

transmission of programs to the public.”<sup>29</sup> The SBA has created a small business size standard for Television Broadcasting entities, which is: such firms having \$14.0 million or less in annual receipts.<sup>30</sup> The Commission has estimated the number of licensed commercial television stations to be 1,379.<sup>31</sup> In addition, according to Commission staff review of the BIA Publications, Inc.’s *Master Access Television Analyzer Database* 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.<sup>32</sup> We therefore estimate that the majority of commercial television broadcasters are small entities.

16. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations<sup>33</sup> 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.

17. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 380.<sup>34</sup> These stations are non-profit, and therefore considered to be small entities.<sup>35</sup> There are also 2,295 low power television stations (LPTV).<sup>36</sup> 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.

18. **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.”<sup>37</sup> 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

<sup>29</sup> U.S. Census Bureau, 2002 NAICS Definitions, “515120 Television Broadcasting” (partial definition); <http://www.census.gov/epcd/naics02/def/NDEF515.HTM>.

<sup>30</sup> 13 C.F.R. § 121.201, NAICS code 515120.

<sup>31</sup> 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](http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf).

<sup>32</sup> We recognize that BIA’s estimate differs slightly from the FCC total given *supra*.

<sup>33</sup> “[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).

<sup>34</sup> 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](http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf).

<sup>35</sup> See generally 5 U.S.C. §§ 601(4), (6).

<sup>36</sup> 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](http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf).

<sup>37</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition); <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

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.<sup>38</sup> 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.<sup>39</sup> 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.<sup>40</sup> Thus, the majority of these firms can be considered small.

19. **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.<sup>41</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.<sup>42</sup> In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>43</sup> Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have fewer than 10,000 subscribers, and an additional 379 systems have 10,000-19,999 subscribers.<sup>44</sup> Thus, under this second size standard, most cable systems are small.

20. **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."<sup>45</sup> 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.<sup>46</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.<sup>47</sup> 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,<sup>48</sup> and therefore we are unable to estimate

<sup>38</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>39</sup> 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).

<sup>40</sup> *Id.* An additional 61 firms had annual receipts of \$25 million or more.

<sup>41</sup> 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).

<sup>42</sup> 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.

<sup>43</sup> 47 C.F.R. § 76.901(c).

<sup>44</sup> 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.

<sup>45</sup> 47 U.S.C. § 543(m)(2); see 47 C.F.R. § 76.901(f) & nn. 1-3.

<sup>46</sup> 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).

<sup>47</sup> 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.

<sup>48</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local (continued....)

more accurately the number of cable system operators that would qualify as small under this size standard.

21. **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.”<sup>49</sup> 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.<sup>50</sup> According to Census Bureau data for 2002, there were 7,772 firms in this category that operated for the entire year.<sup>51</sup> 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.<sup>52</sup> Thus, under this category and associated small business size standard, the majority of firms can be considered small.

22. **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 (MDS) and Instructional Television Fixed Service (ITFS).<sup>53</sup> 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.<sup>54</sup> 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.<sup>55</sup> The SBA has approved of this standard.<sup>56</sup>

23. 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.<sup>57</sup> According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated

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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).

<sup>49</sup> 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).

<sup>50</sup> 13 C.F.R. § 121.201, NAICS code 512110.

<sup>51</sup> 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).

<sup>52</sup> *Id.* An additional 42 firms had annual receipts of \$50 million or more.

<sup>53</sup> 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*).

<sup>54</sup> See *BRS/EBS Report and Order*.

<sup>55</sup> 47 C.F.R. § 21.961(b)(1).

<sup>56</sup> See Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 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).

<sup>57</sup> 13 C.F.R. § 121.201, NAICS code 517510.

for the entire year.<sup>58</sup> 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.<sup>59</sup> Thus, under this size standard, the majority of firms can be considered small.

24. **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.”<sup>60</sup> 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.<sup>61</sup> According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year.<sup>62</sup> Of this total, 1,010 had employment of less than 500, and an additional 13 had employment of 500 to 999.<sup>63</sup> Thus, under this size standard, the majority of firms can be considered small.

25. **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).”<sup>64</sup> The SBA has developed a small business size standard for Other Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees.<sup>65</sup> According to Census Bureau data for 2002, there were a total of 503 establishments in this category that operated for the entire year.<sup>66</sup> Of this total, 493 had

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<sup>58</sup> 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).

<sup>59</sup> *Id.* An additional 61 firms had annual receipts of \$25 million or more.

<sup>60</sup> 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>.

<sup>61</sup> 13 C.F.R. § 121.201, NAICS code 334220.

<sup>62</sup> 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.

<sup>63</sup> *Id.* An additional 18 establishments had employment of 1,000 or more.

<sup>64</sup> U.S. Census Bureau, 2002 NAICS Definitions, “334290 Other Communications Equipment Manufacturing”; <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

<sup>65</sup> 13 C.F.R. § 121.201, NAICS code 334290.

<sup>66</sup> 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 (continued....)

employment below 500, and an additional 7 had employment of 500 to 999.<sup>67</sup> Thus, under this size standard, the majority of firms can be considered small.

26. **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.”<sup>68</sup> 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.<sup>69</sup> According to Census Bureau data for 2002, there were 10,380 firms in this category that operated for the entire year.<sup>70</sup> 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.<sup>71</sup> Thus, the majority of firms in this category can be considered small.

