

has resulted in the significant reduction of the long-term potential for release of contaminants, and, therefore, human health and potential environmental impacts have been minimized. EPA and the Commonwealth of Pennsylvania find that the remedy implemented continues to provide adequate protection of human health and the environment.

Dated: September 3, 2003.

**James W. Newsom,**

*Acting Regional Administrator, Region III.*

[FR Doc. 03-24410 Filed 9-25-03; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Parts 410 and 414

[CMS-1476-CN]

RIN 0938-AL96

#### Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2004; Correction

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Correction of proposed rule.

**SUMMARY:** This document corrects an error that appeared in the proposed rule published in the *Federal Register* on August 15, 2003 entitled "Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2004."

**FOR FURTHER INFORMATION CONTACT:** Diane Milstead (410) 786-3355.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In FR Doc. 03-20662 of August 15, 2003, we published the proposed rule to update the physician fee schedule for CY 2004 (68 FR 49030). We identified an error and we are correcting it in the Correction of Errors section below.

##### II. Correction of Error

In FR Doc. 03-20662 of August 15, 2003 we are making the following correction:

On page 49058 in section III. A. 6. "Adjustments to RVUs to Match the New MEI Weights," the last sentence of this discussion, which is in the second column, incorrectly states that the effects of these adjustments are included in Addendum B of the proposed rule. We also omitted the word "estimated" when we discussed changes to the

RVUs. Therefore, we are replacing the last two sentences of this section with the following: "For this reason, we are proposing to reduce the physician work RVUs by an estimated 0.35 percent (0.9965) and the practice expense RVUs by an estimated 1.15 percent (0.9885) and increase the malpractice RVUs by an estimated 21.7 percent (1.217) to match the rebased MEI weights. We will include the effects of these adjustments in the physician fee schedule final rule and, as explained previously, we are not proposing a compensating adjustment to the conversion factor."

##### III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the *Federal Register* to provide a period for public comment prior to publication of a final notice. We can waive this procedure, however, if we find good cause that notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and the reasons for it into the notice issued.

We find it unnecessary to undertake notice and comment rulemaking because this notice merely provides technical corrections to the proposed regulations. Therefore, we find good cause to waive notice and comment procedures.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 24, 2003.

**Ann C. Agnew,**

*Executive Secretary to the Department.*

[FR Doc. 03-24548 Filed 9-25-03; 8:45 am]

BILLING CODE 4120-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 74

[MB Docket No. 03-185; FCC 03-198]

#### Broadcast Services; Television Stations

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission seeks comment on rules for digital low power television ("LPTV") and television translator stations, and considers issues related to digital television booster stations. This proceeding marks the beginning of the digital television conversion for these

services. The rules and policies that will be adopted as a result of this proceeding will provide the framework for this conversion.

**DATES:** Comments are due November 25, 2003; reply comments are due December 26, 2003.

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

**FOR FURTHER INFORMATION CONTACT:** Keith Larson, Media Bureau (202) 418-2607. For additional information concerning the information collection(s) contained in this document, contact Shirley Suggs at 202-418-1568, or via the Internet at [Shirley.Suggs@fcc.gov](mailto:Shirley.Suggs@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the *Notice of Proposed Rule Making ("NPRM")* in MB Docket No. 03-185, FCC 03-198, adopted August 6, 2003, and released August 29, 2003. The complete text of this *NPRM* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., CY-B402, Washington, DC 20554. The *Notice* is also available on the Internet at the Commission's Web site: <http://www.fcc.gov>.

#### Synopsis

1. The *NPRM* contemplates that a digital TV translator station should be technically capable of rebroadcasting the entire incoming signal of its primary DTV broadcast station and producing a digital output signal that can be satisfactorily viewed on a receiver designed for the Commission's DTV transmission standard. The Commission seeks a definition for a digital TV translator consistent with this tentative conclusion. If the Commission were to extend the current analog translator definition, a digital TV translator would be a station operating for the purpose of retransmitting the programs and signals of a DTV broadcast station for reception by the general public, without significantly altering any characteristic of the original signal other than its frequency and amplitude. A digital TV translator would "pass through" the content and video format of a primary DTV station (e.g., an HDTV input signal would be retransmitted as an HDTV output signal). The Commission seeks comment on how to define digital TV translators and, in particular, how allowances for local message insertions should be incorporated into the definition.

