Therefore, rather than apply the presumptions that we established in the Upper 700 MHz Band for analyzing voluntary band-clearing proposals, we will not adopt any rules, and will instead rely on our basic responsibility to consider any regulatory requests related to band clearing in the Lower 700 MHz Band on a case-by-case basis, considering all relevant public interest factors.[549] Broadcasters seeking to implement early band-clearing agreements must generally comply with existing broadcast rules and policies. Accordingly, we do not extend to the Lower 700 MHz Band the extended DTV construction period that was provided to certain single-channel broadcasters in connection with the arrangements for early clearing of the Upper 700 MHz Band.[550]

b. Other Issues

185. Although we did not seek comment in the *Notice* on broader issues relating the DTV transition process generally, a number of broadcast commenters urge the Commission to adopt proposals that they have been advocating in the Commission's DTV and DTV must-carry proceedings. NAB and MSTV, for example, argue that the Commission should not focus on relocating incumbents, but should instead adopt DTV must-carry and receiver requirements.[551] NAB also urges the imposition of inter-operability standards for DTV sets and cable systems.[552] We believe that these requests in this

(Continued from previous page)
reallocated spectrum before January 1, 2001 (*see* 47 U.S.C. § 337(b)(2)). That deadline was subsequently accelerated. *See* Consolidated Appropriations Act, 2000, Pub. L. No. 106-113, 113 Stat. 2502, App. E, § 213; 145 Cong. Rec. H12493-94 (Nov. 17, 1999). By contrast, the statutory deadline of September 30, 2002 by which the Commission is to reclaim and organize the spectrum currently used by broadcasters in the Lower 700 MHz Band has remained unchanged since it was first enacted in the BBA 97. *See* 47 U.S.C. § 309(j)(14)(C)(ii); *see also* BBA 97 § 3007 (reproduced at 47 U.S.C. § 309(j) note 3).

[549] We delegate to the Chief, Mass Media Bureau authority to evaluate in the first instance regulatory requests submitted in connection with band-clearing agreements. In considering such requests, we will consider whether grant of the request would result in public interest benefits, such as making new or expanded wireless services available to consumers or deploying wireless service to rural or other underserved communities. We intend to weigh these benefits against any likely public interest costs, such as the loss of any of the four stations in the designated market area with the largest audience share, the loss of the sole service licensed to the local community, the loss of a community's sole service on a channel reserved for noncommercial educational broadcast service, or a negative effect on the pace of the DTV transition in the market. *Cf. Upper 700 MHz MO&O and FNPRM*, 15 FCC Rcd at 20868-72 ¶¶ 57-66 (consideration of public interest factors in review of regulatory requests to implement voluntary band-clearing agreements for the Upper 700 MHz band); *Upper 700 MHz Third Report and Order*, 16 FCC Rcd at 2709-2712 ¶¶ 13-17, 2716-17 ¶¶ 32-33 (public interest review and processing of "three-way" Upper 700 MHz band-clearing arrangements).

[550] *See Upper 700 MHz Third Report and Order Reconsideration* at ¶¶ 7-11. Pursuant to our recent decision in the *DTV Periodic Reconsideration Order*, we clarify that all broadcasters, including those in the Lower 700 MHz Band, must comply with the same "use-or-lose" replication deadline that will generally be applied to all other DTV broadcasters. *See* Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television, MM Docket No. 00-39, *Memorandum Opinion and Order on Reconsideration*, 16 FCC Rcd 20594, 20597-98 ¶ 10, 20602-07 ¶¶ 20-33 (2001). In that order, we temporarily deferred the replication deadlines (*i.e.*, the deadline by broadcasters would have to replicate fully their analog service areas with DTV service or lose interference protection to unserved areas), and stated that we will establish a new firm date for all broadcasters in the next DTV periodic review proceeding. *See id.* The new replication deadline may be earlier, but will not be later than, the end of 2006 or the date by which a market meets the statutory 85 percent digital penetration target, whichever is later. *See id.* at 29603-4 ¶ 24.

[551] *See* NAB Comments at 10-11; MSTV Comments at 12-13

[552] *See* NAB Comments at 11.

proceeding do not raise distinctive or additional factual or policy considerations that justify departure from the broad determinations made or under consideration in those other proceedings. We therefore defer consideration of those requests to the proper proceedings.

186. Cox Broadcasting supports the proposal in the *Notice* to permit incumbent broadcasters to share spectrum in time and/or bits in order to facilitate the efficient use of the Lower 700 MHz Band.[553] Cox observes that "[t]here is no reason to prohibit parties from inventing creative market solutions to promote efficient use of spectrum."[554] We agree that incumbent broadcasters and new 700 MHz Band licensees should not be constrained from developing new and innovative approaches to band clearing, however, we decline to adopt a rule of general applicability for approving sharing arrangements at this time, particularly in light of the limited record before us.[555] While we do not adopt a general sharing rule at this time, we will consider any such proposal on a case-by-case basis.

IV. PROCEDURAL MATTERS

187. Final Regulatory Flexibility Act Analysis. As required by Section 603 of the Regulatory Flexibility Act ("RFA"),[556] an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in Appendix C of the *Notice of Proposed Rulemaking* in this proceeding.[557] The Commission sought written public comment on the proposals set forth in the *Notice*, including comment on the IRFA. Appendix C of this Report and Order contains the Commission's Final Regulatory Flexibility Analysis ("FRFA") in compliance with the RFA, as amended by the Contract with America Advancement Act of 1996 ("CWAAA"), Pub. L. No. 104-121, 110 Stat. 847 (1996).

188. Paperwork Reduction Act of 1995 Analysis. This Report and Order contains either a new or modified information collection. As part of our continuing effort to reduce paperwork burdens, we invite the public and other government agencies to take this opportunity to comment on the information collection contained in this Report and Order, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due sixty days from publication of this Report and Order in the Federal Register. Comments should address the following: (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) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) 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. A copy of any comments on the information collections contained herein should be submitted to: Judy Boley, Federal Communications Commission, 445 12th Street, S.W., Room 1-C804, Washington, D.C. 20554, or via the Internet to jboley@fcc.gov, and to Edward C. Springer, OMB Desk Officer, 10236 New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503 or via the Internet to

[553] *See* Cox Reply at 9.

[554] *See id.*

[555] We note that this idea was also proposed in the Upper 700 MHz Band proceeding. *See Upper700 MHz MO&O and FNPRM*, 15 FCC Rcd at 20885 ¶ 104; *Upper 700 MHz Third Report and Order*, 16 FCC Rcd at 2727-28 ¶¶ 57-59.

[556] *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").

[557] *Notice*, 16 FCC Rcd 7349-7356 App. C

Edward.Springer@omb.eop.gov.

V. ORDERING CLAUSES

189. Accordingly, IT IS ORDERED, pursuant to Sections 1, 2, 4(i), 5(c), 7, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 331, 332, 333, 336, 614 and 615 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 155(c), 157, 201, 202, 208, 214, 301, 302a, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 331, 332, 333, 336, 534, 535, that this REPORT AND ORDER is hereby ADOPTED and Parts 2, 27 and 73 of the Commission's rules, 47 C.F.R. Parts 2, 27 and 73, ARE AMENDED to establish service rules for the 698-746 MHz band, as set forth in Appendix B, effective sixty (60) days after publication in the Federal Register. The information collections contained in these rules will become effective seventy (70) days after publication in the Federal Register, following OMB approval, unless a notice is published in the Federal Register stating otherwise.

190. IT IS FURTHER ORDERED that AUTHORITY IS HEREBY DELEGATED to the Mass Media Bureau to implement the policies for the introduction of new wireless services and to promote the early transition of incumbent analog television licensees to DTV service TO THE EXTENT DISCUSSED HEREIN.

191. IT IS FURTHER ORDERED that a 45-day filing window period WILL COMMENCE on January 22, 2002 and WILL END March 8, 2002 for applicants to amend their pending proposals in accordance with the policies and procedures set forth in paragraph 45 of this Report and Order.

