rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on June 27, 1996 (61 FR 33373) by operation of law, the rule did not take effect on July 29, 1996, as stated therein. Now that EPA has discovered its error, the rule is being submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since June 27, 1996, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2). Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the June 27, 1996, **Federal Register** should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in June 27, 1996, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on February 10, 1998. This rule is not a ''major rule'' as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: January 30, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–3026 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 97–157; FCC 97–421]

Reallocation of TV Channels 60–69, the 746–806 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this *Report and Order* (''R&O''), the Commission reallocates the 746–806 MHz band, currently television (TV) channels 60–69, as proposed in the *Notice of Proposed Rule Making* (''Notice'') in this proceeding. In consultation with the Secretary of Commerce and the Attorney General, we allocate 24 megahertz of this band, at 764–776 MHz and 794–806 MHz, on a primary basis to the fixed and mobile services, and designate this spectrum for public safety use. We allocate the remaining 36 megahertz of the band on a primary basis to the fixed, mobile, and new broadcasting services for commercial use, to be assigned by auction. During the digital television (''DTV'') transition period, TV channels 60–69 will continue to be used for analog and digital TV broadcasting. We are establishing policies for the protection of such stations during the DTV transition. We are also providing for continued use of TV channels 60–69 on a secondary basis for low power TV and translator stations until the end of the DTV transition period.

EFFECTIVE DATE: April 13, 1998.

FOR FURTHER INFORMATION CONTACT: Sean White, Office of Engineering and Technology, (202) 418–2453.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, ET Docket 97–157, FCC 97–421, adopted December 31, 1997, and released January 6, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, N.W. Washington, D.C. 20036.

Summary of the Report and Order

1. This *Report and Order* reallocates the 746–806 MHz band, currently comprising television (TV) channels 60–69, as proposed in the Notice of Proposed Rule Making in this proceeding, 62 FR 41012, July 31, 1997. The Balanced Budget Act of 1997 (Budget Act) requires the allocation of 24 megahertz of spectrum for public safety from TV channels 60–69, in consultation with the Secretary of Commerce and the Attorney General, not later than January 1, 1998.[1] There is inadequate spectrum to meet the needs of many public safety organizations, particularly in major metropolitan regions. Public safety requires spectrum to facilitate interoperability and for new types of communications capabilities that will strengthen and enhance public safety. Therefore, as required by the Budget Act, after consulting with and considering the views of the Secretary of Commerce and the Attorney General, we are allocating 24 MHz of spectrum (TV Channels 63, 64, 68, and 69, or, in other words, the 764–776 MHz and 794–806 MHz bands) to the fixed and mobile services on a primary basis for public

[1] See Budget Act, section 3004 (adding new section 337 of the Communications Act).

safety services.[2] We have initiated a separate proceeding to establish the rules that will govern how this spectrum will be used by public safety agencies. Also in accordance with the Budget Act, we are allocating the remaining 36 megahertz of channels 60–69 to the fixed and mobile services on a primary basis, and retaining the primary allocation of this spectrum to the broadcasting service. Licenses in this 36 megahertz of spectrum will be assigned to commercial licensees through competitive bidding in accordance with procedures that will be determined in a later proceeding. This 36 megahertz of commercial spectrum can be used to make new technologies and services available to the American public. These proposals are an outgrowth of our digital television (DTV) transition plan. During the DTV transition, channels 60–69 will continue to be used for analog and digital TV broadcasting. We are establishing policies for the protection of such stations during the DTV transition. We are also providing for continued use of TV channels 60–69 on a secondary basis for low power TV and translator stations until the end of the DTV transition period.