2. In a pending DTV proceeding, the Commission has asked whether the rules should permit TV translators to down-convert to analog format a signal originally broadcast by the parent station in digital format. The Commission seeks comment here on how these issues relate to the appropriate definition of a "digital TV translator" and what, if any, limitations should be imposed on the ability of a translator to alter the signal of the main station.

3. The Commission seeks comment on two transmission modes for digital TV translator rebroadcasts: (1) Heterodyne frequency conversion that simply shifts the signal information on the translator input channel onto a different TV output channel and (2) a "regenerative" mode that also processes the input signal to correct errors in the digital bit stream and mitigate signal distortion.

4. The *NPRM* seeks comment on the merits of local message insertion and the permissible nature and duration of such messages. Should digitally transmitted local messages be limited to the types of messages permitted for analog TV translators? The Commission also seeks comment on available technical means for local message insertion and transmission and related costs.

5. The *NPRM* requests comment on whether a digital translator operator should be permitted some flexibility to alter the content or video format of a DTV broadcast signal prior to retransmission, provided it has been given the consent of its primary DTV station. As one means, the *NPRM* explains permitting DTV translators to rebroadcast in the same output channel multiple video program streams of different broadcast stations, pursuant to arrangements with the involved TV station licensees, and seeks comment on the technical and economic feasibility of this concept.

6. The Commission also proposes to allow digital TV translators to receive DTV broadcast signals using any of the signal delivery means available to analog TV translators (e.g., a TV translator relay or other suitable terrestrial microwave source).

7. The *NPRM* seeks comment on how to distinguish between digital LPTV and TV translator stations. The Commission questions whether it is likely that digital LPTV and TV translator stations will serve different purposes. The Commission asks if a digital LPTV station be defined as a station that may originate programming more than 30 seconds per hour. How should this benchmark and the term "program origination" be interpreted given the

differences between analog TV and DTV signals?

8. The Commission tentatively concludes that digital LPTV stations should be subject to the same minimum video program service requirement applicable to DTV broadcast and digital Class A stations. Accordingly, digital LPTV stations would be required to use some of their channel capacity to provide a free video programming service of at least NTSC technical quality, intended for reception by the general public.

9. The Commission also tentatively concludes that digital LPTV stations should be permitted to use their bit stream dynamically to transmit one or more digital programs in any DTV video format. Upon meeting the minimum video service requirement, the Commission believes that digital LPTV stations should be permitted to offer all of the ancillary and supplemental services, including subscription services, allowed for DTV and digital Class A TV broadcasters. They should also be permitted to enter into arrangements with outside parties with regard to ancillary and supplementary service operations in the manner permitted for DTV broadcasters. The Commission also asks: what circumstances, if any, would justify exclusion of a minimum free over-the-air digital video program service requirement?

10. The *NPRM* proposes to apply to digital LPTV stations the public interest related obligations to analog LPTV stations (e.g., certain provisions for broadcast by candidates for political office).

11. To facilitate digital service opportunities, the *NPRM* proposes to make available for digital LPTV and translator stations VHF channels 2–13, inclusive, and UHF channels 14–59, inclusive (except channel 37 reserved for radio astronomy). The Commission proposes the use of these channels for both on-channel analog to digital station conversions and for new digital LPTV and TV translator stations and alternatively seeks comment on whether these channels should be made available only when applicants can demonstrate the unavailability of lower TV channels. These stations will be required to operate on a non-interfering basis to primary users of these channels and also protect earlier-authorized secondary users. Thus, digital LPTV and TV translator operations would not preclude or impede service from DTV stations or new primary services.

12. The Commission seeks comment on whether TV channels 60–69 (746 MHz to 806 MHz) should be made

available during the DTV transition for new digital LPTV and translator stations and/or digital conversions of existing analog stations possibly excluding the channels reallocated for use by public safety entities.

13. The *NPRM* proposes the following protected signal contour values for digital LPTV and TV translator stations, as calculated from the F(50,90) propagation method in Section 73.625(b)(1) of the Commission's rules: 43 dBu for stations on channels 2–6, 48 dBu for stations on channels 7–13, and 51 dBu for stations on channels 14–69.

