



## I. INTRODUCTION

1. In this Further Notice of Proposed Rulemaking, we consider issues that need to be resolved to complete the low power television station digital transition.<sup>1</sup> Although Congress established a hard deadline of June 12, 2009 for full-power stations to cease analog operations and begin operating only in digital, the statutory deadline did not apply to low power television stations.<sup>2</sup> Therefore, while all full-power television stations have ceased over-the-air analog broadcasting, many low power television stations are continuing to transmit analog signals.

2. Among the issues that we consider herein are: (1) whether to adopt a hard deadline during 2012 for the termination of analog low power television facilities; (2) whether to require existing analog and digital low power television stations in the 700 MHz band (channels 52-69) to cease operations by a date certain and to submit displacement applications or discontinue operations altogether; (3) whether to delegate to the Media Bureau the authority to establish timeframes and procedures for stations "flash cutting" to digital on their existing analog channels and for those operating digital companion channels to return one of their channels; (4) whether to widen the class of low power television broadcasters subject to the Commission's ancillary and supplementary fee rules; (5) whether to modify the Commission's minor change rule so that it covers a proposed change in a low power television station's transmitter site of up to 30 miles (48 kilometers) from the reference coordinates of the station's transmitting antenna; (6) whether to revise the vertical antenna patterns used in the prediction methodology for the low power television services; and (7) whether to allow low power television stations to use the emission mask used by full power television stations.

3. In the Memorandum Opinion and Order ("MO&O"), we dismiss as moot the petition for reconsideration of the *Digital LPTV Order* filed by the New America Foundation and Champaign Urbana Wireless Network (New America). The petitioners request that the Commission explicitly condition the authorization of digital companion channels on the acceptance of unlicensed operations on the channel. As discussed below, the petition raises issues that were resolved in the unlicensed devices proceeding in ET Docket No. 04-186 and are beyond the scope of this proceeding.<sup>3</sup>

## II. BACKGROUND

4. In the *Digital LPTV Order*,<sup>4</sup> the Commission sought to facilitate, wherever possible, the

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<sup>1</sup> In this item, Class A TV stations, low power television stations (LPTV), and TV translators, are referred to collectively as "low power television stations." There are a total of 7536 licensed low power television stations: 523 Class A TV, 2451 LPTV, and 4562 TV translator stations. See "Broadcast Station Totals as of June 30, 2010," *News Release*, July 28, 2010.

<sup>2</sup> See *DTV Delay Act*, Pub. L. No. 111-4, 123 Stat. 112 (2009) ("*DTV Delay Act*"); Digital Television and Public Safety Act of 2005 ("*DTV Act*"), which is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) (codified at 47 U.S.C. §§ 309(j)(14) and 337(e)). See also Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, *Report and Order*, 19 FCC Rcd 19331 (2004) (*Digital LPTV Order*) (interpreting the Communications Act to give the FCC discretion to establish a deadline for the transition of low power television stations "after the end" of the full-service station transition period), citing 47 U.S.C. §§ 309(j)(14)(A), 336(f)(4). The *DTV Delay Act* extended the DTV transition date from February 17, 2009 to June 12, 2009. *DTV Act* § 3002(a) amended Section 309(j)(14) of the Communications Act to establish February 17, 2009 as the original hard deadline for the end of analog transmissions by full-power stations. 47 U.S.C. § 309(j)(14)(A).

<sup>3</sup> See *Unlicensed Operation in the TV Broadcast Bands, Second Report and Order and Memorandum Opinion and Order*, 23 FCC Rcd 16807, ¶¶32-33 (2008).

<sup>4</sup> *Digital LPTV Order*, 19 FCC Rcd at 19331.

digital transition of low power television stations, thereby enabling their viewers to realize the many benefits of digital broadcast television technology. The rules and policies adopted therein provide flexible and affordable opportunities for digital low power television service, both through the conversion of existing analog service and, where spectrum is available, new digital stations. The *Digital LPTV Order* established a regulatory framework consistent with the Commission's goals of hastening the transition of low power television stations to digital operations, while minimizing disruption of existing service to consumers served by analog low power television stations. The Commission granted all existing low power television stations the opportunity to seek either an on-channel digital conversion ("flash cut") authorization or the opportunity to receive a "digital companion channel" to operate with their analog channel.<sup>5</sup>

5. Since adoption of the digital rules in 2004, the Media Bureau has granted 2621 construction permits for low power television stations to flash cut to digital (including digital "displacement" relief applications). In addition, the Media Bureau has granted 1630 construction permits for digital companion channels. Although only 56% of the existing 7536 stations in the low power television services have taken steps to move toward digital operation, the Commission has seen a rapid increase of the licensing of digital low power television facilities over the past year. This is especially true now that the full-power television digital transition has been completed and the Commission will be initiating first-come, first-served digital licensing in the future.<sup>6</sup> Based upon the increased number of stations seeking digital authorizations, we believe that a majority of the remaining low power television stations are now closer to being ready to complete the transition to digital broadcasting.

6. Furthermore, the recently-released National Broadband Plan recommended several measures to increase the efficiency of spectrum use in the broadcast TV bands with the goal of ultimately reallocating spectrum from those bands for use in the provision of mobile broadband services.<sup>7</sup> Among other things, the Plan recommended establishing "a deadline to achieve the DTV transition of low-power TV (LPTV) stations by the end of 2015 or after the reallocation of spectrum from the broadcast TV bands is complete."<sup>8</sup> In this proceeding, we propose deadlines and procedures to complete the low power television transition to digital to help meet the Commission's goal of more efficient use of spectrum in the broadcast TV bands.

### III. FURTHER NOTICE OF PROPOSED RULEMAKING

7. In order to further hasten the low power television conversion to digital, we conclude that low power television stations should now begin to focus their time and resources on developing and implementing a digital conversion plan. Since the initiation of the digital television conversion process, we have always sought to ensure an expedited and successful transition for all television services.<sup>9</sup> In this

<sup>5</sup> *Id.* at 19376 and 19379. The Commission granted existing LPTV, TV translator and Class A station licensees and permittees the initial opportunity to file for digital companion channels before the filing of applications for new digital stations. *Id.* at 19383.

<sup>6</sup> See "Commencement of Rural, First-Come, First-Served Digital Licensing for Low Power Television and TV Translators Beginning August 25, 2009," 24 FCC Red 8911 (MB 2009). The initiation of nationwide first-come, first-served digital licensing for low power television and TV translators was postponed to July 26, 2010 and then until further notice. See "Initiation of Nationwide First-Come, First-Served Digital Licensing for Low Power Television and TV Translators Postponed to July 26, 2010," *Public Notice*, DA 09-2611, 24 FCC Red 14614 (MB 2009); "Initiation of Nationwide, First-Come, First-Served Digital Licensing for Low Power Television and TV Translator Services Postponed until Further Notice," *Public Notice*, DA 10-1168, released June 28, 2010.

<sup>7</sup> See *National Broadband Plan*, at p. 94, released March 16, 2010.

<sup>8</sup> *Id.* at p. 92.

<sup>9</sup> See, e.g., Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television, *Report and Order*, 23 FCC Red 2994 (2007) (*Third Periodic DTV Report and Order*).

proceeding, we seek comment on the timetable and procedures for the final low power television digital conversion and various methods that will enable LPTV stations to enhance their service.

#### A. Analog Shutoff Date

8. A principal concern for the Commission has been determining when low power television licensees must cease operating their analog facilities. The Commission has sought to ensure that low power stations are not forced to terminate their analog operations and go silent before their digital facilities are operational.<sup>10</sup> The Commission previously concluded that the Communications Act compelled low power television stations ultimately to convert to digital operation.<sup>11</sup> But the issue remains – when should such conversion occur?<sup>12</sup> The Commission stated at that time that it would revisit the issue in a future proceeding, once it resolved certain issues for full-power stations and more closely approached the end of the full-power DTV transition.<sup>13</sup>

9. The full-power television DTV transition was completed on June 12, 2009. Therefore, we believe it is time to begin consideration of a digital transition date for low power television stations. We now seek comment on the appropriate date for the termination of analog operations in the low power television and Class A television services. We also seek detailed information on the equipment and other costs of the digital conversion that will be incurred by low power television stations. In considering a time frame for the digital conversion of these services, we seek to bring the benefits of digital broadcast technology to low power television viewers as soon as possible, as well as to facilitate the potential reallocation of broadcast television spectrum. We must also weigh, however, the ability of low power television stations to make a timely conversion to digital, and what kind of Commission outreach would be appropriate for those communities that rely on service from low power television and TV translator stations. We seek to ensure the continued viability of low power television stations that have been recognized as offering important services to specialized and minority audiences, foreign language communities, and rural areas.<sup>14</sup> Such communities often rely on voluntary contributions for station operation and maintenance and may be the least financially and technically able to undertake the conversion. Some are completely surrounded by mountainous terrain and not able to receive directly the signal of any full-power station. Also, in such communities, those already subscribing to Direct Broadcast Satellite (“DBS”) have no incentive to financially contribute to the digital conversion of the local translator stations, increasing the burden on those depending on these stations. As for service to rural areas, some viewers in small and geographically isolated rural communities may depend entirely on

<sup>10</sup> Stations were permitted to seek money from the \$10 million Digital-to-Analog conversion fund established by Congress in the *DTV Act*, that enabled continued analog translator rebroadcast of the programming of DTV stations (i.e., until digital conversion of their stations becomes feasible). The Digital-to-Analog conversion fund was completed on June 12, 2009.

