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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	MM Docket No. 96-90
Implementation of Section 203 of	)	
The Telecommunications Act of 1996	)	
(Broadcast License Terms)	)	
	)	
Sections 73.1020 and 74.15	)	

REPORT AND ORDER

Adopted: January 23, 1997 **Released:** January 24, 1997

By the Commission:

I. INTRODUCTION

1. On February 8, 1996, President Clinton signed into law the Telecommunications Act of 1996 ("Telecom Act").[1] Section 203 of the Telecom Act modifies the previous statutory provisions regarding license terms for broadcast stations in two principal ways.[2] First, it eliminates the statutory distinction between the maximum allowable license terms for television stations and radio stations. Second, Section 203 provides that such licenses may be for terms "not to exceed 8 years," thus increasing the previous allowable statutory maximum terms of 5 years for television stations and 7 years for radio stations.

[1] Pub. L. No. 104-104, 110 Stat. 56 (1996).

[2] The statutory provisions governing the license terms for broadcast stations are contained in Section 307(c) of the Communications Act of 1934, as amended, 47 U.S.C § 307(c).

2. On April 12, 1996, we issued a *Notice of Proposed Rule Making* ("*NPRM*")[3] to implement these new statutory provisions regarding broadcast license terms. Specifically, we sought comment on our proposals to extend broadcast license terms to 8 years, to treat all but experimental broadcast stations uniformly for purposes of license terms, and to maintain the existing synchronization of the broadcast license renewal cycle based on 8-year license terms by extending the terms of recently renewed licenses. In this *Report and Order*, the Commission adopts these proposals.

II. BACKGROUND

3. Section 307(c) of the Communications Act of 1934, as amended, ("Communications Act") 47 U.S.C. § 307(c), authorizes the Commission to establish the period or periods for which licenses shall be granted or renewed. Prior to the enactment of the Telecom Act, Section 307(c) provided that the licenses of television stations, including low power TV stations, could be issued for a term of no longer than 5 years. It further provided that license terms for radio stations, including auxiliary facilities, could be issued for a period not to exceed 7 years. These were the maximum allowable license terms and the Commission had the discretion to grant or renew a broadcast license for a shorter period if the public interest, convenience, and necessity would be served by such action. Consistent with these statutory provisions, Section 73.1020 of the Commission's Rules currently states that "[r]adio broadcasting stations will ordinarily be renewed for 7 years and TV broadcast stations will be renewed for 5 years. However, if the FCC finds that the public interest, convenience and necessity will be served thereby, it may issue either an initial license or a renewal thereof for a lesser term." 47 C.F.R. §73.1020. Section 73.1020 also sets forth a renewal schedule for broadcast stations based on the geographical region of the country in which each station is located.[4]

4. Section 203 of the Telecom Act amends Section 307(c) of the Communications Act to read as follows:

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[3] *Notice of Proposed Rule Making* in MM Docket No. 96-90, FCC 96-169, (released April 12, 1996), 61 Fed. Reg. 17864 (April 23, 1996).

[4] Section 74.15 of the Commission's Rules, 47 C.F.R. §74.15, sets forth the license terms and renewal cycles for other classes of broadcast facilities. Licenses for experimental broadcast stations are issued for 1-year terms under Section 74.15(a). Under Section 74.15(b), licenses for auxiliary broadcast stations or systems are issued for a period running concurrently with the license of the associated broadcast station with which it is licensed. Licenses for FM and TV booster stations are issued for a period running concurrently with the license of the primary stations with which they are used pursuant to Section 74.15(c). Initial licenses for low power TV, TV translator, and FM translator stations will ordinarily be issued for a period running until the date specified in the renewal cycle portion of Section 74.15(d) depending on the geographic area in which the stations are located. Under our current rules, low power TV and TV translator stations are ordinarily renewed for 5 years, and FM translator stations are ordinarily renewed for 7 years. Section 73.733 of the Commission's Rules, 47 C.F.R. §73.733, sets forth the license terms for international broadcasting stations, which are normally issued for a term of 7 years.

> Each license granted for the operation of a broadcasting station shall be for a term of not to exceed 8 years. Upon application therefor, a renewal of such license may be granted from time to time for a term of not to exceed 8 years from the date of expiration of the preceding license, if the Commission finds that public interest, convenience, and necessity would be served thereby. Consistent with the foregoing provisions of this subsection, the Commission may by rule prescribe the period or periods for which licenses shall be granted and renewed for particular classes of stations, but the Commission may not adopt or follow any rule which would preclude it, in any case involving a station of a particular class, from granting or renewing a license for a shorter period than that prescribed for stations of such class if, in its judgment, the public interest, convenience, or necessity would be served by such action.

III. DISCUSSION

5. **Comments**. Most commenters, including the National Broadcasting Company ("NBC"), Capital Cities/ABC, Inc. ("ABC"), the National Association of Broadcasters ("NAB"), and the Association of Local Television Stations ("ALTV"), support our proposal for 8-year license terms and agree with the rationale set forth in the *NPRM*. Two parties, the Media Access Project and the Center for Media Education ("MAP/CME"), filed joint comments disagreeing with our proposal and rationale for 8-year license terms. According to MAP/CME, the Commission should exercise its discretion to extend license terms only if it adds quantitative requirements for locally originated programming addressing community issues, news, and children's educational programming. MAP/CME also assert that the Commission's rationale improperly focuses on the best interests of broadcasters rather than on the public interest. We address these comments in the course of the substantive discussion below.

