

## DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR HAWAII—Continued

	Subpart	Hawaii
CC-EE FF .....	(Reserved). Benzene Waste Operations .....	X

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[FR Doc. 02-702 Filed 1-11-02; 8:45 am]

BILLING CODE 6560-50-P

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[DA 01-3021, MM Docket No. 01-349, RM-10350]

**Radio Broadcasting Services; Boscobel, WI****AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Starboard Broadcasting, Inc. proposing the allotment of Channel 244C3 at Boscobel, Wisconsin, as the community's first local transmission service. The coordinates for Channel 244C3 at Boscobel are 43-08-04 and 90-42-19. The channel can be allotted to Boscobel without a site restriction.

**DATES:** Comments must be filed on or before February 19, 2002, and reply comments on or before March 6, 2002.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Stephen Gajdosik, Vice President, Starboard Broadcasting, Inc., 2470 Crooks Avenue, Kaukauna, Wisconsin 54130.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 01-349, adopted December 19, 2001, and released December 28, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 202-863-2893,

facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

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

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 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 and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Boscobel, Channel 244C3.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 02-786 Filed 1-11-02; 8:45 am]

BILLING CODE 6712-01-P

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Parts 73 and 76**

[MM Docket Nos. 98-204, FCC 01-363]

**Revision of Broadcast and Cable EEO Rules and Policies****AGENCY:** Federal Communications Commission.**ACTION:** Proposed rules.

**SUMMARY:** This document proposes new broadcast and cable Equal Employment

Opportunity (EEO) rules and policies. The document proposes to retain the Commission's ban on discrimination and to require broadcasters and cable entities to maintain an EEO program that would achieve broad and inclusive outreach in recruitment to ensure a fair opportunity for all job seekers; and provide administrative relief to small entities. The intended effect is to invite comments on all aspects of the Commission's proposals.

**DATES:** Comments are due March 15, 2002 and reply comments are due April 15, 2002. Written comments by the public on the proposed information collections are due March 15, 2002. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before March 15, 2002.

**ADDRESSES:** Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington DC 20554. Comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to [jboley@fcc.gov](mailto:jboley@fcc.gov), and to Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to [edward.springer@omb.eop.gov](mailto:edward.springer@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** EEO Staff, Mass Media Bureau, (202) 418-1450. For additional information concerning the information collection(s), contact Judy Boley at 202-418-0214, or via the Internet at [jboley@fcc.gov](mailto:jboley@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Second Notice of Proposed Rule Making (Second NPRM) in MM Docket No. 98-204, FCC 01-363. This Second NPRM contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

## Synopsis of Second Notice of Proposed Rule Making

1. This Second NPRM adopts new broadcast and cable EEO rules and policies consistent with the decision of the Court in *MD/DC/DE Broadcasters Association v. FCC*, 236 F.3d 13, rehearing denied, 253 F.3d 732 (D.C. Cir. 2001), petition for cert. filed, *MMTC v. MD/DC/DE Broadcasters Association*, No. 01-639 (October 17, 2001) (Association), which held that the EEO program requirements of the Commission's broadcast EEO rule were, in part, unconstitutional and therefore vacated the entire rule because the Court found that portions of the rule that it did not find unconstitutional could not be severed from the unconstitutional portion. The broadcast EEO rule was adopted by the *Report and Order* in MM Docket Nos. 98-204 and 96-16, 15 FCC Rcd 2329 (2000) (*Report and Order*), recon. denied, 15 FCC Rcd 22548 (2000), 47 CFR 73.2080. The *Report and Order* also adopted EEO rules for cable entities.

2. The program initiatives of the EEO rule adopted by the Report and Order required that broadcasters widely disseminate information about job openings to ensure that all qualified applicants, including minorities and women, would be able to compete for jobs in the broadcast industry. The EEO rule did not specify the number or type of recruitment sources to be utilized in recruitment efforts. Rather, the rule afforded broadcasters two options from which they could choose, referred to as Option A and Option B.

