119. For additional information concerning the information collections contained in this R&O contact Dorothy Conway at 202-418-0217.

120. Pursuant to the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. § 601 et seq., the Commission's final analysis in this *Fifth Report and Order* is attached as Appendix B.

Ordering Clauses

121. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) & (j), 303(r), 307, 309, and 336 of the Communications Act of 1934 as amended, 47 U.S.C. §§ 154(i), (j) 303(r), 307, 309, and 336, Part 73 of the Commission's Rules is amended as set forth in Appendix A, below.

122. 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 thirty days after publication in the Federal Register or upon receipt by Congress of a report in compliance with the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, whichever is later.

123. IT IS FURTHER ORDERED that the new or modified paperwork requirements contained in this Report and Order (which are subject to approval by the Office of Management and Budget) will go into effect upon OMB approval.

124. IT IS FURTHER ORDERED that, upon release of this Fifth Report and Order, concurrently released with the Sixth Report and Order, this proceeding is hereby terminated.

125. For additional information concerning this proceeding, contact Saul Shapiro, Mass Media Bureau, (202) 418-2600, Gretchen Rubin, Mass Media Bureau, Policy and Rules Division, (202) 418-2120; Mania K. Baghdadi, 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 Branch, (202) 418-2190.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton

William F. Caton
Acting Secretary

APPENDIX A

Rule Changes

Part 73 of Title 47 of the U.S. Code of Federal regulations is amended to read as follows:

PART 73 -- RADIO BROADCAST SERVICES

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

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

2. Section 73.624 is added to Subpart E to read as follows:

§ 73.624 Digital Television Broadcast Stations

(a) Digital television ("DTV") broadcast stations are assigned channels 6 MHz wide. Initial eligibility for licenses for DTV broadcast stations is limited to persons that, as of April 3, 1997, are licensed to operate a full power television broadcast station or hold a permit to construct such a station (or both).

(b) At any time that a DTV broadcast station permittee or licensee transmits a video program signal on its analog television channel, it must also transmit at least one over-the-air video program signal at no direct charge to viewers on the DTV channel that is licensed with the analog channel. The DTV program service provided pursuant to this paragraph must be at least comparable in resolution to the analog television station programming transmitted to viewers on the analog channel but, subject to paragraph 73.624(f), DTV broadcast stations are not required to simulcast the analog programming.

(c) Provided that DTV broadcast stations comply with paragraph (b) of this section, DTV broadcast stations are permitted to offer telecommunications services of any nature, consistent with the public interest, convenience, and necessity, on an ancillary or supplementary basis. The kinds of services that may be provided include, but are not limited to computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, audio signals, subscription video, and any other services that do not derogate DTV broadcast stations' obligations under paragraph (b) of this section. Such services may be provided on a broadcast, point-to-point or point-to-multipoint basis, provided, however, that no video broadcast signal provided at no direct charge to viewers shall be considered ancillary or supplementary.

(1) DTV licensees that provide ancillary or supplementary services that are analogous to other telecommunications services subject to regulation by the Commission must comply with the Commission regulations that apply to those services, provided, however, that no ancillary or supplementary service shall have any rights to carriage under Sections 614 or 615 of the Communications Act of 1934, as amended, or be deemed a multichannel video programming distributor for purposes of Section 628 of the Communications Act of 1934, as amended.

(2) In all arrangements entered into with outside parties affecting telecommunications service operation, the DTV licensee or permittee must retain control over all material transmitted in a broadcast mode via the station's facilities, with the right to reject any material that it deems inappropriate or undesirable. The license or permittee is also responsible for all aspects of technical operation involving such telecommunications services.

(3) In any application for renewal of a broadcast license for a television station that provides ancillary or supplementary services, a licensee shall establish that all of its program services on the analog and the DTV spectrum are in the public interest. Any violation of the Commission's rules applicable to ancillary or supplementary services will reflect on the licensee's qualifications for renewal of its license.

(d) Digital television broadcast facilities that comply with the FCC DTV Standard (Section 73.682(d)), shall be constructed in the following markets by the following dates:

(1)(i) May 1, 1999: all network-affiliated television stations in the top ten television markets;

(ii) November 1, 1999: all network-affiliated television stations not included in category (1)(i) and in the top 30 television markets;

(iii) May 1, 2002: all remaining commercial television stations;

(iv) May 1, 2003: all noncommercial television stations.

(2) For the purposes of paragraph (d)(1)

(i) the term, "network," is defined to include the ABC, CBS, NBC, and Fox television networks;

(ii) the term, "television market," is defined as the Designated Market Area or DMA as defined by Nielsen Media Research as of April 3, 1997; and

(iii) the terms, "network-affiliated" or "network-affiliate," are defined to include those television stations affiliated with at least one of the four networks designated in paragraph (d)(2)(i) as of April 3, 1997. In those DMAs in which a network has more than one network affiliate, paragraphs (d)(1)(i) and (ii) of this section shall apply to its network affiliate with the largest audience share for the 9 a.m. to midnight time period as measured by Nielsen Media Research in its Nielsen Station Index, Viewers in Profile, as of February, 1997.

(3) Authority delegated. (i) Authority is delegated to the Chief, Mass Media Bureau to grant an extension of time of up to six months beyond the relevant construction deadline specified in paragraph (d)(1) of this section upon demonstration by the DTV licensee or permittee that failure to meet that construction deadline is due to circumstances that are either unforeseeable or beyond the licensee's control where the licensee has taken all reasonable steps to resolve the problem expeditiously.

(ii) Such circumstances shall include, but shall not be limited to: (a) inability to construct and place in operation a facility necessary for transmitting digital television, such as a tower, because of delays in obtaining zoning or FAA approvals, or similar constraints; or (b) the lack of equipment necessary to obtain a digital television signal.

(iii) The Bureau may grant no more than two extension requests upon delegated authority. Subsequent extension requests shall be referred to the Commission. The Bureau may not on delegated authority deny an extension request but must refer recommended denials to the Commission.