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

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDIX A:

List of Parties Filing Comments in GN Docket No. 01-74

A. Comments

1. The Association for Maximum Service Television, Inc. ("MSTV")
2. Association of America's Public Television Stations ("APTS")
3. Baltic Telecom Cooperative, Inc. ("Baltic")
4. Cellular South Licenses, Inc. ("Cellular South")
5. Cellular Telecommunications & Internet Association ("CTIA")
6. Coalition for Rural Opportunities in Wireless ("CROW")
7. Davis Television Wausau, LLC, *et al.* ("Davis")
8. Gila River Indian Community ("Gila River")
9. Golden West Communications, Inc. d/b/a Vivian Telephone Company ("Golden West")
10. Golden West Technologies ("GWT")
11. Golden West Telecommunications Cooperative, Inc. ("GWTC")
12. HIC Broadcast, Inc. ("HIC")
13. Interstate Telecommunications Cooperative, Inc. ("Interstate")
14. James Valley Telecommunications ("JVT")
15. Kennebec Telephone Co. ("Kennebec")
16. KM Communications, Inc. and KM LPTV of Atlanta, L.L.C. ("KM")
17. KNME-TV / University of New Mexico ("KNME-TV")
18. Leap Wireless International, Inc. ("Leap")
19. McCook Telephone Cooperative, Inc. ("McCook")
20. Midstate Communications, Inc. ("Midstate")
21. National Association of Broadcasters ("NAB")
22. National Telephone Cooperative Association ("NTCA")
23. Pappas Telecasting of America, a California Limited Partnership ("Pappas")
24. Qwest Wireless, LLC ("Qwest")
25. RC Communications, Inc. ("RC")
26. Roberts County Telephone Cooperative Assn. ("Roberts")
27. The Rural Telecommunications Group ("RTG")
28. SDN Communications ("SDN")
29. Shared Spectrum Company ("Shared Spectrum")
30. Society of Broadcast Engineers, Inc. ("SBE")
31. Splitrock Telecom Cooperative, Inc. ("Splitrock")
32. TCA, Inc. ("TCA")
33. Television Capital Corporation ("TCC")
34. U.S. Cellular Corporation ("U.S. Cellular")
35. Valley Telecommunications Cooperative, Inc. ("Valley")
36. The WB Television Network ("WB")
37. West River Cooperative Telephone Co. ("West River")
38. WLNY-TV Inc. ("WLNY-TV")

B. Reply Comments

1. Block Communications, Inc. ("Block")
2. Cox Broadcasting, Inc. ("Cox")

3. HIC Broadcast, Inc. ("HIC")
4. Leap Wireless International, Inc. ("Leap")
5. Paxson Communications Corporation ("Paxson")
6. The Rural Telecommunications Group ("RTG")
7. Sully Buttes Telephone Cooperative, Inc. ("SBTC")
8. Union Telephone Co. ("Union")
9. U.S. Cellular Corporation ("U.S. Cellular")

C. *Ex Parte* Communications

1. ACME Communications, Inc. ("ACME")
2. ArrayComm, Inc. ("ArrayComm")
3. National Telephone Cooperative Association ("NTCA")
4. Pappas Telecasting Companies and Pappas Telecasting of America, a California Limited Partnership (collectively "Pappas")
5. The Rural Telecommunications Group ("RTG")
6. The WB Television Network ("WB")

APPENDIX B: Final Rules

Parts 2, 27, and 73 of Title 47 of the Code of Federal Regulations are amended to read 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 read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

470-849 MHz (UHF)					Page 37
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	470-585 FIXED MOBILE BROADCASTING S5.291 S5.298	470-608	470-512 BROADCASTING NG128 NG149 FIXED NG127 LAND MOBILE NG66 NG114	Public Mobile (22) Broadcast Radio (TV) (73) Auxiliary Broadcasting (74) Private Land Mobile (90)
	512-608 BROADCASTING S5.297	585-610 FIXED MOBILE BROADCASTING RADIONAVIGATION		512-608 BROADCASTING NG128 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
	608-614 RADIO ASTRONOMY Mobile-satellite except aeronautical mobile-satellite (Earth-to-space)	S5.149 S5.305 S5.306 S5.307 610-890 FIXED	608-614 RADIO ASTRONOMY US74 LAND MOBILE US350 US246		Personal (95)
	614-806 BROADCASTING Fixed Mobile	MOBILE S5.317A BROADCASTING	614-890	614-698 BROADCASTING NG128 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
				698-746 BROADCASTING NG128 FIXED MOBILE NG159	Wireless Communications (27) Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)

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 of Frequency Allocations 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-FEDERAL 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.

* * * * *

PART 27 – MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

3. The authority citation for Part 27 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

4. The table of contents for Part 27 is amended by adding subpart H as follows:

* * * * *

Subpart H – Competitive Bidding Procedures for the 698-746 MHz Band

5. Section 27.1 is amended by adding a subparagraph (3) to paragraph (b) to read as follows:

§ 27.1 Basis and purpose.

* * * * *
(b) * * *
* * * * *
(3) 698-746 MHz.
* * * * *

6. Section 27.3 is amended by redesignating paragraph (n) as paragraph (p), and by adding new paragraphs (n) and (o) to read as follows:

§ 27.3 Other applicable rule parts.

* * * * *
(n) *Part 73.* This part sets forth the requirements and conditions applicable to radio broadcast services.
(o) *Part 90.* This part sets forth the requirements and conditions applicable to private land mobile radio services.
* * * * *

7. Section 27.5 is amended by adding a new paragraph (c) to read as follows:

§ 27.5 Frequencies.

* * * * *
(c) *698-746 MHz band.* The following frequencies are available for licensing pursuant to this part in the 698-746 MHz band:
(1) Three paired channel blocks of 12 megahertz each are available for assignment as follows:

Block A: 698-704 MHz and 728-734 MHz;
Block B: 704-710 MHz and 734-740 MHz; and

Block C: 710-716 MHz and 740-746 MHz.

(2) Two unpaired channel blocks of 6 megahertz each are available for assignment as follows:

Block D: 716-722 MHz; and
Block E: 722-728 MHz.

8. Section 27.6 is amended by adding a new paragraph (c) to read as follows:

§ 27.6 Service areas.

* * * * *

(c) *698-746 MHz band.* WCS service areas for the 698-746 MHz band are as follows.

(1) Service areas for Blocks A, B, D, and E in the 698-746 MHz band are based on Economic Area Groupings (EAGs) as defined in paragraph (b)(2) of this section.

(2) Service areas for Block C in the 698-746 MHz band are based on cellular markets comprising Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs) as defined by Public Notice Report No. CL-92-40 "Common Carrier Public Mobile Services Information, Cellular MSA/RSA Markets and Counties," dated January 24, 1992, DA 92-109, 7 FCC Rcd 742 (1992), with the following modifications:

(i) The service areas of cellular markets that border the U.S. coastline of the Gulf of Mexico extend 12 nautical miles from the U.S. Gulf coastline.

(ii) The service area of cellular market 306 that comprises the water area of the Gulf of Mexico extends from 12 nautical miles off the U.S. Gulf coast outward into the Gulf.

9. Section 27.10 is amended by revising paragraphs (a) and (b), and subparagraph (1) of paragraph (c) to read as follows:

§ 27.10 Regulatory Status.

* * * * *

(a) *Single authorization.* Authorization will be granted to provide any or a combination of the following services in a single license: common carrier, non-common carrier, private internal communications, and broadcast services. A licensee may render any kind of communications service consistent with the regulatory status in its license and with the Commission's rules applicable to that service. An applicant or licensee may submit a petition at any time requesting clarification of the regulatory status for which authorization is required to provide a specific communications service.

(b) *Designation of regulatory status in initial application.* An applicant shall specify in its initial application if it is requesting authorization to provide common carrier, non-common carrier, private internal communications, or broadcast services, or a combination thereof.

(c) * * *

(1) * * *

(i) * * *

(ii) Add to the pending request in order to obtain common carrier, non-common carrier, private internal communications, or broadcast services status, or a combination thereof, in a single license.

* * * * *

10. Section 27.11 is amended by adding a new paragraph (d) to read as follows:

§ 27.11 Initial authorization.

* * * * *

(d) *698-746 MHz band.* Initial authorizations for the 698-746 MHz band shall be for 6 or 12 megahertz of spectrum in accordance with § 27.5(c) of this part.