3. Option A required broadcasters to comply with two supplemental recruitment measures, in addition to the general requirement to recruit for all vacancies so as to achieve broad outreach. First, they were required to provide notice of openings to recruitment organizations that requested such notice. Second, they were required to engage in a certain number of outreach efforts beyond the traditional recruitment that occurs in response to individual vacancies, such as job fairs, internship programs, training programs, mentoring programs, and interaction with educational and community groups. Broadcasters who chose Option A were required to retain records sufficient to document their recruitment efforts and to document that they performed the supplemental recruitment measures. In addition, in order to permit an assessment of their program, they were required to track the recruitment sources of their interviewees and hires.

4. Option B also included the general requirement to recruit for all vacancies but afforded broadcasters the opportunity to design their own program for achieving broad outreach without utilizing the supplemental recruitment measures specified under Option A. Broadcasters electing Option B were required to maintain records documenting their recruitment efforts. In order to permit a meaningful assessment of the success of the program in achieving broad outreach, broadcasters using Option B were required to track the recruitment source, racial/ethnic status, and gender of applicants.

5. The Court in *Association* found that Option B violated the constitutional requirement of equal protection because it created pressure on broadcasters to make greater efforts to recruit for minorities with the result that some nonminority prospective applicants would be deprived of notice. The Court did not find any constitutional infirmity with Option A. However, it concluded that it was unable to sever the invalid Option B from the EEO rule, leaving a rule based only on Option A. Nonetheless, the Court indicated that the Commission could conduct a renewed rulemaking. Thus, this Second NPRM develops EEO requirements for broadcasters and cable entities that are consistent with the Court's decision in *Association* by requesting comments on proposals that generally follow those previously adopted under the former Option A.

### Paperwork Reduction Act

This Second NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this Second NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on this Second NPRM; OMB notification of action is due March 15, 2002. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of

automated collection techniques or other forms of information technology.

OMB Control Number: 3060-XXXX.

Title: Second NPRM—Review of the Commission's Broadcast and Cable EEO Rules and Policies.

Form No.: None.

Type of Review: New collection.

Respondents: Business or other for-profit; not-for-profit institutions.

Number of Respondents: 251—16,425.

Estimated Time Per Response: 10 minutes—42.0 hours.

Total Annual Burden: 394—528,238.

Total Annual Costs: \$0—\$100,000.

Needs and Uses: This Second NPRM seeks comments on a new broadcast EEO rule and policy consistent with the decision in *Association* wherein the court found unconstitutional one of two options for achieving broad outreach. Adoption of any revised EEO rule or policy would likely require changes to the following information collections: 3060-0095 Annual Employment Report—Cable Television (FCC 395-A); 3060-0113 Broadcast EEO Program Report (FCC 396); 3060-0120 Broadcast EEO Model Program Report (FCC 396-A); 3060-0212 § 73.2080 EEO Program; 3060-0349 Cable EEO Requirements (§§ 76.73, 76.75, 73.79, 76.1702; 3060-0390 Broadcast Station Annual Employment Report (FCC 395-B); 3060-0574 MVPD Annual Employment Report (FCC 395-M); and 3060-0922 Broadcast Statement of Compliance (FCC 397). Any revisions to these collections would be subject to OMB review and approval at the final rule stage.

### Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Second NPRM. See 5 U.S.C. 603. [The RFA, see 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).] Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Second NPRM. The Commission will send a copy of the Second NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 603(a). In addition, the Second NPRM and IRFA (or summaries thereof) will be

published in the **Federal Register**. See *id.*

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

This Second NPRM requests comments concerning a new broadcast equal employment opportunity rule and policies consistent with the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *Association*. The Court therein found unconstitutional one of two options for achieving broad outreach provided by the broadcast EEO outreach requirements adopted in the *Report and Order*, 47 CFR 73.2080. The Court found the option invalid because nonminority job applicants were less likely to receive notification of job openings under that recruitment option. The Court further found that the other option provided by the EEO rule, although not invalid, could not be severed from the one unconstitutional option and therefore it vacated the entire rule. The outreach provisions adopted by the *Report and Order* were designed to ensure that all persons have the opportunity to participate in the broadcasting industry by requiring that broadcasters engage in broad and inclusive outreach in connection with their hiring efforts.

