

356. City of New York, Fire Department
357. New York State Police
358. New York State Thruway Authority
359. North Bellmore Fire District
360. County of Orange, Sheriff-Coroner Department
361. City of Orlando, FL
362. Mayor of Orlando, FL
363. Preble County 911 Advisory Board
364. Richardson TX, Police Department
365. Rockland County NY Chief of Police, South Nyack, Grand View
366. Sherman County Communications and Emergency Management
367. SNOBAC 911 Communications, Thomas Howell, Director
368. County of Suffolk, NY Police Department
369. TriCom, Jerry Bleck, Director
370. Union County Sheriff
371. University of California, Irvine
372. City of Yonkers, NY Fire Department

Additionally, the following parties filed comments electronically:

373. John W. Andrews
374. Wayne Banwart
375. Greg Barnes
376. H. Buse
377. Howard Perry Beckman
378. Ken Bolen
379. Kelton L. Clark
380. Karen Craig
381. Larry Coyle
382. Alexander Eddie Currin, Jr.
383. Jack Dallas
384. Mark P. Dessauer
385. Bill Devlin
386. Prescott Eaton
387. Mary Emery
388. Frank Emspak
389. Paul Espinosa
390. Donald W. Fancher
391. Wayne Fanno
392. Dave Farley
393. Rodney Foil
394. Erik C. France
395. James W. Freeze
396. Dan Granger
397. Timothy Gunn
398. James Christopher Hayes
399. Dr. Jim Henley

400. Dane K. Henry
401. Eric Helmuth
402. Ruth Holder
403. Phil Hoy
404. Dr. Robert Huesca
405. Art Hussey
406. Kirvin Knox
407. Ralph Kranz
408. Arlene Krebs
409. Mary M. Kirby
410. Frank Leibrock
411. Charles M. Lohr
412. Robert Lucas
413. Bret Luick
414. Darlene Martin
415. Denise Matthews
416. George Mays
417. Phillip McCarty
418. David Metzler
419. P.E. Morgen
420. Carrick Mundell
421. Barry C. Nelson
422. Carl B. Page
423. John M. Phelan
424. Janet Poley
425. Barbara Popovic
426. Ralph T. Posadas
427. Al Powell
428. John T. Powers Jr.
429. Gordon Quinn
430. Share Reeves
431. Anthony T. Riddles
432. Foil Rodney
433. Neil Ruggles
434. William P. Russell
435. Eugene G. Sander
436. Kara Schiff
437. Ron Schutte
438. Frank Scott
439. J. Sebastian
440. Francis X. Sheehan
441. Laura Sigal
442. Scott M. Smith
443. D.J. Shrader-Smith
444. Ken Snider
445. Joseph Straubhaar
446. James C. Wade

447. Scott Walker
448. Carroll Webber
449. Jim Wohlleb
450. Kevin Wolf
451. Craig Wood
452. Peter Wright
453. Larry Yager

Parties Filing Reply Comments

1. Acadiana Cable Advertising, Inc.
2. Advanced Television Systems Committee
3. AK Media Group, Inc. (Two separate comments regarding different stations)
4. Allbritton Communications Company
5. Appalachian Broadcasting Corporation
6. Association of America's Public Television Stations and the Public Broadcasting Service
7. Association of Federal Communications Consulting Engineers
8. Association of Local Television Stations
9. Association of Public Safety Officials-International, Inc. (APCO)
10. Athens Broadcasting Company, Inc.
11. Benton Foundation
12. Bergen County (NJ) Police Department
13. BET Holdings, Inc.
14. Broadcasters Caucus
15. Channel 6, Inc.
16. Channel 13 Television, Inc.
17. Christian Communications of Chicagoland Inc.
18. Citizens TV, Inc.
19. Coast TV
20. Cohen, Dippell, and Everist, P.C.
21. Community Broadcasters Association
22. Digital HDTV Grand Alliance
23. Dimension Broadcasting Company, L.L.C.
24. du Treil, Lundin & Rackley, Inc. (dLR)
25. Electronic Industries Association and the EIA Advanced Television Committee
26. Empire Broadcasting, L.L.C.
27. The Federal Law Enforcement Wireless Users Group
28. Fireweed Communications Corporation, KYES-TV Anchorage
29. Folse Productions, Inc.
30. Fouce Amusement Enterprises
31. Freedom Communications, Inc.
32. Golden Orange Broadcasting Company, Inc.
33. Grupo Televisa, S.A.
34. Jose A. Guerra, President WWCI-LP
35. HSN, Inc.

