

FCC Launches 2022 Quadrennial Review

The FCC’s Media Bureau has released a *Public Notice* (DA 22-1364) in Docket 22-459 to begin the 2022 Quadrennial Regulatory Review of the Commission’s media ownership rules. Section 202(h) of the Telecommunications Act of 1996 mandates that the FCC review these rules every four years to determine whether they remain “necessary in the public interest as a result of competition.” The Media Bureau acknowledges that the 2018 Quadrennial Review proceeding has not yet been concluded. Despite that fact, the Bureau states that it is initiating a new review proceeding because of the statutory obligation to do so every four years.

The Commission in this proceeding will continue from the 2018 Review proceeding its review of the Local Radio Ownership Rule and the Local Television Ownership Rule. These rules limit the number of stations that an entity can own in a local market. Also under review is the Dual Network Rule, which effectively prohibits mergers of the top four broadcast television networks (ABC, CBS, Fox, and NBC). As with the prior proceeding, the Media Bureau seeks information regarding the media marketplace, including ongoing trends and developments that commenters find relevant to this review. Such developments might include consolidation, technological innovation, and the emergence of new video or audio options for consumers.

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ETRS Form One Due by February 28

The FCC’s Public Safety and Homeland Security Bureau has released a *Public Notice* (DA 22-1330) instructing all Emergency Alert System (“EAS”) participants, including all broadcast stations, to submit their annual Form One filings for calendar year 2022 by February 28, 2023, in the FCC’s online EAS Test Reporting System (“ETRS”). ETRS is a filing system used by EAS participants to submit information about their performance in nationwide tests of the EAS that the FCC and the Federal Emergency Management Agency (“FEMA”) conduct periodically to assess the reliability and effectiveness of the nation’s alert and warning system.

The Form One is an inventory of the participant’s EAS equipment and capabilities. Section 11.61(a) of the

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FTC Proposes To Ban Noncompete Agreements

The Federal Trade Commission (“FTC”) has proposed a rule that would prohibit employers from requiring employees to enter into noncompete agreements. The FTC has adopted a *Notice of Proposed Rulemaking* on this topic in Docket RIN 3084-AB74. The FTC made a preliminary finding that noncompete agreements constitute an unfair method of competition and therefore violate Section 5 of the Federal Trade Commission Act. The FTC says that banning this practice could increase wages by \$300 billion per year and expand career opportunities for 30 million Americans.

Under a typical noncompete agreement, as a provision of his or her employment contract, an employee, upon separation from the employer, is prohibited from taking a similar position, or perhaps any position, with a competitor of the employer. The arrangement typically include limitations as to the length of time and the geographic area covered.

The proposed rule would make it illegal for an employer to:

- enter into or attempt to enter into a noncompete agreement with a worker;

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Court Retains Jurisdiction Over LMA

The United States Bankruptcy Court for the District of Kansas has ruled that it shares jurisdiction with the FCC over the interpretation of a contract for marketing and programming radio stations. This decision came in a Chapter 11 bankruptcy proceeding in which the debtor licensee of two radio stations, Rocking M Media, LLC (“RMM”), moved to reject a Local Programming, Marketing, and Option Agreement (“LMA”) pertaining to those stations. RMM argued that the LMA was invalid and therefore should not be a factor in the bankruptcy proceeding. To persuade the court to refrain from considering the LMA, and thus to support that premise, RMM also asserted that the federal bankruptcy court could not make a finding about the validity of the LMA because the FCC had exclusive jurisdiction over the agreement. The court rejected the motion and assumed primary jurisdiction to interpret the LMA.

The LMA dispute arose from circumstances involving internal disputes within the family that owns RMM. According to the court’s narrative, Christopher Miller, the son of principals Doris and Merle Miller, was named president

of RMM in 2014. In March 2019, Christopher separated from RMM and created his own company, Meridian Media, LLC. RMM agreed to assign certain stations to Meridian in exchange for Meridian’s assumption of certain RMM debt.