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

27. The Report and Order adopts transition procedures for entities that have not been able to migrate their operations of low power auxiliary stations out of the 700 MHz Band by the effective date of the new rules. During a one-year transition period from the end of the DTV transition, to the extent that a 700 MHz public safety or commercial licensee chooses to notify the Commission that it will be initiating operations on specified frequencies in particular market(s), the Commission will issue a public notice providing that users of low power auxiliary stations in the 700 MHz Band in those market(s) will be required to cease operations within 60 days after such notice is issued. Alternatively, any 700 MHz commercial or public safety licensee may, at its option, notify any user of low power auxiliary stations of its intention to initiate operations on specified frequencies in the market in which the low power auxiliary station user is operating. Upon receipt of such notice, the entity operating low power auxiliary stations in the affected market area must cease operation within 60 days.

28. To protect consumers in the United States, and to help ensure that no wireless microphones and other low power auxiliary stations that operate in the 700 MHz Band continue to be made available for use in the United States, the Report and Order requires retailers to remove from display (including online display) any low power auxiliary stations, including wireless microphones, that can operate in the 700 MHz Band, as well as any marketing material that does not comply with the requirements adopted herein.

29. Current licensees with authority under Part 74, Subpart H to operate low power auxiliary stations in the 700 MHz Band whose current authorization limits them in whole or in significant part to

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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.

<sup>67</sup> *Id.* An additional 3 establishments had employment of 1,000 or more.

<sup>68</sup> U.S. Census Bureau, 2002 NAICS Definitions, “443112 Radio, Television, and Other Electronics Stores”; <http://www.census.gov/epcd/naics02/def/NDEF443.HTM>.

<sup>69</sup> 13 C.F.R. § 121.201, NAICS code 443112.

<sup>70</sup> 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).

<sup>71</sup> *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.

operations in the 700 MHz Band can be accommodated with the use of spectrum from other spectrum bands that are available for low power auxiliary station operations under Section 74.802 of the rules. Once replacement spectrum has been identified, as a matter of administrative convenience, the licensee should file an application to modify its authorization to include the identified frequencies.

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

30. 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.”<sup>72</sup>

31. In the *Report and Order*, the Commission adopts a single set of rules for all operators and manufacturers of low power auxiliary stations (including those operators and manufacturers that are small entities). The Commission decides on a single set of rules in accordance with its objective of limiting potential interference on the 700 MHz Band to ensure that it is available for public safety and commercial wireless services as of June 12, 2009. In the *Report and Order*, the Commission concludes to amend its rules to make clear that none of the entities currently operating low power auxiliary stations, including wireless microphones, within the 700 MHz Band will have the right to do so 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.<sup>73</sup> To adopt a separate set of rules for small entities could undermine the Commission’s objective of establishing an unencumbered 700 MHz Band for use by public safety and commercial wireless services after the end of the DTV transition.

32. The rules adopted in the *Report and Order* may have a significant economic impact on a substantial number of small entities. For example, the Commission has determined to amend its rules to provide that low power auxiliary stations licensed under Part 74 of the rules (including those operated by small entities) no longer have a right to operate in the 700 MHz Band after the effective date of the rules adopted in the *Report and Order*. The Commission modifies the licenses of all low power auxiliary station licensees that currently are authorized to operate in the 700 MHz Band to remove this part of the authorization and prohibit such operations in the 700 MHz Band after the effective date of the new rules, as conditioned in the *Report and Order*. The Commission also 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, effective upon publication of a summary of the *Report and Order* in the Federal Register.<sup>74</sup> This ban includes the manufacture, import, sale, offer for sale, or shipment of such devices by small entities, and the requirements for complying with these rules would be the same for both large and small entities. To the extent that small entities feel this compliance burden more, we have, as noted herein in Section D and below, provided a transition period to lessen this burden.

33. In the *Report and Order*, the Commission takes several steps to minimize the economic impact of its rules on operators of low power auxiliary stations in the 700 MHz Band (including those operators which are small entities). For example, the Commission recognizes that not all entities operating low power auxiliary stations in the 700 MHz Band may succeed, despite their best efforts, in

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<sup>72</sup> 5 U.S.C. §§ 603(c)(1)-(c)(4).

<sup>73</sup> *Report and Order* at ¶¶ 29, 34.

<sup>74</sup> *Id.* at ¶ 50.

removing their operations from the band by the date of the new rules and finds that a transition period is appropriate for these users. This limited right terminates one year from the end of the DTV transition, subject to the transition procedures. All users of low power auxiliary stations must cease operations in the band immediately if they cause harmful interference to 700 MHz public safety and commercial licensees. To the extent that a 700 MHz public safety or commercial licensee chooses to notify the Commission that it will be initiating operations on specified frequencies in particular market(s), the Commission will issue a public notice providing that users of low power auxiliary stations in the 700 MHz Band in those market(s) will be required to cease operations within 60 days after such notice is issued. Alternatively, any 700 MHz commercial or public safety licensee may, at its option, notify any user of low power auxiliary stations of its intention to initiate operations on specified frequencies in the market in which the low power auxiliary station user is operating. Upon receipt of such notice, the entity operating low power auxiliary stations in the affected market area must cease operation within 60 days. Alternative procedures that the Commission did not adopt include a longer transition period that may have had an impact on small entities.