Because the Commission continues to believe in the importance of achieving broad and inclusive outreach and that this can be achieved in a manner consistent with the Court's decision, we are issuing this Second NPRM for the purpose of developing EEO rules to replace those found unlawful by the Court. In addition to considering a new broadcast EEO rule, we will also consider new rules applicable to cable entities, including multichannel video program distributors (MVPDs). Thus, in the *Report and Order*, we adopted EEO requirements applicable to cable entities which were generally the same as the requirements applicable to broadcasters, except where necessary to comply with statutory requirements applicable only to cable entities. The Court in *Association* did not address our requirements applicable to cable entities. However, it remains our belief that the EEO requirements for cable entities should, to the extent possible, conform to the requirements applicable to broadcasters. The Court in *Association* did not address those aspects of our broadcast and cable EEO rules that prohibit discrimination in hiring practices and we do not believe the Court intended to invalidate such requirements. The Second NPRM accordingly proposes to readopt our antidiscrimination requirements.

Hence, the Second NPRM seeks comment on proposed EEO rules and policies for broadcast and cable entities, including multichannel video programming distributors. The rules are designed to replace existing requirements that were found to be unconstitutional in part by the Court in *Association*, or are, in light of the Court's decision, constitutionally suspect in part. Specifically, we request comment on our proposal to retain the anti-discrimination prong of our EEO rules. In addition, we request comment on proposals to require broadcasters and cable entities to establish and maintain an EEO program that would emphasize recruitment outreach; discourage entities from preferring members of any racial, ethnic, or gender group in hiring or recruitment practices; and provide administrative relief to small entities that meet proposed qualifying factors.

*B. Legal Basis*

Authority for the actions proposed in this Second NPRM may be found in sections 1, 4(i), 4(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403, and 634 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403, and 554.

*C. Recording, Recordkeeping, and Other Compliance Requirements*

As noted, the purpose of this rule making is to replace our prior EEO rule that was found to be unconstitutional in part by eliminating that portion determined to be unconstitutional. Hence, this Second NPRM anticipates that any recording, recordkeeping and compliance requirements of the new rule will not exceed those provided for in the former rule.

Specifically, the Second NPRM proposes that some EEO materials be kept in the public inspection file, that all broadcasters and cable entities adhere to the EEO rules' general anti-discrimination provisions, and that broadcasters and cable entities widely disseminate information concerning job vacancies.

The Second NPRM also proposes that broadcasters and cable entities undertake two supplemental recruitment measures described herein. As proposed, the first supplemental recruitment measure would require broadcasters and cable entities to provide notification of full-time job vacancies to any requesting organization if the organization regularly distributes information about employment opportunities or refers job seekers to employers. Depending on the size of a station's staff, the second supplemental

