

List of Subjects in 40 CFR Part 79

Environmental protection, Air pollution control, Gasoline, Conventional gasoline, Methylcyclopentadienyl manganese tricarbonyl, and Motor vehicle pollution.

Dated: February 2, 1999.

Robert A. Perciasepe,

Assistant Administrator, Office of Air and Radiation.

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FEDERAL COMMUNICATIONS COMMISSION**47 CFR Parts 73 and 74**

[ET Docket No. 99-34; FCC 99-8]

An Industry Coordination Committee System for Broadcast Digital Television Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has issued a Notice of Proposed Rule Making (NPRM) requesting comment on the establishment of an industry coordination committee to assist in the implementation of digital television (DTV) service. The Commission indicated that it believes such an industry committee could serve to improve its existing procedures for adjusting the DTV Table of Allotments and for managing requests for DTV station modifications as the transition to DTV progresses.

DATES: Comments must be received on or before March 29, 1999, and reply comments on or before April 28, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554

FOR FURTHER INFORMATION CONTACT: Alan Stillwell (202-418-2470), Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in ET Docket No. 99-34, FCC 99-8, adopted January 28, 1999, and released February 3, 1999. The full text of this decision is available for inspection and copying during normal business hours in the Public Reference Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplicating contractor, International Transcription Service, 1231 20th Street,

NW., Washington, DC 20036, (202-857-3800).

Summary of the Notice of Proposed Rule Making

1. In the NPRM, the Commission sought comment on the establishment of an industry coordination committee to assist in the implementation of digital television (DTV) service. The Commission indicated that it believes that such an industry committee may aid its efforts to provide fair and efficient means for adjusting the DTV Table of Allotments and for managing requests for DTV station modifications as the transition to DTV progresses. It stated that a coordination committee might also serve to provide assistance in managing any further requests for modification of analog (NTSC) television stations during the transition and on other issues such as inter-service sharing arrangements.

2. The Commission indicated that it believes that the general principles and policies that were applied in establishing rules for frequency coordination in the land mobile services are also relevant and appropriate for guiding the development of an industry coordination committee system for broadcast television. It presented a number of proposals for the DTV industry coordination committee system that were generally based on a plan suggested in a Petition for Rule Making submitted by the Broadcasters' Caucus. These proposals, which are presented below, address the following issues: (a) the structure of a DTV industry coordination committee system; (b) its functions; (c) the operation of the Committee system; (d) the selection of the DTV frequency coordinators; and (e) the Commission's oversight of committee operations. The Commission invited interested parties to submit suggestions for any changes in these proposals or alternative approaches relating to an industry committee system that they believe would serve to improve the process for modifying the DTV Table and/or to provide other assistance to the Commission on television spectrum matters.

3. The Commission also indicated that if it decides to establish a DTV coordination committee system, it will need to decide whether to make participation in the committee process mandatory or voluntary. It therefore requested comment on whether to require that television station applicants, construction permit holders, licensees and others with proposals that would affect TV spectrum coordinate their proposals through the industry committee process or simply make

participation in that process voluntary. It noted that under a mandatory approach, the industry coordination committee system would replace its existing rules for voluntary negotiation of DTV allotment and facility modifications. The Commission also reiterated its statement in the Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order in the DTV proceeding, MM Docket No. 87-268, 13 FCC Rcd 6860, 63 FR 15774, April 11, 1998, that it intends that consideration of an industry coordination committee system not delay the implementation of DTV service. It therefore advised broadcasters that it will continue to process applications for DTV stations and requests for modification of facilities during the course of this proceeding. Broadcasters preparing DTV applications and/or station modification requests therefore should not delay the filing of those applications.

