

*11. Executive Order 12630: Evaluation of Risk and Avoidance of Unanticipated Takings*

EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order.

*12. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations*

Because this rule proposes authorization of pre-existing State rules and imposes no additional requirements beyond those imposed by State law and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994).

*13. Congressional Review Act*

EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 et seq.) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: May 24, 2007.

**Walter Kovalick,**

*Acting Regional Administrator, Region 5.*  
[FR Doc. E7-10856 Filed 6-5-07; 8:45 am]

**BILLING CODE 6560-50-P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 76**

[CS Docket No. 98-120; FCC 07-71]

**Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission seeks comment on the obligations of cable operators under Sections 614 (establishing mandatory carriage rights for local commercial television stations) and 615 (establishing mandatory carriage rights for noncommercial educational television stations) of the Communications Act of 1934 concerning the carriage of digital broadcast television signals after the conclusion of the digital television ("DTV") transition. The Commission reiterates that broadcast signal delivered in high-definition to a cable system must be carried by that system in HDTV and requests comment on exactly what constitutes material degradation. The Commission proposes to provide more detail on the material degradation requirements adopted by the Commission in 2001 and requests comment on two alternatives. The Commission also offers for comment two proposals for ensuring that cable subscribers with analog television sets can continue to view all must-carry stations after the end of the DTV transition.

**DATES:** Comments for this proceeding are due on or before July 16, 2007; reply comments are due on or before August 16, 2007.

**ADDRESSES:** You may submit comments, identified by CS Docket No. 98-120, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the

**SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact Eloise Gore, [Eloise.Gore@fcc.gov](mailto:Eloise.Gore@fcc.gov) of the Media Bureau, Policy Division, (202) 418-2120.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Second Further Notice of Proposed Rulemaking (Second FNPRM), FCC 07-71, adopted on April 25, 2007, and released on May 4, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

**Initial Paperwork Reduction Act of 1995 Analysis**

The NPRM seeks comment on potential information collection requirements. The Commission will invite the general public to comment at a later date on any rules developed as a result of this proceeding that require the collection of information, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. The Commission will publish a separate notice seeking these comments from the public. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we will seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

**Summary of the NPRM of Proposed Rulemaking**

**I. Introduction**

1. In this *Second Further Notice of Proposed Rulemaking* ("*Second FNPRM*"), we address issues concerning the carriage of digital broadcast television signals after the conclusion of the digital television ("DTV") transition.

Section 614(b)(4)(B) of the Communications Act of 1934, as amended (the “Act”), directs the Commission to revise the mandatory signal carriage rules to reflect changes necessitated by the transition from analog to digital broadcasting. We believe that this *Second FNPRM* is warranted at this time in light of the recently established deadline for the end of analog broadcasts by full-power television licensees. Further, addressing these issues now will provide digital broadcasters and cable operators with adequate time to prepare to comply with any rules that we adopt.

2. In this *Second FNPRM*, we seek comment on the post-transition obligations of cable operators under Sections 614 (establishing mandatory carriage rights for local commercial television stations) and 615 (establishing mandatory carriage rights for noncommercial educational television stations) of the Communications Act of 1934, as amended (the “Act”).

3. First, we remind industry of our 2001 decision regarding material degradation (67 FR 17015–01): A broadcast signal delivered in HDTV [high-definition television] to a cable system must be carried by that system in HDTV. In addition, we seek comment on exactly what constitutes material degradation.

4. Furthermore, we address the statutory requirement that cable operators must make the signal transmitted by a broadcaster electing mandatory carriage viewable by all of their subscribers, and seek comment on how cable operators can implement this requirement after the end of analog broadcasting on February 17, 2009. Specifically, we propose that cable operators must comply with this “viewability” provision and ensure that cable subscribers with analog television sets are able to continue to view all must-carry stations after the end of the DTV transition by either: (1) Carrying the digital signal in analog format, or (2) carrying the signal only in digital format, provided that all subscribers have the necessary equipment to view the broadcast content. In the absence of such a requirement, analog cable subscribers (currently about 50% of all cable subscribers, or approximately 32 million households; Kagan reports that as of June 2006, there were 65.3 million cable subscribers) would no longer be able to view commercial must-carry stations or non-commercial stations after February 17, 2009. We believe such an outcome would adversely impact the DTV transition and would unduly burden millions of consumers.

