

of the Small Business Administration, and will be published in the **Federal Register**.

### C. Congressional Review Act

12. The Commission will send a copy of the Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

### List of Subjects

#### 47 CFR Part 36

Reporting and recordkeeping requirements, Telecommunications, Telephone.

#### 47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

**Marlene H. Dortch**,  
Secretary.

### Rule Changes

- For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 36 and 54 as follows:

### **PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES**

- 1. The authority citation continues to read as follows:

**Authority:** 47 U.S.C. 151, 154(i), 154(j), 205, 221(c), 254, 403, and 410 unless otherwise noted.

- 2. Section 36.125 is amended by revising paragraph (j) to read as follows:

#### **§ 36.125 Local switching equipment—Category 3.**

\* \* \* \* \*

(j) If the number of a study area's access lines increases such that, under § 36.125(f), the weighted interstate DEM factor for 1997 or any successive year would be reduced, that lowered weighted interstate DEM factor shall be applied to the study area's 1996 unweighted interstate DEM factor to derive a new local switching support factor. If the number of a study area's access lines decreases or has decreased such that, under § 36.125(f), the weighted interstate DEM factor for 2010 or any successive year would be raised, that higher weighted interstate DEM

factor shall be applied to the study area's 1996 unweighted interstate DEM factor to derive a new local switching support factor.

### **PART 54—UNIVERSAL SERVICE**

- 3. The authority citation continues to read as follows:

**Authority:** 47 U.S.C. 151, 154(i), 201, 205, 214, and 254 unless otherwise noted.

- 4. Section 54.301 is amended by revising paragraph (a)(2)(ii) to read as follows:

#### **§ 54.301 Local switching support.**

(a) \* \* \*

(2) \* \* \*

(ii) If the number of a study area's access lines increases such that, under § 36.125(f) of this chapter, the weighted interstate DEM factor for 1997 or any successive year would be reduced, that lowered weighted interstate DEM factor shall be applied to the study area's 1996 unweighted interstate DEM factor to derive a new local switching support factor. If the number of a study area's access lines decreases or has decreased such that, under § 36.125(f) of this chapter, the weighted interstate DEM factor for 2010 or any successive year would be raised, that higher weighted interstate DEM factor shall be applied to the study area's 1996 unweighted interstate DEM factor to derive a new local switching support factor. If the number of a study area's access lines decreases or has decreased such that, under § 36.125(f) of this chapter, the weighted interstate DEM factor for 2010 or any successive year would be raised, that higher weighted interstate DEM factor shall be applied to the study area's 1996 unweighted interstate DEM factor to derive a new local switching support factor.

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### **FEDERAL COMMUNICATIONS COMMISSION**

#### **47 CFR Part 73**

[MM Docket No. 99-325; DA 10-208]

### **Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Media Bureau adopts changes in the digital audio broadcasting (DAB) rules to permit FM radio stations to voluntarily increase FM hybrid digital effective radiated power (ERP), and implements interference mitigation and remediation procedures to resolve promptly allegations of digital interference to authorized full-service FM analog stations resulting from an FM digital ERP increase undertaken pursuant to the procedures adopted.

The increase in FM hybrid digital ERP will allow an FM station's digital coverage area to more closely replicate its licensed analog coverage area, and the interference mitigation and remediation procedures will make certain that permissible increases in FM digital ERP do not adversely affect existing FM analog operations. These rule changes balance the immediate need for improved FM digital coverage with the continued need to limit interference from digital FM facilities to FM analog stations.

**DATES:** Effective May 10, 2010.

**FOR FURTHER INFORMATION CONTACT:** Peter H. Doyle or Susan N. Crawford, Media Bureau, Federal Communications Commission, 202-418-2700.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Media Bureau's *Order* in MM Docket No. 99-325, adopted January 27, 2010, and released January 29, 2010.

### **Background and Related Documents**

In the *First Report and Order* in MM Docket No. 99-325 (See 67 FR 78193, December 12, 2002), the Commission adopted rules permitting terrestrial radio stations to begin hybrid digital operations, i.e. the simultaneous transmission of analog and digital signals, using the in band-on channel (IBOC) DAB system developed by iBiquity Digital Corporation (iBiquity). As adopted, the IBOC DAB system permitted an FM station to operate with digital effective radiated power (ERP) equal to one percent (1%) of its analog ERP.