14. The *NPRM* proposes to base standards for accepting digital LPTV and TV translator station application proposals on D/U protection ratios for analysis of predicted interference. The Commission proposes to apply to digital LPTV and translator interference analysis the co-channel D/U ratios for "DTV-into-analog TV," "Analog TV-into-DTV" and "DTV-into-DTV" given in Section 73.623(c)(2) and the DTV-to-DTV co-channel adjustment formula and analog-to-DTV co-channel adjustment table given in 47 CFR Section 73.623(c)(3). The Commission proposes that analog LPTV and TV translator station proposals protect 1st adjacent channel digital LPTV and TV translator stations based on the following D/U ratios, the values given in our DTV rules: "Lower analog TV-into-DTV" -48 dB and "Upper analog TV-into-DTV" -49 dB. The *NPRM* seeks comment on D/U ratios for first adjacent channel protection from digital LPTV and translator stations.

15. In this proceeding, the Commission will adopt a methodology for interference analysis to be used in the application process for accepting digital LPTV and TV translator applications. One possible choice would be the contour protection approach now used to evaluate analog LPTV and TV translator station proposals. As an alternative to the contour overlap approach, the Commission contemplates basing application acceptance on its more flexible DTV interference prediction methodology possibly tailored to reflect the characteristics of transmitting antennas typically used by LPTV and translator stations.

16. The *NPRM* seeks comments on proposals and on issues related to co-located adjacent channel operations involving digital LPTV and TV translator stations. The Commission also seeks comment on any other technical means for demonstrating interference avoidance that could facilitate channel availability for digital LPTV and TV translator service without compromising

the interference protection rights of other stations.

17. The *NPRM* proposes to subject LPTV, Class A, TV translator and TV booster digital stations to the requirements of 47 CFR Section 73.1030 regarding interference protection to radio astronomy research and certain receiving installations. The Commission also requests comment on whether it might be appropriate to subject digital low power television stations to those requirements only with regard to the more sensitive operations of the radio astronomy observatories at Green Bank, West Virginia and Arecibo, Puerto Rico. The *NPRM* seeks comments on the means of interference protection for land mobile radio operations on TV channels 14–20 in certain metropolitan areas.

18. Assuming the Commission adopts the contour values it proposed for digital LPTV and TV translator stations, it invites comment on the adequacy of certain digital effective radiated power limits. The Commission also seeks comment on the appropriate out-of-channel emission limitations for digital LPTV and TV translator stations. The Commission also seeks to establish the minimally necessary standards for the transmitting equipment that will be used for digital low power operations, primarily related to interference avoidance and the process for addressing compliance with these standards: either FCC certification or verification procedures.

19. Assuming the Commission adopts a certification requirement, its questions under what circumstances, if any, should it permit LPTV or TV translator equipment certified for analog operation to be used for digital transmissions?

20. The *NPRM* invites comment on whether to require minimum hours of operation for digital TV translator and/or LPTV stations and, if so, how should the Commission should structure the requirement. The Commission also proposes to apply the provisions for unattended analog station operation to digital LPTV and TV translator operations.

21. The *NPRM* seeks comment on appropriate means for digital LPTV and TV translator station identification and related costs of compliance. The Commission seeks comment on station identification requirements for digital LPTV stations equipped to originate local programming.

22. The *NPRM* proposes to authorize the digital on-channel conversion of a licensed analog LPTV or TV translator station, or a station holding a construction permit for such a facility, as a “minor” facilities change provided:

(1) The proposed digital facility would not involve a channel change not related to channel displacement, and (2) the protected digital signal contour of the proposed facility would overlap some portion of the protected contour based on the station’s analog authorization. Consistent with the rules for LPTV minor change applications, the Commission proposes to grant “digital conversion” applications on a first-come, first-served basis under the current processing procedures.

23. The Commission asks whether the auction exemption provisions in Section 309(j)(2)(B) of the Communications Act apply to mutually exclusive applications for new LPTV and TV translator digital stations or where such applications are mutually exclusive with other applications in the LPTV or Class A TV services. Should the Commission determine that the auction exemption does apply, it seeks comment as to an alternative proposal for resolving mutually exclusive applications for low power and television translator digital stations.