6. **License Terms for Full Service Broadcast Stations.** The Telecom Act eliminated the statutory distinction between television and radio services for purposes of establishing the maximum allowable license terms. In this regard, the legislative history states: "By applying a uniform license term ... for all broadcast station licenses, the Committee simply recognizes that there is no reason for longer radio license terms than for television licenses. The Committee intends that applying a uniform license term ... for radio and television licenses will enable the Commission to operate more efficiently in the awarding of new or renewed licenses for all broadcast licenses." H.R. Rep. No. 104-204, Section 304, 104th Cong., 1st Sess. 122 (1995). The *NPRM* proposed to eliminate the current distinction in our rules between the license terms for full service broadcast television stations and radio stations.[5] No commenter takes issue with this proposal. Indeed, eliminating this distinction would help to streamline the licensing process

[5] *NPRM* at ¶ 6.

and better utilize the administrative resources of both licensees and the Commission. Accordingly, we hereby amend Section 73.1020 of the Commission's Rules, 47 C.F.R. §73.1020, to eliminate any distinction between full service television and radio stations for purposes of establishing the maximum allowable license terms.

7. In addition to eliminating the distinction between full service television and radio station licenses, we also believe it is in the public interest to adopt our proposal in the *NPRM* to provide that these licenses ordinarily have the maximum 8-year term authorized under the Telecom Act. While the statutory language provides the Commission discretion in this area, the Act's legislative history indicates a clear Congressional intent that the Commission adopt the maximum 8-year license term. Indeed, the Conference Report states that Section 203 of the Telecom Act "extends the license term for broadcast licenses to eight years for both television and radio."[6] Extending broadcast license terms will reduce the burden to broadcasters of seeking more frequent renewal of their licenses and the associated burdens on the Commission. This is in accord with longstanding Congressional and Commission policy in favor of reducing regulatory burdens wherever appropriate.[7] By reducing such burdens, we will allow broadcasters to operate more efficiently in an increasingly competitive marketplace, and thus help "assure the maximum service to the public at the lowest cost and with the least amount of regulation and paperwork."[8] Given this, and the clear Congressional intent in enacting Section 203 of the Telecom Act, we will ordinarily provide broadcasters with the maximum 8-year term. This decision is consistent with past Commission practice; our current rules provide for the maximum license terms in accordance with previous statutory maximum terms of 5 years for television stations and 7 years

[6] S. Conf. Rep. 104-230, 104th Cong. 2d Sess. 164 (1996).

[7] *See* S. Conf. Rep. 104-230, 104th Cong. 2d Sess. 1 (1996) (purpose of Telecom Act is "...to provide for a pro-competitive, de-regulatory national policy framework. "); S.Conf. Rep. 96-878, 96th Cong. 2d Sess. 1 (1980) (purpose of Regulatory Flexibility Act is "to encourage Federal agencies to utilize innovative administrative procedures in dealing with individuals, small businesses, small organizations, and small governmental bodies that would otherwise be unnecessarily adversely affected by Federal regulations"). *See also Review of Prime Time Access Rule*, 11 FCC Rcd 546 (1995) (repealing prime time access rule as no longer necessary to serve the public interest).

[8] *Deregulation of Radio*, 84 FCC 2d 968, 971 (1981), *recon.* 87 FCC 2d 797 (1981), remanded on other grounds *sub nom. Office of Communications of the United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983). Most commenters support extending broadcast license terms to 8 years. *See* National Association of Broadcasters ("NAB") Comments at 1-2; Capital Cities/ABC, Inc. ("CC/ABC") Comments at 1-2; NBC Comments at 2; Association of Local Television Stations ("ALTV") Reply Comments at 3-6. Commenters point out that longer license terms may encourage more long-term planning and capital investments in the industry. They further believe that 8-year license terms may promote more innovations in programming and service, as stations will have a longer period in which to develop a record of performance with previously untested or novel formats. *See, e.g.*, NBC Comments at 2.

for radio stations.[9]

8. MAP/CME opposes extending broadcast license terms to eight years. It asserts that longer license terms will undermine meaningful public review of broadcasters' performance, especially when considered in conjunction with the new two-step license renewal process mandated under Sections 204(a) and (c) of the Telecom Act which eliminates comparative renewal hearings and directs the Commission to grant a broadcaster's renewal if certain public interest renewal standards are met.[10] While we acknowledge MAP/CME's concerns, on balance, we believe adopting the maximum terms provided by statute is in the public interest and is consistent with Congressional intent. We do not intend that this action should affect licensees' compliance with public interest obligations and our ability to monitor such compliance. Hence, we remind broadcasters that their public interest responsibilities extend throughout the entire license term.[11] Additionally, the public will continue to have the ability to scrutinize station performance or to bring to the Commission's attention any shortcomings in performance by filing petitions to deny and informal objections at renewal time. Likewise, the public's right to file complaints with the Commission at any time during the license term is unaffected by longer license terms. To the extent MAP/CME believes it is necessary to revise license renewal standards to provide a better measure to evaluate licensee performance in the absence of comparative renewal challenges, that issue is not before us in this proceeding.[12]

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[9] The 5 and 7 year terms for new licenses and license renewals were enacted into law pursuant to the Omnibus Budget Reconciliation Act of 1981. Pub. L. 97-35, 95 Stat. 357. That legislation amended Section 307 of the Communications Act, extending the maximum allowable 3-year license term previously prescribed for both radio and television stations.

