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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 or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Federal Communications Commission.

Jane E. Jackson,

*Associate Chief, Wireless
Telecommunications Bureau.*

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MB Docket No. 03-185; FCC 10-172]

Digital Low Power Television, Television Translator, and Television Booster Stations and Digital Class A Television Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes and seeks comment on rules and issues that need to be resolved to complete the low power television station digital transition. Although Congress established a hard deadline of June 12, 2009 for full-power stations to cease analog operations and begin operating only in digital, many low power television stations are continuing to transmit analog signals.

DATES: Comments for this proceeding are due on or before December 17, 2010; reply comments are due on or before January 18, 2011. Written PRA comments on the proposed information collection requirements contained herein must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before December 17, 2010.

ADDRESSES: You may submit comments, identified by MB Docket No. 03-185 and/or FCC 10-172, 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.

- **Mail:** Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail.) All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- **People With Disabilities:** Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: 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.

In addition to filing comments with the Secretary, a copy of any PRA comments on the proposed collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to PRA@fcc.gov and to Cathy.Williams@fcc.gov and also to Nicholas A. Fraser, Office of Management and Budget, via e-mail to Nicholas_A.Fraser@omb.eop.gov or via fax at 202-395-5167.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Shan.Maher@fcc.gov of the Media Bureau, Video Division, (202) 418-1600. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an e-mail to PRA@fcc.gov or contact Cathy Williams at (202) 418-2918, or via e-mail at Cathy.Williams@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rulemaking and Memorandum Opinion and Order* ("FNPRM and MO&O"), FCC 10-172, adopted on September 17, 2010, and released on September 17, 2010. 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 or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of

the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at FCC Headquarters building located at 445 12th Street, SW., Room TW-A325, Washington, DC 20554. 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, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

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 or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty). To view or obtain a copy of this information collection request (ICR) submitted to OMB: (1) Go to this OMB/GSA Web page: <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR as shown in this section (or its title if there is no OMB control number) and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

Initial Paperwork Reduction Act of 1995 Analysis

This document contains proposed revised information collection requirements. As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Public and agency comments are due December 17, 2010. Comments should address: (a) Whether

the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. 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 seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

OMB Control Numbers: 3060-0016.

Title: Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator or TV Booster Station, FCC Form 346; 47 CFR 74.793(d); LPTV Out-of-Core Digital Displacement Application.

Form Numbers: FCC Form 346.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; not for profit institutions; State, local or Tribal government.

Number of Respondents/Responses: 3,500 respondents; 3,500 responses.

Estimated Hours per Response: 9.5 hours.

Frequency of Response: On occasion reporting requirement; one time reporting requirement; third party disclosure requirement.

Total Annual Burden: 33,250 hours.

Total Annual Cost: \$19,418,000.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 154(i), 301, 303, 307, 308 and 309 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: In the *FNPRM and MO&O*, the Commission considers issues that need to be resolved to complete the low power television station digital transition. Moreover, the *FNPRM and MO&O* adopts the following proposed information collection requirements:

47 CFR 74.793(d) proposes that certain digital low power and TV translator stations will be required to submit information as to vertical radiation patterns as part of their applications (FCC Forms 346 and 301-

CA) for new or modified construction permits.

LPTV Out-of-Core Digital Displacement Application. The Commission proposes to require all low power station with facilities on out-of-core channels (channels 52-59) to submit a digital displacement (FCC Form 346) application proposing an in-core channel (channels 2-51, excluding channel 37) not later than June 30, 2011.

OMB Control Numbers: 3060-0932.

Title: Application for Authority to Construct or Make Changes in a Class A Television Broadcast Station, FCC Form 301-CA; 47 CFR 73.3572(h); 47 CFR 74.793(d).

Form Numbers: FCC Form 301-CA.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; not for profit institutions; State, local or Tribal government.

Number of Respondents/Responses: 400 respondents; 400 responses.

Estimated Hours per Response: 9.5 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement; One time reporting requirement.

Total Annual Burden: 3,800 hours.