(iv) Applications for extension of time shall be filed at least 30 days prior to the relevant construction deadline, absent a showing of sufficient reasons for filing within less than 30 days of the relevant construction deadline.

(e) The application for construction permit must be filed on Form 301 (except for noncommercial stations, which must file on Form 340) on or before the date on which half of the construction period has elapsed. Thus, for example, for applicants in category (d)(1)(i), the application for construction period must be filed by May 1, 1998.

(f)(i) Commencing on April 1, 2003, DTV television licensees and permittees must simulcast 50 percent of the video programming of the analog channel on the DTV channel.

(ii) Commencing on April 1, 2004, DTV licensees and permittees must simulcast 75% of the video programming of the analog channel on the DTV channel.

(iii) Commencing on April 1, 2005, DTV licensees and permittees must simulcast 100% of the video programming of the analog channel on the DTV channel.

(iv) The simulcasting requirements imposed in paragraphs (f)(i)-(iii) of this section will terminate when the analog channel terminates operation and a 6 MHz channel is returned by the DTV licensee or permittee to the Commission.

73.625 DTV coverage of principal community and antenna system.

(a) *Transmitter location.*

(1) The DTV transmitter location shall be chosen so that, on the basis of the effective radiated power and antenna height above average terrain employed, the following minimum F (50,90) field strength in dB above one uV/m will be provided over the entire principal community to be served:

Channels 2-6	Channels 7-13	Channels 14-69
28 dBu	36 dBu	41 dBu

(2) The location of the antenna must be so chosen that there is not a major obstruction in the path over the principal community to be served.

(3) For the purposes of this section, coverage is to be determined in accordance with paragraph (b) of this section. Under actual conditions, the true coverage may vary from these estimates because the terrain over any specific path is expected to be different from the average terrain on which the field strength charts were based. Further, the actual extent of service will usually be less than indicated by these estimates due to interference from other stations. Because of these factors, the predicted field strength contours give no assurance of service to any specific percentage of receiver locations within the distances indicated.

(b) *Determining coverage.*

(1) In predicting the distance to the field strength contours, the F (50,50) field strength charts

(Figures 9, 10 and 10b of section 73.699 of this part) and the F (50,10) field strength charts (Figures 9a, 10a and 10c of section 73.699 of this part) shall be used. To use the charts to predict the distance to a given F (50,90) contour, the following procedure is used: Convert the effective radiated power in kilowatts for the appropriate azimuth into decibel value referenced to 1 kW (dBk). Subtract the power value in dBk from the contour value in dBu. Note that for power less than 1 kW, the difference value will be greater than the contour value because the power in dBk is negative. Locate the difference value obtained on the vertical scale at the left edge of the appropriate F (50,50) chart for the DTV station's channel. Follow the horizontal line for that value into the chart to the point of intersection with the vertical line above the height of the antenna above average terrain for the appropriate azimuth located on the scale at the bottom of the chart. If the point of intersection does not fall exactly on a distance curve, interpolate between the distance curves below and above the intersection point. The distance values for the curves are located along the right edge of the chart. Using the appropriate F (50,10) chart for the DTV station's channel, locate the point where the distance coincides with the vertical line above the height of the antenna above average terrain for the appropriate azimuth located on the scale at the bottom of the chart. Follow a horizontal line from that point to the left edge of the chart to determine the F (50,10) difference value. Add the power value in dBk to this difference value to determine the F (50,10) contour value in dBu. Subtract the F (50,50) contour value in dBu from this F (50,10) contour value in dBu. Subtract this difference from the F (50,50) contour value in dBu to determine the F (50,90) contour value in dBu at the pertinent distance along the pertinent radial.

(2) The effective radiated power to be used is that radiated at the vertical angle corresponding to the depression angle between the transmitting antenna center of radiation and the radio horizon as determined individually for each azimuthal direction concerned. In cases where the relative field strength at this depression angle is 90% or more of the maximum field strength developed in the vertical plane containing the pertaining radial, the maximum radiation shall be used. The depression angle is based on the difference in elevation of the antenna center of radiation above the average terrain and the radio horizon, assuming a smooth spherical earth with a radius of 8,495.5 kilometers (5,280 miles) and shall be determined by the following equation:

A = 0.0277 square root of H

Where:

A is the depression angle in degrees.

H is the height in meters of the transmitting antenna radiation center above average terrain of the 3.2-16.1 kilometers (2-10 miles) sector of the pertinent radial.

This formula is empirically derived for the limited purpose specified here. Its use for any other purpose may be inappropriate.

(3) Applicants for new DTV stations or changes in the facilities of existing DTV stations must submit to the FCC a showing as to the location of their stations' or proposed stations' contour. This showing is to include a map showing this contour, except where applicants have previously submitted material to the FCC containing such information and it is found upon careful examination that the contour locations indicated therein would not change, on any radial, when the locations are determined under this section. In the latter cases, a statement by a qualified

engineer to this effect will satisfy this requirement and no contour maps need be submitted.

