

APPENDIX A: Proposed Rules

Part 2 of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

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

1. The authority citation for part 2 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 302a, 303 and 336, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

- a. Revise page 37.
- b. In the International Footnotes under heading I., revise footnotes S5.293, S5.296, and S5.297.
- c. In the list of non-Government (NG) Footnotes, revise footnotes NG149 and NG159.

The revisions and additions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
470-790 BROADCASTING	470-512 BROADCASTING Fixed Mobile S5.292 S5.293 512-608 BROADCASTING S5.297 608-614 RADIO ASTRONOMY Mobile-satellite except aeronautical mobile- satellite (Earth-to-space) 614-806 BROADCASTING Fixed Mobile	470-585 FIXED MOBILE BROADCASTING S5.291 S5.298 585-610 FIXED MOBILE BROADCASTING RADIONAVIGATION S5.149 S5.305 S5.306 S5.307 610-890 FIXED MOBILE S5.317A BROADCASTING	470-608 608-614 RADIO ASTRONOMY US74 LAND MOBILE US350 US246 614-890	470-512 BROADCASTING NG128 NG149 FIXED NG127 LAND MOBILE NG66 NG114 512-608 BROADCASTING NG128 NG149 614-698 BROADCASTING NG128 NG149 698-746 BROADCASTING NG128 FIXED MOBILE NG159	Public Mobile (22) Broadcast Radio (TV) (73) Auxiliary Broadcasting (74) Private Land Mobile (90) Broadcast Radio (TV) (73) Auxiliary Broadcasting (74) Personal (95) Broadcast Radio (TV) (73) Auxiliary Broadcasting (74) Wireless Communications (27) Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)

A-2

Federal Communications Commission

FCC 01-91

INTERNATIONAL FOOTNOTES

I. New "S" Numbering Scheme

S5.293 Different category of service: in Canada, Chile, Colombia, Cuba, the United States, Guyana, Honduras, Jamaica, Mexico, Panama and Peru, the allocation of the bands 470-512 MHz and 614-806 MHz to the fixed and mobile services is on a primary basis (see No. S5.33), subject to agreement obtained under No. S9.21. In Argentina and Ecuador, the allocation of the band 470-512 MHz to the fixed and mobile services is on a primary basis (see No. S5.33), subject to agreement obtained under No. S9.21.

S5.296 Additional allocation: in Germany, Austria, Belgium, Cyprus, Denmark, Spain, Finland, France, Ireland, Israel, Italy, Libya, Lithuania, Malta, Morocco, Monaco, Norway, the Netherlands, Portugal, Syria, the United Kingdom, Sweden, Switzerland, Swaziland and Tunisia, the band 470-790 MHz is also allocated on a secondary basis to the land mobile service, intended for applications ancillary to broadcasting. Stations of the land mobile service in the countries listed in this footnote shall not cause harmful interference to existing or planned stations operating in accordance with the Table in countries other than those listed in this footnote.

S5.297 Additional allocation: in Costa Rica, Cuba, El Salvador, the United States, Guatemala, Guyana, Honduras, Jamaica and Mexico, the band 512-608 MHz is also allocated to the fixed and mobile services on a primary basis, subject to agreement obtained under No. S9.21.

NON-GOVERNMENT (NG) FOOTNOTES

NG149 The frequency bands 54-72 MHz, 76-88 MHz, 174-216 MHz, 470-512 MHz, 512-608 MHz, and 614-698 MHz are also allocated to the fixed service to permit subscription television operations in accordance with Part 73 of the rules.

NG159 Full power analog television stations licensed and new digital television (DTV) broadcasting operations in the band 698-806 MHz shall be entitled to protection from harmful interference until the end of the DTV transition period. Low power television and television translators in the band 746-806 MHz must cease operations in the band at the end of the DTV transition period. Low power television and television translators in the band 698-746 MHz are secondary to all other operations in the band 698-746 MHz.

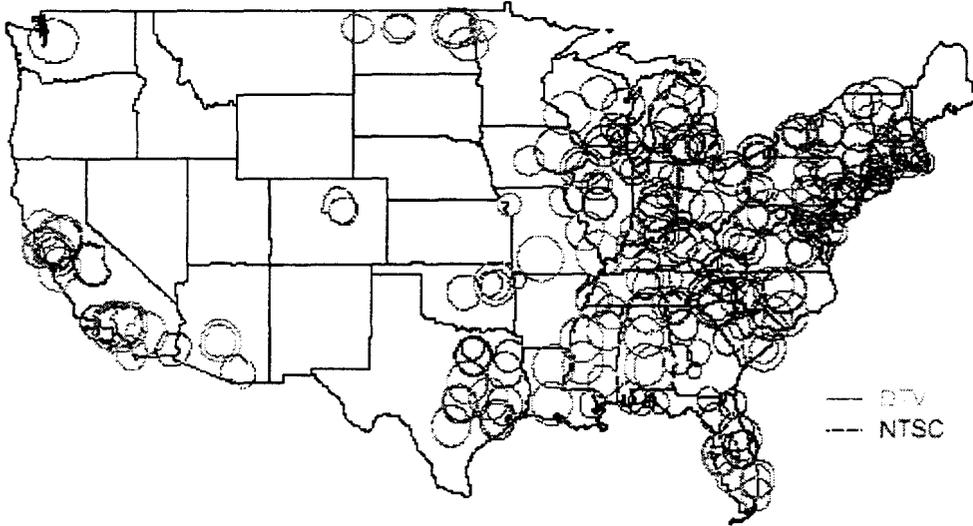
APPENDIX B: Incumbent TV Operations

The following pages contain maps showing the Grade B contours of all co-channel and adjacent channel TV stations on Channels 52-59 in the United States.