<sup>11</sup> See *Digital LPTV Order*, 19 FCC Rcd at 19337 (“As an integral component of the nation’s television system, we believe that Congress intended LPTV, TV translator and Class A stations to transition to digital service, thereby permitting their viewers to realize the benefits of digital broadcast technology.”).

<sup>12</sup> *Id.* at 19336-19339.

<sup>13</sup> *Id.* at 19340 (explaining that it would be irrational and arbitrary to set a deadline for the low power DTV transition at that time “given the uncertainties relating to the full-service DTV transition.”).

<sup>14</sup> See *Reallocation of Television Channels 60-69, the 746-806 MHz Band, Report and Order*, 12 FCC Rcd 22953 (1997) (*60-69 Reallocation Order*) and *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), Report and Order*, 17 FCC Rcd 1022 (2002) (*52-59 Reallocation Order*) (subsequent histories omitted).

TV translators for over-the-air television service.<sup>15</sup> We seek to ensure that those viewers are aware that the stations they rely on for service will be transitioning to digital and provide them, to the best extent feasible, with the necessary information and assistance to prepare for this change. Such communities often rely on voluntary contributions for station operation and maintenance and may be the least financially and technically able to undertake the conversion.

10. With those factors in mind, we seek comment on whether to adopt an analog shutoff date in 2012, giving low power television stations approximately three years after the June 12, 2009 full-power transition date to convert to digital operation. Under this approach, analog station licenses would terminate at that time, and analog construction permits would have to be modified for digital operations prior to the transition date. For the reasons discussed below, we propose that this time frame provides the best balance of allowing low power stations the flexibility needed for a successful transition to digital while ensuring that the transition occurs as quickly as possible.

11. As an initial matter, the principal obstacle to a low power television digital transition that the Commission previously identified—the need to wait for passage of the deadline for the full-power transition deadline—has now been eliminated. In the *Digital LPTV Order*, the Commission found that the low power digital transition must occur after the full-power transition date so that service to low power television viewers would not be severely interrupted.<sup>16</sup> The Commission's finding was based on the fact that many low power television stations rebroadcast the signals of full power television stations. Requiring low power television stations to comply with the full-power DTV transition deadline would, therefore, force low power stations to "flash-cut" to digital on the channels authorized for their existing analog operations, resulting in a disruption in the existing service of many of these stations, a large number of whose viewers may not have obtained the necessary equipment (either a digital receiver or digital-to-analog converter box) to receive DTV signals off-air.<sup>17</sup> The Commission concluded that the better, less disruptive, approach would be for the low power television digital transition to be completed at some fixed time after the deadline for full-service television stations.<sup>18</sup>

12. As the Commission envisioned, completion of the full power television transition has created an incentive and opportunity for viewers of low power television stations to transition to digital service in order to be able to continue viewing full power television stations. This in turn has increased the number of low power television viewers capable of viewing digital over-the-air broadcasts (through either a digital receiver or analog converter) and has reduced the risk of disruption of service that occurs when a low power station converts to digital. With the full power transition now complete and providing the incentive for viewers, we believe it is appropriate to now require low power television stations to complete their transition to digital.

13. We also believe that establishing an analog termination date for the low power

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<sup>15</sup> Many translator-served communities are too small to support a cable television system. While DBS has become more prevalent in such communities, the high rate of station license renewals suggests that continued free over-the-air television is also important to viewers.

<sup>16</sup> *Digital LPTV Order*, 19 FCC Rcd at 19337-38 ("We adopted an approach for the transition of full-service TV stations that has permitted viewers to continue using their existing TV sets to receive analog programming while the number of DTV service offerings grows and consumers gradually become equipped to receive them. To achieve this purpose, we awarded full-service stations a second channel for digital operations during a multi-year transition period. However, lacking sufficient spectrum, we were unable to award second channels to TV translator, LPTV, or Class A stations to facilitate their digital transition. Indeed, we do not expect spectrum for new low power digital operations, as "companion" channels for existing analog programming services, to become available until TV channels are surrendered by full-service stations at the end of the full-service DTV transition period.").

<sup>17</sup> *Id.* at 19339.

<sup>18</sup> *Id.*

television services in 2012 is consistent with the Broadband Plan's recommendations related to increasing the efficient use of broadcast TV bands and facilitating the deployment of new mobile broadband facilities. If low power television stations transition to digital in 2012, the number of channels that will have to be considered with respect to the potential broadband reallocation/repacking proposals will be less with many low power stations having returned their second digital channel and all stations operating on their final digital facilities, thus simplifying the reallocation/repacking process and promoting regulatory certainty.

14. In addition, we note that adoption of a 2012 analog termination date would give those low power television stations that continued to operate in analog mode a total period of approximately three years from the June 12, 2009 full power digital transition to apply for and construct digital facilities. We believe that should be a sufficient time period for low power television stations to successfully complete their transition. We note that Congress created a special fund to assist low power television stations with their conversion to digital. The Digital Television Transition and Public Safety Fund provides up to \$65 million to reimburse low power television stations in eligible rural communities for their cost of upgrading to digital equipment.<sup>19</sup> The National Telecommunications and Information Administration (NTIA) began accepting applications for reimbursements in July 2009.<sup>20</sup> We believe that a transition date occurring in 2012 would allow ample time for stations to take advantage of the availability of this fund by constructing their digital facilities and seeking reimbursement for the cost of their digital equipment.

15. We also note that a three-year period from the full-service television transition deadline would coincide with the construction period that low power stations received to complete construction of digital facilities as set by the Commission in the *Digital LPTV Order*.<sup>21</sup> In addition, a 2012 date would allow most low power stations that obtained a digital companion channel five plus years from the grant of their construction permit (most of which were granted in 2006 or 2007) to transition to complete digital operation without the loss of existing analog service. This period of operation of paired analog and digital channels would approximate the amount of time that was permitted for full-power stations to operate their paired pre-transition DTV channels given the fact that their pre-transition DTV channels were allocated in 1998 and the majority of stations were initially allowed until 2002 (commercial stations outside of the top 30 markets) or 2003 (noncommercial stations) to complete construction.

16. We seek comment on whether an analog shutoff date in 2012 would permit sufficient time for the digital conversion of the remaining stations in the low power television service and, if so, when in 2012 would be the best time to require an analog shutoff. Furthermore, we seek comment on how to address "hardship" cases for those stations that, despite their best efforts, are unable to make a timely conversion. In this regard, we seek detailed information on the equipment and other costs of the digital conversion that will be incurred by low power television stations. We also seek comment on whether to permit stations located in communities that rely solely on over-the-air service from stations in the low power services to seek additional time to continue operating their analog facilities after the transition date. We seek comment on how to define such communities.

17. We also seek comment on alternative timeframes or transition mechanisms. Those commenters advocating other dates or mechanisms should specifically address how their proposal would better facilitate the digital transition of low power television stations and the advantages of their approach. In this regard, we recognize that adoption of an earlier transition date in 2012 might adversely impact low power television stations. Such stations may transition to digital only to find that their digital channel is

<sup>19</sup> *DTV Act* at 3009.

<sup>20</sup> 74 F.R. 22402 (May 12, 2009).

<sup>21</sup> See *Digital LPTV Order*, 19 FCC Rcd at 19388; 47 C.F.R. § 74.788.

no longer available as a result of the spectrum reallocation that is one of the recommendations in the Broadband Plan. Low power television stations would be forced to transition a second time, therefore incurring additional relocation costs. Furthermore, although analog stations in the low power television services operate primarily in the UHF band and their digital facilities operate exclusively in the UHF band, in view of spectrum shortages, and considering the more limited service area and often rural locations of these stations, we seek comment on whether VHF channels, which are now underutilized, accompanied by additional power, provide a viable alternative for continued operation. If so, we seek comment on the characteristics of the locations where such operations would be successful and the necessary increased power levels. Therefore, we seek comment on whether adoption of an analog termination by the end of 2015 or after the recommended reallocation of spectrum from the broadcast TV bands is complete (as envisioned by the Broadband Plan) would be more appropriate and less disruptive for the low power television services. We ask commenters to indicate if their answer to this question would turn on whether funds would be available to reimburse them for the costs of such a second transition.

