FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–1486; MB Docket No. 08–112; RM–11456]

Television Broadcasting Services; Longview, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by Estes Broadcasting, Inc. (''Estes''), the permittee of KCEB–DT, DTV channel 38, Longview, Texas. Estes requests the substitution of DTV channel 51 for channel 38 at Longview.

DATES: Comments must be filed on or before August 25, 2008, and reply comments on or before September 8, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Howard M. Weiss, Esq., Fletcher, Heald & Hildreth, PLC, 11th Floor, 1300 North 17th Street, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, *joyce.berstein@fcc.gov*, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–112, adopted July 15, 2008, and released July 17, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

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* contacts.

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

List of Subjects in 47 CFR Part 73

Television, Television 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, 336.

§ 73.202 [Amended]

2. Section 73.622(i), the DTV Table of Allotments under Texas, is amended by substituting channel 51 for channel 38 at Longview.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–16995 Filed 7–23–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MB Docket No. 08–90; FCC 08–155]

Sponsorship Identification Rules and Embedded Advertising

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on proposed rule changes to make sponsorship identification disclosures more obvious to consumers. The Commission specifically seeks comment on current trends in embedded advertising and potential changes to the current sponsorship identification regulations with regard to embedded advertising.

DATES: Comments for this proceeding are due on or before September 22, 2008; reply comments are due on or before October 22, 2008.

ADDRESSES: You may submit comments, identified by MB Docket No. 08–90, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: *http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact John Norton, *John.Norton@fcc.gov,* or Brendan Murray, *Brendan.Murray@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking (NPRM),* FCC 08–155, adopted on June 13, 2008, and released on June 26, 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/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) 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* or call the

Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Summary of the Notice of Inquiry and Notice of Proposed Rulemaking

I. Introduction

1. We solicit comment on the relationship between the Commission's sponsorship identification rules and increasing industry reliance on embedded advertising techniques. Due, in part, to recent technological changes that allow consumers to more readily bypass commercial content, content providers may be turning to more subtle and sophisticated means of incorporating commercial messages into traditional programming. As these techniques become increasingly prevalent, it is important that the sponsorship identification rules protect the public's right to know who is paying to air commercials or other program matter on broadcast television and radio and cable. Accordingly, we seek comment on current trends in embedded advertising and potential changes to the current sponsorship identification regulations with regard to embedded advertising.

II. Notice of Inquiry

2. Product placement is the practice of inserting ''branded products into programming in exchange for fees or other consideration.'' The Writers Guild and others have made a distinction between the mere use of products as props in television programming and the integration of the product into the plot of the story. Product placement is the placement of commercial products as props in television programming, whereas product integration integrates the product into the dialogue and/or plot of a program. The purpose of embedded advertising, such as product placement and product integration, is to draw on a program's credibility in order to promote a commercial product by weaving the product into the program. The use of embedded advertising is escalating as advertisers respond to a changing industry. Digital recording devices (DVRs) allow consumers to skip traditional commercials, giving rise to interest in other means of promoting products and services. In addition, concerns have been raised that the availability of more programming options may translate into lower audience retention during commercial breaks. The industry appears to be turning increasingly to embedded advertising techniques. PQ Media estimates that between 1999 and 2004, the amount of money spent on television product placement increased an average of 21.5 percent per year. For 2005, PQ Media estimates that the net value of the overall paid product placement market in the United States increased 48.7 percent to $1.50 billion. Product placements for primetime network programming, according to Nielsen's Product Placement Services, decreased in 2006, but the first quarter of 2007 shows an increase in product placements in Nielsen's Top 10 shows.

3. These trends are also reflected in the new types of advertising offered by certain networks and radio stations. The CW network, for example, offers ''content wraps,'' serialized stories within a group of commercials that include product integration, and ''cwikies,'' five second advertising slots interspersed in regular programming. Fox Sports Network claims a specialty in ''product immersion,'' the practice of ''immersing products into programs * * * so that they really feel like it is part of the show.'' NBC has instituted a policy of bringing in advertisers during programming development. In 2004, Universal Television Networks sold to OMD Worldwide the exclusive rights to product placement position in a miniseries. The goal of many of these new marketing techniques is to integrate products and services seamlessly into traditional programming.