recruitment measure would require broadcasters to engage in at least four (for station employment units with more than ten full-time employees) or two (for station employment units with five to ten full-time employees) of the following menu options every two years: participation in at least four job fairs by station personnel who have substantial responsibility in the making of hiring decisions; hosting of at least one job fair; co-sponsoring at least one job fair with organizations in the business and professional community whose membership includes substantial participation of women and minorities; participation in at least four events sponsored by organizations representing groups present in the community interested in broadcast employment issues (including conventions, career days, workshops, and similar activities); establishment of an internship program designed to assist members of the community to acquire skills needed for broadcast employment; participation in job banks, internet programs, and other programs designed to promote outreach generally; participation in scholarship programs designed to assist students interested in pursuing a career in broadcasting; establishment of training programs designed to enable station personnel to acquire skills that could qualify them for higher level positions; establishment of a mentoring program for station personnel; participation in at least four events or programs sponsored by educational institutions relating to career opportunities in broadcasting; sponsorship of at least two events in the community designed to inform and educate members of the public as to employment opportunities in broadcasting; listing of each upper-level category opening in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities; and participation in other activities designed by the station employment unit reasonably calculated to further the goal of disseminating information as to employment opportunities in broadcasting to job candidates who might otherwise be unaware of such opportunities. Cable employment units with more than ten full-time employees would engage in at least two options from the supplemental recruitment measures menu every year and cable employment units with six to ten full-time employees would engage in at least one option every year.

In addition, the Second NPRM proposes that broadcasters and cable entities retain records to demonstrate that they have recruited for all full-time

permanent positions. Under the proposal, such recordkeeping would include: listings of all full-time vacancies filled, listings of recruitment sources, the address/contact person/telephone number of each recruitment source, dated copies of advertisements and other documentation announcing vacancies, listings of those organizations which requested notification of vacancies, the total number of interviewees for each vacancy, the date of each hire, and proof of participation in menu options. The Second NPRM notes that our former rule required licensees and cable entities to keep track of the referral source of all interviewees and hires. The Second NPRM requests comments as to whether this information is necessary in order to validate that outreach is actually effective, or if other information should be required. The Second NPRM further proposes that broadcasters' records be maintained until grant of the renewal application for the term during which the hiring activity occurred. Cable entities would retain their records for a minimum of seven years.

The Second NPRM also proposes that stations and cable employment units place annually the following EEO records in their local public inspection file: listings of full-time vacancies filled, recruitment sources used for each vacancy during the preceding year, the address/contact person/telephone number of each recruitment source, an indication of the organizations requesting notification, the total number of persons interviewed for full-time vacancies during the preceding year, and a brief description of the menu option items undertaken during the preceding year. The Second NPRM asks if stations and cable employment units should track the recruitment source of all full-time hires and/or interviewees referred by each recruitment source for a vacancy. Such information would also be updated in the local public inspection file on an annual basis. Further, under the proposal, station units are to retain the materials in their file until final action has been taken on the station's next license renewal application, and cable entities are to retain their materials for a period of five years.

Further, the Second NPRM proposes that most broadcasters submit the contents of their station's EEO public inspection file to the FCC as part of their renewal application and midway through the license term for the Commission's mid-term review (for those subject to mid-term review), and that cable entities with six or more full-time employees submit copies of their

EEO public inspection file to the Commission every five years. However, broadcasters would limit their submissions to cover only the last 12 months of EEO activity.

Also, the Second NPRM proposes that broadcasters file a Broadcast Mid-Term Report (Form 397) and place a copy of the Report in the public inspection file. Broadcasters would also continue placing a copy of Form 396 (Broadcast EEO Program Report) in the public inspection file. However, broadcasters would no longer be required to place a copy of their station's Form 395-B (Broadcast Station Annual Employment Report) in the public file. Cable employment units would continue placing a copy of Forms 395-A (Cable Television Annual Employment Report) or 395-M (Multi-Channel Video Program Distributor Annual Employment Report) in their public file.

The Second NPRM proposes that all broadcasters and cable entities, with the exception of small entities, comply with these recordkeeping and recording requirements. The proposed exception for small businesses would provide them with some relief of any disparate recordkeeping and reporting costs.

#### *D. Description and Estimate of the Number of Small Entities to Which the Rules Would Apply*

##### 1. Definition of a "Small Business"

The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. 5 U.S.C. 603(b)(3). 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**." 5 U.S.C. 601(3). The new rules would apply to broadcast stations and cable entities, including MVPDs.