Total Annual Cost: \$3,199,200.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 154(i), 301, 307, 308, 309 and 319 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: In the *FNPRM and MO&O*, the Commission considers issues that need to be resolved to complete the low power television station digital transition. Moreover, the *FNPRM and MO&O* adopts the following proposed information collection requirement:

47 CFR 73.3572(h) proposes that Class A station licensees shall file a minor change application (FCC Form 301-CA) for either the flash cut channel or the digital companion channel they choose to retain for post-transition digital operations and shall also certify that their proposed post-transition digital facilities meet all Class A TV interference protection requirements.

47 CFR 74.793(d) proposes that all digital low power and TV translator stations shall be required to submit information as to vertical radiation patterns as part of their applications (FCC Forms 346 and 301-CA) for new or modified construction permits.

OMB Control Numbers: 3060–1086.
Title: Section 74.786, Digital Channel Assignments; § 74.787, Digital Licensing; § 74.790, Permissible Service of Digital TV Translator and LPTV Stations; § 74.794, Digital Emissions, and § 74.796, Modification of Digital Transmission Systems and Analog Transmission Systems for Digital Operation; LPTV Digital Transition Consumer Education Information.

Form Numbers: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; not for profit institutions; State, local or Tribal government.

Number of Respondents/Responses: 7,636 respondents; 40,290 responses.

Estimated Hours per Response: 0.50–4 hours.

Frequency of Response:

Recordkeeping requirement; one-time reporting requirement; Third party disclosure requirement.

Total Annual Burden: 77,542 hours.

Total Annual Cost: \$95,930,000.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in section 301 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality:

There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: In the *FNPRM and MO&O*, the Commission considers issues that need to be resolved to complete the low power television station digital transition. Moreover, the *FNPRM and MO&O* adopts the following proposed information collection requirement:

LPTV Digital Transition Consumer Education Information. The Commission proposes to require, where technically feasible, stations in the low power television services to provide notice of their upcoming digital transition to their viewers.

Also, the information collection requirements contained in §§ 74.786, 74.787, 74.790, 74.794 and 74.796 of the Commission rules are covered under OMB control number 3060–1086 and have already been approved by OMB. Lastly, the information collection requirements pertaining to the protection of analog LPTV and resolving channel conflict are also covered under this collection and have been approved by OMB.

The Commission's *FNPRM and MO&O* also contains an information collection requirement pertaining to 47 CFR 73.624(g), FCC Form 317, which is subject to the Paperwork Reduction Act

of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the information collection requirements contained in this proceeding. The Commission will publish a separate document in the **Federal Register** at a later date seeking these comments.

Synopsis of Further Notice of Proposed Rulemaking

Analog Cut-Off Date

1. We seek comment on the appropriate date for the termination of analog operations in the low power television and Class A television services. We also seek detailed information on the equipment and other costs of the digital conversion that will be incurred by low power television stations. We seek comment on whether to adopt an analog shutoff date in 2012, giving low power television stations approximately three years after the June 12, 2009 full-power transition date to convert to digital operation. Under this approach, analog station licenses would terminate at that time, and analog construction permits would have to be modified for digital operations prior to the transition date. With the full power transition now complete and providing the incentive for viewers, we believe it is appropriate to now require low power television stations to complete their transition to digital.

2. We also believe that establishing an analog termination date for the low power television services in 2012 is consistent with the Broadband Plan's recommendations related to increasing the efficient use of broadcast TV bands and facilitating the deployment of new mobile broadband facilities. In addition, we note that adoption of a 2012 analog termination date would give those low power television stations that continued to operate in analog mode a total period of approximately three years from the June 12, 2009 full power digital transition to apply for and construct digital facilities. We believe that should be a sufficient time period for low power television stations to successfully complete their transition. We also note that a three-year period from the full-service television transition deadline would coincide with the construction period that low power stations received to complete construction of digital facilities as set by the Commission in the Digital LPTV Order. In addition, a 2012 date would allow most low power stations that obtained a digital

companion channel five plus years from the grant of their construction permit (most of which were granted in 2006 or 2007) to transition to complete digital operation without the loss of existing analog service.

3. We seek comment on whether an analog shutoff date in 2012 would permit sufficient time for the digital conversion of the remaining stations in the low power television service and, if so, when in 2012 would be the best time to require an analog shutoff. Furthermore, we seek comment on how to address "hardship" cases for those stations that, despite their best efforts, are unable to make a timely conversion. In this regard, we seek detailed information on the equipment and other costs of the digital conversion that will be incurred by low power television stations. We also seek comment on whether to permit stations located in communities that rely solely on over-the-air service from stations in the low power services to seek additional time to continue operating their analog facilities after the transition date. We seek comment on how to define such communities.