In 2007, after over four years of real-world hybrid digital operation by over 1,100 FM stations, it was apparent to both FM station licensees and the IBOC system developer that the coverage from an FM station's hybrid digital facilities was significantly less than the coverage from its analog facilities, and that this digital coverage shortfall was a direct result of the very low FM digital ERP permitted. Several FM station licensees and the IBOC system developer undertook an experimental field test program to determine the FM digital ERP required for hybrid digital coverage to replicate analog coverage. Based on their results, in June 2008, a group of FM stations licensees and FM transmission equipment manufacturers (Joint Parties) submitted a technical report of these studies prepared by iBiquity, and asked the Commission to increase maximum permissible FM digital ERP to ten percent (10%) of analog ERP for nearly all FM stations. The Joint Parties also requested that the Commission establish procedures to

investigate and resolve allegations of harmful interference from increased power digital operations. Shortly thereafter, National Public Radio (NPR) submitted a technical study disputing the results of the iBiquity study and opposing an unqualified increase in FM digital ERP based on its prediction of substantial interference to authorized analog FM operations. The Commission sought public comment on issues and technical studies related to the proposed FM digital ERP increase by Public Notice DA 08–2340 on October 23, 2008, and Public Notice DA 09–1127 on May 22, 2009 (See 74 FR 27985, June 12, 2009). Over 60 parties filed comments in response to each of these notices. In November 2009, NPR filed an additional technical study. Based on the results of that study, NPR reached an agreement with iBiquity on an increase in FM Digital ERP acceptable to both parties. NPR and iBiquity jointly filed this agreement, along with their proposal requesting that the Commission permit a blanket increase in FM Digital ERP to four percent (4%) of analog ERP for all FM stations except those with licensed facilities exceeding their allowable class maximum, and permit FM stations meeting certain criteria to increase digital ERP up to a maximum of 10% of analog ERP. Additionally, they requested that the Commission adopt specific procedures and requirements to address and resolve complaints of interference to licensed full-service analog FM stations resulting from increased FM digital ERP operation, and asked that the Commission reserve the right to revisit the FM digital ERP increase issue should harmful interference be widespread.

### Synopsis of Order

Based on seven years of hybrid digital operation by over 1,500 FM stations that were free of well-documented interference complaints, and review and analysis of detailed technical studies and voluminous public comments submitted to the Commission, the Media Bureau concluded that it is necessary and prudent to increase maximum permissible FM digital ERP to improve FM digital coverage, and to eliminate regulatory impediments to FM digital radio's ability to realize its full potential and deliver its promised benefits. Specifically, this *Order* takes the following actions:

1. Increases maximum permissible hybrid FM digital ERP to 10% of authorized analog power.

2. Permits most FM stations to immediately commence operation with FM digital ERP equal to 4% of

authorized analog power without prior approval from the Commission.

3. Establishes application procedures for FM stations desiring to increase FM digital ERP to more than 4% of authorized analog ERP.

4. Establishes interference remediation procedures that require the Media Bureau to review and resolve each *bona fide* interference complaint within 90 days of Bureau receipt of the complaint, and details required tiered digital ERP reductions for the alleged interfering digital station should the Bureau fail to act in the allowable 90-day period.

5. Reserves the right of the Commission to revisit the issue of FM digital ERP levels if harmful and significant interference results to existing analog FM operations.

### Document Availability

The full text of this document and all related documents are available for public inspection and copying during regular business hours in the Commission's Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, <http://www.bcpi.com>, or by telephone at 1–800–378–3160. Additionally, all documents are available for download using the Commission's Electronic Comment Filing System at <http://fjallfoss.fcc.gov/ecfs/>. This document is available in alternative formats (computer diskette, large print, audio record and Braille). Persons with disabilities who need documents in these formats may contact Brian Millin at (202) 418–7426 (voice), (202) 418–7365 (TTY), or via e-mail at [Brian.Millin@fcc.gov](mailto:Brian.Millin@fcc.gov).