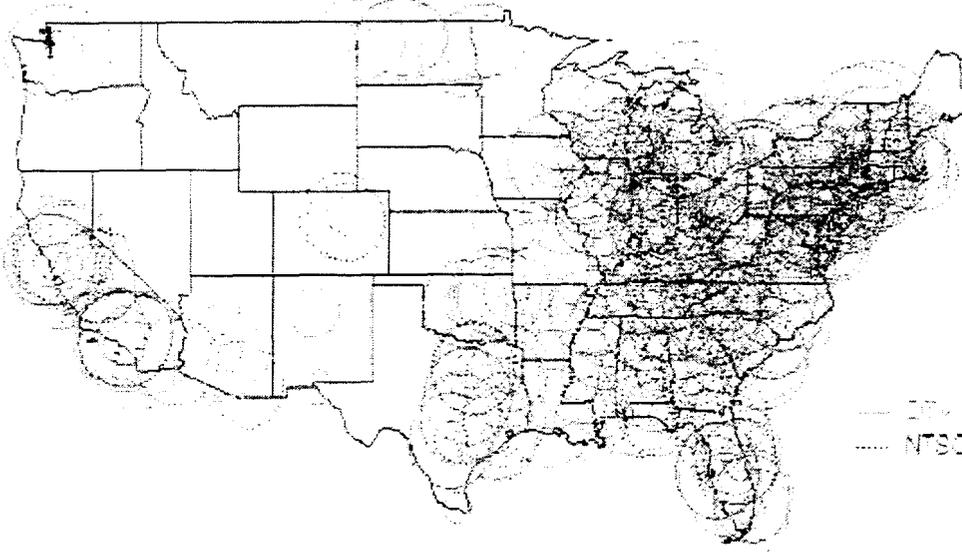
Maps Showing the Following are Attached:

Channels 52-59: DTV and NTSC Incumbents: Grade B Contours
Channels 52-59: DTV and NTSC Incumbents: Adjacent and Co-Channel Protection Zones
Channel 52: DTV and NTSC Incumbents: Adjacent and Co-Channel Protection Zones
Channel 53: DTV and NTSC Incumbents: Adjacent and Co-Channel Protection Zones
Channel 54: DTV and NTSC Incumbents: Adjacent and Co-Channel Protection Zones
Channel 55: DTV and NTSC Incumbents: Adjacent and Co-Channel Protection Zones
Channel 56: DTV and NTSC Incumbents: Adjacent and Co-Channel Protection Zones
Channel 57: DTV and NTSC Incumbents: Adjacent and Co-Channel Protection Zones
Channel 58: DTV and NTSC Incumbents: Adjacent and Co-Channel Protection Zones
Channel 59: DTV and NTSC Incumbents: Adjacent and Co-Channel Protection Zones
Channels 52-59: LPTV Stations

Channels 52 to 59: DTV & NTSC Incumbents
Grade B Contours



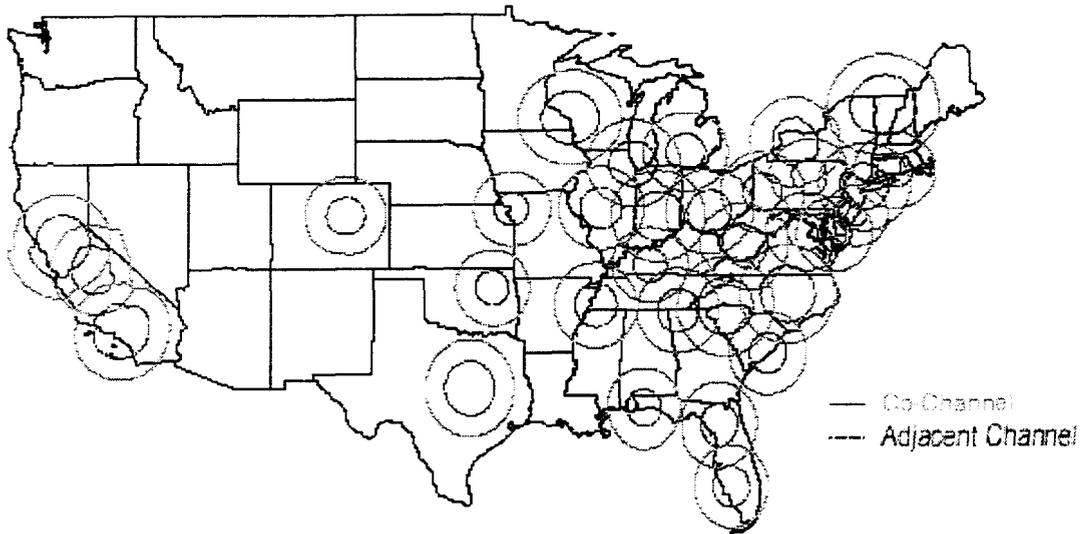
Channels 52 to 59: DTV & NTSC Incumbents
Adjacent and Co-Channel Protection Zone