5. In interpreting both of these statutory provisions, we are mindful of the need to minimize the burden imposed upon consumers by the end of analog broadcasting in order to facilitate the successful and timely conclusion of the DTV transition. The prohibition against material degradation ensures that cable subscribers who invest in a HDTV are not denied the ability to view broadcast signals transmitted in this improved format. The requirement that cable operators make must-carry stations viewable by all cable subscribers ensures that analog cable subscribers, who today are able to view all of their broadcast stations, do not lose access to those stations as a result of the switch to digital-only broadcasting.

## II. Background

6. Pursuant to Section 614(b)(4)(B) of the Act, the Commission initiated this proceeding in 1998 to address the responsibilities of cable television operators with respect to carriage of digital broadcasters in light of the significant changes to the broadcasting and cable television industries resulting from the conversion to digital operations; 63 FR 42330–01.

7. In the 2001 *First Report and Order*, the Commission concluded that broadcasters operating digital-only television stations are entitled to mandatory carriage under the Act. In an effort to support the ultimate conversion of digital broadcast signals and facilitate the return of the analog spectrum, the Commission also decided to permit a digital-only station, on an interim basis, to “demand that one of its HDTV [high-definition television] or SDTV [standard-definition television] signals be carried on the cable system for delivery to subscribers in an analog format.”

8. Now that Congress has established February 17, 2009 as the date certain for the end of analog broadcasts by full-power television licensees, we believe that the time has come for us to address the post-transition carriage responsibilities of cable operators under Sections 614 and 615—particularly in light of the fact that there will continue to be a large number of cable subscribers with legacy, analog-only television sets after the end of the DTV transition. This will be the case despite the steady rise in DTV display sales over the last several years.

## III. Discussion

9. As discussed below, the Communications Act requires that cable systems provide mandatory-carriage signals without material degradation

and ensure that all subscribers can receive and view those signals. This *Second FNPRM* proposes to provide more detail on the material degradation requirements adopted by the Commission in 2001 and offers for comment two proposals for ensuring that cable subscribers with analog television sets can continue to view all must-carry stations after the end of the DTV transition. It also seeks comment on other issues that would be directly implicated by the proposals.

### A. Material Degradation—Sections 614(b)(4)(A) and 615(g)(2)

10. The Communications Act requires (1) cable operators to carry local broadcast signals “without material degradation,” and (2) the Commission to “adopt carriage standards to ensure that, to the extent technically feasible, the quality of signal processing and carriage provided by a cable system for the carriage of local commercial television stations will be no less than that provided by the system for carriage of any other type of signal.” As noted above, Section 614(b)(4)(B) of the Act directs the Commission “to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed” as a result of the transition from analog to digital broadcasting.

11. In the 1998 *NPRM*, we solicited comments to determine the extent to which this provision precludes cable operators from altering a digital broadcast station signal when the transmission is processed at the system headend or in customer premises equipment. Some broadcasters argued that a digital signal would be materially degraded if it were not transmitted to the viewer in the format that the broadcaster intended. Other broadcasters sought to preclude cable operators from blocking or deleting any of the bits constituting the broadcast material. The *First Report and Order* concluded that cable operators are required to ensure that consumers with DTV equipment (e.g., Digital-Cable-Ready sets or DTV-ready sets connected to an HDTV digital cable set-top box) are able to view the digital signal in its original format—e.g., in high definition (“HD”) if delivered by the broadcaster in HD.

12. As noted above, we previously determined in the *First Report and Order* that a broadcast signal delivered to the cable headend in HD must be carried in HD in order to comply with the prohibition on material degradation.