In addition, there were discussions about Meridian managing two other stations belonging to RMM under an LMA, KXUH, Minneapolis, Kansas; and KVOB, Lindsborg, Kansas. The LMA was to have a term of 48 months, during which time Meridian would provide the programming for the stations, pay RMM for the airtime, and reimburse RMM for its expenses incurred in operating the stations. Upon expiration of the LMA, Meridian was to have an option to purchase the stations. The record in the proceeding included a written contract dated October 1, 2020, allegedly signed by Doris and Merle Miller on behalf of RMM. Thereafter, Meridian began operating the stations.

RMM argues that it did not agree to the LMA, but if there was a contract, it asserted that Meridian violated FCC policies for LMAs. These alleged violations included

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FCC Establishes Space Bureau

The FCC has adopted an *Order* (FCC 23-1) in Docket 23-12 by which it has eliminated the agency’s International Bureau and divided that Bureau’s responsibilities between a new Space Bureau and a new separate Office of International Affairs.

The Space Bureau will handle policy and licensing matters related to satellite communications and other in-space activities under the Commission’s jurisdiction. This new Bureau will have three divisions: the Satellite Programs and Policy Division, the Satellite Licensing Division, and the Earth Station Licensing Division. The Commission expects the Space Bureau to undertake policy analysis and rulemakings as well as to authorize satellite systems. The objectives are to streamline regulatory processes and

maximize flexibility to help operators meet customer needs.

The Office of International Affairs will address matters involving international and foreign regulatory authorities, as well as international telecommunications and submarine cable licensing. This Office will oversee and coordinate the FCC’s global participation in international organizations and multilateral conferences, regional organizations, cross-border negotiations, and efforts at setting international standards. The Office will consist of the Global Strategy and Negotiation Division and the Telecommunications and Analysis Division. The Global Strategy and Negotiation Division will include branches for International Radio-telecommunication, Cross Border Negotiations and Treaty Compliance, and Multilateral and Regional Affairs.

Low Power Protection Act Becomes Law

Congress has passed and President Biden has signed into law the Low Power Protection Act. This legislation provides opportunities for certain existing low power television stations to achieve Class A TV status. Class A stations are considered to be primary stations and their signals are protected from interference within their service areas.

The law requires the FCC to initiate a rulemaking proceeding within 90 days to establish the regulatory framework for the application process. The FCC is to establish a one-year filing window during which qualified low power television stations may apply for Class A status.

To qualify to apply for Class A status, a LPTV station must:

- operate in a Designated Market Area with not more than

95,000 television households;

- satisfy all of the original Class A eligibility criteria, including:
 - operating at least 18 hours per day;
 - broadcasting at least three hours per week of programming produced within the station’s local market area, or within the market area of a group of LPTV stations under common control.

Class A television stations must generally comply with all of the regulations in Part 73 of the FCC’s Rules pertaining to full power TV stations. Class A stations do not have the right to demand carriage on multichannel video programming distributors.

License Rescinded for Failure to Construct Permanent Facilities at Authorized Site

The Audio Division of the FCC's Media Bureau has issued a *Letter Decision* (DA 22-1352) denying a Petition from Powell Meredith Communications Company ("Powell") to reconsider the Bureau's decision to rescind the license for Powell's FM translator station, W270CS, Gulfport, Mississippi. The license included the now standard (since June 2015) condition that the station operate continuously for at least one year from an authorized, durable structure. Despite Powell's attestations to the contrary, the Media Bureau concluded that Powell had failed to satisfy this condition of the license.

On September 1, 2021, the Media Bureau granted the license application for W270CS in which Powell stated that it had completed construction of the station at the site authorized in its construction permit, a commercial tower owned by Pinnacle, LLC. Fewer than three months later, on November 23, 2021, Powell requested Special Temporary Authority to remain silent. That filing raised the rebuttable presumption that the construction had been temporary.