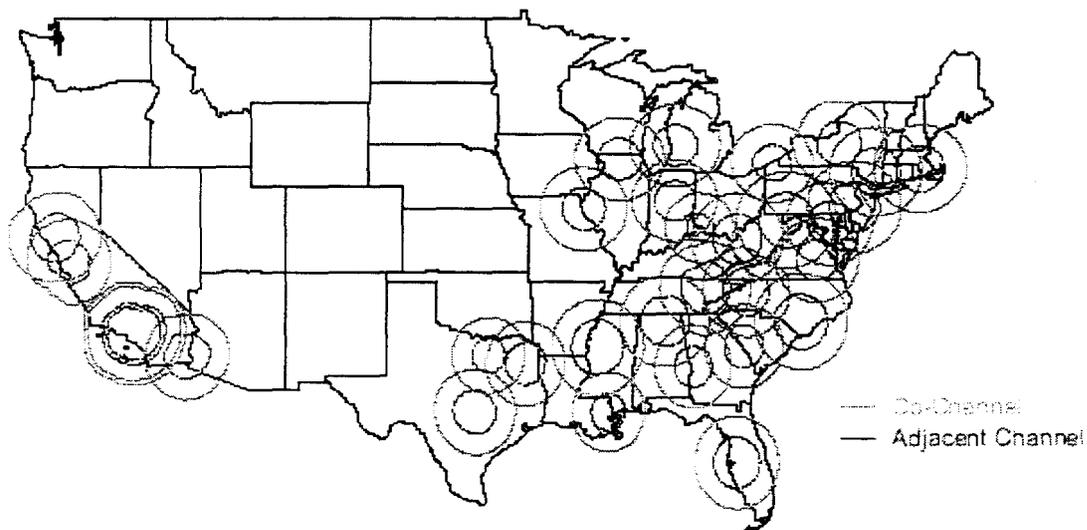
**Channel 52: DTV & NTSC Incumbents
Adjacent & Co-Channel Protection Zones**



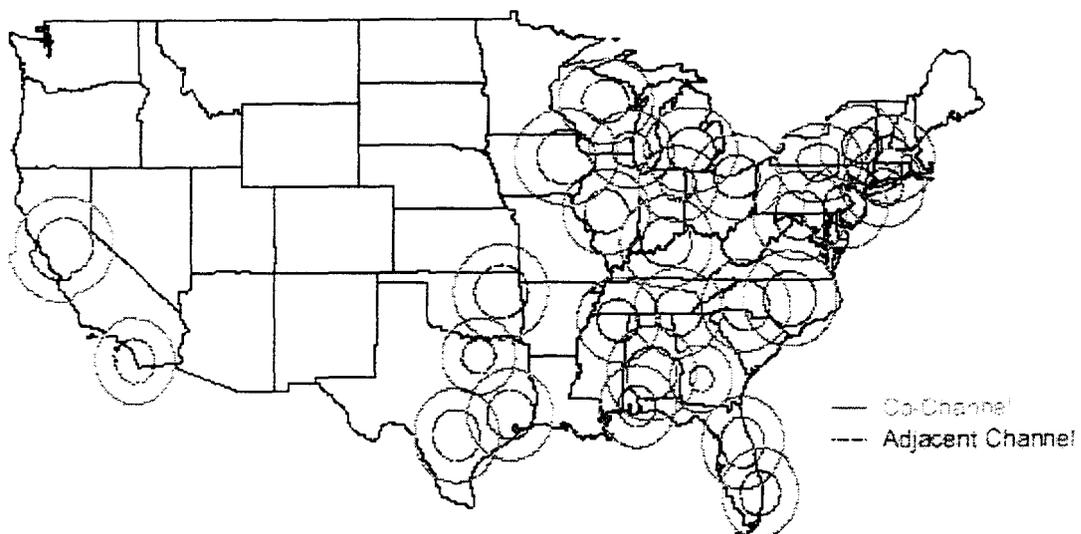
**Channel 53: DTV & NTSC Incumbents
Adjacent & Co-Channel Protection Zones**



**Channel 54: DTV & NTSC Incumbents
Adjacent & Co-Channel Protection Zones**



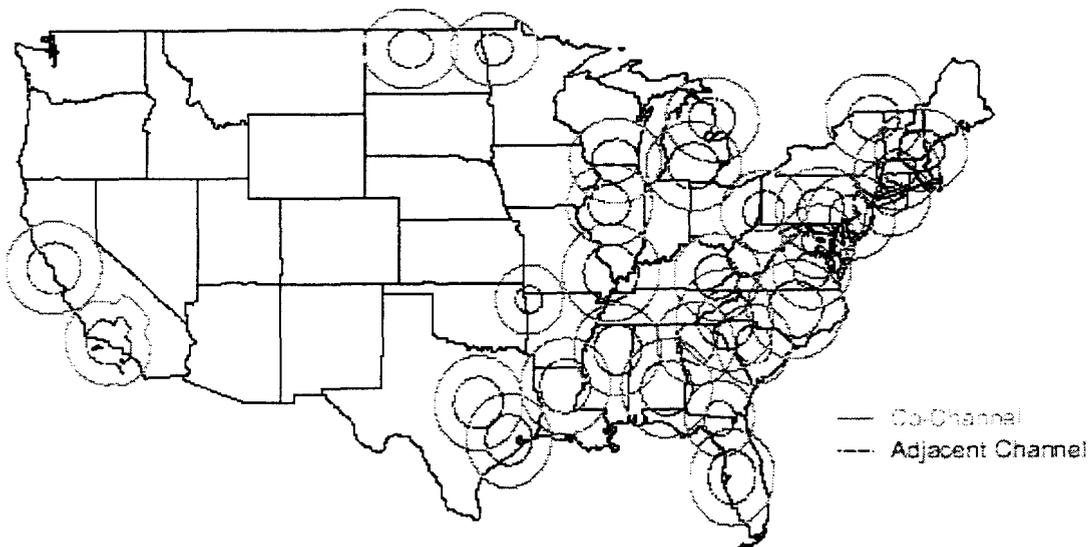
**Channel 55: DTV & NTSC Incumbents
Adjacent & Co-Channel Protection Zones**