[10] MAP/CME Comments at 3-4. The Commission recently implemented the new two-step renewal process. *See Implementation of Sections 204(a) and 204 (c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, FCC No. 96-172 (released April 12, 1996).

[11] This reminder applies to radio as well as television broadcasters, although the extension of the radio license term from 7 to 8 years is a small one compared to the extension of television license terms from 5 to 8 years. We note in this regard that in its recent decision adopting revised children's television rules, the Commission stated that it would monitor industry compliance with the Children's Television Act of 1990 ("CTA") by requiring commercial broadcast television stations to place in their public inspection files quarterly reports regarding their compliance with the CTA and, for an experimental period of three years, to file these children's programming reports with the Commission on an annual basis. *Report and Order* in MM Docket No. 93-48, FCC 96-335, at ¶ 140 (released Aug. 8, 1996). The Commission also stated that Commission staff will conduct selected individual station audits during this time period to assess station performance under the new children's television rules. *Id.*

[12] *See also infra* paragraph 10.

9. MAP/CME also asserts that the Commission's rationale for extending license terms improperly focuses on what best serves the interests of broadcasters, rather than on the best interests of viewers and listeners.[13] In addition, MAP/CME challenges NBC's assertions that longer license terms will create more stability among broadcasters and result in more capital investment in public service and innovative programming. MAP/CME asserts that NBC's claimed public benefits are entirely hypothetical and that there is no evidence from past deregulation that broadcasters will invest additional money in improved programming.[14] As noted above, however, eliminating unnecessary regulatory burdens can allow the competitive marketplace to operate more efficiently, which in turn can enhance the opportunity to further the public interest through improved service delivered to the public. We believe Congress, in providing us authority to do so, made the same reasonable judgment that lengthening broadcast license terms is an appropriate deregulatory measure that would lead to public benefits. If, after some experience with the new 8-year license term, MAP/CME believes the new term is adversely affecting the public interest, it may bring its concerns to our attention at that time

10. Finally, MAP/CME argues the Commission should extend broadcast license terms to the maximum 8-year period only if it adds quantitative requirements for locally-originated programming addressing community issues, news, and children's educational programming.[15] As noted above, see paragraph 8, we believe that MAP/CME's proposal is beyond the scope of this proceeding.

11. In sum, we find that the 8-year term, on balance, would serve the public interest. Accordingly, we amend our rules to provide that broadcast licenses ordinarily have the maximum 8-year term authorized under the Telecom Act. As stated in the *NPRM*, we believe that this result will reduce the burden on broadcasters and is consistent with both past Commission practice and the legislative history of the Telecom Act. We believe this change in broadcast license terms on balance is consistent with the public interest since licensees will continue to be subject to scrutiny by both the public and the Commission. In keeping with this concern, we reiterate that Section 203 of the Telecom Act, as well as our revised rules, explicitly reserve the Commission's authority to grant individual licenses for less than the statutory maximum if the public interest, convenience, and necessity would be served by such action.

12. **Other Classes of Broadcast Stations**. Section 203 of the Telecom Act states in part: "the Commission may by rule prescribe the period or periods for which licenses shall be granted

[13] MAP/CME Comments at 3-5.

[14] MAP/CME Reply Comments at 4-5.

[15] MAP/CME Comments at 2-4; MAP/CME Reply Comments at 2.

and renewed for particular classes of stations...." While this provision provides us authority to designate different license terms for particular classes of stations (provided that they do not exceed 8 years), we proposed in the *NPRM* to treat all but experimental broadcast stations uniformly.

13. As proposed in the *NPRM*, we will track the approach we take with full-service stations and adopt an 8-year license term for FM and TV translator facilities and low power TV stations, as well as for international broadcasting stations. This approach is consistent with our current practice of treating these different classes of stations uniformly.[16] We believe that each of these services will benefit from the stability and reduced administrative burden which will result from a longer license term. Because of the tentative nature and limited purpose of experimental stations, however, it would not be appropriate to grant such stations longer license terms and they will continue to be licensed for one-year terms. Commenters agreed with this approach.[17]

14. We will also continue our practice, set forth in Sections 74.15(b) and (c) of our Rules, of tying the license terms for auxiliary and booster facilities to the license terms of the broadcast stations with which they are associated. Our current practice of tying the license terms of all auxiliary and booster facilities with the main station license eases the administrative burden on both Commission staff and broadcast station licensees, who would otherwise need an intricate record-keeping system to ensure that all licenses were renewed at the appropriate time.

15. ABC/Capital Cities seeks clarification concerning auxiliary facilities used by television and radio networks. ABC believes it would be preferable for all licenses of a given network entity in the same state to come up for renewal at the same time to eliminate potential discrepancies that may exist under the current system. It requests that the Commission specify in Section 74.15(b) of the Commission's Rules that television network auxiliary licenses shall have terms running concurrently with television broadcast stations located in the same state, and that radio network auxiliary licenses shall have terms running concurrently with radio broadcast stations located in the same state. ABC/Capital Cities also urges that the renewal terms for video microwave licenses issued under Section 74.15(f) of the Commission's Rules run concurrently with the terms of television network auxiliary licenses granted under Subparts D and H of Part 74 of the Commission's Rules.[18]

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[16] *See Report and Order* in MM Docket No. 92-168, 9 FCC Rcd 6504 (1994).