4. The Commission's sponsorship identification rules are based on Sections 317 and 507 of the Communications Act of 1934, as amended (''Communications Act''), and are designed to protect the public's right to know the identity of the sponsor when consideration has been provided in exchange for airing programming. Section 317 generally requires broadcast licensees to make sponsorship identification announcements in any programming for which consideration has been received. Section 317(c) requires broadcasters to ''exercise reasonable diligence'' in obtaining sponsorship information from any person with whom the licensee ''deals directly.'' Section 507 of the Communications Act establishes a reporting scheme designed to ensure that broadcast licensees receive notice of consideration that may have been provided or promised in exchange for the inclusion of matter in a program regardless of where in the production chain the exchange takes place.

5. Sections 73.1212 and 76.1615 of the Commission's rules closely track the language of Section 317 of the Communications Act. The rules apply regardless of whether the program is primarily commercial or noncommercial and regardless of the duration of the programming. The rules do not require sponsorship identification, however, when both the identity of the sponsor and the fact of sponsorship of a commercial product or service is obvious. Thus, a sponsorship announcement would not be required when there is a clear connection between an obviously commercial product and sponsor. Furthermore, with the exception of sponsored political advertising and certain issue advertising, the Commission only requires that the announcement occur once during the programming and remain on the screen long enough to be read or heard by an average viewer. Other decisions are left to the ''reasonable, good faith judgment'' of the licensee. The Commission has issued numerous public notices over the years reminding industry participants of their sponsorship identification obligations. In the past, the Commission has specifically reminded the industry that such obligations extend to ''hidden'' commercials embedded in interview programs.

6. Providing ''special safeguards'' against the effects of overcommercialization on children, the Children's Television Act imposes time limitations on the amount of commercial matter in children's programming. The Commission also has several longstanding policies that are designed to protect children from confusion that may result from the intermixture of program and commercial material in children's television programming. The Commission requires broadcasters to use separations or ''bumpers'' between programming and commercials during children's programming to help children distinguish between advertisements and program content. The Commission also considers any children's programming associated with a product, in which commercials for that product are aired, to be a ''program-length commercial.'' Such program length commercials may exceed the Commission's time limits on commercial matter in children's programming and expose the station to enforcement action. The Commission has also stated that this program-length commercial policy applies to ''programs in which a product or service is advertised within the body of the program and not separated from program content as children's commercials are required to be.''

7. In a petition for rulemaking filed with the Commission in 2003, Commercial Alert argues that the Commission's sponsorship

identification rules are inadequate to address embedded advertising techniques, and thus, these rules fail to fulfill the Commission's mandate under Section 317 of the Communications Act. For example, Commercial Alert asserts that ''[t]here was a statement at the end of a segment featuring the product placement that [the television program] 'Big Brother 4 is sponsored by McDonald's.' But there was not a hint that embedded plugs within the show were in fact paid ads.'' Commercial Alert requests revision to these rules to require disclosure of product placement and integration in entertainment programming at the beginnings of programs in clear and conspicuous language. Commercial Alert also requests that disclosure be made concurrently with any product placement and/or integration, asserting that requiring disclosure only at the beginning or the end of the program disadvantages viewers who might miss the announcement.