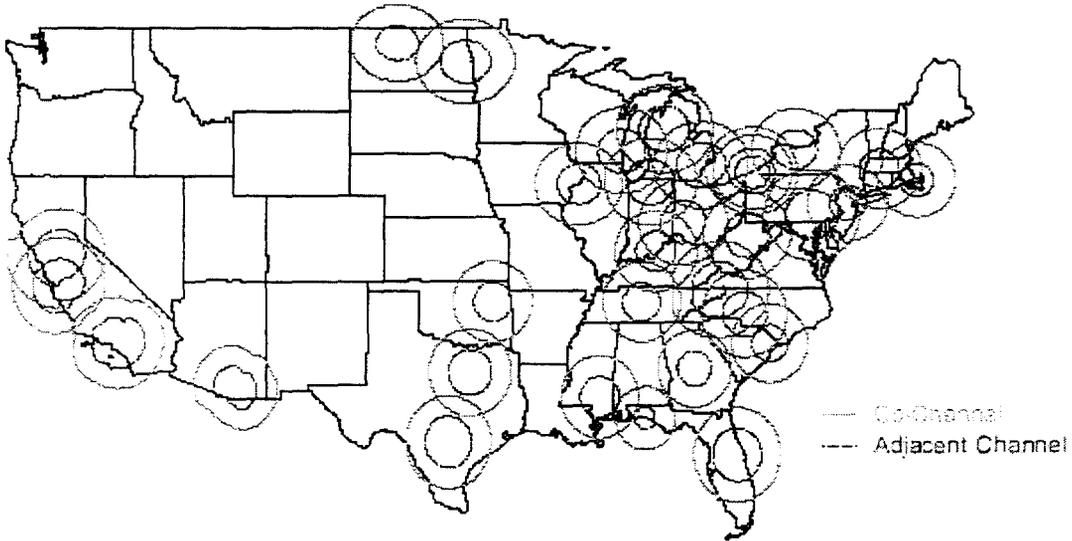
**Channel 56: DTV & NTSC Incumbents
Adjacent & Co-Channel Protection Zones**



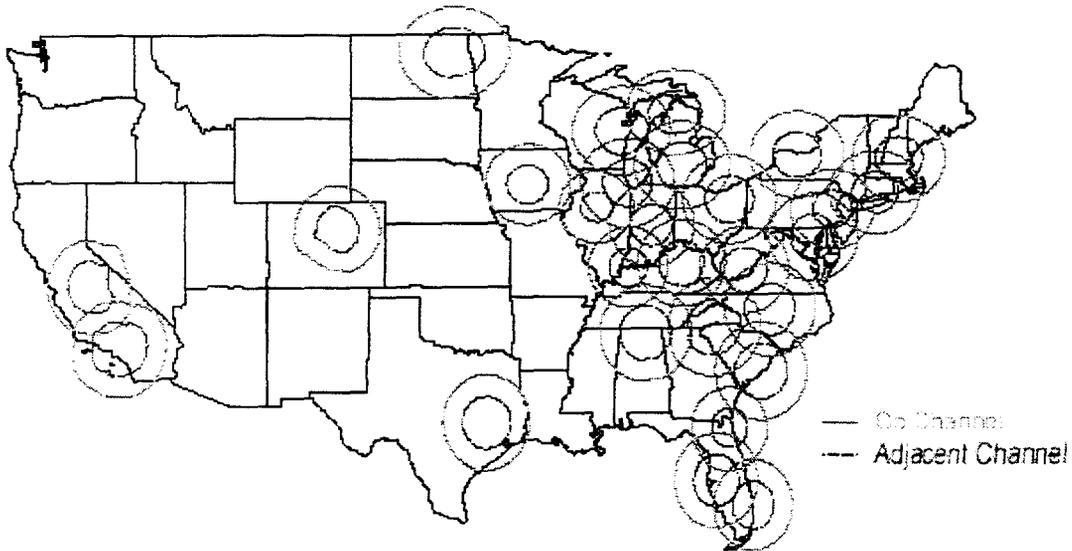
**Channel 57: DTV & NTSC Incumbents
Adjacent & Co-Channel Protection Zones**