##### 2. Issues in Applying the Definition of a "Small Business"

We could not precisely apply the foregoing definition of "small business" in developing our estimates of the number of small entities to which the rules will apply. Our estimates reflect our best judgments based on the data available to us.

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 rules 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. We could not fully apply this criterion, and our estimates of small businesses to which the rules may apply may be overinclusive to this extent. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

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.

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 affiliated based on SBA's definitions, we relied on the databases available to us to provide us with that information.

### 3. Estimates Based on Census Data

The rules to be adopted pursuant to this Second NPRM will apply to television and radio stations. The SBA defines a television broadcasting station that has no more than \$10.5 million in annual receipts as a small business. 13 CFR 121.201, North American Industry Classification System (NAICS) code 513120. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995). Included in this industry are commercial, religious, educational, and other television stations. *Id.*; see Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987), at 283, which describes "Television Broadcasting Stations" (SIC code 4833, now NAICS code 51312) as: "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 here are establishments primarily engaged in television broadcasting and which produce taped television program materials." Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. 1992 Census, Series UC92-S-1, at Appendix A-9. Separate establishments primarily engaged in producing taped television program materials are classified under other NAICS numbers. *Id.*; formerly SIC code 7812 (Motion Picture and Video Tape Production) (NAICS code 512110); formerly SIC code 7922 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and

television programs) (NAICS codes 512110, 512191, 512290).

There were 1,509 full-service television stations operating in the nation in 1992. FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, Appendix A-9. That number has remained fairly constant as indicated by the approximately 1,686 operating full-service television broadcasting stations in the nation as of September 2001. FCC News Release, Broadcast Station Totals as of September 30, 2001 (released October 30, 2001). For 1992<sup>1</sup> the number of television stations that produced less than \$10.0 million in revenue was 1,155 establishments. (The amount of \$10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.) Thus, the proposed rules will affect approximately 1,686 television stations; approximately 77%, or 1,298 of those stations are considered small businesses. (We use the 77 percent figure of TV stations operating at less than \$10 million for 1992 and apply it to the 2001 total of 1,686 TV stations to arrive at stations categorized as 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. We recognize that the proposed rules may also affect minority and women owned stations, some of which may be small entities. In August 1998, minorities owned and controlled 32 (2.6%) of 1,209 commercial television stations in the United States. *Minority Commercial Broadcast Ownership in the United States*, U.S. Department of Commerce, National Telecommunications and Information Administration, The Minority Telecommunications Development Program (MTDP) (August 1998). (MTDP considers minority ownership as ownership of more than 50% of a broadcast corporation's stock, voting control in a broadcast partnership, or ownership of a broadcasting property as an individual proprietor. The minority groups included in this report are Black,

<sup>1</sup> Census for Communications' establishments are performed every five years ending with a "2" or "7". See Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, note 53, III.

Hispanic, Asian, and Native American.) According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and non-commercial television stations in the United States. See Comments of American Women in Radio and Television, Inc. in MM Docket No. 94-149 and MM Docket No. 91-140, at 4 n.4 (filed May 17, 1995), citing 1987 Economic Censuses, *Women-Owned Business*, WB87-1, U.S. Department of Commerce, Bureau of the Census, August 1990 (based on 1987 Census). After the 1987 Census report, the Census Bureau did not provide data by particular communications services (four-digit Standard Industrial Classification (SIC) Code), but rather by the general two-digit SIC Code for communications (#48). Consequently, since 1987, the U.S. Census Bureau has not updated data on ownership of broadcast facilities by women, nor does the FCC collect such data. However, the Commission recently amended its Annual Ownership Report Form 323 to require information on the gender and race of broadcast license owners in future filings. See *1998 Biennial Regulatory Review—Streamlining of Mass Media Applications, Rules and Processes, Report and Order*, MM Docket No. 98-43, 13 FCC Rcd 23,056 (1998).

