

recover a portion of the value of the public spectrum resource made available for commercial use, as well as to avoid unjust enrichment of broadcasters that use that resource, we conclude that low power television permittees operating pursuant to an STA also should be subject to this rule. Therefore, low power television permittees operating pursuant to an STA will be required to file the annual Ancillary and Supplementary Services Report (FCC Form 317) **beginning December 1, 2011**, and will be required to pay a fee of five percent of the gross revenues of any ancillary and supplementary services they provide. We find that such a requirement will enable the Commission to assess the nature of ancillary and supplementary services, if any, that are provided by low power television permittees and the extent to which feeable services are offered.<sup>171</sup>

56. As discussed further below, Harris, SmartComm and Venture disagree that all low power television permittees operating pursuant to digital STA should be subject to the ancillary and supplementary requirements.<sup>172</sup> Airwaves believes that low power television permittees should be allowed to provide ancillary and supplemental services without a fee, so long as they continue to meet their obligation to provide at least one channel of free over-the-air television service.<sup>173</sup> Harris argues that the Commission should not restrict the development of new innovative broadcast offerings by placing fees on ancillary and supplementary services revenue earned by low power television stations operating pursuant to a digital STA.<sup>174</sup> While we seek to encourage innovative service offerings by low power television stations and to further the financial wellbeing of these stations, we are mindful of our statutory obligation under Section 336(e) to recover 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. We believe that the imposition of the fee for ancillary digital revenues should not depend on the type of authorization that covers the digital operation.<sup>175</sup> Therefore, in order to accurately assess the extent of such services and ensure that we recover a portion of the value of the spectrum used, low power television permittees operating pursuant to digital STA will be subject to the ancillary and supplementary requirements.

57. SmartComm argues that low power television broadcasters have smaller coverage areas and more rural coverage areas, and thus the financial impact of a five percent ancillary service fee will be felt to a much greater degree than by full power broadcasters.<sup>176</sup> SmartComm asks that the Commission exempt all low power broadcast licensees from the five percent ancillary service fee obligation or exempt all low power television ancillary and supplementary services from the fee for revenues below a certain threshold (analogous to the *de minimis* exemption to the Universal Service Fund for carriers with a calculated contribution of less than \$10,000 per year).<sup>177</sup> Low power television licensees are already subject to the Section 336(e) reporting and fee requirements, and the *Further Notice* did not propose revisiting this requirement. To the extent that SmartComm seeks to do so, its comments are beyond the

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<sup>171</sup> In the 2004 *Digital LPTV Order*, the Commission added LPTV, TV translators and Class A television stations to Section 73.624(g). See *Digital LPTV Order*, 19 FCC Rcd at 19391; see also 69 FR 69325 (Nov. 29, 2004). That rule change is reflected in the revised version of Section 73.624(g) set forth in Appendix B.

<sup>172</sup> Harris Comments at 2; SmartComm Comments at 2-3 and 6-7; Venture Comments at 6; Airwaves Comments at 2.

<sup>173</sup> Airwaves Comments at 2.

<sup>174</sup> Harris Comments at 2.

<sup>175</sup> See LPTV Licensee Group Comments at 10, note 14.

<sup>176</sup> SmartComm Comments at 2-3 and 6-7.

<sup>177</sup> *Id.*

scope of this proceeding.<sup>178</sup> To the extent SmartComm seeks only to avert the application of the ancillary and supplementary fee requirements on low power television permittees, we have explained above why we disagree. We therefore reject SmartComm's proposal.

#### H. Minor Change Definition

58. To ensure that low power television applications for "minor change" remain just that, and to ensure that stations continue to provide coverage to viewers that rely on their service, we adopt our proposal and expand the "30-mile" rule currently applied to digital displacement applications to all low power television modification applications.<sup>179</sup> In the *Digital LPTV Order*, the Commission changed the minor change processing rule for digital low power television 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>180</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>181</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>182</sup> Outside of the displacement context, low power television stations can file any modification application (both analog and digital) as a "minor change" as long as there is contour overlap between the proposal and the station's existing facilities.<sup>183</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, a station is 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. Viewers of such a station, who have come to rely on its service, may be left behind. Furthermore, because low power television minor change applications are not subject to a filing fee, stations are able to avoid paying an application filing fee when they seek consent to make these changes. Therefore, we believe that expansion of the 30-mile rule to all modification applications (not just displacement applications) is necessary to enforce the original intent of the minor change rule.

59. For these reasons, we believe that expansion of the 30-mile rule to all modification applications (not just displacement applications) is necessary to enforce the original intent of the minor change rule. Accordingly, we expand application of the rule so 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. In effect, we will continue to treat transmitter site changes that are truly minor as a minor change and those that involve a substantial relocation of facilities will be deemed a major change. We agree with Harris that the 30-mile rule "provides LPTV stations with sufficient flexibility to adjust their transmitter site, if necessary, without violating the intent of the Commission's minor change

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<sup>178</sup> As for SmartComm's suggestion that the Commission should clarify that at least a portion of the LPDTV spectrum can be leased to wireless providers, we find this topic to be beyond the scope of this proceeding. SmartComm Comments at 6-7. Similarly, Venture's proposal that the Commission classify analog operations on channel 6 post digital transition as an ancillary or supplemental service such that its revenue would be subject to a 5% fee is also outside the scope of this proceeding. Venture Comments at 6.

<sup>179</sup> See *Further Notice*, 25 FCC Rcd at 13847.

<sup>180</sup> *Digital LPTV Order*, 19 FCC Rcd at 19377.