(4) The antenna height to be used with these charts is the height of the radiation center of the antenna above the average terrain along the radial in question. In determining the average elevation of the terrain, the elevations between 3.2-16.1 kilometers (2-10 miles) from the antenna site are employed. Profile graphs shall be drawn for 8 radials beginning at the antenna site and extending 16.1 kilometers (10 miles) therefrom. The radials should be drawn for each 45 degrees of azimuth starting with True North. At least one radial must include the principal community to be served even though such community may be more than 16.1 kilometers (10 miles) from the antenna site. However, in the event none of the evenly spaced radials include the principal community to be served and one or more such radials are drawn in addition to the 8 evenly spaced radials, such additional radials shall not be employed in computing the antenna height above average terrain. Where the 3.2-16.1 kilometers (2-10 mile) portion of a radial extends in whole or in part over large bodies of water (such as ocean areas, gulfs, sounds, bays, large lakes, etc., but not rivers) or extends over foreign territory but the contour encompasses land area within the United States beyond the 16.1 kilometers (10 mile) portion of the radial, the entire 3.2-16.1 kilometers (2-10 mile) portion of the radial shall be included in the computation of antenna height above average terrain. However, where the contour does not so encompass United States land area and (1) the entire 3.2-16.1 kilometers (2-10 mile) portion of the radial extends over large bodies of water or foreign territory, such radial shall be completely omitted from the computation of antenna height above average terrain, and (2) where a part of the 3.2-16.1 kilometers (2-10 mile) portion of a radial extends over large bodies of water or over foreign territory, only that part of the radial extending from the 3.2 kilometer (2 mile) sector to the outermost portion of land area within the United States covered by the radial shall be employed in the computation of antenna height above average terrain. The profile graph for each radial should be plotted by contour intervals of from 12.2-30.5 meters (40-100 feet) and, where the data permits, at least 50 points of elevation (generally uniformly spaced) should be used for each radial. In instances of very rugged terrain where the use of contour intervals of 30.5 meters (100 feet) would result in several points in a short distance, 61.0-122.0 meter (200-400 foot) contour intervals may be used for such distances. On the other hand, where the terrain is uniform or gently sloping the smallest contour interval indicated on the topographic map (see paragraph (b)(5) of this section) should be used, although only relatively few points may be available. The profile graphs should indicate the topography accurately for each radial, and the graphs should be plotted with the distance in kilometers as the abscissa and the elevation in meters above mean sea level as the ordinate. The profile graphs should indicate the source of the topographical data employed. The graph should also show the elevation of the center of the radiating system. The graph may be plotted either on rectangular coordinate paper or on special paper which shows the curvature of the earth. It is not necessary to take the curvature of the earth into consideration in this procedure, as this factor is taken care of in the charts showing signal strengths. The average elevation of the 12.9 kilometer (8 miles) distance between 3.2-16.1 kilometers (2-10 miles) from the antenna site should then be determined from the profile graph for each radial. This may be obtained by averaging a large number of equally spaced points, by using a planimeter, or by obtaining the median elevation (that exceeded for 50% of the distance) in sectors and averaging those values. In directions where the terrain is such that negative antenna heights or heights below 30.5 meters

(100 feet) for the 3.2 to 16.1 kilometers (2 to 10 mile) sector are obtained, an assumed height of 30.5 meters (100 feet) shall be used for the prediction of coverage. However, where the actual contour distances are critical factors, a supplemental showing of expected coverage must be included together with a description of the method employed in predicting such coverage. In special cases, the Commission may require additional information as to terrain and coverage.

(5) In the preparation of the profile graph previously described, and in determining the location and height above sea level of the antenna site, the elevation or contour intervals shall be taken from the United States Geological Survey Topographic Quadrangle Maps, United States Army Corps of Engineers' maps or Tennessee Valley Authority maps, whichever is the latest, for all areas for which such maps are available. If such maps are not published for the area in question, the next best topographic information should be used. Topographic data may sometimes be obtained from State and Municipal agencies. Data from Sectional Aeronautical Charts (including bench marks) or railroad depot elevations and highway elevations from road maps may be used where no better information is available. In cases where limited topographic data is available, use may be made of an altimeter in a car driven along roads extending generally radially from the transmitter site. United States Geological Survey Topographic Quadrangle Maps may be obtained from the United States Geological Survey, Department of the Interior, Washington, D.C. 20240. Sectional Aeronautical Charts are available from the United States Coast and Geodetic Survey, Department of Commerce, Washington, D.C. 20235. In lieu of maps, the average terrain elevation may be computer generated, except in the cases of dispute, using elevations from a 30 second point or better topographic data file. The file must be identified and the data processed for intermediate points along each radial using linear interpolation techniques. The height above mean sea level of the antenna site must be obtained manually using appropriate topographic maps.

(c) *Antenna system.*

(1) The antenna system shall be designed so that the effective radiated power at any angle above the horizontal shall be as low as the state of the art permits, and in the same vertical plane may not exceed the effective radiated power in either the horizontal direction or below the horizontal, whichever is greater.

(2) An antenna designed or altered to produce a noncircular radiation pattern in the horizontal plane is considered to be a directional antenna. Antennas purposely installed in such a manner as to result in the mechanical beam tilting of the major vertical radiation lobe are included in this category.

(3) Applications proposing the use of directional antenna systems must be accompanied by the following:

(i) Complete description of the proposed antenna system, including the manufacturer and model number of the proposed directional antenna.

(ii) Relative field horizontal plane pattern (horizontal polarization only) of the proposed directional antenna. A value of 1.0 should be used for the maximum radiation. The plot of the pattern should be oriented so that 0 degrees corresponds to true North. Where mechanical beam tilt is intended, the amount of tilt in degrees of the antenna vertical axis and the orientation of the downward tilt with respect to true North must be specified, and the horizontal plane pattern must reflect the use of mechanical beam tilt.

(iii) A tabulation of the relative field pattern required in paragraph (c)(3)(ii) of this section. The tabulation should use the same zero degree reference as the plotted pattern, and be tabulated at least every 10 degrees. In addition, tabulated values of all maxima and minima, with their corresponding azimuths, should be submitted.

(iv) Horizontal and vertical plane radiation patterns showing the effective radiated power, in dBk, for each direction. Sufficient vertical plane patterns must be included to indicate clearly the radiation characteristics of the antenna above and below the horizontal plane. In cases where the angles at which the maximum vertical radiation varies with azimuth, a separate vertical radiation pattern must be provided for each pertinent radial direction.

(v) All horizontal plane patterns must be plotted to the largest scale possible on unglazed letter-size polar coordinate paper (main engraving approximately 18 cm x 25 cm (7 inches x 10 inches)) using only scale divisions and subdivisions of 1, 2, 2.5. or 5 times 10-nth. All vertical plane patterns must be plotted on unglazed letter-size rectangular coordinate paper. Values of field strength on any pattern less than 10 percent of the maximum field strength plotted on that pattern must be shown on an enlarged scale.