*Final Paperwork Reduction Act Analysis.* This *Order* adopts a new or revised information collection requirement(s) subject to the Paperwork Reduction Act of 1995 (“PRA”), Public Law 104–13 (44 U.S.C. 3501–3520). The requirement will be submitted to the Office of Management and Budget (OMB) for review under section 3507 of the PRA. The Commission published a separate notice in the **Federal Register** inviting comment on the new or revised information collection requirement(s) adopted in this document (See 75 FR 10266, March 5, 2010). The requirement(s) will not go into effect until OMB has approved it and the Commission has published a notice announcing the effective date of the information collection requirement(s).

In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.” We find that the modified information collection requirements must apply fully to small entities (as well as to others) to ensure compliance with our FM rules, as described in the Report and Order.

*Final Regulatory Flexibility Act Analysis.* As required by the Regulatory Flexibility Act (RFA),<sup>1</sup> as amended, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the FM Digital Power Increase and Associated Technical Studies Notice of Proposed Rules in this proceeding (See 74 FR 27985, June 12, 2009). The Commission sought written public comment on the proposals in the Notice of Proposed Rules section, including comment on the IRFA. The Commission received no comments specifically on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

*Need For and Objectives of the Proposed Rules.* The Commission's current rules limit the maximum permissible digital effective radiated power for FM stations (FM Digital ERP) to 1 percent of a station's authorized analog effective radiated power (Analog ERP) (20 decibels below carrier (–20 dBc)). Operating pursuant to that limitation, many stations have observed deficiencies in their digital signal coverage as compared to the coverage of their analog signal, particularly with regard to portable and indoor listening. A group consisting of 18 broadcasters that operate over 1200 commercial and noncommercial educational (NCE) FM radio stations throughout the United States and the 4 largest manufacturers of broadcast transmission equipment, collectively identifying themselves as the “Joint Parties,” filed with the Commission a request that the maximum permissible FM Digital ERP be increased to 10 percent of a station's authorized Analog ERP (–10 dBc) to allow stations to improve their digital coverage (Joint Parties' Request). Filed concurrently with and in support of the Joint Parties' Request was a technical report on the proposed increase, prepared by iBiquity Digital Corporation (“iBiquity”). National Public Radio

<sup>1</sup> 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, Pub. L. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

(NPR) subsequently submitted its Corporation for Public Broadcasting (CPB)-supported research on FM digital radio coverage and interference at higher power levels and expressed its opposition to the Joint Parties' Request, citing interference concerns. The Media Bureau (Bureau) issued a public notice seeking comment on the Joint Parties' Request and the iBiquity and NPR technical studies.<sup>2</sup>

NPR subsequently announced that it would complete additional studies on FM DAB at higher power levels, which it stated would be released in September 2009. The Bureau thereafter issued a second public notice in which it specifically asked whether an increase in maximum authorized FM digital operating power is warranted, and whether it should defer consideration of a power increase until completion of and comment on the further NPR studies.<sup>3</sup> In response, the majority of commenters stated that improvements to FM digital coverage are necessary for the successful consumer adoption of FM DAB technology. Some commenters stated, however, that the Bureau should delay any increase until completion of and comment on the further NPR studies, in order to ensure that higher-powered digital operation does not cause unacceptable interference to first adjacent analog stations.

On November 4, 2009, NPR submitted the results of its additional FM Digital ERP increase studies, "Report to the FCC on the Advanced IBOC Coverage and Compatibility Study" (AICCS Project Report), to the Commission. Based on its AICCS Project Report findings, NPR concluded that a blanket 6 dB increase in FM Digital ERP (from -20 dBc to -14 dBc) was acceptable for most FM stations, and that using a formula it developed based on its testing, certain FM stations could increase FM Digital ERP up to a maximum of 10 dB (from -20 dBc to -10 dBc).