4. Under the structural plan proposed by the Commission, the coordination of allotment and station changes would be organized on the basis of regional committees operating under the umbrella of a national organization (national coordinator). The national coordinator would establish an organizational structure and administrative system for the regional committees, manage a nationwide data base, maintain procedures and software systems for performing technical analyses, and monitor the work of the regional committees. The regional coordinating committees would conduct evaluations and provide recommendations/advice to the Commission and would also coordinate among local stations and within the industry. The Commission did not present a plan for a specific number of regional coordinating committees or for the boundaries of the regions in which they would operate. Rather, it requested that interested parties submit comments and suggestions with regard to this issue and indicated that it would select an appropriate number of committees and define the boundaries of the regions in which the individual committees would operate after considering such submissions. The Commission also requested comment on whether it might be more desirable to adopt an alternative approach under which the Commission would specify requirements for the organization and administration of the regional committees and the national coordinator and for the manner in which they would interact. Parties supporting such an approach were requested to submit

specific suggestions for a plan of organizational requirements.

5. The Commission stated that, consistent with its position on frequency coordinators in the DTV proceeding, it believes it is important that any coordination system for the broadcast television industry be open to all affected parties, including low power television and TV translator stations and the public. It therefore proposed to require that the membership and processes of the DTV coordinating committee system be open to all affected parties.

6. The Commission envisioned that the principal function of the DTV industry coordination system would be to process and evaluate proposals for changes in DTV and NTSC station facilities and for changes to the DTV Table of Allotments and to make recommendations to the Commission on these matters. As suggested by the Caucus, the goal of the coordination system would be to accommodate reasonable requests for facility and allotment changes/additions without creating unacceptable interference to neighboring DTV or NTSC stations. In this regard, the industry coordinating committees would provide assistance to both broadcasters and the Commission in assessing the feasibility, in terms of affects on interference and service areas, of modifications in the power, antenna height, antenna pattern, or transmitter site of DTV and NTSC stations, of changes in DTV channels, including negotiated exchanges on an intra-or inter-market basis, and of proposed new DTV allotments. In addition to the station/allotment coordination function, the Commission identified a number of tasks and activities relating to evaluation of service coverage and interference and selection of channels that the coordinating committees could possibly perform to aid in the implementation of DTV service.

7. As indicated above, the national coordinator would be responsible for maintaining an accurate, up-to-date engineering data base of allotments, licensed stations, construction permits, applications and petitions for rule making. This data base, which would correspond in content and format with the engineering data base maintained by the FCC, would be used by the regional coordinating committees in their coordination work. The national coordinator would also be responsible for maintaining and managing a national system of methodology and software for use in performing studies and engineering evaluations. This methodology and software would be required to conform the Commission's

DTV allotment and station modification standards and to the methodological guidance provided in its OET Bulletin No. 69. The national coordinator would further be responsible for monitoring the performance of the regional committees to ensure that studies and evaluations were being performed in a consistent manner and in accordance with all applicable policies and regulations.

8. As proposed by the Commission, coordination committee actions would begin with the submission of a request for facility or allotment changes or for information on interference and coverage. The request would be submitted to the appropriate regional coordinating committee on standard forms, with justification as applicable. The coordinator would then examine and evaluate the request. The coordinator would also be responsible for notifying all other stations in the area that would potentially be affected by the request of its preliminary assessment and providing them with an opportunity to comment, object or suggest their own proposals. In this role, the coordinating committee would also be expected to facilitate negotiations between the party or parties seeking changes and any stations that would be affected by those changes. After completing these activities, a committee coordinator would submit its assessment of the change proposed in the request and any alternative proposals, as appropriate, to the Commission, along with its recommendations. Coordinating committee assessments and recommendations would be limited to the technical viability of proposals, without regard to whether the requested changes would be consistent with any other applicable regulations.

9. Consistent with the approach used with land mobile frequency coordinators and the recommendations of the Caucus, the Commission proposed to establish certain rules for the processing of coordination requests by the DTV industry coordination committees. In this regard, it proposed:

- To require that the DTV industry coordinators accept and process all requests without discriminating among users;
- To permit the DTV industry coordination committees to charge reasonable, cost-based fees for providing information to stations and processing requests for facility and channel changes/additions;
- To require that, as a general practice, the committee coordinators process requests in the order received and to require that they maintain logs; and,

—To require that requests be processed in a timely manner.