34. These transition procedures will apply both to licensed low power auxiliary stations and users of low power auxiliary stations in the 700 MHz Band that did not obtain the required license. By making the procedures available to entities that have not had the required license, it is likely that many small entities will be provided with authority to operate on a limited basis, which has not previously been made available to them. We also conclude that it serves the public interest to waive two of our Part 15 rules, to permit unauthorized users of low power auxiliary stations, including wireless microphones, to operate on an unlicensed basis under Part 15 pursuant to certain specified technical requirements, in the 700 MHz Band until June 12, 2010 and in the core TV bands until the effective date of the rules that will be adopted in response to the Further Notice.

35. In addition, the Commission finds that those licensees whose current authorization limits them in whole or in significant part to operations in the 700 MHz Band can be accommodated with the use of spectrum from other spectrum bands that are available for low power auxiliary station operations under Section 74.802 of the rules. The *Report and Order* notes that such licensees may wish to consult with a local Society of Broadcast Engineers (SBE) coordinator to identify suitable spectrum from other spectrum bands that are available for low power auxiliary station operations under the rules. Once replacement spectrum has been identified, as a matter of administrative convenience the licensee should file an application to modify its authorization to include the identified frequencies. This will enable the Wireless Telecommunications Bureau to modify the license in conformance with the revised rules adopted in the *Report and Order*.

36. The Report and Order rejects an alternative proposal for a general amnesty for unauthorized wireless microphone users. The Commission permits wireless microphone users currently operating in the 700 MHz Band, which include many currently unauthorized users, to remain in the band for a limited period of time subject to specific transition procedures, while also permitting many currently unauthorized users the opportunity, on a going-forward basis, to locate wireless microphone operations in the TV band spectrum. In addition, the Report and Order declines to pursue the investigation requested by PISC.

#### **F. Report to Congress**

37. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>75</sup> In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and FRFA (or

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<sup>75</sup> See 5 U.S.C. § 801(a)(1)(A).

summaries thereof) will also be published in the Federal Register.<sup>76</sup>

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<sup>76</sup> *Id.* § 604(b).

## APPENDIX D

## Part 74 Low Power Auxiliary Station Licenses With 700 MHz Authorization

Listed below are low power auxiliary station licenses under Part 74, Subpart H, that include authorization to operate on frequencies in 698-806 MHz.

Call Sign Licensee

BLP00398	WTVG, INC.
BLP00545	FOX TELEVISION STATIONS, INC.
BLP00556	GRAY TELEVISION LICENSEE, INC.
BLP00582	INDIANA BROADCASTING, LLC
BLP00749	MEDIA GENERAL COMMUNICATIONS HOLDINGS, LLC
BLP00753	MULTIMEDIA HOLDINGS CORPORATION
BLP00764	RADFORD STUDIO CENTER INC
BLP00766	KGO TELEVISION, INC.
BLP00794	WLS TELEVISION, INC.
BLP00813	ABC HOLDING COMPANY, INC.
BLP00822	MEREDITH CORPORATION
BLP00874	BONNEVILLE HOLDING COMPANY
BLP00910	POST-NEWSWEEK STATIONS, FLORIDA, INC.
BLP00930	TRIBUNE TELEVISION COMPANY
BLP00989	NATIONAL CABLE SATELLITE CORPORATION dba C-SPAN
BLP00998	WTVD TELEVISION, LLC
BLP01002	CBS RADIO HOLDINGS INC.
BLP01004	POST-NEWSWEEK STATIONS, SAN ANTONIO, INC.
BLP01005	AMERICAN BROADCASTING COMPANIES, INC
BLP01052	LOCAL TV TENNESSEE LICENSE, LLC
BLP01068	NBC TELEMUNDO LICENSE CO.
BLP01077	TOTAL RF MARKETING, INC.
BLP01080	WMC LICENSE SUBSIDIARY, LLC
BLP01083	KING BROADCASTING COMPANY
BLP01095	KSBY COMMUNICATIONS, INC.
BLP01096	KRCA LICENSE LLC
BLP01102	ESPN PRODUCTIONS INC
BLP01108	TRIBUNE TELEVISION COMPANY
BLP01111	SARKES TARZIAN, INC.
BLP01115	WTNH BROADCASTING, INC.
BLP01123	KSAZ LICENSE, INC.
BLP01124	NEXSTAR BROADCASTING, INC.
BLP01125	NORTHERN CALIFORNIA PUBLIC BROADCASTING, INC.
BLP01129	MIDWEST TELEVISION, INC.
BLP01130	LOCAL TV ARKANSAS LICENSE, LLC
BLP01135	KIRO-TV, INC.
BLP01140	KGO TELEVISION, INC.
BLP01154	COMMUNITY TELEVISION OF WISCONSIN LICENSE, LLC
BLP01156	TOTAL RF MARKETING INC
BLP01157	WBNS-TV, INC.