8. In opposition, the Washington Legal Foundation (WLF) and Freedom to Advertise Coalition (FAC) both argue that embedded advertising techniques are a longstanding fixture of broadcast advertising that cause no substantial harm to consumers, that the Commission's existing sponsorship identification rules are adequate to regulate them, and that a concurrent disclosure requirement would violate the First Amendment. WLF argues that the proposed concurrent disclosure would so greatly interfere with programming that it would be paramount to a governmental ban on product placement. By interfering with both the ''commercial and dramatic reality of television production,'' asserts WLF, a concurrent disclosure requirement would be unconstitutionally overbroad. Similarly, FAC argues that a concurrent disclosure requirement would so greatly interfere with the ''artistic integrity'' of a program that it would ''censor or ban this long standing means of commercial speech.'' FAC also asserts that a concurrent disclosure requirement lacks a ''strong enough governmental interest'' to justify the infringement on commercial speech. Accordingly, applying the four-part test developed by the U.S. Supreme Court in *Central Hudson Gas and Electric Corp.* v. *Public Service Commission*, 447 U.S. 557, (1980), FAC asserts that any concurrent disclosure requirement would fail to meet the intermediate standard of review developed for lawful, non-deceptive commercial speech.

9. Two years after the filing of the Commercial Alert Petition, the Writer's Guild of America, West; the Writer's Guild of America, East; the Screen Actors Guild; and the associate dean of the U.S.C. Annenberg School for Communication formulated another set of recommendations, including: (1) Visual and aural disclosure of product integration at the beginning of each program; (2) strict limits on product integration in children's programming; (3) input by storytellers, actors, and directors, arrived at through collective bargaining, about how a product or brand is to be integrated into content; and (4) extension of all regulation of product integration to cable television. Alternatively, these groups requested the creation of an industry code on embedded advertising. More recently, in 2007, Philip Rosenthal testified on behalf of the Writers Guild of America, West and the Screen Actors Guild before the Subcommittee on Telecommunications and the Internet of the House Committee on Energy and Commerce regarding the need for greater disclosure requirements because of product placement and product integration. In addition, in 2007, Patric Verrone testified on behalf of the Writers Guild of America, West, during the Federal Communications Commission's Public Hearing on Media Ownership in Chicago, Illinois regarding the need for greater disclosure requirements for product integration.

III. Discussion

10. We undertake this proceeding in order to consider the complex questions involved with the practice of embedded advertising, and to examine ways the Commission can advance the statutory goal entrusted to us of ensuring that that the public is informed of the sources of program sponsorship while concurrently balancing the First Amendment and artistic rights of programmers. We seek comment on current trends in embedded advertising and the efficacy of the Commission's existing sponsorship identification rules in protecting the public's right to be informed in light of these trends. More specifically, we seek comment on whether and how Sections 73.1212 and 76.1615 of the Commission's rules should be amended in order to fulfill the purposes of Sections 317 and 507 of the Communications Act.

11. We seek comment on the application of the sponsorship identification regulations to various embedded advertising techniques. As noted above, the Commission in 1960 issued a public notice stating that sponsorship identification requirements applied to ''hidden'' commercials embedded in interview programs.[1] How often are these embedded advertising practices occurring and in what form? Are the existing rules effective in ensuring that the public is made aware of product placement and product integration in entertainment programming? Are persons involved in the production or preparation of program matter intended for broadcast fulfilling their obligations under Section 507? Are broadcasters and cable operators fulfilling their reasonable diligence obligations under Section 317(c) and the Commission's rules? Does embedded advertising fit within the exception to disclosure requirements that applies where the commercial nature and identity of the sponsor is obvious? [2]

12. We also seek comment on whether modifications to the sponsorship identification rules are warranted to address new developments in the use of embedded advertising techniques. Are the concurrent disclosures requested by Commercial Alert necessary to ensure that the public is aware of sponsored messages that are integrated into entertainment programming? [3] Would concurrent disclosures be more or less disruptive to radio programming? Are other rule modifications warranted? Should we require disclosures before or after, or before and after, a program containing integrated sponsored material? [4] Should we require disclosure during a program when sponsored products and/or services are being displayed? Should we require both visual and aural disclosure for televised announcements? [5] Should these disclosures contain language specifying that the content paid for is an ''advertisement'' or other specific

[1] *See Inquiry Into Hidden Commercials In Recorded ''Interview'' Programs,* Public Notice, 40 F.C.C. 81 (1960). In its petition, Commercial Alert stresses that more recently, several pharmaceutical companies have used paid spokespersons to promote certain drugs, ''often without disclosing that they were paid by pharmaceutical companies, or had other financial ties to them.'' *See* Commercial Alert Petition at 5.