We continue to require such carriage and reiterate that requirement. We now propose revisions to the material degradation requirements set forth in the *First Report and Order* with respect to carriage of bits in the broadcast signal. Specifically, we propose to move from a subjective to objective measure. For instance, we seek comment on whether we should require that all primary video and program-related content bits transmitted by the broadcaster (the "content bits") be carried to avoid material degradation. Alternatively, we seek comment on whether the Commission's existing non-discrimination requirement is a better objective test for material degradation. In the *First Report and Order*, the Commission prohibited cable operators from treating cable programming services more favorably than broadcast signals for purposes of material degradation. We seek comment on the application of the existing or a new non-discrimination rule in this context. We also seek comment on how to verify that cable operators are abiding by this requirement. Should we identify specific measurement tools? If so, what should those measurement tools be? We also request comment and specific estimates regarding the costs of compliance with this proposal, particularly with respect to small cable operators, and whether there are alternative means that would minimize the economic impact for small cable operators while still complying with the statutory requirements. As noted in the *First Report and Order*, it may be especially burdensome for small systems with limited channel capacity (such as systems with fewer than 330 MHz) to carry an HDTV signal if they are not otherwise providing HDTV programming. Therefore, if a small system that is not otherwise carrying any HDTV signals is required to carry a broadcast signal in HDTV, such that the signal straddles two 6 MHz channels (*i.e.*, if they are passing through the broadcaster's 8-VSB modulated signal), the system may include all of the lost spectrum when calculating its one-third capacity for purposes of the statutory cap.

13. Our option of carrying all content bits is responsive to the Petitions for Reconsideration filed in this docket in which broadcasters requested that we require cable operators to carry "the entire qualified digital bit stream of each station in the format in which the broadcaster originally transmitted it." It also is consistent with the requests for clarification made by the Broadcast Group and the Noncommercial

Broadcasters that the material degradation requirements "ensure that cable subscribers do not receive DTV service, including HDTV, that is inferior in quality to the service available over the air." In addition, by seeking comment on measurement tools, this option is responsive to broadcast commenters' concern that the material degradation standard adopted in the *First Report and Order* did not provide an objective way to evaluate material degradation.

14. We request comment on this option. We specifically request comment on how cable operators are to distinguish between bits with content and so-called "null bits" (so-called "null bits" need not be passed through or included in the signal as carried, as they are, as the name implies, empty of any content), and whether material degradation could result from failure to carry these empty bits. We also recognize that bandwidth-conserving techniques commonly are used by cable operators to improve efficiency. Is there a way to permit the use of improved compression, statistical multiplexing, rate shaping (Rate shaping "describes bit rate adaptation techniques applied to MPEG-2 encoded streams, to further enhance bandwidth efficiency. This technique can substitute for decoding-encoding operations that are expensive, space consuming and ultimately harmful to content quality"), or other techniques that would not result in prohibited material degradation?

15. We further seek comment on whether, under the option of carrying all content bits, a cable operator that wishes to reduce the number of content bits in a digital broadcast signal first must demonstrate to the broadcaster that such reduction will not result in material degradation. In doing so, how might the cable operator demonstrate that, although not all of the content bits are being carried, the content will not be degraded in a material way? Would it be necessary and/or sufficient for the cable operator to demonstrate that the broadcast station's digital signal carriage does not differ from other broadcast or non-broadcast programmers? (We note that this latter comparison also would ensure that cable operators do not discriminate against some or all broadcast content as compared with non-broadcast content.) We seek comment on whether, under these circumstances, the cable operator must continue to pass through all of the content bits until an agreement has been reached with the broadcast station to permit the reduction in the number of bits. Similarly, we seek comment on a rule that when a broadcast station files

a carriage complaint concerning material degradation, the cable operator must pass through all of the content bits during the pendency of the complaint. The Commission is required to resolve carriage complaints within 120 days after the filing of a complaint. In situations where negotiations between cable operators and broadcasters reach an impasse, cable operators may notify the station in writing of that fact and the station will then have 30 days from receipt of the letter to file a complaint with the Commission in order to preserve its claim. We seek comment on these options and on the procedures and mechanisms for cable operators and stations to engage in such discussions short of filing a carriage complaint with the Commission.