(vi) The horizontal and vertical plane patterns that are required are the patterns for the complete directional antenna system. In the case of a composite antenna composed of two or more individual antennas, this means that the patterns for the composite antenna, not the patterns for each of the individual antennas, must be submitted.

(4) Where simultaneous use of antennas or antenna structures is proposed, the following provisions shall apply:

(i) In cases where it is proposed to use a tower of an AM broadcast station as a supporting structure for a DTV broadcast antenna, an appropriate application for changes in the radiating system of the AM broadcast station must be filed by the licensee thereof. A formal application (FCC Form 301, or FCC Form 340 for a noncommercial educational station) will be required if the proposal involves substantial change in the physical height or radiation characteristics of the AM broadcast antennas; otherwise an informal application will be acceptable. (In case of doubt, an informal application (letter) together with complete engineering data should be submitted.) An application may be required for other classes of stations when the tower is to be used in connection with a DTV station.

(ii) When the proposed DTV antenna is to be mounted on a tower in the vicinity of an AM station directional antenna system and it appears that the operation of the directional antenna system may be affected, an engineering study must be filed with the DTV application concerning the effect of the DTV antenna on the AM directional radiation pattern. Field measurements of the AM stations may be required prior to and following construction of the DTV station antenna, and readjustments made as necessary.

APPENDIX B

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act ("RFA"), 5 U.S.C. § 603, an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Fourth Further Notice of Proposed Rule Making and Third Notice of Inquiry* in this proceeding.[246] The Commission sought written public comments on the proposals in the *Fourth Further Notice*, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis ("FRFA") in this *Fifth 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").[247]

I. Need For and Objectives of Action:

The *Fifth Report and Order* adopts several rules with the following objectives: (1) to promote and preserve free, universally available, local broadcast television in a digital world, thereby preserving free, widely accessible programming that serves the public interest; and (2) to promote spectrum efficiency and rapid recovery of spectrum.

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*. However, some comments indirectly addressed small business issues. For example, ALTV, Telemundo, and noncommercial broadcasters asserted that imposition of a minimum HDTV requirement would be particularly burdensome on independent and foreign-language stations, many of which are owned by small entities. In addition, most commenters agreed that DTV licensees should have the discretion to provide a wide variety of ancillary and supplemental services, thereby providing an additional revenue stream that would benefit small entities. Further, although Joint Broadcasters and ALTV support the six-month/six-year plan in general, they propose that a less demanding schedule and liberal waiver policy apply to help stations facing difficulty, such as noncommercial stations, small stations, and those in small or rural markets.

Addressing the time within which broadcasters will be required to express their interest in, and then construct, DTV facilities, Joint Broadcasters and ALTV propose that a less demanding schedule and liberal waivers apply to help stations facing difficulty, such as noncommercial

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246 10 FCC Rcd 10540, 10555 (1995).

247 *See generally* 5 U.S.C. § 1 et seq. (RFA). Title II of CWAAA is The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

stations, small stations, and those in small or rural markets. Several other commenters argue that stations in smaller markets should have more time than those in larger markets.

Finally, several low power television ("LPTV") broadcasters, many of which are small entities, want the Commission to extend initial eligibility to LPTV licensees. LPTV commenters such as Abacus Television point out the public contribution that LPTV stations make, such as providing television service to underserved areas; providing local and specialized services; increasing the diversification of mass media ownership; and preventing undue concentration of economic power. Abacus also argues that excluding LPTV from the analog to digital transition would exclude the vast majority of minority television licensees and permittees from the DTV conversion. Further, Abacus argues, it would exclude the vast majority of minority television licensees and permittees and is antithetical to increasing ownership diversity. Abacus argues that the Commission should perform a market-by-market analysis to determine which LPTV stations could be accommodated. Absent that, according to Abacus, the Commission could minimize the effect on LPTV stations by adding a second phase to the process of creating a Table of Allotments to address the accommodation of LPTV service next, after it has begun the conversion process for full power television licensees. WatchTV, Inc., however, argues that the Commission should make digital channels available to existing low power operators on the same terms and conditions as it may adopt for small market broadcasters and educational licensees before it allows new entrants to apply. Additionally, White Eagle Partners believes that LPTV stations should be eligible to receive DTV spectrum.

Still other LPTV commenters argue that neither LPTV stations nor full service stations should be afforded a second 6 MHz channel. Community Broadcasters Association ("CBA") believes that a dual channel DTV scenario would be an inefficient use of spectrum that would not only require immense private investment, but would also lead to a host of logistical and other problems that would negate many of the benefits of DTV. CBA argues that full power and LPTV stations should be permitted to convert to DTV on their present channel at any time.

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.[248] Accordingly, for purposes of this *Fifth 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 adopted in this *Fifth 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

[248] 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 rule makings.

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 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 *Fifth Report and Order* will apply to all full service television stations and may have an effect on 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.[249] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[250] Included in this industry are commercial, religious, educational, and other television stations.[251] Also included are establishments primarily

[249] 13 C.F.R. § 121.201, Standard Industrial Code (SIC) 4833 (1996).

[250] 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).

[251] *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

engaged in television broadcasting and which produce taped television program materials.[252] Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.[253]

There were 1,509 television stations operating in the nation in 1992.[254] 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.[255] For 1992[256] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments, or 77% of 1,509 establishments.[257] Thus, the proposed rules will affect approximately 1,551 television stations; approximately 1,194 of those stations are considered small businesses.[258] 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.[259] 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

in television broadcasting and which produce taped television program materials.

252 Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 250.

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

254 FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 250, Appendix A-9.

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

256 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 250, III.

257 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.

258 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.

259 *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.

stations in the United States.[260]

It should also be noted that the foregoing estimates do not distinguish between network-affiliated[261] 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.[262]

There are currently 4,977 TV translator stations and 1,952 LPTV stations which would be affected by the new rules, if they decide to convert to digital television.[263] 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 we indicated earlier, 77% of television stations are designated as small businesses. Given this situation, LPTV and 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.[264] Thus, radio or television

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260 *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).

261 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.