2. We do not adopt an alternative proposal to allocate channels 66–69 for public safety instead of channels 63, 64, 68, and 69. It is not clear that this alternative proposal would reduce adjacent channel interference. In any event, properly crafted technical rules will minimize adjacent channel interference. More importantly, this proposal would have a severe impact on public safety radio communications equipment. We anticipate that much of the public safety communications in the 746–806 MHz band will be two-way. Two-way radios require filtering to permit simultaneous transmission and reception. Small separations between transmit and receive frequencies increase the size, weight, power requirements, and cost of these radios. The mobile nature of public safety communications requires that these factors be minimized to the extent possible. Manufacturers of radio equipment have expressed confidence in their ability to design two-way public safety radios with transmit/receive separations of 30 megahertz. On the other hand, shorter separations, such as the 12 megahertz suggested by the alternate proposal, would significantly increase the cost and weight of public safety radio equipment. Further, the 30 megahertz separation proposed in the *Notice* will allow the design of public safety equipment more compatible with, and more easily integrated into, current public safety systems in the 800 MHz band. On balance, we believe that channels 63, 64, 68, and 69 are most appropriate for public safety use, and therefore, we are reallocating the 764–776 MHz and 794–806 MHz bands to the fixed and mobile services for this purpose.

3. We reject the argument that broadcasting should not retain an allocation in the 36 megahertz of commercial spectrum after the DTV transition. Commenters generally agreed that including full power broadcasting in this spectrum is likely to cause interference problems with other commercial applications, especially low-power mobile applications. We recognize that technical challenges are involved in sharing spectrum between full power broadcasting and land mobile services. However, we plan to address sharing issues in our service rules proceeding, and are not persuaded that such sharing is not feasible. At the same time, we wish to make it clear that analog TV and DTV operations not licensed by competitive bidding as provided by the Budget Act will be required to vacate this spectrum in accordance with the DTV transition plan. Finally, we find that this allocation will not deter investment in new communications services or systems, because the 746–806 MHz band is highly desirable spectrum for fixed, mobile, and broadcasting operations, any of which are likely to attract investment interest.

4. We observe that our DTV transition plan is currently under review in a separate proceeding, and that additional DTV allotments are under consideration for channels 60–69. However, we reject the argument that we should avoid reallocating this spectrum in order to provide a ''safe haven'' for addressing problems that may arise during the DTV transition. As an initial matter, we note that the Budget Act directs the Commission to allocate 24 megahertz of this spectrum for public safety use and 36 megahertz for commercial use by January 1, 1998. Thus we do not have the latitude to delay reallocation of this spectrum. Moreover, even if we had the discretion to do so, we do not believe it would be necessary to retain this spectrum as a ''safe haven''. The DTV transition plan is the product of extensive technical study and review. If problems should arise, in most cases alternative solutions to use of channels 60–69 will be available. The limited potential benefits of retaining channels 60–69 as a ''safe haven'' are outweighed by the costs of delaying much needed public safety services and opportunities for new services. We also find no merit in the argument that we should remove immediately all TV broadcasting operations from TV channels 60–69. The operation of some TV and DTV stations in this spectrum is clearly required to facilitate the DTV transition; and the Budget Act provides for this, stating ''[a]ny person who holds a television broadcast license to operate between 746 and 806 megahertz may not operate at that frequency *after the date on which the digital television service transition period terminates,* as determined by the Commission.''

5. We recognize that the DTV transition and the reallocation of TV channels 60–69 to other services will have a significant impact on LPTV and TV translators. While we are committed to take reasonable steps to reduce the impact on such operations, we are obligated to facilitate the DTV transition and to reallocate the TV channels 60–69 as directed under the Budget Act. Section 3004 of the Budget Act states that anyone holding a television broadcast license in the band ''may not operate at that frequency after the date on which the digital television transition period terminates, as determined by the Commission.''[3] This provision of the Budget Act leaves us no latitude in clearing LPTV and TV translator stations from the band at the end of the DTV transition period. We will permit LPTV and TV translators to continue to operate on channels 60–69 until the end of the DTV transition period, as long as they do not cause harmful interference to primary services. The DTV transition period is currently scheduled to end December 31, 2006, but may be extended in some markets for several reasons.[4] In many rural areas, LPTV and TV translator licensees will be able to continue

[2] The Budget Act provides that this spectrum is to be allocated ''for public safety services according to the terms and conditions established by the Commission, in consultation with the Secretary of Commerce and the Attorney General.'' Budget Act section 3004(a)(1). Section 3004 of the Budget Act defines public safety services as

Services—

(A) The sole or principal purpose of which is to protect the safety of life, health, or property;

(B) That are provided—

(i) By State or local government entities; or

(ii) By nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and

(C) That are not made commercially available to the public by the provider.