18. Whichever date we decide for stations in the low power television services to complete their transition to digital, we seek comment on what kind of Commission outreach to those communities most affected by this phase of the DTV transition would be appropriate, and what form that outreach should take. We have the experience of the full power DTV transition, completed on June 12, 2009, as a guide as to how best to educate consumers about the forthcoming change to digital. Although many consumers are aware, thanks to our previous efforts, of the steps they need to take to prepare for this last phase of the digital transition, we seek comment on whether additional outreach efforts are necessary. What is the present availability of the necessary equipment (i.e. converter boxes) if certain households have not yet transitioned to digital? Although consumers may continue to use the digital to analog converter boxes they previously purchased, and such boxes continue to be available for purchase, consumers will not be able to avail themselves of the widely-advertised and promoted digital-to-analog converter box coupon program which was completed in 2009.<sup>22</sup> Therefore, more consumers may need additional education and information in order to be prepared for the low power television transition. We seek comment on the types of Commission outreach to implement for this phase of the DTV transition.

19. We seek comment on whether to expand and update the FCC's existing call center in order for consumers to receive assistance over-the-phone on such matters as "rescanning," help setting up digital converter boxes for analog TVs or help resolving broader reception issues.<sup>23</sup> Consumers could call the 1-888-CALL-FCC number and be directed to staff available to provide such assistance. Furthermore, we seek comment on whether this call center should be expanded, as it was for the full power transition, with new or retrained staff and longer hours of operation to accommodate time differences across the country? Alternatively, we seek comment on what the Commission might do to encourage the development of third-party call centers, such as might be provided by a group of LPTV licensees working jointly. In addition, we propose to undertake a targeted initiative for select communities nationwide to increase awareness about the forthcoming low power digital transition, focusing on those markets with the largest number of low power television viewers and at-risk

<sup>22</sup> The Department of Commerce's National Telecommunications and Information Administration (NTIA) administered the TV Converter Box Coupon Program (Coupon Program), as authorized in the Digital Television Transition and Public Safety Act of 2005.

<sup>23</sup> See "FCC Continues DTV Outreach Across the Nation," *News Release*, June 15, 2009 (The FCC's call center to assist consumers with the DTV transition has remained open since the full power transition and continues to assist consumers to this day.).

populations.<sup>24</sup> Such initiative could include staff visits to such markets to speak directly to consumers, to representatives of local governments, or trade organizations. Alternatively, we seek comment on whether to encourage the development of third-party “walk-in DTV help centers” like those implemented by local broadcasters during the full power DTV transition.<sup>25</sup> Such help centers could provide a valuable “hands-on” tool to consumers. We propose to provide guidance to consumers on how to prepare for the low power television transition through the Commission’s web site ([www.fcc.gov](http://www.fcc.gov)) and the DTV transition web site ([www.dtv.gov](http://www.dtv.gov)). We seek comment on how best to provide this guidance. Both on-line resources were invaluable in educating consumers about the full power DTV transition and helping resolve many of the challenges from that phase of the transition. For example, to help consumers, the Commission staff could prepare maps available on-line to let consumers know what LPTV signals will be affected by the transition, as we did for the full power television digital transition. Finally, we seek comment on other types of Commission outreach to prepare consumers for the transition of the remaining analog television stations to digital.

#### B. Out-of-Core Transition Date

20. Since the adoption of the digital rules for low power television in 2004, significant progress has been made by 700 MHz band (channels 52-69) commercial wireless and public safety entities to complete their networks and begin providing service to customers and users. We believe, for the reasons discussed below, that it is now appropriate that the 700 MHz band be cleared of low power television broadcasters, both analog and digital, by a specific date so that new commercial wireless and public safety entities can continue to deploy their services.<sup>26</sup> To begin this process, we propose adopting a date by which existing low power stations must submit a displacement application for an in-core (channels 2-51 excluding channel 37) digital channel. When the Commission, in separate proceedings in 1997 and 2002, reallocated channels 52-59 and 60-69 for use by commercial wireless and public safety entities, it permitted low power television stations to remain on these channels temporarily.<sup>27</sup> The Commission found that the full power DTV transition and the reallocation of channels 60-69 would have an adverse impact on the low power television services that offer important services to specialized and minority audiences, foreign language communities, and rural areas.<sup>28</sup> It was expected that during the full power DTV transition, low power television stations in the 700 MHz band would be able to find a replacement in-core channel and that more replacement channels would be available after the transition was complete.<sup>29</sup> The Commission also stated that it retained the discretion to geographically restrict or preclude altogether the filing of applications for new LPTV and TV translator stations seeking to operate

<sup>24</sup> See “Acting FCC Chairman Copps to Visit Los Angeles in the Homestretch of the Digital Transition,” *News Release*, June 8, 2009; see also “Commissioner Adelstein to Visit Albuquerque for DTV Outreach,” *News Release*, April 20, 2009.

<sup>25</sup> See “Commission Provides Guidance to Broadcasters on Obligation to Publicize Walk-in DTV Help Centers,” *Public Notice*, DA 09-807 (released April 10, 2009).

<sup>26</sup> Neither analog nor digital Class A television stations were permitted on channels 52-59. Similarly, the Commission stopped accepting applications for new analog low power television stations on channels 52-59 in 2004. See *Digital LPTV Order*, 19 FCC Rcd at 19355.

<sup>27</sup> See *Reallocation of Television Channels 60-69, the 746-806 MHz Band, Report and Order*, 12 FCC Rcd 22953 (1997) (*60-69 Reallocation Order*) and *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), Report and Order*, 17 FCC Rcd 1022 (2002) (*52-59 Reallocation Order*) (subsequent histories omitted).

<sup>28</sup> See *60-69 Reallocation Order*, 12 FCC Rcd at 22966.

<sup>29</sup> *Id.* at 22967.

on channels 52-69.<sup>30</sup>

21. Similarly, at the time the digital rules were adopted in 2004, the Commission concluded that use of the 700 MHz band for digital low power television on an interim basis was necessary “to facilitate the digital transition of the low power television service.”<sup>31</sup> Use of channels 52-69 by low power television stations for digital facilities was, however, limited and procedures were established to ensure that such facilities could be quickly “cleared” when new 700 MHz licensees were ready to begin operations.<sup>32</sup> The Commission adopted such limitations to “ensure that secondary operations do not conflict with primary wireless operations.”<sup>33</sup> We continue to believe that this was the correct approach at the time, and we note that the Commission’s procedures resulted in less than 2 percent of stations proposing digital facilities in the 700 MHz band (only 10 flash cut and 80 digital companion channels applications filed for out-of-core channels by the more than 7,300 low power television stations). Since the release of the digital low power television rules in 2004, the number of low power stations in the 700 MHz band has been greatly reduced with many stations having taken advantage of the Commission’s new procedures to propose an in-core digital displacement channel, thus helping to further clear the band. We believe that the continued successful development of new commercial wireless and public safety facilities in the 700 MHz band will be facilitated by clearing all remaining analog and digital low power television stations from these channels by a date certain, and that the balance of interests has changed since the digital rules were adopted in 2004 so as to enable such clearing without premature disruption or cessation of digital low power television service. We also believe that a sufficient amount of time has passed since the completion of the full power digital transition on June 12, 2009, for low power stations to identify in-core channels for permanent digital use and to take steps to secure these channels. We tentatively conclude that use of the 700 MHz band as a temporary measure to assist low power stations with their digital transition is no longer necessary and the time has come for low power television stations to vacate this band. We seek comment on this proposal.

22. We propose an “out-of-core transition date” of December 31, 2011, by which we would require all low power television stations to cease all operations (both analog and digital) on channels 52-69. We believe that proposing an earlier transition date for the out-of-core channels will facilitate the clearing of these channels while permitting existing out-of-core stations a sufficient amount of time to identify in-core channels and prepare digital displacement applications. We seek comment on this proposed date and welcome comment on alternative deadlines for the cessation of low power television operations on channels 52-69.

23. In order that the final clearing of the 700 MHz band of low power television stations is completed in an orderly fashion, so that existing stations have sufficient time to secure an in-core channel

<sup>30</sup> See *52-59 Reallocation Order*, 17 FCC Rod at 1044.

<sup>31</sup> See *Digital LPTV Order*, 19 FCC Rod at 19354 (reasoning that many TV translator stations continued to operate on these channels and that in-core replacement channels might be unavailable across much of the country, at least until after the full-service digital transition, so that this spectrum was “needed to ensure continued free television service to rural areas and to avoid leaving an undue number of low power stations with no realistic opportunity to develop digital service.”).