36. Hubbard Broadcasting, Inc. (KSTP-TV, St. Paul, MN, and others)
37. Terry Johnson, General Manager WHFL-TV
38. K15CZ
39. KADN Broadcasting, Inc.
40. Kern Educational Telecommunications Consortium (KETC-TV)
41. KOHA-LP Channel 65
42. Lans Service Corporation
43. Lightning Broadcasting, Inc., WEIL-TV
44. Linear Research Associates (Curt R. Dunnam)
45. County of Los Angeles
46. Los Cerezos Television Company, WMDO-LP Channel 48
47. Louisiana Television Broadcasting Corp (WBRZ-TV, Baton Rouge, LA, and others)
48. Maranatha Broadcasting Company, Inc. (WFMZ-TV, Allentown, PA)
49. MARRI Broadcasting, LP.
50. William E. Mattis, Jr.
51. Max Media Properties, LLC.
52. National Public Radio, Inc.
53. National Religious Broadcasters' Association
54. National Translator Association
55. New York City Police Department
56. New York Metropolitan Advisory Committee
57. New York Network, LLC
58. Nielsen Media Research
59. Northwoods Educational Television Association (WYOW-TV, Eagle River, WI)
60. Joint Reply Comments of Paxon Communications Corporation, The Christian Network, Inc., and Whitehead Media, Inc.
61. Pears Broadcasting, Inc.
62. Pegasus Broadcast Television, Inc.
63. Tim Pipher, W18BD
64. Pulitzer Broadcasting Company
65. Retlaw Enterprises, Inc.
66. Robert R. Rule, d.b.a Rule Communications
67. Sinclair Broadcast Group, Inc.
68. Skinner Broadcasting, Inc.
69. Department of Special Districts, San Bernardino County, CA
70. Spectrum Initiatives, Inc.
71. County of Suffolk Police Department
72. Sullivan Broadcasting Company, Inc. (WUTV-TV, Buffalo, NY)
73. Tanana Valley Television Company
74. Television Wisconsin, Inc.
75. Third Coast Broadcasting, Inc.
76. Tribune Broadcasting
77. TV-67, Inc. (Fox-67, WOHL-TV)
78. US West, Inc. (supports National Cable Television Association, Inc.)
79. Venture Technologies Group
80. Washington County Television, Inc.
81. WatchTV, Inc.

82. WB Television Network
83. Weigel Broadcasting Co.
84. WHRT-LP
85. WRIW-LP, Viking Communications, Inc.
86. WRNN-TV Associates Limited Partnership
87. Viacom
88. Zenith Electronics Corporation

APPENDIX D FINAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Sixth Further Notice of Proposed Rule Making (Sixth Further Notice) in this proceeding.² The Commission sought public comment on the proposals in the Sixth Further Notice, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, as amended.³

A. Need for and Objectives of this Sixth Report and Order

In this rule making action, the Commission adopts policies, procedures and technical criteria for use in conjunction with broadcast digital television (DTV), adopts a DTV Table of Allotments, adopts a plan for the recovery of a portion of the spectrum currently allocated to TV broadcasting, and provides procedures for assigning DTV frequencies. We seek to allot DTV channels in a manner that is most efficient for broadcasters and the public and least disruptive to broadcast television service during the period of transition from NTSC to DTV service. The overarching goals in this phase of the DTV proceeding are to ensure that the spectrum is used efficiently and effectively through reliance on market forces and to ensure that the introduction of digital TV fully serves the public interest