This inconsistency triggered a Letter of Inquiry from the Bureau to determine whether Powell could rebut the presumption. In response to that Letter, Powell admitted that it had operated the station only from July 19, 2021, until August 30, 2021. Although the station had been operating while the license application was pending, it was never on the air following the grant of the license. Powell also disclosed that it had not built the station at the authorized Pinnacle site, but rather it had mounted the station's antenna on an amateur ham radio tower in a recreational vehicle ("RV") park, approximately 30 yards from the authorized site.

According to the *Letter Decision*, Powell claimed that the facilities constructed at the RV site provided equivalent coverage to those authorized at the Pinnacle site, and therefore it did not realize that the FCC would have to approve the alternate site. Powell also suggested that the RV site construction was not temporary because the amateur radio tower was attached to a shed affixed to the ground and received power through a permanent electric outlet shared with an RV. (While not detailed in the decision, the Bureau in a June 2022 letter indicated that Powell, in addition to using the shed, also used facilities associated with an RV.) The station went silent on August 30, 2021, when Hurricane Ida damaged the RV site. It has been off the air continuously since then except for a six-hour stint of testing from an unidentified location on March 4, 2022. In the Letter of Inquiry, the Bureau had requested any documents that could corroborate Powell's claim of a permanent construction, such as photographs of the facilities, utility bills, engineering invoices, etc. Powell did not provide any such evidence.

The Bureau rescinded the license primarily because its grant was based on misinformation in the license application that Powell had constructed the station as authorized. Because Powell never constructed the station as authorized, the Bureau held that the construction permit had expired and there was no station to license. In its Petition for Reconsideration, Powell reiterated its view that the authorized site and the RV site provided essentially equivalent coverage. Powell's claim that it was not aware of the need to obtain FCC approval for relocating the antenna site by only 30 yards was

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Media Ownership Diversity Symposium Set for February 7

The FCC's Communications Equity and Diversity Council will host a Media Ownership Diversity Symposium on February 7. The meeting was announced and an agenda was published in a *Public Notice* (DA 23-53). The purpose of the symposium is to explore challenges and creative solutions to increasing ownership opportunities for women and people of color to achieve success and viewpoint diversity in television, radio, cable, and streaming.

The event will feature panel discussions on research and trends in ownership and employment diversity covering the following topics.

- **Competitive hurdles for minorities in media.** This panel will examine how to incentivize the sale of broadcast stations to diverse owners, and policy and regulatory measures that could create more robust competition in the media industry.
- **Generating next-gen minority leaders, CEOs and owners.** Panelists will share strategies for bringing young diverse

owners into the current media landscape of streaming, apps, gaming, coding, and social media, as well as traditional broadcast and cable ownership.

- **Show me the money.** This discussion will explore incentives to fund or support diverse owners, including tax incentives, and the importance of accessing increased advertising revenues for female- and minority-owned media outlets.

Participants will include experts, entrepreneurs, researchers, thought leaders, and representatives from successful media/tech training programs.

The symposium is scheduled to run from 9:30 am until 4:45 pm. This will be a hybrid event, with both in-person and online participation. The meeting will be conducted in the FCC's meeting room at 45 L Street, N.E., in Washington. The public is invited to attend. The event will also be available to the public online with a live feed from the FCC's webpage at <https://www.fcc.gov/live>.



