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

In the Matter of	)	
	)	
Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band	)	WT Docket No. 08-166
	)	
Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary Stations, Including Wireless Microphones, and the Digital Television Transition	)	WT Docket No. 08-167

NOTICE OF PROPOSED RULEMAKING AND ORDER

Adopted: August 15, 2008 **Released: August 21, 2008**

By the Commission:

Comment Date: [30 days after publication in the Federal Register]
Reply Comment Date: [45 days after publication in the Federal Register]

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I. INTRODUCTION

1. The Digital Television Transition and Public Safety Act of 2005 ("DTV Act")[1] set a firm deadline for the end of the digital television (DTV) transition of February 17, 2009, at which time the spectrum in the 698-806 MHz band ("700 MHz Band"), currently occupied by television broadcasters in TV Channels 52-69, will be fully available for public safety as well as commercial wireless services.[2] As we have recognized, it is incumbent on the Commission to take all steps necessary to make this spectrum effectively available both to public safety and commercial licensees at the end of the DTV transition.[3]

2. In this Notice of Proposed Rulemaking and Order ("Notice and Order"), we consider broadcast low power auxiliary stations, which have been permitted to operate on TV Channels 52-69 in the 700 MHz Band, as well as in several other bands, on a secondary non-interference basis.[4] In the Notice of Proposed Rulemaking (Notice) below, we tentatively conclude to amend our rules to make clear that the operation of low power auxiliary stations within the 700 MHz Band will no longer be permitted after the end of the DTV transition because such operations could cause harmful interference to new public safety and commercial wireless services in the band. We also tentatively conclude to prohibit the manufacture, import, sale, offer for sale, or shipment of devices that operate as low power auxiliary stations in the 700 MHz Band. In addition, for those licensees that have obtained authorizations to operate low power auxiliary stations in spectrum that includes the 700 MHz Band beyond the end of the DTV transition, we tentatively conclude that we will modify these licenses so as not to permit such operations in the 700 MHz Band after February 17, 2009. We also seek comment on issues raised by the Public Interest Spectrum Coalition (PISC) in its informal complaint and petition for rulemaking ("PISC Petition" or "Petition").[5]

3. In the meantime, in the Order below, we impose a freeze, effective upon release of this Order, on the filing of new license applications that seek to operate on any 700 MHz Band frequencies (698-806 MHz) after the end of the DTV transition, February 17, 2009. In addition, we impose a freeze on granting any request for equipment authorization of low power auxiliary station devices that would

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[1] *See* Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) ("DRA"). Title III of the DRA is the DTV Act.

[2] *See* Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 8064, 8066 ¶ 2 (2007) (*700 MHz First Report and Order*).

[3] *Id.*

[4] 47 C.F.R. § 74.803(b).

[5] *See* Complaint of Public Interest Spectrum Coalition (PISC) Against Shure, Inc., Nady Systems, Inc., VocoPro, Audio2000, Sennheiser Electronic Corporation, Audix Microphones, Electro Voice, Hisonic International, Inc., Pyle Audio, *et al.*; Petition To Create a General Wireless Microphone Service (GWMS), *Informal Complaint and Petition for Rulemaking*, (filed July 16, 2008) (PISC Petition). PISC consists of: The CUWiN Foundation (CUWIN), Consumer Federation of America (CFA), Consumers Union (CU), EDUCAUSE, Free Press (FP), Media Access Project (MAP), the National Hispanic Media Coalition (NHMC), the New America Foundation (NAF), the Open Source Wireless Coalition (OSWC), Public Knowledge (PK), and U.S. PIRG.

operate in any of the 700 MHz Band frequencies. We also hold in abeyance, until the conclusion of this proceeding, any pending license applications and equipment authorization requests that involve operation of low power auxiliary devices on frequencies in the 700 MHz Band after the end of the DTV transition.

II. BACKGROUND

4. **Broadcast Low Power Auxiliary Service.** The Commission licenses broadcast low power auxiliary stations on various different spectrum bands.[6] Devices that may be authorized as low power auxiliary stations are intended for such uses as wireless microphones, cue and control communications, and synchronization of TV camera signals.[7] Where authorized, these devices currently may operate on a secondary basis in spectrum that, all totaled, comprises more than 400 megahertz. Specifically, devices may be permitted in twelve frequency bands. Seven of these frequency bands encompass all of the VHF and UHF broadcast television spectrum (except for Channel 37). Those bands are: 54-72 MHz; 76-88 MHz; 174-216 MHz; 470-488 MHz; 488-494 MHz (except in Hawaii); 494-608 MHz; and 614-806 MHz. The five other frequency bands are: (1) 26.100-26.480 MHz (spectrum for land mobile, broadcast, maritime, and remote pickup broadcast); (2) 161.625-161.775 MHz (except in Puerto Rico or the Virgin Islands) (spectrum for land mobile and remote pickup broadcast); (3 & 4) 450-451 MHz and 455-456 MHz (spectrum for land mobile and remote pickup broadcast); and (5) 944-952 MHz (spectrum for aural broadcast auxiliary stations, public mobile, and fixed microwave).[8] The 700 MHz Band falls within the 698-806 MHz portion of one these bands, the 614-806 MHz band (Channels 38-69).[9]

5. *Rules relating to operation.* Subpart H of Part 74 of our rules govern "low power auxiliary stations" generally. As set forth in Section 74.801 of the Commission's rules, devices authorized as low power auxiliary stations are "intended to transmit over distances of approximately 100 meters."[10] Section 74.803 states that low power auxiliary station usage in the UHF-TV spectrum – which comprises Channels 14-69, including spectrum in the 700 MHz Band (Channels 52-69) – is "secondary to TV broadcasting and land mobile stations ... and must not cause harmful interference" to such operations.[11] Section 74.861, which relates to the technical requirements for low power auxiliary stations,[12] provides that the maximum permitted output power for low power auxiliary stations in the 614-

[6] *See* 47 C.F.R. § 74.802(a).

[7] 47 C.F.R. §§ 74.801, 74.831. These stations typically are used in conjunction with Broadcast Auxiliary Service (BAS) stations. Revisions to Broadcast Auxiliary Service Rules in Part 74 and Conforming Technical Rules for Broadcast Auxiliary Service, Cable Television Relay Service and Fixed Services in Parts 74, 78, and 101 of the Commission's Rules, *Report and Order*, 17 FCC Rcd 22979, 23011 n.159 (2002) (*BAS Report and Order*).

[8] 47 C.F.R. § 74.802(a).

[9] In 1987, the Commission increased the amount of spectrum available for low power auxiliary stations by adding many UHF TV channels to the spectrum available for such use, including channels 52-69 at 698-806 MHz which now comprise the spectrum in the 700 MHz Band. *See* Review of Subpart H, Part 74 of the Commission's Rules, Low Power Auxiliary Stations, MM Docket 86-12, *First Report and Order*, 2 FCC Rcd 345 (1987).

[10] 47 C.F.R. § 74.801. *See also* 47 C.F.R. § 2.106 NG115 (note to table of frequency allocations stating that the bands in which wireless microphones and wireless assist video devices may be authorized on a non-interference basis include the "614-806 MHz" band, subject to the terms and conditions set forth in 47 C.F.R. part 74, subpart H).

[11] 47 C.F.R. § 74.803(b).

[12] *Id.* § 74.861.

