

. . . any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof . . . which is . . . established or utilized by one or more agencies, in the interest of obtaining advice or recommendations for . . . one or more agencies or officers of the Federal Government.

5 U.S.C. App. II § 3(2). The parties that reached the Agreement do not meet this definition. Unlike ACATS, this "group" was neither established nor utilized by the Commission.¹¹⁶ The Commission did not appoint its members nor form them into a group with a structure or fixed membership.¹¹⁷ Nor were the parties, individually or as a group, under the influence, control, or management by the Commission or its staff, and thus were not "utilized" by the Commission.¹¹⁸ Not only was the membership of the negotiating parties not determined by the Commission and no member of the Commission or its staff attended any of the meetings or otherwise directed any actions, but the parties themselves explicitly agreed to not discuss the substantive proposals with outside parties, including the Commission and its staff. The fact that we are adopting the DTV Standard, which is consistent with the Agreement, does not indicate that the Commission "utilized" the group as an advisory committee within the meaning of the FACA. The courts have rejected such literalistic definitions of the term "utilized."¹¹⁹ Accordingly, we conclude that it was not an "advisory committee" within the meaning of the Act.

IX. Conclusion

61. This Report and Order is one of the crucial milestones in our effort to ensure that the benefits of digital technology are available to terrestrial television broadcasting and to the American public. We believe that the course we are taking will provide the certainty that many broadcasters, equipment manufacturers and consumers need to invest with confidence in new technology while at the same time preserving the flexibility to accommodate innovation and experimentation. In doing so, we believe our decision will provide many benefits to American consumers. We believe that the inter-industry agreement has provided us with a valuable roadmap to resolve seemingly conflicting goals. After thorough review of the record and

¹¹⁶ See generally Croley, Practical Guidance on the Applicability of the Federal Advisory Committee Act, 10 Admin. L.J. Am. U. 111 (1996) and cases cited therein.

¹¹⁷ See Association of American Physicians & Surgeons v. Clinton, 997 F.2d 898, 914 (D.C. Cir. 1993) ("In order to implicate FACA, [an agency] must create an advisory group that has, in large measure, an organized structure, a fixed membership, and a specific purpose.").

¹¹⁸ See Washington Legal Foundation v. U.S. Sentencing Comm'n. 17 F.3d 1446, 1450 (D.C. Cir. 1994) and cases cited therein.

¹¹⁹ Public Citizen v. Department of Justice, 491 U.S. 464 (1989) (rejecting a "literalistic definition of the term utilized," the Court held that the Department of Justice did not "utilize" the American Bar Association's Standing Committee on Federal Judiciary, from which the Department regularly sought advice on potential nominees for federal judgeships.)

reflection on these issues, we believe our decision strikes a proper balance in achieving all of our goals. Accordingly, we will incorporate into our Rules, by reference, the ATSC Digital Television Standard with the modifications more fully described above and in Appendix A.

ADMINISTRATIVE MATTERS

62. Paperwork Reduction Act of 1995 Analysis. The decision herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, and found to impose or propose no modified information collection requirements on the public.

Ordering Clauses

63. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) & (j) and 303(r) of the Communications Act of 1934 as amended, 47 U.S.C. §§ 154(i), (j) 303(r), Part 73 of the Commission's Rules is amended as set forth in Appendix A, below.

64. IT IS FURTHER ORDERED that, pursuant to the Contract with America Advancement Act of 1996, the rule amendments set forth in Appendix A SHALL BE EFFECTIVE either 60 days after publication in the Federal Register or after the receipt by Congress and the General Accounting Office of a report in compliance with the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, whichever is later.

65. IT IS FURTHER ORDERED that the Secretary shall send a copy of this Fourth Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 et. seq.

66. For additional information concerning this proceeding, contact Saul Shapiro, Mass Media Bureau, (202) 418-2600, Roger Holberg, Mass Media Bureau, Policy and Rules Division, Legal Branch, (202) 418-2130; Dan Bring, Mass Media Bureau, Policy and Rules Division, Policy Analysis Branch, (202) 418-2170; or Gordon Godfrey, Mass Media Bureau, Policy and Rules Division, Engineering Policy, (202) 418-2190.