Based on the results of the AICCS Project Report and the five years of generally interference-free FM hybrid digital operations by approximately 1500 stations, the *Order* adopts rule changes to allow eligible authorized FM stations to commence operation of FM digital facilities with operating power up to -14 dBc upon notice to the Commission (licensees of a super-

powered FM station<sup>4</sup> must file an informal request for any increase in the station's FM Digital ERP). The rule changes will further allow licensees to submit an application to the Media Bureau, in the form of an informal request, for any increase in FM Digital ERP beyond 6 dB. Licensees submitting such a request must use a simplified method set forth in the *Order* to determine the proponent station's maximum permissible FM Digital ERP. In situations where the simplified method is not applicable due to unusual terrain or other environmental or technical considerations or when it produces anomalous FM Digital ERP results, the Bureau will accept applications for FM Digital ERP in excess of -14 dBc. Such an application must be accompanied by a detailed showing containing a complete explanation of the prediction methodology used as well as data, maps and sample calculations. The Media Bureau will evaluate these applications on a case-by-case basis. Finally, the *Order* implements interference mitigation and remediation procedures to resolve promptly allegations of digital interference to an authorized FM analog facility resulting from an FM Digital ERP power increase undertaken pursuant to the procedures adopted in the *Order*. Specifically, if an analog FM station is receiving verifiable listener complaints of interference within its protected contour from FM digital facilities operating with FM Digital ERP in excess of -20 dBc, the licensee of the affected analog FM station must contact the licensee of the station operating the FM digital facilities. Stations are required to work cooperatively to confirm the instances of interference. If the stations fail to reach agreement on appropriate interference remediation measures, the licensee of the affected analog FM station may file an interference complaint with the Bureau.

The rule changes adopted in the *Order* balance the pressing need for improved FM digital coverage with the continued need to limit interference to first-adjacent analog stations. The rules will allow an FM station's digital signal to more closely approximate the coverage of their analog signal, improving service to listeners, and provide a detailed mechanism for resolving interference complaints, thus providing regulatory certainty as this

relatively new service continues to develop.

*Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* In the IRFA, the Bureau sought comment regarding how small entities would be affected if the Commission were to adopt an increase in maximum digital operating power, whether such adoption could result in the disparate treatment of small entities with limited financial and/or technical resources, and any information on alternative approaches to alleviate any potential burdens on small entities. The Commission received no comments specifically in response to the IRFA.

*Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules.<sup>5</sup> The RFA generally defines the term "small entity" as encompassing the terms "small business," "small organization," and "small governmental entity."<sup>6</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>7</sup> A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>8</sup> The proposed rules and policies potentially will apply to all FM radio broadcasting licensees and potential licensees.

The SBA defines a radio broadcasting station that has \$7 million or less in annual receipts as a small business.<sup>9</sup> A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.<sup>10</sup> Included in this industry are commercial, religious, educational, and other radio stations.<sup>11</sup> Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials

<sup>5</sup> 5 U.S.C. 603(b)(3).

<sup>6</sup> 5 U.S.C. 601(6).

<sup>7</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*."

<sup>8</sup> 15 U.S.C. 632.

<sup>9</sup> See 13 CFR 121.201, NAICS Code 515112 (changed from 513112 in October 2002).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>2</sup> *Comment Sought on Joint Parties Request for FM Digital Power Increase and Associated Technical Studies*, Public Notice, DA 08-2340 (MB rel. Oct. 23, 2008).

<sup>3</sup> *Comment Sought on Specific Issues Regarding Joint Parties' Request for FM Digital Power Increase and Associated Technical Studies*, Public Notice, 24 FCC Rcd (MB 2009) (DA 09-1127).

<sup>4</sup> Super-powered FM stations are stations that have effective radiated powers in excess of the maximum permitted for their class, or stations with authorized facilities that produce a reference contour that exceeds the pertinent maximum class contour distance, as specified in § 73.211.

are similarly included.<sup>12</sup> According to Commission staff review of the BIA Financial Network, Inc. Media Access Radio Analyzer Database as of February 19, 2009, about 10,600 (96 percent) of 11,050 commercial radio stations in the United States have revenues of \$7 million or less. We note 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.

*Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* The increase of FM Digital ERP as authorized in the *Order* is at the option of the licensee. As noted above, a broadcast licensee may opt not to increase its power and will thus incur no costs. To the extent that a licensee chooses to increase its digital operating power, the associated burdens and costs depend on the nature of the increase. The rule changes will allow eligible authorized FM stations to commence operation of FM digital facilities with operating power up to  $-14$  dBc upon notice to the Commission. The rule changes will further allow licensees to submit an application to the Media Bureau, in the form of an informal request, for any increase in FM Digital ERP beyond 6 dB (or, in the case of super-powered stations, any increase in its Digital ERP). Licensees submitting such a request must use a simplified method set forth in the *Order* to determine the proponent station's maximum permissible FM Digital ERP. In situations where the simplified method is not applicable due to unusual terrain or other environmental or technical considerations or when it produces anomalous FM Digital ERP results, the Bureau will accept applications for FM Digital ERP in excess of  $-14$  dBc on a case-by-case basis when accompanied by a detailed explanation of the prediction methodology used as well as data, maps and sample calculations.