806 MHz band is 250 milliwatts.[13] That rule also states that such stations "shall be operated so that no harmful interference is caused to any other class of station operating in accordance with the Commission's rules and regulations and with the Table of Frequency Allocations."[14] In addition, Section 2.106, Footnote NG115 of the Table of Frequency Allocations provides that these frequencies may be used for wireless microphones and wireless assist video devices on a non-interference basis, subject to the terms and conditions set forth in Part 74.[15]

6. *Entities eligible* for *licenses.* Under Section 74.832, only certain entities may be issued licenses authorizing the use of low power auxiliary stations. In particular, these entities fall within the following categories:

(1) licensees of AM, FM, TV, or International broadcast stations or low power TV stations;
(2) broadcast network entities;
(3) certain cable television system operators;
(4) motion picture and television program producers as defined in the rules; and
(5) certain entities with specified interests in Broadband Radio Service (BRS) Educational Broadcast Service (EBS) licenses, *i.e.,* BRS licensees (formerly licensees and conditional licensees of stations in the Multipoint Distribution Service and Multi-channel Multipoint Distribution Service), or entities that hold an executed lease agreement with a BRS licensee or conditional licensee or entities that hold an executed lease agreement with an Educational Broadcast Service (formerly Instructional Television Fixed Service)[16] licensee or permittee.[17]

7. *Current licensees authorized to operate in the 700 MHz Band.* Commission records reflect that there are currently 943 active low power auxiliary station licenses. The authorizations for 156 of these licenses include the authority to operate in the 700 MHz Band. While most of these licenses are authorized to operate in bands in addition to the 614-806 MHz band (Channels 38-69), thirty (30) of these 156 licenses are authorized to operate only in that particular band, of which the 700 MHz Band (Channels 52-69) is a part. Of these 30 licenses, 28 are authorized to operate in the entire 614-806 MHz band, and two are authorized to operate only at certain frequencies in the 700 MHz Band.[18] These 30 licenses vary in geographic scope. Two licenses are authorized on a nationwide basis; and one operates on a statewide basis in Illinois. The geographic scopes of two other licenses are not mappable.[19] For the remaining 25

[13] *Id.* § 74.861(e)(1)(ii).

[14] *Id.* § 74.861(g).

[15] *Id.* § 2.106 NG115.

[16] In July 2004, the Commission renamed Multipoint Distribution Service as the Broadband Radio Service and renamed Instructional Television Fixed Service as the Educational Broadcast Service. *See* Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165, 14169 ¶ 6 (2004).

[17] *See* 47 C.F.R. § 74.832(a)(1)-(6).

[18] The two licenses that are authorized to operate only at certain frequencies within the 700 MHz Band are at 794.125-805.875 MHz (BLP01052) and 794-806 MHz (BLP01512).

[19] The two licenses are not "mappable" because the description provided is not easily or readily translated to a particular geographic area. For example, call sign BLP00002 has an area of operation defined as vicinity of New York, NY.

licenses, geographic scope is determined based on specific geographic coordinates using a "radius around centerpoint" definition which ranges from 1 kilometer to 322 kilometers.[20]

8. **PISC's Petition.** On July 16, 2008, PISC filed its Petition requesting that the Commission address unauthorized use of wireless microphones in the 700 MHz Band.[21] PISC's allegations include that certain manufacturers of wireless microphones authorized for use under Part 74, Subpart H have violated the Commission's rules by marketing and selling equipment limited by Commission rule to certain classes of users to the general public; marketing and selling equipment for purposes that violate the Commission's rules; and deceiving the public as to the requirement for a Commission license and the limitations imposed by the Commission on the use of the devices.[22] PISC argues that a number of steps, which are outlined in its Petition, should be taken to prevent interference to public safety and commercial systems that will operate in the bands currently occupied by television channels 52-69, including the creation of a new "General Wireless Microphone Service" (GWMS).[23]

9. **DTV Transition.** In connection with the Congressionally mandated transition from analog television to DTV, the 700 MHz Band is being made available on a primary basis for new public safety and other wireless services once it is relinquished by broadcasters on TV Channels 52-69.[24] As we have noted, because DTV transmissions are more spectrally efficient than analog transmissions, only spectrum occupied currently by Channels 2-51 (*i.e.*, the "core" TV broadcast spectrum) will be needed for broadcast television service after the DTV transition is complete on February 17, 2009.[25] The Commission has stated that "[i]t is incumbent on the Commission to take all the steps necessary to make this [relinquished] spectrum effectively available to both public safety as well as commercial licensees as of the end of the DTV transition."[26] Accordingly, on February 17, 2009, all analog television service by full power TV stations will terminate and temporary DTV assignments on Channels 52-69 will be relocated into the core TV channels so that new wireless licensees will be able to provide unencumbered

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[20] Licenses with a radius around centerpoint have an area of operation defined by a set of geographic coordinates (latitude and longitude) which define the center point of the area of operation and a radius that extends out from that center point.

[21] *See* PISC Petition.

[22] *Id.* at 1-2.

[23] *Id.* at i-ii.

[24] *See* Service Rules for the 698-746, 747-762, and 777-792 MHz Bands, *Notice of Proposed Rulemaking*, 21 FCC Rcd 9345, 9348 ¶ 4 (2006) (*700 MHz Band NPRM*). *See also* Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Second Report and Order*, 22 FCC Rcd 15289, 15291 ¶ 1 (2007) (*700 MHz Second Report and Order*).

[25] *700 MHz Band NPRM*, 21 FCC Rcd at 9348 ¶ 4. *See also 700 MHz First Report and Order*, 22 FCC Rcd at 8069-70 ¶ 14.

[26] *700 MHz First Report and Order*, 22 FCC Rcd at 8066 ¶ 2.

services in the 698-806 MHz Band.[27]

10. Prior to the 2005 DTV Act, the Commission reallocated the 700 MHz Band in separate proceedings, one involving the 48 megahertz covering TV Channels 52-59 ("Lower 700 MHz Band")[28] and the other governing the 60 megahertz covering TV Channels 60-69 ("Upper 700 MHz Band").[29] In the last several years, the Commission also has issued several orders addressing both the lower and upper portions of the 700 MHz Band,[30] and has issued licenses for the provision of commercial and public safety services in the 700 MHz Band.[31] Recently, we auctioned additional licenses for commercial services in the 700 MHz Band,[32] and issued a nationwide license for the broadband portion of the public safety spectrum in this band.[33] In addition, a number of public safety entities already have authority to operate in the narrowband public safety spectrum.[34]

11. The Commission and various affected parties have contemplated that low power broadcast auxiliary devices would lose their secondary status, and would need to vacate the band, upon completion of the DTV transition. For instance, when the Commission adopted service rules in 2001 for the Lower 700 MHz Band (698-746 MHz), it declined to grant a request filed by the Society of Broadcast Engineers, Inc. (SBE) that the Commission "afford continued secondary status to Part 74 low power broadcast auxiliary devices (such as wireless microphones) operating in the Lower 700 MHz Band, and to establish a new service in Part 95 of our Rules to accommodate their use."[35] In its comments filed in that proceeding, SBE claimed that the loss of "many UHF TV channels to DTV stations and the anticipated transfer of Channels 60 through 69 to the Land Mobile services will push the majority of the installed

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[27] *Id.* at 8066 ¶ 1.