(1) Authorizations for Blocks A and B, consisting of two paired channels of 6 megahertz each, will be based on those geographic areas specified in § 27.6(c)(1).

(2) Authorizations for Block C, consisting of two paired channels of 6 megahertz each, will be based on those geographic areas specified in § 27.6(c)(2).

(3) Authorizations for Blocks D and E, consisting of an unpaired channel block of 6 megahertz each, will be based on those geographic areas specified in § 27.6(c)(1).

11. Section 27.13 is amended by revising paragraph (b) to read as follows:

§ 27.13 License Period.

* * * * *

(b) *698-764 MHz and 776-794 MHz bands.* Initial authorizations for the 698-764 MHz and 776-794 MHz bands will extend until January 1, 2015, except that a part 27 licensee commencing broadcast services will be required to seek renewal of its license for such services at the termination of the eight-year term following commencement of such operations.

12. Section 27.50 is amended by redesignating paragraph (c) as paragraph (d), adding a new paragraph (c), and revising the heading of Table 1, which follows paragraph (d), to read as follows:

§ 27.50 Power and antenna height limits.

* * * * *

(c) The following power and antenna height requirements apply to stations transmitting in the 698-746 MHz band:

(1) Fixed and base stations are limited to a maximum effective radiated power (ERP) of 50 kW, with the limitation on antenna heights as follows:

(i) Fixed and base stations with an ERP of 1000 watts or less must not exceed an antenna height of 305 m height above average terrain (HAAT) except when the power is reduced in accordance with Table 1 of this section;

(ii) The antenna height for fixed and base stations with an ERP greater than 1000 watts but not exceeding 50 kW is limited only to the extent required to satisfy the requirements of § 27.55(b) of this part.

(2) Control and mobile stations are limited to 30 watts ERP.

(3) Portable stations (hand-held devices) are limited to 3 watts ERP.

(4) Maximum composite transmit power shall be measured over any interval of continuous transmission using instrumentation calibrated in terms of RMS-equivalent voltage. The measurement results shall be properly adjusted for any instrument limitations, such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, etc., so as to obtain a true maximum composite measurement for the emission in question over the full bandwidth of the channel.

(5) Licensees intending to operate a base or fixed station at a power level greater than 1 kW ERP must provide advanced notice of such operation to the Commission and to licensees authorized in their area of operation. Licensees that must be notified are all licensees authorized under this part to operate a base or fixed station on an adjacent spectrum block at a location within 75 km of the base or fixed station

operating at a power level greater than 1 kW ERP. Notices must provide the location and operating parameters of the base or fixed station operating at a power level greater than 1 kW ERP, including the station's ERP, antenna coordinates, antenna height above ground, and vertical antenna pattern, and such notices must be provided at least 90 days prior to the commencement of station operation.

(d) * * *

TABLE 1 – PERMISSIBLE POWER AND ANTENNA HEIGHTS FOR BASE AND FIXED STATIONS IN THE 698-764 MHZ AND 777-792 MHZ BANDS

* * * * *

13. Section 27.53 is amended by redesignating paragraph (f) as paragraph (g), and adding a new paragraph (f) to read as follows:

§ 27.53 Emission limits.

* * * * *

(f) For operations in the 698-746 MHz band, the power of any emission outside a licensee's frequency band(s) of operation shall be attenuated below the transmitter power (P) within the licensed band(s) of operation, measured in watts, by at least 43 + 10 log (P) dB. Compliance with this provision is based on the use of measurement instrumentation employing a resolution bandwidth of 100 kilohertz or greater. However, in the 100 kilohertz bands immediately outside and adjacent to a licensee's frequency block, a resolution bandwidth of at least 30 kHz may be employed.

(g) * * *

* * * * *

14. Section 27.55 is amended to read as follows:

§ 27.55 Signal strength limits.

(a) *Field strength limits.* For the following bands, the predicted or measured median field strength at any location on the geographical border of a licensee's service area shall not exceed the value specified unless the adjacent affected service area licensee(s) agree(s) to a different field strength. This value applies to both the initially offered service areas and to partitioned service areas.

(i) 2305-2320 and 2345-2360 MHz bands: 47 dBμ V/m.

(ii) 698-764 and 776-794 MHz bands: 40 dBμ V/m.

(b) *Power flux density limit.* For base and fixed stations operating in the 698-746 MHz band, with an effective radiated power (ERP) greater than 1 kW, the power flux density that would be produced by such stations through a combination of antenna height and vertical gain pattern must not exceed 3000 microwatts per square meter on the ground over the area extending to 1 km from the base of the antenna mounting structure.

15. Section 27.57 is amended by designating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 27.57 International coordination.

(a) * * *

(b) Operation in the 698-764 MHz and 776-794 MHz bands is subject to international agreements between Mexico and Canada. Unless otherwise modified by international treaty, licenses must not cause interference to, and must accept harmful interference from, television broadcast operations in Mexico and Canada.

16. Section 27.60 is amended by revising introductory text, and paragraphs (a) and (b) to read as follows:

§ 27.60 TV/DTV interference protection criteria.

Base, fixed, control, and mobile transmitters in the 698-764 MHz and 776-794 MHz frequency bands must be operated only in accordance with the rules in this section to reduce the potential for interference to public reception of the signals of existing TV and DTV broadcast stations transmitting on TV Channels 51 through 68.

(a) * * *

(1) The minimum D/U ratio for co-channel stations is:

(i) 40 dB at the hypothetical Grade B contour (64 dBμV/m) (88.5 kilometers (55 miles)) of the TV station;

(ii) For transmitters operating in the 698-746 MHz frequency band, 23 dB at the equivalent Grade B contour (41 dBμV/m) (88.5 kilometers (55 miles)) of the DTV station; or

(iii) For transmitters operating in the 746-764 MHz and 776-794 MHz frequency bands, 17 dB at the equivalent Grade B contour (41 dBμV/m) (88.5 kilometers (55 miles)) of the DTV station.

(2) * * *

(b) *TV stations and calculation of contours.* The methods used to calculate TV contours and antenna heights above average terrain are given in §§ 73.683 and 73.684 of this chapter. Tables to determine the necessary minimum distance from the 698-764 MHz or 776-794 MHz station to the TV/DTV station, assuming that the TV/DTV station has a hypothetical or equivalent Grade B contour of 88.5 kilometers (55 miles), are located in § 90.309 of this chapter and labeled as Tables B, D, and E. Values between those given in the tables may be determined by linear interpolation. Distances for station parameters greater than those indicated in the tables should be calculated in accordance with the required D/U ratios, as provided in paragraph (a) of this section. The locations of existing and proposed TV/DTV stations during the period of transition from analog to digital TV service are given in Part 73 of this chapter and in the final proceedings of MM Docket No. 87-268.

(1) Licensees of stations operating within the ERP and HAAT limits of § 27.50 must select one of four methods to meet the TV/DTV protection requirements, subject to Commission approval:

(i) Utilize the geographic separation specified in the tables referenced below;

(ii) When station parameters are greater than those indicated in the tables, calculate geographic separation in accordance with the required D/U ratios, as provided in paragraph (a) of this section;

(iii) Submit an engineering study justifying the proposed separations based on the actual parameters of the land mobile station and the actual parameters of the TV/DTV station(s) it is trying to protect; or,

(iv) Obtain written concurrence from the applicable TV/DTV station(s). If this method is chosen, a copy of the agreement must be submitted with the application.

(2) The following is the method for geographic separations.