<sup>32</sup> *Id.* at 19355-19360.

<sup>33</sup> *Id.* at 19356. More specifically, the Commission established requirements for low power television station licensees and permittees to provide wireless licensees with advance notice of proposed digital low power facilities and an opportunity to coordinate with licensees and permittees, and explicitly conditioned low power television station authorizations on the absence of a technical conflict with primary service licensees. The Commission explained that it sought to balance the need to avoid potential interference conflicts that could unduly delay the provision of wireless service in the 700 MHz band with the need to avoid premature disruption or cessation of digital low power television service. *Id.* at 19355-56.

and to prevent any disruption in existing service, we propose requiring that all low power stations with facilities on channels 52-69 submit a digital displacement application proposing an in-core channel (channels 2-51 excluding channel 37) not later than June 30, 2011 – six months prior to the “out-of-core transition date.” We seek comment on the proposed submission deadline and welcome comment on alternative deadlines for the submission of a digital displacement application. We propose that any low power television station that cannot identify a workable in-core channel and submit a digital displacement application by the deadline be required to cease operations altogether by the “out-of-core transition date.” We seek comment on this proposal. Furthermore, we seek comment on how to address “hardship” cases for those stations that, despite their best efforts, are unable to identify an in-core channel and submit the required displacement application by the announced deadline.

24. To further facilitate the clearing of the 700 MHz band, we propose to extend the notification and termination provisions contained in Section 74.703(g) of the Rules to analog LPTV and TV translator facilities in the 700 MHz band.<sup>34</sup> In the *Digital LPTV Order*, the Commission adopted special notification and termination provisions “in an effort to prevent secondary digital LPTV and TV translator stations from technically conflicting with future operations of primary 700 MHz wireless licensees within their licensed service areas.”<sup>35</sup> Pursuant to those provisions, a primary wireless licensee in the 700 MHz band may notify affected digital LPTV and TV translator stations of its intent to initiate or change operations and upon receipt of such notice the digital LPTV or TV translator station must cease operation of any interference-causing operation with 120 days, unless it obtains the agreement of the primary licensee to continue operations. The notification and termination provisions became an important tool for clearing the 700 MHz band of secondary digital LPTV and TV translator facilities.

25. Since adoption of these provisions, new wireless licensees have been using the digital provisions to notify analog LPTV and TV translator stations in the 700 MHz band of their intent to initiate or modify their service and to request that they terminate operations. Since it appears the industry has already adopted this approach for the clearing of both digital and analog facilities, we believe that we should extend the notification and termination provisions in Section 74.703(g) of the Rules to analog LPTV and TV translator stations in the 700 MHz band. We believe that extension of the notification and termination provisions will greatly facilitate the clearing of the 700 MHz band in advance of the proposed December 31, 2011 “out-of-core transition date.”

### C. Filing Freeze

26. Effective upon the adoption date of this Further Notice of Proposed Rulemaking, we announce a freeze on the filing of (1) applications for new analog low power television and TV translator facilities; and (2) applications for new or modified, analog or digital, low power television stations on

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<sup>34</sup> Section 74.703(g) provides that:

An existing or future wireless licensee in the 700 MHz bands may notify (certified mail, return receipt requested), a digital low power TV or TV translator operating on the same channel or first adjacent channel of its intention to initiate or change wireless operations and the likelihood of interference from the low power TV or translator station within its licensed geographic service area. The notice should describe the facilities, associated service area and operations of the wireless licensee with sufficient detail to permit an evaluation of the likelihood of interference. Upon receipt of such notice, the digital LPTV or TV translator licensee must cease operation within 120 days unless: (1) it obtains the agreement of the wireless licensee to continue operations, (2) the commencement or modification of wireless service is delayed beyond that period (in which case the period will be extended), or (3) the Commission stays the effect of the interference notification, upon request.

<sup>35</sup> See *Digital LPTV Order*, 19 FCC Rcd at 19354.

channels 52-69, including applications for flash-cut and digital companion channel facilities on these channels. We believe it is time to discontinue the licensing of all new analog facilities and new or modified analog and digital facilities in the 700 MHz band. The staff has already notified all pending applicants for new analog low power facilities that they must amend their pending applications to specify digital operations by May 24, 2010, and those pending applications that are not amended to specify digital operations by the deadline will not be processed.<sup>36</sup> We believe the freeze announced herein, like the staff's action, will further the digital low power television transition by encouraging stations and applicants to seek new digital facilities. We also believe that freezing the filing of low power television applications for the 700 MHz band will ensure that new applications are not filed in anticipation of future limitations, thus defeating the administrative purpose of the action herein. We seek comment on whether to dismiss those applications for new analog low power television facilities that remain pending after the May 24, 2010 deadline for amendment to specify digital facilities.

27. The Media Bureau will consider, on a case-by-case basis, requests for waiver of this freeze when an application is necessary or otherwise in the public interest for technical or other reasons to maintain quality service to the public, such as when zoning restrictions preclude tower construction at a particular site or when unforeseen events, such as extreme weather events or other extraordinary circumstances, require relocation to a new tower site. As with any request for waiver of our rules, a request for waiver of the freeze will be granted only upon a showing of good cause and when grant of the waiver will serve the public interest.

28. The decision to impose this freeze is procedural in nature and therefore the freeze is not subject to the notice and comment and effective date requirements of the Administrative Procedure Act.<sup>37</sup> Moreover, there is good cause for the Commission's not using notice and comment procedures in this case, and not delaying the effect of the freeze until 30 days after publication in the Federal Register, because to do either would be impractical, unnecessary, and contrary to the public interest because compliance would undercut the purposes of the freeze.<sup>38</sup>

#### D. Surrender of Channels

29. In the *Digital LPTV Order*, the Commission provided that stations issued a digital channel as a companion to a station's analog channel must eventually surrender one of the channels at a time and manner to be determined in a future proceeding.<sup>39</sup> Authorizations for the two channels are considered to be paired and may not be separately assigned.<sup>40</sup> At the end of their digital transition, low power television stations may choose to continue operating on their digital companion channel and return the license for their analog channel. Stations may also choose to flash cut to digital operation on their analog channel. As for stations choosing to surrender their analog station license and continue operating their digital companion channel, we seek comment on whether to allow such stations to simply notify the Commission of this decision and whether to delegate to the Media Bureau the authority to determine the timetable and procedures for such notifications in order to expedite the process.

<sup>36</sup> See "Applicants for New Low Power Television and TV Translator Stations Must Convert to Digital By May 24, 2010", *Public Notice*, DA 10-496, released March 25, 2010.

<sup>37</sup> See 5 U.S.C. § 553(b)(A), (d); *Neighborhood TV Co. v. FCC*, 742 F.2d 629, 637-38 (D.C. Cir. 1984) (holding Commission's filing freeze is a procedural rule not subject to the notice and comment requirements of the Administrative Procedures Act); *Buckeye Cablevision, Inc. v. United States*, 438 F.2d 948, 952-53 (6th Cir. 1971) (same); *Kessler v. FCC*, 326 F. 2d 673, 680-82 (D.C. Cir. 1963) (same).

<sup>38</sup> See 5 U.S.C. § 553(b)(B), (d)(3).

<sup>39</sup> See *Digital LPTV Order*, 19 FCC Rcd at 19382.

<sup>40</sup> *Id.* at 19389, n.363.

30. If an entity that holds a construction permit for unbuild analog and companion digital stations and the analog permit expires and is forfeited, we seek comment on whether the digital construction permit should be forfeited notwithstanding the later expiration date on the digital construction permit. Although we have not addressed such a situation previously, we believe that this approach would be consistent with our established policy that analog and digital authorizations are part of single, unified authorization. We also seek comment on how to address situations in which the digital companion station is constructed, and the construction permit for the related unbuild analog station expires.

31. We desire to encourage low power stations to focus their resources on the conversion to digital and to provide the maximum flexibility to station owners to decide whether to discontinue analog operations and operate digital-only on or some time before the deadline established in this proceeding. Stations in the low power television service currently are permitted to terminate their analog operations and transition to digital without notice to the public. We seek comment on whether to continue this practice and to permit stations to simply discontinue operation of their licensed analog stations at any time they deem appropriate and without notification to their viewers, provided, however, that their companion digital channels are licensed and operational. Alternatively, we seek comment on whether stations in the low power television services should be required to provide notice of their upcoming transition to digital where technically feasible, as a courtesy to their viewers. Although our rules permit all stations in the low power television service to originate some amount of local public service announcements (PSAs),<sup>41</sup> TV translator stations may not possess the technical ability to originate such programming. We seek comment, therefore, on whether to require only those stations that are suitably-equipped to provide notice of their upcoming transition to digital. We seek comment on whether such a viewer notification would impose undue burdens on stations in the low power television service, and is unnecessary in light of the completion of the full-power television digital transition.