24. The *NPRM* tentatively concludes that the Commission should place a high priority on facilitating the digital transition of existing LPTV and TV translator service. It seeks comment on the following approach for accepting applications for construction permits for new digital LPTV and TV translator stations. Under this approach, the Commission would first issue a Public Notice announcing a digital-only application filing window with filing eligibility limited to LPTV, TV translator and Class A TV licensees and permittees (“incumbents”). Class A TV licensees and permittees would be filing for digital authorizations in the low power television service. This window would not be geographically restricted. At some time after processing the applications received in the initial window, the Commission would announce the commencement of a separate filing procedure referred to as “rolling one-day filing windows.” In this first-come-first-served filing procedure, the applicant eligibility would not be restricted. As an application acceptance condition, proposed facilities would be required to protect those in all earlier-filed applications. Applications having predicted interference conflicts with other applications filed in such a window on the same day would be considered to be mutually exclusive and whether incumbents authorized channels through this window should be required to surrender an equal number of channels at the end of the DTV transition period or some other

time. The *NPRM* also asks if the Commission should continue to accept applications for new analog LPTV and TV translator stations; for example, only in those geographic areas with the greatest unmet TV service needs.

25. The *NPRM* seeks comment on how to structure application filing policies and procedures to appropriately balance our digital service objectives and analog LPTV service needs. The Commission invites comment on the merits of an initial digital-only application filing window limited to incumbent LPTV, TV translator, and Class A TV licensees and permittees. The Commission asks whether it should limit the number of applications that could be filed by a single entity.

26. The *NPRM* seeks comment on whether the licensing approach detailed in Section 336(f)(4) of the Communications Act is the only means by which the Commission might award additional digital channels to Class A and translator stations or whether the Commission may use the “all-secondary” channel approach proposed in the item and defer the implementation of the 336(f)(4) licensing scheme until a later point in the digital transition.

27. Section 309(j)(14)(A) of the Communications Act provides that the Commission may not renew a license for analog broadcast television service for a period extending beyond December 31, 2006 or later if certain conditions apply. Section 336(f)(4) of the Act provides that Class A TV stations (formerly LPTV stations) and TV translator stations shall not be required to convert to digital operation until the end of the DTV transition period. The Commission seeks comment on whether these provisions apply to analog authorizations in the low power television service.

28. The *NPRM* proposes to apply to digital LPTV and TV translator stations the construction period provisions applicable to analog LPTV and TV translator stations.

29. The *NPRM* seeks comment on whether to establish a digital booster class of station in our LPTV service rules and, if so, what requirements should govern the authorization and operation of such stations including who should be eligible to operate such stations. The Commission asks: should digital boosters be limited to improving signal coverage within a station’s protected signal contour as is the case for analog TV boosters (*i.e.*, by requiring the service contour of a digital booster to be encompassed by the service contour of the station whose signal is being retransmitted)? Should digital

boosters also be permitted to deliver programming to communities or areas located beyond the protected area of the station whose signal is being retransmitted (*i.e.*, where technically feasible, as an alternative delivery mechanism to a digital TV translator)? Could such use of boosters enable more efficient spectrum use (*e.g.*, in areas of hilly or mountainous terrain where spectrum opportunities are limited due to a high density of analog translators)?

30. The Commission also asks if it should apply to digital boosters the interference protection methodology and technical standards we adopt for digital LPTV and TV translator stations (*e.g.*, protected signal contour, effective radiated power limits, emission mask and interference protection D/U ratios and methodology, excluding co-channel protection of the station whose signal is retransmitted by the booster).

31. The *NPRM* seeks comment on an appropriate call sign suffix for digital TV translator and LPTV stations. The Commission also seeks comment on what fees should apply to digital LPTV and TV translator stations. The Commission also proposes extending broadcast auxiliary service (BAS) eligibility provisions to permit digital LPTV and TV translator stations to operate on the same bands and for the same purposes as analog LPTV and TV translators, subject to the BAS rules governing digital operations. The Commission also seeks comment on whether a particular digital service contour would be more appropriate with regard to defining the area for locally produced programming of digital Class A TV stations.

32. The *NPRM* also seeks comments on a request by Association of Public Television Stations, the Public Broadcasting Service and the Corporation for Public Broadcasting that the Commission: (1) Facilitate the relocation of analog translators that provide a noncommercial service; (2) facilitate the transition of existing or relocated analog noncommercial educational translators to digital operation; and (3) make additional technical modifications to its rules to support the licensing of translators and repeaters.