(i) Base and fixed stations that operate in the 746-764 MHz and 777-792 MHz bands having an antenna height (HAAT) less than 152 m. (500 ft.) shall afford protection to co-channel and adjacent channel TV/DTV stations in accordance with the values specified in Table B (co-channel frequencies based on 40 dB protection) and Table E (adjacent channel frequencies based on 0 dB protection) in § 90.309 of this chapter. Base and fixed stations that operate in the 698-746 MHz band having an antenna height (HAAT) less than 152 m. (500 ft.) shall afford protection to adjacent channel DTV stations in accordance with the values specified in Table E in § 90.309 of this chapter, shall afford protection to co-channel DTV stations by providing 23 dB protection to such stations' equivalent Grade B contour (41

dBμV/m), and shall afford protection to co-channel and adjacent channel TV stations in accordance with the values specified in Table B (co-channel frequencies based on 40 dB protection) and Table E (adjacent channel frequencies based on 0 dB protection) in § 90.309 of this chapter. For base and fixed stations having an antenna height (HAAT) between 152-914 meters (500-3,000 ft.) the effective radiated power must be reduced below 1 kilowatt in accordance with the values shown in the power reduction graph in Figure B in § 90.309 of this chapter. For heights of more than 152 m. (500 ft.) above average terrain, the distance to the radio path horizon will be calculated assuming smooth earth. If the distance so determined equals or exceeds the distance to the hypothetical or equivalent Grade B contour of a co-channel TV/DTV station (*i.e.*, it exceeds the distance from the appropriate Table in § 90.309 of this chapter to the relevant TV/DTV station), an authorization will not be granted unless it can be shown in an engineering study (*see* paragraph (b)(1)(iii) of this section) that actual terrain considerations are such as to provide the desired protection at the actual Grade B contour (64 dBμV/m for TV and 41 dBμV/m for DTV stations) or unless the effective radiated power will be further reduced so that, assuming free space attenuation, the desired protection at the actual Grade B contour (64 dBμV/m for TV and 41 dBμV/m coverage contour for DTV stations) will be achieved. Directions for calculating powers, heights, and reduction curves are listed in § 90.309 of this chapter for land mobile stations. Directions for calculating coverage contours are listed in §§ 73.683-685 of this chapter for TV stations and in § 73.625 of this chapter for DTV stations.

(ii) Control, fixed, and mobile stations (including portables) that operate in the 776-777 MHz and 792-794 MHz bands and control and mobile stations (including portables) that operate in the 698-746 MHz, 747-762 MHz and 777-792 MHz bands are limited in height and power and therefore shall afford protection to co-channel and adjacent channel TV/DTV stations in the following manner:

(A) For control, fixed, and mobile stations (including portables) that operate in the 776-777 MHz and 792-794 MHz bands and control and mobile stations (including portables) that operate in the 747-762 MHz and 777-792 MHz band, co-channel protection shall be afforded in accordance with the values specified in Table D (co-channel frequencies based on 40 dB protection for TV stations and 17 dB for DTV stations) in § 90.309 of this chapter.

(B) For control and mobile stations (including portables) that operate in the 698-746 MHz band, co-channel protection shall be afforded to TV stations in accordance with the values specified in Table D (co-channel frequencies based on 40 dB protection) and to DTV stations by providing 23 dB protection to such stations' equivalent Grade B contour (41 dBμV/m).

(C) For control, fixed, and mobile stations (including portables) that operate in the 776-777 MHz and 792-794 MHz bands and control and mobile stations (including portables) that operate in the 698-746 MHz, 747-762 MHz, and 777-792 MHz band, adjacent channel protection shall be afforded by providing a minimum distance of 8 kilometers (5 miles) from all adjacent channel TV/DTV station hypothetical or equivalent Grade B contours (adjacent channel frequencies based on 0 dB protection for TV stations and -23 dB for DTV stations).

(D) Since control, fixed, and mobile stations may affect different TV/DTV stations than the associated base or fixed station, particular care must be taken by applicants/licensees to ensure that all appropriate TV/DTV stations are considered (*e.g.*, a base station may be operating within TV Channel 62 and the mobiles within TV Channel 67, in which case TV Channels 61, 62, 63, 66, 67 and 68 must be protected). Control, fixed, and mobile stations shall keep a minimum distance of 96.5 kilometers (60 miles) from all adjacent channel TV/DTV stations. Since mobiles and portables are able to move and communicate with each other, licensees must determine the areas where the mobiles can and cannot roam in order to protect the TV/DTV stations.

(iii) * * *

* * * * *

17. A new subpart H is added to read as follows:

Subpart H – Competitive Bidding Procedures for the 698-746 MHz Band

§ 27.701 698-746 MHz band subject to competitive bidding.

Mutually exclusive initial applications for licenses in the 698-746 MHz band are subject to competitive bidding procedures. The procedures set forth in part 1, subpart Q, of this chapter will apply unless otherwise provided in this part.

§ 27.702 Designated entities.

(a) *Eligibility for small business provisions.*

(1) An entrepreneur is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. This definition applies only with respect to licenses in Block C (710-716 MHz and 740-746 MHz) as specified in § 27.5(c)(1).

(2) A very small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $15 million for the preceding three years.

(3) A small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $40 million for the preceding three years.

(4) A consortium of entrepreneurs, a consortium of very small businesses, or a consortium of small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the applicable definition in paragraphs (a)(1), (a)(2) or (a)(3) of this section. Where an applicant or licensee is a consortium of entrepreneurs, a consortium of very small businesses, or a consortium of small businesses, the gross revenues of each entrepreneur, very small business, or small business shall not be aggregated.

(b) *Bidding credits.* A winning bidder that qualifies as an entrepreneur or a consortium of entrepreneurs as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter. A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter.

PART 73 – RADIO BROADCAST SERVICES

18. The authority citation for Part 73 continues to read as follows:

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

19. Section 73.622 is amended to revise subparagraph (2) of paragraph (a) to read as follows:

§ 73.622 Digital television table of allotments.

(a) * * *

(1) * * *

(2) Petitions requesting a change in the channel of an initial allotment must specify a channel in the range of channels 2-58.

* * * * *

3. Section 73.3572 is amended by revising subparagraph (4) of paragraph (a) to read as follows:

§ 73.3572 Processing of TV broadcast, Class A TV broadcast, low power TV, TV translator and TV booster station applications.

(a) * * *
* * * * *
(4) * * *
(ii) * * * Where such an application is mutually exclusive with applications for new low power TV, TV translator or TV booster stations, or with other nondisplacement relief applications for facilities modifications of Class A TV, low power TV, TV translator or TV booster stations, priority will be afforded to the displacement application(s) to the exclusion of other applications, provided the permittee or licensee had tendered its initial application for a new LPTV or TV translator station to operate on channels 52-69 prior to the August 2000 filing window.
* * * * *

APPENDIX C: Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act ("RFA"),[1] an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in Appendix C of the *Notice of Proposed Rulemaking (NPRM)* issued in this proceeding.[2] The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. Only one commenter, NTCA, addressed the IRFA directly.[3] This Final Regulatory Flexibility Analysis ("FRFA") examines the possible significant economic impact on small entities by the policies and rules adopted in this Report and Order and conforms to the RFA.[4]

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

2. In the Report and Order, the Commission adopts rules to reclaim and reallocate 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.[5] This Report and Order reallocates the entire 48 megahertz of spectrum in the 698-746 MHz band to fixed and mobile services, while retaining the existing broadcast allocation. The Report and Order establishes technical criteria designed to protect incumbent television operations in the band during the digital television ("DTV") transition period, allows low power television ("LPTV") and TV translator stations to retain secondary status and operate in the band after the transition, and sets forth a mechanism by which pending broadcast applications may be amended to provide analog or digital service in the core television spectrum or to provide digital service on TV Channels 52-58. The decision to reallocate this band in a manner that will permit new licensees to provide a broad range of services was guided by the Commission's previously announced policies favoring flexible spectrum allocations.[6] This reallocation is also consistent with the Commission's obligations under Sections 303(y) and 309(j)(3) of the Communications Act of 1934, as amended (the "Act").[7]

3. The Report and Order also establishes service rules for the 698-746 MHz band using the flexible regulatory framework in Part 27 of the Commission's rules. In particular, the band plan for the Lower 700 MHz Band divides this spectrum into three 12-megahertz blocks (with each block consisting of a pair of 6-megahertz segments) and two 6-megahertz blocks of contiguous, unpaired spectrum. The Commission will license the five blocks in the Lower 700 MHz Band plan as follows: the two 6-megahertz blocks of contiguous unpaired spectrum, as well as two of the three 12-megahertz blocks of paired spectrum, will be assigned over six Economic Area Groupings ("EAGs"); the remaining 12 megahertz block

[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* Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), GN Docket No. 01-74, *Notice of Proposed Rulemaking*, 16 FCC Rcd 7278, 7349-7356 App. C (2001)(*Notice*).

[3] *See* NTCA Comments at 5-6.