Budget Act section 3004(f)(1).

[3] See Budget Act section 3004 (adding new section 337(e)(1) of the Communications Act).

[4] Budget Act section 3003 (adding new section 309(j)(14) of the Communications Act) establishes the conditions under which the Commission shall extend the end of the DTV transition period beyond December 31, 2006.

broadcasting because demand for spectrum for both public safety and commercial applications is likely to be less in rural areas than in urban areas.

6. LPTV operators also can be accommodated in other ways. We will consider whether there are any other steps that may be of benefit to LPTV and TV translator operations as we develop service rules for the commercial spectrum. We emphasize that all the provisions we made in the *DTV Proceeding Sixth Report and Order* to accommodate LPTV and TV translator stations also apply to LPTV and TV translator stations in channels 60–69.

7. We believe that most holders of TV station construction permits in channels 60–69 are sufficiently advanced in the licensing process that it would be inequitable to rescind their permits. At the same time, as we pointed out in the *Notice,* there are outstanding construction permits that were issued years ago, on which there has been little progress. In order to ensure that holders of construction permits, both for new facilities and modification of existing facilities, progress in construction, we are establishing a deadline by which construction must be completed. We believe that three years is sufficient time for current construction permits to build or improve their facilities, and also provides a date certain for planning purposes for public safety agencies and commercial entities. Therefore, we will cancel any construction permit issued before the release date of this Report and Order for which no license application has been filed as of January 2, 2001.

8. We decline to indefinitely protected analog TV stations up to their maximum possible coverage. Such a measure would deny areas of the country to public safety and commercial licensees, even though the current licensees may never increase their coverage to the maximum. Accordingly, we will protect analog TV licensees up to their actual coverage until the end of the DTV transition period. In this regard, we will process requests for minor modifications to existing analog TV stations and construction permits. However, the planning and development of new services would be impeded if we were to permit modifications that increase service area on an indefinite basis. We believe that licensees have been aware of the DTV transition plan and have had the opportunity to plan necessary modifications. Accordingly, as of six months after the release date of this Report and Order we will no longer accept requests for modifications to increase the service areas of stations operating on TV channels 60–69. With regard to DTV, we will protect the full coverage area until the end of the DTV transition period.[5] We recognize that stations may not be able to provide full coverage initially and we do not wish to impede growth and development of DTV.

9. In the *DTV Sixth Further Notice of Proposed Rule Making,* we provided a final opportunity for the filing of new applications for analog stations for vacant allotments and rule making petitions to add channels to the TV Table of Allotments, thereby accommodating parties who were in the process of preparing application and rule making submissions. We are aware of the investment in planning, effort, and money that have been put into these and other pending applications and petitions to amend the TV allotment table. However, we continue to believe that it is important to maximize the utility of the 746–806 MHz band for public safety and new commercial services. For these reasons, we will not authorize additional new analog full-service television stations on channels 60–69. However, we will at a later date provide applicants and petitioners an opportunity to amend their applications and petitions, if possible, to seek a channel below channel 60. We will thereafter dismiss any applications or allotment petitions that are not satisfactorily amended. We direct the Mass Media Bureau to announce the details of this amendment opportunity by Public Notice, at a date after we complete action on our broadcast auction proceeding and the petitions for reconsideration in the DTV proceeding. To encourage settlements among mutually exclusive applicants, we authorize the Mass Media Bureau to waive for this special amendment opportunity the rule which limits reimbursements of applicants to legitimate and prudent expenses (47 CFR 73.3525(a)(3)). Finally, we note that all conditions pertaining to the applications and rule making petitions will continue to apply.