[2] *See* 47 CFR 73.1212(f).

[3] *See* Commercial Alert Petition at 4.

[4] *Id.*

[5] *See Writers Guild White Paper* at 8. We note that in a 1991 Report and Order, the Commission adopted a rule requiring both audio and video sponsorship identification for television political advertisements. *In the matter of Codification of the Commission's Political Programming Policies,* 7 FCC Rcd 678 (1991). However, as part of the same proceeding, in response to petitions for reconsideration addressing these requirements, the Commission subsequently eliminated the audio identification (agreeing with petitioners that this requirement was unduly burdensome to candidates, particularly for short spot announcements) and set forth the specific standards for video sponsorship identification currently in effect. 7 FCC Rcd 1616 (1992).

terms?[6] Should we require that radio disclosures be of a certain duration or of a certain volume?

13. We further seek comment on the First Amendment implications of possible modifications to the sponsorship identification rules to address more effectively embedded advertising techniques. In particular, we invite comment on the arguments raised by WLF and FAC in response to Commercial Alert's petition. Would the imposition of concurrent disclosure requirements or other regulations infringe on the artistic integrity of entertainment programming, as WLF argues? Would such a regulation be paramount to a ban on embedded advertising, as asserted by WLF and FAC? Does the apparently common existing practice of superimposing unrelated promotional material at the bottom of the screen during a running program belie WLF's and FAC's contention that concurrent identification would effectively preclude product integration as a form of commercial speech because it would ''infringe on artistic integrity''? Are the government interests at stake here substantial enough to justify any such requirements? How can the Commission ensure that any modified regulations are no more extensive than necessary to serve these interests?

14. We also seek comment on whether Section 317 disclosure requirements should apply to feature films containing embedded advertising when re-broadcast by a licensee or provided by a cable operator. We note that in its prior Order, the Commission granted a Section 317 waiver for feature films.[7] We found that there was a lack of evidence of sponsorship within films and observed that there was a lag time between production of feature films and their exhibition on television. In the 1963 Order, the Commission found no public interest considerations which would dictate immediate application of Section 317 to feature films re-broadcast on television. At present, the Commission's rules continue to waive the sponsorship identification requirements for feature films ''produced initially and primarily for theatre exhibition.''[8] We seek comment on the use of embedded advertising in feature films today, and whether the Commission should revisit the decision to waive Section 317 disclosure requirements.

IV. Notice of Proposed Rulemaking

15. With the exception of sponsored political advertising and certain issue advertising, the Commission only requires that the announcement occur once during the programming and remain on the screen long enough to be read or heard by an average viewer. The sponsorship identification announcement must state ''paid for,'' ''sponsored by,'' or ''furnished by'' and by whom the consideration was supplied. In this *Notice of Proposed Rulemaking,* we seek comment on a proposed rule change to make the current disclosure requirement more obvious to the consumer by requiring that sponsorship identification announcements (1) have lettering of a particular size and (2) air for a particular amount of time. Currently, the sponsoring announcement for any television political advertising concerning candidates for public office must have lettering equal to or greater than four percent of the vertical picture height and air for not less than four seconds. Also, any political broadcast matter or broadcast matter involving the discussion of a controversial issue of public importance longer than five minutes ''for which any film, record, transcription, talent, script, or other material or service of any kind is furnished * * * to a station as inducement for the broadcasting of such matter'' requires a sponsorship identification announcement both at the beginning and the conclusion of the broadcast programming containing the announcement. We seek comment on whether the Commission should apply similar standards to all sponsorship identification announcements and, if so, we seek comment on the size of lettering for these announcements and the amount of time they should air. We seek suggestions on any other requirements for these announcements.