[4] *See* 5 U.S.C. § 604.

[5] *See* Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (1997).

[6] *See* Principles for Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millennium, *Policy Statement*, 14 FCC Rcd 19868, 19879-80 ¶ 25 (1999).

[7] 47 U.S.C. §§ 303(y), 309(j)(3).

of paired spectrum will be licensed over 734 Metropolitan Statistical Areas ("MSAs") and Rural Service Areas ("RSAs"). The service rules have been designed to promote the objectives identified in Section 309(j) of the Act, including the development and rapid deployment of new technologies, products, and services for the benefit of the public; the promotion of economic opportunity and competition; the recovery of a portion of the value of the spectrum made available for commercial use; and the efficient and intensive use of the spectrum.[8]

4. Although the decisions in the Report and Order were patterned on the approach adopted for the Upper 700 MHz Band, the Report and Order adopts a geographic area licensing approach to assign licenses in the Lower 700 MHz Band that includes smaller license areas than were established for the Upper 700 MHz Band. As with the Upper 700 MHz Band, the Report and Order for the Lower 700 MHz Band also uses relatively small spectrum block sizes. As noted above, the 48 megahertz of spectrum that comprises the Lower 700 MHz Band will be licensed with two six-megahertz blocks of contiguous unpaired spectrum and two 12-megahertz blocks of paired spectrum over 6 EAGs. The remaining 12-megahertz block of paired spectrum will be licensed over 734 MSAs/RSAs.

5. The use of these small license areas also is intended to satisfy the Commission's obligations in prescribing characteristics of licenses to "promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women."[9] Establishing such small license areas also furthers the Commission's obligation to "prescribe area designations and bandwidth assignments that promote ... economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women."[10]

6. The Report and Order also establishes competitive bidding rules and voluntary clearing procedures for the Lower 700 MHz Band. Consistent with the Commission's responsibility under Section 309(j) to promote opportunities for, and disseminate licenses to, a wide variety of applicants,[11] the Report and Order also adopts small business size standards and bidding preferences for qualifying bidders that will provide such bidders with opportunities to compete successfully against large, well-financed entities. In particular, for services in the Lower 700 MHz Band, the Commission has defined a "small business" as any entity with average annual gross revenues for the three preceding years not exceeding $40 million, a "very small business" as any entity with average annual gross revenues for the three preceding years not exceeding $15 million, and an "entrepreneur" as any entity with average annual gross revenues for the three preceding years not exceeding $3 million.[12] The Commission will use its standard schedule of bidding credits, which may be found at Section 1.2110(f)(2) of the Commission's rules.[13] The standard bidding credit schedule provides for the following levels of credits:

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[8] *See id.* § 309(j)(3)(A)-(E).

[9] *Id.* § 309(j)(3)(B).

[10] *Id.* § 309(j)(4)(C).

[11] *Id.* § 309(j)(3)(B), (4)(C)-(D).

[12] The "entrepreneur" definition applies only to the MSA/RSA-based licenses, and not to the larger EAG-based licenses, in the Lower 700 MHz Band.

[13] 47 C.F.R. § 1.2110(f)(2).

Average Annual Gross Revenues	Bidding Credit
Not to exceed $3 million	35%
Not to exceed $15 million	25%
Not to exceed $40 million	15%

The entrepreneur standard and associated 35 percent bidding credit will, however, not apply to the larger EAG-based licenses in the Lower 700 MHz Band. Drawing on recent precedent involving another flexible-use service (the 24 GHz service), the Commission found that "[b]ecause the capital costs of operational facilities in the ... band are likely to vary widely, we believe that the use of three small business definitions will be useful in promoting opportunities for a wide variety of applicants ... ."[14] The Commission has concluded that these bidding credits will provide adequate opportunities for small businesses to participate in the Lower 700 MHz Band auction.

7. The Report and Order also establishes a policy of permitting incumbent broadcasters and new licensees to reach voluntary agreements that would result in the early clearing of incumbents from the Lower 700 MHz spectrum. These policies are intended to further the Commission's objective of establishing rules that will facilitate, rather than hinder, the clearing of incumbent broadcasters from this spectrum in a manner consistent with our DTV transition policy goals.[15]

B. Summary of Significant Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis (IRFA)

8. Only one commenter, NTCA, specifically raises issues in response to the IRFA.[16] NTCA urges the Commission to assign spectrum in the Lower 700 MHz Band across small geographic areas, arguing that small businesses such as rural telephone companies cannot compete against large carriers in auctions for large geographic areas.[17] According to NTCA, assigning at least a portion of this spectrum across small geographic areas will allow small providers an opportunity to bid on, acquire, and develop service in the more limited areas in which they wish to operate.[18] In response to comments made by NTCA and other small business interests on this issue,[19] the Commission decided to use the smallest geographic area option that was described in the *NPRM*,[20] the 734 MSAs and RSAs, for 12 of the 48 megahertz of spectrum in the Lower 700 MHz Band.

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[14] Amendment to Parts 1, 2, and 101 of the Commission's Rules To License Fixed Services at 24 GHz, WT Docket No. 99-327, *Report and Order*, 15 FCC Rcd 16934, 16967 (2000) (*24 GHz Report and Order*).

[15] *Notice*, 16 FCC Rcd at 7297-98 ¶ 37.

[16] *See* NTCA Comments at 5-6.

[17] *Id.*

[18] *Id.*

[19] *See* Cellular South Comments at 6; CROW Comments at 7-8; Leap Comments at 4; NTCA Comments at 2; RTG Comments at 5-6; SDN, *et. al.* Comments at 2; TCA Comments at 4.

[20] *NPRM*, 16 FCC Rcd at 7304-5 ¶¶ 56-57.

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

9. 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.[21] 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 Act.[22] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[23] Under the Small Business Act, 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.[24] According to SBA reporting data, there were approximately 4.44 million small business firms nationwide in 1992.[25] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[26] Nationwide, as of 1992, there were approximately 275,801 small organizations.[27] "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."[28] As of 1992, there were approximately 85,006 local governments in the United States.[29] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[30] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. The Commission therefore estimates that, of the 85,006 governmental entities, 81,600 (96 percent) are small entities. Below, the Commission further describes and estimates the number of small entity licensees and regulatees that may be affected by the rules adopted herein.

10. The policies and rules adopted in the Report and Order and discussed in this FRFA will affect all entities, including small entities, that seek to acquire licenses in wireless services in the 698-746 MHz band, or are television broadcasters in this band.

11. **Wireless services.** The policies and rules adopted in this Report and Order affect all small

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[21] *See* 5 U.S.C. § 604(a)(3).

[22] *See id.* § 601(6).

[23] *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, 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.

[24] *See* 15 U.S.C. § 632.

[25] *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).

[26] *See* 5 U.S.C. § 601(4).

[27] *See* 1992 Economic Census, U.S. Bureau of the Census, Table 6.

[28] *See* 5 U.S.C. § 601(5).

[29] *See* U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

[30] *Id.*

entities that seek to acquire licenses in wireless services in the Lower 700 MHz Band currently used for television broadcasts on Channels 52-59, or are incumbent television broadcasters on Channels 52-59.[31] As noted above, the Commission has adopted small business size standards that define a "small business" as any entity with average annual gross revenues for the three preceding years not exceeding $40 million, a "very small business" as any entity with average annual gross revenues for the three preceding years not exceeding $15 million, and an "entrepreneur" as any entity with average annual gross revenues for the three preceding years not exceeding $3 million. (As mentioned above, the entrepreneur standard does not extend to the larger EAG-based licenses in the Lower 700 MHz Band.) The SBA has approved this small business size standard for the Lower 700 MHz auction.[32] However, the Commission cannot know until the auction begins how many entities will seek entrepreneur, small business, or very small business status. The Commission will allow partitioning and disaggregation, yet it cannot determine in advance how many licensees will partition their license areas or disaggregate their spectrum blocks. In view of our lack of knowledge of these factors, it is therefore assumed that, for purposes of our evaluations and conclusions in the FRFA, all of the prospective licenses are small entities, as that term is defined by the SBA or the Commission's small business definitions for these bands.