#### *B. Availability of Signals—Sections 614(b)(7) and 615(h)*

16. Pursuant to Sections 614 and 615 of the Act, cable operators must ensure that all cable subscribers have the ability to view all local broadcast stations carried pursuant to mandatory carriage. Specifically, Section 614(b)(7) (for commercial stations) states that broadcast signals that are subject to mandatory carriage must be "viewable via cable on all television receivers of a subscriber which are connected to a cable system by a cable operator or for which a cable operator provides a connection." Similarly, Section 615(h) for noncommercial stations states that "Signals carried in fulfillment of the carriage obligations of a cable operator under this section shall be available to every subscriber as part of the cable system's lowest priced tier that includes the retransmission of local commercial television broadcast signals." These statutory requirements plainly apply to cable carriage of digital broadcast signals, and, as a consequence, cable operators must ensure that all cable subscribers—including those with analog television sets—continue to be able to view all commercial and non-commercial must-carry broadcast stations after February 17, 2009. Analog-only television sets plainly qualify as "television receivers" under Section 614(b)(7) at the present time, and we think that it is eminently reasonable to conclude that they will continue to fall within the scope of that term as it is used in Section 614(b)(7) after the transition. Below we seek comment on how to implement this statutory requirement. We note that all cable subscribers today are able to view all of their must-carry stations, and we believe that it is critical to the successful and timely conclusion of the DTV transition that they are not disenfranchised by the

switch to digital-only broadcasting. We therefore are mindful of the need to minimize the burden imposed on consumers, including cable subscribers with analog television sets, by the end of the DTV transition.

17. To achieve compliance with the viewability requirement of Sections 614(b)(7) and 615(h) after the end of the DTV transition, we propose that, in order to ensure that subscribers with analog television sets remain able to view all local broadcast television stations electing mandatory carriage, cable operators must either: (1) Carry the signals of commercial and non-commercial must-carry stations in analog format to all analog cable subscribers, or (2) for all-digital systems, carry those signals only in digital format, provided that all subscribers with analog television sets have the necessary equipment to view the broadcast content. In the 2001 *First Report and Order*, the Commission afforded a digital-only station mandatory carriage rights pursuant to Sections 614 and 615, coupled with the option to request that its digital signal be carried on the cable system for delivery to subscribers in an analog format, at the station's expense (a mechanism also referred to as "down-conversion."). This requirement would be in addition to the requirement that the cable operator pass through the HD signal to cable subscribers of an HD package, as discussed above. We believe that these proposals are consistent with our articulation of carriage requirements in the analog must-carry context, in which the Commission has made clear that mere transmission of the must-carry signal is not sufficient to meet the requirements of Section 614(b)(7). The Commission stated in 1993 that:

We believe that the 1992 Act is clear in its requirement that all local commercial television stations carried in fulfillment of the must-carry requirements must be provided to every cable subscriber and must be viewable on all television sets that are connected to the cable system by a cable operator for which the cable operator provides a connection. The Act does not give the Commission authority to exempt any class of subscribers from this requirement. In other words, the signal must be "viewable" on all television sets connected to the cable provider's system. We seek comment on these proposals.

18. As we consider these issues, we are cognizant that the ultimate goal of Congress is that every customer should enjoy the benefits of the digital transition. That is, our policies should advance the goal of transitioning all consumers—including cable

consumers—to digital. We seek comment on ways to promote this goal within the context of this proceeding. In particular, we seek comment on ways to move cable subscribers from analog to digital in a manner consistent with the statute and consumer expectations.