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

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

264 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

stations with fewer than five full-time employees are exempted from certain EEO reporting and recordkeeping requirements.[265] We estimate that the total number 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.[266]

IV. Projected Compliance Requirements of the Rule:

The *Fifth Report and Order* adopts a number of rules, procedures, and policies, most of which are not expected to involve the imposition of new compliance requirements upon licensees or other entities. These include the rules: (1) providing 6 MHz channels for each DTV channel; (2) limiting the initial eligibility for DTV channels to existing full-power broadcasters; (3) requiring licensees to provide at least one free digital video programming service that is at least comparable in resolution to today's service and aired during the same time periods that their analog channel is broadcasting; (4) allowing broadcasters full flexibility to respond to the demands of their audience by providing ancillary and supplementary services that do not derogate the mandated free, over-the-air program service; (5) giving broadcasters the discretion as to how much, if any, high definition television programming they will transmit; (6) refraining from imposing a simulcasting requirement upon broadcasters until the final years of the transition; (7) licensing NTSC and DTV television facilities under a single, paired license; (8) stating the Commission's intent to give special relief to noncommercial broadcasters to assist their transition to DTV, including providing them six years within which to construct DTV facilities; (9) allowing equipment manufacturers at this time maximum latitude to determine which video formats DTV equipment will receive, since broadcasters will have the latitude to decide which video formats they will transmit based on market and consumer demand; (10) postponing a decision whether to impose labeling requirements on receiver manufacturers; and (11) declining to limit the sale of NTSC-only display devices in the future.

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).

[265] *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.

[266] 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.

We do expect that three of the rules we adopt today may constitute significant compliance requirements on small entities, as well as on others. First, pursuant to the rule setting a timetable for applying for and constructing DTV facilities, all licensees will have 90 days after the release date of the DTV Table of Allotments to inform the Commission if they do not want a DTV channel. After that, there will be three categories of construction requirements for commercial television stations. In the first category, all network-affiliated stations in the top ten television markets[267] will have until May 1, 1999, to construct their digital facilities. In the second category, all network-affiliated stations in the top 30 television markets not included above will have until November 1, 1999, to construct their digital facilities. In the third category, all other commercial stations will have until May 1, 2002, to construct their DTV facilities. All noncommercial stations will have until May 1, 2003, to construct their DTV facilities. We will ask that those stations that have represented to the Commission that they will complete construction of the DTV facility by November 1, 1998, file reports at six-month intervals, beginning on November 1, 1997, stating that their plans to meet these deadlines are on schedule or specifying any difficulties encountered in attempting to meet these deadlines. We will grant an extension of time where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the licensee's control where the licensee has taken all possible steps to resolve the problem expeditiously.

We believe that an aggressive construction schedule will not burden small entities for several reasons. First, most stations in the largest television markets can be expected to lead the transition to DTV, since these stations are better situated to invest the capital necessary to establish the first DTV stations. Second, smaller stations will find it easier to begin DTV service after learning from the experience gained by the top market stations. Third, our staggered construction schedule will help keep costs lower for smaller market stations, as equipment costs decrease as the market matures. Finally, our tiered approach allows us to ensure that DTV quickly reaches a large percentage of U.S. television households while placing requirements on a relatively small number of stations.

The second rule with compliance requirements, that setting a deadline of 2006 for broadcasters to complete their transition to DTV by surrendering their NTSC spectrum, also affects small entities, as well as others. However, because stations will have constructed their DTV facilities by that time, pursuant to the timetable mentioned above, the compliance requirement is simply to cease transmitting NTSC signals.

The third rule with compliance requirements, that setting a graduated simulcast requirement for the last three years of the transition, also affects small entities, as well as others. However, because of the gradual nature of the requirement, as well as the multichannel capabilities of DTV,

[267] For the purposes of the construction schedule, a network-affiliated station is one that operates as an affiliate of CBS, NBC, ABC, or Fox, as of April 3, 1997, the adoption date of this *Report and Order*. "Television markets" are defined as the Designated Market Areas, or DMA, as defined by Nielsen Media Research. In those DMAs in which a network has more than one network affiliate, only the affiliate with the largest audience share will be considered as "network-affiliated" for the purposes of the digital television construction schedule.

small entities are not expected to find it difficult to comply.

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

The *Fifth Report and Order* adopts a rule providing 6 MHz channels for each DTV channel. This represents the optimum balance of broadcast needs and spectrum efficiency, and it is consistent with the DTV Standard adopted in the *Fourth Report and Order*. To specify a different channel size at this late date would not promote the goals we sought to achieve in adopting the DTV Standard and would prolong the conversion to DTV, thereby putting broadcasters at a competitive disadvantage to other digital video program providers.

The *Fifth Report and Order* also adopts a rule limiting the initial eligibility for DTV channels to existing full-power broadcasters, consistent with the statutory directive to do so contained in the Telecommunications Act of 1996. This minimizes the chances that small entities that already have full-service NTSC licenses or construction permits will be forced to surrender them. However, low power television broadcasters, many of which are small entities, would not automatically be eligible for DTV channels. While LPTV commenters urge the inclusion of LPTV stations in the conversion to digital television, some urge us not to afford them a second 6 MHz channel, as this would be costly and disruptive to them. In proposing a DTV Table of Allotments in the *Sixth Further Notice* in this proceeding, we stated that in order to provide DTV allotments for existing full service stations, it will be necessary to displace LPTV stations and TV translator stations to some degree, especially in major markets. In the *Sixth Further Notice*, we also issued a number of proposals to mitigate the impact on LPTV stations. In the *Sixth Report and Order* establishing a DTV Table of Allotments, which is a companion document adopted concurrently with the present *Fifth Report and Order*, we adopt a number of measures intended to minimize the impact of DTV implementation on LPTV service.