BLP01158	EAST TENNESSEE PUBLIC COMMUNICATIONS CORP.
BLP01159	AMERICAN BROADCASTING COMPANIES INC
BLP01167	WLKY HEARST-ARGYLE TELEVISION, INC.
BLP01169	CBS BROADCASTING INC.
BLP01170	FRESNO, CITY OF
BLP01171	WKYC-TV, INC.
BLP01173	OHIO/OKLAHOMA HEARST- ARGYLE TELEVISION
BLP01178	RANDY HERMES PRODUCTION INC dba AERIAL VIDEO SYSTEMS
BLP01195	RADIO LICENSE HOLDING IV, LLC
BLP01204	CAPITOL BROADCASTING COMPANY, INC.
BLP01215	KING BROADCASTING COMPANY
BLP01216	GREATER BOSTON RADIO, INC.
BLP01222	WXII HEARST-ARGYLE TELEVISION, INC.
BLP01223	FOX TELEVISION STATIONS, INC.
BLP01373	WLOS LICENSEE, LLC
BLP01384	FREEDOM BROADCASTING OF FLORIDA LICENSEE, L.L.C.
BLP01411	KTLA INC.
BLP01502	QVC INC
BLP01505	COMMUNITY EDUCATIONAL TELEVISION, INC.
BLP01506	WIRELESS VIDEO INC
BLP01509	ESPN INC
BLP01510	NFL PRODUCTIONS LLC
BLP01512	GRAY TELEVISION LICENSEE, INC.
BLP01515	MIDCOM, INC.
BLP01517	NATIONAL FOOTBALL LEAGUE
BLP01519	KSWB INC.
BLP01520	ICI/GLOBAL UNIVERSITY
BLP01524	WAITT BROADCASTING, INC.
BLP01525	WABASH VALLEY BROADCASTING CORPORATION
BLP01529	STANFORD UNIVERSITY
WPMK337	KVVU BROADCASTING CORPORATION
WPPG800	GOODYEAR TIRE & RUBBER COMPANY
WPRS457	KING BROADCASTING COMPANY
WPRT657	CBS RADIO EAST INC.
WPRY410	PIKES PEAK TELEVISION, INC.
WPTA510	UNIVERSITY OF CINCINNATI
WPTA512	UNIVERSITY OF MICHIGAN, FOOTBALL OFFICE
WPTA515	UNIVERSITY OF OKLAHOMA FOOTBALL
WPTA547	UNIVERSITY OF MIAMI ATHLETIC DEPARTMENT (FOOTBALL)
WPTA560	UNIVERSITY OF ARKANSAS, MEN'S ATHLETICS
WPTA566	UNIVERSITY OF WASHINGTON, ATHLETICS DEPARTMENT
WPTA981	OHIO STATE UNIVERSITY
WPTA982	PENN STATE UNIVERSITY INTERCOLLEGIATE ATHLETICS
WPTA986	NASHVILLE PUBLIC TELEVISION, INC.
WPTA991	UNIVERSITY OF MARYLAND
WPTB546	VIRGINIA TECH, ATHLETIC DEPARTMENT
WPTB548	NOTRE DAME UNIVERSITY
WPTB550	UNIVERSITY OF CALIFORNIA, BERKELEY
WPTB551	MICHIGAN STATE UNIVERSITY
WPTB557	BOARD OF REGENTS UNIVERSITY OF WISCONSIN SYSTEM

WPTI807	THE UNIVERSITY OF TEXAS AT AUSTIN
WPTS554	TEXAS A&M UNIVERSITY, ATHLETIC DEPARTMENT
WPUL328	WALT DISNEY WORLD CO.
WPVL464	IMMERSION ENTERTAINMENT, LLC
WPVX572	FLORIDA STATE UNIVERSITY, ATHLETIC DEPARTMENT
WPWA802	CBS RADIO STATIONS INC.
WPWA803	CBS RADIO STATIONS INC.
WPWA805	WILKS LICENSE COMPANY-KANSAS CITY LLC
WPWA806	WILKS LICENSE COMPANY-KANSAS CITY LLC
WPWA809	TEXAS CBS RADIO BROADCASTING L.P.
WPWE243	WFIE LICENSE SUBSIDIARY, LLC
WPWF637	UNIVERSITY OF LOUISVILLE
WPWF650	SAN JOSE STATE UNIVERSITY
WPWT842	BOARD OF TRUSTEES FOR SAN DIEGO UNIV.
WPWT854	UNIVERSITY OF MONTANA
WPXA849	ENTRAVISION HOLDINGS, LLC
WPXW291	KJLA, LLC
WPXY539	VIACOM INTERNATIONAL, INC.
WPYE310	NBC TELEMUNDO LICENSE CO.
WPYM958	UNIVERSITY OF HOUSTON
WPYP773	FOX TELEVISION STATIONS, INC.
WPYQ913	ARENA FOOTBALL LEAGUE, LLC
WPYR934	EDUCATIONAL BROADCASTING CORPORATION
WPYR946	EDUCATIONAL BROADCASTING CORPORATION
WPYR948	MISSISSIPPI STATE UNIVERSITY, BULLDOG CLUB, INC.
WPYY596	INDIANA, STATE OF - PURDUE UNIVERSITY - W LAF
WPYY613	STATE OF OHIO, YOUNGSTOWN STATE UNIVERSITY
WPYY643	SONY PICTURES ENTERTAINMENT
WPZA303	FOX TELEVISION STATIONS, INC.
WPZK735	STATION VENTURE OPERATIONS, LP
WQAB582	FOX TELEVISION STATIONS OF PHILADELPHIA, INC.
WQAC462	ODS TECHNOLOGIES, L.P.
WQAE263	LOCAL TV VIRGINIA LICENSE, LLC
WQAE302	UNIVERSAL CITY STUDIOS LLLP
WQBE979	BLACK ENTERTAINMENT TELEVISION LLC
WQBV562	AUBURN UNIVERSITY
WQCK457	SLC TV LICENSEE CORP.
WQCT290	SACRAMENTO TELEVISION STATIONS INC.
WQCT920	UNIVERSITY OF OREGON
WQDA545	CBS CORPORATION
WQDH542	CBS STATIONS GROUP OF TEXAS L.P.
WQDU966	THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ALABAMA
WQEF500	CBS BROADCASTING INC.
WQEP917	RF FILM, INC.
WQER925	NORTHERN CALIFORNIA PUBLIC BROADCASTING, INC.
WQEW826	AF2, LLC
WQFB893	WGAL HEARST-ARGYLE TELEVISION, INC.
WQFF540	THE BOEING COMPANY
WQFH685	BROADCAST SPORTS, INC.
WQFS290	UNIVERSITY OF CENTRAL FLORIDA

