104. DTV Receiver Standards – DTV Demodulation Requirement. The NAB and the NABA submit that the Commission should adopt rules requiring every new television receiver sold to include the capability to receive DTV signals. The NAB states that this requirement is needed because market forces are not working to effect DTV receiver penetration except at an extremely slow pace. It observes that current DTV receivers are not in the marketplace in great numbers and existing sales volume of DTV receivers will not support the timely conversion and recovery of spectrum envisioned by the Commission and Congress. The NAB and the NABA argue a requirement that new TV receivers be capable of tuning DTV channels is therefore needed to push the transition along quickly. They specifically propose that the Commission require all new television receivers thirteen inches and greater in diagonal screen size to be capable of receiving all frequencies allocated by the Commission to television broadcasting, including all NTSC and all DTV channels. Although the NAB and NABA conclude the increased burden on consumers is temporary and thus acceptable, other commenters have concluded otherwise. The Consumer Federation of America (CFA) argued that a tuner requirement would place a burden on consumers, especially low-income consumers who "may potentially be priced out of the market. . . ." CFA also stated that "[w]ithout more programming it is clear that there will not be a timely and complete transition to digital television. . . ."

105. The NAB argues that the Commission has authority for such action under the All Channel Receiver Act (ACRA), and that there is precedent in the all channel television receiver rules.[158] It observes that the Senate Report accompanying that legislation noted three points in favor of promoting UHF receivers that are equally applicable to DTV: 1) that this is a unique situation; 2) while there will be an increased cost, it is expected that this will be substantially reduced once the benefits of mass production are fully realized; and 3) in any event, the relatively slight increase in cost will be a small price to pay for the unlocking of the ... valuable UHF channels.[159] The NAB submits that there are obvious parallels to DTV. It states that the DTV process is a unique transition of the entire television system to digital technology. The NAB and NABA state that while the price the public will pay to purchase an all channel receiver will initially be higher, the costs of such receivers will fall substantially as production increases. And finally, they state that the higher costs will be a small price to pay for "unlocking" the valuable DTV channels and, in addition, unlocking the valuable NTSC channels to be returned for public benefit and use.

106. In addition, in their reply comments CEA and Thomson argue that the ACRA does not provide the Commission authority to require DTV tuners in every set. They argue that in passing the ACRA, Congress only intended to ensure the viability of UHF broadcasting and that it did not foresee or intend to accommodate new modes of broadcasting, particularly digital broadcasting. CEA further argues that Congress explicitly considered but rejected empowering the Commission generally to set receiver standards. Thomson argues that in the DTV proceeding, the Commission itself acknowledged the ACRA's narrow scope in this area when it found that the Act does not mandate the manufacture of so-called dual-mode receivers, i.e., receivers capable of receiving both analog and DTV signals.[160]

---

[158] 47 U.S.C. § 303(s). See Senate Report No. 87-1526, 2d Sess. (1962), reprinted in 1962 U.S.C.C.A.N Vol. 1 1880 (Senate Report); see also 47 CFR § 15.117; see also First Report and Order in Docket No. 14760, 47 FR 11698 (November 28, 1962).

[159] See First Report and Order in Docket No. 14760, supra.

[160] See Memorandum Opinion and Order/ Third Report and Order/Third Further Notice of Proposed Rule Making in MM Docket No. 87-268 (Third Report and Order), 7 FCC Rcd 6984 (1992). In the Third Report and (continued....)

107. As NAB, NABA and other commenters observe, DTV receivers are not yet available in the market in large quantities, and certainly not in sufficient volume to support a rapid transition to an all-digital broadcast television service. We request comment on whether a requirement to include DTV reception capability in certain new television sets could help to develop the production volumes needed to bring DTV prices down to where they are more attractive to consumers and thereby promote the more rapid development of high DTV set penetration. In particular, we seek comment on whether we should require that certain types of TV sets have the capability to demodulate and decode over-the-air DTV signals. Under such a requirement, TV sets would have to provide useable picture and sound commensurate with their video display and audio capabilities when receiving any of the recognized ATSC video formats. Such a requirement would not necessitate full HDTV capability in TV sets. For example, a TV set that had only NTSC level display capabilities would only have to be able to demodulate and decode DTV signals and present them at a standard definition display level equivalent to its NTSC capabilities. This capability would reduce reliance on analog television transmissions. We are, however, concerned about the potential impact of such a requirement on consumers, especially low-income consumers. We therefore seek comment on the initial projected costs of such a requirement as well as realistic estimates of those costs over time. We also seek comment on consumer television receiver purchasing patterns, especially those of low-income consumers.