4. We also seek comment on alternative timeframes or transition mechanisms. Those commenters advocating other dates or mechanisms should specifically address how their proposal would better facilitate the digital transition of low power television stations and the advantages of their approach. We seek comment on whether VHF channels, which are now underutilized, accompanied by additional power, provide a viable alternative for continued operation. If so, we seek comment on the characteristics of the locations where such operations would be successful and the necessary increased power levels. Therefore, we seek comment on whether adoption of an analog termination by the end of 2015 or after the recommended reallocation of spectrum from the broadcast TV bands is complete (as envisioned by the Broadband Plan) would be more appropriate and less disruptive for the low power television services. We ask commenters to indicate if their answer to this question would turn on whether funds would be available to reimburse them for the costs of such a second transition.

5. Whichever date we decide for stations in the low power television services to complete their transition to digital, we seek comment on what kind of Commission outreach to those communities most affected by this phase of the DTV transition would be

appropriate, and what form that outreach should take.

Out-of-Core Transition Date

6. To begin the process of clearing the 700 MHz band, we propose adopting a date by which existing low power stations must submit a displacement application for an in-core (channels 2–51 excluding channel 37) digital channel. We tentatively conclude that use of the 700 MHz band as a temporary measure to assist low power stations with their digital transition is no longer necessary and the time has come for low power television stations to vacate this band. We seek comment on this proposal. We propose an “out-of-core transition date” of December 31, 2011, by which we would require all low power television stations to cease all operations (both analog and digital) on channels 52–69. We seek comment on this proposed date and welcome comment on alternative deadlines for the cessation of low power television operations on channels 52–69.

7. We propose requiring that all low power stations with facilities on channels 52–69 submit a digital displacement application proposing an in-core channel (channels 2–51 excluding channel 37) not later than June 30, 2011—six months prior to the “out-of-core transition date.” We seek comment on the proposed submission deadline and welcome comment on alternative deadlines for the submission of a digital displacement application. We propose that any low power television station that cannot identify a workable in-core channel and submit a digital displacement application by the deadline be required to cease operations altogether by the “out-of-core transition date.” We seek comment on this proposal. Furthermore, we seek comment on how to address “hardship” cases for those stations that, despite their best efforts, are unable to identify an in-core channel and submit the required displacement application by the announced deadline.

8. We propose to extend the notification and termination provisions contained in § 74.703(g) of the rules to analog LPTV and TV translator facilities in the 700 MHz band. We believe that we should extend the notification and termination provisions in § 74.703(g) of the rules to analog LPTV and TV translator stations in the 700 MHz band. We believe that extension of the notification and termination provisions will greatly facilitate the clearing of the 700 MHz band in advance of the proposed December 31, 2011 “out-of-core transition date.”

Filing Freeze

9. Effective upon the adoption date of this Further Notice of Proposed Rulemaking, we announce a freeze on the filing of (1) applications for new analog low power television and TV translator facilities; and (2) applications for new or modified, analog or digital, low power television stations on channels 52–69, including applications for flash-cut and digital companion channel facilities on these channels. We seek comment on whether to dismiss those applications for new analog low power television facilities that remain pending after the May 24, 2010 deadline for amendment to specify digital facilities.

10. The Media Bureau will consider, on a case-by-case basis, requests for waiver of this freeze when an application is necessary or otherwise in the public interest for technical or other reasons to maintain quality service to the public, such as when zoning restrictions preclude tower construction at a particular site or when unforeseen events, such as extreme weather events or other extraordinary circumstances, require relocation to a new tower site. As with any request for waiver of our rules, a request for waiver of the freeze will be granted only upon a showing of good cause and when grant of the waiver will serve the public interest.

11. The decision to impose this freeze is procedural in nature and therefore the freeze is not subject to the notice and comment and effective date requirements of the Administrative Procedure Act. Moreover, there is good cause for the Commission’s not using notice and comment procedures in this case, and not delaying the effect of the freeze until 30 days after publication in the **Federal Register**, because to do either would be impractical, unnecessary, and contrary to the public interest because compliance would undercut the purposes of the freeze.