#### **E. Class A Television Transition To Digital**

32. In the *Digital LPTV Order*, the Commission rejected a proposal to license Class A television stations' digital companion channels with primary, protected status, finding that the "better course of action . . . is to continue to defer awarding second digital channels with protected status to Class A licensees. . . ."<sup>42</sup> The Commission made it clear that "Class A station licensees are guaranteed primary status on the channel they ultimately choose to retain for digital operations."<sup>43</sup>

33. With the completion of the full-power television DTV transition, and as more low power television stations, including Class A stations, near the end of their digital transition, we believe that it is now appropriate to propose a procedure whereby Class A stations are able to secure primary, protected status for the channel they choose to retain for digital operations. We propose that Class A TV station licensees file a minor change application for either the "flash cut" channel on which they are now operating in analog or the digital companion channel they choose to retain for post-transition operations. Class A stations thereby will be able to obtain primary, protected regulatory status on their desired post-transition digital channel. We also propose that all Class A applicants certify that their proposed facilities meet all Class A interference protection requirements. We seek comment on these proposed procedures.

#### **F. Ancillary and Supplementary Services**

34. In the *Digital LPTV Order*, the Commission announced that it would "apply annual fees

<sup>41</sup> See 47 C.F.R. § 74.731(l) and (g), and 47 C.F.R. § 74.701(f). PSAs originated by TV translators are limited to 30 seconds each and not more than once per hour.

<sup>42</sup> *Digital LPTV Order*, 19 FCC Rcd at 19381-2.

<sup>43</sup> *Id.*

for ancillary and supplementary services provided by digital LPTV and TV translator stations on a subscription basis.<sup>44</sup> The Commission stated that it would mirror the approach applicable to full-service DTV broadcasters and impose an annual fee in the amount of 5% of a station's gross revenue from feeable services.<sup>45</sup> The Commission concluded that the same ancillary and supplementary services that are feeable if provided by full-service stations shall be feeable if provided by low power television stations and revised the rules to make low power television stations subject to Section 73.624(g) of the rules.<sup>46</sup>

35. Subsequently, the Commission revised Section 73.624(g) and modified the Annual DTV Ancillary/Supplementary Services Report (FCC Form 317) to include permittees of full-service stations operating pursuant to an STA or any other FCC instrument authorizing DTV transmissions that earn revenue from feeable ancillary and supplementary services.<sup>47</sup> Previously, the rule provided that any such fees were owed only by "DTV licensees." The Commission recognized that some DTV stations provide DTV service pursuant to an STA and the ancillary and supplementary fee rules should also apply to entities operating digitally pursuant to an STA or other FCC authorization.<sup>48</sup>

36. We seek comment on whether to similarly widen the class of low power television broadcasters included in Section 73.624(g) to include permittees of low power television stations operating pursuant to a digital STA and to require such permittees to file the annual ancillary and supplementary services report to enable the Commission to assess the nature of ancillary and supplementary services, if any, that are provided by low power television licensees and permittees and the extent to which feeable services are offered. We propose to do so to better carry out our obligation under Section 336(e) of the Communications Act to ensure that the public recovers a portion of the value of the public spectrum resource made available for commercial use and avoid unjust enrichment of broadcasters that use that resource.<sup>49</sup> We seek comment on this proposal.

#### G. Minor Change Definition

37. In the *Digital LPTV Order*, the Commission changed the minor change processing rule for digital LPTV and TV translator displacement applications filed to replace channels that are displaced by full-service NTSC or DTV station or by a 700 MHz commercial wireless or public safety operation.<sup>50</sup> The rule was changed so that such applications may propose a change in transmitter site of no more than 30 miles (48 kilometers) from the reference coordinates of the existing station's community of license, as provided in Section 76.53 of the rules.<sup>51</sup> The Commission found that such a change would help to prevent applicants from using the displacement process to propose greater than needed modifications to their facilities.<sup>52</sup>

38. Currently, an existing low power television station can file any modification application (both analog and digital) as a "minor change" as long as there is a contour overlap between the proposal

<sup>44</sup> *Digital LPTV Order*, 19 FCC Rcd at 19391.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 19392.

<sup>47</sup> *Third Periodic DTV Report and Order*, 23 FCC Rcd at 3083.

<sup>48</sup> *Id.* at 3084.

<sup>49</sup> 47 U.S.C. § 336(e).

<sup>50</sup> *Digital LPTV Order*, 19 FCC Rcd at 19377.

<sup>51</sup> *Id.* at 19376.

<sup>52</sup> *Id.*

and the station's existing facilities.<sup>53</sup> There is no limitation as to how far a station may relocate its transmitter site, as long as some contour overlap is demonstrated. Therefore, stations are able to frustrate the intent of the minor change rule by proposing a modified facility that is a substantial distance from the station's existing location while showing only a very slight amount of contour overlap. Furthermore, stations are able to avoid paying an application filing fee for a major change (because low power television minor change applications are not subject to a filing fee).

39. To ensure that low power television applications for "minor change" remain just that -- applications proposing a minor modification to a station's facilities and a not a major site relocation -- we propose expanding the so-called "30-mile" rule. We propose that any digital low power television modification that proposes a change in transmitter site of greater than 30 miles (48 kilometers) from the reference coordinates of the existing station's antenna location will be considered a new proposal for low power television stations. Those transmitter site changes that are truly minor would continue to be treated as a minor change in the rules and those that involve a substantial relocation of facilities would be deemed a major change. We believe that such a rule change is necessary to enforce the original intent of the minor change rule, to reduce frivolous filings and to conserve Commission resources. We seek comment on this proposal.

#### H. Antenna Vertical Radiation Patterns

40. The *Digital LPTV Order* adopted a modified version of the full-power DTV methodology for evaluating service and potential interference for digital low power television station proposals.<sup>54</sup> The Commission concluded that the assumed vertical patterns used in the analysis of full-power DTV stations do not reflect the types of antennas typically used by low power television stations and are not appropriate for analysis of these stations.<sup>55</sup> In this regard, the Commission was concerned that use of the values in Table 8 of OET Bulletin 69 could under-predict a low power station's protected service area and its interference impact on other stations. Public comments in response to the Notice of Proposed Rulemaking in the proceeding did not identify alternative vertical patterns more suitable for use in the low power television service. Therefore, as a temporary measure, the Commission adopted the following criterion:

"...we will assume (for predicting both service and interference) that the downward relative field strengths for digital and analog LPTV and TV translator stations and digital and analog Class A TV stations is double the values specified in OET Bulletin 69, Table 8, up to a maximum of 1,000."<sup>56</sup>

These values are tabulated below.

<sup>53</sup> See 47 C.F.R. §§73.3572(a)II (analog) and 74.787(b) (digital).

<sup>54</sup> See *Digital LPTV Order*, 19 FCC Rod at 19360. DTV service area and interference standards are given in Sections 73.622(e) and 73.623(c) of the Commission's Rules. The prediction methodology is described in OET Bulletin No. 69, "Longley-Rice Methodology for Evaluating TV Coverage and Interference, available at [www.fcc.gov/oet/info/documents/bulletins/#69](http://www.fcc.gov/oet/info/documents/bulletins/#69).

<sup>55</sup> See *Digital LPTV Order*, 19 FCC Rod at 19365 and 19368 (noting that LPTV and TV translator stations typically use antennas with less gain and that are smaller, lighter, and transmit a larger proportion of the stations' limited power downward toward the close-in locations these stations want to serve).

<sup>56</sup> *Id.* at 19568.