[28] *See* Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), GN Docket No. 01-74, *Report and Order*, 17 FCC Rcd 1022 (2002) (*Lower 700 MHz Report and Order*); Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), GN Docket No. 01-74, *Memorandum Opinion and Order*, 17 FCC Rcd 11613 (2002) (*Lower 700 MHz MO&O*).

[29] *See* Reallocation of Television Channels 60-69, the 746-806 MHz Band, ET Docket No. 97-157, *Report and Order*, 12 FCC Rcd 22953, *recon.* 13 FCC Rcd 21578 (1998) (*Upper 700 MHz Reallocation Order*); 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 (2000) (*Upper 700 MHz First Report and Order*).

[30] *See, e.g.*, *700 MHz First Report and Order*, 22 FCC Rcd 8064; *700 MHz Second Report and Order*, 22 FCC Rcd 15289.

[31] *See* Auction of 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction 73, *Public Notice*, 23 FCC Rcd 4572 (2008) (*Auction 73 Notice*). Prior to Auction 73, other licenses in the 700 MHz Band were auctioned. *See, e.g.*, Lower 700 MHz Band Auction Closes, *Public Notice*, 17 FCC Rcd 17272 (2002); Lower 700 MHz Band Auction Closes, *Public Notice*, 18 FCC Rcd 11873 (2003); Auction of Lower 700 MHz Band Licenses Closes, *Public Notice*, 20 FCC Rcd 13424 (2005).

[32] *See Auction 73 Notice.*

[33] Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, *Order*, 22 FCC Rcd 20453 (2007).

[34] *See, e.g.*, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Order*, 22 FCC Rcd 20290 (2007) (granting a waiver to the Commonwealth of Virginia to allow continued deployment outside of the consolidated narrowband channels); Request for Waiver of Pierce Transit, *Order*, 23 FCC Rcd 433 (PSHSB 2008).

[35] *Lower 700 MHz Report and Order*, 17 FCC Rcd at 1037 ¶ 33 (citing SBE Comments at 4-5, GN Docket 01-74).

base of wireless microphones, IFB [Interrupted Fold Back], and cues and control signal uses of vacant UHF TV channels right off the bus."[36] The Commission stated that SBE's request was outside the scope of that proceeding,[37] but noted that "insofar that the Lower 700 MHz Band will host extensive broadcast use throughout the DTV transition, it is unlikely that new licensees will rapidly occupy the band to the extent that users of the low power broadcast auxiliary devices of the type SBE discusses will have to immediately cease all operation."[38] Thus, both SBE and the Commission contemplated that low power broadcast auxiliary devices would be losing their secondary status and would have to vacate the band upon completion of the DTV transition in a particular local market.[39] In addition, we note that some manufacturers of wireless microphones, including Shure Incorporated (Shure), have indicated on their websites that after the end of the DTV transition, frequencies in the 700 MHz Band will no longer be available for wireless microphone use.[40]

12. In 2002, in another proceeding touching on the DTV transition, the Commission adopted an order expressly excluding from the 700 MHz Band another type of Part 74 Subpart H low power auxiliary station device – wireless assist video devices (WAVDs) – in recognition of reallocation of TV Channels 52-69 to wireless services, including public safety services.[41] In that order, the Commission stated that "WAVDs will not be allowed to use . . . [Channels 52-69] in the UHF-TV band due to a recent spectrum reallocation of those channels to uses other than broadcasting."[42] In addition, we note that in the TV "White Spaces" proceeding, where the Commission is considering allowing the introduction of new low power, unlicensed devices in the broadcast television spectrum, the Commission in 2006 determined

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[36] SBE Comments, GN Docket 01-74 (May 14, 2001).

[37] *Lower 700 MHz Band Report and Order*, 17 FCC Rcd at 1037-38 ¶ 33 (noting that the Commission had neither solicited nor developed a record on this issue).

[38] *Lower 700 MHz Band Report and Order*, 17 FCC Rcd at 1037-38 ¶ 33.

[39] Prior to the DTV Act, analog broadcasters were required to cease operations by December 31, 2006, but the Commission was required to extend the end of this transition in certain circumstances. Specifically, extensions were to be granted at the request of broadcast licensees on a market-by-market basis if one or more of the four largest network stations or affiliates were not broadcasting in digital, if digital-to-analog converter technology was not generally available, or if 15 percent or more of television households were not receiving a digital signal. *See* 47 U.S.C. § 309(j)(14)(A)-(B) (2005).

[40] *See, e.g.*, Shure Pro Audio, What Digital TV Means to Wireless Microphone Users, http://www.shure.com/ProAudio/Products/us_pro_ea_dtv (notifying users that auctioned 700 MHz spectrum is to be used for other wireless services, and stating that wireless microphones that operate on frequencies above 698 MHz should not be used after the end of the DTV transition); Lectrosonics, Wireless FAQ Number: 121, http://www.lectrosonics.com/faq/faq1byref.php?id=121 (stating that as of February 17 2009, the 700 MHz Band will "not be legal for use by wireless microphones").

[41] *See* Revisions to Broadcast Auxiliary Service Rules in Part 74 and Conforming Technical Rules for Broadcast Auxiliary Service, Cable Television Relay Service and Fixed Services in Parts 74, 78, and 101 of the Commission's Rules, *Report and Order*, 17 FCC Rcd 22979, 23035-37 ¶¶ 150-155 (2002) (*BAS Report and Order*).

[42] *BAS Report and Order*, 17 FCC Rcd at 23037 ¶ 155. That 2002 order is the last in which the Commission adopted significant revisions to the Commission's Part 74 Subpart H rules addressing low power auxiliary stations. *See generally BAS Report and Order*, 17 FCC Rcd 22979. In addressing petitions for reconsideration in 2003, the Commission only made minor changes to the rules governing the frequency bands that can be used by WAVDs. *See* Revisions to Broadcast Auxiliary Service Rules in Part 74 and Conforming Technical Rules for Broadcast Auxiliary Service, Cable Television Relay Service and Fixed Services in Parts 74, 78, and 101 of the Commission's Rules, *Memorandum Opinion and Order*, 18 FCC Rcd 21828 (2003).

that such low power devices will not be permitted to operate on TV Channels 52-69.[43] In making this determination, the Commission stated that this spectrum "ha[s] been reallocated for services other than broadcast television and will no longer be part of the TV bands after the transition."[44] Despite its intent to make the 700 MHz Band spectrum fully available for public safety and commercial wireless services at the end of the DTV transition, the Commission has not revisited its low power auxiliary stations rules expressly to revise the Part 2 and Part 74 rules for low power auxiliary stations to prohibit their operation in the 700 MHz Band after the end of the DTV transition.[45]

III. NOTICE OF PROPOSED RULEMAKING

13. In this Notice, we tentatively conclude to revise our rules to prevent operation of low power auxiliary stations in the 700 MHz Band, and thus avoid potential disruption to new public safety and other services in that Band after the DTV transition. We also tentatively conclude to prohibit the manufacture, import, sale, offer for sale, or shipment of devices that operate as low power auxiliary stations in the 700 MHz Band. In addition, we seek comment on the PISC Petition.