108. We request comment on how best to implement DTV reception capability requirements, if we were to adopt them. We recognize that consumer electronics manufacturers would need time to implement such a requirement. The cost of DTV receiver components is still relatively high and it would not be economically feasible at this point to include DTV capability in smaller screen receivers, *i.e.*, 20 inches or less. In this regard, we understand the cost considerations associated with including DTV reception capability in TV sets now, and do not wish to impose undue costs on consumers or disrupt TV set pricing structure or the availability of TV receivers to consumers. One approach to minimize the impact of such a requirement would be to phase it in over time to take advantage of declining costs associated with electronics manufacturing volumes and apply the requirement initially only to receivers with large screen sizes, *e.g.*, 32 inches and above. Such receivers are typically higher priced units where the cost of DTV components would be a smaller percentage of the cost of a receiver. Each manufacturer would be required include DTV capability in an increasing percentage of the large screen units it markets each year.[161] Separate set-top DTV receiver could be included in meeting the reception capability requirements. As the costs of components decreases, the requirement for DTV reception capability could be applied to more units each year by reducing the threshold screen size and by increasing the portion of units that would have to comply. We seek comment on what would be an appropriate minimum screen size for an initial requirement and the schedule for extending such requirements to other receivers. We also request comment on the cost implications of DTV reception capability requirements for both consumers and manufacturers.

(Continued from previous page)
Order, the Commission sought comment on whether there was any need to require that manufacturers produce receivers capable of both NTSC and ATSC reception during the period prior to full conversion to DTV. In this context, the Commission indicated that it was concerned that it not establish manufacturing requirements that may overly or prematurely burden consumers. It also stated that the ACRA does not mandate the manufacture of dual-mode receivers. The Commission did observe, however, that some manufacturers believed that as a practical matter, in the transition period, DTV receivers will be dual mode.

[161] For example, in the first year of the requirements, 20 percent or some other percentage of each manufacturer's large screen models would be required to have DTV receive capability and this percentage would increase on some schedule in subsequent years.

109. We further request comment on whether any DTV reception capability requirements we might adopt should be based on percentages of the models marketed by each manufacturer, rather than units of production. In addition, we invite interested parties to submit other plans that would result in new TV receivers being equipped with DTV capability that would result in widespread penetration of TV receivers in households to enable the transition from analog to digital TV service consistent with the intent of Congress in Section 309(j)(14) of the Communications Act, and a discussion of the likely effectiveness of such alternative plans.[162]

110. With regard to our authority to establish requirements for DTV receiver capabilities, we observe that Section 303(s), as noted above, provides the Commission with authority to require that television receivers be capable of adequately receiving all frequencies allocated by the Commission to television broadcasting. While Congress in 1962 did not anticipate the advent of digital television service, a plain language reading of this section does not limit our authority to analog television receivers, nor does it limit our authority to channels in the UHF band. Inasmuch as the frequencies allocated to television broadcasting now include those channels allotted for DTV service, Section 303(s) provides the Commission with authority to require that television receivers be capable of adequately receiving those channels. Moreover, the ACRA's legislative history suggests that Congress' reasoning in enacting the statute supports such a conclusion.[163] We seek comment on how to construct any DTV tuner requirement consistent with any relevant statutory authority, including Section 303(s) and any other relevant sections of the Communications Act of 1934, as amended.

111. Receiver Labeling. Turning to another issue concerning digital television receivers, we observe that television receivers could be marketed that do not have the capability to receive over-the-air broadcast signals. For example, receivers intended only for use in receiving cable or direct broadcast satellite service might not include the capability to tune over-the-air broadcast television signals. While we are not aware of any such receivers that are being marketed at this time, such devices would be permissible under our rules. In this regard, the all-channel reception provisions of Section 15.117(b) of the rules would not apply to receivers that did not have any capability for receiving broadcast signals.[164] We expect that consumers will continue to expect that all digital television receivers will be able to receive over-the-air digital broadcast signals and that manufacturers therefore will continue to equip all television receivers with this capability. If, however, manufacturers do at some point chose to produce receivers that can be used with digital cable systems but cannot receive digital broadcast signals, we believe that consumers should be so notified prior to purchase. We therefore intend to explore this

[162] 47 U.S.C. § 309(j)(14).

[163] See Senate Report No. 87-1526, supra.