FEDERAL COMMUNICATIONS COMMISSION



William F. Caton
Acting Secretary

APPENDIX A

Part 73 of the Commission's Rules and Regulations (Chapter I of Title 47 of the Code of Federal Regulations) is amended to read as follows:

1. A new Section 73.682(d) is added to read as follows:

§ 73.682 TV transmission standards

(d) *Digital broadcast television transmission standard.* Transmission of digital broadcast television (DTV) signals shall comply with the standards for such transmissions set forth in ATSC Doc. A/53 ("ATSC Digital Television Standard, 16 Sep 95") and ATSC Doc. A/52 ("ATSC Digital Audio Compression Standard (AC-3), 20 Dec 95"), which are incorporated by reference pursuant to 5 U.S.C. § 552(a). *Except that:* Section 5.1.2 ("Compression format constraints") including Table 3 ("Compression Format Constraints") as contained in Annex A ("Video Systems Characteristics") of the ATSC Digital Television Standard, and references to Table 3 contained in Section 5.1.1 Table 2 and Section 5.1.3 Table 4, are not incorporated herein. Although not incorporated herein by reference, licensees may also consult ATSC Doc. A/54 ("Guide to the Use of the ATSC Digital Television Standard, 4 Oct 95"). Copies of ATSC A/53, A/52, and A/54 can be obtained from the Commission's contract copier and can be inspected during normal business hours at the following location: 1919 M Street, N.W., Room 239 (FCC Reference Center), Washington, DC 20554. These documents also are available in their entirety on the Internet at <http://www.atsc.org>.

APPENDIX B**Final Regulatory Flexibility Analysis**

As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603 (RFA), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the Fifth Further Notice of Proposed Rule Making in this proceeding. The Commission sought written public comments on the proposals in the Fifth Further Notice, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis ("FRFA") in this Fourth Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) ("CWAAA").¹²⁰

I. Need For and Objectives of Action:

The Fourth Report and Order adopts, in modified form, the Advanced Television Systems Committee ("ATSC") digital television ("DTV") standard. Our ratification of this industry-developed standard is intended to provide the certainty that some parties seek in order to undertake the wholesale replacement of our analog system of terrestrial broadcast television with DTV. At the same time, we seek to ensure that governmental involvement is neither more extensive than necessary nor inhibitory to innovation, experimentation, and entrepreneurship. In the Fifth Further Notice in this proceeding, we listed four objectives regarding the authorization and implementation of a DTV standard: (1) to ensure that all affected parties have sufficient confidence and certainty in order to promote the smooth introduction of a free and universally available digital broadcast television service; (2) to increase the availability of new products and services to consumers through the introduction of digital broadcasting; (3) to ensure that our rules encourage technological innovation and competition; and (4) to minimize regulation and assure that any regulations we do adopt remain in effect no longer than necessary. In addition to these objectives, we considered how adoption of the standard would affect other goals enumerated in this proceeding, including a rapid transition to DTV, ceasing broadcasting in NTSC, and recovering spectrum. The Fourth Report and Order adopts the standard, except for certain aspects as discussed in paragraphs 30-49, supra, based on a careful weighing and balancing of these various goals.

II. Significant Issues Raised by the Public in Response to the Initial Analysis:

No comments were received specifically in response to the IRFA contained in the Fifth Further Notice. Further, while no comments were addressed specifically to small business issues, according to several Low Power Television ("LPTV") commenters, including Third Coast Broadcasting, Inc. and Island Broadcasting Company, the Commission should minimize the

¹²⁰ Subtitle II of CWAAA is The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), codified at 5 U.S.C. § 601 et seq.

impact on LPTV to prevent LPTV from being forced off the air by the transition to the new digital technology. Third Coast and Roger E. Harders contend that LPTV serves niches not covered by larger regional stations and should be able to provide this important service on digital channels in the future. Further, Blue Mountain Translator District argues that translators must be able to receive interactive signals to be full partners in DTV systems. In addition, not-for-profit and commercial translators must be treated equally. As discussed in Section V of this FRFA, we have considered these concerns. However, adoption of a standard for DTV will not implicate the concerns raised by LPTV and translator stations. The role of LPTV and translator stations in the transition to digital will be considered separately.

III. Description and Number of Small Entities To Which the Rule Will Apply:

1. Definition of a "Small Business"

Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. § 601(6). The RFA, 5 U.S.C. § 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. § 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). According to the SBA's regulations, entities engaged in television broadcasting Standard Industrial Classification ("SIC") Code 4833 -- Television Broadcasting Stations, may have a maximum of \$10.5 million in annual receipts in order to qualify as a small business concern. This standard also applies in determining whether an entity is a small business for purposes of the RFA.