Table 1. Vertical Patterns Assumed for Transmitting Antennas in the LPTV and Class TV Services

| ANGLE,<br>Degrees | Gain in Vertical Plane, Relative Field Strength |          |       |        |       |
|-------------------|---|----------|-------|--------|-------|
|                   | Low VHF<br>Analog and<br>DTV                    | High VHF |       | UHF    |       |
|                   |   | Analog   | DTV   | Analog | DTV   |
| 0.75              | 1.000   | 1.000    | 1.000 | 1.000  | 1.000 |
| 1.50              | 1.000   | 1.000    | 1.000 | 1.000  | 1.000 |
| 2.00              | 1.000   | 1.000    | 1.000 | 1.000  | 1.000 |
| 2.50              | 1.000   | 1.000    | 1.000 | 0.660  | 0.920 |
| 3.00              | 1.000   | 1.000    | 1.000 | 0.440  | 0.520 |
| 3.50              | 1.000   | 0.940    | 1.000 | 0.340  | 0.470 |
| 4.00              | 1.000   | 0.740    | 1.000 | 0.300  | 0.420 |
| 5.00              | 1.000   | 0.740    | 0.940 | 0.260  | 0.400 |
| 6.00              | 1.000   | 0.740    | 0.660 | 0.220  | 0.300 |
| 7.00              | 1.000   | 0.740    | 0.560 | 0.220  | 0.300 |
| 8.00              | 1.000   | 0.620    | 0.560 | 0.220  | 0.300 |
| 9.00              | 1.000   | 0.440    | 0.560 | 0.220  | 0.300 |
| 10.00             | 0.960   | 0.340    | 0.500 | 0.220  | 0.300 |

41. Low power television stations use a variety of transmitting antennas designed to produce widely differing vertical patterns. As a result, use of an assumed pattern(s) in the methodology affects to varying degrees the accuracy of service and interference predictions. "Desired" and "undesired" (D/U) field strengths predicted from the assumed pattern(s) can differ substantially from the values predicted from actual vertical patterns of stations' antennas. The difference depends on the type of antenna (e.g., low or high gain) and the vertical angle of the signal path, which, in turn, depends on the transmitting antenna height and the distance from the antenna site.<sup>57</sup> Discrepancies in desired and undesired signal strengths can combine to produce even larger differences between D/U ratios based upon the assumed vertical pattern(s) and those that would result from actual patterns. These differences can be quite large, particularly at smaller distances from the antenna site of a protected station.

42. For these reasons, we propose to revise the vertical patterns used in the temporary prediction methodology for the low power television services that the FCC adopted in the *Digital LPTV Order*. Use of the actual vertical patterns of proposed low power television facilities would enable a more realistic determination of the service areas of these stations and their potential for interfering with other

<sup>57</sup> At very small angles below the horizontal plane, there is typically little difference between the vertical relative field strengths of the assumed pattern and the patterns of most antennas used in the LPTV service. Thus, the assumed vertical pattern has relatively little effect on the accuracy of co-channel interference analysis, except in those situations where stations employ antenna beam tilt.

stations, as well as more accurate determinations of application mutual exclusivity. Realizing the full benefits of this approach would require the prediction model to apply the vertical relative field strengths of the antennas used by existing stations, thereby enabling more realistic predictions of their "desired" signal strengths and "interference masking" effects on the service of other stations. Collecting vertical relative field strength data from the thousands of existing stations could be time consuming if we decided to pursue such an undertaking. In the meantime, however, use of the actual vertical antenna patterns in analyzing proposed low power facilities would, we believe, significantly improve the accuracy of the low power television station prediction methodology. We are considering revising FCC Forms 346 and 301-CA to start collecting the vertical patterns. Rather than undertaking the task of collecting vertical patterns from existing stations, we are considering the use of assumed vertical patterns; for example, the value in Table 1. Also, existing stations would have the option of filing applications for minor changes to their facilities and submitting the actual vertical patterns with their applications. We seek comment on this proposed methodology.

43. We also seek comment as to whether the power levels and interference protection criteria currently specified in the rules are appropriate to ensure that post-transition low power TV signals provided to consumers will be of an estimable quality? If not, what modifications are needed and how would such modifications improve the ability of consumers to receive service? Is there specific testing necessary to test out such modifications or to determine the digital signal strength in distinct geographic locations?

#### I. Use of Full-Power DTV Emission Mask

44. The *Digital LPTV Order* adopted the use of relaxed emission masks, specifically simple and stringent masks.<sup>58</sup> Recently, we have received numerous waiver requests from low power television station applicants to substitute the full-power DTV emission mask.<sup>59</sup> The applicants argue that in the areas that frequencies are not available, use of the full-power DTV emission mask will enable them to secure a channel even though it will cost more to install such a mask. Furthermore, the National Broadband Plan recommended allowing "LPTV stations to use certain technologies (such as mask filters) to enable more efficient channel allotments...."<sup>60</sup> Accordingly, we seek comment on whether to adopt rules allowing use of full-power DTV emission masks by low power television stations.

### IV. MEMORANDUM OPINION AND ORDER

45. We dismiss as moot New America's petition for reconsideration of the *Digital LPTV Order*, which requests that the Commission explicitly condition the authorization of digital companion channels for low power television stations on the acceptance of unlicensed operations on the digital channel.<sup>61</sup>

46. New America argues that such a condition on licenses for digital operations of low power stations will "promote universal broadband" by "expanding direct access to spectrum."<sup>62</sup> The Community Broadcasters Association (CBA), the Association of Public Television Stations (APTS) and the Association For Maximum Service Television, Inc. (MSTV) all oppose the petition. CBA, citing

<sup>58</sup> See *Digital LPTV Order*, 19 FCC Rcd at 19400-19405; 47 C.F.R. § 74.794(a)(2) and 74.793(c). Simple and stringent masks are defined at 47 C.F.R. § 74.794(a)(2)(i) and (ii).

<sup>59</sup> See 47 C.F.R. § 73.622(b)(1).

<sup>60</sup> See *National Broadband Plan*, at p. 94, released March 16, 2010

<sup>61</sup> New America Foundation and Champaign Urbana Wireless Network Request for Clarification or Modification (citing ET Docket No. 04-186).

<sup>62</sup> *Id.* at 3.

instances of real-world interference to low power television stations from wireless internet operations, expresses concern that unlicensed devices will cause harmful interference to licensed users of the spectrum.<sup>63</sup> APTS states that the New America petition raises issues that should be addressed in the unlicensed devices proceeding.<sup>64</sup> MSTV challenges the legality of the petitioner's request that digital channels granted to LPTV and translator stations be made "co-primary" or "subject to" unlicensed devices that may be authorized on TV broadcast channels and contends that operation of unlicensed devices on TV channels would harm over-the-air TV service.<sup>65</sup>

47. Issues related to the relative spectrum use priorities of licensed stations and unlicensed devices were appropriately addressed in the unlicensed devices proceeding in ET Docket No. 04-186. In the *Unlicensed Operation Second Report and Order*, the Commission found "that low power devices can and should be allowed to operate in the TV bands on frequencies that are not being used by authorized services;" however, "[I]t is, of course, most important that we ensure that new unlicensed devices do not interfere with the incumbent licensed services in the TV bands."<sup>66</sup> Accordingly, given that the Commission concluded that fixed low power devices may operate on any permissible TV channel, but only at times and locations where the spectrum is not being used by authorized services, we conclude that the issue raised by New America in its petition for reconsideration is now moot. Accordingly, we dismiss as moot New America's petition.

## V. PROCEDURAL MATTERS

### A. Initial Regulatory Flexibility Act Analysis

48. The Initial Regulatory Flexibility Analysis is attached to this Notice as Appendix B.

### B. Initial Paperwork Reduction Act of 1995 Analysis

49. This Notice has been analyzed with respect to the Paperwork Reduction Act of 1995 ("PRA"),<sup>67</sup> and contains proposed information collection requirements including the following proposal: (1) to require all low power television stations with facilities on channels 52-59 to submit a digital displacement application proposing an in-core channel (channels 2-51 excluding channel 37) not later than June 30, 2011; (2) to require, where technically feasible, low power television services to provide notice of their upcoming digital transition to their viewers; (3) to require Class A TV station licensees to file a minor change application for either the "flash cut" channel on which they are now operating in analog or the digital companion channel they choose to retain for post-transition operations; (4) to require all Class A applicants to certify that their proposed facilities meet all Class A interference protection requirements; (5) to require permittees of low power television stations operating pursuant to a digital STA to file the annual ancillary and supplementary services report; and (6) to require digital low power and TV translator stations to submit information as to vertical radiation patterns as part of their applications (FCC Forms 346 and 301-CA) for new or modified construction permits.<sup>68</sup> The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and

<sup>63</sup> CBA Opposition at 4-5.

<sup>64</sup> APTS Opposition at 2. APTS also contends that the petition is procedurally defective, failing to satisfy the regulatory criteria warranting reconsideration.

<sup>65</sup> MSTV Opposition at 1.

<sup>66</sup> See *Unlicensed Operation in the TV Broadcast Bands, Second Report and Order and Memorandum Opinion and Order*, 23 FCC Red 16807, ¶¶32-33 (2008).

<sup>67</sup> The Paperwork Reduction Act of 1995 ("PRA"), Pub. L. No. 104-13, 109 Stat 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

<sup>68</sup> See OMB Control No. 3060-0016 (Form 346).

the Office of Management and Budget (OMB) to comment on the proposed information collection requirements contained in this Notice, as required by the PRA.

50. Written comments on the PRA proposed information collection requirements must be submitted by the public, the Office of Management and Budget (OMB), and other interested parties on or before 60 days after date of publication in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,<sup>69</sup> we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

51. In addition to filing comments with the Office of the Secretary, a copy of any comments on the proposed information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, 445 12th St. S.W., Room 1-C823, Washington, D.C., 20554, or via the Internet to [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov); and also to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, N.W., Washington, D.C. 20503, or via Internet to [Kristy\\_L\\_LaLonde@omb.eop.gov](mailto:Kristy_L_LaLonde@omb.eop.gov), or via fax at 202-395-5167.