A. Facilitating the DTV Transition

14. As discussed above, the Commission and various affected parties, such as SBE and Shure, have contemplated that low power broadcast auxiliary devices would lose their secondary status, and would need to vacate the band, upon completion of the DTV transition. We therefore tentatively conclude to revise our rules to make clear that low power auxiliary stations authorized under Part 74 of our rules – including wireless microphones – will not be permitted to operate in the 700 MHz Band after the DTV transition. With these revisions, we would be conforming our rules to our expressed intent to ensure that this spectrum, currently occupied by TV Channels 52-69, will be fully available for public safety as well as commercial wireless services at the end of the DTV transition on February 17, 2009. We are concerned about the potential for harmful interference from low power auxiliary devices to 700 MHz Band public safety and commercial wireless operations.

15. We also note that our tentative conclusion to amend our rules so as not to permit low power auxiliary devices in the 700 MHz Band after the end of the DTV transition is consistent with the rules adopted in 2002 to authorize WAVDs, which prohibited their use of the 700 MHz Band because of the DTV transition.[46] As described above, the Commission determined that WAVDs were not permitted to operate in the 700 MHz Band, recognizing that this spectrum has been allocated to public safety and commercial operations.[47] Our tentative conclusion is also consistent with our decision to exclude the operation of unlicensed devices from the 700 MHz Band in the TV white spaces proceeding.

16. To the extent existing licensees have obtained authorizations to operate low power auxiliary stations in spectrum that includes the 700 MHz Band beyond the end of the DTV transition, we tentatively conclude that we should use our statutory authority under Section 316 of the Act[48] to modify their licenses so as not to permit operations on the 700 MHz Band past February 17, 2009. Under this

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[43] Unlicensed Operation in the TV Broadcast Bands, ET Docket No. 04-186, Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GG\Hz Band, ET Docket No. 02-380, *First Report and Order and Further Notice of Proposed Rulemaking*, 21 FCC Rcd 12266, 12267 ¶ 2 (2006).

[44] *Id.* at 12275 ¶ 21.

[45] *See* 47 C.F.R. §§ 74.802, 2.106 NG115.

[46] *See BAS Report and Order*, 17 FCC Rcd at 23035-37 ¶¶ 150-155.

[47] *Id.* at 23037 ¶ 155.

[48] 47 U.S.C. § 316.

proposal, individual licenses will continue to include authorization to use all frequencies currently included in those licenses other than the 700 MHz Band through the end of their existing term, and licensees can seek to amend their licenses to include additional frequencies permitted under Subpart H if they wish. We make this tentative conclusion because we are concerned that continued use of this spectrum by existing licensees of low power auxiliary stations may be disruptive to new public safety and other wireless operations in the 700 MHz Band, and because of the ready availability of other means that those licensees have under our rules for obtaining access to various other spectrum frequencies in which to operate low power auxiliary stations. We seek comment on this tentative conclusion. Commenters advocating that these license terms should be reduced so as to terminate at some other date, *e.g.*, one year after February 17, 2009, or not reduced at all, should fully support how operations that would continue beyond February 17, 2009 would be in the public interest and not harmful to public safety and commercial users.

17. We also tentatively conclude to prohibit the manufacture, import, sale, offer for sale, or shipment of devices that operate as low power auxiliary stations in the 700 MHz Band. Further, we tentatively conclude that this prohibition, if adopted in this proceeding, will take effect on the date that the revised rules take effect. We note that the Communications Act of 1934, as amended, authorizes the Commission "consistent with the public interest, convenience, and necessity, [to] make reasonable regulations . . . governing the interference potential of devices which in their operation are capable of emitting radio frequency energy by radiation, conduction, or other means in sufficient degree to cause harmful interference to radio communications" and these regulations "shall be applicable to the manufacture, import, sale, offer for sale, or shipment of such devices . . . , and to the use of such devices."[49] The Act further provides that "[n]o person shall manufacture, import, sell, offer for sale, or ship devices . . . , or use devices, which fail to comply with regulations promulgated pursuant to this section."[50] We believe that this proposed prohibition will help facilitate the DTV transition by helping address possible concerns about significant unauthorized operation of wireless microphones in the 700 MHz Band, and therefore help minimize the likelihood that additional unauthorized use would occur after the end of the DTV transition. We seek comment on our tentative conclusions to prohibit the manufacture, import, sale, offer for sale, or shipment of low power auxiliary station devices that operate in the 700 MHz Band, and to have the prohibition take effect on the effective date of the revised rules.

18. In reaching this tentative conclusion, we note that even if low power auxiliary stations are no longer authorized to operate in the 700 MHz Band at the end of the DTV transition, such stations will continue to be permitted access to more than 300 megahertz of spectrum in which low power auxiliary stations may operate under our rules.[51] We tentatively conclude that, given the amount of spectrum available in these other bands, prohibiting the use of low power auxiliary stations from the 700 MHz band will have minimal impact on such operations. We seek comment on this conclusion.

19. Finally, we seek comment on any steps that the Commission should take – if we do not adopt a version of our proposals set out above – to ensure that low power auxiliary stations do not interfere with public safety and commercial operations in the 700 MHz Band after the end of the DTV transition.

B. PISC's Informal Complaint and Petition for Rulemaking

20. In its Petition, PISC addresses a number of issues concerning the operation of low power

[49] 47 U.S.C. § 302a(a).

[50] *Id.* at § 302a(b).

[51] Low power auxiliary stations are also authorized for use in over 300 megahertz of spectrum in 11 other frequency bands ranging from 26 MHz to 950 MHz. *See* 47 C.F.R. § 74.802(a).

auxiliary stations, and wireless microphones in particular, in the context of the 700 MHz Band. PISC alleges that certain manufacturers of wireless microphones authorized for use under Part 74, Subpart H have violated the Commission's rules by marketing and selling equipment limited by Commission rule to certain classes of users to the general public; marketing and selling equipment for purposes that violate the Commission's rules; and deceiving the public as to the requirement for a Commission license and the limitations imposed by the Commission on the use of the devices.[52] PISC also claims that unauthorized use by ineligible users of wireless microphones with respect to Channels 52-69 has become widespread and that because of the risk to new wireless services from unauthorized wireless microphone use, and because manufacturers have demonstrated an intent to market equipment authorized for limited use to the general public, the Commission should move expeditiously to prohibit the manufacture and sale of wireless microphones that operate on Channels 52-69.[53]

21. Specifically, PISC requests that the Commission: (1) "[b]egin an investigation against Shure, Inc., and the other manufacturers" listed in its informal complaint, "for willfully and knowingly marketing and selling wireless microphones to unauthorized users for ineligible purposes in violation of Part 74, Subpart H, and for engaging in deceptive advertising practices designed to persuade ineligible users such as houses of worship, theaters, corporate event venues, and members of the general public" that they could "legally purchase and operate wireless microphones operating on vacant broadcast UHF Channels without a license and for purposes prohibited by the Commission;" (2) "[g]rant a general amnesty to all unauthorized users of wireless microphones deceived by the illegal and deceptive marketing of manufacturers, permit use of the illegal equipment on a going forward basis until the Commission authorizes" the new GWMS proposed by PISC, and require those manufacturers that "engaged in illegal marketing to migrate the unauthorized users of Part 74, Subpart H equipment to the new GWMS [proposed by PISC] by replacing equipment authorized for Part 74, Subpart H; (3) "[i]mmediately reclassify all licensed wireless microphone systems operating pursuant to Part 74, Subpart H as secondary" to all commercial and public safety wireless systems "authorized to operate on television Channels 52-69 following the shut off of analog television transmission;" (4) "[o]rder that manufacture, sale, and advertisement for sale of wireless microphone systems operating on channels 52-69 cease immediately;" and (5) "[c]reate a new 'General Wireless Microphone Service' (GWMS) licensed by rule pursuant to Section 307(e) to operate on vacant broadcast UHF channels below Channel 52 on a secondary basis to broadcast licensees and individually licensed wireless microphone systems," and authorized "on a primary basis to operate on the 2020-[20]25 Band currently authorized for broadcast auxiliary service (BAS) and under consideration . . . in Docket Nos. WT 07-195, WT 04-356 ("AWS-2/AWS-3 Proceeding")."[54]

22. We seek comment on the various elements found in PISC's Petition, particularly to the extent that we are not addressing those elements elsewhere in this Notice and Order. We note that the Commission's Enforcement Bureau has initiated an investigation relating to the marketing practices of various manufacturers of wireless microphones.