[164] See 47 CFR 15.117(b). We also note that in our recently adopted Report and Order in the cable compatibility proceeding, PP Docket No. 00-67, we defined three labels for digital TV receivers marketed as "cable ready" or "cable compatible." See Report and Order in PP Docket No. 00-67, FCC 00-352, released September 15, 2000. In that proceeding we specified labels for three categories of DTV receivers. A "Digital Cable Ready 1" label will indicate a receiver is capable of receiving analog basic, digital basic and digital premium cable television programming by direct connection to a cable system providing digital programming. A "Digital Cable Ready 2" label will pertain to a receiver that, in addition to the features of Digital Cable Ready 1 sets, also includes the 1394 digital interface connector that may be used for attaching the receiving device to various other consumer appliances. Finally, a "Digital Cable Ready 3" label will indicate a receiver that, in addition to the features of Digital Cable Ready 1 sets, is capable of receiving advanced and interactive digital services by direct connection to a cable system providing digital programming and advanced and interactive digital services.

question and possible Commission responses. We seek comment on whether any manufacturers are producing or plan to produce digital television receivers that can receive digital cable transmissions but are incapable of receiving digital broadcast signals off-the-air. We also seek comment on whether the Commission should require any digital television receivers that cannot receive off-the-air digital broadcast signals to carry a label informing consumers of this limitation on the receivers' functionality. Parties supporting such a labeling requirement may wish to propose labels keeping in mind our goals of ease of understanding for consumers and low cost and ease of compliance for manufacturers.

112. Update of the DTV Standard. As indicated above,[165] there has been an update to the ATSC DTV Standard since 1996, when we adopted it. When we incorporated most of the ATSC DTV Standard into our rules by reference,[166] we made reference to the version of that Standard which was the most recent iteration of the Standard at that time. Specifically, we incorporated by reference "ATSC Digital Television Standard, 16 Sep 95." However, as commenters noted, this standard has been updated since we incorporated it into our rules.[167] Accordingly, we seek comment on whether we should revise our rules to include reference the March 16, 2000, amendment to the standard. Commenters favoring revision should specify whether we should refrain from incorporating any parts of this update, as we did with regard to the eighteen video format constraints in the original ATSC DTV Standard. Additionally, we specifically do not plan on considering in regard to updating the standard comments urging us to amend the standard with regard to its 8 VSB modulation component, or to fundamentally change the standard in any other way such as, for example, by prohibiting its use of interlaced scanning, changing the audio component of the standard, or altering its frame aspect ratios.

VI. CONCLUSION

113. At the outset of this proceeding we stated that the conversion to digital is progressing and television stations are working hard to convert to DTV. The comments we received in response to the Notice have mostly further confirmed our initial impressions. We believe that the conversion is, indeed, making progress and that the actions we are taking, and proposing, herein will hasten this transition. Particularly, our choice of an early channel election for commercial licensees and our decision not to require replication of NTSC service should well conduce to allowing stations to make plans and purchase equipment at the earliest practicable times. We believe that specific receiver performance standards are neither necessary nor useful at this time but we are inclined that a mandatory phase-in of a DTV reception capability in receivers will best ensure the rapid progress of the transition at a reasonable cost to consumers. We will continue to monitor the progress toward the DTV conversion and will in future reviews take those actions needed to accomplish a smooth transition by December 31, 2006.

---

[165] See ¶¶ 57-61, supra.

[166] See 47 CFR § 73.682(d). That Section also provides that we were not incorporating into our rule any portion of the ATSC DTV Standard that made reference to 18 specific mandatory video formats, defined in terms of, e.g., screen aspect ratios, frame rates and type of scanning.

[167] See ATSC's Amendment No. 1 to A/53, 16 Mar 00.

VII. ADMINISTRATIVE MATTERS

A. Report and Order

114. Paperwork Reduction Act Analysis. This Report and Order has been analyzed with respect to the Paperwork Reduction Act of 1995, and found to impose no new or modified reporting and recordkeeping requirements or burdens on the public.

115. Additional Information. For additional information on this proceeding, please contact Roger Holberg, Mania K. Baghdadi, or Gordon Godfrey, Policy and Rules Division, Mass Media Bureau, (202) 418-2120 or Bruce Franca or Alan Stillwell of the Office of Engineering and Technology at (202) 418-2470.

116. Final Regulatory Flexibility Analysis. As required by the Regulatory Flexibility Act (RFA),[168] the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible impact on small entities of the rules adopted in this Report and Order.[169] The FRFA is set forth in Appendix B.

B. Further Notice of Proposed Rule Making

117. Comments and Reply Comments. 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 on or before April 6, 2001, and reply comments on or before May 7, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

118. Comments filed through ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment via e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

119. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW-A325, Washington, D.C. 20554.