19. Under the Commission's interim down-conversion policy for digital-only stations during the transition, broadcasters that request carriage of an analog version of their digital signal must pay for the cost of down-conversion. Under the first option set forth in our proposal, however, cable operators themselves would elect to satisfy their obligations under Sections 614 and 615 by carrying a digital signal in analog format to ensure that the signal is viewable by all subscribers. Given the circumstances, should cable operators be responsible for any expense associated with down-conversion?

20. Finally, we note that, in the *First Report and Order*, the Commission concluded "not to require a cable operator to provide subscribers with a set top box capable of processing digital signals for display on analog sets." That decision, however, was premised on factual considerations that will not apply in a post-transition environment. Specifically, the Commission was reluctant to require cable subscribers to obtain such equipment because the content available on the digital signal likely would have been identical to analog programming to which subscribers already had access. In that same vein, the Commission pointed out that the obligation to simulcast—which later was eliminated—weighed against requiring the provision of equipment necessary to view a digital signal. However, given that our proposal here would apply to the carriage of digital signals after the end of analog broadcasting, we believe that the Commission's 2001 decision is not directly relevant since subscribers with analog sets after the transition will face the prospect of not being able to view the signals of must-carry stations unless they possess the necessary equipment (i.e., a Digital-Cable-Ready television set or a digital cable set-top box). Nevertheless, we seek comment on this issue.

#### IV. Procedural Matters

##### A. Filing Requirements

21. *Ex Parte Rules*. This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under Section 1.1206(b) of the Commission's rules. Ex parte presentations are permissible if

disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making oral ex parte presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b).

22. *Comments and Reply Comments*. 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 or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

23. Comments filed through 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. In completing the transmittal screen, commenters should include their full name, U.S. Postal mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto: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.

24. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must

be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD, 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail, should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary: Office of the Secretary, Federal Communications Commission.

#### 25. Availability of Documents.

Comments, reply comments, and ex parte submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418-0267 (voice), (202) 418-7365 (TTY), or [bill.cline@fcc.gov](mailto:bill.cline@fcc.gov). These documents also will be available from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554; they can also be reached by telephone, at (202) 488-5300 or (800) 378-3160; by e-mail at [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com); or via their Web site at <http://www.bcpiweb.com>. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

#### B. Initial Regulatory Flexibility Analysis

26. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible economic impact on a substantial number of small entities by the policies and rules proposed in this *Second Further Notice of Proposed Rulemaking* ("*Second FNPRM*"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Second FNPRM* as indicated on the first page of the Order. The Commission will send a copy of the *Second FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In

addition, the *Second FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

#### A. Need for, and Objectives of, the Proposals

27. This *Second FNPRM* seeks comment on several issues relating to the carriage of digital television broadcast stations after the analog to digital transition. Our goal in this proceeding is to determine how to implement the statutory requirements under Sections 614 (local commercial television station mandatory carriage) and 615 (noncommercial educational television station mandatory carriage) of the Communications Act of 1934, as amended (the "Act"), when digital broadcasters seek mandatory carriage for their digital signal after February 17, 2009, the date established by Congress as to when analog service must cease. We remind industry of our 2001 decision regarding material degradation (*i.e.*, that a broadcast signal delivered in HDTV to a cable system must be carried by that system in HDTV). In addition, we seek comment on the proposal that cable operators be required to carry all of the primary video and program-related content bits transmitted by the broadcaster and on the alternative proposal to rely on the existing non-discrimination requirement or a new non-discrimination rule to provide a better objective test for material degradation. We also seek comment on procedures by which cable operators could demonstrate that, although they were not carrying every content bit (*e.g.*, through the use of improved compression or other efficiency maximizing techniques), they nevertheless were providing must-carry digital signals without material degradation. The *Second FNPRM* proposes that cable operators can comply with the "viewability" provisions of Sections 614 and 615 (as discussed in the *Second FNPRM*) and ensure that cable subscribers with analog television sets are able to continue to view all must-carry stations after the end of the DTV transition by either: (1) Carrying the digital signal in analog format to ensure that the signal is viewable by all subscribers, or (2) for all-digital systems, carry those signals only in digital format, provided that all subscribers with analog television sets have the necessary equipment to view the broadcast content.

