acquired under FAR Subpart 13.5 be accomplished using MidRange Procedures. This precludes the use of additional flexibility provided for in FAR Part 13. This final rule will relax the MidRange requirement to permit use of MidRange Procurement Procedures for commercial item acquisitions conducted under FAR Subpart 13.5. Also, an editorial change is made to correct a FAR citation noted in section 1871.401-6.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) since the changes modify administrative procedures and do not impose any new requirements on offerors or contractors. The rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Part 1871

Government Procurement.

Tom Luedtke,

Acting Associate Administrator for Procurement.

Accordingly, 48 CFR Part 1871 is amended as follows:

1. The authority citation for 48 CFR Part 1871 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1)

PART 1871—MIDRANGE PROCUREMENT PROCEDURES

2. Section 1871.204 is revised to read as follows:

1871.204 Small business set-asides.

(a) Except as provided in paragraphs (b) through (f) of this section, each MidRange acquisition shall be reserved exclusively for small business concerns.

(b) The requirement for small business MidRange set-asides does not relieve the buying office of its

responsibility to procure from required sources of supply, such as Federal Prison Industries, Industries for the Blind and Other Severely Handicapped, and multiple award Federal Supply Schedule contracts.

(c) Procurements not conducted as small business set-asides and under less than full and open competition require a Justification for Other than Full and Open Competition pursuant to FAR Part 6.

(d) If the buying team procurement member determines there is no reasonable expectation of obtaining offers from two or more responsible small business concerns that will be competitive in terms of market price, quality, and delivery, the buying team need not proceed with the small business set-aside and may purchase on an unrestricted basis utilizing MidRange procedures. The buying team procurement member shall document the contract file with the reason for the unrestricted procurement.

(e) Acquisitions required to be conducted under Full and Open Competition by the Small Business Competitiveness Demonstration Program, FAR subpart 19.10, will not be set aside for small business.

(f) If the buying team proceeds with the small business MidRange set-aside and receives an offer from only one responsible small business concern at a reasonable price, the contracting officer will normally make an award to that concern. However, if the buying team does not receive a reasonable offer from a responsible small business concern, the buying team procurement member may cancel the small business set-aside and complete the procurement on an unrestricted basis utilizing MidRange procedures. The buying team procurement members shall document in the file the reason for the unrestricted purchase.

(g) Each model contract under a small business MidRange set-aside shall contain the clause at FAR 52.219-6, Notice of Total Small Business Set-Aside.

1871.401-6 [Amended]

3. In paragraph (a)(2) to section 1871.401-6, the word “shall” is revised to read “may” and the citation “FAR subpart 13.6” is revised to read “FAR subpart 13.5”.

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