B. Summary of Significant Issues Raised by Public Comments In Response to the IRFA

Three comments were received specifically in response to the IRFA contained in the Sixth Further Notice. First, Apogee Broadcasting Corporation (Apogee), which is the owner, operator, and licensee of an LPTV station, states that its station will be forced from the air under the proposed Table of Allotments. Apogee also estimates that over half of the current LPTV stations will be threatened under the proposed Table of Allotments. Apogee argues that such a result will lead to less diversity in programming on LPTV. Apogee endorses the series of technical proposals put forth by the Community Broadcasters Association (CBA),⁴ and suggests that the Table of Allotments be redrafted with an eye toward protecting LPTV stations wherever possible, with full power stations being required to negotiate engineering solutions with LPTV stations. Apogee argues that unused spectrum due to DTV implementation should be offered for use first to displaced LPTV stations, and that DTV licensees that displace LPTV stations should pay for the costs associated with frequency changes, pay for the costs of lost business opportunities, and, if necessary, provide spectrum

¹ See 5 U.S.C. § 603.

² 11 FCC Rcd 10968, 11060 (1996).

³ See 5 U.S.C. § 604. The RFA, see 5 U.S.C. § 601 et seq., has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 1045-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the "Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA).

⁴ See paras. 113-147, passim.

from their DTV allotment for LPTV replacement channels. Apogee supports the proposal that LPTV stations be permitted to seek "primary" channel status ahead of any new entrants. Finally, Apogee argues that the Table of Allotments, as proposed, will lead to costly and time-consuming litigation.

Second, Fireweed Communications Corporation (Fireweed), licensee of a full power station in Anchorage, Alaska, notes that, in the Sixth Further Notice IRFA, we requested comment on "whether the Commission should adopt measures that will assist small stations . . . in their transition, either in their cost to upgrade technical operations or new channel identification."⁵ In this regard, Fireweed notes that the IRFA also cited the expected cost of equipment to operate on the new DTV channels as varying "from \$750,000 upwards to \$10 million."⁶ Fireweed argues that conversion costs to DTV can be kept lower by providing for continued operation on all VHF channels. Fireweed states that its station, and other small-market stations, already possess the most expensive part of a DTV transmission plant -- an existing transmitter and antenna. On behalf of its station, Fireweed proposes that it be permitted to retain its current VHF channel for DTV while initiating a temporary UHF channel for NTSC, later to drop the temporary UHF channel. Fireweed estimates that this approach would accomplish the conversion to DTV for under \$80,000.

Finally, MARRI Broadcasting, Inc. (MARRI), argues generally that we should ensure certainty in the time frame for the implementation of DTV, and that we should tolerate no delays by those unable to meet the time frames for providing service.⁷

We have taken the commenters' views and arguments into account in the Sixth Report and Order. As there described,⁸ we determined, first, that the primary allotment objective should be to develop a DTV Table of Allotments that provides a channel for all eligible broadcasters, consistent with the provisions of the 1996 Telecommunications Act regarding initial eligibility for DTV licenses. The Commission also noted that low power television and TV translator operations have always been authorized on a secondary basis. For these reasons, we rejected an approach that would have resulted in providing allotments for fewer than all full service licensees in order to avoid the displacement of some LPTV stations. We did, however, take into account the views of the commenters and others in recognizing the public benefits from LPTV stations and in adopting measures to mitigate the impact of DTV implementation on such stations. The mitigating measures adopted by the Commission, including those in response to the views of the commenters, are described infra in Section E of this FRFA ("Steps Taken to Minimize Burdens on Small Entities, and Significant

⁵ IRFA, 11 FCC Rcd at 11067.

⁶ Id. at 11065.

⁷ MARRI also argues that mutually exclusive applicants should be permitted to settle disputes among themselves without necessarily resorting to frequency coordination committees, and that small business broadcast owners should be permitted to form partnerships to deliver DTV to designated areas of the country. These additional issues are beyond the scope of this present Sixth Report and Order.

⁸ See paras. 11, 113-147.