Surrender of Channels

12. For stations choosing to surrender their analog station license and continue operating their digital companion channel, we seek comment on whether to allow such stations to simply notify the Commission of this decision and whether to delegate to the Media Bureau the authority to determine the timetable and procedures for such notifications in order to expedite the process. If an entity that holds a construction permit for unbuilt analog and companion digital stations and the analog permit expires and is forfeited, we seek comment on whether the digital construction permit should be forfeited

notwithstanding the later expiration date on the digital construction permit. We also seek comment on how to address situations in which the digital companion station is constructed, and the construction permit for the related unbuilt analog station expires.

13. We seek comment on whether to permit stations to simply discontinue operation of their licensed analog stations at any time they deem appropriate and without notification to their viewers, provided, however, that their companion digital channels are licensed and operational. Alternatively, we seek comment on whether stations in the low power television services should be required to provide notice of their upcoming transition to digital where technically feasible, as a courtesy to their viewers. We seek comment on whether to require only those stations that are suitably-equipped to provide notice of their upcoming transition to digital. We seek comment on whether such a viewer notification would impose undue burdens on stations in the low power television service, and is unnecessary in light of the completion of the full-power television digital transition.

Class A Television Transition to Digital

14. We propose that Class A TV station licensees file a minor change application for either the “flash cut” channel on which they are now operating in analog or the digital companion channel they choose to retain for post-transition operations. Class A stations thereby will be able to obtain primary, protected regulatory status on their desired post-transition digital channel. We also propose that all Class A applicants certify that their proposed facilities meet all Class A interference protection requirements. We seek comment on these proposed procedures.

Ancillary and Supplementary Services

15. We seek comment on whether to widen the class of low power television broadcasters included in § 73.624(g) to include permittees of low power television stations operating pursuant to a digital STA and to require such permittees to file the annual ancillary and supplementary services report to enable the Commission to assess the nature of ancillary and supplementary services, if any, that are provided by low power television licensees and permittees and the extent to which feeable services are offered.

Minor Change Definition

16. We propose that any digital low power television modification that

proposes a change in transmitter site of greater than 30 miles (48 kilometers) from the reference coordinates of the existing station's antenna location will be considered a new proposal for low power television stations. Those transmitter site changes that are truly minor would continue to be treated as a minor change in the rules and those that involve a substantial relocation of facilities would be deemed a major change.

Vertical Antenna Patterns

17. We propose to revise the vertical patterns used in the temporary prediction methodology for the low power television services that the Commission previously adopted. We are considering revising FCC Forms 346 and 301-CA to start collecting the vertical patterns. Rather than undertaking the task of collecting vertical patterns from existing stations, we are considering the use of assumed vertical patterns. Also, existing stations would have the option of filing applications for minor changes to their facilities and submitting the actual vertical patterns with their applications. We seek comment on this proposed methodology.

18. We also seek comment as to whether the power levels and interference protection criteria currently specified in the rules are appropriate to ensure that post-transition low power TV signals provided to consumers will be of an estimable quality. If not, we seek comment on what modifications are needed and how would such modifications improve the ability of consumers to receive service. We seek comment as to whether there is specific testing necessary to test out such modifications or to determine the digital signal strength in distinct geographic locations.

Use of Full-Power DTV Emission Mask

19. We see comment on whether to adopt rules allowing use of full-power DTV emission masks by low power television stations.

Initial Regulatory Flexibility Analysis

20. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA")¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis ("IRFA") concerning the possible significant economic impact on small entities by the policies and rules proposed in this *FNPRM and MO&O*. Written public comments are

¹ See 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. 104-121, Title II, 110 Stat. 847 (1996).

requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments indicated on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.³

Need for and Objectives of the Proposed Rules

21. In the NPRM, the Commission considers matters related to the low power television digital transition. The following matters are considered in the Notice and are more fully defined and described below: The adoption of an analog shutoff date for low power television stations; the adoption of an earlier transition date for low power television stations on TV channels 52-69 (the so-called "out-of-core" channels); the adoption of procedures for stations to notify the Commission of their final digital channel; whether to make low power television permittees subject to the Commission's ancillary and supplementary fee rules; whether to modify the Commission's minor change rule so that it covers a proposed change in a low power television station's transmitter site of up to 30 miles (48 kilometers) from the reference coordinates of the station's transmitting antenna; whether to revise the vertical antenna patterns used in the prediction methodology for the low power television services; and whether to allow low power television stations to use the emission mask used by full power television stations.