#### B. Legal Basis

28. The authority for the action proposed in this rulemaking is contained in Sections 1, 4(i) and (j), 614, and 615 of the Communications Act of

1934, as amended, 47 U.S.C. 151, 154(i) and (j), 534, and 535.

#### C. Description and Estimate of the Number of Small Entities To Which the Proposals Will Apply

29. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 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"). The rules we may adopt as a result of the comments filed in response to this *Second Further Notice of Proposed Rulemaking* will primarily affect cable operators and television stations. A description of these small entities, as well as an estimate of the number of such small entities, is provided below.

30. *Cable and Other Program Distribution*. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material." The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having \$13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million. Thus, under this size standard, the majority of firms can be considered small. We note, however, that the proposals at issue in this *Second FNPRM* only apply at this time to cable operators, and not other MVPD providers.

31. *Cable Companies and Systems*. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation.

Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.

Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

32. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

33. *Television Broadcasting.* The proposed rules and policies apply to digital television broadcast licensees, and potential licensees of digital television service. The SBA defines a television broadcast station as a small business if such station has no more than \$13 million in annual receipts. Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound." According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database (BIA) on October 18, 2005, about 873 of the 1,307 commercial television stations (or about 67 percent) have revenues of \$12 million or less and thus qualify as small entities under the SBA definition. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations

must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

34. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may 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. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

35. *Other Program Distribution.* The SBA-recognized definition of Cable and Other Program Distribution includes other MVPDs, such as HSD, MDS/MMDS, ITFS, LMDS and OVS. This definition provides that a small entity is one with \$13.5 million or less in annual receipts. As previously noted, according to the Census Bureau data for 2002, there were a total of 1,191 firms that operated for the entire year in the category of Cable and Other Program Distribution. Of this total, 1,087 firms had annual receipts of under \$10 million and an additional 43 firms had receipts of \$10 million or more, but less than \$25 million. The Commission estimates that the majority of providers in this category of Cable and Other Program Distribution are small businesses.

36. While SBA approval for a Commission-defined small business size standard applicable to ITFS is pending, educational institutions are included in this analysis as small entities. There are currently 2,032 ITFS licensees, and all but 100 of these licenses are held by educational institutions. Thus, the Commission estimates that at least 1,932 ITFS licensees are small businesses.

37. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.

Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

#### *D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities*

38. The *Second Further Notice of Proposed Rulemaking* seeks comment on statutory interpretations and proposals to address post-transition obligations of cable operators with respect to carriage of digital broadcast signals pursuant to the must carry requirements in the Communications Act. Small cable operators currently have obligations with respect to carriage of local commercial and non-commercial broadcast stations which vary according to the size of the cable system. As with existing statutory and regulatory requirements, small cable operators will need engineering and legal services to comply with the proposed rules. The *Second FNPRM* reiterates the Commission's 2001 decision regarding material degradation and requests comment on requiring cable operators be required to carry all of the primary video and program-related content bits transmitted by the broadcaster and on an alternative proposal to rely on the existing non-discrimination requirement or a new non-discrimination rule to provide a better objective test for material degradation. The 2001 *First Report and Order* recognized that the material degradation requirements could impact small cable operators disproportionately and made special provision for such situations. This recognition is retained in the proposals set forth in the *Second FNPRM*. The *Second FNPRM* also notes that cable operators must make the primary video and any program-related material transmitted by a digital broadcaster electing mandatory carriage viewable by all of their subscribers and proposes to permit cable operators to

comply with the "viewability" provisions by either: (1) Carrying the signals of commercial and non-commercial must-carry stations in analog format to all analog cable subscribers, or (2) for all-digital systems, carry those signals only in digital format, provided that all subscribers with analog television sets have the necessary equipment to view the broadcast content. Small cable operators will need engineering and legal analysis to comply with this proposal. The *Second FNPRM* seeks comment on the cost of compliance to small cable operators and solicits alternative approaches that would reduce the burden on small cable operators while still complying with statutory requirements. Small broadcast stations will also be affected by the proposed rules and other issues raised in the *Second FNPRM*, but we do not have any reason to expect that the compliance burden will be any greater than under the existing rules, except that initially, broadcasters may need additional legal services.