10. The Commission requested comment on how those who would lead the DTV coordination committee system should be selected and how it should provide for the start-up of this organization. It noted that one approach would be for the Commission to select an entity to head the national committee organization, and then allow the national organization to proceed with selection of the regional, in accordance with that organization's stated plan for the regional committee structure and administrative system. Another approach would be for the Commission to select entities to head the national organization and the regional coordination committees. In selecting parties to lead the coordination committee system, the Commission proposed to consider a number of factors, including:

- The extent to which the applicant is representative of all broadcast television interest groups;
- The applicant's technical knowledge and expertise in performing the analyses and evaluations used in the coordination process and plans for the software and methodology to use in accomplishing DTV and NTSC interference and service area engineering studies on a nationwide basis; and,
- The applicant's plan for coordinating the DTV service.

11. The Commission stated that it believes it is important to exercise oversight of the DTV coordination committee system. It stated that, in addition to the investigation of complaints, it would conduct regular, perhaps on a six or twelve month basis, and ad hoc discussions with the regional committees and the national organization to review their performance, ensure they are conducting evaluations and analyses in accordance with established policies and regulations, and also to determine whether any changes might be needed in our policies based on experience gained through their work. Coordinators found to be unsatisfactory would be replaced. As suggested by the Caucus, the Commission's policies in this oversight would be developed on a case-by-case basis, so that an effective "common law" would develop.

Procedural Matters

Paperwork Reduction Act of 1995 Analysis

12. This Notice of Proposed Rule Making has been analyzed with respect to the Paperwork Reduction Act of 1995,

Pub. L. 104-13, and found to impose no new or modified information collection requirements on the public.

Regulatory Flexibility Act Analysis

13. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rule Making in ET Docket No. 99-34. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided below.

Need for and Objectives of the Proposed Rule

14. In this rule making action the Commission seeks comment on proposals for the establishment of an industry DTV coordination committee system to process and evaluate proposed changes to the Table of Allotments for digital television (DTV) service and related matters involving use of the television frequencies. It indicated that it believes that such an industry committee system may aid its efforts to provide fair and efficient means for adjusting the DTV Table and for managing requests for DTV station modifications as the transition to DTV progresses. In this regard, the Commission indicated that an industry coordination committee system could serve to improve its existing procedures by minimizing the number of petitions for rule making that are filed to change the DTV Table and encouraging the development of regional solutions to shared problems. A coordination committee system might also serve to provide assistance in managing any further requests for modification of analog (NTSC) television stations during the transition and on other issues such as inter-service sharing arrangements. The objective of this action is to obtain comment and information that will assist us in determining whether such an industry committee system is needed and to establish rules and policies for its structure, functions, operation, membership selection and oversight by the Commission.

Legal Basis

15. The proposed action is authorized under Sections 4(i), 7, 301, 303, 307, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303, 307, and 336.

Description and Estimate of the Number of Small Entities to Which The Rules Will Apply

I. Definition of a "Small Business"

16. Under the Regulatory Flexibility Act, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The Regulatory Flexibility Act, 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"). *Id.* According to the SBA's regulations, entities engaged in television broadcasting may have a maximum of \$10.5 million in annual receipts in order to qualify as a small business concern. 13 CFR 121.201. This standard also applies in determining whether an entity is a small business for purposes of the Regulatory Flexibility Act.

17. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." For purposes of this Notice of Proposed Rule Making, we utilize the SBA's definition in determining the number of small businesses to which the rules apply, although we believe that that definition of "small business" overstates the number of television broadcast stations that are small businesses. Further, in this IRFA, we will identify the different classes of small television stations that may be impacted by the rules adopted in this Notice of Proposed Rule Making.

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

18. SBA has defined "annual receipts" specifically in 13 CFR 104, and its calculations include an averaging process. We do not currently require submission of financial data from licensees that we could use to apply 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.