Alternatives Considered and Rejected"). We note that, as a result of these actions, the great majority of LPTV operations should be able to continue to operate.⁹

We have limited compensation issues to those of low power services affected by new service providers on channels 60-69, and will address such issues in a forthcoming Notice of Proposed Rule Making on reallocation of those channels.¹⁰ Concerning Fireweed's request for relief specific to its own full power station, we note that such specific request must be handled outside of this rule making, and Fireweed has submitted a separate request for such consideration.¹¹ And finally, consistent with MARRI's concern, we have stated our intention, through use of the DTV Table of Allotments and other policies described in the Sixth Report and Order, to promote an orderly and efficient transition to DTV.¹²

C. Description and Estimate Of The Number Of Small Entities To Which The Rules 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

⁹ Id. at para. 11.

¹⁰ Id. at paras. 80, 143.

¹¹ Fireweed Communications Corporation, "In re: Allotment for Homer, Alaska," filed Nov. 22, 1996 (filed in MM Docket No. 87-268).

¹² Sixth Report and Order at, e.g., paras. 11, 34, 76, 112, 142, 144; see also Fifth Report and Order in this proceeding at paras. 76-91. (The Fifth Report and Order has been adopted concurrently with the present Sixth Report and Order.)

stations, we did not propose an alternative definition in the IRFA.¹³ Accordingly, for purposes of this Sixth Report and Order, 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 and policies adopted in this Sixth 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

¹³ 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 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 proceedings.

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 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 Sixth Report and Order will affect full service television stations, TV translator facilities, and LPTV stations. The Small Business Administration defines a television broadcasting station that has no more than \$10.5 million in annual receipts as a small business.¹⁴ Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.¹⁵ Included in this industry are commercial, religious, educational, and other television stations.¹⁶ Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.¹⁷ Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.¹⁸

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

¹⁵ 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).

¹⁶ 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.

¹⁷ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 7, Appendix A-9.

¹⁸ Id.; SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services (producers of live radio and television programs).

There were 1,509 television stations operating in the nation in 1992.¹⁹ That number has remained fairly constant as indicated by the approximately 1,551 operating television broadcasting stations in the nation as of February 28, 1997.²⁰ For 1992²¹ the number of television stations that produced less than \$10.0 million in revenue was 1,155 establishments, or approximately 77 percent of the 1,509 establishments.²² Thus, the rules will affect approximately 1,551 television stations; approximately 1,194 of those stations are considered small businesses.²³ 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 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.²⁴ 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.²⁵

It should also be noted that the foregoing estimates do not distinguish between network-

¹⁹ FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, supra note 7, Appendix A-9.

²⁰ FCC News Release No. 7033, March 6, 1997.

²¹ 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 7, at III.

²² 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.

²³ We use the 77 percent figure of TV stations operating at less than \$10 million for 1992 and apply it to the 1997 total of 1551 TV stations to arrive at 1,194 stations categorized as small businesses.

²⁴ 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.

²⁵ 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 Rule Making, 10 FCC Rcd 2788, 2797 (1995).

affiliated²⁶ stations and independent stations. As of April, 1996, the BIA Publications, Inc. 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.²⁷

There are currently 4,977 TV translator stations and 1,952 LPTV stations which would be affected by the allotment policy and other policies in this proceeding.²⁸ The Commission 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 of these broadcast facilities, including LPTV stations, could be classified as small businesses. As indicated earlier, approximately 77 percent of television stations are designated under this analysis as potentially small business. Given this, LPTV and TV translator stations would not likely have 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.²⁹ Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and recordkeeping requirements.³⁰ We estimate that the total number

²⁶ 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.

²⁷ Secondary affiliations are secondary to the primary affiliation of the station and generally afford the affiliate additional choice of programming.

²⁸ FCC News Release No. 7033, March 6, 1997.

²⁹ 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).

³⁰ 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.

of commercial television stations with 4 or fewer employees is 132 and that the total number of noncommercial educational television stations with 4 or fewer employees is 136.³¹

5. Other Industry Groups.

While we do not believe that the following groups of equipment manufacturers constitute regulated entities for the purpose of this FRFA, we note that these entities were interested in certain technical issues in this proceeding and, accordingly, submitted comments for the record. Because the rule changes and textual discussions in the Sixth Report and Order may ultimately have some affect on equipment compliance, we include these entities for the purpose of this FRFA.