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 SBA 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." While we tentatively believe that the foregoing definition of "small business" greatly overstates the number of television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the new rules on small television stations, we did not propose an alternative definition in the IRFA.¹²¹ Accordingly, for purposes of this Fourth Report and Order,

¹²¹ We have pending proceedings seeking comment on the definition of and data relating to small businesses. In our Notice of Inquiry in GN Docket No. 96-113 (In the Matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses), FCC 96-216, released May 21, 1996, we requested commenters to provide profile data about small telecommunications businesses in particular services, including television, and the market entry barriers they encounter, and we also sought comment as to how to define small businesses for purposes of implementing Section 257 of the Telecommunications Act of 1996, which requires us to identify market entry barriers and to prescribe regulations to eliminate those barriers. Additionally, in our Order and Notice of Proposed Rule Making in MM Docket No. 96-16 (In the Matter of Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to

we utilize the SBA's definition in determining the number of small businesses to which the rules apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to television broadcast stations and to consider further the issue of the number of small entities that are television broadcasters in the future. Further, in this FRFA, we will identify the different classes of small television stations that may be impacted by the rules adopted in this Fourth Report and Order.

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

As discussed below, we could not precisely apply the foregoing definition of "small business" in developing our estimates of the number of small entities to which the rules will apply. Our estimates reflect our best judgments based on the data available to us.

An element of the definition of "small business" is that the entity not be dominant in its field of operation. We were unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the following estimates of small businesses to which the new rules will apply do not exclude any television station from the definition of a small business on this basis and are therefore overinclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. As discussed further below, we could not fully apply this criterion, and our estimates of small businesses to which the rules may apply may be overinclusive to this extent. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

With respect to applying the revenue cap, the SBA has defined "annual receipts" specifically in 13 C.F.R. § 121.104, and its calculations include an averaging process. We do not currently require submission of financial data from licensees that we could use in applying the SBA's definition of a small business. Thus, for purposes of estimating the number of small entities to which the rules apply, we are limited to considering the revenue data that are publicly available, and the revenue data on which we rely may not correspond completely with the SBA definition of annual receipts.

Under SBA criteria for determining annual receipts, if a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period for determining annual receipts, the annual receipts in determining size status include the receipts of both firms. 13 C.F.R. § 121.104(d)(1). The SBA defines affiliation in 13 C.F.R. § 121.103. In this context, the SBA's definition of affiliate is analogous to our attribution rules. Generally, under the SBA's

Include EEO Forfeiture Guidelines), 11 FCC Rcd 5154 (1996), we invited comment as to whether relief should be afforded to stations: (1) based on small staff and what size staff would be considered sufficient for relief, e.g., 10 or fewer full-time employees; (2) based on operation in a small market; or (3) based on operation in a market with a small minority work force. We have not concluded the foregoing rule makings.

definition, concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. 13 C.F.R. § 121.103(a)(1). The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. 13 C.F.R. § 121.103(a)(2). Instead of making an independent determination of whether television stations were affiliated based on SBA's definitions, we relied on the data bases available to us to provide us with that information.

3. Television Station Estimates Based on Census Data

The rules amended by this Fourth Report and Order will apply to full service television stations and may have an effect on TV translator facilities and low power TV stations ("LPTV"). The Small Business Administration defines a television broadcasting station that has no more than \$10.5 million in annual receipts as a small business.¹²² Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.¹²³ Included in this industry are commercial, religious, educational, and other television stations.¹²⁴ Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.¹²⁵ Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.¹²⁶

There were 1,509 television stations operating in the nation in 1992.¹²⁷ That number has

¹²² 13 C.F.R. § 121.201, Standard Industrial Code (SIC) 4833 (1996).

¹²³ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995).

¹²⁴ Id. See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes "Television Broadcasting Stations (SIC Code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

¹²⁵ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995).

¹²⁶ Id.; SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services (producers of live radio and television programs).