Final Regulatory Flexibility Analysis

10. As required by the Regulatory Flexibility Act (RFA),[6] the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities in the *Notice of Proposed Rule Making* (Notice) in this proceeding. The Commission sought written public comments on the proposals in the *Notice,* including the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Public Law 104–121, 110 Stat. 847.[7]

A. Need for and Purpose of This Action

11. In this Report and Order, the Commission reallocates the 746–806 MHz band, television (TV) Channels 60–69, to other services. We allocate 24 megahertz at 764–776 MHz and 794–806 MHz for public safety use. We allocate the remaining 36 megahertz at 746–764 MHz and 776–794 MHz to the fixed and mobile services, and to retain the allocation to the broadcasting service in these bands. We further assure the protection of full-power TV stations in the band until the transition to digital television (DTV) is complete, and retain the secondary status in the band of Low Power TV (LPTV) and TV translator stations until the end of the DTV transition period. These allocations will help alleviate a critical shortage of public safety spectrum, make new technologies and services available to the American public, and allow more efficient use of spectrum in the 746–806 MHz band.

B. Legal Basis

12. This action is taken pursuant to Sections 4(i), 303(c), 303(f), 303(g), 303(r), and 337(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), 303(r), and 337(a); and section 3004 of the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251 section 3004 (1997).

C. Summary of Issues Raised by the Public Comments in Response to the IRFA

13. One commenter responded to the IRFA. The Mountain Broadcasting Corporation (Mountain) states that individual small businesses in the televsion broadcasting industry will be harmed by interference and loss of service resulting from our attempts to clear channels 60–69, while providing interference protection for DTV service during the DTV transition. Mountain contends that existing analog UHF stations must be protected from interference from new DTV stations.[8]

[5] DTV coverage areas are established in the *DTV Sixth Report and Order,* ¶¶ 29–33.

[6] 5 U.S.C. 603.

[7] Public Law 104–121, 110 Stat. 847 (1996)(CWAAA, Subtitle II of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), *codified at* 5 U.S.C. 601 *et seq.*).

[8] See Mountain Comments at 5–6.

D. Changes Made to the Proposed Rules

14. In the *Notice* in this proceeding, released July 10, 1997, we proposed to reallocate the 746–806 MHz band, currently comprising TV channels 60–69. We proposed to allocate 24 megahertz, at 764–776 MHz and 794–806 MHz (channels 63, 64, 68, and 69) to the fixed and mobile services, for the exclusive use of public safety services. We proposed to allocate the remaining 36 megahertz, at 746–764 MHz and 776–794 MHz (channels 60–62 and 65–67) to the fixed, mobile, and broadcasting services. We stated in the *Notice* that we anticipated that licenses in this 36 megahertz of spectrum would be assigned through competitive bidding. We also inquired into protection of TV stations on channels 60–69 from interference by new licensees during the DTV transition period, but deferred specific interference protection standards to a separate proceeding on service rules for the 746–806 MHz band. We reaffirmed the secondary status of LPTV and TV translators in the entire 746–806 MHz band until the end of the DTV transition period, and inquired whether we should take any other measures to accommodate LPTV in the band.

15. This Report and Order contains no substantial changes to the *Notice.* The only commenter who addressed the IRFA in the *Notice* addressed potential DTV-to-analog TV interference problems. This was not an issue in this proceeding; it was therefore impossible to address the comment in this Report and Order.

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

16. *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. This standard also applies in determining whether an entity is a small business for purposes of the RFA.

17. *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 over inclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. 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 over inclusive 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.

18. *Television station estimates based on census data.* The *Notice of Proposed Rule Making* will affect full service television stations, TV translator facilities, and LPTV stations. The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business.[9] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[10] Included in this industry are commercial, religious, educational, and other television stations.[11] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[12] Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.[13]

19. There were 1,509 television stations operating in the nation in 1992.[14] That number has remained fairly constant as indicated by the approximately 1,551 operating television broadcasting stations in the nation as of February 28, 1997.[15] For 1992[16] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments, or approximately 77 percent of the 1,509 establishments.[17] Thus, the rules will affect approximately 1,551 television stations; approximately 1,194 of those stations are considered small businesses.[18] 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 affiliated companies. We recognize that the rules may also impact minority and women owned stations, some of which may be small entities. In 1995, minorities owned and controlled 37 (3.0%) of 1,221 commercial television stations in the United States.[19] According to the

[9] 13 CFR 121.201, Standard Industrial Code (SIC) 4833 (1996).

[10] 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).