IV. ORDER

23. In light of our tentative conclusion above not to permit the operation of low power auxiliary stations on 700 MHz Band frequencies (698-806 MHz) following the end of the DTV transition,

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[52] *See* PISC Petition at 21-22

[53] *Id.* at ii-iv.

[54] *Id.* at i-ii. We note that the Commission staff has also included the PISC Petition in the records of WT Docket No. 07-195 and WT Docket No. 04-356, because the Petition raises the possibility of using 5 megahertz of the spectrum at issue in those proceedings as a home for a wireless microphone service.

we also find that continuing to accept new license applications for low power auxiliary station licenses that involve the operation of such stations on this spectrum after February 17, 2009 would impair the objectives that we are proposing in this proceeding. In addition, we impose a freeze on granting any request for equipment authorizations of low power auxiliary station devices that would operate in any of the 700 MHz Band frequencies. Accordingly, we hereby suspend acceptance of license applications and equipment authorizations for low power auxiliary stations that seek to operate on 700 MHz Band frequencies after February 17, 2009. This suspension is effective immediately and until further notice and applies to applications received on or after the release date of this Notice.[55] Any applications received on or after this date will be returned as unacceptable for filing. We take this action to permit orderly and effective resolution of issues in this proceeding.

24. In addition, we will not process such pending license applications and equipment authorization requests if they would involve operation in the 700 MHz Band after the end of the DTV transition.[56] Pending applications and equipment authorization requests will be held in abeyance until the conclusion of this proceeding, whereupon we will determine, in accordance with such new rules as are adopted, whether to process or return any such pending applications and equipment authorization requests. We note that entities with pending applications and equipment authorization requests to operate in spectrum that would include the 700 MHz Band are free to modify their applications and requests to exclude operation in this band, and these applications and requests could then proceed with being processed.

V. PROCEDURAL MATTERS

A. Regulatory Flexibility Act

25. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this Notice. The IRFA is set forth in the Appendix. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to the Notice, and must have a separate and distinct heading designating them as responses to the IRFA. Although Section 213 of the Consolidated Appropriations Act 2000 provides that the RFA shall not apply to the rules and competitive bidding procedures for frequencies in the 746-806 MHz Band,[57] we nevertheless believe that it would serve the public interest to analyze the possible significant economic impact of the proposed policy and rule changes in this band on small entities. Accordingly, the IRFA in the Appendix of this Notice includes an analysis of (and seeks comment on) this impact in connection with all spectrum that falls within the scope of this Notice, including spectrum in the 746-806 MHz Band.

B. Paperwork Reduction Act

26. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain

[55] The decision to impose this freeze is procedural in nature and therefore not subject to the notice and comment and effective date requirements of the Administrative Procedure Act. *See* 5 U.S.C. § 553(b)(A), (B), (d). *See also* Neighborhood TV Co., Inc. v. FCC, 742 F.2d 629 (D.C. Cir. 1984) (citing Kessler v. FCC, 326 F.2d 673 (D.C. Cir. 1963)).

[56] *See supra* n.55.

[57] In particular, this exemption extends to the requirements imposed by Chapter 6 of Title 5, United States Code, Section 3 of the Small Business Act (15 U.S.C. 632) and Section 3507 and 3512 of Title 44, United States Code. Consolidated Appropriations Act 2000, Pub. L. No. 106-113, 113 Stat. 2502, Appendix E, Sec. 213(a)(4)(A)-(B); *see* 145 Cong. Rec. H12493-94 (Nov. 17, 1999); 47 U.S.C.A. 337 note at Sec. 213(a)(4)(A)-(B).

any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

C. Other Procedural Matters

1. *Ex Parte* Presentations

27. The rulemaking this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[58] Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required.[59] Other requirements pertaining to oral and written presentations are set forth in Section 1.1206(b) of the Commission's rules.[60]

D. Comment Filing Procedures

28. Pursuant to Sections 1.415 and 1.419 of the Commission's rules,[61] interested parties may file comments and reply comments regarding the Notice on or before the dates indicated on the first page of this document. All filings related to this Notice of Proposed Rulemaking should refer to WT Docket No. 08-166, and WT Docket No. 08-167. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.[62]

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://www.fcc.gov/cgb/ecfs/ or the Federal eRulemaking Portal: http://www.regulations.gov. Filers should follow the instructions provided on the website for submitting comments.

  - ECFS filers must transmit one electronic copy of the comments for WT Docket No. 08-166 and WT Docket No. 08-167. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and WT Docket No. 08-166 and WT Docket No. 08-167. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, DC, 20554. Parties who choose to file by paper should also send a copy of their comments to: Bill Stafford, Wireless Telecommunications Bureau, Federal

[58] 47 C.F.R. §§ 1.200 *et. seq.*

[59] *See* 47 C.F.R. § 1.1206(b)(2).

[60] 47 C.F.R. § 1.1206(b).

[61] 47 C.F.R. §§ 1.415, 1.419.

[62] *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

Communications Commission, 445 12th Street, S.W., Washington, DC, 20554.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington DC 20554.

29. Parties shall serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, Room CY-B402, 445 12th Street, S.W., Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

30. Documents in WT Docket No. 08-166 and WT Docket No. 08-167 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, Room CY-A257, 445 12th Street, S.W., Washington, D.C. 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com.

1. Accessible Formats

31. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CARTS, *etc.*) by e-mail: FCC504@fcc.gov; phone: 202-418-0530 (voice), 202-418-0432 (TTY).

VI. ORDERING CLAUSES

32. Accordingly, IT IS ORDERED, pursuant to sections 1, 2, 4(i), 4(j), 301, 302, 303, 304, 307, 308, 309, 316, 332, 336, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 301, 302a, 303, 304, 307, 308, 309, 316, 332, 336, and 337 that this NOTICE OF PROPOSED RULEMAKING AND ORDER in WT Docket No. 08-166 and WT Docket No. 08-167 IS HEREBY ADOPTED.

33. IT IS FURTHER ORDERED that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on the NOTICE OF PROPOSED RULEMAKING on or before 30 days after publication in the Federal Register and reply comments on or before 60 days after publication in the Federal Register.