16. We also invite comment on whether the Commission's existing rules and policies governing commercials in children's programming adequately vindicate the policy goals underlying the Children's Television Act and Sections 317 and 507 with respect to embedded advertising in children's programming. If commenters believe that these rules and policies do not do so, we invite comment on what additional steps the Commission should take to regulate embedded advertising in programming directed to children. For example, we note that embedded advertising in children's programming would run afoul of our separation policy because there would be no bumper between programming content and advertising. Should that prohibition be made explicit in our rules?

17. The Writers Guild of America asks that we extend regulation of product integration to cable television. Section 76.1615 of the Commission's rules applies to origination cablecasting by a cable operator, which is defined as ''programming (exclusive of broadcast signals) carried on a cable television system over one or more channels and subject to the exclusive control of the cable operator.'' Should the Commission take additional steps with respect to sponsorship identification announcements required of cable programmers?

18. We also invite comment on issues raised by radio hosts' personal, on-air endorsements of products or services that they may have been provided at little or no cost to them. In such circumstances, should we presume that an ''exchange'' of consideration for on-air mentions of the product or service has occurred, thus triggering the obligation to provide a sponsorship announcement? Should we do so in all such circumstances or should we limit this presumption to situations where other factors enhance the likelihood that an exchange of consideration for air time has taken place. In addition, we invite comment on the scope of the ''obviousness'' exception to the sponsorship announcement requirement. Does that exception apply to endorsements or favorable commentary by a radio host that are integrated into broadcast programming, *i.e.*, made to sound like they are part of a radio host's on-air banter rather than an advertisement?

V. Administrative Matters

19. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this *Notice of Inquiry and Notice of Proposed Rulemaking.* Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *Notice Inquiry and Notice of Proposed Rulemaking,* and they should have a separate and distinct heading designating them as responses to the IRFA.

20. *Paperwork Reduction Act Analysis.* This *Notice Inquiry and Notice of Proposed Rulemaking* contains potential revised information collection

[6] *See* Commercial Alert Petition at 4.

[7] *In the Matter of Amendment of Sections 3.119, 3.289, 3.654 and 3.789 of the Commission's Rules,* Report and Order, 34 F.C.C. 829, 841 (1963).

[8] *See* 47 CFR 73.1212(h).

requirements. If the Commission adopts any revised information collection requirements, the Commission will publish a notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, 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.''

21. *Ex Parte Rules.* This proceeding will be treated as a ''permit-but-disclose'' proceeding subject to the ''permit-but-disclose'' requirements under section 1.1206(b) of the Commission's rules. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one-or two-sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

22. *Comment Information.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, *interested* parties may file comments September 22, 2008; reply comments are due on or before October 22, 2008. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

• Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.

• For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

• Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Comments, reply comments, and *ex parte* submissions will be available for public inspection 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. Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.

23. *Additional Information.* For additional information on this proceeding, contact John Norton, *John.Norton@fcc.gov,* or Brendan Murray, *Brendan.Murray@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120.

Initial Regulatory Flexibility Analysis

24. As required by the Regulatory Flexibility Act of 1980, as amended (the ''RFA''), the Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact of the policies and rules proposed in the *Notice Inquiry and Notice of Proposed Rulemaking* on a substantial number of small entities. 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 *Notice Inquiry and Notice of Proposed Rulemaking.* The Commission will send a copy of the *Notice Inquiry and Notice of Proposed Rulemaking,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA''). In addition, the *Notice Inquiry and Notice of Proposed Rulemaking* and IRFA (or summaries thereof) will be published in the **Federal Register**.

25. *Need for, and Objectives of, the Proposed Rules.* Our goal in commencing this proceeding is to seek comment on current trends in embedded advertising and potential changes to the current sponsorship identification regulations with regard to embedded advertising. Given the increased prevalence of embedded advertising techniques, it is important that sponsorship identification rules protect the public's right to know who is paying to air commercials or other program matter on broadcast television and radio and cable.