#### Administrative Matters

33. *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 November 25, 2003 and reply comments on or before December 26, 2003. 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 24,121 (1998).

Written comments by the public on the proposed information collections are due November 25, 2003. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before November 25, 2003.

34. 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. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters 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 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. 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 appear in the caption of this proceeding, commenters 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). The Commission's contractor, Vistrionix, 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, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

35. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Wanda Hardy, 445 Twelfth Street, SW., Room, 2-C207, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using MS Word 97 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number in this case, MM Docket No. 02-113, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Vistrionix, Portals II, 445 12th Street SW., CY-B402, Washington, DC 20554.

36. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Shirley Suggs, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, or via the Internet to [Shirley.Suggs@fcc.gov](mailto:Shirley.Suggs@fcc.gov), and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to [Jeanette\\_I.Thornton@omb.eop.gov](mailto:Jeanette_I.Thornton@omb.eop.gov).

37. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 Twelfth Street, SW., CY-A257, Washington, DC 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418-0270, (202) 418-2555 TTY, or [bcline@fcc.gov](mailto:bcline@fcc.gov). Comments and reply comments also will be available electronically at the Commission's Disabilities Issues Task Force Web site: <http://www.fcc.gov/df>. Comments and reply comments are available electronically in ASCII text, Word 97, and Adobe Acrobat.

38. This document is available in alternative formats (computer diskette, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Martha Contee at

(202) 4810-0260, TTY (202) 418-2555, or [mcontee@fcc.gov](mailto:mcontee@fcc.gov).

39. *Ex Parte Rules*. This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

40. *Initial Regulatory Flexibility Analysis*. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following IRFA of the possible significant economic impact on small entities of the proposals contained in this *NPRM*. Written public comments are requested on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions in our IRFA regarding the prevalence of small businesses in the radio broadcasting industry. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *NPRM*, but they must have a distinct heading designating them as responses to the IRFA.

41. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *NPRM*. 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 *NPRM* provided above in paragraph 16. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). See 5 U.S.C. 603(a). In addition, the *NPRM* and the IRFA (or summaries thereof) will be published in the **Federal Register**.

#### *A. Need for, and Objectives of, the Proposed Rules*

42. As described in the *NPRM*, the proposed rules are intended to permit LPTV, television translator, and television booster stations to transition to digital service. Provisions in the *NPRM* may also facilitate the digital transition of Class A TV stations. Beginning in 1987, the Commission undertook to bring the most up-to-date technology to broadcast television. That resulted in several Commission decisions, including those adopting a digital television (DTV) standard, DTV service rules, and a Table of DTV

Allotments. The rules proposed in the Notice are a fundamental part of the Commission's effort to establish rules to help effectuate the transition of the nation's television broadcast service from analog to digital format.

43. The proposed rules are intended to meet the need recognized by the Commission to provide flexible and affordable opportunities for low power digital service, both through the digital conversion of existing analog service and, where spectrum is available, new digital stations. The Commission's goals are to hasten the transition of LPTV and TV translator stations to digital operations, and to do so in a manner that minimizes disruption of existing service to the consumers served by analog LPTV and translator stations. The following proposals in the Notice serve as examples of how the Commission seeks to realize these objectives. As one example, the *NPRM* seeks comment on flexible means for digital translator operations, including combining the signals of two or more DTV broadcast station signals on a translator's transmitted output channel, provided such operations are technically and economically feasible. The *NPRM* also proposes to permit digital LPTV stations to provide ancillary and supplementary services upon meeting a minimum video program service requirement, and seeks to impose as few interference requirements on digital low power service stations as necessary to ensure interference-free operation. In addition, to expedite authorization of service, the *NPRM* proposes that LPTV and translator operators be permitted to convert to digital on their existing analog channels by applying for a minor facilities change at any time. The *NPRM* also seeks comment on filing procedures for new digital stations that would facilitate the transition of existing LPTV and translator service and quicken the authorization of digital service.

#### *B. Legal Basis*

44. The authority for the action proposed in this rulemaking is contained in Sections 4(i) & (j), 303, 307, 309 and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) & (j), 303, 307, 309 and 336.

#### *C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply*

45. 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. The RFA generally defines the term "small entity" as

having the same meaning as the terms "small business," "small organization," and "small governmental entity." 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").