[17] *See* NBC Comments at 3.

[18] ABC/Capital Cities Comments at 4.

16. We agree with the ABC/Capital Cities proposals concerning television and radio network auxiliary licenses and video microwave licenses. We believe that these proposals are consistent with both the Telecom Act and the *NPRM* and would simplify the license renewal process and eliminate potential confusion about renewal dates by treating these different classes of broadcast licenses uniformly. Accordingly, network auxiliary stations and video microwave licenses will generally be linked to the license terms of full-service broadcast stations in the same state, and will ordinarily be granted for a term of 8 years.[19]

17. **Implementation of Amended License Term Provisions.** Section 203 of the Telecom Act and the legislative history are silent as to whether existing broadcast station licenses may be modified immediately to conform to any new license terms that may be adopted.

18. As we noted in the *NPRM* the implementation issue is important because of the logistics involved in renewing broadcast licenses. Under Sections 73.1020 and 74.15 of the Commission's Rules, all of the licenses for a particular class of broadcast stations expire at fixed intervals over a 3-year period. To stagger the processing of renewal applications and thus perform this task more efficiently, the country is divided into 18 different regions containing 1 or more states for purposes of establishing synchronized schedules for radio and television license renewals. The radio renewal schedule and the television renewal schedule operate on separate and distinct cycles that do not run concurrently. Accordingly, once all radio licenses have been renewed as scheduled, there is a 50-month hiatus before the radio renewal cycle begins again. Similarly, once all television licenses have been renewed as scheduled, there is a 26-month hiatus before the television renewal cycle begins again.

19. Because of the cyclical nature of this process, any change in the length of the license term implemented in the middle of a renewal cycle could undermine the synchronization of the whole renewal process. In 1981, when Congress last amended the length of broadcast license terms, two factors allowed us to avoid any such synchronization problems. First, under the statute in effect at that time, both radio and television licenses had 3-year maximum terms and the renewal cycles for radio and television ran concurrently. Furthermore, the renewal cycles for both radio and television had not yet begun when the rules implementing the amended statute took effect. Accordingly, pursuant to the explicit Congressional mandate contained in the

[19] Network auxiliary licenses and video microwave licenses are processed in the Gettysburg office of the Commission's Wireless Telecommunications Bureau. We will implement the linkage proposed by ABC, and the new 8-year license terms for these network auxiliary and microwave facilities, as the licenses for these facilities come up for renewal. Commission staff will process these renewals so that, over the course of time, the license terms for these facilities will be linked to the license terms of full-service broadcast stations in the same state and share the same 8-year term, except for those facilities which serve more than a single state. In those instances where multiple states are served by a facility, the license term will continue to be based on the date of initial license grant rather than the license terms of full-service broadcast stations for a particular state.

amended statute, Pub. L. No. 97-35, 95 Stat. 357, 736 (1981), the Commission applied the longer license terms prospectively as stations came up for renewal following the legislation's enactment. *See Order, Amendment of Section 73.1020 of the Commission's Rules*, 88 F.C.C. 2d 355, 356 (1981).

20. There is, however, a significant difference between the renewal situation in 1981 and the current situation. By the time the Telecom Act of 1996 was enacted in February 1996, the renewal cycle had already begun for radio stations in several regions of the country. Specifically, the licenses for radio stations in Maryland, the District of Columbia, Virginia, West Virginia, North Carolina, and South Carolina have either already been renewed under the previous license term guidelines, or are still pending. Similarly, renewal applications for radio stations in Florida, Puerto Rico, the Virgin Islands, Alabama, Georgia, Arkansas, Louisiana, and Mississippi were already on file with the Commission at the time the 1996 Act was enacted, and may be ripe for grant before the conclusion of this proceeding. The practical effect of this situation is that radio licenses that have already been renewed for the current maximum allowable 7-year term will have shorter terms than radio licenses renewed later in the renewal cycle, which would become subject to the 8-year term we now adopt. When the previously granted 7-year licenses expire the radio renewal process will no longer be synchronized. This may also be the case for some television licenses given that the current television renewal cycle is now underway.[20]

21. NAB, NBC, ABC/Capital Cities, and ALTV all agree that maintaining the synchronization of the renewal process is crucial and should be facilitated by Commission rule.[21] NAB states that synchronization allows the Commission to predict its staffing needs with greater precision and is convenient for the public since all stations serving a market will generally come up for renewal at the same time. NAB further states that if the Commission has determined that the public interest would be served by granting a renewal, a one-year extension of the license term would not raise any additional public interest question.[22] NBC states that if this proceeding is still pending when the television renewal cycle begins, the Commission should adopt the same

[20] The first group of television licenses, which expired on October 1, 1996, include the renewal applications for television stations in Maryland, the District of Columbia, Virginia, and West Virginia. In addition, license renewal applications for television stations in North Carolina, South Carolina, Florida, Puerto Rico, and the Virgin Islands, are currently on file, or will be on file with the Commission, prior to the conclusion of this proceeding, and at least some of these applications may be granted by that time. Accordingly, the synchronization problems previously discussed in the radio license context may also be a problem with some television license renewals.