120. Parties who choose to file paper should also submit their comments on diskette. These diskettes should be addressed to: Wanda Hardy, Paralegal Specialist, Mass Media Bureau, Policy and Rules Division, Federal Communications Commission, 445 Twelfth Street, S.W., 2-C221, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case (MM Docket No. 00-39), type of pleading

[168] 5 U.S.C. § 601 et seq.

[169] 5 U.S.C. § 604.

(comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy – Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must sent diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 445 Twelfth Street, S.W., CY-B402, Washington, D.C. 20554.

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

122. This document is available in alternative formats (computer diskette, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Martha Contee at (202) 4810-0260, TTY (202) 418-2555, or mcontee@fcc.gov.

123. Ex Parte Rules. This proceeding will be treated as a "permit-but-disclose" proceeding, subject to the "permit-but-disclose" requirements under section 1.1206(b) of the rules. 47 C.F.R. § 1.1206(b), as revised. Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making oral ex parte presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description or the views and arguments presented is generally required. See 47 C.F.R. § 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

124. Initial Regulatory Flexibility Analysis. With respect to this Further Notice, an Initial Regulatory Flexibility Analysis (IRFA) is contained in Appendix C. As required by the Regulatory Flexibility Act, see 5 U.S.C. § 603, the Commission has prepared an IRFA of the possible economic impact on small entities of the proposals contained in this Further Notice. Written public comments are requested on the IRFA. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the Further Notice, and must have a distinct heading designating them as a response to the IRFA.

125. Initial Paperwork Reduction Act Analysis. This Further Notice may contain either proposed or modified information collections. As part of our continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on the information collections contained in this Further Notice, as required by the Paperwork Reduction Act of 1996. Public and agency comments are due at the same time as other comments on the Further Notice. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected; and (c) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street, S.W., Room C-1804, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW, Washington, DC 20503 or via the Internet to

Edward.Springer@omb.eop.gov.

VIII. ORDERING CLAUSES

126. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1, 2(a), 4(i),7, and 303 of the Communications Act of 1934 as amended, 47 U.S.C. §§ 1, 2(a), 4(i), 7 and 303, Part 73 of the Commission's rules, 47 C.F.R. Part 73, IS AMENDED as set forth in Appendix A of this Report and Order.

127. IT IS FURTHER ORDERED that Sinclair Broadcasting Group, Inc.'s, Petition for Reconsideration of our denial of its Petition for Expedited Rulemaking, and Univision Communications Inc.'s, Petition for Expedited Rule Making submitted November 17, 1999, ARE DENIED.

128. IT IS FURTHER ORDERED that, pursuant to the Contract With America Advancement Act of 1996, the rule amendments set forth in Appendix A SHALL BE EFFECTIVE sixty days after publication in the Federal Register.

129. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 2(a), 4(i), 7 and 303 of the Communications Act, as amended, 47 U.S.C. §§ 151, 152(a), 154(i), 157 and 303, this Further Notice of Proposed Rule Making IS ADOPTED.

130. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order and Further Notice of Proposed Rule Making, including both the Final Regulatory Flexibility Analysis, and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary

APPENDIX A

RULE CHANGES

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

PART 73 – RADIO BROADCAST SERVICES

1. The Authority citation for Part 73 continues to read as follows:

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

2. Section 73.623 is amended by adding the following new subsection (h):

§ 73.623 DTV applications and changes to DTV allotments

* * * * *

(h) *DTV Application Processing.*

(1) DTV applications pending as of (adoption date of the Report and Order) are cut-off as of that date and shall be afforded the interference protection set forth in Section 73.622(f) of the Rules by all NTSC minor change applications and later-filed DTV applications.

(i) DTV applications pending as of (adoption date of the Report and Order) must provide the requisite interference protection set forth in Section 73.622(f) to:

(A) NTSC and DTV stations, construction permits and allotments;

(B) petitions for rulemaking for new DTV allotments for which a Commission announced comment period has passed prior to the filing date of the DTV application; and

(C) earlier-filed and accepted for filing applications for new NTSC stations submitted by: post-auction winners pursuant to Section 73.5005 of the Rules; applicants with a settlement agreement on-file with the Commission that would result in the grant of the NTSC application; and cut-off singleton applicants.