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

39. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. We seek comment on the applicability of any of these alternatives to affected small entities.

40. The requirements proposed in the *Second FNPRM* are the result of statutory requirements that do not expressly provide exceptions for small entities. Broadcast stations, including small entity stations, are afforded the flexibility to elect mandatory carriage of their digital signal or elect to negotiate carriage with cable systems. The proposals do not contemplate imposing any significant burdens on small television stations, but station licensees and other parties are encouraged to submit comment on the proposals' impact on small television stations. Every effort will be made to minimize the impact of any adopted proposals on cable operators. In this IRFA, we seek

comment on whether there is a specific legal basis for affording operators that qualify as small systems special consideration in this regard. We anticipate that more and more cable systems will become all-digital cable systems, thereby minimizing any potential impact that our proposals, if adopted, might have. Finally, we are mindful of the potential concerns of small entities and will, therefore, continue to carefully scrutinize our policy determinations going forward. We invite small entities to submit comment on how the Commission could further minimize potential burdens on small entities if the proposals provided in the *Second FNPRM*, or those submitted into the record, are ultimately adopted.

#### *F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

41. None.

#### **V. Ordering Clauses**

42. *It is ordered* that, pursuant to authority contained in Sections 4, 303, 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 303, 534, and 535, this *Second Further Notice of Proposed Rulemaking* is hereby adopted.

43. *It is further ordered* that the Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Second Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E7-10962 Filed 6-5-07; 8:45 am]

**BILLING CODE 6712-01-P**

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## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 17**

#### **Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Remove the Bliss Rapids Snail (*Taylorconcha serpenticola*) From the List of Endangered and Threatened Wildlife**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to remove the Bliss Rapids snail (*Taylorconcha serpenticola*) from the Federal List of Endangered and Threatened Wildlife (List) pursuant to the Endangered Species Act (Act). We find that the petition presents substantial scientific information that delisting the Bliss Rapids snail may be warranted, and are initiating a status review. We plan to conduct this review concurrent with the ongoing status review initiated on July 27, 2004, which we are required to make every 5 years under section 4(c)(2)(A) of the Act. We are requesting submission of any new information on the Bliss Rapids snail since its original listing as a threatened species in 1992. At the conclusion of our status review, we will make the requisite recommendation under section 4(c)(2)(B) of the Act and issue a 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

**DATES:** The finding announced in this document was made on June 6, 2007. To be considered in the 12-month finding on this petition or the 5-year review, comments and information must be submitted to us by September 4, 2007.

**ADDRESSES:** You may submit new information, materials, comments, or questions concerning this species by any one of the following methods:

1. You may submit comments and information to the Field Supervisor, *Attention:* Bliss Rapids Snail Comments, Snake River Fish and Wildlife Office, 1387 S. Vinnell Way, Suite 368, Boise, Idaho 83709.

2. You may hand-deliver written comments and information to the above address.

3. You may fax your comments to 208-378-5262.

4. You may go to the Federal rulemaking internet portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

5. You may e-mail your comments to [fw1srbocomment@fws.gov](mailto:fw1srbocomment@fws.gov).

Please include "Bliss Rapids Snail Comments" in the subject line for faxes and e-mails. Please submit electronic comments in unformatted text, and avoid the use of special characters and encryption.

**FOR FURTHER INFORMATION CONTACT:** Susan Burch, Fish and Wildlife Biologist, Snake River Fish and Wildlife Office (see **ADDRESSES**); telephone: 208-378-5243; or e-mail: [susan\\_burch@fws.gov](mailto:susan_burch@fws.gov).

**SUPPLEMENTARY INFORMATION:**