The proposed rule changes would 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. 13 CFR 121.201, NAICS codes 513111 and 513112. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, Appendix A-9. Included in this industry are commercial, religious, educational, and other radio stations. *Id.* Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. *Id.* However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number. *Id.* 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. (The Census Bureau counts multiple radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.) Official Commission

records indicate that 11,334 individual radio stations were operating in 1992. FCC News Release No. 31327, Jan. 13, 1993. As of September 2001, official Commission records indicate that 13,012 radio stations are currently operating. FCC News Release, Broadcast Station Totals as of September 30, 2001 (released October 30, 2001).

The rule changes would also affect small cable entities, including MVPDs. SBA has developed a definition of a small entity for cable and other pay television services, which includes all such companies generating \$11 million or less in annual receipts. 13 CFR 121.201 (NAICS codes 513210 and 513220). This definition includes cable system operators, closed circuit television services, direct broadcast satellite services (DBS), multipoint distribution systems (MDS), local multipoint distribution service (LMDS), satellite master antenna systems, and subscription television services. According to the Bureau of the Census, there were 1,423 such cable and other pay television services generating less than \$11 million in revenue that were in operation for at least one year at the end of 1992. 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration). We discuss these services to provide a more succinct estimate of small entities.

*Cable Systems:* The Commission has developed, with SBA's approval, its own definition of small cable system operators. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. 47 CFR 67.901(3). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of \$100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 6393 (1995). Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable companies at the end of 1995. Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995). Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the rules proposed herein.

The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenue in the aggregate exceeds \$250,000,000." 47 U.S.C. 543(m)(2). The Commission has determined that there are 67,700,000 subscribers in the United States. *See FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice DA 01-158 (January 24, 2001). Therefore, we found that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate. 47 CFR 76.1403(b) (SIC 4833). Based on available data, we find that the number of cable operators serving 677,000 subscribers or less totals approximately 1,450. Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995). Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

*MDS:* MDS involves a variety of transmitters, which are used to relay programming to the home or office. For purposes of this item, MDS includes the single channel Multipoint Distribution Service (MDA) and the Multichannel Multipoint Distribution Service (MMDS). The Commission has defined "small entity" for purposes of the 1996 auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than \$40 million for the preceding three calendar years. 47 CFR 1.2110(a)(1). This definition of a small entity in the context of MDS auctions has been approved by the SBA. *See Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, MM Docket No. 94-131 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589 (1995). These stations were licensed prior to implementation of section 309(j) of the Communications Act of 1934, as

amended. 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for "other telecommunications" (annual receipts of \$11 million or less). *See* 13 CFR 121.201. Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas. *Id.* A BTA is the geographic area by which the MDS is licensed. *See* Rand McNally, *1992 Commercial Atlas and Marketing Guide*, 123rd Edition, pp. 36-39. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 met the definition of a small business. There are approximately 2,000 MDS/MMDS/LMDS stations currently licensed. We conclude that there are 1,595 MDS/MMDS/LMDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

*LMDS:* The auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. *See Local Multipoint Distribution Service, Second Report and Order*, 12 FCC Rcd 12545 (1997). An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. *Id.* These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA. *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from A. Alvarez, Administrator, SBA (January 6, 1998). There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission reaucted 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the reauction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

*DBS:* Because DBS provides subscription services, it falls within the SBA-recognized definition of "Cable

and Other Pay Television Services.” 13 CFR 121.201, NAICS codes 513210 and 513220. This definition provides that a small entity is one with \$11.0 million or less in annual receipts. *Id.* Currently, there are four DBS providers, though there are only two DBS companies in operation at this time. We neither request nor collect annual revenue information for DBS services, and are unable to determine the number of DBS operators that would be considered a small business under the SBA definition.