(ii) DTV applications pending as of (adoption date of the Report and Order) that do not provide the interference protection set forth in Section 73.622(f) of the Rules to other DTV applications pending as of (adoption date of the Report and Order) or petitions for rulemaking seeking the allotment of new DTV stations for which a Commission announced comment period has not passed, will be deemed mutually exclusive with those applications or petitions. Those applicants and petitioners will be notified by Public Notice and provided with a 90-day period of time to resolve their mutual exclusivity via engineering amendment or settlement. Those applications and petitions that remain mutually exclusive upon conclusion of the 90-day settlement period will be dismissed.

(2) DTV applications filed after (adoption date of Report and Order) shall be afforded the interference protection set forth in Section 73.622(f) of the Rules by all NTSC minor change applications and later-filed DTV applications. DTV applications filed after (adoption date of Report and Order) must provide the interference protection set forth in Section 73.622(f) of the Rules to the following:

(i) NTSC and DTV stations, construction permits and allotments;

(ii) earlier-filed DTV applications;

(iii) petitions for rulemaking seeking the allotment of new DTV stations for which a Notice of Proposed Rulemaking has been released and the comment deadline specified therein has passed; and

(iv) earlier-filed and accepted for filing applications for new NTSC stations submitted by: post-auction winners pursuant to Section 73.5005 of the Rules; applicants with a settlement agreement on-file with the Commission that would result in the grant of the NTSC application; and cut-off singleton applicants.

3. Section 73.625 is amended by revising paragraph (a)(1) to read as follows:

§ 73.625 DTV coverage of principal community and antenna system.

(a) Transmitter location.

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

Channels 2-6	35 dBu
Channels 7-13	43 dBu
Channels 14-69	48 dBu

* * * * *

APPENDIX B

FINAL REGULATORY FLEXIBILITY ANALYSIS
(Report and Order)

As required by the Regulatory Flexibility Act (RFA),[170] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rule Making in MM Docket No. 00-39 (Notice).[171] The Commission sought written public comment on several issues concerning the transition to digital television (DTV), including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[172]

A. Need for, and Objectives of, the Report and Order:

As described in the Report and Order and Further Notice of Proposed Rule Making (Report and Order), the nation's television system is currently engaged in the transition from analog to digital television. As part of that transition, all television broadcasters will have to file applications of various types. This might create mutual exclusivities both between DTV applicants and between DTV and analog (NTSC) applicants. The Commission will have to process those applications. The rules adopted herein are needed to, and will, govern the processing of those applications.

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

No comments were filed in response to the IRFA.

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

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[173] The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction.[174] In addition, the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act.[175] A small business concern is one

---

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

[171] 15 FCC Rcd 5257 (2000).

[172] See 5 U.S.C. § 604.

[173] 5 U.S.C. § 603(b)(3).

[174] Id. § 601(6).

[175] Id. § 601(3).

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.[176]

Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the [SBA] and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[177] Nationwide, as of 1992, there were approximately 275,801 small organizations.[178] "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000."[179] As of 1992, there were approximately 85,006 local governments in the United States.[180] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[181] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

Small TV Broadcast Stations. The SBA defines small television broadcasting stations as television broadcasting stations with $10.5 million or less in annual receipts.[182] According to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database, fewer than 800 commercial TV broadcast stations (65%) subject to our proposal have revenues of less than $10.5 million dollars. We note, however, that under SBA's definition, revenues of affiliates that are not television stations should be aggregated with the television station revenues in determining whether a concern is small. Therefore, our estimate may overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-television affiliated companies. It would appear that there would be no more than 800 entities affected.

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

None. The actions taken in the Report and Order impose no reporting, recordkeeping, or other compliance requirements on television broadcast stations, large or small. Instead, this Report and Order simply alerts licensees to the procedures that the Commission will utilize in considering DTV applications and, particularly, mutually exclusive applications. Additionally, this Report and Order adopted a channel election requirement but specifically reserved the process and procedure for a future

[176] 15 U.S.C. § 632.

[177] 5 U.S.C. § 601(4).

[178] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[179] 5 U.S.C. § 601(5).

[180] U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

[181] Id.

[182] 13 C.F.R. § 121.201 (SIC Code 4833)

DTV periodic review. Accordingly, no reporting, recordkeeping or other compliance requirements were adopted in this Report and Order with regard to channel election.

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

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.[183]

The processes adopted in the Report and Order are designed to be as simple and inexpensive to applicants as possible, including any small entities. The revised rules call for neither auctions nor hearings, alternatives which were considered and not adopted because of the Commission's belief that, inter alia, such alternatives might disadvantage small entities. The Commission declined to adopt a hearing procedure to resolve disputes because such procedures are expensive, prolonged, and likely would be precluded by Section 309(j) of the Communications Act. A second alternative would have been to go to an auction system. It is our belief, however, that in this situation an auction would have both caused delay and disadvantaged smaller entities. Therefore, we declined to adopt either of these alternatives.