46. In this context, the application of the statutory definition to television stations is of concern. 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 estimates that follow 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 therefore might be over-inclusive.

47. An additional element of the definition of "small business" is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses might therefore be over inclusive.

48. *Class A TV, LPTV, TV translator, and TV booster stations*. The proposed rules and policies would apply to licensees of LPTV, TV translator, and TV booster stations, and to potential licensees in these television services. Certain rules and policies would also apply to licensees of Class A TV stations. The Small Business Administration defines a television broadcasting station that has no more than \$12 million in annual receipts as a small business. Television broadcasting consists of establishments primarily engaged in broadcasting images together with sound, including the production or transmission of visual programming which is broadcast to the public on a predetermined schedule. Included in this category are establishments primarily engaged in television broadcasting and which produce programming in their own studios. Separate establishments primarily engaged in producing programming are classified under other NAICS numbers.

49. Currently, there are approximately 2,100 licensed LPTV stations, 600 licensed Class A stations, 4,700 licensed TV translators and 11 TV booster stations. According to Commission staff review of the BIA Publications, Inc.,

Master Access Television Analyzer Database, virtually all LPTV broadcast stations, including LPTV stations that have converted to Class A status, have revenues of less than \$12 million. 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 \$12 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

50. *Cable and Other Program Distribution.* Cable systems often receive the television service transmitted over the cable system from a TV translator or LPTV station. Thus, cable systems may also be affected by the rules proposed in the Notice. The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating \$12.5 million or less in revenue annually. This category includes, among others, cable operators, direct broadcast satellite ("DBS") services, home satellite dish ("HSD") services, multipoint distribution services ("MDS"), multichannel multipoint distribution service ("MMDS"), Instructional Television Fixed Service ("ITFS"), local multipoint distribution service ("LMDS"), satellite master antenna television ("SMATV") systems, and open video systems ("OVS"). According to Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than \$10 million in revenue. We address below each service individually to provide a more precise estimate of small entities.

51. *Cable Operators.* The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. We last estimated that there were 1,439 cable operators that qualified as small cable companies. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators.

Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules proposed in this Notice.

52. The Communications Act, as amended, also contains a size standard for a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate less than 1% 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 there are 68,500,000 subscribers in the United States. Therefore, an operator serving fewer than 685,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

53. *Direct Broadcast Satellite ("DBS") Service.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Program Distribution services. This definition provides that a small entity is one with \$12.5 million or less in annual receipts. There are four licensees of DBS services under Part 100 of the Commission's Rules. Three of those licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge, despite the absence of specific data on this point, that there are entrants in this field that may not yet have generated \$12.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated. Therefore, we will assume all four licensees are small, for the purpose of this analysis.

54. *Home Satellite Dish ("HSD") Service.* Because HSD provides

subscription services, HSD falls within the SBA-recognized definition of Cable and Other Program Distribution services. This definition provides that a small entity is one with \$12.5 million or less in annual receipts. The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion. As noted, supra, for the category Cable and Other Program Distribution, most of providers of these services are considered small.

55. *Multipoint Distribution Service ("MDS"), Multichannel Multipoint Distribution Service ("MMDS") Instructional Television Fixed Service ("ITFS") and Local Multipoint Distribution Service ("LMDS").* MMDS systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the MDS and ITFS services. LMDS is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.

56. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues of less than \$40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. In addition, MDS includes licensees of stations authorized prior to the auction. As noted, the SBA has

developed a definition of small entities for pay television services, which includes all such companies generating \$12.5 million or less in annual receipts. This definition includes multipoint distribution services, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of \$12.5 million annually. Therefore, using the SBA small business size standard, we find that there are approximately 850 small MDS providers.

57. The SBA definition of small entities for Cable and Other Distribution services, which includes such companies generating \$12.5 million in annual receipts, seems reasonably applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

58. Additionally, the auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding calendar years. These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

59. *Satellite Master Antenna Television ("SMATV") Systems.* The

SBA definition of small entities for Cable and Other Program Distribution services includes SMATV services and, thus, small entities are defined as all such companies generating \$12.5 million or less in annual receipts. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of July 2001. The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. As noted, *supra*, for the category Cable and Other Program Distribution, most of providers of these services are considered small.