WQGB468	KING BROADCASTING COMPANY
WQGH513	UNIVERSITY OF CONNECTICUT
WQGJ552	UNIVERSITY OF IOWA, FOOTBALL OFFICE
WQGL952	OHIO/OKLAHOMA HEARST-ARGYLE TELEVISION, INC
WQGW680	MEDIA GENERAL COMMUNICATIONS HOLDINGS, LLC
WQHA394	THE WALT DISNEY COMPANY
WQHQ645	CBS TELEVISION STATIONS INC.
WQHQ691	THE BOEING COMPANY
WQIH757	CBS CORPORATON
WQIJ473	RF TECHNOLOGY, LLC
WQIY392	THE BOEING COMPANY
WQJB800	WDAF LICENSE, INC.
WQJE713	WMBF LICENSE SUBSIDIARY, LLC

## APPENDIX E

## Proposed Rules

Part 15 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation of Part 15 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 302, 303, 304, 307, 336, and 544A.

2. Section 15.3 is revised by adding a new paragraph (hh) to read as follows:

**§ 15.3 Definitions.**

\* \* \* \* \*

(hh) *Wireless Audio Device.* An intentional radiator that is used to transmit voice, music or other audio material over a short distance. Transmissions may be either analog or digital. Data transmissions are not permitted except for short strings such as recognition codes necessary to ensure the functionality of a system. Transmission of audio material to the public switched telephone network and private and commercial wireless systems and networks is not permitted.

3. A new Section 15.238 added to read as follows:

**§ 15.238 Operation in the bands 54-72 MHz, 76-88 MHz, 174-216 MHz, 470-608 MHz and 614-698 MHz.**

(a) Operation under this section is limited to wireless audio devices as defined in § 15.3(hh).

(b) Operation is limited to locations removed from existing co-channel TV broadcast stations by not less than the following distances. See §73.609 for zone definitions.

(1) 54.000–72.000 MHz and 76.000–88.000 MHz:

Zone I 105 km (65 miles)

Zones II and III 129 km (80 miles)

(2) 174.000–216.000 MHz

Zone I 97 km (60 miles)

Zones II and III 129 km (80 miles)

(3) 470.000–608.000 MHz and 614.000–698.000 MHz.

All zones 113 km (70 miles)

(c) Specific frequency operation is required as follows.

(1) The frequency selection shall be offset from the upper or lower band limits by 25 kHz or an integral multiple thereof.

(2) One or more adjacent 25 kHz segments within the assignable frequencies may be combined to form a channel whose maximum bandwidth shall not exceed 200 kHz. The operating bandwidth shall not exceed 200 kHz.

(3) The frequency tolerance of the carrier signal shall be maintained within +/- 0.005% of the operating frequency over a temperature variation of -20 degrees to +50 degrees C at normal supply voltage, and for a variation in the primary supply voltage from 85% to 115% of the rated supply voltage at a temperature of 20 degrees C. Battery operated equipment shall be tested using a new battery.

(d) The unmodulated carrier power at the antenna input may not exceed 50 mW.

(e) The mean power of out-of-band emissions must comply with the following:

(1) On any frequency removed from the operating frequency by more than 50% and up to 100% of the authorized bandwidth: at least 25 dB.

(2) On any frequency removed from the operating frequency by more than 100% and up to 250% of the authorized bandwidth: at least 35 dB.

(3) On any frequency removed from the operating frequency by more than 250% of the authorized bandwidth:  $43 + 10 \log P$  dB where P is the mean output power in watts.

## APPENDIX F

## Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice of Proposed Rule Making (Further Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided in Section V.F.2. of the item. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the Further Notice and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

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

2. The Further Notice addresses the use of wireless low power auxiliary stations, including wireless microphones that operate on TV channels 2-51, excluding channel 37, (“the TV bands”) by entities that are not eligible for a Part 74 license. In light of the important functions that these types of devices provide to the public, the Commission believes that developing rules to provide for the unlicensed use of wireless low power auxiliary stations, including wireless microphones, in the TV bands would serve the public interest. While wireless microphones are available for use on an unlicensed basis in the 49 MHz, 902-928 MHz and 2.4 GHz bands and on a licensed basis by some entities under Part 90 in the 170 MHz band, many entities are using wireless microphones designed for use in the TV bands on an unauthorized basis. The reasons for the use of TV band wireless microphones are varied including, for example, the amount of spectrum that is available for their use in the TV bands can accommodate multiple microphones at one venue and the sound fidelity that is achieved by TV bands microphones is much higher than that of microphones that operate in other bands.