52. Further Information. For additional information concerning the PRA proposed information collection requirements contained in this Notice, contact Cathy Williams at 202-418-2918, or via the Internet to [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

### C. Ex Parte Rules

53. Permit-But-Disclose. This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under section 1.1206(b) of the Commission's rules.<sup>70</sup> *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.<sup>71</sup> Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

### D. Filing Requirements

54. Comments and Replies. Pursuant to Sections 1.415 and 1.419 of the Commission's rules,<sup>72</sup> interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. 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

<sup>69</sup> The Small Business Paperwork Relief Act of 2002 ("SBPRA"), Pub. L. No. 107-198, 116 Stat 729 (2002) (codified in Chapter 35 of title 44 U.S.C.); see 44 U.S.C. 3506(c)(4).

<sup>70</sup> See 47 C.F.R. § 1.1206(b); see also 47 C.F.R. §§ 1.1202, 1.1203.

<sup>71</sup> See *id.* § 1.1206(b)(2).

<sup>72</sup> See *id.* §§ 1.415, 1.419.

copies.<sup>73</sup>

55. **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. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. 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](mailto: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.

56. **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. 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, Office of the Secretary, Federal Communications Commission. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., 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, SW, Washington DC 20554.

57. **Availability of Documents:** Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the PCC Reference Center, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., CY-A257, Washington, D.C., 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.

58. **Accessibility Information:** To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov>.

## VI. ORDERING CLAUSES

59. Accordingly, IT IS ORDERED that pursuant to Sections 1, 4(i) and (j), 5(c)(1), 7, 301, 302, 303, 307, 308, 309, 312, 316, 319, 324, 332, 336, and 337 of the Communications Act of 1934, 47 U.S.C §§ 151, 154(i) and (j), 155(c)(1), 157, 301, 302, 303, 307, 308, 309, 312, 316, 319, 324, 332, 336, and 337, that NOTICE IS HEREBY GIVEN of the proposals and tentative conclusions described in this *Notice of Proposed Rulemaking*, including the proposed amendments to Parts 73 and 74 of the Commission's rules, as set forth in Appendix A.

<sup>73</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 13 FCC Red 11322 (1998).

60. IT IS FURTHER ORDERED that the Reference Information Center, Consumer Information Bureau, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script that reads "Marlene H. Dortch".

Marlene H. Dortch  
Secretary

## APPENDIX A

## Proposed Rules

## PART 73 – RADIO BROADCAST SERVICES

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

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

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

2. Amend Section 73.624(g) to read as follows:

Section 73.624 Digital television broadcast stations.

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(g) Commercial and noncommercial DTV licensees and permittees, and low power television, TV translator and Class A television stations DTV licensees and permittees, must annually remit a fee of five percent of the gross revenues derived from all ancillary and supplementary services, as defined by paragraph (b) of this section, which are *feasible*, as defined in paragraphs (g)(2)(i) and through (ii) of this section.

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3. Amend Section 73.3572 to as a new subsection (h) as follows:

Section 73.3572 - Processing of TV broadcast, Class A TV broadcast, low power TV, TV translators, and TV booster applications.

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(h) Class A TV station licensees shall file a minor change application for either the flash cut channel or the digital companion channel they choose to retain for post-transition digital operations. Class A TV stations will retain primary, protected regulatory status on their desired post-transition digital channel. Class A TV applicants must certify that their proposed post-transition digital facilities meet all Class A TV interference protection requirements.

## PART 74 – EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

4. The authority citation for Part 74 is amended to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 309, 336 and 554

5. Amend Section 74.787 to read as follows:

Section 74.787 – Digital licensing.

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(b) *Definitions of "major" and "minor" changes to digital low power television and television translator stations.*

(1) Applications for major changes in digital low power television and television translator stations include: (1) any change in the frequency (output channel) not related to displacement relief; (2) any change in transmitting antenna location where the protected contour resulting from the change does not overlap some portion of the protected contour of the authorized facilities of the existing station; or (3) any change in transmitting antenna location of greater than 30 miles (48 kilometers) from the reference coordinates of the existing station's antenna location.

(2) Other facilities changes will be considered minor.

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6. Amend Section 74.793 to read as follows:

74.793- Digital low power TV and TV translator station protection of broadcast stations.

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(c) The following D/U signal strength ratio (db) shall apply to the protection of stations on the first adjacent channel. The D/U ratios for "Digital TV-into-analog TV" shall apply to the protection of Class A TV, LPTV and TV translator stations. The D/U ratios for "Digital TV-into-digital TV" shall apply to the protection of DTV, digital Class A TV, digital LPTV and digital TV translator stations. The D/U ratios correspond to the digital LPTV or TV translator station's specified out-of-channel emission mask.

|                            | Simple Mask | Stringent Mask | Full service Mask         |
|----------------------------|-------------|----------------|---------------------------|
| Digital TV-into-analog TV  | 10          | 0              | Lower (-14) / Upper (-17) |
| Digital TV-into-digital TV | -7          | -12            | Lower (-28) / Upper (-26) |

(d) For analysis of predicted interference from digital low power TV and TV translator stations, the relative field strength values of the antenna vertical radiation pattern provided by the applicant will be used instead of the values in Table 8 in OET Bulletin 69.

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7. Amend Section 74.794 to read as follows:

74.794 - Digital emissions.

(a) (1) An applicant for a digital LPTV or TV translator station construction permit shall specify that the station will be constructed to confine out-of-channel emissions within one of the following emission masks: simple, stringent or full service.

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(a) (2) (iii) *Full service mask*: The power level of emissions on frequencies outside the authorized channel of operation must be attenuated no less than the following amounts below the average transmitted power within the authorized channel. In the first 500 kHz from the channel edge the emissions must be attenuated no less than 47 dB. More than 6 MHz from the channel edge, emissions must be attenuated no less than 110 dB. At any frequency between 0.5 and 6 MHz from the channel edge, emissions must be attenuated no less than the value determined by the following formula:

$$\text{Attenuation in dB} = -11.5([\Delta]f + 3.6);$$

Where:  $[\Delta]f$  = frequency difference in MHz from the edge of the channel.

This attenuation is based on a measurement bandwidth of 500 kHz. Other measurement bandwidths may be used as long as appropriate correction factors are applied. Measurements need not be made any closer to the band edge than one half of the resolution bandwidth of the measuring instrument. Emissions include sidebands, spurious emissions and radio frequency harmonics. Attenuation is to be measured at the output terminals of the transmitter (including any filters that may be employed). In the event of interference caused to any service, greater attenuation may be required.

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## APPENDIX B

## Initial Regulatory Flexibility Act 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”) concerning the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking (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 indicated on the first page of the *Notice*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the *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. In the *Notice*, the Commission considers matters related to the low power television digital transition. The following matters are considered in the *Notice* and are more fully defined and described below: the adoption of an analog shutoff date for low power television stations; the adoption of an earlier transition date for low power television stations on TV channels 52-69 (the so-called “out-of-core” channels); the adoption of procedures for stations to notify the Commission of their final digital channel; whether to make low power television permittees subject to the Commission’s ancillary and supplementary fee rules; whether to modify the Commission’s minor change rule so that it covers a proposed change in a low power television station’s transmitter site of up to 30 miles (48 kilometers) from the reference coordinates of the station’s transmitting antenna; whether to revise the vertical antenna patterns used in the prediction methodology for the low power television services; and whether to allow low power television stations to use the emission mask used by full power television stations.

3. The *Notice* seeks comment on establishing an analog shutoff date in 2012 for low power TV, TV translator and Class A TV stations, giving these stations the flexibility of three additional years from the conclusion of the full power television transition in on June 12, 2009, to convert to digital, *i.e.*, analog station licenses would terminate at that time and analog construction permits would have to be modified for digital operations.

4. The Commission seeks comment on whether to require existing analog and digital low power television stations on channels 52-69 (the so-called “out of core” channels) to file an application for an in-core channel 2-51 by June 30, 2011, and discontinue operations on their out-of-core channel by December 31, 2011.

5. The Commission seeks comment on whether to delegate to the Media Bureau the authority to establish timeframes and procedures for stations to notify the Commission as to whether they intend to convert to digital on their existing analog channel (a so-called “flash cut”) or if they intend to continue to operate their second digital channel and terminate operations on their analog channel.

6. The Commission seeks comment on whether to make low power television station permittees subject to the Commission’s ancillary and supplementary fee rules. Currently, low power television station licensees are subject to the rules and the Commission seeks comment on whether permittees (defined as those stations constructed and operating but have not yet received a grant of their license) should also be subject to these rules.