12. **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.[33] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[34] Included in this industry are commercial, religious, educational, and other television stations.[35] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[36] There were 1,509 television stations operating in the United States in 1992, of which 1,155 (76.5 percent) produced less than $10.0 million in revenue.[37] 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

[31] *See supra* text accompanying NPRM note 2.

[32] *See* Letter from John Whitmore, Acting Administrator, Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated March 26, 2001 (approving the size standards proposed and described in the *Notice*). *See also* Letter from Hector V. Barreto, Administrator, Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated January 14, 2002 (stating that final size standards comply with SBA regulations).

[33] *See* 13 C.F.R. § 121.201 (NAICS code 51312).

[34] 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).

[35] *Id.*

[36] *Id.*

[37] 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.

were licensed.[38] Using the percentage of television broadcasting licensees that were small entities in 1992 (76.5 percent) and the 1998 records indicating 1,579 full power stations, we conclude that there are approximately 1,208 full power television stations that are small entities.

13. The rules adopted herein may affect approximately 1,663 television stations currently operating in the Lower 700 MHz Band, approximately 1,281 of which are considered small businesses.[39] In addition, the rules adopted herein will affect some 12,717 radio stations currently operating in this band, approximately 12,209 of which are small businesses.[40] 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.[41] Given the nature of this service, we presume that all LPTV licensees qualify as small entities under the SBA definition.

14. **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 definition is that noted previously, under the SBA rules applicable to television broadcasting stations.[42] The Commission estimates that there are approximately 2,700 translators and boosters. The Commission 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.[43]

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

15. Entities interested in acquiring initial licenses for new services in the 698-746 MHz band will be required to submit short form applications (FCC Form 175) to participate in an auction and high bidders will be required to apply for their individual licenses. Also, commercial licenses will be required 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

[38] FCC News Release, June 19, 1998.

[39] 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.

[40] We use the 96 percent 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.

[41] FCC News Release, "Broadcast Station Totals as of September 30, 2000."

[42] 13 C.F.R. § 121.201 (NAICS code 51312).

[43] 15 U.S.C. § 632.

regulations. Entities seeking to acquire licenses (or disaggregated or partitioned portions of licenses) from Commission licensees in the post-auction market are also required to submit long-form applications (FCC Form 601) seeking Commission authority to complete any such transactions. 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.[44] 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.

16. By this Report and Order, we require licensees to notify the Commission within 30 days of a change in regulatory status between common carrier and/or non-common carrier. In addition, because we consider partitioning and disaggregation to be a form of license assignment, we require such action to receive Commission approval via application for assignment on FCC Form 603. With regard to alien ownership, we require licensees to amend their FCC Form 602 to reflect any changes in foreign ownership information, together with the initial information required by FCC Form 601.

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

17. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its decision, 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.[45]

18. Commenters in this proceeding recommend a variety of steps the Commission may take to lessen the impact on small businesses while assigning spectrum in the Lower 700 MHz Band. For example, the majority of commenters advocate the use of small geographic license areas, especially MSAs and RSAs, so that small providers may avoid having to bid on areas that are larger than they need.[46] A few commenters suggest the Commission could benefit small providers in a similar manner by assigning the spectrum across multiple blocks,[47] and one party, Gila River Indian Community, urges a set-aside for small businesses.[48] Another commenter, Leap, argues that spectrum aggregation limits must be maintained so as to prevent an "excessive concentration of licenses" by large providers that may work against the interests of other competitors.[49]

19. With these RFA requirements and comments from the record in mind, the Commission adopts rules in the Report and Order that are designed to reduce regulatory burdens, promote innovative services and encourage flexible use of this spectrum. They increase economic opportunities to a variety

[44] 47 C.F.R. § 27.3.

[45] 5 U.S.C. § 603(c).

[46] *See* CROW Comments at 7-8; Gila River Comments at 4-5; Leap Comments at 2-4; NTCA Comments at 2-3; RTG Comments at 4-7; SDN, *et. al.* Comments at 2; TCA Comments at 3-4; U.S. Cellular Comments at 2-5.

[47] *See* Gila River Comments at 4-5; Qwest Comments at 5-6; RTG Comments at 7-8; U.S. Cellular Comments at 2.

[48] *See* Gila River Comments at 10. Specifically, Gila River recommends that 10-12 MHz be set aside for designated entities, with assignment across Economic Areas.

[49] *See* Leap Reply at 14-15.

of spectrum users, including small businesses. Specifically, the Commission reallocates the entire 48 megahertz of spectrum in the 698-746 MHz band to fixed and mobile services, while retaining the existing broadcast allocation. New licensees, including smaller entities, will enjoy flexible use for the full range of proposed allocated services consistent with necessary interference requirements.

20. In addition, the Commission adopts rules on spectrum block size and geographic areas that may be of even greater significance for small entities. For example, with respect to the size of spectrum blocks for licensees, we decline to allocate the 48 megahertz over a single block, instead choosing an allocation over multiple blocks of six and twelve megahertz each. The Commission also permits disaggregation and partitioning of these spectrum blocks. With respect to the size of geographic license areas, we allocate licenses over large regional EAGs as well as small MSAs/RSAs. As small business commenters have observed, a MSA/RSA-based license area may be a particularly appropriate alternative for small providers that wish to avoid having to acquire a larger license area that they must subsequently partition.[50] At the same time, consistent with our flexible approach, the Commission allows both partitioning and aggregation of all of these licenses, such that licensees may increase or decrease the size of their service areas to better meet market demands. Because the Commission believes that the use of multiple spectrum blocks and MSAs/RSAs effectively meets the needs of small providers, it therefore declines to adopt other suggested alternatives, such as spectrum aggregation limits, in this band.

21. We further note that the Report and Order adopts small business definitions and preferences for qualifying bidders in the 698-746 MHz band. These standards define an "entrepreneur" as any entity with average annual gross revenues for the three preceding years not exceeding $40 million, a "small business" as any entity with average annual gross revenues for the three preceding years not exceeding $15 million, and a "very small business" as any entity with average annual gross revenues for the three preceding years not exceeding $3 million. Although the Commission had initially proposed the adoption of only two small business definitions, it has found that the use of a third small business definition for MSA/RSA-based licenses will allow small business and rural telecommunications providers to participate more meaningfully in a Lower 700 MHz Band auction.

22. Finally, the Report and Order establishes a policy of permitting incumbent broadcasters and new licensees to reach voluntary agreements that would result in the early clearing of the Lower 700 MHz spectrum. Broadcasters electing to enter into such agreements may be required to seek Commission approvals in order to implement such agreements. Such regulatory requests may be submitted using existing application forms. Because the Commission's policy is entirely voluntary, broadcasters and new licensees, including small entities, are under no obligation to enter into such early clearing arrangements or to seek Commission approval of same.

23. The regulatory burdens contained in the Report and Order, 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. The Commission will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities.

24. **Report to Congress:** The Commission will send a copy of this Report and Order, 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 will send a copy of this Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Report

[50] *See* CROW Comments at 7-8; Gila River Comments at 4-5; Leap Comments at 2-4; NTCA Comments at 2-3; RTG Comments at 4-7; SDN, *et. al.* Comments at 2; TCA Comments at 3-4; U.S. Cellular Comments at 2-5.

and Order and FRFA (or summaries thereof) will also be published in the Federal Register. *See* 5 U.S.C. § 604(b).

25. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including this Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

APPENDIX D: Adjacent Channel Interference Considerations

1. The maximum power limit for services operating in the Lower 700 MHz Band is set at 50 kW subject to the condition that, for stations operating at power levels above 1 kW, there shall be a power flux density ("PFD") limit in the vicinity of the antenna mounting structure to mitigate the risk of interference to adjacent channels. This limit on power flux density levels has two effects. First, it insures that the field strengths received by ground-based portable devices from high power transmission facilities up to 50 kW are no greater than the field strengths received on the ground from 1 kW transmissions. Secondly, it effectively requires that higher-powered transmission facilities use less power at those lower heights where in the vertical plane they may more or less directly face the base station receiving antenna of a two-way cellular system. In this way, the PFD limitation imposes a degree of vertical separation between high-powered transmitters and such base receivers.[1]

2. The PFD limitation is a calculated value of 3 milliwatts per square meter not to be exceeded on the ground within 1 km from the base of the antenna mounting structure.[2] This PFD is the value theoretically produced on the ground by a half-wave dipole antenna transmitting 1 kW ERP at a height of 75 meters above ground (246 feet). There are no practical difficulties achieving low PFD values with transmitting power levels greater than 1 kW. In fact, transmitting antennas in common use for television broadcasting have vertical radiation patterns that reduce the PFD on the ground near the antenna site to low values. Sample computations using commonly available transmitting antennas show that no values exceeding 1 milliwatt per square meter would be produced on the ground by a transmitter of 50 kW at an antenna height of 384 meters above ground.