During our consideration of other possible alternatives, all steps were taken to ameliorate the impact of these rules on small entities. Instead of the hearing and auction alternatives, we adopted rules that establish in cases of mutual exclusivity, that all mutually exclusive applications will be dismissed if no voluntary resolution can be arrived at within 90 days. We believe that this provision levels the playing field, and thereby protects small entities from the economic leverage that large entities could wield in either a hearing or settlement environment.

F. Report to Congress

The Commission shall send a copy of the Report and Order in MM Docket No. 00-39, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A). In addition, the Commission shall send a copy of the Report and Order in MM Docket No. 00-39, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order in MM Docket No. 00-39 and FRFA (or summaries thereof) will also be published in the Federal Register. See 5 U.S.C. § 604(b).

[183] 5 U.S.C. § 603(c).

APPENDIX C

INITIAL REGULATORY FLEXIBILITY ANALYSIS
(Further Notice of Proposed Rule Making)

As required by the Regulatory Flexibility Act (RFA),[184] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Report and Order and Further Notice of Proposed Rulemaking (Further 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 on the Further Notice provided above in paragraph 117. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). See 5 U.S.C. § 603(a). In addition, the Further Notice and the IRFA (or summaries thereof) will be published in the Federal Register. See id.

A. Need for, and Objectives of, the Proposed Rules:

Beginning in 1987, the Commission undertook to bring the most up-to-date technology to broadcast television. That resulted in several Commission decisions including those adopting a digital television (DTV) standard, DTV service rules, and a Table of DTV Allotments. The Table of DTV Allotments provides each existing television broadcaster with a second channel on which to operate a DTV station for the transition period after which one of its channels will revert to the government for use in other services. The transition deadline established by Congress is December 31, 2006. The Commission is permitted to extend that deadline on a market-by market basis if more than 15 percent of viewers will be left without service from 1) a digital television receiver; 2) an analog television receiver equipped with a digital/analog converter; or 3) a multi-channel video provider that carries local broadcast stations. The Commission is issuing this Further Notice to explore whether a requirement to include DTV reception capability in new television sets would help develop the production volumes needed to bring DTV receiver prices down quickly to where they are more attractive to consumers and thereby promote the more rapid development of high DTV set penetration, enabling compliance with the statutory transition deadline.

B. Legal Basis:

This Further Notice is adopted pursuant to sections 1, 2(a), 4(i), 7, and 303 of the Communications Act, 47 U.S.C. §§ 151, 152(a), 154(i), 157, and 303.

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

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[185] The RFA defines the term "small

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

[185] 5 U.S.C. § 603(b)(3).

entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[186] In addition, the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act.[187] 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.[188]

Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the [SBA] and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[189] Nationwide, as of 1992, there were approximately 275,801 small organizations.[190] "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000."[191] As of 1992, there were approximately 85,006 local governments in the United States.[192] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[193] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

Rules adopted in this proceeding could apply to manufacturers of DTV receiving equipment and, particularly, television receivers. The SBA has developed a definition of small entity for manufacturers of household audio and video equipment (SIC 3651). This includes 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 definition applicable to manufacturers of Household Audio and Visual Equipment. According to the SBA's regulations, a household audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.[194] Census Bureau data indicate that there are 410 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 386 of these

[186] Id. § 601(6).

[187] Id. § 601(3).

[188] 15 U.S.C. § 632.

[189] 5 U.S.C. § 601(4).

[190] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[191] 5 U.S.C. § 601(5).

[192] U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

[193] Id.

[194] 13 CFR § 121.201, (SIC Code 3651).

firms have fewer than 500 employees and would be classified as small entities.[195] The remaining 24 firms have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Furthermore, the Census Bureau category is very broad and specific figures are not available as to how many of these firms are exclusive manufacturers of television equipment, and particularly television receivers, for consumers or how many are independently owned and operated. We conclude that there are approximately 386 small manufacturers of television equipment for consumer/household use but, in any even, no more than 410 are small entities.

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

At this time, we do not expect that the proposed rules would impose any additional recordkeeping or recordkeeping requirements. However, compliance may require the manufacture of some types of DTV capable receivers. While this would have an impact on manufacturers of television receivers, it will be similarly costly for both large and small manufacturers and, in any event, the cost will ultimately be borne by the consumer. We seek comment on whether others perceive a need for extensive recordkeeping.