¹²⁷ FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, supra note 4, Appendix A-9.

remained fairly constant as indicated by the approximately 1,550 operating television broadcasting stations in the nation as of August, 1996.¹²⁸ For 1992¹²⁹ the number of television stations that produced less than \$10.0 million in revenue was 1,155 establishments.¹³⁰ Thus, the proposed rules will affect approximately 1,550 television stations; approximately 1,194 of those stations are considered small businesses.¹³¹ These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies. We recognize that the proposed rules may also impact minority and women owned stations, some of which may be small entities. In 1995, minorities owned and controlled 37 (3.0%) of 1,221 commercial television stations in the United States.¹³² According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and non-commercial television stations in the United States.¹³³

It should also be noted that the foregoing estimates do not distinguish between network-affiliated¹³⁴ stations and independent stations. As of April, 1996, the BIA Publications, Inc.

¹²⁸ FCC News Release No. 64958, Sept. 6, 1996.

¹²⁹ Census for Communications' establishments are performed every five years ending with a "2" or "7". See Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, supra note 4, III.

¹³⁰ The amount of \$10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

¹³¹ We use the 77 percent figure of TV stations operating at less than \$10 million for 1992 and apply it to the 1996 total of 1550 TV stations to arrive at 1,194 stations categorized as small businesses.

¹³² Minority Commercial Broadcast Ownership in the United States, U.S. Dep't of Commerce, National Telecommunications and Information Administration, The Minority Telecommunications Development Program ("MTDP") (April 1996). MTDP considers minority ownership as ownership of more than 50% of a broadcast corporation's stock, voting control in a broadcast partnership, or ownership of a broadcasting property as an individual proprietor. Id. The minority groups included in this report are Black, Hispanic, Asian, and Native American.

¹³³ See Comments of American Women in Radio and Television, Inc. in MM Docket No. 94-149 and MM Docket No. 91-140, at 4 n.4 (filed May 17, 1995), citing 1987 Economic Censuses, Women-Owned Business, WB87-1, U.S. Dep't of Commerce, Bureau of the Census, August 1990 (based on 1987 Census). After the 1987 Census report, the Census Bureau did not provide data by particular communications services (four-digit Standard Industrial Classification (SIC) Code), but rather by the general two-digit SIC Code for communications (#48). Consequently, since 1987, the U.S. Census Bureau has not updated data on ownership of broadcast facilities by women, nor does the FCC collect such data. However, we sought comment on whether the Annual Ownership Report Form 323 should be amended to include information on the gender and race of broadcast license owners. Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities, Notice of Proposed Rulemaking, 10 FCC Rcd 2788, 2797 (1995).

¹³⁴ In this context, "affiliation" refers to any local broadcast television station that has a contractual arrangement with a programming network to carry the network's signal. This definition of affiliated station includes both stations owned and operated by a network and stations owned by other entities.

Master Access Television Analyzer Database indicates that about 73 percent of all commercial television stations were affiliated with the ABC, CBS, NBC, Fox, UPN, or WB networks. Moreover, seven percent of those affiliates have secondary affiliations.¹³⁵

There are currently 4926 TV translators, and 1,921 LPTV stations which may be affected by the new rules, if they decide to convert to digital television.¹³⁶ The FCC does not collect financial information of any broadcast facility and the Department of Commerce does not collect financial information on these broadcast facilities. We will assume for present purposes, however, that most, if not all, LPTV stations and translator stations, could be classified as small businesses, if considered by themselves. We also recognize that most, if not virtually all translators are owned by a parent station which is a full-service station. Thus, translator stations generally can be considered affiliates, as that term is defined in the SBA regulations, with full-service stations. Given this situation, these stations would likely have annual revenues that exceed the SBA maximum to be designated as small businesses.

4. Alternative Classification of Small Television Stations

An alternative way to classify small television stations is by the number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity ("EEO") rule for broadcasting.¹³⁷ Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and recordkeeping requirements.¹³⁸ We estimate that the total number of commercial television stations with 4 or fewer employees is 132 and that the total number of noncommercial

¹³⁵ Secondary affiliations are secondary to the primary affiliation of the station and generally afford the affiliate additional choice of programming.

¹³⁶ FCC News Release, Broadcast Station Totals as of August 31, 1996.

¹³⁷ The Commission's definition of a small broadcast station for purposes of applying its EEO rule was adopted prior to the requirement of approval by the Small Business Administration pursuant to Section 3(a) of the Small Business Act, 15 U.S.C. § 632(a), as amended by Section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Pub. L. No. 102-366, § 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Pub. L. No. 103-403, § 301, 108 Stat. 4187 (1994). However, this definition was adopted after public notice and an opportunity for comment. See Report and Order in Docket No. 18244, 23 FCC 2d 430 (1970).