34. IT IS FURTHER ORDERED that , pursuant to 5 U.S.C. §553(b)(A), (B), (d), and Sections 4(i), 4(j) and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 154(j), and 303(r), the acceptance of applications for low power auxiliary stations that seek to operate on 698-806 MHz after February 17, 2009, IS SUSPENDED, effective August 21, 2008.

35. IT IS FURTHER ORDERED that , pursuant to 5 U.S.C. §553(b)(A), (B), (d), and Sections 4(i), 4(j) and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 154(j), and 303(r), pending applications for low power auxiliary stations that seek to operate on frequencies 698-806 MHz after February 17, 2009, WILL NOT BE PROCESSED, and will be held in abeyance until the conclusion of this proceeding initiated by this NOTICE OF PROPOSED RULEMAKING AND ORDER.

36. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this NOTICE OF PROPOSED RULEMAKING AND ORDER, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

APPENDIX

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules considered in this Notice of Proposed Rulemaking (*Notice*), WT Docket No. 08-166and WT Docket No. 08-167.[2] 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* provided on page one of this *Notice*. The Commission will send a copy of this *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[3] In addition, this *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.[4]

2. Although Section 213 of the Consolidated Appropriations Act 2000 provides that the RFA shall not apply to the rules and competitive bidding procedures for frequencies in the 746-806 MHz Band,[5] the Commission believes that it would serve the public interest to analyze the possible significant economic impact of the proposed policy and rule changes in this band on small entities. Accordingly, this IRFA contains an analysis of this impact in connection with all spectrum that falls within the scope of this *Notice*, including spectrum in the 746-806 MHz Band.

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

3. As noted above, the DTV Act set a firm date by which the spectrum in the 700 MHz Band (698-806 MHz), currently occupied by television broadcasters in TV Channels 52-69, must be vacated to allow for use by public safety and commercial wireless services. This *Notice* proposes rules intended to ease the DTV transition by ensuring that the 700 MHz Band is fully available for public safety and commercial wireless services as of February 17, 2009, by limiting potential interference in the band. In this *Notice*, the Commission seeks comment on our tentative conclusion to amend our rules to make clear that the operation of low power auxiliary stations within the 700 MHz Band will no longer be permitted after the end of the DTV transition because such operations could cause harmful interference to new wireless services in the band, particularly public safety operations.[6] The Commission also tentatively concludes to prohibit the manufacture, import, sale, offer for sale, or shipment of devices that operate as low power auxiliary stations in the 700 MHz Band after the end of the DTV transition.[7] In addition, for those licensees that have obtained authorizations to operate low power auxiliary stations in

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[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band, WT Docket No. xx-xxx, Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary Stations, Including Wireless Microphones, and the Digital Television Transition, WT Docket No. xx-xxx.

[3] *See* 5 U.S.C. § 603(a).

[4] *Id.*

[5] In particular, this exemption extends to the requirements imposed by Chapter 6 of Title 5, United States Code, Section 3 of the Small Business Act (15 U.S.C. 632) and Section 3507 and 3512 of Title 44, United States Code. Consolidated Appropriations Act 2000, Pub. L. No. 106-113, 113 Stat. 2502, Appendix E, Sec. 213(a)(4)(A)-(B); *see* 145 Cong. Rec. H12493-94 (Nov. 17, 1999); 47 U.S.C.A. 337 note at Sec. 213(a)(4)(A)-(B).

[6] *See Notice* at ¶ 2.

[7] *Id.*

spectrum that includes the 700 MHz Band beyond the end of the DTV transition, the Commission tentatively concludes that we will modify these licenses so as not to permit such operations in the 700 MHz Band after February 17, 2009.[8]

B. Legal Basis

4. The potential actions about which comment is sought in this *Notice* would be authorized pursuant to the authority contained in Sections 1, 2, 4(i), 4(j), 301, 302, 303, 304, 307, 308, 309, 316, 332, 336, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 301, 302a, 303, 304, 307, 308, 309, 316, 332, 336, and 337.

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

5. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted.[9] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[10] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[11] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[12]

6. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.[13] A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[14] Nationwide, as of 2002, there were approximately 1.6 million small organizations.[15] The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[16] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[17] We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."[18] Thus, we estimate that most governmental jurisdictions are small.

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[8] *Id.*

[9] 5 U.S.C. § 603(b)(3).

[10] 5 U.S.C. § 601(6).

[11] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 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."

[12] 15 U.S.C. § 632.

[13] See SBA, Programs and Services, SBA Pamphlet No. CO-0028, at page 40 (July 2002).

[14] 5 U.S.C. § 601(4).

[15] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[16] 5 U.S.C. § 601(5).

[17] U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, page 272, Table 415.

[18] We assume that the villages, school districts, and special districts are small, and total 48,558. See U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, page 273, Table 417. For 2002, Census Bureau (continued....)

7. In the *Notice*, the Commission seeks comment on the tentative conclusion that low power auxiliary stations authorized under Part 74 of our rules – including wireless microphones – will not be permitted to operate in the 700 MHz Band after the DTV transition. The Notice then seeks comment on whether to prohibit the manufacture, import, sale, offer for sale, or shipment of devices that operate as low power auxiliary stations in the 700 MHz Band after the end of the DTV transition. Under Section 74.832, only certain entities may be issued licenses authorizing the use of low power auxiliary stations. In particular, these entities fall within the following categories: (1) licensees of AM, FM, TV, or International broadcast stations or low power TV stations;(2) broadcast network entities; (3) certain cable television system operators; (4) motion picture and television program producers as defined in the rules; and (5) certain entities with specified interests in Broadband Radio Service (BRS) Educational Broadcast Service (EBS) licenses, i.e., BRS licensees (formerly licensees and conditional licensees of stations in the Multipoint Distribution Service and Multi-channel Multipoint Distribution Service), or entities that hold an executed lease agreement with a BRS licensee or conditional licensee or entities that hold an executed lease agreement with an Educational Broadcast Service (formerly Instructional Television Fixed Service)[19] licensee or permittee.[20]

8. In the *Notice,* the Commission also seeks comment on issues raised by the Public Interest Spectrum Coalition (PISC) in an informal complaint and petition for rulemaking ("PISC Petition" or "Petition").[21] PISC's allegations include that certain manufacturers of wireless microphones authorized for use under Part 74, Subpart H have violated the Commission's rules by marketing and selling equipment limited by Commission rule to certain classes of users to the general public; marketing and selling equipment for purposes that violate the Commission's rules; and deceiving the public as to the requirement for a Commission license and the limitations imposed by the Commission on the use of the devices.[22] PISC argues that a number of steps should be taken to prevent interference to public safety and commercial systems that will operate in the bands currently occupied by television channels 52-69, including the creation of a new "General Wireless Microphone Service" (GWMS).[23]

9. **Radio Stations.** This Economic Census category "comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources."[24] The SBA has established a small business

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data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. Id.

[19] In July 2004, the Commission renamed Multipoint Distribution Service as the Broadband Radio Service and renamed Instructional Television Fixed Service as the Educational Broadcast Service. *See* Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165, 14169 ¶6 (2004).

[20] *See* 47 C.F.R. § 74.832(a)(1)-(6).