<sup>1</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 et seq., has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (“CWAAA”).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> See *id.* § 603(a).

7. The Commission seeks comment whether to change the Commission's minor change rule. This proposal seeks to modify the rule to prevent stations from proposing a major change in their facilities (a change that would require the payment of a filing fee) in a minor change application. To remedy this problem, the Commission proposes limiting transmitter site changes in minor change applications to no more than 30 miles (48 kilometers) from the reference coordinates of the existing station's transmitting antenna.

8. The Commission proposes allowing low power television stations to use the emission mask used by full power television stations. This proposal would permit stations to secure a channel in areas where unused channels are scarce by allowing for more efficient use of channels.

9. Finally, the Commission seeks comment on whether to revise the vertical patterns used in the temporary interference prediction methodology for the low power television services that the FCC adopted in its 2004 *Digital LPTV Order*. Use of the actual vertical patterns of proposed low power television facilities would enable a more realistic determination of the service areas of these stations and their potential for interfering with other stations, as well as more accurate determinations of application mutual exclusivity.

#### B. Legal Basis

10. The authority for the action proposed in this rulemaking is contained in Sections 1, 4(i) and (j), 5(c)(1), 7, 301, 302, 303, 307, 308, 309, 312, 316, 319, 324, 332, 336, and 337 of the Communications Act of 1934, 47 U.S.C §§ 151, 154(i) and (j), 155(c)(1), 157, 301, 302, 303, 307, 308, 309, 312, 316, 319, 324, 332, 336, and 337.

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

11. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will 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 government jurisdiction."<sup>5</sup> In addition, the term "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 operation; and (3) satisfies any additional criteria established by the SBA.<sup>7</sup>

12. **Television Broadcasting.** The SBA defines a television broadcasting station as a small business if such station has no more than \$14 million in annual receipts.<sup>8</sup> Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound."<sup>9</sup> According to

<sup>4</sup> *Id.* § 603(b)(3).

<sup>5</sup> 5 U.S.C. § 601(6).

<sup>6</sup> *Id.* § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

<sup>7</sup> 15 U.S.C. § 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.

<sup>8</sup> See 13 C.F.R. § 121.201, NAICS Code 515120.

<sup>9</sup> NAICS Code 515120. This category description continues, "These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the (continued...)"

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<sup>10</sup> (or approximately 72 percent) have revenues of \$13.5 million or less and thus qualify as small entities under the SBA definition. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations<sup>11</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. The Commission has estimated the number of licensed NCE television stations to be 380.<sup>12</sup> The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

13. *Class A TV, LPTV, and TV translator stations.* The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than \$14 million in annual receipts.<sup>13</sup>

14. Currently, there are approximately 567 licensed Class A stations, 2,227 licensed LPTV stations, 4,518 licensed TV translators and 11 TV booster stations.<sup>14</sup> Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than \$13 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

15. 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 do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

16. *Electronics Equipment Manufacturers.* Rules adopted in this proceeding could apply to manufacturers of television receiving equipment and other types of consumer electronics equipment. The

(Continued from previous page)

programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources." Separate census categories pertain to businesses primarily engaged in producing programming. See Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

<sup>10</sup> Although we are using BIA's estimate for purposes of this revenue comparison, the Commission has estimated the number of licensed commercial television stations to be 1374. See News Release, "Broadcast Station Totals as of December 31, 2006" (dated Jan. 26, 2007); see <http://www.fcc.gov/mb/andio/totals/b061231.html>.

<sup>11</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 the power to control both." 13 C.F.R. § 121.103(a)(1).

<sup>12</sup> Broadcast Stations Total as of December 31, 2006.

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

<sup>14</sup> See News Release, "Broadcast Station Totals as of December 31, 2006" (dated Jan. 26, 2007); <http://www.fcc.gov/mb/audio/totals/b061231.html>.

SBA has developed definitions of small entity for manufacturers of audio and video equipment<sup>15</sup> as well as radio and television broadcasting and wireless communications equipment.<sup>16</sup> These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.<sup>17</sup> Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities.<sup>18</sup> The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern.<sup>19</sup> Census Bureau data indicates that there 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities.<sup>20</sup> The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

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

17. The *Notice* proposes one new reporting or recordkeeping requirement. The *Notice* proposes requiring that low power stations submit information as to vertical radiation patterns as part of their applications (FCC Form 346) for new or modified construction permits.<sup>21</sup> Otherwise, existing rules and forms will be used to undertake the proposals set forth in the *Notice*.

<sup>15</sup> 13 CFR § 121.201, NAICS Code 334310.

<sup>16</sup> 13 CFR § 121.201, NAICS Code 334220.

<sup>17</sup> 13 CFR § 121.201, NAICS Code 334310.

<sup>18</sup> Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series - Manufacturing, Audio and Video Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

<sup>19</sup> 13 CFR § 121.201, NAICS Code 334220.

<sup>20</sup> Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series - Manufacturing, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

<sup>21</sup> See OMB Control No. 3060-0016 (Form 346).

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

18. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>22</sup>

19. The Commission's proposed adoption of an analog shutoff date in 2012 would minimize impact on small entities by allowing them three additional years from the full power television transition that occurred on June 12, 2009, to complete their transition to digital. Adoption of an early low power transition date was not considered as it was felt that many small entities would not be ready to transition any sooner and would be forced off the air.

20. With respect to requiring stations on out-of-core channels to transition at an early date – on December 31, 2011, the Commission found that the burden on small entities of adopting an earlier deadline was more than outweighed by the need to clear out-of-core channels for new uses by commercial wireless (including mobile broadband) and public safety entities. It was determined that adoption of a later transition date for low power television stations on these channels would delay progress on clearing these channels.

21. The Commission's proposal to establish timeframes and procedures for stations to notify the Commission as to whether they intend to convert to digital on their existing analog channel (a so-called "flash cut") or if they intend to continue to operate their second digital channel and terminate operations on their analog channel prevented a significant impact on small entities. Low power stations will not be burdened with having to complete and file a lengthy progress report, as was required of full power television stations, but rather will only have to file a simple informal notification to make their final digital choice known to the Commission.

22. With respect to subjecting low power television station permittees to the Commission's ancillary and supplementary fee rules, the Commission found that the burden on small entities of having to comply with these rules was outweighed by the need to eliminate ambiguity in the rules and to provide efficient use and administration of spectrum.

23. The Commission did not find that there would be a significant impact on small entities by its proposed change to its Commission's low power television minor change rule. The change would have little impact and any impact would affect all entities equally.

24. The Commission did not find that there would a significant impact on small entities by its proposal to permit stations to use the emission mask used by full power television stations. Use would be voluntary and any impact would affect all entities equally.

25. The Commission's proposal to revise the vertical patterns used in the temporary interference prediction methodology for the low power television services would not have a significant impact on small entities. Use of the actual vertical patterns of proposed low power television facilities will simplify the engineering filings on FCC Form 346, making it easier for all applicants to complete the form, and thus saving applicants time and money. Any burden from this requirement would impact all entities equally.

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<sup>22</sup> 5 U.S.C. § 603(c)(1)-(c)(4)

**F. Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals**

26. None.

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

**Re:** *Further Notice of Proposed Rulemaking and Memorandum Opinion and Order to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations to Amend Rules for Digital Class A Television Stations*

After helping to navigate the waters of the full-power digital transition, I take any and all transitions more seriously. In the DTV transition, new challenges kept rising up, old presumptions were frequently invalidated, pieces of the puzzle didn't gel put together the way they should, and all the relevant stakeholders didn't really come cooperatively together until very late in the day. Hopefully this time will be different. We will learn from the previous transition and improve upon it. Obviously this is a different transition in many ways, but in equally many ways, it is very similar.

This will be a complex undertaking. Its success will depend upon close partnering between the private and public sectors; it will require effective consumer outreach and providing assistance to consumers who need help to transition their televisions to accommodate digital technology. And it also will call for good technical knowledge, adequate signal testing, and taking into consideration the myriad factors that can influence TV reception in diverse geographical settings.

By launching this proceeding we are not only attempting to complete the digital television transition, but we are also beginning the next phase of low power television. In many communities these low power stations provide unique local content, sometimes in diverse languages, and they furnish much-needed independent programming in many corners of the country. Low-power television serves the public interest—and that should be all the motivation we need to ensure a smooth digital transition and, going forward, an environment that contributes to the growing vibrancy of low-power television.

I urge all interested parties to respond to this Further Notice in order to get the best information and analysis possible to guide our ongoing and future decision-making in this endeavor. I thank the Bureau for its work in putting this item together and I look forward to working with it, with the Chairman and with my colleagues to make this a transition of which we can be truly proud.