[11] *Id. 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.

[12] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, supra note 7, Appendix A–9.

[13] *Id.*; SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services (producers of live radio and television programs).

[14] FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 7, Appendix A–9.

[15] FCC News Release No. 7033, March 6, 1997.

[16] 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 7, at III.

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

[18] We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 1997 total of 1551 TV stations to arrive at 1,194 stations categorized as small businesses.

[19] *Minority Commercial Broadcast Ownership in the United States*, U.S. Dep't of Commerce, National Telecommunications and Information Administration, The Minority Telecommunications

U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and non-commercial television stations in the United States.[20]

20. There are currently 4,977 TV translator stations and 1,952 LPTV stations which would be affected by the allocation policy and other policies in this proceeding.[21] The Commission does not collect financial information of any broadcast facility and the Department of Commerce does not collect 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 indicated earlier, approximately 77 percent of television stations are designated under this analysis as potentially small business. Given this, LPTV and TV translator stations would not likely have revenues that exceed the SBA maximum to be designated as small businesses.

21. *Alternative classification of small television stations*. An alternative way to classify small 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.[22] Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and record keeping requirements.[23] We estimate that the total number of commercial television stations with 4 or fewer employees is 132 and that the total number of noncommercial educational television stations with 4 or fewer employees is 136.[24]

22. We have concluded that the 746–806 MHz band can be recovered immediately, and that it is in the public interest to reallocate this spectrum to uses in addition to TV broadcasting. We believe that such a reallocation is possible while continuing to protect TV. There are 95 full power TV stations, either operating or with approved construction permits, in Channel 60–69. There are also nine proposed stations, and approximately 15 stations will be added during the DTV transition period, for a total of approximately 110 nationwide. There are also approximately 1,366 LPTV stations and TV translator stations in the band, operating on a secondary basis to full power TV stations. We propose to immediately reallocate the 746–806 MHz band in order to maximize the public benefit available from its use.

23. The RFA also includes small governmental entities as a part of the regulatory flexibility analysis.[25] The definition of a small governmental entity is one with a population of fewer than 50,000.[26] There are approximately 85,006 governmental entities in the nation.[27] This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number have populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,566, or 96 percent, have populations of fewer than 50,000.[28] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the approximately 85,006 governmental entities, we estimate that 96 percent, or 81,600, are small entities that may be affected by our rules.

F. Description of Projected Reporting, Record Keeping and Other Compliance Requirements

24. None.

G. Significant Alternatives Considered and Rejected

25. We do not provide LPTV and TV translator stations with the same protection afforded to full-power TV stations. Because of the large number of such stations, protecting them would significantly diminish the utility of the 746–806 MHz band to both public safety and commercial users. Also, LPTV and TV translator stations are secondary in this band, and we have made public safety and commercial services primary in the band. We affirm measures which will allow as many LPTV and TV translator stations as possible to remain in operation until the end of the DTV transition period. We continue the secondary status of these stations, so that they will not be required to change or cease their operations until they actually interfere with one of the newly-allocated services.

H. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

26. None.

List of Subjects in 47 CFR Part 2

Frequency allocations and radio treaty matters, Radio.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rules Changes

For the reasons discussed in the preamble part 2 of title 47 of the Code of Federal Regulations, is amended as follows:

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.

[20] *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* 1987 Economic Censuses, *Women-Owned Business*, WB87–1, U.S. Dep't of Commerce, Bureau of the Census, August 1990 (based on 1987 Census). 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 Rule Making, 10 FCC Rcd 2788, 2797 (1995), 60 FR 06068, February 1, 1995.

[21] FCC News Release No. 7033, March 6, 1997.

[22] 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, Public Law 102–366, section 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Public Law 103–403, section 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).

[23] *See, e.g.*, 47 CFR 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 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), 61 FR 9964, March 12, 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.

[24] We base this estimate on a compilation of 1995 Broadcast Station Annual Employment Reports (FCC Form 395–B), performed by staff of the Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

[25] 5 U.S.C. 601(5).

[26] *Id.*

[27] 1992 Census of Governments, U.S. Bureau of the Census, U.S. Department of Commerce.