22. The NPRM seeks comment on establishing an analog shutoff date in 2012 for low power TV, TV translator and Class A TV stations, giving these stations the flexibility of three additional years from the conclusion of the full power television transition in on June 12, 2009, to convert to digital, i.e., analog station licenses would terminate at that time and analog construction permits would have to be modified for digital operations.

23. The Commission seeks comment on whether to require existing analog and digital low power television stations on channels 52-69 (the so-called "out of core" channels) to file an application for an in-core channel 2-51 by June 30, 2011, and discontinue operations on their out-of-core channel by December 31, 2011.

² See 5 U.S.C. 603(a).

³ See *id.* 603(a).

24. The Commission seeks comment on whether to delegate to the Media Bureau the authority to establish timeframes and procedures for stations to notify the Commission as to whether they intend to convert to digital on their existing analog channel (a so-called "flash cut") or if they intend to continue to operate their second digital channel and terminate operations on their analog channel.

25. The Commission seeks comment on whether to make low power television station permittees subject to the Commission's ancillary and supplementary fee rules. Currently, low power television station licensees are subject to the rules and the Commission seeks comment on whether permittees (defined as those stations constructed and operating but have not yet received a grant of their license) should also be subject to these rules.

26. The Commission seeks comment whether to change the Commission's minor change rule. This proposal seeks to modify the rule to prevent stations from proposing a major change in their facilities (a change that would require the payment of a filing fee) in a minor change application. To remedy this problem, the Commission proposes limiting transmitter site changes in minor change applications to no more than 30 miles (48 kilometers) from the reference coordinates of the existing station's transmitting antenna.

27. The Commission proposes allowing low power television stations to use the emission mask used by full power television stations. This proposal would permit stations to secure a channel in areas where unused channels are scarce by allowing for more efficient use of channels.

28. Finally, the Commission seeks comment on whether to revise the vertical patterns used in the temporary interference prediction methodology for the low power television services that the FCC adopted in its 2004 Digital LPTV Order. Use of the actual vertical patterns of proposed low power television facilities would enable a more realistic determination of the service areas of these stations and their potential for interfering with other stations, as well as more accurate determinations of application mutual exclusivity.

Legal Basis

29. The authority for the action proposed in this rulemaking is contained in sections 1, 4(i) and (j), 5(c)(1), 7, 301, 302, 303, 307, 308, 309, 312, 316, 319, 324, 332, 336, and 337 of the Communications Act of 1934, 47 U.S.C 151, 154(i) and (j), 155(c)(1), 157,

301, 302, 303, 307, 308, 309, 312, 316, 319, 324, 332, 336, and 337.

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

30. 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.⁴ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.”⁵ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁶ 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 SBA.⁷

31. *Television Broadcasting.* The SBA defines a television broadcasting station as a small business if such station has no more than \$14 million in annual receipts.⁸ Business concerns included in this industry are those “primarily engaged in broadcasting images together with sound.”⁹ According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database (BIA) on March 30, 2007, about 986 of an estimated 1,374 commercial television

stations¹⁰ (or approximately 72 percent) have revenues of \$13.5 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) affiliations¹¹ 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. The Commission has estimated the number of licensed NCE television stations to be 380.¹² The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

32. *Class A TV, LPTV, and TV translator stations.* The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than \$14 million in annual receipts.¹³

33. Currently, there are approximately 567 licensed Class A stations, 2,227 licensed LPTV stations, 4,518 licensed TV translators, and 11 TV booster stations.¹⁴ Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA’s definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than \$13 million and thus may be categorized as

small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

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. *Electronics Equipment Manufacturers.* Rules adopted in this proceeding could apply to manufacturers of television receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment¹⁵ as well as radio and television broadcasting and wireless communications equipment.¹⁶ These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA’s regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.¹⁷ Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that

⁴ *Id.* sec. 603(b)(3).

⁵ 5 U.S.C. 601(6).

⁶ *Id.* sec. 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. 632). 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**.” 5 U.S.C. 601(3).