An alternative way to classify small entities is by the number of employees. Based on available data, we estimate that in 1997 the total number of full-service broadcast stations with four or fewer employees was 5186, of which 340 were television stations. We base these estimates on a compilation performed by the Equal Employment Opportunity Staff, Mass Media Bureau, FCC. Similarly, we estimate that in 1997, 1900 cable employment units employed fewer than six full-time employees. Also, in 1997, 296 MVPD employment units employed fewer than six full-time employees. We also estimate that in 1997, the total number of full-service broadcast stations with five to ten employees was 2145, of which 200 were television stations. Similarly, we estimate that in 1997, 322 cable employment units employed six to ten full-time employees. Also, in 1997, 65 MVPD employment units employed six to ten full-time employees.

#### *E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

The RFA requires an agency to describe any significant alternatives that it has considered in 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. 5 U.S.C. 603(c).

One of the alternatives that this Second NPRM proposes is that broadcasters with station employment units of five to ten full-time employees be provided some relief from EEO program requirements, and that station employment units of fewer than five full-time employees be exempt altogether, with the exception that all

broadcasters be subject to the nondiscrimination requirement and report any employment discrimination complaints filed against them. In addition, cable employment units, including MVPD employment units, employing six to ten full-time employees would be provided some relief from the proposed EEO program requirements, and cable employment units with fewer than six full-time employees would not be required to demonstrate compliance with the proposed EEO program requirements. We consider this alternative because entities with small staffs have limited personnel and financial resources to carry out EEO requirements. Furthermore, these proposed rules streamline and clarify recordkeeping requirements, thereby benefiting all entities, including those with fewer employees. It is our belief that the proposed alternative balances the importance of deterring discrimination and achieving broad outreach in broadcast and cable employment practices against the need to maintain minimal regulatory burdens and the ease and clarity of administration.

#### *F. Federal Rules That Overlap, Duplicate, or Conflict With the Proposed Rules*

The proposed rules do not overlap, duplicate or conflict with any other rules.

#### **List of Subjects**

##### *47 CFR Part 73*

Radio, Equal employment opportunity, Reporting and recordkeeping requirements, Television.

##### *47 CFR Part 76*

Cable television, Equal employment opportunity, Reporting and recordkeeping requirements.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 02-870 Filed 1-11-02; 8:45 am]

**BILLING CODE 6712-01-P**

## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Parts 95**

**[WT Docket No. 01-339; FCC 01-366]**

#### **Garmin International, Inc.**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this *Notice of Proposed Rule Making (NPRM)*, the FCC proposes

to amend Commission's rules to authorize Family Radio Service (FRS) units to transmit an additional emission type and to revise the permissible communications rule that applies to FRS units. These rule changes could allow a new and incidental use of the FRS, a short-range two-way voice communication service used by small groups of persons.

**DATES:** Written comments by the public on the proposed are due on or before February 13, 2002 and reply comments are due on or before February 28, 2002.

**ADDRESSES:** Federal Communications Commission, Office of the Secretary, Room TW-B204, 445 Twelfth Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** William Cross, Wireless Telecommunications Bureau, at (202) 418-0691.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's Notice of Proposed Rule Making, FCC 01-366, adopted on December 12, 2001 and released on December 20, 2001. The full text of this Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at [www.fcc.gov](http://www.fcc.gov). Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418-0260 or TTY (202) 418-2555.

1. This *NPRM* seeks comment on a proposal to amend §§ 95.193(a), 95.193(b), and 95.631(d) of the Commission's rules to authorize Family Radio Service (FRS) units to transmit an additional emission type and to revise the permissible communications rule that applies to FRS units. In its Petition, Garmin International, Inc. (Garmin) proposes to allow FRS units to transmit Global Positioning System (GPS) location information using emission type F2D in a digital data burst of not more than one second. Prior to the submission of the Petition, Garmin sought a waiver (Waiver Request) of §§ 95.193(a), 95.193(b), and 95.631(d) of the Commission's rules to allow it to manufacture and market inexpensive handheld FRS transceivers capable of transmitting GPS location information on FRS channels. The Public Safety and Private Wireless Division (Division) of the Wireless Telecommunications Bureau granted a one-year waiver of the