DEADLINES TO WATCH



License Renewal, FCC Reports & Public Inspection Files

DUE TO TECHNICAL MALFUNCTIONING OF THE FCC'S WEBSITE, JANUARY DEADLINES TO UPLOAD DOCUMENTS TO ONLINE PUBLIC INSPECTION FILES, LICENSE RENEWALS, AND CHILDREN'S TELEVISION PROGRAMMING REPORTS ARE EXTENDED TO FEBRUARY 28

February 28	Deadline to file Children's Television Programming Reports for all commercial full service and Class A television stations for 2022.	February 28	Deadline to place EEO Public File Report in Public Inspection File and on station's website for all nonexempt radio and television stations in Arkansas, Kansas, Louisiana, Mississippi, Nebraska, Oklahoma, New Jersey, and New York.
February 28	Deadline to place quarterly Issues and Programs List in Public Inspection File for all full service radio and television stations and Class A TV stations.	February 28	Deadline for all broadcast licensees and permittees of stations in Arkansas, Kansas, Louisiana, Mississippi, Nebraska, Oklahoma, New Jersey, and New York to file annual report on any adverse findings and final actions taken by any court or governmental administrative agency involving misconduct of the licensee, permittee, or any person or entity having an attributable interest in the station(s).
February 28	Deadline for noncommercial stations to place quarterly report regarding third-party fundraising in Public Inspection File.	February	Television stations in New Jersey and New York begin broadcasting post-filing announcements within five business days of acceptance for filing of license renewal application and continuing for four weeks.
February 28	Deadline for Class A TV stations to place certification of continuing eligibility for Class A status in Public Inspection File.		
February 28	Deadline for all commercial full service and Class A television stations to place verification of compliance with the commercial limitations in children's programming for 2022 in Public Inspection File.		
February 28	Deadline to file license renewal applications for television stations in New Jersey and New York.		

Cut-Off Date for AM and FM Applications to Change Community of License

The FCC has accepted for filing the applications identified below proposing to change the community of license for each station. These applications may also include proposals to modify technical facilities. The deadline for filing comments about any of the applications in the list below is **January 27, 2023**. Informal objections may be filed any time prior to grant of the application.

PRESENT COMMUNITY	PROPOSED COMMUNITY	STATION	CHANNEL	FREQUENCY
Vidalia, GA	Twin City, GA	WKIH	212	90.3
Gooding, ID	Filer, ID	KRXR(AM)	N/A	1480
Terrytown, NE	Lexington, NE	KOLT(AM)	N/A	690
Lawrenceburg, TN	Loretto, TN	WWLX(AM)	N/A	590
Premont, TX	Ben Bolt, TX	KABV	264	100.7
Menard, TX	Wall, TX	KTCY	287	105.3
Richland Springs, TX	Adamsville, TX	KQXZ	285	104.9
Santa Ana, TX	Menard, TX	KSZX	288	105.5
Tahoka, TX	Ropesville, TX	KAMZ	278	103.5

**DEADLINE TO FILE
EAS TEST REPORTING SYSTEM
FORM ONE**

FEBRUARY 28, 2023



DEADLINES TO WATCH



Paperwork Reduction Act Proceedings

The FCC is required by the Paperwork Reduction Act to periodically collect public information on the paperwork burdens imposed by its record-keeping requirements in connection with certain rules, policies, applications and forms. Public comment has been invited about this aspect of the following matters by the filing deadlines indicated.

TOPIC	COMMENT DEADLINE
DTV license application form, Form 2100, Schedule B	Jan. 27
Television application forms, Form 2100, Schedules C, D, E, F	Feb. 10
Significantly viewed signals, Section 76.54	Feb. 13

Deadlines for Comments in FCC and Other Proceedings

DOCKET	COMMENTS	REPLY COMMENTS
(All proceedings are before the FCC unless otherwise noted.)		
Docket 22-405; Public Notice (DA 22-1226) Digital FM power		Feb. 13
Docket 23-11; Public Notice (DA 23-18) Petition for Declaratory Ruling re foreign ownership by Alpha Media Holdings, Inc.	Feb. 6	Feb. 21
Docket 22-459; Public Notice (DA 22-1364) 2022 Quadrennial Review of Media Ownership Rules	Mar. 3	Mar. 20
Federal Trade Commission Docket No. RIN 3084-AB74 Rule to ban noncompete agreements	Mar. 20	None
Docket 22-227; NPRM (FCC 22-73) Updating television rules	FR+60	FR+75

FR+N means the filing due date is N days after publication of notice of the proceeding in the Federal Register.