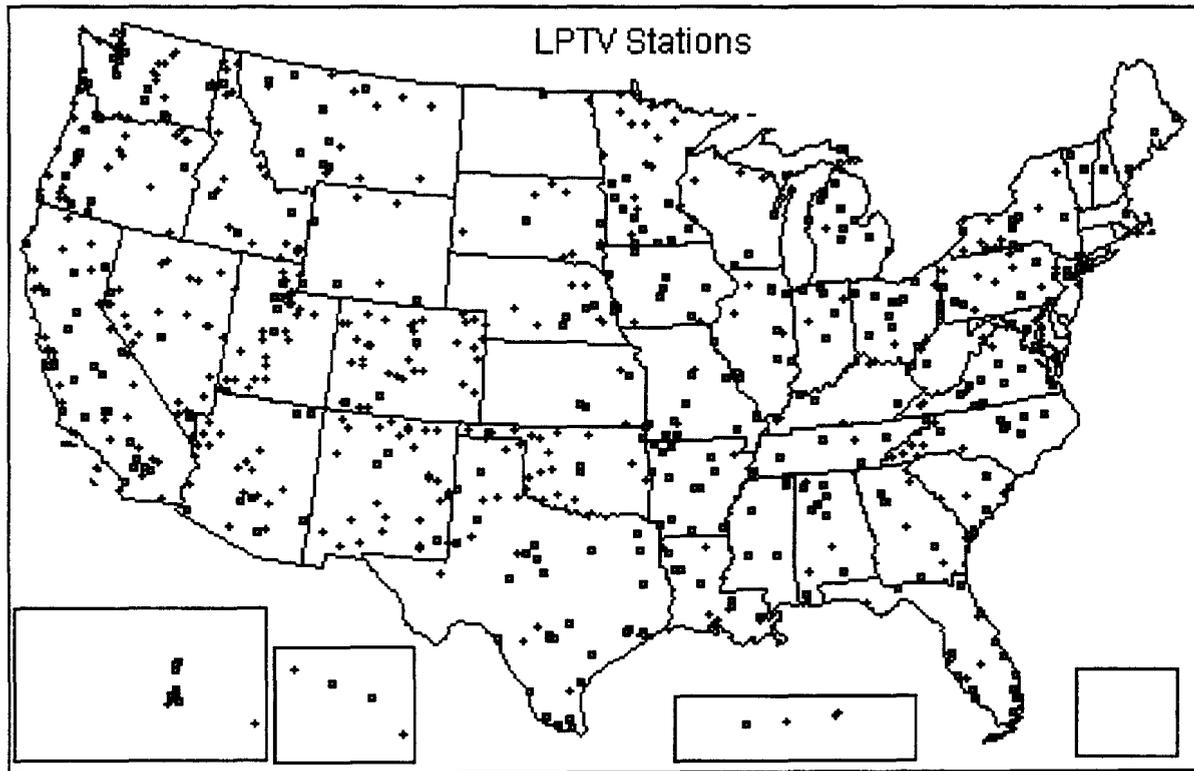


**Channel 58: DTV & NTSC Incumbents
Adjacent & Co-Channel Protection Zones**



**Channel 59: DTV & NTSC Incumbents
Adjacent & Co-Channel Protection Zones**





From: Report: 1992-01-18: 1992-01-18 / Call Area: World: 147420 / Line/Vol: 0001-01-0001 / 0001-01-0001
FCC: 1992-01-18 / Class of Station: LPTV: 147420 / Station: CP & Co
Number of stations: 147420 - 147420 / Source: 0001-01-0001

Federal Communications Commission
Office of Engineering and Technology
Technical Analysis Branch

APPENDIX C: Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (“RFA”),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (“IRFA”) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (“Notice”), GN Docket No. 01-74. 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 Notice as provided above in paragraph 141. The Commission will send a copy of the Notice, including the 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. This Notice is part of the Commission’s plan to reclaim the 698-746 MHz band (“698-746 MHz band” or “Lower 700 MHz Band”), currently used for television (“TV”) Channels 52-59, for new commercial services as part of our transition of TV broadcasting from analog to digital transmission systems, consistent with the statutory directives enacted in the Balanced Budget Act of 1997.⁴ This Notice consists of two parts. First, the Notice proposes to reallocate the 698-746 MHz band, currently used for TV Channels 52-59, from use solely for broadcast services to Fixed, Mobile, and Broadcast services. Second, the Notice proposes to adopt certain service, licensing, and competitive bidding rules for the 698-746 MHz band.

3. The Notice proposes to reallocate the entire 48 megahertz of spectrum in the 698-746 MHz band to the fixed and mobile services, and retain the existing broadcast allocation. The Notice also seeks comment on whether the band should also be allocated for satellite services.

4. In this Notice, we also propose to license the 698-746 MHz commercial band under a flexible framework established in Part 27 of the Commission’s Rules. We expect that provisions of Part 27 will be modified to reflect the particular characteristics and circumstances of services offered through the use of spectrum on these bands. Depending on the extent and nature of provisions in the service rules that enable broadcast services, these modifications may also reference or incorporate rules in other Parts of the Commission’s Rules, such as Part 73 governing broadcast services. We believe that this flexible approach will encourage new and innovative services and technologies in this band without significantly limiting the range of potential uses for this spectrum.

5. The Notice proposes to apply the same small business definitions here that the Commission adopted for the Upper 700 MHz Band. In particular, the Notice proposes to define a “small business” as an

¹ 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) (“CWAA”). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ See Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (1997).

entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a “very small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. The Notice reflects the Commission’s belief that the services that will be deployed in this band will have similar capital requirements to the commercial services in the Upper 700 MHz Band, and thus proposes to apply the same small business definitions. The Notice also observes that new licensees both in this band and the Upper 700 MHz Band may be presented with similar issues and costs, including those involved in relocating incumbents and developing markets, technologies, and services. The Notice also seeks alternative standards proposals, and specifically seeks comment on whether we should adopt an additional definition for entities with average annual gross revenues for the three preceding years of not more than \$3 million.⁵

6. Among our principal objectives in this proceeding are: (1) to license these commercial spectrum blocks through competitive bidding, as directed by the Balanced Budget Act of 1997; (2) to accommodate the introduction of new uses of spectrum and the enhancement of existing uses; (3) to implement the Section 303(y) requirement that flexible use allocations not create harmful interference or discourage investment; (4) to facilitate the awarding of licenses to entities that value them the most. The Commission seeks to develop a regulatory plan for these commercial spectrum blocks that will allow for efficient licensing and intensive use of the band, eliminate unnecessary regulatory burdens, enhance the competitive potential of the band, and provide a wide variety of radio services to the public.