[21] NAB Comments at 3; NBC Comments at 3-4; Capital Cities/ABC Reply Comments at 2; ALTV Reply Comments at 5-6.

[22] NAB Comments at 2-3.

plan it has proposed for radio license and by rule extend previously granted television licenses to 8-year terms.[23]

22. We agree with these commenters, and believe that maintaining the predictability, administrative efficiencies, and fairness inherent in the existing synchronized schedule of renewal cycles would serve the public interest. We therefore adopt, as proposed in the *NPRM*, an 8-year license term, to be implemented as follows. For broadcast renewal applications granted *after* the effective date of a decision in this proceeding, we will ordinarily grant the renewed license for the maximum proposed term of 8 years.[24] For renewal applications that have been filed as part of the current renewal cycle (*e.g.*, the cycle beginning October 1, 1995 for radio stations, and October 1, 1996 for television stations) and that have been granted only the maximum 7-year or 5-year license term provided under our current rules because they were processed *prior* to a decision in this proceeding, we will extend the already renewed 7-year or 5-year license term for such stations to the proposed 8-year term. We consequently direct the staff to modify the terms of such licenses to afford these licensees the newly authorized 8-year term and to ensure synchronization of such licenses with future renewal cycles. The Commission adopted a similar approach in 1983 when it extended existing common carrier and satellite licenses from 5 to 10 years.[25] As noted in that decision, the Commission's authority to modify the provisions of existing licenses by rule making had been upheld on several occasions.[26] We believe that this approach is consistent with the discretion we are given by the Telecom Act to prescribe rules governing the period or periods for which licenses are granted for particular classes of stations.

Paperwork Reduction Act of 1995 Analysis

23. The decision herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, and found to impose or propose no modified information collection requirement on the public.

Ordering Clauses

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[23] NBC Comments at 3-4.

[24] We will, as required by the Telecom Act, reserve the right to grant renewals in particular cases for less than the maximum term if the public interest would be served by such action.

[25] *See Report and Order* in CC Docket No. 83-371, 53 R.R. 2d 1514 (1983).

[26] *See, e.g., Committee For Effective Cellular Rules v. FCC*, 53 F.3d 1309 (D.C. Cir. 1995); *WBEN, Inc., v. FCC*, 396 F.2d 601 (2d Cir.), *cert. denied*, 393 U.S. 914 (1968); *see also National Broadcasting Co. v. United States*, 319 U.S. 190 (1943); *California Citizens Band Association v. United States*, 375 F.2d 43 (9th Cir. 1967), *cert. denied*, 389 U.S. 844 (1967).

24. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in Sections 154, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 303, and 307, Sections 73.733, 73.1020, and 74.15 of the Commission's Rules, 47 C.F.R. §§ 73.733, 73.1020, AND 74.15, ARE AMENDED as set forth in Appendix C.

25. IT IS FURTHER ORDERED that the Commission staff take appropriate administrative actions to extend broadcast licenses already granted or renewed as part of the current renewal cycle (*i.e.*, the cycle beginning October 1, 1995 for radio stations and October 1, 1996 for television stations), for the previously allowable maximum terms, to the new maximum 8-year term.

26. IT IS FURTHER ORDERED that, pursuant to the Contract with America Advancement Act of 1996, the amendment set forth in Appendix C SHALL BE EFFECTIVE either 30 days after publication in the Federal Register or upon the receipt by Congress of a report in compliance with the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, whichever is later

27. IT IS FURTHER ORDERED that the Secretary of the Commission shall send this *Report and Order* to the Small Business Administration for review.

28. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

29. Additional Information. For additional information regarding this proceeding, please contact Robert B. Somers, Mass Media Bureau, Policy and Rules Division, (202) 418-2130.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A

Final Regulatory Flexibility Analysis

As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603 (RFA), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in *Implementation of Section 203 of The Telecommunications Act of 1996 (Broadcast License Terms) Sections 73.1020 and 74.15, Notice of Proposed Rule Making in MM Docket No. 96-90 ("NPRM")*[27] The Commission sought written public comments on the proposals in the *NPRM* including on the IRFA. The Commission's Final Regulatory Flexibility Analysis ("FRFA") in this *Report and Order* conforms to the RFA, as amended by the Contract With America Advancement Act of 1996, P.L. No. 104-121, 110 Stat. 847 (1996) ("CWAAA").[28]

I. Need For and Objectives of Action:

On February 8, 1996, President Clinton signed into law the Telecommunications Act of 1996 ("Telecom Act"). Section 203 of the Telecom Act modifies the previous statutory provisions contained in 47 U.S.C. § 307(c) regarding license terms for broadcast stations in two principal ways. First, it eliminates the statutory distinction between the maximum allowable license terms for television stations and radio stations. Second, Section 203 provides that such licenses may be for terms "not to exceed 8 years," thus increasing the previous statutory maximum terms of 5 years for television stations and 7 years for radio stations. The purpose of this *Report and Order* is amend the Commission's Rules to conform to the provision of Section 203 of the Telecom Act.