19. 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 CFR 121.104(d)(1). The SBA defines affiliation in 13 CFR 121.103. While we refer to an affiliate generally as a station affiliated with a network, 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 CFR 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 CFR 121.103(a)(2). Instead of making an independent determination of whether television stations were affiliated based on SBA's definitions, we relied on the industry data bases available to us to afford us that information.

III. Estimates Based on Census and BIA Data

20. According to the Census Bureau, in 1992, there were 1,155 out of 1,478 operating television stations with revenues of less than ten million dollars. This represents 78 percent of all television stations, including non-commercial stations. *See 1992 Census of Transportation, Communications, and Utilities, Establishment and Firm Size, May 1995, at 1-25.* The Census Bureau does not separate the revenue data by commercial and non-commercial stations in this report. Neither does it allow us to determine the number of stations with a maximum of 10.5 million dollars in annual receipts. Census data also indicates that 81 percent of operating firms (that owned at least one television station) had revenues of less than \$10 million.

21. We have also performed a separate study based on the data contained in the BIA Publications, Inc. Master Access Television Analyzer Database, which lists a total of 1,141 full-power commercial television stations. It should be noted that the percentage figures derived from the data base may be underinclusive because the data base does not list revenue estimates for noncommercial educational stations, and these are therefore excluded from our calculations based on the data base.

Non-commercial stations would be subject to the allotment rules and policies proposed herein. The data indicate that, based on 1995 revenue estimates, 440 full-power commercial television stations had an estimated revenue of 10.5 million dollars or less. That represents 54 percent of commercial television stations with revenue estimates listed in the BIA program. The data base does not list estimated revenues for 331 stations. Using a worst case scenario, if those 331 stations for which no revenue is listed are counted as small stations, there would be a total of 771 stations with an estimated revenue of 10.5 million dollars or less, representing approximately 68 percent of the 1,141 commercial television stations listed in the BIA data base.

22. Alternatively, if we look at owners of commercial television stations as listed in the BIA data base, there are a total of 488 owners. The data base lists estimated revenues for 60 percent of these owners, or 295. Of these 295 owners, 158 or 54 percent had annual revenues of \$10.5 million or less. Using a worst case scenario, if the 193 owners for which revenue is not listed are assumed to be small, the total of small entities would constitute 72 percent of owners.

23. In summary, based on the foregoing worst case analysis using census data, we estimate that our rules could affect as many as 1,155 commercial and non-commercial television stations (78 percent of all stations) that could be classified as small entities. Using a worst case analysis based on the data in the BIA data base, we estimate that as many as approximately 771 commercial television stations (about 68 percent of all commercial television stations) could be classified as small entities. As we noted above, these estimates are based on a definition that we believe greatly overstates the number of television broadcasters that are small businesses. Further, it should be noted that under the SBA's definitions, revenues of affiliates that are not television stations should be aggregated with the television station revenues in determining whether a concern is small. The estimates overstate the number of small entities since the revenue figures on which they are based do not include or aggregate such revenues from non-television affiliated companies.

24. The proposed DTV industry coordination committee system could also affect low power television (LPTV) and TV translator stations. Our records indicate that currently there are about 1,750 licensed LPTV stations and 5,050

licensed TV translators. We have also issued about 1,400 construction permits for new LPTV stations. We do not collect individual station financial data for LPTV and TV translator stations. However, based on our experience with LPTV and TV translator stations, we believe that all such stations have revenues of less than \$10.5 million. We also seek information on the number of low power stations that operate commercially and noncommercially.