The *Fifth Report and Order* also adopts a rule requiring licensees to provide at least one free digital video programming service that is at least comparable in resolution to today's service and aired during the same time periods that their analog channel is broadcasting. We believe that this requirement will not be onerous for small broadcast entities because of the relative ease with which they will be able to digitize their analog signal in order to meet the requirement. Accordingly, the provision of this minimum service should impose no economic impact beyond that already imposed by the general requirement that stations construct and operate digital television facilities. At the same time, it ensures that viewers will continue to have access to over-the-air broadcast programming. Finally, it does not impede broadcasters' opportunities to generate revenue through additional advertiser-supported programming or subscription, if they choose.

The *Fifth Report and Order* also adopts a rule stating that broadcasters shall have full flexibility to respond to the demands of their audience by providing ancillary and supplementary services that do not derogate the mandated free, over-the-air program service. Such services could include, but are not limited to, subscription television programming, computer software distribution, data transmissions, teletext, interactive services, audio signals, and any other services that do not interfere with the required free service. Revenue-based services can help digital broadcasters achieve more rapid penetration of digital television, can help broadcasters compete with other video providers, and can help support the free television service. Because these ancillary and supplemental services are voluntary, they will impose no economic burden on broadcast television licensees.

The *Fifth Report and Order* declines to impose a requirement that broadcasters provide a minimum amount of high definition television programming over the DTV spectrum, and instead leaves this decision to the discretion of broadcasters. Such a minimum requirement might be particularly burdensome on small broadcasters, including many independent and foreign-language stations.

The *Fifth Report and Order* also refrains from imposing a simulcasting requirement on broadcasters until the closing years of the transition. However, broadcasters at all times retain the option to simulcast, should they so choose. This discretion assures small entities, as well as others, the flexibility to compete more efficiently in the video marketplace. We believe that during the early stages of the transition, marketplace forces will ensure that the best NTSC programming will be simulcast on DTV.

However, in order to help reclaim spectrum at the end of the transition period, the *Fifth Report and Order* requires that by the sixth year after its adoption, programming that is aired on a broadcaster's analog channel must be available on its digital channel. This will prevent disenfranchisement of the remaining NTSC viewers when the NTSC spectrum is reclaimed. Thus, commencing April 1, 2003, DTV licensees and permittees must simulcast at least 50% of the video programming transmitted on their analog channel; commencing April 1, 2004, there will be a 75% simulcasting requirement; commencing April 1, 2005, there will be a 100% simulcasting requirement until the analog channel is terminated and returned. Because of the gradual nature of the requirement and the multichannel capabilities of digital television, the simulcasting requirement should impose little, if any, burden on small entities.

The *Fifth Report and Order* also determines that NTSC and DTV television facilities should be licensed under a single, paired license. This will help small broadcasters, as well as others, minimize their administrative burdens and the financial costs associated with them.

The *Fifth Report and Order* also sets a timetable by which stations must apply for and construct DTV facilities. It is important to foster an expeditious and orderly transition to digital technology that will allow the public to receive the benefits of digital television, so it is important that viewers in television markets have access to DTV programming and other digital services as quickly as possible. First, pursuant to the rule setting a timetable for applying for and constructing DTV facilities, all licensees will have 90 days after the release date of the DTV Table of Allotments to inform the Commission if they do not want a DTV channel. After that, there will be three categories of construction requirements for commercial television stations. In the first category, all network-affiliated stations in the top ten television markets[268] will have until May 1, 1999, to construct their digital facilities. In the second category, all network-affiliated stations in the top 30 television markets not included above will have until November 1, 1999, to construct their digital facilities. In the third category, all other commercial stations will have until May 1, 2002, to construct their DTV facilities. All noncommercial stations will have until May 1, 2003, to construct their DTV facilities. We will require that those stations that have represented to the Commission that they will complete construction of the DTV facility by November 1, 1998, file reports at six-month intervals, beginning on November 1, 1997, stating that their plans to meet these deadlines are on schedule or specifying any difficulties encountered in attempting to meet these deadlines. We will grant an extension of time where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the licensee's control where the licensee has taken all possible steps to resolve the problem expeditiously.

An aggressive construction schedule is necessary for us to meet our main objectives in this proceeding. First, digital broadcast television stands a risk of failing unless it is rolled out quickly. Other media such as DBS, cable, and wireless cable have or soon will offer digital programming services. Unless digital television broadcasting is available quickly, other digital services may achieve levels of penetration that could preclude the success of over-the-air, digital television. Second, a rapid construction period is critical to DTV's competitive strength internationally, as well as domestically. Third, an aggressive construction schedule helps to offset possible disincentives that any individual broadcaster may have to begin digital transmissions quickly, as well as the absence of many market forces that might themselves ensure rapid construction. Fourth, a rapid build-out works to ensure that recovery of broadcast spectrum and its reallocation to other beneficial uses occurs as quickly as possible.

This construction schedule takes the needs and interests of small entities into account. The most aggressive requirements apply to stations that we believe will be in the best position to make the transition quickly: network-affiliated stations in the top 10 television markets. These markets include approximately 30 percent of U.S. television households. Network-affiliated stations consistently have higher ratings, with higher audience numbers, and we assume with greater financial and other resources, so that the above construction requirement will both serve the public and be reasonably nonburdensome to broadcasters. In recognition of the fact that some networks may have in some of the larger markets a second affiliate that is not as strong as the other affiliate, we have minimized the burden on that weaker affiliate by imposing a longer construction deadline. Moreover, we are not requiring licensees initially to construct full-replication facilities. Instead, we are requiring them at the outset only to emit a DTV signal strong enough to encompass the community of license.

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[268] For the purposes of the construction schedule, a network-affiliated station is one that operates as an affiliate of CBS, NBC, ABC, or Fox, as of April 3, 1997, the adoption date of this *Report and Order*. "Television markets" are defined as the Designated Market Areas, or DMA, as defined by Nielsen Media Research. In those DMAs in which a network has more than one network affiliate, only the affiliate with the largest audience share will be considered as "network-affiliated" for the purposes of the digital television construction schedule.