¹³⁸ See, e.g., 47 C.F.R. § 73.3612 (Requirement to file annual employment reports on Form 395-B applies to licensees with five or more full-time employees); First Report and Order in Docket No. 21474 (In the Matter of Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395), 70 FCC 2d 1466 (1979). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. Order and Notice of Proposed Rule Making in MM Docket No. 96-16 (In the Matter of Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines), 11 FCC Rcd 5154 (1996). One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees. Id. at ¶ 21.

educational television stations with 4 or fewer employees is 136.¹³⁹

5. Other Industry Groups

Television Equipment Manufacturers: The Commission has not developed a definition of small entities applicable to manufacturers of television equipment. Therefore, we will utilize the SBA definition of manufacturers of Radio and Television Broadcasting and Communications Equipment.¹⁴⁰ According to the SBA's regulations, a TV equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.¹⁴¹ Census Bureau data indicates that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities.¹⁴² The Census Bureau category is very broad, and specific figures are not available as to how many of these firms are exclusive manufacturers of television equipment or how many are independently owned and operated. We conclude that there are approximately 778 small manufacturers of radio and television equipment.

Household/Consumer Television Equipment: The Commission has not developed a definition of small entities applicable to manufacturers of television equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definition applicable to manufacturers of Household Audio and Visual Equipment. According to the SBA's regulations, a household audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.¹⁴³ Census Bureau data indicates that there are 410 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 386 of these firms have fewer than 500 employees and would be classified as small entities.¹⁴⁴ The remaining 24 firms 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. Furthermore, the Census Bureau category is very broad, and specific figures are not

¹³⁹ We base this estimate on a compilation of 1995 Broadcast Station Annual Employment Reports (FCC Form 395-B), performed by staff of the Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

¹⁴⁰ This category excludes establishments primarily engaged in the manufacturing of household audio and visual equipment which is categorized as SIC 3651. See *infra* for SIC 3651 data.

¹⁴¹ 13 C.F.R. § 121.201, (SIC) Code 3663.

¹⁴² U.S. Dept. of Commerce, 1992 Census of Transportation, Communications and Utilities, Table 1D, (issued May 1995), SIC category 3663.

¹⁴³ 13 C.F.R. § 121.201, (SIC) Code 3651.

¹⁴⁴ U.S. Small Business Administration 1995 Economic Census Industry and Enterprise Report, Table 3, SIC Code 3651, (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

available as to how many of these firms are exclusive manufacturers of television equipment for consumers or how many are independently owned and operated. We conclude that there are approximately 386 small manufacturers of television equipment for consumer/household use.

Computer Manufacturers: The Commission has not developed a definition of small entities applicable to computer manufacturers. Therefore, we will utilize the SBA definition. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity.¹⁴⁵ Census Bureau data indicates that there are 716 firms that manufacture electronic computers and of those, 659 have fewer than 500 employees and qualify as small entities.¹⁴⁶ The remaining 57 firms have 500 or more employees; however, we are unable to determine how many of those have fewer than 1,000 employees and therefore also qualify as small entities under the SBA definition. We conclude that there are approximately 659 small computer manufacturers.

IV. Projected Compliance Requirements of the Rule:

The Fourth Report and Order adopts a rule incorporating by reference the digital television broadcast standard ("Standard") recommended to the Commission by its Advisory Committee on Advanced Television Service ("ACATS"), with the exception of the video formats. The Fourth Report and Order imposes no new reporting or recordkeeping requirements.

V. Significant Alternatives Considered Minimizing the Economic Impact on Small Entities and Consistent with the Stated Objectives:

The Fourth Report and Order adopts a rule that requires transmission of DTV signals to comply with the Standard adopted except for the video format layer and incorporates that Standard, except for the video format layer, into the Commission's rules. We believe that adopting a standard is essential to the goal of universal television service and to facilitating the conversion to digital television service. Not requiring the use of the video format layer advances the goals of minimizing regulation and facilitating technological innovation. The alternatives considered, including authorizing use of the Standard and prohibiting interference to its users, and adopting the Standard for allocation and assignment purposes only, received no express support in the Comments. Moreover, careful evaluation of these alternatives showed that each failed to advance one or more of the important goals of this proceeding. The Commission determined that not mandating video formats sufficiently addressed its concerns with stifling innovation so that neither a sunset of the Standard nor formal periodic review of the Standard would be required. Instead, it indicated that its scheduled reviews of the progress of DTV implementation would be sufficient to keep the Commission abreast of technological developments and marketplace

¹⁴⁵ 13 C.F.R. § 121.201, (SIC) Code 3571.