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

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.

The Further Notice recognizes that if the Commission were to require DTV reception capability in new television receivers that action would pose new burdens on consumer electronics manufacturers, especially in the initial period when production volumes are relatively low. The Further Notice further observes that the cost considerations associated with DTV reception capability are such that it could not be economically feasible at this point in time to include DTV capability in smaller screen receivers, i.e., 20 inches or less. We believe that as production increases, the price and size of the components needed for DTV reception will decline substantially, so that the incremental cost of including that capability in TV receivers will eventually become low. In addition, as the goal of this effort is to convert broadcast television service to digital operation, all television receivers will have to be able to receive DTV service at the end of the transition.

In order to minimize the impact of a DTV reception capability requirement on manufacturers, if the Commission were to conclude that one were needed, the Further Notice suggests a plan by which the requirement would first apply to receivers with large screen sizes, i.e., 32 inches or larger. Larger screen

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

receivers generally are more expensive units, so that the additional cost of manufacturing them with DTV capability would be a much lower percentage of the total cost than it would for smaller screen units. As discussed, the requirement would apply to only a small portion of larger screen receivers at first; over time the percentage of units that would have to have DTV reception capability would increase and the requirement would also be extended to smaller screen units in the same incremental manner. To minimize the impact on manufacturers, receivers would only be required to have the capability to receive and decode over-the-air DTV signals. Thus, TV sets subject to the requirement would only have to provide useable picture and sound commensurate with their video and sound capabilities when receiving any of the recognized ATSC video formats. The requirement as proposed would not mandate full HDTV capability in TV sets. We also requested comment on whether we should base a requirement on percentages of the models marketed by each manufacturer, rather than units of production. This should benefit small entities by allowing them to provide DTV capability in their larger receivers, with a higher profit margin, rather than requiring them to provide such capability across their product line including sets where the market is more price conscious and price sensitive.

The Further Notice also solicits comment on a proposal to require receiver manufacturers to label as such television sets that are not capable of receiving over-the-air DTV broadcasts but which, instead are intended for digital use only in conjunction with cable television and/or broadcast satellite reception. This proposed requirement is intended to provide the consuming public with easily understandable information concerning the capabilities of the receivers being purchased.

The principal alternatives for minimizing the impact of the transition on manufacturers include plans that would relax the schedule for the percentages of units required to comply. The Further Notice requests comments on this proposal and also invites interested parties to submit alternatives. The labeling proposal will be made as simple and inexpensive to comply with as possible to minimize the impact on small entity producers. Comments on how it may be made even simpler are solicited.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules:

None.

STATEMENT OF CHAIRMAN WILLIAM E. KENNARD

Re: Biennial Review - Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television

The transition to digital television will bring tremendous benefits to the public, both in enhanced broadcast services and in the return of valuable spectrum for auction. Our actions today go a long way toward moving that transition forward.

Today's decision provides broadcasters with the clarity and flexibility necessary to accelerate the build out of their DTV operations, while ensuring that all Americans will participate in the digital television future. We also reaffirm our selection of the 8-VSB ATSC transmission standard and finally put this lingering debate to rest. I appreciate the efforts of the broadcast industry to confirm that 8-VSB will serve the needs of American consumers in the digital age. I am pleased that after extensive testing of 8-VSB, including tests that compared 8-VSB with alternate transmission standards, the broadcast industry overwhelmingly supports the 8-VSB standard. Now, I encourage broadcasters and manufacturers to come together to refine and improve 8-VSB as necessary.

Finally, I believe that reception capability is a critical part of the transition puzzle. I fully support the decision to seek comment on a requirement that all DTV sets be able receive DTV programming over the air.

SEPARATE STATEMENT OF COMMISSIONER SUSAN NESS

Re: Biennial Review - Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television

Today's action is good news for industry and consumers.

I am pleased that the Commission has completed the first periodic review of the digital television transition. The issuance of this Order and Further Notice puts to rest some lingering issues that required resolution to assure a smooth transition. The broadcasting industry, together with the consumer electronics, cable television, and content industries, should now set aside division and delay, and forge ahead with the digital transition. I firmly believe that the transition from an analog terrestrial broadcast system to a digital broadcast system is in the public interest, but it must be executed in a manner least disruptive and most beneficial to consumers.