⁷ 15 U.S.C. 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission’s statistical account of television stations may be over-inclusive.

⁸ See 13 CFR 121.201, NAICS Code 515120.

⁹ NAICS Code 515120. This category description continues, “These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.” Separate census categories pertain to businesses primarily engaged in producing programming. See Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

¹⁰ Although we are using BIA’s estimate for purposes of this revenue comparison, the Commission has estimated the number of licensed commercial television stations to be 1374. See News Release, “Broadcast Station Totals as of December 31, 2006” (dated Jan. 26, 2007); see <http://www.fcc.gov/mb/audio/totals/bt061231.html>.

¹¹ “[Business 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 to power to control both.” 13 CFR 121.103(a)(1).

¹² Broadcast Stations Total as of December 31, 2006.

¹³ See 13 CFR 121.201, NAICS Code 515120.

¹⁴ See News Release, “Broadcast Station Totals as of December 31, 2006” (dated Jan. 26, 2007); <http://www.fcc.gov/mb/audio/totals/bt061231.html>.

¹⁵ 13 CFR 121.201, NAICS Code 334310.

¹⁶ 13 CFR 121.201, NAICS Code 334220.

¹⁷ 13 CFR 121.201, NAICS Code 334310.

542 of these establishments have fewer than 500 employees and would be classified as small entities.¹⁸ The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern.¹⁹ Census Bureau data indicates that there 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities.²⁰ The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

36. The Notice proposes one new reporting or recordkeeping requirement. The Notice proposes requiring that low power stations submit information as to vertical radiation patterns as part of their applications (FCC Form 346) for new or modified construction permits. Otherwise, existing rules and forms will

¹⁸ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series—Manufacturing, Audio and Video Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

¹⁹ 13 CFR 121.201, NAICS Code 334220.

²⁰ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series—Manufacturing, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

be used to undertake the proposals set forth in the Notice.

Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

37. 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.²¹

38. The Commission's proposed adoption of an analog shutoff date in 2012 would minimize impact on small entities by allowing them three additional years from the full power television transition that occurred on June 12, 2009, to complete their transition to digital. Adoption of an early low power transition date was not considered as it was felt that many small entities would not be ready to transition any sooner and would be forced off the air.

39. With respect to requiring stations on out-of-core channels to transition at an early date—on December 31, 2011, the Commission found that the burden on small entities of adopting an earlier deadline was more than outweighed by the need to clear out-of-core channels for new uses by commercial wireless (including mobile broadband) and public safety entities. It was determined that adoption of a later transition date for low power television stations on these channels would delay progress on clearing these channels.

40. The Commission's proposal to establish timeframes and procedures for stations to notify the Commission as to whether they intend to convert to digital on their existing analog channel (a so-called "flash cut") or if they intend to continue to operate their second digital channel and terminate operations on their analog channel prevented a significant impact on small entities. Low power stations will not be burdened with having to complete and file a lengthy progress report, as was required of full power television stations, but rather will only have to file a simple informal notification to make

their final digital choice known to the Commission

41. With respect to subjecting low power television station permittees to the Commission's ancillary and supplementary fee rules, the Commission found that the burden on small entities of having to comply with these rules was outweighed by the need to eliminate ambiguity in the rules and to provide efficient use and administration of spectrum.

42. The Commission did not find that there would be a significant impact on small entities by its proposed change to its Commission's low power television minor change rule. The change would have little impact and any impact would affect all entities equally.

43. The Commission did not find that there would be a significant impact on small entities by its proposal to permit stations to use the emission mask used by full power television stations. Use would be voluntary and any impact would affect all entities equally.

44. The Commission's proposal to revise the vertical patterns used in the temporary interference prediction methodology for the low power television services would not have a significant impact on small entities. Use of the actual vertical patterns of proposed low power television facilities will simplify the engineering filings on FCC Form 346, making it easier for all applicants to complete the form, and thus saving applicants time and money. Any burden from this requirement would impact all entities equally.

Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Proposals

45. None.

46. The Commission will send a copy of the Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

47. Television, Television Broadcasting, Low Power Television.

List of Subjects

47 CFR Part 73

Radio broadcast services.

47 CFR Part 74

Auxiliary, Experimental radio, Special broadcast and other program distributional services.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications

²¹ 5 U.S.C. 603(c)(1)–(c)(4).