B. Legal Basis for Proposed Rules

7. This action is authorized under Sections 1, 2, 4(i), 7, 10, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 316, 319, 324, 331, 332, 333, 336, 337, 614 and 615 of the Communications Act of 1934, 47 U.S.C. §§ 151, 152, 154(i), 157, 160, 201, 202, 208, 214, 301, 302a, 303, 307, 308, 309, 310, 311, 316, 319, 324, 331, 332, 333, 336, 337, 534, 535.

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

8. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.⁶ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction” under section 3 of the Small Business Act⁷ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁸ Under the Small Business Act, a “small business concern” is one which: (1)

⁵ See *supra* NPRM paras. 120-21.

⁶ See 5 U.S.C. § 604(a)(3).

⁷ See *id.* § 601(6).

⁸ See *id.* § 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, (continued....)”

is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁹ According to SBA reporting data, there were approximately 4.44 million small business firms nationwide in 1992.¹⁰ A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹¹ Nationwide, as of 1992, there were approximately 275,801 small organizations.¹² “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.”¹³ As of 1992, there were approximately 85,006 local governments in the United States.¹⁴ This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.¹⁵ 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 (96 percent) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

9. The proposals in this Notice affect applicants who wish to provide services in the 698-746 MHz band. The Notice proposes to apply the same small business definitions here that the Commission adopted for the Upper 700 MHz Band. In particular, the Notice proposes to define a “small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a “very small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million.¹⁶ The Notice reflects the Commission’s belief that the services that will be deployed in this band will have similar capital requirements to the commercial services in the Upper 700 MHz Band, and thus proposes to apply the same small business definitions. The Notice also observes that new licensees both in this band and the Upper 700 MHz Band may be presented with similar issues and costs, including those involved in relocating incumbents and developing markets, technologies, and services. The Notice also seeks alternative standards proposals, which consider the impact of our band plan on small business size

(Continued from previous page) _____

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.

⁹ See 15 U.S.C. § 632.

¹⁰ See 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).

¹¹ See 5 U.S.C. § 601(4).

¹² See 1992 Economic Census, U.S. Bureau of the Census, Table 6.

¹³ See 5 U.S.C. § 601(5).

¹⁴ See U.S. Dept. of Commerce, Bureau of the Census, “1992 Census of Governments.”

¹⁵ *Id.*

¹⁶ See 47 C.F.R. § 27.502(a)(1)-(2); see also Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 99-168, *First Report and Order*, 15 FCC Rcd 476, 529-31, ¶¶ 131-36 (2000) (*Upper 700 MHz First Report and Order*). These definitions are consistent with the Commission’s approach in the broadband PCS services. See 47 C.F.R. § 24.720(b).

standards. The Notice specifically seeks comment on whether we should adopt an additional definition for entities with average annual gross revenues for the three preceding years of not more than \$3 million.

10. The Commission used these same small business size definitions for Blocks C and F broadband PCS licensees.¹⁷ This regulation defining “small business” and “very small business” in the context of broadband PCS auctions has been approved by the SBA.¹⁸ The Commission has also adopted this same definition for 746-764 and 776-794 MHz applicants.¹⁹

11. The Commission, however, has not yet determined or proposed how many licenses will be awarded, nor will it know how many entities will seek small business or very small business status until the auction process begins. Even after that, the Commission will not know how many licensees will partition their license areas or disaggregate their spectrum blocks, if partitioning and disaggregation are allowed. In view of our lack of knowledge of the entities which will seek licenses in the 698-746 MHz band, we therefore assume that, for purposes of our evaluations and conclusions in the IRFA, all of the prospective licenses are small entities, as that term is defined by the SBA or our proposed definitions for these bands.

12. **Wireless services.** The policies and rules proposed in the Notice would affect all small entities that seek to acquire licenses in wireless services in the Lower 700 MHz Band currently used for television broadcasts on Channels 52-58, or are incumbent television broadcasters on Channels 52-58.²⁰ As noted *supra*, we propose to use the small and very small business size standard adopted in the PCS proceeding.²¹ No channelization plan or licensing plan has been proposed or adopted for the Lower 700 MHz Band. Therefore, no reasonable estimate can be made at this time of the potential number of small entities that might become licensees in the Lower 700 MHz Band.²²

13. **Television Broadcast.** The SBA defines a television broadcasting station as a small business where it is independently owned and operated, is not dominant in its field of operation, and has no more than \$10.5 million in annual receipts.²³ Television broadcasting stations consist of establishments primarily

¹⁷ See 47 C.F.R. § 24.720(b)

¹⁸ See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5581-82 ¶ 115 (1994).

¹⁹ See 47 C.F.R. § 27.210(b)(1)-(2).

²⁰ See *supra* text accompanying NPRM note 2.