[21] *See* Complaint of Public Interest Spectrum Coalition (PISC) Against Shure, Inc., Nady Systems, Inc., VocoPro, Audio2000, Sennheiser Electronic Corporation, Audix Microphones, Electro Voice, Hisonic International, Inc., Pyle Audio, *et al.*; Petition To Create a General Wireless Microphone Service (GWMS), *Informal Complaint and Petition for Rulemaking*, (filed July 16, 2008) (PISC Petition). The Public Interest Spectrum Coalition Consists of: The CUWiN Foundation (CUWIN), Consumer Federation of America (CFA), Consumers Union (CU), EDUCAUSE, Free Press (FP), Media Access Project (MAP), the National Hispanic Media Coalition (NHMC), the New America Foundation (NAF), the Open Source Wireless Coalition (OSWC), Public Knowledge (PK), and U.S. PIRG.

[22] *See* PISC Petition at 21-22

[23] *See* PISC Petition at i-ii.

[24] U.S. Census Bureau, 2002 NAICS Definitions, "515112 Radio Stations"; http://www.census.gov/epcd/naics02/def/NDEF515.HTM. A separate census category for "Radio Networks" (continued....)

size standard for this category, which is: such firms having $6.5 million or less in annual receipts.[25] According to Commission staff review of BIA Publications, Inc.'s *Master Access Radio Analyzer Database* on March 31, 2005, about 10,840 (95%) of 11,410 commercial radio stations had revenues of $6 million or less. Therefore, the majority of such entities are small entities.

10. We note, however, that in assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included.[26] In addition, to be determined to be a "small business," the entity may not be dominant in its field of operation.[27] We note that it is difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

11. **Television Broadcasting.** The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public."[28] The SBA has created a small business size standard for Television Broadcasting entities, which is: such firms having $13 million or less in annual receipts.[29] The Commission has estimated the number of licensed commercial television stations to be 1,379.[30] In addition, according to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database (BIA) on March 30, 2007, about 986 of an estimated 1,374 commercial television stations (or approximately 72 percent) had revenues of $13 million or less.[31] We therefore estimate that the majority of commercial television broadcasters are small entities.

12. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations[32] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

(Continued from previous page)
"comprises establishments primarily engaged in assembling and transmitting aural programming to their affiliates or subscribers via over-the-air broadcasts, cable, or satellite. The programming covers a wide variety of material, such as news services, religious programming, weather, sports, or music." *Id.* (NAICS code 5155111).

[25] 13 C.F.R. § 121.201, NAICS code 515112.

[26] "Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists." 13 C.F.R. § 121.103(a)(1) (an SBA regulation).

[27] 13 C.F.R. § 121.102(b) (an SBA regulation).

[28] U.S. Census Bureau, 2002 NAICS Definitions, "515120 Television Broadcasting" (partial definition); http://www.census.gov/epcd/naics02/def/NDEF515.HTM.

[29] 13 C.F.R. § 121.201, NAICS code 515120.

[30] *See FCC News Release*, "Broadcast Station Totals as of December 31, 2007," dated March 18, 2008; http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.

[31] We recognize that BIA's estimate differs slightly from the FCC total given *supra*.

[32] "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 C.F.R. § 21.103(a)(1).

13. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 380.[33] These stations are non-profit, and therefore considered to be small entities.[34] There are also 2,295 low power television stations (LPTV).[35] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

14. **Cable Television Distribution Services.** Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."[36] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts.[37] According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.[38] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[39] Thus, the majority of these firms can be considered small.

15. **Cable Companies and Systems.** The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.[40] Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[41] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[42] Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers,

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[33] *See FCC News Release*, "Broadcast Station Totals as of December 31, 2007," dated March 18, 2008; http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.

[34] *See generally* 5 U.S.C. §§ 601(4), (6).

[35] *See FCC News Release*, "Broadcast Station Totals as of December 31, 2007," dated March 18, 2008; http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.

[36] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.

[37] 13 C.F.R. § 121.201, NAICS code 517110.

[38] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[39] Id. An additional 61 firms had annual receipts of $25 million or more.

[40] 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

[41] These data are derived from: R.R. Bowker, Broadcasting & Cable Yearbook 2006, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, Television & Cable Factbook 2006, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

[42] 47 C.F.R. § 76.901(c).

and an additional 379 systems have 10,000-19,999 subscribers.[43] Thus, under this second size standard, most cable systems are small.

16. **Cable System Operators.** The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[44] The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[45] Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.[46] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[47] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

17. **Motion Picture and Video Producers.** This economic census category comprises "establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials."[48] The SBA has developed a small business size standard for firms within this category, which is: firms with $27 million or less in annual receipts.[49] According to Census Bureau data for 2002, there were 7,772 firms in this category that operated for the entire year.[50] Of this total, 7,685 firms had annual receipts of under $25 million and 45 firms had annual receipts of $25 million to $49,999,999.[51] Thus, under this category and associated small business size standard, the majority of firms can be considered small.

18. **Broadband Radio Service (formerly Multipoint Distribution Service) and Educational Broadband Service (formerly Instructional Television Fixed Service).** Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service

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[43] Warren Communications News, Television & Cable Factbook 2006, "U.S. Cable Systems by Subscriber Size," page F-2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

[44] 47 U.S.C. § 543(m)(2); see 47 C.F.R. § 76.901(f) & nn. 1-3.

[45] 47 C.F.R. § 76.901(f); *see* Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, DA 01-158 (Cable Services Bureau, Jan. 24, 2001).

[46] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

[47] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. *See* 47 C.F.R. § 76.909(b).

[48] U.S. Census Bureau, 2007 NAICS Definitions, "512110 Motion Picture and Video Production"; http://www.census.gov/naics/2007/def/ND512110.HTM#N512110 (this definition is unchanged from the 2002 NAICS definition).

[49] 13 C.F.R. § 121.201, NAICS code 512110.

[50] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 512110 (issued Nov. 2005).

[51] *Id.* An additional 42 firms had annual receipts of $50 million or more.

(MDS) and Instructional Television Fixed Service (ITFS).[52] In its *BRS/EBS Report and Order* in WT Docket No. 03-66, the Commission comprehensively reviewed its policies and rules relating to the ITFS and MDS services, and replaced the MDS with the Broadband Radio Service and ITFS with the Educational Broadband Service in a new band plan at 2495-2690 MHz.[53] In connection with the 1996 MDS auction, the Commission defined "small business" as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years.[54] The SBA has approved of this standard.[55]

19. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having $13.5 million or less in annual receipts.[56] According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.[57] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[58] Thus, under this size standard, the majority of firms can be considered small.

20. **Low Power Auxiliary Device Manufacturers: Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.** The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment."[59] The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees.[60] According to Census Bureau data for 2002, there were a total of

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[52] Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act – Competitive Bidding, MM Docket No. 94-131 and PP Docket No. 93-253, *Report and Order*, 10 FCC Rcd 9589, 9593 ¶ 7 (1995) (*MDS Auction R&O*).

[53] *See* Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 03-145 (rel. July 29, 2004) (*BRS/EBS Report and Order*). As the Commission noted in the *Further Notice*, there are unique policies associated with ITFS licensees' educational purposes, and the services have already developed their own approach to excess capacity leasing. *See Further Notice* at ¶¶ 307-08.

[54] 47 C.F.R. § 21.961(b)(1).

[55] *See* Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Bureau, from Gary Jackson, Assistant Administrator for Size Standards, Small Business Administration, dated March 20, 2003 (noting approval of $40 million size standard for MDS auction).