3. Possibilities of base-to-base interference arise at base receive stations that are close to high power transmitters operating on adjacent-channels. A relatively high powered transmitting antenna may more or less directly face the base station receiving antenna of a two-way cellular system operating in a low power regime. Special engineering provisions may be necessary in such cases to mitigate the risk of interference to reception at the base station of signals from low power, ground-based portable units. The 50 kW limit for transmitters operating in the Lower 700 MHz Band results in transmissions that are 17 dB higher than the ERP limit set for the Upper 700 MHz Band. However, this power discrepancy can be mitigated by providing a comparable degree of signal attenuation in the vertical pattern of the base receiving antenna. For maximum advantage, the attenuation should be aimed in the precise direction of the undesired transmitting antenna. This expedient is available because when the undesired adjacent channel transmitter is of higher power than the cellular base station, it will also be at a greater altitude due to the PFD limitation. Therefore, the direction of the higher power transmitter in the vertical plane will be upwards at an angle of no consequence to reception of calls from ground-based portable units.

4. The base-to-base interference consequences of a 50 kW limit in place of 1 kW can be offset by attenuation in vertical antenna patterns. We provide, in Table 1 below, sample computations demonstrating the use of the vertical pattern attenuation strategy for minimizing base-to-base interference. Attenuation generally in excess of the 17 dB difference between 50 kW and 1 kW is

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[1] With any particular vertical pattern, power must be reduced in proportion to the square of the fractional decrease in height in order to maintain the same PFD on the ground. Thus the PFD limitation is equivalent to a power versus height table in keeping high power sources at greater altitudes than those of conventional cellular systems. Reduction in proportion to the square of the fractional decrease in height implies 6 dB in power for a reduction of 50 percent in height, or 3 dB for every reduction by 70 percent in height.

[2] The 3 milliwatt per square meter power flux density limit at distances up to 1 km may be calculated using the manufacturer specifications of the transmitting antenna to be used.

Environment	Distance from Base Station to Mobile Unit (km)	Hata Path Loss (dB)	Distance from Base Station to 50 kW Source (km)	Declination of Base Station from 50 kW Source (degrees)	Free Space Loss from 50 kW Source to Base Station (dB)	Relative Gain of Receiving Antenna in Direction of 50 kW Source (dB)	Relative Gain of 50 kW Source Antenna at Indicated Declination (dB)	Combined Relative Gain of Antennas (dB)	Desired Relative to Undesired Field Strength at Base Receiver (dB)
Urban	1	121	2	9.7	95.4	-30	-28	-58	-16.8
Urban	2	131	2	9.7	95.4	-30	-28	-58	-26.8
Urban	3	136	2	9.7	95.4	-30	-28	-58	-33.8
Urban	1	121	5	3.9	103.3	-30	-14.9	-44.9	-22.0
Urban	2	131	5	3.9	103.3	-30	-14.9	-44.9	-32.0
Urban	3	136	5	3.9	103.3	-30	-14.9	-44.9	-39.0
Urban	1	121	10	2.0	109.3	-30	-12	-42	-18.9
Urban	2	131	10	2.0	109.3	-30	-12	-42	-28.9
Urban	3	136	10	2.0	109.3	-30	-12	-42	-35.9
Suburban	1	112	2	9.7	95.4	-30	-28	-58	-7.8
Suburban	2	122	2	9.7	95.4	-30	-28	-58	-17.8
Suburban	3	128	2	9.7	95.4	-30	-28	-58	-23.8
Suburban	5	136	2	9.7	95.4	-30	-28	-58	-31.8
Suburban	1	112	5	3.9	103.3	-30	-14.9	-44.9	-13.0
Suburban	2	122	5	3.9	103.3	-30	-14.9	-44.9	-23.0
Suburban	3	128	5	3.9	103.3	-30	-14.9	-44.9	-29.0
Suburban	5	136	5	3.9	103.3	-30	-14.9	-44.9	-37.0
Suburban	1	112	10	2.0	109.3	-30	-12	-42	-9.9
Suburban	2	122	10	2.0	109.3	-30	-12	-42	-19.9
Suburban	3	128	10	2.0	109.3	-30	-12	-42	-25.9
Suburban	5	136	10	2.0	109.3	-30	-12	-42	-33.9
Open Area	1	93	2	9.7	95.4	-30	-28	-58	11.2
Open Area	2	104	2	9.7	95.4	-30	-28	-58	0.2
Open Area	3	110	2	9.7	95.4	-30	-28	-58	-5.8
Open Area	5	118	2	9.7	95.4	-30	-28	-58	-13.8
Open Area	10	128	2	9.7	95.4	-30	-28	-58	-23.8
Open Area	1	93	5	3.9	103.3	-30	-14.9	-44.9	6.0
Open Area	2	104	5	3.9	103.3	-30	-14.9	-44.9	-5.0
Open Area	3	110	5	3.9	103.3	-30	-14.9	-44.9	-11.0
Open Area	5	118	5	3.9	103.3	-30	-14.9	-44.9	-19.0
Open Area	10	128	5	3.9	103.3	-30	-14.9	-44.9	-29.0
Open Area	1	93	10	2.0	109.3	-30	-12	-42	-9.1
Open Area	2	104	10	2.0	109.3	-30	-12	-42	-1.9
Open Area	3	110	10	2.0	109.3	-30	-12	-42	-7.9
Open Area	5	118	10	2.0	109.3	-30	-12	-42	-15.9
Open Area	10	128	10	2.0	109.3	-30	-12	-42	-25.9

Table 1. Sample Calculations

available according to manufacturer specifications for typical land mobile base station receive antennas (see Figure 1, for example). In fact, vertical attenuation values as great as 30 dB can be provided, and this value is assumed in the sample computations of Table 1.[3] The sample computations examine the desired-to-undesired (D/U) signal ratio at base station receivers with an antenna height of 38.1 meters (125 feet). The undesired adjacent channel signal source is assumed to be a 50 kW transmitting antenna at a height of 381 meters (1250 feet). The Hata propagation prediction model is used to estimate the strength of the signal received from handheld units of 600 milliwatts ERP at distances corresponding to various cell radii.[4] Under these circumstances, the D/U ratio is –39 dB or greater, a condition favorable

[3] We assume a 30 dB attenuation value for all cases because of the following. The main lobe of the base receiver is assumed to be pointed towards the edge of the station's service area, but when a mobile is located closer than this distance to the base station (*e.g.*, 1 km, 2 km), its signal is very near the center of the main lobe of the antenna. For distances inside of 1 km, the mobile signal will begin to depart from the main lobe, but at such distances, the Hata path loss will decrease at a rate greater than the reduction in antenna gain due to the mobile's departure from the main lobe. And when the reduction in antenna gain is as great as 20 dB (as occurs at a distance of about 75 meters), the reduction in Hata path loss at this distance will more than compensate for the antenna gain reduction.