II. Significant Issues Raised by the Public in Response to the Initial Analysis:

No comments were received specifically in response to the IRFA contained in the *NPRM*. However, commenters generally addressed the effects of the proposed rules on broadcast stations. Most commenters, including the National Association of Broadcasters ("NAB"), National Broadcasting Company ("NBC"), Association of Local Television Stations, Inc. ("ALTV"), and Capital Cities/ABC, Inc. ("Capital Cities/ABC"), supported the proposed rules, believing that longer license terms for both radio and television broadcast stations would reduce the administrative burden on broadcast licensees. The Media Access Project and the Center for

[27] Notice of Proposed Rule Making in MM Docket No. 96-90 (Released April 12, 1996).

[28] Subtitle II of CWAAA is The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), codified at 5 U.S.C. § 601 et seq.

Media Education ("MAP/CME") opposed the proposed rules and supported the creation of additional regulatory requirements on broadcast licensees as a prerequisite to allowing longer broadcast license terms. As discussed in Section V of this FRFA, we have addressed these concerns.

III. Description and Number of Small Entities To Which the Rule Will Apply:

1. Definition of a "Small Business"

Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. § 601(6). The RFA, 5 U.S.C. § 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. § 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). According to the SBA's regulations, entities engaged in television broadcasting Standard Industrial Classification ("SIC") Code 4833 -- Television Broadcasting Stations, may have a maximum of $10.5 million in annual receipts in order to qualify as a small business concern.[29] Similarly, entities engaged in radio broadcasting, SIC Code 4832 -- Radio Broadcasting Stations, have a maximum of $5 million in annual receipts to qualify as a small business concern. 13 C.F.R. §§ 121.101 et seq. This standard also applies in determining whether an entity is a small business for purposes of the RFA.

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." While we tentatively believe that the foregoing definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the new rules on small television radio stations, and auxiliary

[29] This revenue cap appears to apply to noncommercial educational television stations, as well as to commercial television stations. 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) 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.

services, we did not propose an alternative definition in the IRFA.[30] Accordingly, for purposes of this Report and Order, we utilize the SBA's definition in determining the number of small businesses to which the rules apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to radio and television broadcast stations and to consider further the issue of the number of small entities that are radio and television broadcasters in the future. Further, in this FRFA, we will identify the different classes of small radio and television stations that may be impacted by the rules adopted in this *Report and Order*.

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

As discussed below, we could not precisely apply the foregoing definition of "small business" in developing our estimates of the number of small entities to which the 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 were 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 following estimates of small businesses to which the new rules will apply do not exclude any 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 attempted to factor in this element by looking at revenue statistics for owners of television stations. However, as discussed further below, 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.

[30] We have pending proceedings seeking comment on the definition of and data relating to small businesses. In our Notice of Inquiry in GN Docket No. 96-113 (In the Matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses), FCC 96-216, released May 21, 1996, we requested commenters to provide profile data about small telecommunications businesses in particular services, including television, and the market entry barriers they encounter, and we also sought comment as to how to define small businesses for purposes of implementing Section 257 of the Telecommunications Act of 1996, which requires us to identify market entry barriers and to prescribe regulations to eliminate those barriers. The comment and reply comment deadlines in that proceeding have not yet elapsed. Additionally, in our Order and Notice of Proposed Rule Making in MM Docket No. 96-16 (In the Matter of Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines), 11 FCC Rcd 5154 (1996), we invited comment as to whether relief should be afforded to stations: (1) based on small staff and what size staff would be considered sufficient for relief, e.g., 10 or fewer full-time employees; (2) based on operation in a small market; or (3) based on operation in a market with a small minority work force. We have not concluded the foregoing rule making.

With respect to applying the revenue cap, the SBA has defined "annual receipts" specifically in 13 C.F.R § 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 C.F.R. § 121.104(d)(1). The SBA defines affiliation in 13 C.F.R. § 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 C.F.R. § 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 C.F.R. § 121.103(a)(2). Instead of making an independent determination of whether radio and television stations were affiliated based on SBA's definitions, we relied on the data bases available to us to provide us with that information.

3. Estimates Based on Census Data

The rules amended by this *Report and Order* will apply to full service television and radio stations, FM and TV translator facilities, low power TV stations ("LPTV"), television and radio auxiliary and booster facilities, international broadcasting stations, television and radio network auxiliary facilities, and video microwave facilities

There were 1,509 television stations operating in the nation in 1992.[31] That number has remained fairly constant as indicated by the approximately 1,550 operating television broadcasting stations in the nation as of August, 1996.[32] For 1992[33] the number of television stations that

[31] FCC News Release No. 31327, Jan. 13, 1993; 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).

[32] FCC News Release No. 64958, Sept. 6, 1996.

[33] 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, *supra* note 31.

produced less than $10.0 million in revenue was 1,155 establishments.[34]

The rule changes will also affect radio stations. The SBA defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business.[35] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[36] Included in this industry are commercial religious, educational, and other radio stations.[37] Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.[38] However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.[39] 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.[40] Official Commission records indicate that 11,334 individual radio stations were operating in 1992.[41] As of December 1996, official Commission records indicate that 12,140 radio stations are currently operating.[42]

Thus, the rule changes will affect approximately 1,550 television stations, approximately 1,194 of which are considered small businesses.[43] Additionally, the rule changes will affect

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[34] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped a $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.

[35] 13 C.F.R. § 121.201, SIC 4832.

[36] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 6, Appendix A-9.

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

[41] FCC News Release No. 31327, Jan. 13, 1993.

[42] FCC News Release, *Broadcast Station Totals as of December 31, 1996.*

[43] We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 1996 total of 1,550 TV stations to arrive at 1,194 stations categorized as small businesses.