[28] *Id.*

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 307, and 336, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

a. Remove the existing entries for 614–790 MHz and 790–806 MHz.

b. Add entries in numerical order for 614–746 MHz through 794–806MHz.

c. In the International Footnotes under heading I., add footnotes S5.293, S5.296, S5.300, S5.309, S5.310, S5.311, S5.312, S5.313, S5.314, S5.315, and S5.316 in numerical order.

d. In the Non-Government (NG) Footnotes, remove footnotes NG30 and NG43, revise footnote NG149, and add in numerical order footnotes NG158 and NG159.

The revisions and additions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

International table			United States table		FCC use designators	
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	Rule part(s)	Special-use frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
*	*	*	*	*	*	*
614–746 BROADCASTING	614–746 BROADCASTING Fixed Mobile	614–746 FIXED MOBILE BROADCASTING	614–746	614–746 BROADCASTING	RADIO BROADCAST (TV) (73) Auxiliary Broadcasting (74)	
S5.296 S5.300 S5.311 S5.312	S5.293 S5.309 S5.310 S5.311	S5.311		NG128 NG149		
746–764 BROADCASTING	746–764 BROADCASTING Fixed Mobile	746–764 FIXED MOBILE BROADCASTING	746–764	746–764 FIXED MOBILE BROADCASTING	PRIVATE LAND MOBILE (90) RADIO BROADCAST (TV) (73) WIRELESS COMMUNICATIONS (27) Auxiliary Broadcasting (74)	
S5.296 S5.300 S5.311 S5.312	S5.293 S5.309 S5.310 S5.311	S5.311		NG128 NG159		
764–776 BROADCASTING	764–776 BROADCASTING Fixed Mobile	764–776 FIXED MOBILE BROADCASTING	764–776	764–776 FIXED MOBILE	PRIVATE LAND MOBILE (90) Auxiliary Broadcasting (74)	
S5.312 S5.313 S5.314 S5.315 S5.316	S5.293 S5.309 S5.310	S5.311		NG128 NG159		
776–790 BROADCASTING	776–790 BROADCASTING Fixed Mobile	776–790 FIXED MOBILE BROADCASTING	776–790	776–790 FIXED MOBILE BROADCASTING	PRIVATE LAND MOBILE (90) RADIO BROADCAST (TV) (73) WIRELESS COMMUNICATIONS (27) Auxiliary Broadcasting (74)	
S5.312 S5.313 S5.314 S5.315 S5.316	S5.293 S5.309 S5.310	S5.311		NG128 NG158 NG159		
790–794 FIXED BROADCASTING	790–794 BROADCASTING Fixed Mobile	790–794 FIXED MOBILE BROADCASTING	790–794	790–794 FIXED MOBILE BROADCASTING	PRIVATE LAND MOBILE (90) RADIO BROADCAST (TV) (73) WIRELESS COMMUNICATIONS (27) Auxiliary Broadcasting (74)	

International table			United States table		FCC use designators	
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
S5.312 S5.313 S5.314						
S5.315 S5.316	S5.293 S5.309 S5.310	S5.311		NG128 NG159		
794–806 FIXED BROADCASTING	794–806 BROADCASTING Fixed Mobile	794–806 FIXED MOBILE BROADCASTING	794–806	794–806 FIXED MOBILE	PRIVATE LAND MOBILE (90) Auxiliary Broadcasting (74)	
S5.312 S5.313 S5.314						
S5.315 S5.316	S5.293 S5.309 S5.310			NG128 NG158 NG159		
*	*	*	*	*	*	*

International Footnotes

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I. New ''S'' Numbering Scheme

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S5.293 Different category of service: in Chile, Colombia, Cuba, the United States, Guyana, Honduras, Jamaica, Mexico and Panama, the allocation of the bands 470–512 MHz and 614–806 MHz to the fixed and mobile services is on a primary basis, (see No. S5.33), subject to agreement obtained under Article 14/No. S9.21.