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.³² 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.³³ 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.³⁴ 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.³⁵ Census Bureau data indicates that there are 410 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 386

³¹ 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.

³² 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.

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

³⁴ U.S. Dept. of Commerce, 1992 Census of Transportation, Communications and Utilities, Table 1D (issued May 1995), SIC category 3663.

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

of these firms have fewer than 500 employees and would be classified as small entities.³⁶ 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 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.³⁷ 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.³⁸ 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.

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

The rules adopted will result in no changes to reporting, recordkeeping, or other compliance requirements beyond that already required under current regulation.

E. Steps Taken to Minimize Burdens on Small Entities, and Significant Alternatives Considered and Rejected

The DTV Table of Allotments will affect all of the commercial and noncommercial broadcast television stations eligible for a DTV channel in the transition period and a significant number of the LPTV and TV translator stations.³⁹ It is expected that the allotments will constitute the population of channels on which broadcasters will operate DTV

³⁶ 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).

³⁷ 13 CFR 121.201, (SIC) Code 3571.

³⁸ 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).

³⁹ As noted earlier in Section C of this FRFA ("Description and Estimate Of The Number Of Small Entities To Which The Rules Will Apply"), approximately 77 percent of television stations are designated under this present analysis as potentially small business. Given this, LPTV and TV translator stations, especially, are likely to be small businesses.

service in the future. Affected stations will need to modify or obtain new transmission facilities and, to a varying extent, production equipment to operate on the new DTV channels. The actual cost of equipment is expected to vary in accordance with the degree to which the station becomes involved in DTV programming and origination.

As noted supra in Section B of this FRFA ("Summary of Significant Issues Raised by Public Comments In Response to the IRFA"), we have determined that the primary allotment objective should be to develop an Allotments Table that provides a channel for all eligible broadcasters, consistent with the provisions of the 1996 Telecommunications Act regarding initial eligibility for DTV licenses. As a result, some LPTV and TV translator licensees currently on the subject DTV spectrum will be displaced. One alternative to this approach would have been to permit existing LPTV and TV translator stations to remain on their incumbent channels; this approach was not chosen because it would have resulted in providing allotments for fewer than all full service licensees.⁴⁰ In making this determination, the Commission noted that LPTV and TV translator operations have always been authorized on a secondary basis.⁴¹ To mitigate the effect of this determination on those LPTV stations likely to be displaced, we adopted the following policies.

First, we will permit LPTV and TV translator stations that are displaced by DTV stations to apply for a suitable replacement channel in the same area without being subject to competing applications.⁴² In this regard, we also are amending our rules to indicate that such applications will be considered on a first-come, first-served basis without waiting for the Commission to issue a low power application window. Also, we will permit displaced stations to request an increase in power or other facility modifications necessary to avoid an interference conflict or to continue serving the previous coverage area.⁴³

Second, we have adopted a number of changes to our technical rules, including many changes requested by the LPTV and TV translator industries, that will provide additional flexibility to accommodate low power operations during and after the transition to DTV.⁴⁴ These changes include permitting closer spacing of channels, new criteria for accepting low power station applications for adjacent channel operations within a DTV station's noise-limited service area, and the possibility of waivers for low power stations where interference to the DTV station will not occur or where the DTV station has consented.

Finally, we will permit unused DTV spectrum to be used by both new and displaced LPTV and TV translator stations, and will permit existing LPTV and TV translator stations to continue to operate, as secondary operations, until a displacing DTV station or a new primary

⁴⁰ Sixth Report and Order at paras. 11, 141.

⁴¹ Id. at para. 11.

⁴² Id. at para. 144.

⁴³ Id. at n.263.

⁴⁴ See id. at paras. 144-147.

APPENDIX E

AMENDMENTS TO THE RULES

Parts 2, 73 and 74 of the Commission's Rules and Regulations (Chapter I of title 47 of the Code of Federal Regulations) is amended to read as follows:

**PART 2 -- FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS;
GENERAL RULES AND REGULATIONS**

1. The authority citation for Part 2 is revised to read as follows:

AUTHORITY: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303, 307 and 336, unless other wise noted.