12,140 radio stations, approximately 11,605 of which are small businesses.[44] 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 or non-radio affiliated companies.

We recognize that the rule changes may also affect minority and women-owned stations, some of which may be small entities. In 1995, minorities owned and conrolled 37 (3.0%) of 1,221 commercial television stations and 293 (2.9%) of the commercial radio stations in the United States.[45] 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 and 394 (3.8%) of 10,244 commercial and non-commercial radio stations in the United States.[46]

The rule changes also affect radio translator and booster stations, television translator stations, experimental radio stations and television stations, and LPTV stations. The Commission has not developed a definition of small entities applicable to radio or television booster and translator stations, or experimental radio or television stations. Therefore, the applicable definition of a small entity is the definition under the SBA rules applicable to radio and television stations. Under this definition, FM booster and translator radio stations and experimental radio stations (SIC Code 4832) that would qualify as small businesses would be those radio broadcasting facilities with maximum revenues of $5 million. Similarly, under this definition, television translator stations, television experimental stations, and LPTV stations (SIC Code 4833)

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[44] We use the 96% figure of radio station establishments with less than $5 million revenue from the Census data and apply it to the 12,088 individual station count to arrive at 11,605 individual stations as small businesses

[45] *Minority Commercial Broadcast Ownership in the United States*, U.S. Department of Commerce, National Telecommunications and Information Administration, The Minority Telecommunications Development Program ("MTDP") (April 1996). 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. *Id.* The minority groups included in this report are Black, Hispanic, Asian, and Native American.

[46] *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 Economic Censuses, *Women-Owned Business*, WB87-1, U.S. Department of Commerce, Bureau of the Census, August 1990 (based on 1987 Cenus). 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, we sought comment on whether the Annual Ownership Report Form 323 should be amended to include information on the gender and race of broadcast license owners. *Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities, Notice of Proposed Rulemaking*, 10 FCC Rcd 2788, 2797 (1995).

television translator stations, television experimental stations, and LPTV stations (SIC Code 4833) would be those television broadcasting facilities with maximum revenues of $10.5 million.

There are currently 2,720 FM translator and booster stations, 4,952 TV translator stations, and 1,954 LPTV stations which will be affected by the new license term rules.[47] Neither the FCC nor the Department of Commerce collects financial information on these broadcast facilities. We will assume for present purposes, however, that most of these broadcast facilities, including LPTV stations, could be classified as small businesses. As we indicated earlier, 96% of radio stations and 78% of TV stations are designated as small businesses. Given this situation, these stations would not likely have revenues that exceed the SBA maximum to be designated as small businesses.

We have no compilation of data on how many experimental stations are small entities. We will therefore assume that all are small entities as defined by the SBA. We believe, however, that this assumption greatly overstates the number of experimental stations that are small businesses since some of the licensees of experimental stations may have aggregate revenues that are above the revenue definition of small businesses.

4. Alternative Classification of Small Stations

An alternative way to classify small radio and television stations is by the number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity ("EEO") rule for broadcasting.[48] Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and recordkeeping requirements.[49] We estimate that the total number of broadcast

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[47] FCC news release, *Broadcast Station Totals as of December 31, 1996.*

[48] The Commission's definition of a small broadcast station for purposes of applying its EEO rule was adopted prior to the requirement of approval by the Small Business Administration pursuant to Section 3(a) of the Small Business Act, 15 U.S.C. § 632(a), as amended by Section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Pub. L. No. 102-366, § 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Pub. L. No. 103-403, § 301, 108 Stat. 4187 (1994). However, this definition was adopted after public notice and an opportunity for comment. See Report and Order in Docket No. 18244, 23 FCC 2d 430 (1970).

[49] See, e.g., 47 C.F.R. § 73.3612 (Requirement to file annual employment reports on Form 395-B applies to licensees with five or more full-time employees); First Report and Order in Docket No. 21474 (In the Matter of Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395), 70 FCC 2d 1466 (1979). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. Order and Notice of Proposed Rule Making in MM Docket No. 96-16 (In the Matter of Streamlining Broadcast EEO Rule and

stations with 4 or fewer employees is 4,239.[50]

IV. Projected Compliance Requirements of the Rule:

This *Report and Order* imposes compliance with new license terms for broadcast stations in accordance with the amended rules set forth in the *Report and Order*. Compliance will be implemented as follows. For broadcast renewal applications granted *after* the effective date of a decision in this proceeding, we will ordinarily grant the renewed license for the maximum proposed term of 8 years.[51] For renewal applications that have been filed as part of the current renewal cycle (*e.g.*, the cycle beginning October 1, 1995 for radio stations, and October 1, 1996 for television stations) and that have been granted only the maximum 7-year or 5-year license term provided under our current rules because they were processed *prior* to a decision in this proceeding, we will extend the already renewed 7-year or 5-year license term for such stations to the proposed 8-year term. We consequently direct the staff to modify the terms of such licenses to afford these licensees the newly authorized 8-year term and to ensure synchronization of such licenses with future renewal cycles.

The *Report and Order* imposes no new reporting or recordkeeping requirements. To the contrary, broadcasters will have fewer filings to make, since initial license terms will be for longer periods and renewal filings will be made less frequently. These changes will result in greater economic efficiency for broadcasters, especially those classified as small entities, since administrative burdens on broadcast licensees will be reduced.