The *Fifth Report and Order* also concludes that broadcasters should have sufficient time between now and 2006 to complete their transitions to DTV and surrender their NTSC frequencies. It has become clear that conversion, both for stations and for viewers, will cost significantly less than thought at the time of the *Third Report and Order*, which had set a 15-year termination date. Thus, conversion can occur more quickly and NTSC spectrum can be surrendered sooner than earlier anticipated. In addition, the interests of small entities are served through our decision to conduct thorough reviews of the progress of DTV every two years, which will allow us to make adjustments to the 2006 target, if necessary.

The *Fifth Report and Order* also states the Commission's intent to give special relief to noncommercial broadcasters to assist their transition to DTV, including providing them with six years within which to construct their DTV facilities. In so doing, the Commission is recognizing the unique financial difficulties often faced by these entities, which, as noted earlier, are likely to be small entities.

The *Fifth Report and Order* allows equipment manufacturers at this time maximum latitude to determine which video formats DTV equipment will receive, since broadcasters will have the latitude to decide which video formats they will transmit based on market and consumer demand. We believe that it is likely that market forces will provide incentives for broadcasters and equipment manufacturers to work closely together to produce the receiver and converter designs most valued by consumers. The *Fifth Report and Order* also postpones a decision regarding labeling requirements for manufacturers of receivers. Finally, the *Fifth Report and Order* recognizes that there is an enormous embedded base of video cassette recorders, cable decoder boxes, laser disc players, and other video equipment that use NTSC receivers for non-broadcast purposes. Because there may be a continuing market for the sale of NTSC display devices, even after the conversion to DTV, we decline to limit the sale of NTSC-only display devices. These decisions allow small entities the maximum ability to determine and meet consumer interests.

As noted, at least two of our decisions may have a significant economic impact on a substantial number of small entities. We believe that the additional burdens on small entities cannot be diminished, however, without compromising the two primary goals of this proceeding, as described earlier.

VI. Report to Congress

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

APPENDIX C

COMMENTS OF FOURTH NOTICE OF PROPOSED RULEMAKING and THIRD NOTICE OF INQUIRY ATV/HDTV (DOCKET NO. 87-268)[269]

<u>**Filed by:**</u>	<u>**Date Filed**</u>:
Abacus Television	Nov. 20, 1995
Advanced Television System Committee	Nov. 30, 1995
AFL Group	Nov. 21, 1995
Alliance for Community Media	Nov. 20, 1995
America One Television	Nov. 20, 1995
Ameritech New Media Enterprises, Inc.	Nov. 20, 1995
Antenna Concepts, Inc.	Nov. 20, 1995
Apogee Broadcasting Corporation	Oct. 13, 1995
Apple Computer, Inc.	Nov. 20, 1995
Asiavision, Inc. (TV 58)	Nov. 20, 1995
Association of America's Public TV Stations & Public B'casting Svc.	Nov. 20, 1995
[illegible] Stations	Nov. 27, 1995
Association of Federal Communications Consulting Engineers	Nov. 21, 1995
Association of Independent Television Stations, Inc.	Nov. 20, 1995
Assoc. of Public-Safety Comm. Officials-International, Inc. (APCO)	Nov. 20, 1995
Athens Broadcasting Company, Inc.	Nov. 20, 1995
Atrium Broadcasting Company	Nov. 20, 1995
AZ Video Media (Azevedo)	Oct. 18, 1995
Beach TV, Inc.	Nov. 20, 1995
BLM Enterprises	Nov. 20, 1995
Broadcasters	Nov. 20, 1995
Bruno-Goodworth Network, Inc.	Nov. 20, 1995
Busse Broadcasting Corporation	Nov. 20, 1995
Cable Telecommunications Association	Nov. 20, 1995
Campbellsville College (WO4BP)	Nov. 20, 1995
Capital Cities/ABC, Inc.	Nov. 20, 1995
CBS	Nov. 20, 1995
Central States Communications (TV Channel 18)	Nov. 20, 1995
Child, Lynn R.	Nov. 20, 1995
Christian Communications of Chicagoland, Inc.	Nov. 20, 1995
Cocola, Gary (K66CQ)	Nov. 20, 1995

[269] The Commission received numerous letters and other informal comments in this proceeding which were considered but are not listed herein.

Cohen, Dippell & Everist, P.C. (CDE)	Nov. 20, 1995
Community Broadcasters Association	Nov. 20, 1995
Community Teleplay, Inc.	Oct. 18, 1995
Consumer Electronics Retailers Coalition	Nov. 20, 1995
Creative Educational Media Corporation	Nov. 20, 1995
Datacast Partners	Nov 28, 1995
Digital HDTV Grand Alliance	Nov. 20, 1995
Donahue, Michael P.	Nov. 21, 1995
Electronic Industries Association & The Advanced TV Committee	Nov. 20, 1995
Emcee Broadcast Productions, Inc.	Nov. 20, 1995
Erwin Scala Broadcasting Corporation	Nov. 6, 1995
Evetts, Sarah (W10BV)	Nov. 20, 1995
Factory Direct Sales	Nov. 20, 1995
FAIR (Fairness & Accuracy In Reporting)	Nov. 20, 1995
Friendship House of Western New York, Inc.	Oct. 2, 1995
General Instrument Corporation (GI)	Nov. 20, 1995
Genesis (TV 7), Inc.	Nov. 20, 1995
Georgia Television (WDNN TV 43)	Nov. 20, 1995
Giese, Mark M.	Oct. 16, 1995
Golden Orange Broadcasting Company, Inc.	Nov. 20, 1995
Goldstein, Harley J.	Nov. 20, 1995
Greater Louisville Communications, Inc.	Nov. 20, 1995
Great Oaks Broadcasting Corporation	Nov. 20, 1995
Hispanic Broadcasters of Tucson (KFAM Family Television)	Nov. 20, 1995
Hitachi America, Ltd.	Nov. 20, 1995
Holston Valley Broadcasting Corporation	Nov. 20, 1995
Home Box Office (HBO)	Nov. 20, 1995
Information Technology Industry Council	Nov. 21, 1995
Intermedia Partners	Nov. 20, 1995
International Broadcasting Networks	Oct. 18, 1995
Johnson-Davis Broadcasting	Oct. 10, 1995
K0DQ (Kaleidoscope Associates, KTV 20)Nov. 20, 1995K39DQ & K63EZNov. 20, 1995	
K56FD (Arkansas Media, KTV 56)	Nov. 20, 1995
K61DW TV	Nov. 20, 1995
K67DW (Las Vegas Media, KTV 67)	Nov. 20, 1995
Kaleidoscope Affiliates, LLC	Nov. 20, 1995
KB Limited (Kompas and Biel)	Nov. 20, 1995
KDR TV 64	Nov. 20, 1995
KGH TV 61	Nov. 20, 1995
Kmetzko, Mark	Nov. 3 1995
Kusk, Inc.	Nov. 20, 1995
L & M Video Production (WNGT TV 48)	Nov. 20, 1995
Latin Communications Group Television, Inc.	Nov. 20, 1995
Latino Media Productions, Inc.	Nov. 20, 1995

Lighting Broadcasting Company	Nov. 20, 1995
Lockwood Broadcasting, Inc. (WPEN-LP)	Nov. 20, 1995
Louisiana Television News Corporation	Nov. 20, 1995
Marri Broadcasting, LP	Dec. 4, 1995
Mattis, William E., Jr.	Nov. 13, 1995
McCann, Ronnie Z.	Nov. 20, 1995
Media Access Project, et. al.	Nov. 20, 1995
Media-Com Television, Inc.	Nov. 7, 1995
Metro Communications	Oct. 18, 1995
Microsoft Corporation	Dec. 12, 1995
Mintz, Herbert F., II	Nov. 21, 1995
Moore, Allan	Nov. 8, 1995
Motorola	Nov. 20, 1995
Mt. Mansfield Television, Inc.	Nov. 20, 1995
National Association of Broadcasters (NAB)	Nov. 20, 1995
National Broadcasting Company (NBC)	Nov. 20, 1995
National Cable Television Association, Inc.	Nov. 20, 1995
National Consumers League	Nov. 20, 1995
National Translator Association	Nov. 20, 1995
Navarro College	Oct. 18, 1995
Network One	Nov. 20, 1995
New World Television Incorporated	Nov. 20, 1995
Nielsen, A.C. Company	Nov. 20, 1995
North Georgia Television (WDNN Channel 43)	Nov. 20, 1995
NYNEX	Nov. 20, 1995
Pacific FM, Inc.	Nov. 20, 1995
Palm Beach Television Broadcasting, Inc.	Nov. 1, 1995
Personal Communications Industry Association	Nov. 20, 1995
Pharis Broadcasting, Inc.	Nov. 13, 1995
Polar Broadcasting, Inc.	Nov. 20, 1995
Portuguese American Communications, Inc.	Oct. 18, 1995
Posadas Broadcasting, Inc. (KGH TV 61)	Nov. 20, 1995
Pulitzer Broadcasting Company	Nov. 20, 1995
RJ Late Night Entertainment, Inc.	Nov. 20, 1995
Rosso, Mike	Nov. 20, 1995
Schreiber, William F.	Oct. 18, 1995
Schwartz, Richard	Nov. 20, 1995
Seniors' Advocate	Nov. 20, 1995
Shively, Daniel	Nov. 1, 1995
Signal Sciences	Nov. 20, 1995
Skinner Broadcasting, Inc.	Nov. 20, 1995
Smith, Thomas C.	Nov. 21, 1995
Special Districts	Nov. 20, 1995
St. Clair, Byron W.	Nov. 20, 1995

Stuart Tower Corporation	Oct. 13, 1995
Tele-Communications, Inc.	Nov. 20, 1995
Texas Instruments, Inc.	Nov. 20, 1995
Thomas Consumer Electronics	Nov. 20, 1995
Three Angels Broadcasting Network	Nov. 20, 1995
Tramontano, Paul J.	Nov. 27, 1995
Turner Broadcasting System, Inc.	Nov. 20, 1995
Turnpike Television	Nov. 20, 1995
TV 8 (WO8BV)	Nov. 27, 1995
TV 13 (Nashua)	Jan. 16, 1996
TV 18 (K18DD)	Nov. 20, 1995
TV 43 (Hopkinsville, KY)	Nov. 20, 1995
TV 58 St. Louis, Inc.	Nov. 20, 1995
Unprivileged user	Nov. 7, 1995
UTC	Nov. 20, 1995
UVTV	Nov. 20, 1995
Video Information Providers for Non-discriminatory Access, Inc.	Nov. 13, 1995
Video Jukebox Network, Inc.	Nov. 20, 1995
W06BE (Kaleidoscope Associates, KTV 06)	Nov. 20, 1995
W11BZ (Kaleidoscope Associates, KTV 11)	Nov. 20, 1995
W11CB TV	Nov. 20, 1995
W38AW (Kaleidoscope Affiliates, KTV 38)	Nov. 20, 1995
W46BV TV	Nov. 20, 1995
W56BR TV	Nov. 20, 1995
Washington County Television, Inc.	Nov. 21, 1995
WatchTV, Inc.	Nov. 20, 1995
Watson, Vernon (WBOP TV 12)	Nov. 20,1995
WAV TV 48	Nov. 20, 1995
WAV TV 53	Nov. 21, 1995
WBR-LP & WBSP-LP(Southwest Florida Community TV Network)	Oct. 13, 1995
Weigner, Randolph	Oct. 10, 1995
WIWU Communications, Inc. (WIWU TV 51)	Nov. 20, 1995
WNGN TV 26	Nov. 20, 1995
WRAP-LP (Channel 33)	Nov. 20, 1995
WSFJ TV 51	Nov. 20, 1995
WTCN-LP (Treasure Coast Network)	Oct. 13, 1995
WZBN TV 25 (Mercer's Local News Channel)	Oct. 6, 1995
Y & B Company (WYHB)	Nov. 20, 1995
Yost, Cheryl S.	Oct. 30, 1995
Younger, Valgene T.	Nov. 20,1995
Zenith Electronics Corporation	Nov. 20, 1995