¹⁴⁶ U.S. Small Business Administration 1995 Economic Census Industry and Enterprise Report, Table 3, SIC Code 3571, (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

conditions. No additional action is taken on the issues of licensing of patents for DTV technology or provision for closed captioning information to be carried by DTV stations using the standard adopted.

Pursuant to the RFA, 5 U.S.C. § 603(c), we have considered whether there is a significant economic impact on a substantial number of small entities. The action taken does not impose additional burdens on small entities. The Fourth Report and Order in itself does not mandate a conversion to digital television, only requiring that digital television signals that are transmitted conform to certain standards. The details of requiring the conversion will be taken up in a future Report and Order, which will consider alternatives to minimize the economic impact of that conversion on small entities.

VI. Report to Congress

The Commission shall send a copy of this Final Regulatory Flexibility Analysis along with this Fourth Report and Order in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, codified at 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the Federal Register.

December 24, 1996

**SEPARATE STATEMENT
of
COMMISSIONER SUSAN NESS**

Re: Digital Television Fourth Report and Order Adoption of Digital Television Standard

Our decision today to adopt the modified ATSC digital television standard launches the United States into a new broadcast era. It promises the American consumer not just theater-quality pictures and sound, but also a plethora of innovative products and services. It hastens convergence -- transporting us into a competitive world of computer-friendly television sets and broadcast-friendly computers. Advanced television sets may access and display data as well as video, while computers may receive and process video as well as data, all delivered by broadcast stations.

Our decision also provides a springboard for global leadership in high definition digital equipment and programming. No other world-wide standard offers such flexibility and computer compatibility, packaged in an efficient, six megahertz of spectrum.

The Critical Need for a Standard

Free, over-the-air broadcasting is a vital service. Most consumers obtain their news and information from broadcast sources. When station ownership is widely held, the diversity of voices serves as an insurance policy for democracy.

The decision to convert from an analog to a digital broadcasting system will profoundly affect all consumers. Once the conversion is completed our present television sets no longer will work without a digital decoder. Some argue that the marketplace, rather than the government, should dictate the transmission technology. I strongly believe it is in the public interest to facilitate a smooth and rapid transition.

In my view, a smooth transition is too important a goal to leave to chance.

Our adoption of the digital transmission standard is critical to the successful and speedy conversion of over-the-air broadcasting from analog to digital. The economics of a free, commercial broadcasting system requires licensees to amass a large number of viewers to deliver to advertisers. If consumers hesitate to invest in digital receivers because of confusion or worry about the ability to receive all of the local stations or the obsolescence of

the equipment, the conversion will become more lengthy, more costly and less certain.

Unlike multichannel video subscription services, such as cable, DBS, and MMDS, broadcasters do not have a direct relationship with consumers. Because consumers typically subscribe to only one multichannel service, there is no need for coordination among suppliers. But it does matter to consumers that their television sets receive and display all of the local signals. While it may be desirable to allow the marketplace to develop incompatible equipment for subscription services, that logic does not apply to free broadcast service, where service is enhanced with each additional local signal that the television set receives.

Attributes of the Modified ATSC Standard

The standard we adopt today has been carefully crafted through an open process coordinated by the Commission's Advisory Committee on Advanced Television Service. It provides for flexible use of the spectrum, enabling a broadcaster to vary the bandwidth dynamically to provide multiple programming streams during some dayparts and high definition television during other dayparts.

Last May 8th, the Commission voted unanimously to propose adoption of the ATSC standard. In a separate statement, I noted that in light of the openness of the process and years of consideration, "the burden of showing why we should not adopt the standard or that the standard has significant flaws lies with the proponents of that view."

Support for the recommended standard was widespread and enthusiastic, but several affected industries challenged our tentative conclusions.