²¹ See *supra* NPRM paras. 120-21. We note that the SBA generic size standard applicable to Radiotelephone (Wireless) companies provides that a small entity is a radiotelephone company employing no more than 1,500 persons. See 13 C.F.R. § 121.201 (NAICS code 513322). According to the Bureau of the Census, only 12 radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. See *1992 Census, Series UC92-S-1*, at Table 5 (SIC code 4812). Therefore, even if all 12 of these firms were wireless companies, nearly all wireless carriers were small businesses under the SBA's definition.

²² See *supra* IRFA para. 8 (numbers of small entities nationwide).

²³ See 13 C.F.R. § 121.201 (NAICS code 51312).

engaged in broadcasting visual programs by television to the public, except cable and other pay television services.²⁴ Included in this industry are commercial, religious, educational, and other television stations.²⁵ Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.²⁶ There were 1,509 television stations operating in the nation in 1992, of which 1,155 produced less than \$10.0 million in revenue (76.5 percent).²⁷ As of May 31, 1998, official Commission records indicate that 1,579 full power television stations, 2,089 low power television stations, and 4,924 television translator stations were licensed.²⁸ Using the percentage of television broadcasting licensees that were small entities in 1992 (76.5 percent), we conclude that there are approximately 1,208 full power television stations that are small entities.

14. The rules may affect approximately 1,663 television stations, approximately 1,281 of which are considered small businesses.²⁹ The proposed rules will affect some 12,717 radio stations, approximately 12,209 of which are small businesses.³⁰ These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. There are also 2,366 LPTV stations.³¹ Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

15. Auxiliary or Special Broadcast. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable SBA

²⁴ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995).

²⁵ *Id.*

²⁶ *Id.*

²⁷ FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, Appendix A-9. The amount of \$10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

²⁸ FCC News Release, June 19, 1998.

²⁹ We use the 77 percent figure of TV stations operating at less than \$10 million for 1992 and apply it to the 2000 total of 1,663 TV stations to arrive at 1,281 stations categorized as small businesses.

³⁰ We use the 96% figure of radio station establishments with less than \$5 million revenue from data presented in the year 2000 estimate (*FCC News Release*, September 30, 2000) and apply it to the 12,717 individual station count to arrive at 12,209 individual stations as small businesses.

³¹ FCC News Release, "Broadcast Station Totals as of September 30, 2000."

definition is that noted previously, under the SBA rules applicable to television broadcasting stations.³² The Commission estimates that there are approximately 2,700 translators and boosters. The FCC does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses if viewed apart from any associated broadcasters. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (\$10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.³³

16. We invite comment on this analysis.

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

17. Entities interested in acquiring initial licenses to use spectrum in the 698-746 MHz band will be required to submit short form applications to participate in an auction and high bidders will be required to apply for their individual licenses.³⁴ The proposals under consideration in this item also include requiring commercial licenses to make showings that they are in compliance with construction requirements, file applications for license renewals, and make certain other filings as required by the Communications Act and Commission regulations. In addition to the general licensing requirements of Part 27 of the Commission's Rules, other parts may be applicable to commercial licensees, depending on the nature of service provided. For example, commercial licensees proposing to provide broadcast services on these bands may be required to comply with all or part of the broadcast-specific regulations in Part 73 of the Commission's Rules. We request comment on how these requirements can be modified to reduce the burden on small entities and still meet the objectives of the proceeding.

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

18. 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.³⁵

19. In this Notice, we seek comment on a number of proposals and alternatives regarding the

³² 13 C.F.R. § 121.201 (NAICS code 51312).

³³ 15 U.S.C. § 632.

³⁴ See *supra* NPRM para. 116.

³⁵ 5 U.S.C. § 603(c).

reallocation of, and service rules for, the 698-746 MHz band. This Notice seeks to adopt rules that will reduce regulatory burdens, promote innovative services and encourage flexible use of this spectrum. It opens up economic opportunities to a variety of spectrum users, including small businesses. We consider various proposals and alternatives partly because we seek to minimize, to the extent possible, the economic impact on small businesses.

20. In the Notice, we propose to reallocate the entire 48 megahertz of spectrum in the 698-746 MHz band to the fixed and mobile services, and to retain the existing broadcast allocation.³⁶ The Notice tentatively concludes that service rules for this band should implement flexible use for the full range of proposed allocated services consistent with necessary interference requirements. We seek comment on how this approach will impact small entities.

21. We seek comment on various alternative licensing and service rules. The Notice seeks comment on a number of issues relating to how the Commission should craft service rules for this spectrum, that could have an impact on small entities. With respect to the size of spectrum blocks for licensees, we seek comment on whether we should license the spectrum as a single 48 megahertz block or as two or more blocks, and how the size of spectrum blocks would impact small entities.³⁷ With respect to service areas, we propose a geographic area approach and seek comment on the appropriate size of service areas. We ask for comment on whether smaller geographic areas would better serve the needs of small entities.³⁸ We propose to permit geographic partitioning and spectrum disaggregation, which promotes efficient spectrum use and economic opportunity for small business entities.³⁹ We also seek comment on whether we should permit licensees to lease their licensed spectrum usage rights. Spectrum leasing could benefit small businesses because many different types of spectrum users (including small businesses) would be permitted to satisfy their spectrum needs without having to acquire a license or go through the Commission's procedures for assigning or transferring control of a license or a partial license through partitioning, disaggregation, or partial assignment.⁴⁰ With respect to spectrum aggregation, we seek comment on whether we should abstain from counting the 698-746 MHz band against the Commercial Mobile Radio Services ("CMRS") spectrum cap, and how this would impact the marketplace, which includes the impact on small entities.⁴¹

22. The Notice proposes the small business definitions for bidders in auctions of licenses in the counting the 698-746 MHz band: a "small business" would be defined as an entity with average annual gross revenues for the three preceding years not exceeding \$40 million, and a "very small business" would be defined as an entity with average annual gross revenues for the three preceding years not exceeding \$15 million. As discussed above, these definitions are consistent with the definitions the Commission applied to

³⁶ See *supra* NPRM para. 14.