V. Significant Alternatives Considered Minimizing the Economic Impact on Small Entities and Consistent with the Stated Objectives:

The action taken does not impose additional burdens on small entities. To the contrary, it lessons burdens on both small and large entities by lengthening broadcast license terms to the maximum extent authorized by statute.

Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines), 11 FCC Rcd 5154 (1996). One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees. Id. at ¶ 21.

[50] We base this estimate on a compilation of 1994 Broadcast Station Annual Employment Reports (FCC Form 395-B), performed by staff of the Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

[51] We will, as required by the Telecom Act, reserve the right to grant renewals in particular cases for less than the maximum term if the public interest would be served by such action

MAP/CME opposes extending broadcast license terms to eight years because of concerns about the potential effects of such an action on the public interest obligations of broadcasters. MAP/CME believes that longer license terms, together with the elimination of comparative renewals, focus on the interests of broadcasters and will result in no meaningful public review of broadcasters' performance. MAP/CME also believes that the Commission should extend broadcast license terms to the maximum 8-year period only if it adds quantitative programming requirements as part of broadcasters' public interest obligations.[52]

Like MAP/CME, we are concerned about the public interest obligations of licensees. We are also cognizant of Congressional intent to reduce regulatory burdens while at the same time providing for meaningful review of licensee performance. In this *Report and Order* we have addressed these public interest and regulatory concerns. On balance, we find that the 8-year term would serve the public interest. Accordingly, we amend our rules to provide that broadcast licenses ordinarily have the maximum 8-year term authorized under the Telecom Act. As stated in the *NPRM*, we believe this change in broadcast license terms is consistent with the public interest since licensees will continue to be subject to scrutiny by both the public and the Commission. In keeping with this concern, we reiterate that Section 203 of the Telecom Act, as well as our revised rules, explicitly reserve the Commission's authority to grant individual licenses for less than the statutory maximum if the public interest, convenience, and necessity would be served by such action.[53]

Pursuant to the RFA, 5 U.S.C. § 603(c), we have considered whether there is a significant economic impact on a substantial number of small entities. We conclude that there is no adverse economic impact on such entities. To the contrary, extending broadcast license terms would benefit small business entities (*e.g.*, small radio stations, auxiliary stations and LPTV stations), by reducing the administrative burdens on such entities, thereby allowing them to operate more efficiently in the competitive marketplace.

VI. Report to Congress

The Commission shall send a copy of this Final Regulatory Flexibility Analysis along with this *Report and Order* in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, codified at 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the *Federal Register*.

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[52] *See* ¶¶ 8-11, *supra*.

[53] *See* ¶¶ 9-12, *supra*.

APPENDIX B

List of Commenters

Media Access Project and Center For Media Education
National Association of Broadcasters
National Broadcasting Company, Inc.

List of Reply Commenters

Association of Local Television Stations, Inc.
Capital Cities/ABC, Inc.
Media Access Project and Center For Media Education

APPENDIX C

Rules

Part 73 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 73 -- RADIO BROADCAST SERVICES

1. The Authority Citation for Part 73 is amended to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, and 307 unless otherwise noted.

2. Section 73.733 is amended to read as follows:

§ 73.733 Normal license period.

All international broadcast station licenses will be issued so as to expire at the hour of 3 a.m. local time and will be issued for a normal period of 8 years expiring November 1.

3. Section 73.1020 is amended by revising paragraph (a) to read as follows:

(a) Initial licenses for broadcast stations will ordinarily be issued for a period running until the date specified in this section for the State or Territory in which the station is located. If issued after such date, it will run to the next renewal date determined in accordance with this section. Both radio and TV broadcasting stations will ordinarily be renewed for 8 years. However, if the FCC finds that the public interest, convenience and necessity will served thereby, it may issue either an initial license or a renewal thereof for a lesser term. The time of expiration of normally issued initial and renewal licenses will be 3 a.m., local time, on the following dates and thereafter at 8-year intervals for radio and TV broadcast stations located in:

* * * * *

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

1. The Authority Citation for Part 74 is amended to read as follows:

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

2. Paragraphs (d) and (f) of § 74.15 are revised to read as follows:

§ 74.15 Station license period.

* * * * *

(d) Initial licenses for low power TV, TV translator, and FM translator stations will ordinarily be issued for a period running until the date specified in Section 73.1020 of this chapter for full service stations operating in their State or Territory, or if issued after such date, to the next renewal date determined in accordance with Section 73.1020 of this chapter. Lower power TV and TV translator station and FM translator station licenses will ordinarily be renewed for 8 years. However, if the FCC finds that the public interest, convenience or necessity will be served, it may issue either an initial license or a renewal thereof for a lesser term. The FCC may also issue a license renewal for a shorter term if requested by the applicant. The time of expiration of all licenses will be 3 a.m. local time, on the following dates, and thereafter to the schedule for full service stations in their states as reflected in Section 73.1020 of this chapter:

* * * * *

(f) Licenses held by broadcast network-entities under Subpart F will ordinarily be issued for a period of 8 years running concurrently with the normal licensing period for broadcast stations located in the same area of operation. An application for renewal of license (FCC Form 313-R) shall be filed not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed. If the prescribed deadline falls on a nonbusiness day, the cutoff shall be the close of business of the first full business day thereafter.