60. *Open Video Systems ("OVS").* Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with \$12.5 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. ("RCN") received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

61. *Electronics Equipment Manufacturers.* Rules adopted in this proceeding could affect manufacturers of digital transmitting and receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment as well as radio and television broadcasting and wireless communications equipment. 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. Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities. 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. 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. 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.

62. *Computer Manufacturers.* The Commission has not developed a definition of small entities applicable to computer manufacturers. Therefore, we will utilize the SBA definition of electronic computers manufacturing. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify

as a small entity. Census Bureau data indicates that there are 563 firms that manufacture electronic computers and of those, 544 have fewer than 1,000 employees and qualify as small entities. The remaining 19 firms have 1,000 or more employees. We conclude that there are approximately 544 small computer manufacturers.

*D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

63. This *NPRM* contains additional reporting and recordkeeping requirements. While the requirements proposed in the *NPRM* could have an impact on LPTV, Class A, TV translator, and TV booster licensees, and potential licensees in these services, we believe such impact would be similarly costly for both large and small entities. We seek comment on whether others perceive a need for more extensive recordkeeping and, if so, whether the burden would fall on large and small entities differently.

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

64. 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.

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

65. None.

66. **Authority.** This *NPRM* is issued pursuant to authority contained in Sections 4(i), 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 307, and Section 202(h) of the Telecommunications Act of 1996.

**Ordering Clauses**

67. Pursuant to the authority contained in sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, and 310, and Section

202(h) of the Telecommunications Act of 1996, this *NPRM* is adopted.

68. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *NPRM*, 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. 03-24328 Filed 9-25-03; 8:45 am]

**BILLING CODE 6712-01-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[I.D. 091503E]

**RIN 0648-A063**

**Fisheries of the South Atlantic; Dolphin and Wahoo Fishery of the Atlantic; Fishery Management Plan**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability of a fishery management plan for the dolphin and wahoo fishery of the Atlantic (FMP); request for comments.

**SUMMARY:** The South Atlantic Fishery Management Council (SAFMC) has submitted the subject FMP for review, approval, and implementation by NMFS. If approved, the FMP would establish the management unit and stock status criteria for dolphin and wahoo, permitting and reporting requirements, restrictions on the harvest and sale of dolphin and wahoo, designations of essential fish habitat (EFH) and habitat areas of particular concern (HAPCs), and a framework procedure that would allow implementing certain regulations through an abbreviated rulemaking process.

**DATES:** Written comments must be received on or before November 25, 2003.

**ADDRESSES:** Comments on the FMP must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727-522-5583. Comments will not be accepted if submitted via e-mail or Internet.

Requests for copies of the FMP, which includes an Environmental Impact Statement, an Initial Regulatory Flexibility Analysis, a Regulatory Impact Review, and a Social Impact Assessment/Fishery Impact Statement, should be sent to the South Atlantic Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699; Phone: 843-571-4366; fax: 843-769-4520; e-mail: [safmc@safmc.net](mailto:safmc@safmc.net).

Requests for copies of a Supplemental Economic Analysis, Regulatory Impact Review, and Regulatory Flexibility Act Analysis, prepared by NMFS, should be sent to the Fisheries Economics Office, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

**FOR FURTHER INFORMATION CONTACT:** Dr. Steve Branstetter, 727-570-5305.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act, requires each Regional Fishery Management Council to submit any fishery management plan or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish a document in the **Federal Register** stating that the plan or amendment is available for public review and comment.

In developing this FMP, the SAFMC adopted a precautionary and risk-adverse approach to management. The SAFMC is concerned about rising catches in both the recreational and commercial fisheries, and with this FMP, intends to stabilize the fisheries at their current levels.

The FMP would establish the management unit for dolphin and wahoo as that portion of the stocks found in the exclusive economic zone (EEZ) along the U.S. Atlantic coast from Maine through the east coast of Florida. Several scientific studies have concurred that there is a single stock of dolphin ranging throughout the U.S. Atlantic, Gulf of Mexico and Caribbean region; a similar single stock hypothesis is also assumed for the widely dispersed, but poorly described, wahoo stock. Nevertheless, the National Standard Guidelines, at 50 CFR 600.320, suggest that more restrictive alternative management units may be justified if complementary management is planned for other geographic areas or if the unmanaged portions of the stocks are immaterial to proper management within the area under consideration for the alternate management unit,