Proposed Amendments to the FM Table of Allotments

The FCC is considering requests to amend the FM Table of Allotments by modifying channels for the communities identified below. The deadlines for submitting comments and reply comments are shown.

COMMUNITY	PRESENT CHANNEL	PROPOSED CHANNEL	PROPOSED MHZ	COMMENTS	REPLY COMMENTS
Ralston, WY	---	233C	94.5	Jan. 23	Feb. 7
Wharton, TX	---	277C2	103.3	Feb. 6	Feb. 21

Proposed Amendments to the Television Table of Allotments

The FCC is considering petitions to amend the digital television Table of Allotments by changing the channels allotted to the communities identified below. The deadlines for submitting comments and reply comments are shown.

COMMUNITY	STATION	PRESENT CHANNEL	PROPOSED CHANNEL	COMMENTS	REPLY COMMENTS
Yuma, AZ	New	11	27		Jan. 30
Odessa, TX	KOSA-TV	7	31	Feb. 2	Feb. 17
Lufkin, TX	KTRE	9	24	Feb. 6	Feb. 21
Roanoke, VA	WBRA-TV	*3	*13	Feb. 21	Mar. 6

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The Media Bureau solicits comments on the impact that the rules have on the American public as consumers of media, and the function and objectives of the rules as they relate to the public interest obligations of broadcasters. The Bureau suggests specific questions that commenters could address:

- Do the rules serve consumers with respect to the FCC's policy goals of competition, localism, and diversity?
- How can the Commission evaluate the benefits that consumers have realized with respect to competition, localism, and diversity?
- Should the Commission adjust its analysis of the audio or video programming marketplace to account for fundamental changes in consumer behavior, such as the use of streaming alternatives?
- Are there areas in which consumers rely exclusively on broadcast media?
- How should the Commission define or redefine the policy

goals for these rules?

- Are there are other policy goals that the Commission should consider aside from competition, localism, and diversity?
- Could barriers to minority and female ownership of broadcast stations be addressed by changes to these rules?

The Media Bureau welcomes any additional information about legal or economic factors or issues that commenters feel the Commission should consider in connection with the 2022 Review. The Bureau reiterates the request from previous quadrennial reviews that commenters submit empirical data and new studies to support their claims and positions whenever possible. Commenters are encouraged to explicitly draw conclusions or connections between data and potential policy changes.

Comments are due by March 3. The deadline for reply comments is March 20.

License Rescinded for Failure to Construct Permanent Facilities at Authorized Site continued from page 3

unavailing. The Bureau said that ignorance of the law is not a mitigating factor. Powell also asserted it is not in the public interest to delete a license. The Bureau refused to consider that as grounds for reconsidering the rescission of the license. The Bureau stated that "the public receives no benefit from construction or operation of unauthorized facilities such as those that [Powell] built. Return of the spectrum prevents warehousing by those unable to build in accordance with the rules and makes it possible for others to propose rule-compliant uses."

A secondary basis given for the rescission was Powell's failure to rebut the finding that the construction of the station at the RV site was only temporary. Powell failed to provide any documentary evidence that the station had actually been constructed and operational. Powell indicated that it had no engineering invoice because its installation engineer had provided services without compensation because he was a friend of a Powell principal. The Bureau said that even if it were able to accept Powell's claim that the absence of an engineering invoice is due to a reason other than the non-

permanence of the facilities, that would be insufficient to rebut the presumption and, as noted above, insufficient to overcome the facilities being constructed at an unauthorized location. According to the Bureau, factors against a finding of permanence included the following:

- (a) RVs are inherently mobile;
- (b) the RV and associated connections that hosted the station's transmitter are no longer at the site;
- (c) there was no written lease with the RV owner;
- (d) the oral site agreement was for only three months;
- (e) there was no indication of how long the RV was entitled to stay on the property;
- (f) there was no agreement with the RV park landowner.