2. Section 2.106 is amended to revise existing non-government footnote 66 to read as follows:

* * * * *

NON-GOVERNMENT (NG) FOOTNOTES

* * * * *

NG66 The frequency band 470-512 MHz is allocated for use in the broadcasting and land mobile radio services. In the land mobile services, it is available for assignment in the domestic public, public safety, industrial, and land transportation radio services at, or in the vicinity of 11 urbanized areas of the United States, as set forth in the table below. Additionally, in the land mobile services, TV channel 16 is available for assignment in the public safety radio services at, or in the vicinity of, Los Angeles. Such use in the land mobile services is subject to the conditions set forth in parts 22 and 90 of this chapter, CFR 47.

Urbanized Area	TV Channel
New York, NY-Northeastern New Jersey	14, 15
Los Angeles, CA	14, 20
Chicago, IL-Northwestern Indiana	14, 15
Philadelphia, PA-New Jersey	19, 20
San Francisco-Oakland, CA	16, 17
Boston, MA	14, 16
Washington, D.C.-Maryland-Virginia	17, 18
Pittsburgh, PA	14, 18
Miami, FL	14
Houston, TX	17
Dallas, TX	16

* * * * *

PART 73 -- RADIO BROADCAST SERVICES

3. The authority citation for Part 73 is revised to read as follows:

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

4. A new Section 73.622 is added to read as follows:

§ 73.622 Digital television table of allotments.

(a) *General.* The following table of allotments contains the digital television (DTV) channel allotments designated for the listed communities in the United States, its Territories, and possessions. The initial DTV Table of Allotments was established on April 3, 1997, to provide a second channel for DTV service for all eligible analog television broadcasters. Requests for addition of new DTV allotments, or requests to change the channels allotted to a community must be made in a petition for rule making to amend the DTV Table of Allotments. A request to amend the DTV table to change the channel of an allotment in the DTV table will be evaluated for technical acceptability using engineering criteria set forth in Section 73.623(c) of this part. A request to amend the DTV table to add a new allotment will be evaluated for technical acceptability using the geographic spacing criteria set forth in section 73.623(d) of this part. DTV allotments designated with an asterisk are assigned for use by non-commercial educational broadcast stations only. Stations operating on DTV allotments designated with a "c" are required to comply with paragraph (g) of this section.

(1) Petitions requesting the addition of a new allotment must specify a channel in the range of channels 2-51.

(2) Petitions requesting a change in the channel of an initial allotment must specify a channel in the range of channels 2-59.

(b) *DTV Table of Allotments.*

ALABAMA

Community	Channel No.				
Anniston	58				
Bessemer	18c				
Birmingham	30.	36.	50.	52.	*53
Demopolis	*19				
Dothan	21.	36			
Dozier	*59				
Florence	14c.	20.	*22		
Gadsden	26.	45c			

Homewood	28				
Huntsville	*24c,	32c,	41,	49c,	59
Louisville	*42c				
Mobile	9c,	*18,	20c,	26,	27
Montgomery	*14,	16,	46c,	51,	57
Mount Cheaha	*56				
Opelika	31				
Ozark	33c				
Selma	55				
Troy	48				
Tuscaloosa	34c				
Tuskegee	24				

ALASKA

Community	Channel No.					
Anchorage	18,	20,	22,	*24,	*26,	28,
	30,	32				
Bethel	*3					
Dillingham	*9					
Fairbanks	18,	22,	*24,	26,	28	
Juneau	*6,	11				
Ketchikan	*8,	13				
North Pole	20					
Sitka	2					

ARIZONA

Community	Channel No.					
Flagstaff	18,	22,	27,	28		
Green Valley	47c					
Kingman	19,	*46				
Lake Havasu City	35c					
McNary	*42					
Mesa	36					
Nogales	25					
Phoenix	14c,	17,	20c,	23,	24,	26,
	*29,	34c,	49			
Prescott	25					
Sierra Vista	44					
Tolleson	52c					
Tucson	19c,	*28c,	*30,	31,	32,	35,