3. Certain users of wireless microphones that are not currently eligible for a low power auxiliary station license under Part 74 may have needs that are similar to existing eligible licensees and may have a need for the interference protection that a license affords. The Further Notice seeks comment on whether to revise the Commission’s rules to provide for a limited expansion of eligibility that would permit such users to hold a Part 74 license in the TV bands. For example, the Further Notice seeks comment on whether to expand eligibility for licensing under Part 74, Subpart H of the rules to include large theaters, entertainment complexes, sporting arenas, and religious facilities. The Further Notice also seeks comment on whether we should modify the eligibility requirements for a Part 74 license to include other entities that use wireless microphones, such as those operating at convention or trade shows, certain other cultural events, or governmental or educational institutions.

**B. Legal Basis**

4. The proposed action is authorized under Sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302,

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<sup>1</sup> 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).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> See 5 U.S.C. § 603(a).

303(e), 303(f), 303(r), 304 and 307.

**C. Description and Estimate of the Number of Small Entities To Which the Proposed 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.<sup>4</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>5</sup> In addition, the “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>6</sup> A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operations; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>7</sup>

6. Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA. A “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of 2002, there were approximately 1.6 million small organizations. 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.” Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.” Thus, we estimate that most governmental jurisdictions are small.

7. In the Report and Order, the Commission concludes 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 Commission also 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, effective upon the publication of a summary of the Report and Order in the Federal Register. Under Section 74.832 of the Commission’s rules, 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) licensee or permittee.

8. **Radio Stations.** This Economic Census category “comprises establishments primarily

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<sup>4</sup> See 5 U.S.C. § 603(b)(3).

<sup>5</sup> 5 U.S.C. § 601(6).

<sup>6</sup> 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.”

<sup>7</sup> 15 U.S.C. § 632.

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.”<sup>8</sup> The SBA has established a small business size standard for this category, which is: such firms having \$7.0 million or less in annual receipts.<sup>9</sup> 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.

9. We note, however, that in assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included.<sup>10</sup> In addition, to be determined to be a “small business,” the entity may not be dominant in its field of operation.<sup>11</sup> 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.

10. **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.”<sup>12</sup> The SBA has created a small business size standard for Television Broadcasting entities, which is: such firms having \$14.0 million or less in annual receipts.<sup>13</sup> The Commission has estimated the number of licensed commercial television stations to be 1,379.<sup>14</sup> In addition, according to Commission staff review of the BIA Publications, Inc.’s *Master Access Television Analyzer Database* 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.<sup>15</sup> We therefore estimate that the majority of commercial television broadcasters are small entities.

11. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations<sup>16</sup> 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.

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<sup>8</sup> 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” “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).

<sup>9</sup> 13 C.F.R. § 121.201, NAICS code 515112.

<sup>10</sup> “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).

<sup>11</sup> 13 C.F.R. § 121.102(b) (an SBA regulation).

<sup>12</sup> U.S. Census Bureau, 2002 NAICS Definitions, “515120 Television Broadcasting” (partial definition); <http://www.census.gov/epcd/naics02/def/NDEF515.HTM>.

<sup>13</sup> 13 C.F.R. § 121.201, NAICS code 515120.

<sup>14</sup> 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](http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf).

<sup>15</sup> We recognize that BIA’s estimate differs slightly from the FCC total given *supra*.

<sup>16</sup> “[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).

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.

12. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 380.<sup>17</sup> These stations are non-profit, and therefore considered to be small entities.<sup>18</sup> There are also 2,295 low power television stations (LPTV).<sup>19</sup> 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.

13. **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."<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup> Thus, the majority of these firms can be considered small.

14. **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.<sup>24</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.<sup>25</sup> In addition, under

<sup>17</sup> 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](http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf).

<sup>18</sup> See generally 5 U.S.C. §§ 601(4), (6).

<sup>19</sup> 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](http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf).

<sup>20</sup> U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

<sup>21</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>22</sup> 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).

<sup>23</sup> *Id.* An additional 61 firms had annual receipts of \$25 million or more.

<sup>24</sup> 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).

<sup>25</sup> 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.

the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>26</sup> Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have fewer than 10,000 subscribers, and an additional 379 systems have 10,000-19,999 subscribers.<sup>27</sup> Thus, under this second size standard, most cable systems are small.

15. **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."<sup>28</sup> 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.<sup>29</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.<sup>30</sup> 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,<sup>31</sup> and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

16. **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."<sup>32</sup> 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.<sup>33</sup> According to Census Bureau data for 2002, there were 7,772 firms in this category that operated for the entire year.<sup>34</sup> 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.<sup>35</sup> Thus, under this category and associated small business size standard, the majority of firms can be considered small.

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<sup>26</sup> 47 C.F.R. § 76.901(c).

<sup>27</sup> 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.

<sup>28</sup> 47 U.S.C. § 543(m)(2); see 47 C.F.R. § 76.901(f) & nn. 1-3.

<sup>29</sup> 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).

<sup>30</sup> 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.

<sup>31</sup> 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).

<sup>32</sup> 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).

<sup>33</sup> 13 C.F.R. § 121.201, NAICS code 512110.