In the end, the Bureau concluded that, whether the facilities were temporary or permanent was not determinative. The facilities were not constructed according to the construction permit, so there were no facilities to license. In view of these facts, the Media Bureau denied Powell's Petition for Reconsideration.

ETRS Form One Due by February 28 continued from page 1

Commission's Rules requires EAS participants to renew and update the data in the Form One every year. When a nationwide test is conducted, participants also file Form Two and Form Three to report on the station's performance during the actual event. FEMA schedules the nationwide test, but has not yet set a date for the 2023 test.

EAS filers submit these forms through the ETRS page on the FCC's website, at <https://www.fcc.gov/general/eas-test-reporting-system>. To access this page, filers use their registered FCC username that is associated with the FCC Registration Number associated with the station for which the report is being submitted.

Broadcast stations, including Low Power FM stations, Class D noncommercial stations, and stations that are operating pursuant to Special Temporary Authority are required to register and file with ETRS. The following types of stations are exempt and are not required to file the ETRS forms: (1) FM booster and FM translator stations that rebroadcast the signal of another station 100 percent of the time, and (2) broadcast stations that operate as satellites or repeaters of a hub station (or from a common control point if there is no hub) and rebroadcast 100 percent of the programming of the hub station. However, the common control point or hub station is required to register and file with ETRS.

Court Retains Jurisdiction Over LMA continued from page 2

Meridian's failure to provide RMM information about political programming, changing the program format without notice to RMM, and failure to compensate RMM while programming the station for more than a year. RMM sent Meridian a termination letter dated December 2, 2021. RMM demanded a full accounting of revenue and expenses, and took the stations off the air.

Meridian contends that there was a written contract for the LMA and rejects the allegation that it violated FCC policies. Meridian claimed that the LMA was valid and that RMM wrongfully terminated it. Meridian initiated litigation in state court for injunctive relief, and requested a declaratory ruling from the FCC. On March 26, 2022, RMM (and three related entities) filed for relief under Chapter 11 of the Bankruptcy Code, bringing these disputes before the federal bankruptcy court.

RMM filed a motion with the bankruptcy court for an Order Authorizing the Rejection of Certain Executory Contracts – including the LMA. RMM claimed that the LMA had been breached and terminated prior to commencement of the bankruptcy proceeding. According to RMM, the court's rejection of the LMA would merely be a confirmation of that prior termination to facilitate the sale of the stations. Meridian opposed the motion, arguing that the court must first determine whether the LMA was an executory contract as of the date that the bankruptcy proceeding was initiated. Assuming that the LMA was executory, Meridian asserted that rejection of the LMA was not the correct business judgment. Further, Meridian claimed \$4.8 million in damages for breach of the LMA.

To resolve these factual disputes, the court would need to conduct a trial. However, the parties disputed whether the court had subject-matter jurisdiction over the LMA. To refine the arguments in this dispute, the court asked the parties to submit briefs on the questions of (a) whether the FCC has exclusive jurisdiction to determine the validity of the alleged LMA, and (b) if the LMA is valid, whether the FCC has exclusive jurisdiction to determine if the termination of the alleged LMA was proper.

RMM argued that the FCC must have exclusive jurisdiction over the validity and enforceability of LMAs because LMAs can create an environment conducive for unauthorized transfers of control, citing policy from FCC precedent to the effect that the FCC has jurisdiction over "all types of transfer of control" of licensed radio stations. The court acknowledged that the administrative agency had

jurisdiction, but disagreed that that jurisdiction was exclusive. The court cited other FCC precedent where the Commission stated that an alleged violation of the FCC's rules is an issue separate and distinct from the issue of whether [a contract] is enforceable under state contract law." The court also quoted a prior FCC decision in which RMM had been a party, stating that a party to an LMA may properly bring a "private contractual dispute seeking monetary damages before a local court of competent jurisdiction." The court noted that the FCC lacks the expertise and resources to fully adjudicate state law breach of contract issues. It defers to local courts on such matters, including bankruptcy courts.