[4] M. Hata, *Empirical Formula for Propagation Loss in Land Mobile Radio Services*, IEEE Transactions on Vehicular Technology, Vol. VT-29, No. 3, August 1980.

for reception of flat spectrum signals like digital television and wideband CDMA.[5]

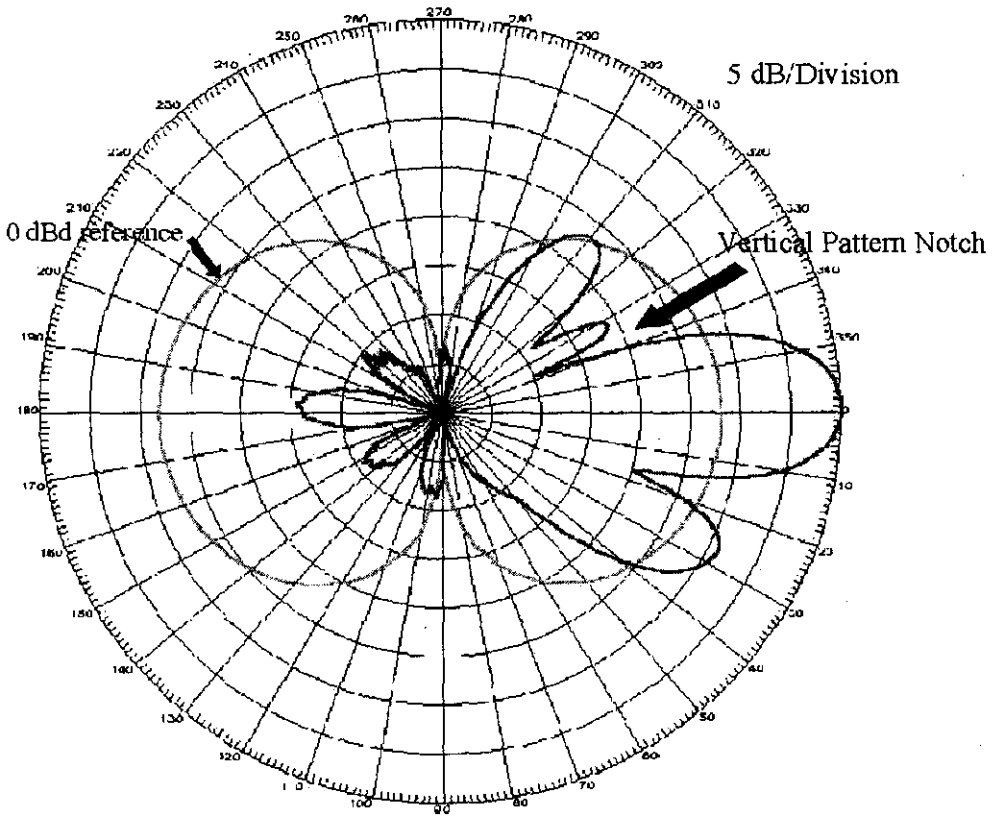

Figure 1. Typical Land Mobile Base Station Receive Antenna

[5] A thorough experimental investigation of adjacent-channel interference between flat spectrum digital signals found that the bit error rate is less than a few parts in 10^6 for a D/U ratio of –42 dB. *See* Advanced Television Test Center, Inc., *Record of Test Results for Digital HDTV Grand Alliance System*, Report to the FCC Advisory Group on Advanced Television Service, October 1995. Both desired and undesired signals in this investigation were 6 MHz wide, and interference into narrower channels would be expected to occur only at still more negative D/U ratios.

SEPARATE STATEMENT OF COMMISSIONER KEVIN J. MARTIN APPROVING IN PART, CONCURRING IN PART

RE: Relocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59 (GN Docket No. 01-14, Report and Order).

I support and approve most aspects of this item. I am disappointed, however, in the approach taken by the majority regarding pending applications for construction permits to broadcast in analog on channels in the lower 700 MHz band. Granting these applications would have resulted in substantial consumer benefits with little-to-no harm to the digital transition or the ability to auction the spectrum at issue. Indeed, in an era of increasing consolidation of the broadcasting industry, the majority has missed an opportunity to promote local origination, and has effectively denied numerous communities the chance to receive local broadcast services for the first time.

This item offers applicants seeking to construct new NTSC stations in the 698-746 MHz band a "Hobson's choice": Amend the application either (1) to specify an NTSC channel in the core (where there is no room), or (2) to build in digital from the start (significantly limiting potential viewership and increasing costs). I fear that for most applicants, both "options" are tantamount to an outright dismissal. Although I concur with the decision to *allow* applicants to build in digital from the start, I would not have constrained all of these applicants by strictly limiting them in this manner. I believe we should have permitted at least some of these applicants to broadcast in analog initially. Remaining concerns regarding the impact on the digital transition could have been addressed through more reasonable options, such as requiring a switch to digital by a date certain.

As a practical matter and on policy grounds, it seems that the more sensible approach would have been to allow analog broadcast today. Spectrum that has been lying fallow would be put to productive use more quickly. Consumers would benefit by having more viewing options. Indeed, nine communities would have had their own local channel for the first time.[1]

All of these benefits would have been at very little cost. I've been informed that only 16 of the pending applications are actually "grantable" from a technical perspective, and that all of them are in areas that are already encumbered. Indeed, the lower 700 band, with 100 analog and 165 digital stations in operation, is *four times* more encumbered than the upper 700 band. As a result, the impact of granting a few of these applications would have been minimal. It would have had little to no impact on the transition and no effect on the date when this band could be auctioned.

Furthermore, as the majority acknowledges, parties have already made significant investments of time, money, and effort in these applications. They likely did so in part because we earlier encouraged broadcasters who had applied for an analog station in channels 60-69 to modify their requests to apply for an allotment in a lower channel – including channels 52-59.[2] Indeed, we acknowledged in the notice to this proceeding that:

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[1] These towns include Hammond, Louisiana; Blanco, Texas; New Iberia, Louisiana; Galesboro, Illinois; Waverly, New York; Warner Robins, Georgia; Franklin, North Carolina; Hampton, Virginia; and Fairmont, West Virginia.

[2] *See* Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, MM Docket No. 87-268, *Sixth Further Notice of Proposed Rule Making*, 11 FCC Rcd 10968 (1996); Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations, *Public Notice*, 14 FCC Rcd 19559 (1999).

> this band was originally intended to remain principally a television band until the end of the transition and we recognize that it may be inequitable not to process these applications, or a subset of them. In addition, given the significant number of analog and DTV incumbents that already exist on this band, the impact on the provision of new services may be marginal.[3]

In sum, I believe that the approach taken by the majority with respect to these pending applications is unreasonable. It is simply not good policy to deny communities the opportunity to enjoy localized broadcast services when there is very little, if any, corresponding gain.

[3] Reallocation and Service Rules for the 698-746 MHz Spectrum Band, *Notice of Proposed Rulemaking*, GN Docket No. 01-74, 16 FCC Rcd 7278, ¶24 (2001).

SEPARATE STATEMENT OF COMMISSIONER MICHAEL J. COPPS

RE: Relocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59 (GN Docket No. 01-14, Report and Order) (Rel. December 12, 2001).

I support today's *Order* because I believe that it balances two important goals: promoting the transition to digital television and establishing a pathway to making channels 52-59 available for new services as Congress instructed us to do.

Importantly, the *Order* furthers these goals without reducing our responsibility to conduct a public interest review of any proposed transaction that would clear an existing broadcaster from the band. Channels 52-59 occupy spectrum that I believe can support exciting new services throughout the nation. My hope is that this spectrum will someday contribute to bringing more broadband wireless services to rural America, but I do not underestimate the challenges that confront our path to that happy ending. I commend the many rural carriers who participated in this proceeding. Today we establish a band plan that includes the auction of Rural Statistical Areas, which many rural carriers believe will give them the ability to harness this spectrum for the good of small businesses and citizens in some of our most rural areas. Getting broadband to these areas is an important national priority.

Continued access to free over-the-air television is also a central concern of this Commission. Broadcasters serve a special and critical role in our communities and in the nation's marketplace of ideas. We must always work to maintain the viability of free over-the-air television, and protect this service for the millions of Americans who receive their news, entertainment, and so many other services solely from over-the-air broadcasting. Free over-the-air television will be just as critical in the digital era as it is right now in these early days.

By refraining from adopting the band-clearing incentives for channels 52-59 that the previous Commission adopted for channels 60-69, we guarantee that, as has always been the case in other bands, we will review band-clearing proposals with the understanding that "once in operation, a station assumes an obligation to maintain service to its viewing audience, and the withdrawal or downgrading of existing service is justifiable only if offsetting factors are shown which establish that the public generally will be benefited."[1] Therefore, we come down squarely on the side of a public interest review of each case rather than letting purely commercial transactions determine the future of this critical public spectrum.

[1] *Triangle Publications, Inc.*, 37 FCC 307, 313 (1964), *citing Hall v. FCC*, 237 F.2d 567 (D.C. Cir. 1954).