For example, representatives of the computer industry were concerned that inclusion of interlaced scanning among the eighteen specified formats would be incompatible with computers and costly to consumers. Cinematographers urged the Commission to require that films be transmitted in their original format.

These industries acknowledged that they all would benefit from the introduction of digital television, and agreed to meet privately to resolve their differences. After extensive discussions, representatives of the computer, broadcast and consumer electronics industries proposed that the Commission adopt the ATSC DTV standard, minus Table 3, the video format constraints. Table 3 would remain a part of the voluntary ATSC standard under which manufacturers would design equipment.

I have carefully reviewed the modified standard from the consumer and public interest perspective. My objectives are threefold: (1) that consumers buying new digital television sets have confidence that they will receive all local broadcast signals for the duration of the useful life of the equipment; (2) that broadcasters have the ability to take advantage of new technology; and (3) that advertiser-supported free over-the-air broadcasting not be

disadvantaged as a strong and viable competitor to paid delivery services, such as cable, DBS and MMDS.

I have concluded that today's decision to adopt the modified standard will satisfy all three objectives and is in the public interest. Adoption of our standard will provide the certainty in the marketplace necessary for consumers, manufacturers, and broadcasters to introduce and support these digital technological improvements. The flexibility and extensibility of the standard will ensure that the first digital consumer television sets will continue to work well into the future, even as new and better features are added in future years that may serve computers as well as television sets.

The modified standard will also permit broadcasters to be guided by consumer demand in deciding whether programs should be transmitted using interlace or progressive scan; in 480, 720 or 1080 lines of resolution; and in a 16-by-9 or other aspect ratio. This flexibility is permitted by both our modified DTV standard and the ATSC Standard.

Finally, our standard permits broadcasters to compete in quality with multi-channel subscription television services. Consumers should not have to settle for a second-rate free broadcast service.

Opposing Viewpoints

I carefully weighed the arguments of those opposing the modified standard. The Coalition of Film Makers, in particular, argued that the Commission should require that broadcasters transmit all films in their original aspect ratio (size). Consumers enjoy seeing films displayed in their original format. But this is a matter for the marketplace to decide; it should not be a government mandate.

The standard we adopt today does not prescribe the aspect ratio. However, the system is capable of instructing television sets to display a wide variety of formats. It would be commendable if digital broadcasters voluntarily committed to transmitting films and other works in their original aspect ratios. I would applaud such a voluntary undertaking, and so would the public.

I also carefully considered the opposing comments of several audio interests. I concluded that the benefit from a common audio delivery standard outweighed any possible advantage of totally undefined audio channels. Providing a common base audio standard ensures that equipment can be designed efficiently and with certainty that CD-quality audio will be received. I want to emphasize, however, that the standard permits other methods of audio delivery to be implemented.

Given the comparatively little bandwidth required for multiple audio tracks, the audio associated with programming need never be obsolete in quality. I leave it to consumers to make the quality/cost tradeoff.

Conclusion

Ten years have passed since broadcasters petitioned to open this proceeding. We have two more orders to finish before they can demonstrate to the American public the benefits of digital broadcasting. I look forward to completing this process so that consumers can reap the benefit of this new technology.



Federal Communications Commission
Washington, D.C. 20554

December 26, 1996

**SEPARATE STATEMENT OF
COMMISSIONER RACHELLE B. CHONG**

Re: Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, Fourth Report and Order

Digital television is coming to American homes. In today's Order, we adopt a slightly modified version of the digital broadcasting standard developed by the Advisory Committee on Advanced Television Service (ACATS). By doing so, we will provide certainty and confidence for both consumers and the broadcast industry as we take this important and inevitable step into the digital age.

No one should underestimate the impact of the new digital broadcasting standard that we adopt today. This standard will help ensure smooth sailing as we transition to digital broadcasting. We have charted a consumer-oriented course. Consumers will be able to buy digital television sets and know that the sets they purchase will work anywhere in the United States. This is important if we want to preserve the free, universal over-the-air television service that we have all come to rely upon.

I am pleased that the digital standard we have adopted will provide enough flexibility and "headroom" that it will accommodate future technological innovations. I am confident that this standard, which is the product of unprecedented cooperative effort by the entire video industry, will keep pace with innovation.

Finally, I note that this is only the first leg of our journey into the digital era. The industry is ready to move forward. It is time for government to get out of the way and for us to complete the other two digital television proceedings before us. Let's get the job done.