Yuma 41c
16, 41

ARKANSAS

Community	Channel No.					
Arkadelphia	*46					
El Dorado	27					
Fayetteville	15,	*45				
Fort Smith	17,	18,	21			
Hot Springs	14					
Jonesboro	*20c,	49c,	58			
Little Rock	12c,	22,	32,	33,	43c,	*47
Mountain View	*35					
Newark	*26					
Pine Bluff	24c,	39c				
Rogers	50c					
Springdale	39					

CALIFORNIA

Community	Channel No.					
Anaheim	32					
Arcata	22c					
Bakersfield	10,	25,	33,	55		
Barstow	*27,	44				
Blythe	*4					
Calipatria	50					
Ceres	*15					
Chico	36,	43,	*51			
Clovis	44c					
Coalinga	*22					
Concord	63c					
Corona	39c					
Cotati	*23c					
El Centro	22,	48				
Eureka	*11,	16,	17,	28c		
Fort Bragg	15					
Fresno	7,	9,	14,	16,	*40	
Hanford	20c					
Huntington Beach	*48					
Los Angeles	8c,	35c,	36,	*41c,	42,	43,

	*59c,	60,	65c,	66,	68	
Merced	38					
Modesto	18c					
Monterey	31,	32				
Novato	47					
Oakland	56					
Ontario	47c					
Oxnard	24					
Palm Springs	46,	52				
Paradise	20					
Porterville	48c					
Rancho Palos Verdes	51c					
Redding	14,	*18				
Riverside	69					
Sacramento	21,	35,	48,	*53,	55,	61
Salinas	13,	43				
San Bernardino	*26,	38,	61c			
San Diego	18,	19,	25,	*30,	40c,	55
San Francisco	19c,	24,	27c,	28,	29,	*33c,
	*34,	39c,	45c,	57		
San Jose	12c,	41c,	49c,	*50,	52	
San Luis Obispo	15,	34c				
San Mateo	*59c					
Sanger	36					
Santa Ana	53c					
Santa Barbara	*26,	27				
Santa Maria	19					
Santa Rosa	54					
Stockton	25,	46,	62			
Twentynine Palms	23					
Vallejo	30					
Ventura	49					
Visalia	28,	*50c				
Watsonville	*58					

COLORADO

Community	Channel No.
Alamosa	*46
Boulder	15c
Broomfield	*36
Castle Rock	47
Colorado Springs	10c, 22c, 24

Craig	*48					
Denver	16,	17,	*18,	19c,	32c,	34,
	35,	*40c,	44,	51c		
Durango	17					
Fort Collins	21c					
Glenwood Springs	23,	*39				
Grand Junction	2,	7c,	14,	15,	*16	
La Junta	*30					
Lamar	*50					
Leadville	*49					
Longmont	26c					
Montrose	13					
Pueblo	27,	*29				
Steamboat Springs	10					
Sterling	23					
Trinidad	*43					

CONNECTICUT

Community	Channel No.
Bridgeport	42c, *52
Hartford	5, 11, *32, 46
New Britain	35
New Haven	6, 10, *39
New London	34
Norwich	*45
Waterbury	12

DELAWARE

Community	Channel No.
Seaford	*44
Wilmington	31, *55

DISTRICT OF COLUMBIA

Community	Channel No.
Washington	6c, *27c, *33c, 34, 35, 39, 48, 51c

FLORIDA

Community	Channel No.					
Boca Raton	*44c					
Bradenton	*5,	42				
Cape Coral	35c					
Clearwater	21c					
Clermont	17c					
Cocoa	*30,	51c				
Daytona Beach	11,	49				
Fort Lauderdale	52c					
Fort Myers	15,	*31c,	53			
Fort Pierce	*38,	50				
Fort Walton Beach	25,	40,	49			
Gainesville	16,	*36				
High Springs	28					
Hollywood	47					
Jacksonville	13c,	19,	32,	34,	*38,	42,
	*44					
Key West	3,	12				
Lake Worth	36					
Lakeland	19					
Leesburg	40,	*46c				
Live Oak	48					
Marathon	*34					
Melbourne	20,	48				
Miami	8c,	9c,	*18c,	*19,	20,	21,
	22c,	24c,	30,	32c,	46c	
Naples	43,	45c				
New Smyrna Beach	*33					
Ocala	31					
Orange Park	10					
Orlando	14,	22,	*23c,	39,	41,	58
Palm Beach	49					
Panama City	19,	29c,	*38,	41		
Panama City Beach	47c					
Pensacola	17,	*31,	34c,	45c		
Sarasota	52					
St. Petersburg	24,	57,	59			
Tallahassee	2,	22,	*32			
Tampa	7c,	12c,	29c,	*34,	47,	*54
Tequesta	16					
Tice	33					
Venice	25					