<sup>34</sup> 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).

<sup>35</sup> *Id.* An additional 42 firms had annual receipts of \$50 million or more.

17. **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 (MDS) and Instructional Television Fixed Service (ITFS).<sup>36</sup> 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.<sup>37</sup> 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.<sup>38</sup> The SBA has approved of this standard.<sup>39</sup>

18. 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.<sup>40</sup> According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.<sup>41</sup> 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.<sup>42</sup> Thus, under this size standard, the majority of firms can be considered small.

19. **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.”<sup>43</sup> 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.<sup>44</sup> According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year.<sup>45</sup> Of this total, 1,010 had

<sup>36</sup> 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*).

<sup>37</sup> See *BRS/EBS Report and Order*.

<sup>38</sup> 47 C.F.R. § 21.961(b)(1).

<sup>39</sup> See Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 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).

<sup>40</sup> 13 C.F.R. § 121.201, NAICS code 517510.

<sup>41</sup> 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).

<sup>42</sup> *Id.* An additional 61 firms had annual receipts of \$25 million or more.

<sup>43</sup> 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>.

<sup>44</sup> 13 C.F.R. § 121.201, NAICS code 334220.

<sup>45</sup> U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by (continued....)

employment of less than 500, and an additional 13 had employment of 500 to 999.<sup>46</sup> Thus, under this size standard, the majority of firms can be considered small.

20. **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).”<sup>47</sup> The SBA has developed a small business size standard for Other Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees.<sup>48</sup> According to Census Bureau data for 2002, there were a total of 503 establishments in this category that operated for the entire year.<sup>49</sup> Of this total, 493 had employment below 500, and an additional 7 had employment of 500 to 999.<sup>50</sup> Thus, under this size standard, the majority of firms can be considered small.

21. **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.”<sup>51</sup> 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.<sup>52</sup> According to Census Bureau data for 2002, there were 10,380 firms in this category that operated for the entire year.<sup>53</sup> Of this total, 10,080 firms had annual sales of under \$5 million, and 177

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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.

<sup>46</sup> *Id.* An additional 18 establishments had employment of 1,000 or more.

<sup>47</sup> U.S. Census Bureau, 2002 NAICS Definitions, “334290 Other Communications Equipment Manufacturing”; <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

<sup>48</sup> 13 C.F.R. § 121.201, NAICS code 334290.

<sup>49</sup> 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.

<sup>50</sup> *Id.* An additional 3 establishments had employment of 1,000 or more.

<sup>51</sup> U.S. Census Bureau, 2002 NAICS Definitions, “443112 Radio, Television, and Other Electronics Stores”; <http://www.census.gov/epcd/naics02/def/NDEF443.HTM>.

<sup>52</sup> 13 C.F.R. § 121.201, NAICS code 443112.

<sup>53</sup> 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).

firms had sales of \$5 million or more but less than \$10 million.<sup>54</sup> Thus, the majority of firms in this category can be considered small.

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

22. The Further Notice seeks comment on whether to expand the eligibility to operate wireless microphones under Part 74 of the rules, and to allow wireless microphones to operate in the TV bands under Part 15 of the rules.

23. Parties operating low power auxiliary stations in the TV bands under Part 74 of the rules are required to be licensed. Only entities that fall within the following categories are currently eligible for a Part 74 license: (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, 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 licensee or permittee. The Further Notice seeks comment on whether to revise the Commission's rules to provide for a limited expansion of eligibility that would permit such users to hold a Part 74 license in the TV bands. For example, the Further Notice seeks comment on whether to expand the eligibility for licensing to allow the use of wireless microphones or other low power auxiliary audio devices in large theaters, entertainment complexes, sporting arenas, and religious facilities. The Further Notice also seeks comment on whether we should modify the eligibility requirements for a Part 74 license to include other entities that use wireless microphones, such as those operating at convention or trade shows, certain other cultural events, or governmental or educational institutions. If license eligibility is expanded, the additional entities eligible for licensing would have to apply for a license in the same manner as currently eligible parties.

24. Most non-licensed transmitters are required to be authorized under the Commission's certification procedure as a prerequisite to marketing and importation. The Further Notice proposes to allow wireless microphones to operate in the TV bands on a non-licensed basis under Part 15 of the rules, and the proposed new types of wireless microphones would be subject to the same certification requirement. Operation of Part 15 wireless microphones would not be limited to a defined group of eligible entities, so parties that are not eligible to operate wireless microphones on a licensed basis under Part 74 of the rules would be able to operate these devices under Part 15. The proposed technical requirements for Part 15 wireless microphones are very similar to those for Part 74 wireless microphones, except that the proposed maximum output power for Part 15 wireless microphones is lower to reduce the risk of interference. The proposed power level is 50 milliwatts, while Part 74 wireless microphones are permitted to operate with 50 milliwatts in the VHF band and 250 milliwatts in the UHF band.

25. The Further Notice seeks comment on whether a marketing restriction should be imposed on manufacturers with respect to equipment that is certificated for use by Part 74 licensees. For example, the Further Notice seeks comment on whether the Commission should adopt a rule requiring that the marketing of equipment certificated under Part 74, Subpart H of the Commission's rules be directed solely to parties eligible to operate the equipment.