DIGITAL TRANSMISSION STANDARD

I am pleased that on the basis of industry and Commission testing, the Report and Order concludes that the 8-VSB transmission standard should not be revisited. Under the leadership of MSTV and NAB, the broadcast industry conducted comparative tests of 8-VSB and COFDM. While it found that neither system worked perfectly in all settings, the broadcast industry, with few dissents, elected to continue to embrace the industry-designed and Commission-adopted 8-VSB standard. The industry also decided to devote significant resources to improve signal reception quality.

Broadcasters deserve much credit for resolving this issue. Its decision enables he Commission to conclude with greater confidence that 8-VSB should remain the digital television transmission standard. This important decision should now spur additional research in receiver design to ensure that consumers are able to enjoy indoor reception of digital television signals.

DIGITAL RECEIVER REQUIREMENTS

While the item does not mandate receiver performance standards, we will continue to monitor receiver quality during the transition and will take appropriate action on receiver standards as necessary. I urge consumer electronics manufacturers to make the necessary investment to improve receiver performance. This is a critical component of a terrestrial broadcast regime.

I am also pleased that we ask questions, but draw no firm conclusions in the Further Notice, regarding our authority and the desirability of requiring digital broadcast reception capability in a subset of future receivers sold in the United States. We need to weigh very carefully the cost to the consumer of such a requirement, as well as its impact on the digital transition. I am also interested in submissions regarding the availability and retail cost of simple

decoders that will enable consumers to display digital programs on their analog sets.

In just 17 months, all commercial television broadcast licensees are supposed to have their digital systems up and operating. Is there adequate reception capability -- through digital receivers, decoders attached to analog sets, and cable television connectivity and program carriage – to reap the benefit of these new digital signals and to spur the production of original digital programming?

Today, the retail cost of digital receivers is prohibitively expensive for all but the most enthusiastic early adopters. Moreover, many of the sets sold today are incapable of receiving an over-the-air digital signal. Will the marketplace address this situation?

I am pleased that our Further Notice poses the question of whether digital television sets designed for cable connection should have a warning label if they are incapable of receiving and displaying a digital broadcast signal. Consumers have a right to know that information.

NEXT STEPS

Now that the uncertainty over the transmission standard is resolved, is time for all industries involved in the digital broadcast food chain to come together and redouble efforts to achieve a speedy transition that works for the American consumer. Broadcasters must increase the amount of unique digital programming to whet the appetite of consumers and to make the case for cable carriage. Equipment manufacturers must improve receivers and lower prices dramatically. The cable, broadcast, and programming industries must work together with the consumer electronics manufacturers to ensure that viewers are able to receive all available digital programming, including top-quality productions. Finally, broadcasters and cable operators must negotiate in good faith for the carriage of digital signals on systems that have been expanded.

I intend to do my part to ensure that the Commission processes applications expeditiously and resolves issues necessary to the transition.

January 19, 2001

Separate Statement of Commissioner Gloria Tristani

In the Matter of the Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MM Docket No. 00-39.

I write separately to set forth my objection to imposition of mandatory DTV reception capabilities for new television sets. As consumer advocates have repeatedly noted, any mandate that increases the cost of television sets to facilitate the transition to the digital broadcast era, unfairly burdens consumers. A mandate also reduces the likelihood that less expensive options like digital converters will be developed and deployed. The Further Notice of Proposed Rulemaking seeks information from consumers and consumer groups regarding the harm that may arise from imposition of mandatory DTV reception capabilities. I believe a well-developed record may demonstrate such a requirement is contrary to the best interests of consumers and may do little to advance the transition to digital broadcast television.

In re Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television

STATEMENT OF COMMISSIONER HAROLD W. FURCHTGOTT-ROTH CONCURRING IN PART AND DISSENTING IN PART

I concur on the matters presented in the Report and Order because I believe the Commission has taken reasonable and appropriate steps to move the digital television transition forward. The decisions set forth in the Report and Order, such as affirming the 8 VSB standard, provide a modicum of certainty that will enable television stations to plan, build, and operate digital facilities in a timely fashion.

I do, however, dissent on the DTV tuner matters raised in the Further Notice of Proposed Rulemaking. In general, I have concerns about the government forcing technology on the public rather than letting the marketplace take the lead. More specifically, I am apprehensive about requiring DTV tuners to be built into all television sets because of the costs such a policy may impose upon set manufacturers and consumers. I find that government manufacturing standards rarely benefit the public. I also call into question whether the 1962 All Channel Receiver Act, as codified in Section 303(s) of the Act, provides the Commission with the authority to require DTV tuners to be built in all television sets. This particular statute was conceived at a time when digital television was mere science fiction--Congress could not have had DTV technology in mind when it was considering this law.