The court rejected RMM's claim that the FCC has *exclusive* jurisdiction over LMAs. However, that left open the question of whether the court may decide factual issues arising under federal communications law. The division of jurisdiction between federal agencies and the courts is governed by the doctrine of "primary jurisdiction." The purpose of this doctrine is to allocate authority between courts and administrative agencies. It pertains to claims properly cognizable in court that contain some issue within the special competence of an expert administrative agency. If the issue is one that Congress has assigned to a specific agency, the doctrine of primary jurisdiction allows the court to stay the proceedings and direct to parties to seek a decision before the appropriate administrative agency. Even where a court has subject matter jurisdiction over a claim, it has the discretion to refer a specific issue to an administrative agency.

The court concluded that it had subject matter jurisdiction to conduct this proceeding, and that the request to refer any specific factual question to the FCC was premature before the development of a factual record. The court observed that the validity and enforceability of the LMA under state contract law is challenged, and whether Meridian actually acted in a manner alleged to have caused an improper transfer of control of the stations is unknown. As a result, it found there is currently no factual basis for making a decision. Upon establishing a factual record, the court might in the future decide to refer that question to the agency with expertise in this field, i.e., the FCC.

The court ordered the parties to prepare for trial, during which a factual record will be developed that will inform the future course of this case. The decision is *In re Rocking M. Media* (Chapter 11), 2022 Bankr. LEXIS 3184.

FTC Proposes To Ban Noncompete Agreements continued from page 1

- maintain a noncompete with a worker; or
- represent to a worker that the worker is subject to a noncompete.

For the purposes of this rule, the term, “worker,” would include an employee, an individual classified as an independent contractor, an extern, an intern, a volunteer, an apprentice, and a sole proprietor who provides services to a customer or a client, regardless of whether the worker is compensated.

The term “employer” would mean any person or business entity who hires or engages another person to be a worker regardless of whether the employer would meet the legal definition of “employer” under federal or state labor laws.

Employers who are exempt from coverage under the Federal Trade Commission Act would be exempt from the proposed rules. Among the categories of exempt employers under the Act are certain governmental entities and nonprofit entities.

Employers would be required to rescind existing noncompete agreements and to actively inform workers by a compliance deadline that such agreements are no longer in effect. The compliance deadline would be 180 days after publication in the Federal Register of the final adopted rule. The FTC proposes a safe harbor for employers to comply with this obligation by providing model language that would satisfy the notice requirement.

The FTC proposes to exempt from the ban certain noncompete provisions in agreements for the sale and purchase of a business. This exception would be available where the selling party restricted by the noncompete clause is an owner, member, or partner holding at least a

25 percent ownership interest in the business entity. The FTC requests input about whether 25 percent is the best threshold for this exception. It could be set at any other level of ownership stake in the business. The rule would clarify that noncompete provisions allowed under this exception would nonetheless remain subject to federal antitrust law and applicable state law.

The FTC also invites comment about alternative approaches to regulating noncompete agreements. One such alternative would be adoption of a rebuttable presumption in place of an absolute ban on noncompete agreements. A noncompete provision might be permissible if the employer could demonstrate the existence of certain facts in a specific case that would justify such a restriction. The test for what constitutes justification would be a subject for consideration in this rulemaking proceeding.

Another alternative to the uniform prohibition might be to exempt certain categories of workers. The differentiation of workers could be based on job function, occupation, compensation level, or management level, such as senior executives.

As proposed, the rule would not prohibit certain other types of restrictive employment covenants, such as nondisclosure agreements and agreements to prohibit solicitation of clients or customers. The rationale for these exceptions is that such covenants generally would not prevent a worker from seeking or accepting employment with another employer.

The FTC solicited comments about these proposals and set March 20 as the filing deadline.