26. In this *Notice Inquiry and Notice of Proposed Rulemaking,* we seek comment on a proposed rule change to make the current disclosure requirement more obvious to the consumer by requiring that sponsorship identification announcements (1) have lettering of a particular size and (2) air for a particular amount of time, and seek suggestions for any other requirements for these announcements. We also invite comment on whether the Commission's existing rules and policies governing commercials in children's programming adequately vindicate the policy goals underlying the Children's Television Act and Sections 317 and 507 with respect to embedded advertising in children's programming. We also ask whether we should take additional steps with respect to sponsorship identification announcements required of cable programmers. In addition, we

invite comment on issues raised by radio hosts' personal, on-air endorsements of products or services that they may have been provided at little or no cost to them: should we presume that an ''exchange'' of consideration for on-air mentions of the product or service has occurred, thus triggering the obligation to provide a sponsorship announcement; and does the ''obviousness'' exception to the sponsorship announcement requirement apply to endorsements or favorable commentary by a radio host that are integrated into broadcast programming, *i.e.*, made to sound like they are part of a radio host's on-air banter rather than an advertisement?

27. *Legal Basis.* The authority for the action proposed in this rulemaking is contained in Sections 4(i) & (j), 303(r), 317, 403, and 507 of the Communications Act of 1934 as amended, 47 U.S.C. 154(i) & (j), 303(r), 303a, 317, 403, and 508.

28. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* 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 generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 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 Small Business Administration (''SBA'').

29. *Television Broadcasting.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.'' The SBA has created a small business size standard for Television Broadcasting entities, which is: such firms having $13 million or less in annual receipts. The Commission has estimated the number of licensed commercial television stations to be 1,379. In addition, according to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database (BIA) on March 30, 2007, about 986 of an estimated 1,374 commercial television stations (or approximately 72 percent) had revenues of $13 million or less. We therefore estimate that the majority of commercial television broadcasters are small entities.

30. We note, however, that in assessing whether a business concern 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 our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

31. In addition, the Commission has estimated that number of licensed noncommercial educational (NCE) television stations to be 380. These stations are non-profit, and therefore considered small entities. In addition, there are also 2,295 low power television stations (LPTV). Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

32. *Cable Television Distribution Services.* Since 2007, these services have been newly defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed an associated small business size standard for this category, and that is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these cable firms can be considered to be small.

33. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

34. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined 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 its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

35. *Radio Stations.* The proposed rules and policies potentially will apply to all AM and commercial FM radio broadcasting licensees and potential licensees. The SBA defines a radio broadcasting station that has $6.5 million or less 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 which primarily are engaged in radio broadcasting and which 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 NAICS number. According to Commission staff review of BIA Publications, Inc. Master Access Radio Analyzer Database on March 31, 2005, about 10,840 (95%) of 11,410 commercial radio stations have revenue of $6.5 million or less. We note, however, that many radio stations are affiliated with much larger corporations having much higher revenue. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action.

36. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* The *Notice Inquiry and Notice of Proposed Rulemaking* does not propose any additional recordkeeping requirements but these types of requirements may be suggested by commenters. Some of the proposed rules do require additional on-air reporting to the public of sponsorship identification, which could result in more sponsorship identification announcement requirements for stations/cable systems to monitor and for producers to insert into their programming.

37. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives, specifically small business 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 and reporting requirements under the rule for such 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 such small entities.''

38. The proposals in the *Notice Inquiry and Notice of Proposed Rulemaking* would apply equally to large and small entities and we have no evidence that the burden of any of our proposals is significantly greater for small entities. As noted, some of the proposed rules do require additional on-air reporting to the public of sponsorship identification, which could result in more sponsorship identification announcement requirements for stations/cable systems to monitor and for producers to insert into their programming. We anticipate that some portion of the cost of compliance with the proposals will fall on producers of programming, which are indirectly affected. However, we acknowledge that some portion of the cost may fall on stations themselves. Accordingly, we welcome comment on modifications of the proposals if such modifications might assist small entities and especially if such comments are based on evidence of potential economic differential impact of the regulations on small entities that might have to absorb some of the cost of compliance.

39. *Federal Rules that May Duplicate, overlap, or Conflict with the Commission's Proposals.* None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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