26. The Further Notice seeks further comment on whether any rules are necessary to ensure that purchasers of low power auxiliary stations that are certificated under only Part 74 of the rules are made aware of the Part 74 licensing requirements. For example, the Further Notice seeks comment on whether manufacturers should be required to provide a label visible at the time of purchase advising of

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<sup>54</sup> *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.

the requirement to obtain a license? Similarly, the Further Notice seeks comment on any responsibility that manufacturers, retailers, and distributors should have to notify customers about the licensing requirements or steps they could take ensure that low power auxiliary stations are not marketed to ineligible users. Should there be some form of responsibility or accountability placed upon one or more of these entities at the point of sale and, if so, what should it be? The Further Notice seeks comment, for example, on whether the rules should prohibit manufactures, retailers and distributors from selling or distributing low power auxiliary stations, including wireless microphones unless such sale is to a party that has committed in writing that the party is a bona fide reseller or a party eligible to be a low power auxiliary station licensee pursuant to Part 74 of the Commission's rules. In addition, the Further Notice seeks comment on whether manufacturers, retailers, or distributors could require a facility identification number associated with a Commission license, or some other form of identification which shows that the purchaser is a licensee. Another alternative would be for the manufacturer, retailer, or distributor to cross-check a purchaser against information, perhaps in a database provided by the Commission, to determine whether a purchaser is an eligible user.

**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 and reporting requirements under the rule for such 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.”<sup>55</sup>

28. The Commission is considering the extent to which it should expand eligibility to allow more parties to obtain a license to operate wireless microphones under Part 74. It seeks comment on whether to expand eligibility to permit parties operating large theaters, entertainment complexes, sporting arenas and religious facilities to obtain Part 74 licenses because these applications are similar to others which are currently permitted under Part 74. The Commission also seeks comment on whether it should modify the eligibility requirements for a Part 74 license to include other entities that use wireless microphones, such as those operating at convention or trade shows, certain other cultural events, or governmental or educational institutions. The Commission is considering whether the expansion should be limited, because a broad expansion in eligibility for licensing under Part 74 could significantly reduce the amount of spectrum available for Part 15 TV band devices, which have to protect licensed Part 74 operations.

29. The Commission considered and decided to propose allowing wireless microphones to operate in the TV bands on a non-licensed basis under Part 15 of the rules. The proposed technical requirements are consistent with the current Part 74 technical requirements for wireless microphones, meaning that manufacturers should be able to certify equipment under Part 15 with few or no changes from currently available designs, thus minimizing the economic burden on manufacturers. This proposed approach would allow parties such conference and special events centers; schools and other educational facilities; Federal, state and local government agencies; tour guides; a variety of small entertainment venues, clubs and other social organizations, meeting and gathering places that are not currently eligible to operate wireless microphones in the TV bands to legally operate them. The proposed approach places Part 15 wireless microphones on a more equal footing to TV band devices in terms of interference protection.

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<sup>55</sup> 5 U.S.C. § 603(c)(1) – (c)(4).

30. In seeking comment on whether any rules are necessary to ensure that purchasers of low power auxiliary stations that are certificated under only Part 74 of the rules are made aware of the Part 74 licensing requirements, the Commission will carefully consider alternatives that would mitigate the impact that such rules may have on small entities. Similarly, to the extent the Commission considers rules that would impose responsibilities on manufacturers, retailers, and distributors to notify customers about the licensing requirements or steps they could take ensure that low power auxiliary stations are not marketed to ineligible users, the Commission will seek to examine alternatives that would not be burdensome on small entities. The Commission seeks comment on whether there should be some form of responsibility or accountability placed upon manufacturers, retailers, or distributors, and it is considering a number of alternatives, such as requiring that (1) sales of equipment only be made to a party that has committed in writing that the party is a bona fide reseller or a party eligible to be a low power auxiliary station licensee pursuant to Part 74 of the Commission's rules; (2) a facility identification number associated with a Commission license, or some other form of identification shows that the purchaser is a licensee be developed; and (3) requiring a manufacturer, retailer, or distributor to cross-check a purchaser against information, perhaps in a database provided by the Commission, to determine whether a purchaser is an eligible user.

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

31. None.

**STATEMENT OF  
CHAIRMAN JULIUS GENACHOWSKI**

*Re: 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; Amendment of Parts 15, 74 and 90 of the Commission's Rules Regarding Low Power Auxiliary Stations, Including Wireless Microphones, ET Docket No. 10-24.*

Today the Commission is taking necessary and essential action to complete the digital television transition, by requiring wireless microphone users to exit the 700 MHz Band by June 12, 2010. Our decision will accelerate the buildout of 4G wireless networks, and will prevent interference with first responders who rely on the 700 MHz Band for mission-critical communications.

In order to ensure that existing microphone users are aware of the June 12 deadline and their role in the transition, the Commission will also implement a major consumer outreach program, including a consumer-friendly Commission webpage on wireless microphones. The Commission is also requiring—for the first time—that manufacturers and retailers of wireless microphones provide clear notice to consumers about the basic terms and conditions under which they may use wireless microphones and how they may find out more information. Finally, the Commission is seeking comment on the long-term status of wireless microphones and other low-power auxiliary stations.

I thank my colleagues and their staff, as well as the staff of the Commission's Wireless Telecommunications Bureau, the Office of Engineering and Technology, and the Consumer and Governmental Affairs Bureau for their hard work on this important item.