IV. Alternative Classification of Small Stations

25. An alternative way to classify small television stations is by the number of employees. We currently apply a standard based on the number of employees in administering its Equal Employment Opportunity Rule (EEO) for broadcasting. Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and recordkeeping requirements. We estimate that the total numbers of commercial and noncommercial television stations with 4 or fewer employees are 132 and 136, respectively. These estimates do not include LPTV stations, for which we do not collect employment data.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

26. The proposals set forth in this action would involve no changes to reporting, recordkeeping and other compliance requirements beyond what is already required under the current regulations.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules

27. None.

Significant Alternatives To Proposed Rules Which Minimize Significant Economic Impact of Small Entities and Accomplish Stated Objectives

28. The DTV industry coordination committee system proposed in this action would be available for use by all commercial and noncommercial broadcast television stations desiring to change their DTV facilities and/or channels or their NTSC facilities and by parties seeking to add new channel allotments to the DTV Table of Allotments. This coordination system would be used by existing full service stations, low power stations and those seeking to establish new stations on a voluntary basis. Stations would also be allowed to use their own internal resources or the services of consultants to obtain the analyses and evaluations

that would be performed by the committee coordinators. We therefore believe that our proposal would result in the minimum impact on those needing such services. We have, however, requested comment on whether we should require that facility changes, channel changes, and new allotments be coordinated through the services of the industry coordination committee system. In this case, we have sought to minimize the impact on those using the coordination system by requiring that charges for services be reasonable and cost based and that services be provided in a timely manner. At this time we have no information on the approximate cost of the services that would be provided by the industry coordinating committees. We also do not know how many stations may seek such changes, although we expect that most of the changes sought will be to increase station's DTV service areas. We expect that the number of requests for addition of new DTV allotments will be approximately the same as we now receive each year, *i.e.* approximately 50 requests.

29. An alternative approach would be to establish specific allowable charges for services and specific time-periods within which requests for coordination must be completed. However, we generally believe that it would be difficult to establish a schedule of appropriate fees and required completion time-periods due to the great variation in complexity of the services to be performed and the time and resources needed to fulfill the requests. We seek comment and suggestions for alternatives that would further reduce any impact that an industry coordination committee system would have on those seeking to modify existing stations or to establish new stations.

30. As we observed in the DTV proceeding, implementation of DTV service will affect low power television (LPTV) and TV translator stations. Total investment in the LPTV and TV translator facilities is estimated to be about \$150—\$250 million. Studies by our staff indicate that there is not sufficient spectrum to accommodate both low power stations and DTV stations. These studies estimate that up to about one-third of all LPTV stations and one-quarter of all TV translators may have to cease operation to make way for DTV stations. In general, most LPTV stations within major markets will be affected, while rural operations will be affected to lesser degrees. We generally believe that the industry coordinating committee system would serve to provide a relatively low-cost

source of assistance to LPTV and TV translator stations that will need to modify their existing operations or seek displacement channels to avoid interference to DTV service. We seek comment on whether there are specific actions we could take in establishing the industry coordination system to further aid low power stations.

Comments

31. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on before March 29, 1999, and reply comments on or before April 28, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rule Making Proceedings*, 63 FR 24121, published May 1, 1998.

32. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rule making numbers appear in the caption of this proceeding, however, commenting parties must transmit one electronic copy of the comments to each docket or rule making number referenced in the caption. In completing the transmittal screen, commenting parties should include their full name, Postal Service mailing address, and the applicable docket or rule making number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenting parties should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail

address>." A sample form and directions will be sent in reply.

33. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rule making number appear in the caption of this proceeding, commenting parties must submit two additional copies for each additional docket or rule making number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th St. SW, Room TW-A325, Washington, DC 20554.

34. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Alan Stillwell, Federal Communications Commission, Office of Engineering and Technology, 2000 M Street, NW, Suite 480, Washington, DC 20554C. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenting party's name, proceeding (including the docket number in this case [ET Docket No. 99-34], type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenting parties must send diskette copies to the

Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20037.

Ex Parte Presentations

35. This is a permit-but-disclose notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during any Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1200(a), 1.1203, and 1.1206.

Ordering Clauses/Authority

36. *It is ordered* that the Commission's Office of Public Affairs, Reference Operations Division, *shall send* a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration. Actions herein are taken pursuant to authority contained in Sections 4(i), 7, 301, 303, 307, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303, 307, and 336.

37. For additional information concerning this matter, contact Alan Stillwell, Office of Engineering and Technology, (202) 418-2470.

List of Subjects in 47 CFR Parts 73 and 74

Television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

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