Commission proposes to amend 47 CFR parts 73 and 74 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

2. Section 73.624 is amended by revising paragraph (g) introductory text to read as follows:

§ 73.624 Digital television broadcast stations.

(g) Commercial and noncommercial DTV licensees and permittees, and low power television, TV translator and Class A television stations DTV licensees and permittees, must annually remit a fee of five percent of the gross revenues derived from all ancillary and supplementary services, as defined by paragraph (b) of this section, which are *feeable*, as defined in paragraphs (g)(2)(i) and through (ii) of this section.

3. Section 73.3572 is amended by adding paragraph (h) to read as follows:

§ 73.3572 Processing of TV broadcast, Class A TV broadcast, low power TV, TV translators, and TV booster applications.

(h) Class A TV station licensees shall file a minor change application for either the flash cut channel or the digital companion channel they choose to retain for post-transition digital operations. Class A TV stations will retain primary, protected regulatory status on their desired post-transition digital channel. Class A TV applicants must certify that their proposed post-transition digital facilities meet all Class A TV interference protection requirements.

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

4. The authority citation for part 74 is revised to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 309, 336 and 554.

5. Section 74.787 is amended by revising paragraph (b)(1) to read as follows:

§ 74.787 Digital licensing.

(1) Applications for major changes in digital low power television and television translator stations include:

(i) Any change in the frequency (output channel) not related to displacement relief;

(ii) Any change in transmitting antenna location where the protected contour resulting from the change does not overlap some portion of the protected contour of the authorized facilities of the existing station; or

(iii) Any change in transmitting antenna location of greater than 30 miles (48 kilometers) from the reference coordinates of the existing station's antenna location.

* * * * *

6. Section 74.793 is amended by revising paragraphs (c) and (d) to read as follows:

§ 74.793 Digital low power TV and TV translator station protection of broadcast stations.

* * * * *

(c) The following D/U signal strength ratio (db) shall apply to the protection of stations on the first adjacent channel. The D/U ratios for "Digital TV-into-analog TV" shall apply to the protection of Class A TV, LPTV, and TV translator stations. The D/U ratios for "Digital TV-into-digital TV" shall apply to the protection of DTV, digital Class A TV, digital LPTV, and digital TV translator stations. The D/U ratios correspond to the digital LPTV or TV translator station's specified out-of-channel emission mask.

	Simple mask	Stringent mask	Full service mask
Digital TV-into-analog	10	0	Lower (-14)/Upper (-17)
TV Digital TV-into-digital TV	-7	-12	Lower (-28)/Upper (-26).

(d) For analysis of predicted interference from digital low power TV and TV translator stations, the relative field strength values of the antenna vertical radiation pattern provided by the applicant will be used instead of the values in Table 8 in OET Bulletin 69.

7. Section 74.794 is amended by revising paragraph (a)(1) and by adding paragraph (a)(2)(iii) to read as follows:

§ 74.794 Digital emissions.

(a) (1) An applicant for a digital LPTV or TV translator station construction permit shall specify that the station will be constructed to confine out-of-channel emissions within one of the following emission masks: Simple, stringent, or full service.

(2) * * *

(iii) *Full service mask.* (A) The power level of emissions on frequencies outside the authorized channel of operation must be attenuated no less

than the following amounts below the average transmitted power within the authorized channel. In the first 500 kHz from the channel edge the emissions must be attenuated no less than 47 dB. More than 6 MHz from the channel edge, emissions must be attenuated no less than 110 dB. At any frequency between 0.5 and 6 MHz from the channel edge, emissions must be attenuated no less than the value determined by the following formula:

Attenuation in dB = -11.5 ([Delta] f + 3.6);

Where:

[Delta] f = frequency difference in MHz from the edge of the channel.

(B) This attenuation is based on a measurement bandwidth of 500 kHz. Other measurement bandwidths may be used as long as appropriate correction factors are applied. Measurements need not be made any closer to the band edge than one half of the resolution

bandwidth of the measuring instrument. Emissions include sidebands, spurious emissions, and radio frequency harmonics. Attenuation is to be measured at the output terminals of the transmitter (including any filters that may be employed). In the event of interference caused to any service, greater attenuation may be required.

* * * * *

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