

every two years commencing in 1998 ("Biennial Review"), and to determine whether any of these rules are necessary in the public interest as the result of competition. The 1996 Act also requires the Commission to repeal or modify any regulation it determines to be no longer in the public interest. In the 2002 Biennial Report and Order, the Commission concluded that the numerical limits in the local radio ownership rule are necessary in the public interest to protect competition in local radio markets. We also concluded that the rule in its current form did not promote the public interest as it relates to competition, in part, because the current methodology for defining radio markets is conceptually flawed as a means to protect competition in local radio markets. Thus, the Commission revised the present method of determining the dimensions of radio markets and/or of counting the stations available in those markets. The new geographic based approach better serves the public interest, reflects true markets in which radio stations compete, and better effectuates Congressional intent when it adopted the radio ownership limits in 1996. In the 2002 Biennial Report and Order, the Commission adopted a geography-based approach using Arbitron-defined markets. However, the Commission found that the current record provides insufficient information about appropriate boundaries for areas located outside of Arbitron defined areas. This NPRM is designed to solicit comment on proposals to define radio markets outside of Arbitron defined areas.

## B. Legal Basis

16. This NPRM is adopted pursuant to sections 1, 2(a), 4(i), 303, 307, 309, 310, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, and section 202(h) of the Telecommunications Act of 1996.

## C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

17. 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.<sup>13</sup> The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental entity" under Section 3 of the Small Business Act.<sup>14</sup>

In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>15</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 SBA.<sup>16</sup>

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

19. The SBA defines a radio broadcast entity that has \$6 million or less in annual receipts as a small business.<sup>17</sup> Business concerns included in this industry are those "primarily engaged in broadcasting aural programs by radio to the public."<sup>18</sup> According to Commission staff review of the BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States have revenue of \$6 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue, and that in assessing whether a business concern qualifies as small under the above definition, such business (control)

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 the term where appropriate to the activities of the agency and publishes the definition(s) in the *Federal Register*."

<sup>13</sup> *Id.*

<sup>14</sup> 15 U.S.C. 632.

<sup>15</sup> See OMB, North American Industry Classification System: United States, 1997, at 509 (1997) (Radio Stations) (NAICS code 513111, which was changed to code 515112 in October 2002).

<sup>16</sup> *Id.*

affiliations<sup>19</sup> are included.<sup>20</sup> Our estimate, therefore likely overstates the number of small businesses that might be affected by any changes to the ownership rules.

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

20. The NPRM proposes to modify the definition of radio markets outside of Arbitron defined areas. The action, depending on the definition ultimately adopted, would modify the instructions and the multiple ownership showing currently required for the following forms: (1) FCC Form 315, Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License; (2) FCC Form 314, Application for Consent to Assignment of Broadcast Station Construction Permit or License; and (3) FCC Form 301, Application for Construction Permit For Commercial Broadcast Stations. The impact of these changes will be the same on all entities. Whether compliance will take more, less, or the same amount of time and money, will depend on the definition adopted.

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

21. 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>21</sup>

22. We are directed under law to consider alternative means to achieve our stated objectives.<sup>22</sup> In the *2002 Biennial Report and Order*, the Commission considered and rejected alternatives to defining radio markets through the rulemaking process. Specifically, the Commission found that

<sup>19</sup> "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).

<sup>20</sup> "SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size." 13 CFR 121(a)(4).

<sup>21</sup> 5 U.S.C. 603(c).

<sup>22</sup> 5 U.S.C. 603(b).

<sup>13</sup> 5 U.S.C. 603(b)(3).

<sup>14</sup> *Id.* section 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory