

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Parts 73 and 74 of the) MB Docket No. 03-185
Commission's Rules to Establish Rules for Digital)
Low Power Television and Television Translator)
Stations)
)
Expanding the Economic and Innovation) GN Docket No. 12-268
Opportunities of Spectrum Through Incentive)
Auctions)
)
Amendment of Part 15 of the Commission's Rules) ET Docket No. 14-175
to Eliminate the Analog Tuner Requirement)

THIRD NOTICE OF PROPOSED RULEMAKING

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I. BACKGROUND

1. In this Third Notice of Proposed Rulemaking (“Third Notice”), we seek comment on a number of issues involving low power television (“LPTV”) and TV translator stations (referred to collectively as “LPTV and TV translator stations”). These stations are a source of diverse and local programming for viewers, especially in rural and remote locations.¹ Through this proceeding, we seek comment on measures to facilitate the final conversion of LPTV and TV translator stations to digital service and consider additional means to mitigate the potential impact of the incentive auction and the repacking process on LPTV and TV translator stations to help preserve the important services they provide.

2. In May 2014, we adopted a *Report and Order* promulgating rules to implement the broadcast television spectrum incentive auction authorized by the Middle Class Tax Relief and Job Creation Act (the “Spectrum Act”).² As we recognized in the *Incentive Auction Report and Order*, the auction will potentially displace a significant number of LPTV and TV translator stations.³ As part of the incentive auction, we will reorganize or “repack” the broadcast television bands in order to free up a portion of the ultra high frequency (UHF) band for new flexible uses.⁴ Consistent with the requirements of the Spectrum Act, we will make all reasonable efforts to preserve the coverage area and population served of eligible full power and Class A television stations in the repacking process, but LPTV and TV translator stations will not receive such protection.⁵ Accordingly, a significant number of LPTV and TV translator stations may be displaced as a result of the auction or repacking process and required to find a

¹ See *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, Report and Order, 19 FCC Rcd 19331, 19332, para. 1 (2004)(*LPTV DTV Report and Order*); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Notice of Proposed Rulemaking, 27 FCC Rcd 12357, 12476, para. 358 (2012) (*Incentive Auction NPRM*).

² *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567 (2014) (*Incentive Auction Report and Order*); see also Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402 (codified at 47 U.S.C. § 309(j)(8)(G)), 6403 (codified at 47 U.S.C. § 1452), 126 Stat. 156 (2012)(Spectrum Act).

³ *Incentive Auction Report and Order*, 29 FCC Rcd at 6834-35, paras. 656-57.

⁴ *Id.* at §§ IV.B (Reverse Auction) and III.B (Repacking the Broadcast Television Bands).

⁵ *Id.* at 6652, para. 185 and § III.B.3.d.iii (Facilities That Will Not Receive Discretionary Protection: LPTV and TV Translator Stations). The Commission also concluded that LPTV and TV translator stations are not eligible to participate in the reverse auction. *Id.* at 6716-17, para. 352.

new channel from the smaller number of channels that will remain in the reorganized spectrum or discontinue operations.⁶

3. In order to mitigate the impact of the auction and repacking process on LPTV and TV translator stations, and to attempt to ensure that the programming they provide continues to reach viewers, we directed the Media Bureau in the *Incentive Auction Report and Order* to open a special displacement filing window for operating LPTV and TV translator stations that are displaced as a result of the repacking process or the reverse or forward auction.⁷ In addition, we stated our intention to initiate an *LPTV/TV Translator Proceeding* “to consider additional measures that may help alleviate the consequences of LPTV and TV translator station displacements resulting from the auction and repacking process.”⁸ These measures included considering “whether to modify the current September 1, 2015 deadline for LPTV stations to convert to digital service,”⁹ and “whether to permit LPTV and TV translator stations to participate in channel sharing arrangements after the conclusion of the reverse auction.”¹⁰ We also stated our intent to invite comment on “whether to create a new digital replacement translator service for full power stations that experience losses in their pre-auction service areas.”¹¹ Finally, the Commission pledged to explore “efficient ways to assign the remaining spectrum available for LPTV and TV translator stations,” including the possible use of optimization tools, in order to “expedite and ease the post-auction transition process for many low power stations.”¹² Specifically, we also indicated that, because it is likely that a number of LPTV and TV translator stations will be displaced from UHF channels, we would consider whether and, if so how, we should facilitate the ability of such stations to relocate to VHF channels where UHF channels are unavailable.¹³

4. In this proceeding, we consider the measures discussed in the *Incentive Auction Report and Order*, other measures to ensure the successful completion of the LPTV and TV translator digital transition and to help preserve the important services LPTV and TV translator stations provide, and other related matters. Specifically, we tentatively conclude that we should: (1) extend the September 1, 2015 digital transition deadline for LPTV and TV translator stations; (2) adopt rules to allow channel sharing by and between LPTV and TV translator stations; and (3) create a “digital-to-digital replacement translator” service for full power stations that experience losses in their pre-auction service areas. We also seek comment on: (1) our proposed use of the incentive auction optimization model to assist LPTV and TV translator stations displaced by the auction and repacking process to identify new channels; (2)

⁶ We note that this proceeding concerns matters related only to LPTV and TV translator stations and not Class A television stations. In the *Incentive Auction Report and Order*, we explained that the Spectrum Act mandates that we make all reasonable efforts to preserve the coverage area and population served of Class A stations during the repacking process, and Class A stations that are reassigned to new channels in that process will be eligible for reimbursement of costs reasonably incurred in relocating to their new channels. *Incentive Auction Report and Order*, 29 FCC Rcd at 6652 and 6812, paras. 184-85 and 601. Because Class A stations are not similarly impacted by the auction and repacking process, the measures discussed herein to mitigate the impact on LPTV and TV translator stations, including extending the digital transition deadline, do not extend to Class A stations.

⁷ *Id.* at 6635-36, para. 659. This window will be opened after full power and Class A television stations relocating to new channels as a result of the reverse auction or repacking process have submitted their construction permit applications and had an opportunity to request alternate channels or expanded facilities. *Id.* We also modified our rules to afford stations with mutually exclusive displacement applications in the window an opportunity to reach a settlement or an engineering solution. *Id.* at para. 661.

⁸ *Id.* at 6838, para. 664.

⁹ *Id.*

¹⁰ *Id.* at 6838-39, para. 665.

¹¹ *Id.* at 6839, para. 666.

¹² *Id.*

¹³ *Id.*

whether to permit digital LPTV stations to operate analog FM radio-type services on an ancillary or supplementary basis; and (3) whether to eliminate the requirement in section 15.117(b) of our rules that TV receivers include analog tuners.¹⁴ We also invite input on any other measures we should consider to further mitigate the impact of the auction and repacking process on LPTV and TV translator stations.

II. DISCUSSION

A. Extending the September 1, 2015 LPTV and TV Translator Digital Transition Date

5. We tentatively conclude that we should postpone the September 1, 2015 deadline for LPTV and TV translator stations to transition to digital.¹⁵ The Commission established the September 2015 deadline in 2011, reasoning that a deadline in four years would allow time for LPTV and TV translator operators to learn more about the future reallocation of broadcast TV spectrum and “even if the reallocation is not concluded before the conversion deadline, a 2015 deadline will permit low power operators to take specific proposals into account when finalizing their transition plans.”¹⁶ In 2013, the Commission declined to postpone the September 2015 deadline because of the upcoming incentive auction, anticipating that the auction and the repacking process would occur in 2014, before the deadline.¹⁷ However, at this time it appears that the current LPTV and TV translator digital transition deadline may occur in close conjunction with the incentive auction, leaving LPTV and TV translator stations little or no time to consider its impact before having to complete their digital conversion.

6. As of the release date of this Third Notice, approximately 56% of LPTV and 80% of TV translator stations have completed their transition to digital. However, 795 LPTV and 779 TV translator stations have not yet completed their conversion. Because a significant number of stations have yet to complete their transition to digital service, and with less than a year before the digital transition deadline,

¹⁴ 47 C.F.R. § 15.117(b).

¹⁵ See *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, Second Report and Order, 26 FCC Rcd 10732, 10733 n.1 (2011)(*LPTV DTV Second Report and Order*). We note that this proceeding concerns matters related only to LPTV and TV translator stations and not Class A television stations. We are not proposing to extend the digital transition date for Class A stations. See *supra* n. 6.

¹⁶ See *LPTV DTV Second Report and Order*, 26 FCC Rcd at 10736-39, paras. 6-12. The Commission rejected its original proposal to adopt a transition date in 2012, finding that it would not be appropriate given that the Commission was considering the reallocation of some spectrum for wireless broadband services. *Id.* at 10736-37, para. 8. The Commission pointed out that a 2012 digital transition deadline likely would result in some stations having to construct digital facilities twice - once to meet the 2012 digital conversion deadline and then later in accordance with any reallocation scheme - and that “it would be preferable for these stations not to have to make the significant investment required for conversion to digital facilities, when such facilities may have to be substantially modified due to channel displacement or taken off the air altogether in connection with the implementation of a spectrum repacking scheme.” *Id.* The Commission also noted that a 2015 deadline would be consistent with the National Broadband Plan’s recommendation to conclude the digital transition by the end of 2015. *Id.* at 10737 n.23, citing Federal Communications Commission, *Connecting America: The National Broadband Plan* at 92 (2010) (*Broadband Plan*).

¹⁷ See *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-183, Second Memorandum Opinion and Order, 28 FCC Rcd 14412, 14412-15, paras. 2-4 (2013) (*LPTV DTV Second MO&O*). However, the Commission did state that its decision was “without prejudice to the Commission’s ability to consider making adjustments to the timing of the low power television transition in [the incentive auction] proceeding as the Commission develops the schedule for holding the incentive auction and implementation of the subsequent repacking.” *Id.* at 14415, para. 4. Signal Above, LLC has filed a Petition for Review of the Commission’s decision with the United States Court of Appeals for the District of Columbia Circuit, which the court has held in abeyance. See *Signal Above, LLC v. FCC*, No. 14-1069 (D.C. Cir. 2014).

we tentatively conclude that we should postpone the transition deadline in order to avoid requiring stations to incur the costs of digital transition before completion of the auction and repacking process, which is likely to impact a significant number of LPTV and TV translator stations. We also seek input from the industry about why the remaining analog stations have not yet converted.

7. A number of commenters in the incentive auction proceeding argued that having a transition deadline that is close to the incentive auction would have a negative impact on LPTV and TV translator stations. They pointed out the hazards of requiring such stations to “double build” facilities – once to meet the September 1, 2015 deadline and then again to accommodate the changes that will occur as a result of the auction and repacking process.¹⁸ These commenters supported a postponement of the September 1, 2015 transition date until after the repacking process has been concluded to allow low power stations to evaluate the impact of repacking and to avoid the double build issue.¹⁹

8. Although we tentatively conclude that postponement of the digital transition deadline is appropriate, we note that, since the initiation of the digital television conversion process, the Commission has consistently sought to ensure an expedited and successful transition for all television services, so that the public will be able to enjoy the benefits of digital broadcast television technology.²⁰ We seek comment on whether and how postponement of the low power transition date will impact these goals. In addition, we seek comment from existing LPTV and TV translator stations on the status of their conversion efforts and the additional costs they may have to incur should they have to “double build” their digital facilities. We also invite comment from low power stations that have completed the conversion process regarding their experience and the extent of their current digital service offerings.²¹

9. Should we adopt our tentative conclusion and postpone the September 1, 2015 transition date, we seek comment on whether to establish a new deadline now or wait until after the incentive auction. The advantage of the latter approach would be to allow us to examine the outcome of the incentive auction and take into account the overall impact of the repacking process on LPTV and TV translator stations before settling on a new transition date. Alternatively, prior to the auction, we could establish a new transition date based on the record in this proceeding. That approach would provide LPTV and TV translator stations with more certainty about when the transition will end and might expedite completion of the digital transition. We seek comment on the advantages and disadvantages of both approaches.

10. If we decide to set, prior to the auction, a new transition date, we seek comment on an appropriate new transition date. We note that LPTV and TV translator stations may have to wait several months after the conclusion of the incentive auction to determine whether they are displaced as well as

¹⁸ See, e.g., Letter from Mike Gravino, Director, LPTV Spectrum Rights Coalition, to Marlene H. Dortch, Secretary, FCC, Gen. Docket No. 12-268 at 5 (filed Aug. 27, 2013)(LPTV Spectrum Aug. 27, 2013 *Ex Parte*). See also Univision Comments at 13-14 (“. . . because all low power television stations have moved or soon will move to digital channels in order to meet the September 2015 cutoff for analog low power television station operations, it would be unfair to require these stations to incur unnecessary costs by moving yet again to replacement digital channels in connection with a repacking”) and NRB Comments at 9 (“LPTV stations that have not yet transitioned to digital face a dilemma of potentially spending thousands of dollars on digital conversion, and then being displaced or put off-the-air by the repacking process”). The short names and corresponding full names of commenters in GN Docket No. 12-268 are listed in Appendix D to the *Incentive Auction Report and Order*, 29 FCC Rcd at 7026-30. In addition, all comments referred to in this Third Notice were filed in GN Docket No. 12-268.

¹⁹ Univision Comments at 13-14; NRB Comments at 17; UVM Comments at 7; LPTV Spectrum Aug. 27, 2013 *Ex Parte* at 7.

²⁰ See *LPTV DTV Second Report and Order*, 26 FCC Rcd at 10736, para. 10.

²¹ See, e.g., Letter from Mike Gravino, Director, LPTV Spectrum Rights Coalition, to Marlene H. Dortch, Secretary, FCC, Gen. Docket No. 12-268 at 3 (filed Aug. 15, 2014)(LPTV Spectrum Aug. 15, 2014 *Ex Parte*) (noting that “the DTV transition has enabled multiple digital channels instead of the single analog channel, and a fast growing minority of translator systems and licensees are now operating as LPTV digital stations”).

the channel availability for displacement applications. Within three months after the release of the Public Notice announcing the new channel assignments (the “*Channel Reassignment Public Notice*”), full power and Class A television stations reassigned to new channels will be required to file minor change applications for construction permits for their new channels.²² Following that three-month period, full power and Class A stations that were reassigned to new channels will be allowed to file for alternate channels or expanded facilities during two window filing opportunities.²³ Thus, the full extent to which LPTV and TV translators will be displaced by new channel assignments may not be known until six or more months after the conclusion of the incentive auction. Given this post-auction timetable, would a postponement of the current deadline to twelve months after the close of the incentive auction be appropriate in order to further our goal of expediting the transition to digital for these services? We also invite comment on alternative approaches and dates. Whatever the new deadline, we intend that it will continue to be a “hard” deadline and that all analog transmissions will be required to cease even if stations’ digital facilities are not yet constructed.²⁴ We seek comment on this approach.

11. If we extend the digital transition deadline for LPTV and TV translator stations, we propose to make corresponding rule changes and to modify transition-related digital construction permits to effectuate any new transition date.²⁵ In addition, we propose to modify the rules to continue to allow transitioning stations to request one “last minute” extension beyond the transition deadline of up to six months, so long as the request is filed at least four months before the new deadline and meets the other criteria in our current rule.²⁶ As in the current rule, we propose that extension requests no longer be accepted after that deadline and that use of the tolling rule commence the following day. We seek comment on these proposals

²² See *Incentive Auction Report and Order*, 29 FCC Rcd at 6790-91, para. 546.

²³ *Id.* at 6793-94, paras. 553-54.

²⁴ We again remind stations that section 312(g) of the Communications Act, 47 U.S.C. § 312(g), provides that: “If a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary, except that the Commission may extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness.” Stations that go silent on the “hard deadline” will be subject to automatic cancellation if they do not return on-air with digital facilities within 12 months from ceasing analog operations.

²⁵ For example, section 74.731(k)(1) of the rules provides, “[a]fter 11:59 pm local time on September 1, 2015, low power television, TV translators, and Class A television stations may no longer operate any facility in analog (NTSC) mode.” See 47 C.F.R. § 74.731(k)(1). In addition, all transition-related digital construction permits (for flash cut or digital companion channels) have a September 1, 2015 expiration date – set to coincide with the current digital transition deadline. See *LPTV DTV Second Report and Order*, 26 FCC Rcd at 10740, para. 14 (“fairness dictates that stations with outstanding digital construction permits . . . be given until September 1, 2015 to complete their digital facilities”).

²⁶ Currently, transitioning stations may file an application for extension no later than May 1, 2015 and demonstrate that the failure to meet the September 1, 2015 deadline is due to circumstances that either were unforeseeable or beyond the licensee’s control, and that the licensee has taken all reasonable steps to resolve the problem expeditiously. See 47 C.F.R. § 74.788(c)(3). Such applications will be acted on by the Media Bureau staff on delegated authority. After May 1, 2015, extensions of construction permit expiration dates will no longer be permitted under our current rules, and LPTV and TV translator stations will be able to obtain additional time to complete construction only by qualifying under the stricter “tolling” rule. See 47 C.F.R. §§ 73.3598 and 74.788(d). The May 1, 2015 date was set four months before the September 1, 2015 transition date in order to give transitioning stations an opportunity to seek one “last minute” extension. See *LPTV DTV Second Report and Order*, 26 FCC Rcd at 10740-42, paras. 13-16.

12. Finally, the September 1, 2015 digital transition date does not apply to holders of unbuilt construction permits for new digital LPTV and TV translator stations.²⁷ These permits are issued a three-year construction deadline at the time the initial construction permit is granted.²⁸ Many of the more than 1,700 outstanding new digital LPTV and TV translator station permittees have been granted two extensions of time to construct by the Media Bureau staff and some have filed applications requesting a third extension of time.²⁹ In order to treat these permittees similarly to the permittees of transitioning LPTV and TV translator stations, by Public Notice released today, we have suspended the expiration date and construction deadlines of construction permits for new digital LPTV and TV translator stations pending final action in this proceeding.³⁰ In the event we extend the deadline for transitioning analog LPTV and TV translator stations in this proceeding, we tentatively conclude to extend the deadline for construction permits for new digital stations to conform their construction deadline to the new digital transition deadline.³¹ We seek comment on this tentative conclusion.

B. LPTV and TV Translator Channel Sharing

1. Extending Channel Sharing to LPTV and TV Translators

13. We tentatively conclude that we should adopt rules to permit channel sharing by and between LPTV and TV translator stations, and we seek comment on a variety of rules to implement channel sharing for these stations. Our existing channel sharing rules apply only to full power and Class A stations bidding in the incentive auction.³² We now consider creating channel sharing rules for LPTV and TV translator stations outside of the auction context. We tentatively conclude that such rules are permitted under our general authority in Title III of the Communications Act of 1934, as amended.³³

14. In the *Incentive Auction Report and Order*, we recognized “the potential benefits of allowing LPTV and TV translator stations to explore channel sharing outside of the auction context, such as to ensure the continued viability of LPTV and TV translator services through new programming and business arrangements, to promote spectral efficiency by freeing up spectrum, and to promote the use of available digital capacity on other platforms to distribute programming.”³⁴ A commenter in the incentive

²⁷ *Id.* at 10732, 10740, para. 13, n. 37.

²⁸ *See* 47 C.F.R. § 74.788(a).

²⁹ The third extensions remain pending because they cannot be granted by the Media Bureau under delegated authority and must be granted by the full Commission. *See Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, Report and Order, 19 FCC Rcd 19331, 19388, para. 172 (2004); 47 C.F.R. § 74.788(c).

³⁰ *See Commission Suspends Expiration Dates and Construction Deadlines For New Digital Low Power and TV Translator Stations*, Public Notice, FCC 14-150 (rel. October 10, 2014).

³¹ In a Petition for Blanket Extension or Waiver filed in this proceeding, the Advanced Television Broadcasting Alliance (ATBA) requests that the holders of unbuilt construction permits for new digital LPTV and TV translator stations be granted an extension to September 1, 2015. *See* ATBA’s Petition for Blanket Extension or Waiver filed February 20, 2014 in MB Docket No. 03-185 (Petition); *see also Media Bureau Seeks Comment on Petition for Blanket Extension or Waiver*, Public Notice, DA 14-996 (rel. Jul. 14, 2014). In its comments on the Petition, ATBA asks that the permits be extended indefinitely pending the outcome of this proceeding. *See* ATBA’s Comments filed August 14, 2014 in this proceeding. ATBA’s Petition and the comments and reply comments filed in response are hereby incorporated into this Docket and will be addressed in this proceeding.

³² *See* 47 C.F.R. § 73.3700(b)(1).

³³ *See* 47 U.S.C. §§ 303(g), 303(r), 307(b); 309(a); *cf.*, Spectrum Act at § 6403(a)(2)(C) (identifying channel sharing as an eligible relinquishment in broadcast incentive auction).

³⁴ *Incentive Auction Report and Order*, 29 FCC Rcd at 6839, para. 665. When it adopted a general framework for channel sharing by full power and Class A stations in the incentive auction, the Commission concluded that channel sharing will help broadcasters, including existing small, minority-owned, and niche stations, to reduce operating

(continued...)

auction proceeding also noted the possibility that channel sharing may make operations more cost-effective for LPTV and TV translator stations, a benefit that could be particularly important to marginal stations, because tower leases, infrastructure, and other costs can be shared.³⁵ Channel sharing may also assist stations that have not yet completed their digital facilities to meet the digital transition deadline. In addition, channel sharing may help to mitigate the impact of the auction and repacking process. For example, two displaced LPTV or TV translator stations may file displacement applications proposing to share a single channel. Alternatively, a displaced LPTV or TV translator station could agree to share the channel of a non-displaced station. These types of channel sharing arrangements would minimize the number of mutually exclusive applications filed in the post-incentive auction displacement window and free up valuable channels for use by other displaced stations.³⁶ For all of these reasons, we tentatively conclude that authorizing channel sharing between and among LPTV and TV translator stations would serve the public interest, and we seek comment on this tentative conclusion.³⁷

15. To implement channel sharing between LPTV and TV translators we propose the following rules and procedures, similar to those we adopted for full power and Class A television channel sharing in the incentive auction context. As in the full power and Class A channel sharing rules, we propose that LPTV channel sharing be voluntary and flexible, that stations be permitted to choose their channel sharing partners, that channel sharing agreements (“CSAs”) be required to outline stations’ rights with respect to certain matters, and that stations be permitted to assign or transfer their rights under a CSA. We propose a streamlined set of rules and procedures for reviewing and licensing LPTV and TV translator CSAs, and for termination of an LPTV or TV translator channel sharing station’s license, that differ from the rules for full power and Class A stations in some respects to accommodate the particularities of the low power television service. Finally, we also seek comment on whether to permit channel sharing between LPTV and TV translator stations and full power and Class A television stations.

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costs and provide broadcasters with a capital infusion to strengthen operations and improve programming services. *See Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, ET Docket No. 10-235, Report and Order, 27 FCC Rcd 4616, 4622, para. 12 (2012) (*Channel Sharing Report and Order*). In these ways, the Commission recognized that channel sharing “will help to preserve over-the-air television as a ‘healthy, viable medium going forward, in a way that would not harm consumers overall, while establishing mechanisms to make available additional spectrum for flexible broadband uses.’” *Id.*, citing Broadband Plan at 89.

³⁵ *See* WISPA Comments at 22. We note that two Los Angeles market full power television stations, KLCS, Los Angeles, California, and KJLA, Ventura, California, in conjunction with CTIA – The Wireless Association, conducted a successful channel sharing pilot in the spring of 2014. In their Channel Sharing Pilot Report, the stations reported that “channel sharing is feasible, and is a technically viable option for broadcasters with minimal impact for viewers.” *See* “Overview of the KLCS/KJLA Channel Sharing Pilot, a Technical Report,” Mar. 28, 2014, available at: <http://www.ctia.org/docs/default-source/fcc-filings/technical-report-of-the-klcs-kjla-channel-sharing-pilot.pdf>.

³⁶ *See* WISPA Comments at 22.

³⁷ Several commenters in the incentive auction proceeding supported allowing channel sharing between LPTV and TV translator stations. *See* Spectrum Bridge Comments at 7; WISPA Comments at 21-22; SEI Comments at 12; Entravision Comments at 15-16; Mako Reply at 8-9. WISPA also notes that there was no opposition to channel sharing among LPTV and TV translator stations in the incentive auction proceeding. WISPA Reply at 14. SEI noted that the Commission has allowed full power and Class A television stations to share channels and “[t]here is no reason not to allow LPTV operators to do the same thing, especially if it will avoid forcing some stations out of business.” SEI Comments at 12. SEI points out that, while some LPTV and TV translators already “share” a channel through programming or time brokerage agreements, “[t]here is an important difference between a time brokerage agreement and channel-sharing in terms of each party being free from legal responsibility for the activities of the other when each entity holds its own license. Thus channel-sharing is likely to lead to more joint operation on a channel than the currently available time brokerage arrangement.” *Id.*

2. Voluntary and Flexible Channel Sharing

16. Should we decide to authorize channel sharing by and between LPTV and TV translator stations, we emphasize that channel sharing would be entirely voluntary.³⁸ We do not intend to be involved in the process of matching licensees interested in channel sharing with potential partners.³⁹ Rather, under the rules we propose, LPTV and TV translator stations would decide for themselves whether and with whom to enter into a channel sharing arrangement.

17. As with full power and Class A television channel sharing, we propose to require all LPTV and TV translator stations to operate in digital on the shared channel and to retain spectrum usage rights sufficient to ensure at least enough capacity to operate one standard definition (“SD”) programming stream at all times.⁴⁰ This requirement will ensure that each LPTV and TV translator station will have sufficient channel capacity to meet our requirement to “transmit at least one over-the-air video broadcast signal provided at no direct charge to viewers. . . .”⁴¹ However, we propose to allow stations flexibility within this “minimum capacity” requirement to tailor their agreements and allow a variety of different types of spectrum sharing to meet the individualized programming and economic needs of the parties involved.⁴² Therefore, we do not propose to prescribe a fixed split of the capacity of the six megahertz channel between the stations from a technological or licensing perspective. We propose that all channel sharing stations be licensed for the entire capacity of the six megahertz channel and that the stations be allowed to determine the manner in which that capacity will be divided among themselves subject only to the minimum capacity requirement.⁴³

18. We also propose to retain our existing policy framework for the licensing and operation of channel sharing LPTV and TV translator stations.⁴⁴ Under this policy, despite sharing a single channel and transmission facility, each station would continue to be licensed separately. Each station would have its own call sign, and each licensee would separately be subject to all of the Commission’s obligations, rules, and policies.⁴⁵ We seek comment on these proposals.

3. Licensing Procedures

19. We propose a licensing scheme for reviewing and approving channel sharing between LPTV and TV translator stations that differs from the one adopted for full power and Class A stations.⁴⁶ Because the implementation of a channel sharing arrangement does not involve construction that requires Commission pre-approval, and because channel sharing arrangements involving full power and Class A stations will have been reviewed already in conjunction with the stations submitting bids in the incentive auction, we found that there was no need for such stations to go through a two-step process by first applying for construction permits to implement their channel sharing proposals and then filing for new shared licenses.⁴⁷ In contrast, LPTV and TV translator stations will not have already participated in the

³⁸ See *Channel Sharing Report and Order*, 27 FCC Rcd at 4621-23, paras. 11-14 (explaining voluntary nature of channel sharing for full power and Class A stations).

³⁹ *Id.* at 4621-22, para. 11.

⁴⁰ *Id.* at 4624, para. 15.

⁴¹ See 47 C.F.R. § 74.790(g)(3).

⁴² See *Channel Sharing Report and Order*, 27 FCC Rcd at 4624, para. 15.

⁴³ *Id.*

⁴⁴ *Id.* at 4625, para. 16.

⁴⁵ *Id.*; see also *Incentive Auction Report and Order*, 29 FCC Rcd at 6854, para. 702.

⁴⁶ See *Incentive Auction Report and Order*, 29 FCC Rcd at 6795-96, para. 558.

⁴⁷ *Id.* Instead, we required that each channel sharing station simply file a Form 302 application for a license on commencement of shared operations. *Id.*

incentive auction, and the Commission will not have had an opportunity to review their proposed channel sharing arrangements, including any technical changes to the stations' facilities.⁴⁸ Therefore, we propose the following two-step process for implementing channel sharing between LPTV and TV translator stations that addresses the particularities of the low power television service while minimizing costs and burdens in order to encourage channel sharing among these stations.

20. As the first step, if no technical changes are necessary for sharing, a channel sharing station relinquishing its channel would file an application for digital construction permit (FCC Form 346) for the same technical facilities as the sharer station,⁴⁹ including a copy of the channel sharing agreement ("CSA") as an exhibit, and cross reference the other sharing station(s). In this case, the sharer station would not need to take action at this time. If the CSA required technical changes to the sharer station's facilities, each sharing station would file an application for construction permit for identical technical facilities proposing to share the channel, along with the CSA.⁵⁰ As a second step, after the sharing stations have obtained the necessary construction permits, implemented their shared facility and initiated shared operations, a station relinquishing its channel would notify the Commission that it has terminated operation on that channel.⁵¹ At the same time, sharing stations would file applications for license (FCC Form 347) to complete the licensing process. We seek comment on these proposed procedures.

21. We seek comment on an appropriate length of time for channel sharing LPTV and TV translator stations to implement their arrangements. We required that channel sharing arrangements involving full power and Class A stations in the incentive auction be implemented within three months after the relinquishing station receives its reverse auction proceeds.⁵² While we found that this deadline would expedite the transition to the reorganized UHF band,⁵³ we do not believe it is necessary to set a similar deadline for LPTV and TV translator stations to implement their channel sharing arrangements. Therefore, we seek comment on whether to allow channel sharing stations the standard three-year construction period under the rules to implement their sharing deals.⁵⁴ We expect that many stations will not need a full three-year time period. Indeed, some LPTV and TV translator stations displaced by the repacking process and forced to go silent will need to resume operations within twelve months to avoid automatic cancellation of their license pursuant to section 312(g) of the Communications Act.⁵⁵ Finding a channel sharing partner and resuming operations on a shared facility within the twelve months could be an important way for displaced stations to avoid automatic cancellation of their license. Other stations not facing this timing constraint may want or need more time to implement their new shared facilities. We seek comment on this issue.

⁴⁸ For example, if each sharing station is an LPTV or TV translator station displaced in repacking, the stations will need to specify a new channel.

⁴⁹ The relinquishing station would file the appropriate application for its service, i.e., an LPTV station would file an FCC Form 346 even if it is proposing to share a full power television station's channel.

⁵⁰ In the event the sharing stations were all displaced as a result of the auction or repacking process, each station would file an application for construction permit for identical technical facilities during the post-incentive auction displacement window proposing to share the channel, including a copy of the CSA as an exhibit. If the sharer station's channel was not displaced as a result of the incentive auction or repacking, the displaced sharing station would not have to wait for the post-incentive auction displacement window to file its displacement application to propose sharing the sharer station's facilities and could file its displacement application at any time after the incentive auction.

⁵¹ See 47 C.F.R. § 73.1750.

⁵² See *Incentive Auction Report and Order*, 29 FCC Rcd at 6803, para. 577.

⁵³ See *id.* at 6573 and 6802, paras. 11 and 575.

⁵⁴ See 47 C.F.R. § 73.3598(a).

⁵⁵ 47 U.S.C. § 312(g).

22. We also seek comment on whether to apply existing restrictions on relocation proposals to LPTV and TV translator channel sharing arrangements. LPTV and TV translator stations may need flexibility in their ability to move their facilities in order to take advantage of channel sharing.⁵⁶ Specifically, LPTV and TV translator stations may need to propose to relocate to a shared transmission site that is several miles from the location of their current transmission site. However, under our current rules, LPTV and TV translator stations filing a minor change application may not propose a move of their transmitter site of greater than 30 miles (48 kilometers) from the reference coordinates of the existing station's antenna location.⁵⁷ In addition, LPTV and TV translator stations may file a minor change application only if there is contour overlap between the proposed and existing facilities.⁵⁸ These rules were adopted to prevent LPTV and TV translator stations from making major changes to their facilities through "minor change" applications, and to ensure that stations continue to provide coverage to viewers who rely on their service.⁵⁹ We seek comment on whether continued application of these limitations is necessary and appropriate or whether their application in the context of channel sharing modifications would unduly limit channel sharing between LPTV and TV translator stations. Alternatively, should these restrictions be waived in certain cases to allow LPTV and TV translators more flexibility in their channel sharing arrangements, and if so, under what circumstances?

4. Channel Sharing Operating Rules

23. As discussed below, we propose to adopt "channel sharing operating rules" similar to those adopted for full power and Class A television stations in the *Incentive Auction Report and Order* with respect to the terms of CSAs, as well as the transfer or assignment of channel sharing licenses.⁶⁰ We propose a different approach, however, when a channel sharing station's license is terminated due to voluntary relinquishment, revocation, or failure to renew.

24. *CSAs.* CSAs for full power and/or Class A stations must include provisions governing certain key aspects of their operations.⁶¹ In so requiring, we recognized that channel sharing will create new and complex relationships, and sought to avoid disputes that could lead to a disruption in service to the public and to ensure that each licensee is able to fulfill its independent obligation to comply with all pertinent statutory requirements and our rules.⁶² At the same time, we noted that the Commission ordinarily does not become involved in private contractual agreements and that we do not wish to discourage channel sharing relationships.

25. We tentatively conclude that the same requirements are warranted in the context of LPTV and TV translator channel sharing. As with full power and Class A sharing arrangements, we believe this approach will protect the public interest and ensure the success of channel sharing with minimal intrusion into channel sharing relationships. Therefore, we propose that LPTV and TV translator CSAs be required to contain provisions outlining each licensee's rights and responsibilities in the following areas: (1) access

⁵⁶ In the *Incentive Auction Report and Order*, we allowed full power stations flexibility to propose changes in their community of license in conjunction with a channel sharing bid in order to "help facilitate channel sharing arrangements, thus facilitating broadcaster auction participation." *Incentive Auction Report and Order*, 29 FCC Rcd at 6727, para. 375. We recognized the fact that some changes to stations' communities of license may be necessary for channel sharing stations to engineer their shared transmission facilities. *Id.*

⁵⁷ See 47 C.F.R. § 74.787(b)(1). If filed in conjunction with a digital displacement application, then the move may not be greater than 30 miles from the reference coordinates of the existing station's community of license. See 47 C.F.R. § 74.787(a)(4).

⁵⁸ *Id.*

⁵⁹ See *LPTV DTV Second Report and Order*, 26 FCC Rcd at 10760-62, paras. 58-62.

⁶⁰ See *Incentive Auction Report and Order* at § VI.A.2 (Channel Sharing Operating Rules).

⁶¹ *Id.*

⁶² See *id.* at 6852-53, para. 700.

to facilities, including whether each licensee will have unrestrained access to the shared transmission facilities; (2) allocation of bandwidth within the shared channel; (3) operation, maintenance, repair, and modification of facilities, including a list of all relevant equipment, a description of each party's financial obligations, and any relevant notice provisions; and (4) termination or transfer/assignment of rights to the shared licenses, including the ability of a new licensee to assume the existing CSA.⁶³ We propose to reserve the right to review CSA provisions and require modification of any that do not comply with these requirements or the Commission's rules. We seek comment on these proposals.

26. *Termination and Assignment/Transfer of Channel Sharing Licenses.* We seek comment on a streamlined approach to the situation in which an LPTV or TV translator channel sharing station's license is terminated due to voluntary relinquishment, revocation, failure to renew, or any other circumstance. Under the proposed approach, where an LPTV or TV translator sharing station's license is terminated, we would modify the license(s) of the remaining channel sharing station(s) to reflect that its channel is no longer shared with the terminated licensee.⁶⁴ In the event that only one station remains on the shared channel, that station could request that the shared channel be re-designated as a non-shared channel or could enter into a CSA with another LPTV or TV translator station and resume shared operations, subject to Commission approval. This approach differs from the approach we adopted for full power and Class A television channel sharing arrangements in order to reduce the cost and burden to LPTV and TV translator stations and to encourage channel sharing among these stations.⁶⁵

27. In addition, we propose to allow rights under a CSA to be assigned or transferred, subject to the requirements of Section 310 of the Communications Act,⁶⁶ our rules, and the requirement that the assignee or transferee comply with the applicable CSA.⁶⁷ We seek comment on the above proposals and on any alternative approaches we should consider.

5. Channel Sharing Between LPTV and TV Translators and Other Television Services

28. Should we adopt rules authorizing channel sharing for LPTV and TV translator stations, we seek comment on whether to permit these stations to channel share with full power and Class A television stations as well. We seek comment on the feasibility of allowing channel sharing between primary (full power and Class A) and secondary (LPTV and TV translator) services, each of which operate with differing power levels and interference protection rights.⁶⁸ In the *Incentive Auction Report and Order*, we allowed channel sharing between full power and Class A television stations despite the

⁶³ As we did in the *Incentive Auction Report and Order*, we propose that any rights of first refusal included in a CSA would have to be consistent with Commission rules and policies. See *id.* at 6854, n.1942.

⁶⁴ 47 U.S.C. § 316.

⁶⁵ See *Incentive Auction Report and Order*, 29 FCC Rcd at 6853-54, para. 701. In that case, we adopted a policy whereby the terminated portion of the shared channel would be offered at auction and the winning bidder would be required to agree to the terms of the existing CSA as a condition of agreeing to be the new sharing partner. *Id.* We note that, in an *ex parte* filing in the incentive auction proceeding after the *Incentive Auction Report and Order* was released, the EOBC questioned this policy, argued that the Commission's reversionary interest rule (section 73.1150) should not apply to full power and Class A television station channel sharing arrangements and proposed that these stations should "maintain the flexibility to terminate their sharing agreements at any time and to utilize their spectrum as they see fit." See Letter from Preston Padden, Executive Director, Expanding Opportunities for Broadcasters Coalition, to Marlene H. Dortch, Secretary, FCC, filed July 28, 2014 in GN Docket No. 12-268 at 2.

⁶⁶ 47 U.S.C. § 310.

⁶⁷ The assignee or transferee would have to agree to the terms of the CSA in existence at the time of the transfer or assignment, unless the assignee/transferee and the remaining sharing station(s) agree to amend the CSA and the amendment is approved by the Commission. See *Incentive Auction Report and Order*, 29 FCC Rcd at 6853-54, para. 701 n.1952.

⁶⁸ Compare 47 C.F.R. § 73.622(h) with 47 C.F.R. § 74.735(b).

fact that each operate with different technical rules.⁶⁹ We concluded that the Class A television station sharing a full power television station's channel after the incentive auction would be permitted to operate under the Part 73 rules governing power levels and interference.⁷⁰ To facilitate channel sharing and further assist displaced LPTV and TV translator stations to find a new channel, we seek comment on whether to allow LPTV and TV translator stations that share a full power or Class A television station's channel to similarly operate under the rules governing power levels and interference for full power and Class A television stations. In the unlikely event a full power or Class A television station proposes to share an LPTV or TV translator station's channel, we propose that the full power or Class A station would be subject to the power level and interference protection rules associated with the channel of the LPTV or TV translator station. We seek comment on these proposals, including any regulatory difficulties that would result from channel sharing between a full power or Class A television station and an LPTV or TV translator station.

C. Creation of a New Digital-to-Digital Replacement Translator Service

29. We propose to establish a new "digital-to-digital" replacement translator service that will allow eligible full power television stations to recover lost digital service area that results from the reverse auction and repacking process.⁷¹ In 2009, as full power stations were transitioning from analog to digital operation, the Commission recognized that, in some cases, "a portion of the existing analog service area of a full-service station will no longer be able to receive service after the station transitions to digital broadcasting."⁷² To assist full power television stations to restore service to any loss areas, the Commission established a new digital replacement translator service ("DRT") "for the purpose of maintaining broadcast service that the public has come to depend upon and enjoy [in analog]."⁷³

30. We now seek comment on whether we should establish a similar replacement service for full power stations that are reassigned to new channels, either in the repacking process or through a winning UHF-to-VHF or high-VHF-to-low-VHF bid, if those full power stations discover that a portion of their existing pre-auction service area will no longer be able to receive service after the station transitions to its new channel. We recognize that there may be some instances in which a station may not be able to fully replicate its pre-auction service area because, like some stations transitioning to digital during the DTV transition, it is unable to build its assigned channel at its current tower site as a result of

⁶⁹ See *Incentive Auction Report and Order*, 29 FCC Rcd at 6855-56, para. 705.

⁷⁰ *Id.*

⁷¹ We do not propose extending the eligibility for the new digital-to-digital replacement translator service to Class A television stations. Because of the limited size of their coverage area, it is not likely that Class A television stations would be able to engineer a replacement translator to replace a loss area that might occur as a result of the incentive auction.

⁷² See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Replacement Digital Low Power Television Translator Stations*, MB Docket No. 08-253, Report and Order, 24 FCC Rcd 5931, 5932, para. 3 (2009) (*DRT R&O*). Some of these "loss" areas were a result of "unavoidable engineering changes that stations were required to implement in order to avoid interference or other problems on their post-transition digital channel." *Id.* In other cases, "the analog service area of certain full-service stations could not be fully replicated because of technical complexities, and, in some cases, relocation of the facility was mandated by environmental and zoning issues." *Id.*

⁷³ *Id.* In the *Incentive Auction Report and Order*, we declined to extend discretionary protection to DRTs because, *inter alia*, protecting existing DRT facilities would significantly affect repacking flexibility in markets where they are licensed. *Incentive Auction Report and Order*, 29 FCC Rcd at 6675, paras. 242-43. We also noted that, if a station is reassigned to a new channel in the repacking process, its need for a DRT may no longer exist or may be significantly different based on the signal propagation characteristics of its new channel assignment. *Id.* at n. 748. However, in order to mitigate the potential impact of the repacking process, we stated that we would afford DRT displacement applications priority over other displacement applications in cases of mutual exclusivity. *Id.* at para. 242.

technical or legal issues.⁷⁴ In addition, broadcasters that voluntarily relocate to a different band may have difficulty maintaining their antenna pattern on the new channel⁷⁵ and may experience unusual coverage problems.⁷⁶ These and other circumstances could result in full power television stations experiencing loss areas on initiation of their new channel facilities. To assist stations to overcome these challenges and to replace lost digital service area resulting from new channel assignments, we seek comment on whether to create a new digital-to-digital replacement translator service.⁷⁷

31. In addition, we seek comment on whether to discontinue the licensing of new analog-to-digital replacement translators given that the DTV transition was completed five years ago and stations have had ample opportunity to identify the need for such a translator to serve lost analog service areas.⁷⁸

1. Licensing of Digital-to-Digital Replacement Translators

a. Eligibility/Service Area

32. We tentatively conclude that eligibility for the digital-to-digital replacement translator service should be limited to those full power television stations whose channels are changed following the incentive auction⁷⁹ that can demonstrate that (1) a portion of their pre- auction service area will not be served by the facilities on their new channel, and (2) the proposed digital-to-digital replacement translator will be used solely to fill in such loss areas.⁸⁰ We believe these requirements will be consistent with the limited scope of our objective in proposing this new service: to assist full power television stations to maintain their digital service areas following the completion of the repacking process and auction,⁸¹ but not to enable expansions of such service areas. We seek comment on this objective and this tentative conclusion.

33. We propose to limit the service area of digital-to-digital replacement translators to digital loss areas resulting from the reverse auction and repacking process.⁸² To implement this restriction, we propose to require applicants for a digital-to-digital replacement translator to demonstrate a digital loss area through an engineering study that depicts the station's pre- and post-incentive auction digital service areas. We tentatively conclude that "pre-auction digital service area" should be defined as the geographic area within the full power station's noise-limited contour (of its facility licensed by the pre-auction licensing deadline). We recognize that, due to the lack of available transmitter sites, it may be impossible or extremely costly for stations to locate a translator that replaces digital loss areas without also slightly

⁷⁴ *Id.* at 6794, para. 554 n.1571.

⁷⁵ *Id.* at 6645, para. 168.

⁷⁶ *Id.* at 6725-26, paras. 369-71 (affording favorable consideration to post-auction requests by these winning bidders for waiver of VHF power and height restrictions).

⁷⁷ We note that, assuming we create a new digital-to-digital replacement translator, we will limit stations to channels that remain available for broadcast service following the conclusion of the incentive auction.

⁷⁸ Following the release of the *Incentive Auction Report and Order*, the Media Bureau announced a freeze on the filing of applications for new analog-to-digital replacement translators. *See Freeze on the Filing of Applications for Digital Replacement Translator Stations and Displacement Applications*, Public Notice, 29 FCC Rcd 6063 (MB 2014) (*Low Power Freeze PN*).

⁷⁹ This would include winning UHF-to-VHF and high-VHF-to-low-VHF bidders in the reverse auction as well as non-participating stations that are reassigned to new channels in the repacking process.

⁸⁰ The Commission adopted a similar restriction for the analog-to-digital replacement translators. *See DRT R&O*, 24 FCC Rcd at 5938-39, paras. 14-17.

⁸¹ *Incentive Auction Report and Order*, 29 FCC Rcd at 6839, para. 666.

⁸² The Commission adopted a similar requirement for the analog-to-digital replacement translator service. *See DRT R&O*, 24 FCC Rcd at 5937-39, paras. 11-13.

expanding their pre-auction digital service areas.⁸³ We believe a better approach would be to allow applicants to propose *de minimis* expansions of pre-auction digital service areas on a showing that the expansions are necessary to replace service area lost as a result of their new channel assignments.⁸⁴ To demonstrate necessity, we propose that stations be required to show that it is not possible to site a digital-to-digital replacement translator without *de minimis* expansion of the station's pre-auction digital service area. Further, we propose to define *de minimis* on a case-by-case basis, consistent with the approach we took for processing DRT applications.⁸⁵ We seek comment on these proposals.

34. We also seek comment on the appropriate timing for the availability of this proposed new service. Specifically, we propose that the opportunity to apply for a digital-to-digital replacement translator be limited, commencing with the opening of the post-auction LPTV and TV translator displacement window and ending one year after the completion of the 39-month post-incentive auction transition period.⁸⁶ Under this proposal, stations could begin applying for digital-to-digital replacement translators during the LPTV and TV translator displacement window and would then have one year beyond the completion of the post-auction transition period to identify the need and apply for a digital-to-digital replacement translator. We believe this proposed deadline will provide full power television stations sufficient time to identify any possible loss areas that result from their new channel assignments while also helping to limit this service to its proposed objective of replacing a loss that results from the reverse auction and repacking process. We seek comment on this proposal and on any alternative commencement and expiration dates we should consider.

b. Processing Priority

35. We propose to afford applications for new digital-to-digital replacement translators co-equal processing priority with displacement applications for existing DRTs that are displaced as a result of the auction and repacking process. We propose co-equal processing treatment of these two types of applications to meet two goals. First, we seek to assist those full power stations that need a new digital-to-digital replacement translator to quickly obtain an authorization and schedule construction to coincide with the completion of their repacked facilities. We also recognize that full power stations with existing DRTs that are displaced by the repacking process will need to construct on their new channel to help preserve their existing service.⁸⁷ Therefore, to balance these two goals, we propose that applications for new digital-to-digital replacement translators be afforded a co-equal processing priority with displacement applications for existing DRTs in cases of mutual exclusivity.

36. In the *Incentive Auction Report and Order*, we adopted a processing priority for displacement applications filed by full power television stations seeking to replace a displaced DRT.⁸⁸ Therefore, pursuant to our proposal, both applications for new digital-to-digital replacement translators

⁸³ In some cases, a station may be able to design and purchase a vastly more expensive directional antenna system specifically designed to avoid such overlap or build a new tower structure.

⁸⁴ The Commission allowed similar *de minimis* expansions for the analog-to-digital replacement translator service. *Id.* at 5941, para. 20.

⁸⁵ *Id.*

⁸⁶ In the *Incentive Auction Report and Order*, the Commission announced a 39-month post-incentive auction transition period. *See Incentive Auction Report and Order*, 29 FCC Rcd at 6796, para. 559. At the close of the incentive auction, stations that are assigned new channels in the repacking process as well as winning reverse auction bidders changing channels will be announced in the *Channel Reassignment Public Notice*. Those stations will then have a three-month period to examine their new channel assignment and submit an application for construction permit. This period will be followed by a construction period that may be up to 36 months, during which stations must complete their construction on a phased schedule.

⁸⁷ *Id.* at 6836-37, para.661.

⁸⁸ *Id.*

and displacement applications for existing DRTs would have processing priority over all other LPTV and TV translator applications including new, minor change and displacement applications. Under our approach, we propose beginning to accept applications for new digital-to-digital replacement translators commencing with the opening of the post-auction LPTV and TV translator displacement window. All applications for new digital-to-digital replacement translators and displacement applications for existing DRTs filed during the post-auction displacement window would be considered filed on the last day of the window, would have priority over all other displacement applications filed during the window by LPTV and TV translator stations, and would be considered co-equal if mutually exclusive. Following the close of the displacement window, applications for new digital-to-digital replacement translators would be accepted on a first-come, first-served basis, would continue to have priority over all LPTV and TV translator new, minor change or displacement applications, even if first-filed, and co-equal priority with applications for displacement applications for existing DRTs filed on the same day. We seek comment on these proposals and request input on any alternative approaches we should consider.

c. Licensing and Operating Rules

37. We seek comment on a number of proposed licensing and operating rules for digital-to-digital replacement translators analogous to those the Commission adopted for DRTs in 2009. Although we tentatively conclude that the same rules would be appropriate, we welcome input regarding why a different approach might be preferable in this context and any alternative proposals.

38. *Association with Main Station License.* Under our current rules, DRTs must be associated with the full power television station's main license.⁸⁹ We propose a similar licensing approach for digital-to-digital replacement translators. Under this approach, the digital-to-digital replacement translator license could not be separately assigned or transferred and would be renewed, transferred, or assigned along with the main license. We believe that these limitations are necessary to ensure that digital-to-digital replacement translator licenses are used only to restore service to a loss area as a result of the incentive auction and repacking process. We also believe that this measure will prevent a replacement translator from being converted to an LPTV station. Similar to the current approach,⁹⁰ we also propose that applications for digital-to-digital replacement translators be filed on FCC Form 346, be treated as minor change applications, and be exempt from filing fees.

39. *Secondary Frequency Use Status.* We propose that digital-to-digital replacement translator stations be licensed with "secondary" frequency use status.⁹¹ Under this approach, these translators would not be permitted to cause interference to, and must accept interference from, full power television stations, certain land mobile radio operations, and other primary services, and would be subject to the interference protections to land mobile station operations in the 470- 512 MHz band set forth in the rules.⁹²

40. *Application of Other TV Translator Rules.* In order to facilitate the ability of stations to apply for and license digital-to-digital replacement translators, except as specified herein,⁹³ we propose to apply the existing rules associated with television translator stations to digital-to-digital replacement

⁸⁹ *DRT R&O*, 24 FCC Rcd at 5942-43, paras. 23-24.

⁹⁰ *Id.*

⁹¹ *Id.* at 5943, para. 25.

⁹² *See* 47 C.F.R. § 74.709.

⁹³ *See supra* paras. 32-36.

translators, including the rules concerning power limits,⁹⁴ out-of-channel emission limits,⁹⁵ unattended operation,⁹⁶ time of operation,⁹⁷ and resolution of mutual exclusivity.⁹⁸

41. *Call Signs.* We propose to assign digital-to-digital replacement translators the same call sign as their associated full power television station. The Commission previously concluded that “use of a unique call sign for replacement translators serves little or no purpose and will only cause confusion,” would be more costly to stations, and could cause technical problems.⁹⁹ For the same reasons, we believe that use of a unique call sign for digital-to-digital replacement translators is not appropriate.

42. *Construction Period.* We propose that stations be given a full three-year construction period to build their digital-to-digital replacement translators.¹⁰⁰ We believe that a full three-year period for completion of replacement translator facilities will help to ensure the successful implementation of this new service. Among other things, we believe it will allow stations that are reassigned to new channels in the repacking process, some of which will have 39 months to complete construction of their post-auction facilities, to schedule construction of their replacement translator to coincide with the completion of their full power facilities. We are concerned that a shorter construction period could discourage licensees from taking advantage of their processing priority by applying for digital-to-digital replacement translators at the earliest possible time.

2. Discontinuation of Applications for New DRTs

43. We tentatively conclude that allowing the licensing of new analog-to-digital replacement translators is no longer necessary and propose to no longer accept applications for such facilities. As noted above, the Media Bureau placed a freeze on the filing of applications for analog-to-digital replacement translators (“DRTs”) earlier this year.¹⁰¹ Prior to the freeze, full power stations had more than five years to apply for this type of replacement translator to provide service to viewers within their analog coverage areas who lost service as a result of a station’s 2009 digital transition.¹⁰² Given the length of time that has passed since the digital transition deadline, we do not believe any future applications will be necessary for stations to replace an analog loss area that occurred as a result of the digital transition.¹⁰³ We seek comment on this tentative conclusion.

D. Assistance to LPTV and TV Translator Stations in Finding Displacement Channels After the Incentive Auction

44. Commenters in the incentive auction proceeding noted that it will be highly challenging for some displaced LPTV and TV translator stations to find new channel homes on the decreased number

⁹⁴ See 47 C.F.R. § 74.735.

⁹⁵ See 47 C.F.R. § 74.736.

⁹⁶ See 47 C.F.R. § 74.734.

⁹⁷ See 47 C.F.R. § 74.763.

⁹⁸ See 47 C.F.R. §§ 1.2100 *et seq.* & 73.5000 *et seq.*

⁹⁹ See *DRT R&O*, 24 FCC Rcd at 5944, paras. 27-29 (internal quotation marks omitted).

¹⁰⁰ See *id.* at 5945, paras. 30-31.

¹⁰¹ See *Low Power Freeze PN*, 29 FCC Rcd 6063.

¹⁰² In 2014, prior to initiation of the freeze, five applications for analog-to-digital replacement translators were filed. All of these have been granted.

¹⁰³ As the Media Bureau noted in the *Freeze PN*, applications for DRTs pending at the time of the freeze would be processed. *Id.* at 6064. We also note that we do not intend to discontinue allowing stations to file a displacement application if their DRT is displaced as a result of the incentive auction and repacking process or later by a full power television station modification. Our proposal is only to discontinue acceptance of applications for new DRTs.

of channels that will be allocated and assigned for television use post-auction.¹⁰⁴ In the *Incentive Auction Report and Order*, we identified the possibility of using the incentive auction repacking software in order to assist displaced LPTV and TV translator stations to identify new channels, and to ensure that a greater number of these stations will be able to relocate to new channels.¹⁰⁵ We found that, “[i]f feasible, the use of our [repacking and optimization] software for this purpose may expedite and ease the post-auction transition process for many low power stations.”¹⁰⁶

45. We believe that the availability of the repacking and optimization software may provide a unique opportunity for the Commission to assist with the challenges displaced LPTV and TV translator stations face in finding new channel homes. We seek comment on the use of these software tools to facilitate the relocation of displaced low power stations. In particular, because it is likely that a number of low power stations will be displaced from UHF channels, we seek comment on whether and, if so how, our optimization software could facilitate the ability of low power stations to relocate to VHF channels where UHF channels are unavailable. One possibility is that, prior to opening the special window for LPTV and TV translator stations affected by the repacking process to file displacement applications, the Media Bureau could utilize the optimization model to identify market areas where all displaced LPTV and TV translator stations can be accommodated onto new channels. For such markets, the Media Bureau would issue a Public Notice listing potential channel assignments for displaced low power stations.¹⁰⁷ Displaced low power stations would be encouraged to file for those channels in the displacement window. In cases where not all LPTV and TV translator stations can be accommodated onto new channels using current operating parameters, the Media Bureau could use the software to identify possible arrangements based on other objectives, such as maximizing the number of stations assigned or minimizing the interference that stations might experience, to assist stations in examining engineering solutions to find channels. In addition, we seek comment on alternative methods for efficiently assigning the spectrum that will remain available post-auction for LPTV and TV translator stations.

46. We emphasize that stations’ decision to seek channel assignments recommended by the Media Bureau as a result of using repacking and optimization software or another method to assist with the displacement process would be voluntary. We do not propose to require stations to accept channel assignments identified by the Media Bureau. Such an obligation would run counter to more than 30 years of licensing policies with respect to LPTV and TV translator stations.¹⁰⁸ We intend that these stations continue to be permitted to seek displacement channels that work best for their particular circumstances, so long as the channel selections comply with our licensing and technical rules. Although stations would be permitted to apply for channels of their choice, we believe that issuing a list of possible channel assignments would significantly reduce the possibility of mutually exclusive applications being filed in the displacement window and greatly facilitate the post-incentive auction displacement and band clearing processes. We seek comment on these proposals.

¹⁰⁴ See, e.g., Affiliates Association Comments at 56-57; APTS Comments at 9-10, 12; Leadership Conference Comments at 5; LIN Comments at 9; LPTV Spectrum Comments at 5 (“in the post-auction environment there will be a lot less stations, channels, and opportunities for new players”); NRB Comments at 3 (“[o]nly a limited number of available channels may exist following the repacking process, limiting the relocation options available to displaced LPTV and translator stations”); NTA Comments at 5-6.

¹⁰⁵ *Incentive Auction Report and Order*, 29 FCC Rcd at 6839, para. 666

¹⁰⁶ *Id.* Along similar lines, LPTV Spectrum suggests that the Commission conduct a “mock LPTV repacking.” LPTV Spectrum Aug. 27, 2013 *Ex Parte* at 7.

¹⁰⁷ See LPTV Spectrum Aug. 15, 2014 *Ex Parte* at 7 (asking which Bureau will conduct the LPTV displacement process).

¹⁰⁸ See *Inquiry into the Future Role of Low-Power Television Broadcasting and TV Translators*, BC Docket No. 78-253, Report and Order, 51 Rad. Reg. 2d (P & F) 476, 490-91 (1982) (concluding that, given their lower power and secondary status, LPTV applicants should be free to choose their proposed channels subject to the technical rules) (subsequent citations omitted).

E. Operation of Analog Radio Services by Digital LPTV Stations as Ancillary or Supplementary Services

47. We seek comment on whether to allow LPTV stations on digital television channel 6 (82-88 MHz) to operate analog FM radio-type services on an ancillary or supplementary basis pursuant to section 73.624(c) of the rules.¹⁰⁹ Currently, some analog LPTV stations licensed on channel 6 are operating with very limited visual programming and an audio signal that is programmed like a radio station. FM radio listeners are able to receive the audio portion of these LPTV stations at 87.76 MHz, which is adjacent to noncommercial educational (NCE) FM channel 201 (88.1 MHz). When these LPTV stations convert to digital, however, they are unable to continue providing such radio service because the digital audio portion of their signal can no longer be received by standard FM receivers.

48. LPTV stations have been proposing engineering solutions to allow their continued FM radio-type operation following their conversion to digital.¹¹⁰ For example, a station has proposed using a single transmitter that allows a digital visual and audio stream, as well as a separate analog audio transmission, to simultaneously operate a digital LPTV station on channel 6 and an analog FM radio-type service at 87.76 MHz.¹¹¹ Under this proposal, we would treat the analog FM audio transmission as an “ancillary or supplementary” service offering under section 74.790(i) of the Commission’s rules, which provides that “a digital LPTV station may offer services of any nature, consistent with the public interest, convenience, and necessity, on an ancillary or supplementary basis in accordance with the provisions of § 73.624(c)”¹¹² Section 73.624(c) in turn provides that:

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.¹¹³

49. We seek comment on whether to permit LPTV stations¹¹⁴ on digital television channel 6 (82-88 MHz) to operate dual digital and analog transmission systems in this manner. These stations are low power television stations and, following the eventual transition, will be operating solely in digital. We seek comment on whether a digital LPTV station can provide an analog FM radio-type service as an ancillary or supplementary service consistent with the Communications Act and our rules.¹¹⁵ For

¹⁰⁹ 47 C.F.R. § 73.624(c).

¹¹⁰ See, e.g., LPTV Spectrum Aug. 15, 2014 *Ex Parte* at 6 (noting that it is preparing an LPTV experimental license program including “a digital channel-6 transmission system with an 87.7 FM signal”).

¹¹¹ See pending application of Venture Technologies Group, LLC (Venture), licensee of KFMP-LP, channel 6, Lubbock, Texas, File No. BMPDVL-20140226AFU. Venture previously filed a modification application in 2012 seeking to use a “hybrid” transmission method different than the one that has been adopted for digital LPTV and TV translator stations in order to continue providing its FM radio-type service after it converted to digital. See File No. BMPDVL-201201131AAE, Exh. 13. The Video Division dismissed that application because it failed to comply with various Commission rules. See Letter to Venture Technologies Group, LLC from Hossein Hashemzadeh, Deputy Chief of Video Division, File No. BMPDVL-20120113AEE, Aug. 2, 2012, available at: http://licensing.fcc.gov/cgi-bin/prod/cdbs/forms/prod/getimportletter_exh.cgi?import_letter_id=35147

¹¹² 47 C.F.R. § 74.790(i), citing § 73.624(c).

¹¹³ 47 C.F.R. § 73.624(c).

¹¹⁴ Because TV translators are licensed only for the simultaneous retransmission of the programs and signals of a television broadcast station, and, with the exception of airing not more than 30 seconds an hour of local announcements, do not originate programming, we do not propose that TV translators be eligible to operate this type of service. See 47 C.F.R. § 74.731(b) and (f).

¹¹⁵ See 47 U.S.C. § 336(a)-(b); 47 C.F.R. § 74.790(i); *LPTV DTV Second Report and Order*, 26 FCC Rcd at 10757-58, para. 55 (discussing section 336(e) as applied to LPTV); see also § 201 of the Telecommunications Act of 1996, (continued...)

example, whenever operating, a digital LPTV station must transmit an over-the-air video program signal at no direct charge to viewers.¹¹⁶ In addition, section 336(b)(1) of the Communications Act, provides that the Commission may only permit ancillary or supplementary services “if the use of a designated frequency for such services is consistent with the technology or method designated by the Commission for the provision of advanced television services.”¹¹⁷ We seek comment on whether a digital LPTV station offering an analog FM radio-type service on an ancillary or supplementary basis would be able to satisfy these requirements.

50. We also seek comment on the potential for a digital LPTV station’s analog FM radio-type service to interfere with or disrupt the LPTV station’s digital TV service. Section 336(b)(2) of the Act provides that the Commission shall “limit the broadcasting of ancillary or supplementary services on designated frequencies so as to avoid derogation of any advanced television services, including high definition television broadcasts, that the Commission may require using such frequencies.”¹¹⁸ Would a digital LPTV station be able to operate an analog transmitter without interfering or derogating its co-channel digital operation?

51. In addition, we seek comment on the potential of interference to other primary licensees. Because an LPTV station operates on a secondary interference basis, the provision of an ancillary or supplementary service by the station must also be on a secondary basis. Therefore, it must protect the operations of all primary licensees. LPTV stations on channel 6 are second and third adjacent to FM channels 201 and 202, which are licensed on a primary basis for NCE FM radio operations. We seek comment on the potential for interference from digital LPTV stations’ ancillary or supplementary analog FM radio-type operations to primary licensees, including NCE FM radio stations. We also seek comment on what rules we might adopt to prevent such interference. If we permit such operations, should we prohibit any overlap between the 100 dBu interfering contour of the channel 6 LPTV station and the 60 dBu protected contour of the NCE FM station?¹¹⁹ In addition, should we propose that if the operation of the LPTV station causes any actual interference to the transmission of any authorized FM broadcast station, the LPTV station would be required to eliminate the interference or immediately suspend operations? Would such a prohibition of contour overlap adequately prevent interference to primary licensees including NCE FM stations?

52. If we decide to permit analog FM radio-type operations by LPTV stations on an ancillary or supplementary basis, we also seek comment on whether such operations should be subject to the Part 73 rules applicable to FM radio stations.¹²⁰ Section 336(b)(3) of the Communications Act mandates that the Commission “apply to any other ancillary or supplementary service such of the Commission’s

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Pub. L. No. 104-104, 110 Stat. 56, 108-109 (1996), codified at 47 U.S.C. § 336 (Telecom Act); *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MM Docket No. 87-268, Fifth Report and Order, 12 FCC Rcd 12809, 12820-23, paras. 27-36 (1997); Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order, 13 FCC Rcd 6860, 6868-71, paras. 25-30 (1998); *In the Matter of Fees for Ancillary or Supplementary Use of Digital Television Spectrum Pursuant to Section 336(e)(1) of the Telecommunications Act of 1996*, MM Docket No. 97-247, Report and Order, 14 FCC Rcd 3259 (1998); Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 19931 (1999); *In the Matter of Ancillary or Supplementary Use of Digital Television Capacity by Noncommercial Licensees*, MM Docket No. 98-203, Report and Order, 16 FCC Rcd 19042 (2001).

¹¹⁶ See 47 C.F.R. § 74.790(g)(3).

¹¹⁷ 47 U.S.C. § 336(b)(1).

¹¹⁸ 47 U.S.C. § 336(b)(2).

¹¹⁹ See 47 C.F.R. § 73.509.

¹²⁰ Because a digital transmission is more specifically “channelized,” it does not appear that LPTV stations operating on channel 6 could propose using an HD radio transmitter to provide the same type of ancillary or supplementary radio service and must propose an analog radio operation so that listeners can receive their service.

regulations as are applicable to the offering of analogous services by any other person”¹²¹ We seek comment on whether the analog FM radio-type service discussed herein is “analogous to other services subject to regulation by the Commission” within the meaning of section 336(b)(3) and the Commission’s implementing rules and, if so, on which of the Part 73 rules should apply to the offering of an analog FM radio-type service. The Part 73 rules require, for example, that an FM radio station file an application for a construction permit and license to operate,¹²² that stations be located on channels 88.1 MHz through 107.9 MHz,¹²³ that primary FM channels be allotted through rulemaking,¹²⁴ that such stations maintain a main studio and public inspection file,¹²⁵ and that the use of such frequencies in border areas be coordinated with Canada and Mexico.¹²⁶

53. Finally, should we permit the provision of an analog FM radio-type service on an ancillary or supplementary basis, we seek comment on whether that service would be subject to a five percent fee.¹²⁷ Our ancillary and supplementary rule provides that digital television stations “must annually remit a fee of five percent of the gross revenues derived from all ancillary and supplementary services . . . which are feeable”¹²⁸ “Feeable” services are defined as “[a]ll ancillary or supplementary services for which payment of a subscription fee or charge is required in order to receive the service.”¹²⁹ “Feeable” services are also defined as “[a]ny ancillary or supplementary service for which no payment is required from consumers in order to receive the service . . . if the DTV licensee directly or indirectly receives compensation from a third party in return for the transmission of material provided by that third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required).”¹³⁰ The FM radio-type services provided by LPTV stations, thus far, appear to have been available to the general public without subscription. Given these definitions, we seek comment on whether, and under what circumstances, an LPTV station’s ancillary or supplementary analog FM radio service should be deemed “feeable” and subject to the five percent fee.

F. Elimination of Analog Tuner Requirement

54. We seek comment on a proposed change to section 15.117(b) of our rules that would eliminate any obligation to integrate analog tuners in TV receivers.¹³¹ This proposed modification would

¹²¹ 47 U.S.C. § 336(b)(3). Section 73.624(c)(1) of the Commission’s rules contains a similar provision. *See* 47 C.F.R. § 73.624(c)(1) (digital television stations may offer “audio signals” on a “broadcast basis,” but “DTV licensees that provide ancillary or supplementary services that are analogous to other services subject to regulation by the Commission must comply with the Commission regulations that apply to those services. . . .”).

¹²² *See* 47 C.F.R. § 73.201.

¹²³ We note that the KFMP-LP application proposes use of channel 87.76 MHz. *See supra* n. 111.

¹²⁴ *See* 47 C.F.R. § 73.202.

¹²⁵ *See* 47 C.F.R. §§ 73.1125 and 73.3526.

¹²⁶ *See* 47 C.F.R. §§ 73.204 and 73.504.

¹²⁷ *See* 47 C.F.R. § 73.624(g).

¹²⁸ *Id.*; *see also* 47 U.S.C. § 336(e).

¹²⁹ *See* 47 C.F.R. § 73.624(g)(1)(i); *see also* 47 U.S.C. § 336(e)(1)(A). Moreover, the rules provide that “[t]he fee required by this provision shall be imposed on any and all revenues from such services, including revenues derived from subscription fees and from any commercial advertisements transmitted on the service.” *See* 47 C.F.R. § 73.624(g)(1)(i).

¹³⁰ *See* 47 C.F.R. § 73.624(g)(1)(ii); *see also* 47 U.S.C. § 336(e)(1)(B). Moreover, the rules provide that “[t]he fee required by this provision shall be imposed on any and all revenues from such services, other than revenues received from a third party in return for the transmission of commercial advertisements used to support broadcasting for which a subscription fee is not required.” *See* 47 C.F.R. § 73.624(g)(1)(ii).

¹³¹ 47 C.F.R. § 15.117(b). Section 15.117(b) is a successor to former section 15.70(a) of the Commission’s rules, which implemented the Commission’s authority under the All Channel Receiver Act of 1962 “to require that

(continued...)

allow TV broadcast receiver manufacturers and importers to ship and import devices without analog tuners before all LPTV and TV translator stations cease analog broadcasting, but would continue to require those devices to be able to receive all digital broadcast TV channels.¹³² Section 15.117(b) currently provides that “TV broadcast receivers shall be capable of adequately receiving all channels allocated by the Commission to the television broadcast service.”¹³³ The purpose of this rule is to ensure that television broadcast receivers receive all television broadcast channels irrespective of the channel’s place in the broadcast spectrum.¹³⁴ Given that all full power stations ceased analog broadcasts in 2009 and approximately 56% of LPTV, 80% of TV translator stations and 58% of Class A television stations have completed their conversion to digital, we seek comment on whether section 15.117(b) of our rules is still necessary to achieve its purpose.

55. Should we eliminate the analog tuner requirement before all broadcast TV stations cease broadcasting in analog? What are the costs to manufacturers of continuing to build analog tuners into their devices in comparison with the benefits to consumers? In other words, to what extent does the analog tuner requirement continue to serve the public interest given that all full power stations are digital and the vast majority of LPTV and TV translator stations are currently digital? If we eliminate the analog tuner requirement, should we otherwise modify Section 15.117 to remove requirements that apply to analog tuners?¹³⁵

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apparatus designed to receive television pictures broadcast simultaneously with sound be capable of adequately receiving all frequencies allocated by the Commission to television broadcasting when such apparatus is shipped in interstate commerce, or is imported from any foreign country into the United States, for sale or resale to the public.” 47 U.S.C. § 303(s); All Channel Receiver Act of 1962, Pub. L. No. 87-529, 76 Stat. 150. *See also* S. Rep. 1526, 87th Cong., 2nd Sess. 1962 *reprinted at* 1962 U.S.C.C.A.N. 1873, 1875 (discussing “the relative scarcity of television receivers in the United States which are capable of receiving the signals of UHF stations” (only about 16 percent), which “prevents effective competition between UHF and VHF stations which operate in the same market”). We note that the All Channel Receiver Act grants authority to require that broadcast TV receivers receive all broadcast channels, but does not require the Commission to impose such a rule. 47 U.S.C. § 303(s); All Channel Receiver Act of 1962, Pub. L. No. 87-529, 76 Stat. 150.

¹³² We refer to this approach below as “eliminating the analog tuner requirement” as a shorthand for this rule modification.

¹³³ *See Revision of Part 15 of the Rules Regarding the Operation of Radio Frequency Devices Without an Individual License*, GEN Docket No. 87-389, First Report and Order, 4 FCC Rcd 3493, 3517, para. 139 (1989) (adopting 47 C.F.R. § 15.117(b)). A “TV broadcast receiver” is defined as a “device designed to receive television pictures that are broadcast simultaneously with sound on the television channels authorized under part 73 of this chapter.” 47 C.F.R. § 15.3(w). For purposes of 47 C.F.R. § 15.117, the term “TV broadcast receiver” includes “devices, such as TV interface devices and set-top devices that are intended to provide audio-video signals to a video monitor, that incorporate the tuner portion of a TV broadcast receiver and that are equipped with an antenna or antenna terminals that can be used for off-the-air reception of TV broadcast signals, as authorized under part 73 of this chapter.” 47 C.F.R. § 15.117(a).

¹³⁴ All-Channel Television Broadcast Receivers, 27 Fed. Reg. 11,698. When the Commission defined a TV broadcast receiver to include “TV interface devices and set-top devices that are intended to provide audio-video signals to a video monitor,” it was focused on whether those devices should include digital broadcast tuners because of the impending DTV transition, rather than whether devices should include analog broadcast tuners. *See Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, MM Docket No. 00-39, Second Report and Order and Second Memorandum Opinion and Order, 17 FCC Rcd 15978, 15995-99, paras. 39-46 (2002) (“Consistent with the intent of Congress that we not use our authority under the ACRA to set broad standards for television receivers, we believe that the rules implementing the DTV tuner requirements should avoid imposing new performance standards on DTV except as necessary to ensure that receivers can adequately tune DTV signals on all of the television channels.”), *aff’d*, *Consumer Electronics Ass’n v. FCC*, 347 F.3d 291 (D.C. Cir. 2003). This context informs our analysis of the public interest benefits below.

¹³⁵ For example, § 15.117(a) states that “paragraphs (f) and (g) of this section shall not apply to the features of such sets that provide for reception of digital television signals.” 47 C.F.R. § 15.117(a).

56. We note that the Media Bureau has waived the analog tuner requirement several times to promote retail competition, reduce costs, and encourage energy efficiency.¹³⁶ In these instances, the Bureau concluded that waiver would save consumers money, reduce power consumption, and increase retail competition.¹³⁷ Were those findings unique to the waiver requests at issue or do they apply more broadly? Does the benefit of analog signal reception in every device for the few consumers that need it justify the cost and power consumption that analog tuners add to all devices?

57. In its waiver orders, the Bureau found that granting a waiver of this rule in those specific cases would “have a *de minimis* effect on consumers.”¹³⁸ We seek comment on whether consumers will be able to rely on existing devices until the last of the analog LPTV and TV translator stations has migrated to digital. If some viewers need to purchase additional TV broadcast receivers with analog tuners, will they be able to find used or specialty devices? Or is our existing rule necessary to ensure that these consumers will be able to view their local broadcast channels? If we eliminate our rule, will all manufacturers immediately cease including analog tuners in all their broadcast receivers?

58. In its waiver orders, the Bureau also conditioned the waivers on the recipients’ voluntary commitments to educate consumers and retailers about the devices’ limits and capabilities to prevent consumer confusion.¹³⁹ If we adopt our proposal, should we impose similar consumer protection or education measures on broadcast receiver manufacturers and importers who market digital-only equipment prior to the LPTV and TV translator digital transition deadline? If so, should such measures only be required for a defined period of time? Or would such requirements be unnecessary because the effect on consumers by the time any elimination would become effective will be “*de minimis*”? We invite comment on our statutory authority to adopt consumer protection or education measures and on any other issues related to our analog tuner rule that we should consider.¹⁴⁰

G. Additional Measures to Preserve LPTV and TV Translator Services

59. Finally, we seek comment on additional measures we should consider in order to mitigate the impact of the incentive auction on LPTV and TV translator stations and to help preserve the important services they provide. Commenters proposing other measures for consideration should identify our legal authority to take the proposed measures and describe in detail any perceived benefits and disadvantages of the measures advocated.

III. PROCEDURAL MATTERS

A. Ex Parte Presentations

60. The proceeding this *Third Notice of Proposed Rulemaking* initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁴¹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any

¹³⁶ See *EchoStar Technologies L.L.C.*, MB Docket No. 13-177, Memorandum Opinion and Order, 28 FCC Rcd 14000 (MB 2013) (*Echostar Waiver Order*); *TiVo, Inc.*, MB Docket No. 11-105, Memorandum Opinion and Order, 28 FCC Rcd 12181 (MB 2013).

¹³⁷ See *EchoStar Waiver Order*, 28 FCC Rcd at 14003-4, paras. 5-6.

¹³⁸ *Id.* at para. 7.

¹³⁹ *Id.* at paras. 7-8.

¹⁴⁰ We note that the Commission previously adopted labeling and disclosure requirements relating to the transition from analog to digital television, including for analog-only television equipment. See *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 03-15, Second Report and Order, 22 FCC Rcd 8776, 8784-86, paras. 15-20 (2007); see also *DTV Consumer Education Initiative*, MB Docket No. 07-148, Report and Order, 23 FCC Rcd 4134, 4137-38, para. 5 (2008) (citing 47 U.S.C. § 336(b)(5)).

¹⁴¹ 47 C.F.R. §§ 1.1200 *et seq.*

oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies).¹⁴² Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the rules.¹⁴³ In proceedings governed by section 1.49(f) of the rules¹⁴⁴ or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Comment Period and Filing Procedures

61. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All filings related to this *Third Notice of Proposed Rulemaking* should refer to Docket No. 03-185, GN Docket No. 12-268 and ET Docket No. 14-175. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

62. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., S.W., Room TW-A325, Washington, D.C. 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, S.W., Washington, D.C. 20554.

63. People with Disabilities: To request materials in accessible formats for people with

¹⁴² See 47 C.F.R. § 1.1203.

¹⁴³ 47 C.F.R. § 1.206(b).

¹⁴⁴ 47 C.F.R. § 1.49(f).

disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

C. Initial Regulatory Flexibility Analysis

64. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix B.

D. Paperwork Reduction Act Analysis

65. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13, *see* 44 U.S.C. § 3507. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

E. Further Information

66. For further information about this *Third Notice of Proposed Rulemaking*, please contact Shaun Maher at (202) 418-2324, Shaun.Maher@fcc.gov.

IV. ORDERING CLAUSES

67. IT IS ORDERED that pursuant to sections 1, 4, 301, 303, 307, 308, 309, 310, 316, 319, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 301, 303, 307, 308, 309, 310, 316, 319, and 403, this *Third Notice of Proposed Rulemaking* IS ADOPTED.

68. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Third Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A
Proposed Rules

PART 15 – RADIO FREQUENCY DEVICES

1. Amend Section 15.117 to read as follows:

§ 15.117 TV broadcast receivers.

* * * * *

(b) TV broadcast receivers shall be capable of adequately receiving all digital channels allocated by the Commission to the television broadcast service.

* * * * *

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

2. The authority citation for Part 74 is amended to read as follows:

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

3. § 74.731 Purpose and permissible service.

* * * * *

(l) After 11:59 pm local time on September 1, 2015, Class A television stations may no longer operate any facility in analog (NTSC) mode. After 11:59 pm local time on **(insert new transition date)**, low power television and TV translator stations may no longer operate any facility in analog (NTSC) mode.

4. Amend Section 74.787 to read as follows:

Section 74.787 Digital Licensing

* * * * *

(a) Applications for digital low power television and television translator stations.

* * * * *

(5) *Applications for analog-to-digital and digital-to-digital replacement television translators.*

(i) Applications for new analog-to-digital replacement translators will not be accepted. Displacement applications for analog-to-digital replacement translators will continue to be accepted. An application for a digital-to-digital replacement translator may be filed beginning the first day of the low power television and TV translator displacement window set forth in section 73.3700(g)(1) of this part to one year after the completion of the 39 month transition period set forth in section 73.3700(b)(4) of this part. Applications for digital-to-digital replacement translators filed during the displacement window will be considered filed on the last day of the window. Following the completion of the displacement window, applications for digital-to-digital replacement translators will be accepted on a first-come, first-serve basis.

* * *

(iii) Applications for analog-to-digital replacement television translator shall be given processing priority over all other low power television and TV translator applications except displacement applications (with which they shall have co-equal priority) as set forth in 47 C.F.R. 73.3572(a)(4)(ii). Applications for digital-to-digital replacement television translator shall be given processing priority over all other low power television and TV translator applications and shall have co-equal priority with displacement applications filed for analog-to-digital replacement translators.

* * *

(v) The service area of the digital-to-digital replacement translator shall be limited to only a demonstrated loss area within the full-service station's pre-auction digital service area. "Pre-auction digital service area" is defined as the geographic area within the full power station's noise-limited contour (of its facility licensed by the pre-auction licensing deadline prior to the incentive auction conducted under Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. No. 112-96)). An applicant for a digital-to-digital replacement television translator may propose a *de minimis* expansion of its full power pre-auction digital service area upon demonstrating that the expansion is necessary to replace its digital loss area.

(vi) The license for the analog-to-digital and digital-to-digital replacement television translator will be associated with the full power station's main license, will be assigned the same call sign, may not be separately assigned or transferred, and will be renewed with the full power station's main license.

(vii) Analog-to-digital and digital-to-digital replacement television translators may only operate on those television channels designated for broadcast television use following completion of the auctions conducted under Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. No. 112-96).

(viii) Each original construction permit for the construction of an analog-to-digital or digital-to-digital replacement television translator station shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed. The provisions of Section 74.788(c) of this chapter shall apply for stations seeking additional time to complete construction of their replacement television translator station.

(ix) Applications for analog-to-digital and digital-to-digital replacement television translators shall be filed on FCC Form 346 and shall be treated as an application for minor change. Mutually exclusive applications shall be resolved via the Commission's Part 1 and broadcast competitive bidding rules, §1.2100 *et seq.* and §73.5000 *et seq.* of this chapter.

(x) The following sections are applicable to analog-to-digital and digital-to-digital replacement television translator stations:

- § 73.1030 Notifications concerning interference to radio astronomy, research and receiving installations.
- § 74.703 Interference
- § 74.709 Land mobile station protection.
- § 74.734 Attended and unattended operation
- § 74.735 Power Limitations
- § 74.751 Modification of transmission systems.
- § 74.763 Time of Operation
- § 74.765 Posting of station and operator licenses.
- § 74.769 Copies of rules.

- § 74.780 Broadcast regulations applicable to translators, low power, and booster stations (except §73.653 – Operation of TV aural and visual transmitters and §73.1201 – Station identification).
- §74.781 Station records.
- §74.784 Rebroadcasts.

5. Amend Section 74.788 to read as follows:

Section 74.788 - Digital construction period.

* * * * *

(c) Authority delegated. (1) For the September 1, 2015 Class A television digital construction deadline, authority is delegated to the Chief, Media Bureau to grant an extension of time of up to six months beyond September 1, 2015 upon demonstration by the digital licensee or permittee that failure to meet the 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. For the (insert new transition date) low power television and TV translator station digital construction deadline, authority is delegated to the Chief, Media Bureau to grant an extension of time of up to six months beyond (insert new transition date) upon demonstration by the digital licensee or permittee that failure to meet the 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.

* * * * *

(3) Applications for extension of time filed by Class A television stations shall be filed not later than May 1, 2015 absent a showing of sufficient reasons for late filing. Applications for extension of time filed by low power television and TV translator stations shall be filed not later than (insert new filing deadline) absent a showing of sufficient reasons for late filing.

(d) For Class A television digital construction deadlines occurring after May 1, 2015, the tolling provisions of Section 73.3598 shall apply. For low power television and TV translator digital construction deadlines occurring after (insert new transition date), the tolling provisions of Section 73.3598 shall apply.

* * * * *

6. Add new Section 74.800 – Low Power Television Channel Sharing

(a) Channel sharing generally.

(1) Subject to the provisions of this section, low power television and TV translator stations may voluntarily seek Commission approval to share a single six megahertz channel with other low power television, TV translator, full power television and Class A television station.

(2) Each station sharing a single channel pursuant to this section shall continue to be licensed and operated separately, have its own call sign and be separately subject to all of the Commission's obligations, rules, and policies.

(b) Licensing of Channel Sharing Stations. The LPTV or TV translator channel sharing station relinquishing its channel must file an application for the initial channel sharing construction permit (FCC Form 346), include a copy of the channel sharing agreement as an exhibit, and cross reference the other sharing station(s). Any engineering changes necessitated by the channel sharing arrangement may be included in the station's application. Upon initiation of shared operations, the station relinquishing its

channel must notify the Commission that it has terminated operation pursuant to section 73.1750 of this part and each sharing station must file an application for license (FCC Form 347).

(c) **Deadline For Implementing Channel Sharing Arrangements.** Channel sharing arrangements submitted pursuant to this section must be implemented within three years of the grant of the initial channel sharing construction permit.

(d) **Channel Sharing Agreements.**

(i) Channel sharing agreements submitted under this section must contain provisions outlining each licensee's rights and responsibilities regarding:

(A) Access to facilities, including whether each licensee will have unrestrained access to the shared transmission facilities;

(B) Operation, maintenance, repair, and modification of facilities, including a list of all relevant equipment, a description of each party's financial obligations, and any relevant notice provisions; and

(C) Termination or transfer/assignment of rights to the shared licenses, including the ability of a new licensee to assume the existing CSA.

(ii) Channel sharing agreements submitted under this section must include a provision affirming compliance with the channel sharing requirements in this section including a provision requiring that each channel sharing licensee shall retain spectrum usage rights adequate to ensure a sufficient amount of the shared channel capacity to allow it to provide at least one Standard Definition (SD) program stream at all times.

(e) **Termination and Assignment/Transfer of Shared Channel.** If a channel sharing station's license authorized under this section is terminated, the remaining channel sharing station or stations will continue to have rights to their portion(s) of the shared channel. The license(s) of the remaining channel sharing station(s) shall be modified to reflect that its channel is no longer shared with the terminated licensee. In the event that only one station remains on the shared channel, that station may request that the shared channel be re-designated as a non-shared channel or could enter into a CSA with another station and resume shared operations, subject to Commission approval.

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”)¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (“IRFA”) concerning the possible significant economic impact on small entities by the policies and rules proposed in this *Third Notice of Proposed Rulemaking (Notice)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments indicated on the first page of the *Notice*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for and Objectives of the Proposed Rules

2. On June 2, 2014, the Federal Communications Commission (Commission) released its Incentive Auction Report and Order, 29 FCC Rcd 657 (2014), adopting rules to implement the broadcast television spectrum incentive auction authorized by the Middle Class Tax Relief and Job Creation Act (Spectrum Act). The Commission recognized in the Incentive Auction Report and Order that the incentive auction will have a significant impact on low power television stations and TV translator stations. As part of the incentive auction, the Commission will (1) conduct a “reverse auction,” whereby full power and Class A television stations may opt to relinquish some or all of their spectrum usage rights in exchange for incentive payments, and (2) reorganize or “repack” the broadcast television bands in order to free up a portion of the ultra high frequency (UHF) band for new flexible uses. The Commission concluded in the Incentive Auction Report and Order that the Spectrum Act does not mandate the protection of LPTV and TV translator stations because the scope of mandatory protection under section 6403(b)(2) is limited to full power and Class A television stations. The Commission also declined to extend discretionary protection to these stations because of the detrimental impact such protection would have on the repacking process and the success of the incentive auction. Accordingly, some LPTV and TV translator stations will be displaced as a result of the repacking process and required to either find a new channel or discontinue operations.

3. In order to mitigate the impact of the auction and repacking process on LPTV and TV translator stations, the Commission stated that it intended to initiate an LPTV/TV Translator rulemaking proceeding “to consider additional measures that may help alleviate the consequences of LPTV and TV translator station displacements resulting from the auction and repacking process. In this *Notice*, the Commission considers the measures discussed in the Incentive Auction Report and Order as well as other measures to ensure the successful completion of the LPTV and TV translator digital transition and the continued viability of these services.

4. In the *Notice*, the Commission seeks comment on whether to extend the September 1, 2015 digital transition deadline for LPTV and TV translator stations. Because a significant number of stations have yet to complete their transition to digital service, and with less than a year before the digital transition deadline, the Commission believes that it is appropriate to reconsider whether the deadline should be postponed in light of the projected timing of its incentive auction. The Commission seeks comment on an appropriate new transition date and whether to revise its related rules to accommodate the change.

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 et. seq., has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (“CWAAA”).

² See 5 U.S.C. § 603(a).

³ *Id.*

5. The Commission also tentatively concludes to adopt rules to permit channel sharing by and between LPTV and TV translator stations, and seeks comment on a variety of rules to implement channel sharing for these stations. The Commission's existing channel sharing rules apply only to full power and Class A stations bidding in the incentive auction. The Commission now considers creating channel sharing rules for LPTV and TV translator stations outside of the auction context.

6. The Commission also tentatively concludes to create a "digital-to-digital replacement translator" service for full power stations that are reassigned to new channels in the incentive auction, either in the repacking process and or through a winning UHF-to-VHF or high-VHF-to-low-VHF bid, if those full power stations discover that a portion of their existing pre-auction service area will no longer be able to receive service after the station transitions to its new channel. The Commission seeks comment on various rules and policies to implement the new digital-to-digital replacement translator service.

7. In the *Notice*, the Commission seeks comment on a proposed use of the incentive auction optimization model to assist LPTV and TV translator stations displaced by the incentive auction repacking process to identify new channels.

8. The Commission also seeks comment on whether to permit digital LPTV stations to operate analog FM radio-type services on an ancillary or supplementary basis. Currently, some analog LPTV stations licensed on channel 6 are operating with very limited visual programming and an audio signal that is programmed like a radio station. FM radio listeners are able to receive the audio portion of these LPTV stations at 87.76 MHz, which is adjacent to noncommercial educational (NCE) FM channel 201 (88.1 MHz). When these LPTV stations convert to digital, however, they are unable to continue providing such radio service because the digital audio portion of their signal can no longer be received by standard FM receivers. Anticipating the end of their FM radio-type operations, LPTV stations have been proposing engineering solutions to allow their continued operation following their conversion to digital. The Commission seeks comment on whether to permit LPTV stations to operate dual digital and analog transmission systems in this manner and whether the provision of an analog FM radio-type service is what Congress intended when it passed the 1996 Telecom Act to allow digital television stations, including LPTV stations, to offer ancillary or supplementary services.

9. In the *Notice*, the Commission seeks comment on whether to eliminate the requirement in section 15.117(b) of our rules that TV receivers include analog tuners. This proposed modification would allow TV broadcast receiver manufacturers and importers to build and import devices without analog tuners before all LPTV and TV translator stations cease analog broadcasting, but would continue to require those devices to be able to receive all digital broadcast TV channels.

10. Finally, the Commission invites input on any other measures it should consider to further mitigate the impact of the auction and repacking process on LPTV and TV translator stations.

B. Legal Basis

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

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

12. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted.⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," small

⁴ *Id.* at § 603(b)(3).

organization,” and “small government jurisdiction.”⁵ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁶ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁷

13. *Television Broadcasting.* This economic census category “comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.”⁸ The SBA has created the following small business size standard for Television Broadcasting firms: those having \$14 million or less in annual receipts.⁹ The Commission has estimated the number of licensed commercial television stations to be 1,387.¹⁰ In addition, according to Commission staff review of the BIA Advisory Services, LLC’s *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of \$14 million or less.¹¹ We therefore estimate that the majority of commercial television broadcasters are small entities.

14. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included.¹² Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

15. In addition, the Commission has estimated the number of licensed noncommercial educational (“NCE”) television stations to be 395.¹³ These stations are non-profit, and therefore considered to be small entities.¹⁴

⁵ 5 U.S.C. § 601(6).

⁶ *Id.* at § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

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

⁸ U.S. Census Bureau, *2012 NAICS Definitions: 515120 Television Broadcasting*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515120&search=2012> (last visited Mar. 6, 2014).

⁹ 13 C.F.R. § 121.201 (NAICS code 515120) (updated for inflation in 2010).

¹⁰ *See* FCC News Release, Broadcast Station Totals as of June 30, 2014 (rel. July 9, 2014).

¹¹ We recognize that BIA’s estimate differs slightly from the FCC total given the information provided above.

¹² “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.” 13 C.F.R. § 121.103(a)(1).

¹³ *See* FCC News Release, Broadcast Station Totals as of June 30, 2014 (rel. July 9, 2014).

¹⁴ *See generally* 5 U.S.C. §§ 601(4), (6).

16. There are also 2,460 LPTV stations, including Class A stations, and 3838 TV translator stations.¹⁵ Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

17. *Electronics Equipment Manufacturers.* Rules adopted in this proceeding could apply to manufacturers of television receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment¹⁶ as well as radio and television broadcasting and wireless communications equipment.¹⁷ These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.¹⁸ Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities.¹⁹ The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern.²⁰ Census Bureau data indicates that there 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities.²¹ The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

¹⁵ See FCC News Release, Broadcast Station Totals as of June 30, 2014 (rel. July 9, 2014)

¹⁶ 13 C.F.R. § 121.201, NAICS Code 334310.

¹⁷ 13 C.F.R. § 121.201, NAICS Code 334220.

¹⁸ 13 C.F.R. § 121.201, NAICS Code 334310.

¹⁹ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series - Manufacturing, Audio and Video Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

²⁰ 13 C.F.R. § 121.201, NAICS Code 334220.

²¹ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series - Manufacturing, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

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

18. The *Notice* proposes the following new or revised reporting or recordkeeping requirements.

19. To implement channel sharing between LPTV and TV translator stations, stations will follow a two-step process proposed by the Commission – first filing an application for construction permit (Form 346) and then application for license (Form 347). Stations terminating operations to share a channel would be required to submit a termination notice pursuant to the existing Commission rule. These existing forms and collections will need to be revised to accommodate these new channel-sharing related filings and to expand the burden estimates. In addition, the Commission proposes that channel sharing stations submit their channel sharing agreements (CSAs) with the Commission and be required to include certain provisions in their CSAs. The existing collection concerning the execution and filing of CSAs will need to be revised.

20. To implement its proposed new digital-to-digital replacement translator service, the Commission will need to revise its existing replacement translator forms (346 and 347), rules and collections and to expand the burden estimates.

21. Should the Commission eliminate its rule requiring that television receivers include an analog tuner, prior to the time that all broadcasters are operating digital-only, it is considering requiring that all broadcast receiver manufacturers and importers who market digital-only equipment prior to the LPTV and TV translator digital transition deadline educate consumers and retailers about the devices' limits and capabilities to prevent consumer confusion.

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

22. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.²²

23. The Commission's proposal to extend the September 1, 2015 LPTV and TV Translator digital transition date will greatly minimize the impact on small entities having to complete their transition to digital. Instead of having to possibly endure the expense of having to construct a digital facility only to be displaced by the incentive auction reorganization of spectrum and having to finance the construction of a second digital facility, the Commission's proposal will allow small entities to wait until the incentive auction is complete and to determine the impact on their digital transition plan.

24. The Commission's proposal to allow LPTV and TV Translator to share channels between themselves and with other television services would greatly minimize the impact on small entities. Many stations will be displaced by the incentive auction reorganization of spectrum and allowing these stations to channel share will reduce the cost of having to build a new facility to replace the one that was displaced. Stations can share in the cost of building a shared channel facility and will experience cost savings by operating a shared transmission facility. In addition, channel sharing is voluntary and only those stations that determine that channel sharing will be advantageous will enter into this arrangement.

25. The Commission's proposed licensing and operating rules for channel sharing between LPTV and TV translator stations and other television services were designed to minimize impact on small

²² 5 U.S.C. § 603(c)(1)-(c)(4)

entities. The rules provide a streamlined method for reviewing and licensing channel sharing for these stations as well as a streamlined method for resolving cases where a channel sharing station loses its license on the shared channel. These rules were designed to reduce the burden and cost on small entities.

26. The Commission is aware that some full service television stations operate with limited budgets. Accordingly, every effort was taken to propose rules for the new digital-to-digital replacement translator that impose the least possible burden on all licensees, including small entities. Existing forms will be used to implement this new service thereby reducing the burden on small entities.

27. The Commission proposes that applications for digital-to-digital replacement translators should be given licensing priority over all other low power television and TV translator applications except displacement applications for analog-to-digital replacement translators (for which they would have co-equal priority). The Commission could have proposed allowing no such priority, but this alternative was not considered because it would result in many more mutually exclusive filings and delay the implementation of this valuable service.

28. The Commission also proposes to limit the eligibility for such service to only those full-service television stations that can demonstrate that a portion of their digital service area will not be served by their post-incentive auction facilities and for translators to be used for that purpose. Alternatively, the Commission could have allowed all interested parties to file for new translators, however such approach was not considered because it would also result in numerous mutually exclusive filings and would greatly delay implementation of this needed service.

29. The Commission further proposes that the service area of the replacement translator should be limited to only a demonstrated loss area and seeks comment on whether a replacement translator should be permitted to expand slightly a full-service station's post-incentive auction service area. Once again, the Commission could have allowed stations to file for expansion of their existing service areas but such an alternative was not seriously considered because it could result in the use of valuable spectrum that the Commission seeks to preserve for other uses.

30. The Commission proposes that replacement digital television translator stations should be licensed with "secondary" frequency use status. The Commission could have proposed that replacement translators be licensed on a primary frequency use basis, but this alternative was not proposed because it would result in numerous interference and licensing problems.

31. The Commission proposes that, unlike other television translator licenses, the license for the replacement translator should be associated with the full power station's main license. Therefore, the replacement translator license could not be separately assigned or transferred and would be renewed or assigned along with the full-service station's main license. Alternatively, the Commission could have proposed that the replacement translator license be separate from the main station's license however this approach was not seriously considered because it could result in licenses being sold or modified to serve areas outside of the loss area, and thus would undermine the purpose of this new service.

32. The Commission also tentatively concludes that the other rules associated with television translator stations should apply to the new replacement translator service including those rules concerning the filing of applications, payment of filing fees, processing of applications, power limits, out-of-channel emission limits, call signs, unattended operation, and time of operation. The alternative could have been to design all new rules for this service, but that alternative was not considered as it would adversely impact stations ability to quickly implement these new translators.

33. The Commission's proposal to discontinue accepting applications for analog-to-digital replacement translators may impact small entities. However, the Commission determined that the need to prevent a negative impact on the post-incentive auction displacement window that could occur if the precious few channels were used for this service rather than for use by displaced LPTV and TV translator stations outweighed the limited impact on full power stations seeking a replacement translator given that the DTV transition was completed over five years ago.

34. The Commission's efforts to assist LPTV and TV translator stations in finding displacement channels after the incentive auction will greatly benefit small entities. By helping stations find new channels from an ever shrinking universe of channels that will remain after the incentive auction reorganization of channels, the Commission will save small entities time and money by not having to consult with an engineer to make such determinations. Such savings can then be used to construct and operate the displacement facility.

35. The Commission seeking comment on whether to permit operation of analog radio services by digital LPTV stations as ancillary or supplementary services could greatly benefit small entity LPTV stations by allowing them to find new business operations and sources of income. LPTV stations could establish a separate radio operation on an ancillary basis in addition to their primary digital television service. Such ancillary operation could provide a separate source of income to supplement their television operation and provide a separate audience for their programming and advertising.

36. The Commission seeking comment on whether to permit equipment manufacturers to forego having to include an analog tuner in their television sets could benefit small entity equipment manufacturers. Having to include an analog tuner increases the cost of a television sets and equipment manufacturers, some of whom may be small entities, would enjoy a cost savings as a result of the Commission's proposal. Any impact that not including an analog tuner in new television sets may have upon consumers should be minimal now that the digital transition has been complete for over five years and would be outweighed by the benefit of less expensive digital television sets.

F. Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals

37. None.