³⁷ See *supra* NPRM paras. 46-47.

³⁸ See *supra* NPRM paras. 53-57.

³⁹ See *supra* NPRM para. 106.

⁴⁰ See *supra* NPRM paras. 55, 87.

⁴¹ See *supra* NPRM para. 91.

broadband PCS and the Upper 700 MHz Band. We have also sought comment on whether alternative approaches may be appropriate in light of the particular characteristics of this band. For example, the Notice seeks comment on whether to adopt an additional definition for entities with average annual gross revenues for the three preceding years of not more than \$3 million. The Notice also proposes to provide qualifying “small businesses” that participate in an auction with a bidding credit of 15%, and “very small businesses” with a 25% bidding credit. The Commission has previously found that bidding credits provide adequate opportunities for small businesses of varying sizes to participate in spectrum auctions.⁴² The Notice also seeks comment on whether, if we adopt a third small business definition for entities with average annual gross revenues of not more than \$3 million for the past three years, the 35% bidding credit set out in Section 1.2110(f)(2)(i) should be made available to such entities. In addition, small business may combine any additional tribal lands bidding credits pursuant to Section 1.2110(f)(3) of the rules with the proposed small business bidding credits.

23. The regulatory burdens contained in the Notice, such as filing applications on appropriate forms, are necessary in order to ensure that the public receives the benefits of innovative new services, or enhanced existing services, in a prompt and efficient manner. We will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities. We seek comment on significant alternatives commenters believe we should adopt.

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

24. None.

⁴² See Amendment of Part 1 of the Commission’s Rules - Competitive Bidding Procedures, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 404, ¶ 47 (*Part 1 Third Report and Order*).

SEPARATE STATEMENT OF COMMISSIONER GLORIA TRISTANI
Approving in Part, Dissenting in Part

Re: Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), GEN Docket No. 01-74

In 1997, the Commission adopted a comprehensive Table of Allotments for the introduction of Digital Television (DTV) and concluded that, while channel 60-69 spectrum could be recovered early, other reclaimed spectrum would only be recovered “at the end of the transition period.”¹ Today, the Commission suggests that we alter course by proposing ways to promote early recovery of spectrum in channels 52-59.

My views expressed in the upper 700 MHz proceeding extend to this Notice.² I do not support a presumption that the public is better served by loss of existing television service than by delay in receiving new services. My convictions run even deeper here given the Commission’s previous commitment to preserve the lower 700 MHz band for broadcast services until the end of the transition. I thus respectfully dissent from the band clearing proposals.

The 1997 DTV Table of Allotment decision was based on sound principles of spectrum management. The Commission could not locate all stations’ DTV channel allotments within the “core” broadcast spectrum (currently channels 2-51), so it placed 165 DTV stations in channels 52-59 as a transitional measure pending final placement within the core. The Commission stated that “the public interest is best served by developing a Table of DTV Allotments that meets the DTV spectrum needs of broadcasters during the transition; facilitates the early recovery of spectrum from channels 60-69; and also facilitates the eventual recovery of [other] spectrum currently being used for analog broadcasting.”³ Consistent with this approach, pending applicants that were either displaced from the core or from channels 60-69 were later allowed to seek temporary refuge in this band as well.

Later in 1997, Congress mandated an auction of this spectrum by September 30, 2002. In doing so, however, Congress did not suggest that we encourage early recovery of the spectrum. To the contrary, although the Commission had just announced that reclaimed spectrum would be recovered at the end of the DTV transition, Congress proceeded to define the end of the transition as 2006 or beyond.⁴

¹ DTV 6th Report and Order, 12 FCC Rcd 14588, 14590 para. 1 (1997).

² See Separate Statement of Commissioner Gloria Tristani, Service Rules for 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, *Third Report and Order*, WT Docket No. 99-168 (Jan. 19, 2001); Separate Statement of Commissioner Gloria Tristani, Service Rules for 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 99-168 (June 30, 2000).

³ DTV 6th Report and Order, 12 FCC Rcd at 14625, para. 76.

⁴ 47 U.S.C. § 309(j)(14).

With the auction date looming, however, the majority proposes policies to promote band clearing in channels 52-59. Unless Congress directs this agency otherwise, I do not believe we should change course. I support the DTV Table of Allotment and the spectrum transition plan adopted in 1997. The DTV transition should be guided by sound principles of spectrum management, not auction consequences.

In the end, these band clearing proposals may have little effect other than fueling false expectations of available spectrum. Today, roughly 100 NTSC and 165 DTV incumbents are in channels 52-59. These proposals alone are unlikely to clear substantial swaths of spectrum. Nonetheless, my commitment to free, over-the-air broadcast services and our DTV transition plan compel me to dissent from these proposals.