*Steps Taken to Minimize Significant 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.<sup>13</sup>

In the *Order*, we take actions that may affect FM stations that are small entities by providing them the opportunity to operate at higher digital power levels. Prior to the instant rule changes, broadcasting in digital was optional for FM stations, and it will remain optional for FM stations following the rule changes. As a result, FM radio stations of all sizes may choose to take no action in response to the rule changes. In addition, FM radio stations already broadcasting in digital will not be required to take any action under the new rule if they continue operation at one percent of their Analog ERP levels, the maximum FM Digital ERP previously authorized, because the authorized increases in FM Digital ERP adopted in the *Order* are voluntary. In other words, small entities may continue to operate as authorized prior to today's rule changes if they lack, for instance, the resources to make investments in equipment necessary to implement a digital power increase. We acknowledge that an argument could be made by smaller entities that they could face an unacceptable disproportionate burden because of a comparative lack of capital and other resources. This argument suggests that the adopted rule changes places smaller entities at a resultant disadvantage in relation to larger entities. However, we reject such an argument because allowing such voluntary upgrades will ultimately provide: (1) Improved digital coverage; (2) the advancement of digital radio technology; (3) increased listenership; (4) greater regulatory certainty; (5) flexibility to licensees in the timing and scope of the rollout of their digital radio services; and (6) the facilitation of informed decisions regarding equipment purchases that will best serve licensees' needs. Allowing licensees to voluntarily increase their Digital ERP will, in the long run, prove to impose a lesser burden on smaller entities than alternative measures, such as making digital power increases compulsory or prohibiting increases altogether. In light of these considerations, the Bureau has determined that the rule changes will not have a significant disproportionate impact on small entities.

*Report to Congress.* The Commission will send a copy of this *Order*, including the FRFA, in a report to be sent to Congress and the Government

Accountability Office pursuant to the SBREFA.<sup>14</sup>

### Legal Basis

The authority for the actions taken in this *Order* is contained in sections 1, 4(i), 301, 302, 303, 307, 308, 309, 319, and 324 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 301, 302, 303, 307, 308, 309, 319, and 324, as well as the authority delegated to the Media Bureau by the Commission in the *Second Report and Order* (See 72 FR 45670, August 15, 2007) in this proceeding.

### List of Subjects in 47 CFR Part 73

Radio.

Federal Communications Commission.

**William T. Lake,**  
Chief, Media Bureau.

### Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

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

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

■ 2. Section 73.404 is amended by revising paragraphs (a) and (e)(5) as follows:

#### § 73.404 Interim hybrid IBOC DAB operation.

(a) The licensee of an AM or FM station, or the permittee of a new AM or FM station which has commenced program test operation pursuant to § 73.1620, may commence interim hybrid IBOC DAB operation with digital facilities which conform to the technical specifications specified for hybrid DAB operation in the *First Report and Order* in MM Docket No. 99–325, as revised in the Media Bureau's subsequent *Order* in MM Docket No. 99–325. FM stations are permitted to operate with hybrid digital effective radiated power equal to one percent ( $-20$  decibels below carrier (dBc)) of authorized analog effective radiated power and may operate with up to ten percent ( $-10$  dBc) of authorized analog effective radiated power in accordance with the procedures set forth in the Media Bureau's *Order* in MM Docket No. 99–325. An AM or FM station may transmit IBOC signals during all hours for which the station is licensed to broadcast.

\* \* \* \* \*

<sup>12</sup> *Id.*

<sup>13</sup> 5 U.S.C. 603(b).

<sup>14</sup> See 5 U.S.C. 801(a)(1)(A).

(e) \* \* \*

(5) FM digital effective radiated power used and certification that the FM

analog effective radiated power remains as authorized;

\* \* \* \* \*

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**BILLING CODE 6712-01-P**