S5.296 Additional allocation: in Germany, Austria, Belgium, Cyprus, Denmark, Spain, Finland, France, Ireland, Israel, Italy, Libya, Malta, Morocco, Monaco, Norway, the Netherlands, Portugal, the United Kingdom, Sweden, Switzerland, Swaziland, Syria, Tunisia and Turkey, the band 470–790 MHz is also allocated on a secondary basis to the land mobile service, intended for applications ancillary to broadcasting. Stations of the land mobile service in the countries mentioned in this footnote, shall not cause harmful interference to existing or planned stations operating in accordance with the Table of Frequency Allocations in countries other than those listed in this footnote.

S5.300 Additional allocation: in Israel, Libya, Syria and Sudan, the band 582–790 MHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a secondary basis.

S5.309 Different category of service: in Costa Rica, El Salvador and Honduras, the allocation of the band 614–806 MHz to the fixed service is on a primary basis (see No. S5.33), subject to agreement obtained under Article 14/No. S9.21.

S5.310 Additional allocation: in Cuba, the band 614–890 MHz is also allocated to the radionavigation service on a primary basis, subject to agreement obtained under Article 14/No. S9.21.

S5.311 Within the frequency band 620–790 MHz, assignments may be made to television stations using frequency modulation in the broadcasting-satellite service subject to agreement between the administrations concerned and those having services, operating in accordance with the Table, which may be affected (see Resolutions 33 and 507). Such stations shall not produce a power flux-density in excess of the value-129 dB(W/m^2) for angles of arrival less than 20° (see Recommendation 705) within the territories of other countries without the consent of the administrations of those countries.

S5.312 Additional allocation: in Armenia, Azerbaijan, Belarus, Bulgaria, Georgia, Hungary, Kazakhstan, Latvia, Lithuania, Moldova, Mongolia, Uzbekistan, Poland, Kyrgyzstan, Slovakia, the Czech Republic, Romania, Russia, Tajikistan, Turkmenistan and Ukraine, the band 645–862 MHz is also allocated to the aeronautical radionavigation service on a primary basis.

S5.313 Alternative allocation: in Spain and France, the band 790–830 MHz is allocated to the broadcasting service on a primary basis.

S5.314 Additional allocation: in Austria, Italy, the United Kingdom and Swaziland, the band 790–862 MHz is also allocated to the land mobile service on a secondary basis.

S5.315 Alternative allocation: in Greece, Italy, Morocco and Tunisia, the band 790–838 MHz is allocated to the broadcasting service on a primary basis.

S5.316 Additional allocation: in Germany, Bosnia and Herzegovina, Burkina Faso, Cameroon, Côte d'Ivoire, Croatia, Denmark, Egypt, Finland, Israel, Kenya, The Former Yugoslav Republic of Macedonia, Libya, Liechtenstein, Monaco, Norway, the Netherlands, Portugal, Sweden, Switzerland and Yugoslavia, the band 790–830 MHz, and in these same countries and in Spain, France, Gabon, Malta and Syria, the band 830–862 MHz, are also allocated to the mobile, except aeronautical mobile, service on a primary basis. However, stations of the mobile service in the countries mentioned in connection with each band referred to in this footnote shall not cause harmful interference to, or claim protection from, stations of services operating in accordance with the Table in countries other than those mentioned in connection with the band.

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Non-Government (NG) Footnotes

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NG149 The frequency bands 54–72 MHz, 76–88 MHz, 174–216 MHz, 470–512 MHz, 512–608 MHz, and 614–746 MHz are also allocated to the fixed service to permit subscription television operations in accordance with Part 73 of the rules.

* * * * *

NG158 The frequency bands 764–776 MHz and 794–806 MHz are available for assignment exclusively to the public safety services, to be defined in Docket No. WT 96–86.

NG159 Full power analog television stations licensed pursuant to applications filed before January 2, 2001, and new digital television (DTV) broadcasting operations in the 746–806 MHz band will be entitled to protection from harmful interference until the end of the DTV transition period. After the end of the DTV transition period, the Commission may assign licenses in the 746–806 MHz band without regard to existing television and DTV operations.

Low power television and television translators in the 746–806 MHz band must cease operations in the band at the end of the DTV transition period.

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ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1515 and 1525

[FRL–5960–1]

Technical Amendments to Acquisition Regulation; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).