West Palm Beach 13c, *27, 28c, 55

GEORGIA

Community	Channel No.					
Albany	17,	30c				
Athens	*22,	48				
Atlanta	10c,	19,	20,	*21,	25,	27,
	*38,	39,	43			
Augusta	30,	31,	42,	51		
Bainbridge	50c					
Baxley	35c					
Brunswick	24					
Chatsworth	*33					
Cochran	*7					
Columbus	15,	*23,	35,	47,	49	
Cordele	51					
Dalton	16					
Dawson	*26c					
Macon	16,	40c,	45,	50		
Monroe	44					
Pelham	*20					
Perry	32					
Rome	51					
Savannah	15,	23c,	39,	*46		
Thomasville	52					
Toccoa	24					
Valdosta	43c					
Waycross	*18					
Wrens	*36					

HAWAII

Community	Channel No.					
Hilo	8,	18,	*19,	21,	22,	23,
	*31,	*39				
Honolulu	8,	*18,	19,	22,	23,	27,
	31,	33,	35,	*39,	40,	*43
Kailua Kona	25					
Kaneohe	41					
Lihue	*7,	*12,	*28,	*45		
Wailuku	16,	20,	24,	*28,	29,	*30,

*34, 36

IDAHO

Community	Channel No.		
Boise	*21,	25,	26
Burley	*48		
Caldwell	10c		
Coeur D'alene	*56		
Filer	*18c		
Grangeville	*44		
Idaho Falls	9c,	36	
Lewiston	32		
Moscow	*33		
Nampa	22,	27	
Pocatello	*17,	23	
Twin Falls	16,	*24,	34c
Weiser	*34		

ILLINOIS

Community	Channel No.					
Aurora	59c					
Bloomington	28					
Carbondale	*40					
Champaign	41,	48				
Charleston	*50c					
Chicago	3c,	19c,	*21c,	27c,	29,	31c,
	43c,	45c,	*47,	52		
Decatur	18c,	22c				
East St. Louis	47c					
Freeport	41					
Harrisburg	34					
Jacksonville	*15c					
Joliet	53					
Lasalle	10					
Macomb	*21c					
Marion	17					
Moline	*23c,	38				
Mount Vernon	21					
Olney	*19					
Peoria	30c,	39,	40,	*46c,	57	

Quincy	32,	*34,	54
Rock Island	58		
Rockford	16c,	42,	54
Springfield	42,	44,	53
Urbana	26c,	*33	

INDIANA

Community	Channel No.				
Angola	12				
Bloomington	*14,	27,	53,	56	
Elkhart	58				
Evansville	28,	45c,	*54,	58,	59
Fort Wayne	4,	19,	24,	36,	*40c
Gary	*17,	51c			
Hammond	36				
Indianapolis	9c,	16,	*21c,	25,	*44, 45,
	46				
Kokomo	54				
Lafayette	11				
Marion	32				
Muncie	52				
Richmond	30				
Salem	57c				
South Bend	30,	*35c,	42,	48	
Terre Haute	24,	36,	39c		
Vincennes	*52				

IOWA

Community	Channel No.				
Ames	59				
Burlington	41				
Cedar Rapids	27c,	47c,	51,	52	
Centerville	*44				
Council Bluffs	*33c				
Davenport	*34,	49,	56		
Des Moines	16c,	19,	26,	31,	*50
Dubuque	43				
Fort Dodge	*25				
Iowa City	25,	*45			
Mason City	*18,	42			