[56] 13 C.F.R. § 121.201, NAICS code 517510.

[57] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[58] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[59] U.S. Census Bureau, 2002 NAICS Definitions, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing"; http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342.

[60] 13 C.F.R. § 121.201, NAICS code 334220.

1,041 establishments in this category that operated for the entire year.[61] Of this total, 1,010 had employment of less than 500, and an additional 13 had employment of 500 to 999.[62] Thus, under this size standard, the majority of firms can be considered small.

21. **Low Power Auxiliary Device Manufacturers: Other Communications Equipment Manufacturing.** The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment)."[63] The SBA has developed a small business size standard for Other Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees.[64] According to Census Bureau data for 2002, there were a total of 503 establishments in this category that operated for the entire year.[65] Of this total, 493 had employment below 500, and an additional 7 had employment of 500 to 999.[66] Thus, under this size standard, the majority of firms can be considered small.

22. **Radio, Television, and Other Electronics Stores.** The Census Bureau defines this economic census category as follows: "This U.S. industry comprises: (1) establishments known as consumer electronics stores primarily engaged in retailing a general line of new consumer-type electronic products; (2) establishments specializing in retailing a single line of consumer-type electronic products (except computers); or (3) establishments primarily engaged in retailing these new electronic products in combination with repair services."[67] The SBA has developed a small business size standard for Radio, Television, and Other Electronics Stores, which is: all such firms having $8 million or less in annual receipts.[68] According to Census Bureau data for 2002, there were 10,380 firms in this category that

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[61] U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (released May 26, 2005); http://factfinder.census.gov. The number of "establishments" is a less helpful indicator of small business prevalence in this context than would be the number of "firms" or "companies," because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 929.

[62] *Id.* An additional 18 establishments had employment of 1,000 or more.

[63] U.S. Census Bureau, 2002 NAICS Definitions, "334290 Other Communications Equipment Manufacturing"; http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342.

[64] 13 C.F.R. § 121.201, NAICS code 334290.

[65] U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334290 (released May 26, 2005); http://factfinder.census.gov. The number of "establishments" is a less helpful indicator of small business prevalence in this context than would be the number of "firms" or "companies," because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 471.

[66] *Id.* An additional 3 establishments had employment of 1,000 or more.

[67] U.S. Census Bureau, 2002 NAICS Definitions, "443112 Radio, Television, and Other Electronics Stores"; http://www.census.gov/epcd/naics02/def/NDEF443.HTM.

[68] 13 C.F.R. § 121.201, NAICS code 443112.

operated for the entire year.[69] Of this total, 10,080 firms had annual sales of under $5 million, and 177 firms had sales of $5 million or more but less than $10 million.[70]. Thus, the majority of firms in this category can be considered small.

23. When identifying small entities that could be affected by the Commission's new rules, this IRFA provides information describing the number of small entities that currently hold low power auxiliary station licenses, as well as estimates of the number of small entities that currently manufacture low power auxiliary devices.[71] In order to assist the Commission in analyzing the total number of potentially affected small entities, the Commission requests commenters to estimate the number of small entities that may be affected by any rule changes that might result from this *Notice*.

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

24. Under the proposals contained in this *Notice* there would be no new reporting or recordkeeping requirements placed on small entities. The Commission tentatively concludes to amend its rules to make clear that the operation of low power auxiliary stations within the 700 MHz Band will no longer be permitted after the end of the DTV transition because such operations could cause harmful interference to new wireless services in the band, particularly public safety operations. To the extent there are licensees that have obtained authorizations to operate low power auxiliary stations in spectrum that includes the 700 MHz Band beyond the end of the DTV transition, the Commission tentatively concludes that it will modify these licenses so as not to permit such operations in the 700 MHz Band after February 17, 2009.

25. The *Notice* also seeks comment on whether to prohibit the manufacture, import, sale, offer for sale, or shipment of devices that operate as low power auxiliary stations in the 700 MHz Band after the end of the DTV transition. If this proposal is adopted, manufacturers producing low power auxiliary devices would be required to ensure that such devices would be unable to operate within the 700 MHz band.

26. To the extent the Commission's proposed revisions to its rules do not reflect the best approach to limit interference within the 700 MHz Band, the *Notice* seeks comment on the possibility of making appropriate adjustments to various prohibitions that will better serve the public interest.

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

27. The RFA requires an agency to describe any significant, specifically small business 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) and exemption from coverage of the rule, or any part thereof, for small entities."[72]

28. The *Notice* tentatively concludes to amend its rules to make clear that the operation of

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[69] U.S. Census Bureau, 2002 Economic Census, Industry Series: Retail Trade, Table 4, Sales Size of Firms for the United States: 2002, NAICS code 443112 (issued November 2005).

[70] *Id.* An additional 123 firms had annual sales of $10 million or more. As a measure of small business prevalence, the data on annual sales are roughly equivalent to what one would expect from data on annual receipts.

[71] *See* infra, para. 18.

[72] 5 U.S.C. §§ 603(c)(1)-(c)(4).

low power auxiliary stations within the 700 MHz Band will no longer be permitted after the end of the DTV transition because such operations could cause harmful interference to new wireless services in the band, particularly public safety operations. Although the *Notice* tentatively concludes that the Commission will modify licenses so as not to permit operations past February 17, 2009, it makes this tentative conclusion because the Commission is concerned that continued use of this spectrum by existing licensees of low power auxiliary stations may be disruptive to new public safety and other wireless operations in the 700 MHz Band, and because of the ready availability of other means that those licensees have under the Commission's rules for obtaining access to various other spectrum frequencies in which to operate low power auxiliary stations. Moreover, such stations will continue to be permitted access to more than 300 megahertz of spectrum.[73]

29. The Commission also seeks comment on alternatives to modifying current licenses so as not to permit such operations in the 700 MHz Band after February 17, 2009. The Commission seeks comment on whether license terms should be reduced so as to terminate at some other date, *e.g.*, one year after February 17, 2009, or not reduced at all.

30. Along with prohibiting low power auxiliary devices within the 700 MHz Band after the end of the DTV transition, the Commission also proposes to prohibit the manufacture, import, sale, offer for sale, or shipment of devices that operate as low power auxiliary stations in the 700 MHz Band after the end of the DTV transition. The Commission tentatively concludes that this proposed prohibition will help facilitate the DTV transition by helping to address possible concerns about significant unauthorized operation of wireless microphones in the 700 MHz Band, and therefore help minimize the likelihood that additional unauthorized use would occur after the end of the DTV transition.[74] The Commission seeks comment on its tentative conclusions to prohibit the manufacture, import, sale, offer for sale, or shipment of low power auxiliary station devices that operate in the 700 MHz Band, and to have the prohibition take effect on the effective date of the revised rules.

31. To minimize significant economic impact to the firms, including small entities, that are or will become low power auxiliary station licensees or that manufacture, import, sell, or ship devices that operate as low power auxiliary stations in the 700 MHz Band, the *Notice* seeks comment on the impact that such changes would have on small entities. The Commission will continue to examine alternatives in the future with the objective of eliminating unnecessary regulations and minimizing significant impact on small entities. Toward that end, the Commission seeks comment on alternatives commenters believe we should adopt.

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

32. None.

[73] *See* 47 C.F.R. 74.802(a).

[74] *See Notice* at ¶ 15.