<sup>181</sup> *Id.* at 19376.

<sup>182</sup> *Id.*

<sup>183</sup> See 47 C.F.R. §§73.3572(a)II (analog) and 74.787(b) (digital).

rule.”<sup>184</sup>

60. A number of commenters expressed concern that expansion of the 30-mile rule to all modification applications may adversely affect low power stations’ ability to make needed changes to their facilities.<sup>185</sup> For example, PBS maintains that translator stations in Western states “may need to make use of the existing minor change rule, or may need a waiver of the 30-mile rule, “in order to adjust their disparate translator setup to avoid interference from and with other new electromagnetic spectrum uses.”<sup>186</sup> LPTV Licensee Group requests that the Commission permit a waiver of the rule “if a station is displaced and cannot survive without moving more than 30 miles.”<sup>187</sup> Venture points out that channel congestion in many markets makes locating a useable allotment difficult for many low power television operators.<sup>188</sup> Joint Commenters argue that this congestion will be exacerbated by implementation of the Broadband Plan and the mandatory conversion to digital.<sup>189</sup> Venture and Joint Commenters are concerned that restricting a minor change to within 30 miles from the transmitter site will further limit the options available for low power television stations to construct a viable, usable facility.<sup>190</sup> Airwaves argues that the low power industry is still learning about digital television and that stations may need to move their facilities to “put a bigger signal into the community to be served.”<sup>191</sup> One Ministries points out that “LPTV stations are often owned by minorities and educational organizations that don’t have exhaustive financial resources, and it is often necessary to move more than 30 miles to find economically priced tower space and to cover sufficient population to make LPTV stations economically viable or to avoid causing interference to other TV stations.”<sup>192</sup>

61. It is not our intent to preclude low power television stations from making necessary changes to their facilities, especially changes that are needed to ensure a station’s continued operation as a result of displacement or spectrum reallocation. Expansion of the 30-mile rule will not preclude stations from seeking needed facility modifications. Stations may continue to propose necessary modifications, but some proposals will be deemed “major changes” necessitating a waiver if an applicant seeks to have its application processed as a minor change. As suggested by the commenters, we will provide full and expedited consideration to requested waivers of the 30-mile rule to ensure that stations are able to make those modifications necessary to ensure continued operation as a result of interference, displacement or reallocation of their operating channel. Furthermore, the technical rule changes adopted in this proceeding, such as to permit greater operating power on VHF channels, to permit stations to specify the actual vertical patterns of their proposed facilities and to allow use of full power DTV emission masks by low power stations, will provide low power stations with the additional tools to engineer facilities so that they can provide continued service to their viewers within the confines of the 30-mile rule.

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<sup>184</sup> Harris Comments at 10. We note that stations must complete construction and file a license application for each facility authorized by a minor modification before they may propose a further minor modification if the combined changes would not comply with the 30-mile rule.

<sup>185</sup> See, e.g., PBS Comments at 9-10; LPTV Licensee Group Comments at 10.

<sup>186</sup> PBS Comments at 10.

<sup>187</sup> LPTV Licensee Group Comments at 10.

<sup>188</sup> Venture Comments at 6 and Reply Comments at 8.

<sup>189</sup> Joint Commenters Reply Comments at 4.

<sup>190</sup> Venture Comments at 6-7 and Joint Commenters Reply Comments at 4.

<sup>191</sup> Airwaves Comments at 3.

<sup>192</sup> One Ministries Comments at 2.

62. Cellular South maintains that the 30-mile rule is “more liberal than the minor change rules for other broadcast services” and suggests that the Commission require low power applicants to “propose overlap of at least 35 percent of their existing service area” and “limit the distance an LPTV station could move its transmitter site on a minor change application to 15 miles, rather than 30 miles from the reference coordinates of the community of license.”<sup>193</sup> Cellular South believes that such requirements “would insure a continued connection with [a station’s] designated community of license and service area while still affording LPTV licensees substantial flexibility.” We disagree that further limitations to low power digital modifications are necessary. The 30-mile limitation for displacement applications has been in place for over six years and has worked well to ensure that applicants propose only necessary modifications to complete the displacement process.<sup>194</sup> We believe that expansion of the 30-mile rule to all modifications will serve the same purpose. To further restrict station modifications, as suggested by Cellular South, may result in stations being unable to make changes necessary to their continued existence and result in the loss of service. We therefore reject Cellular South’s proposal.

63. Finally, at the suggestion of duTreil, we clarify that, in addition to the proposed 30-mile limit, the protected contours of the station’s existing and proposed facilities must also overlap.<sup>195</sup>

#### I. Antenna Vertical Radiation Patterns

64. We revise our rules to begin accepting actual vertical pattern relative field values from applicants and permittees in the low power television service on a voluntary basis. Also, licensees and permittees will be permitted to submit actual vertical patterns for their existing facilities (in order to modify the official record of their station’s contour) by filing a minor change to their existing facilities or a minor modification of their existing construction permit. We will revise FCC Forms 346 and 301-CA to accommodate the acceptance of actual vertical pattern relative field values.

65. In the *Further Notice*, we found that low power television stations use a variety of transmitting antennas designed to produce widely differing vertical patterns.<sup>196</sup> As a result, use of assumed vertical antenna patterns, as has been our practice since the 2004 *Digital LPTV Order*,<sup>197</sup> has been affecting to varying degrees the accuracy of service area and interference predictions. This in turn may have been limiting low power television stations from engineering their digital facilities to best serve the needs of their viewers. It was for this reason that in the *Further Notice* we proposed to revise the assumed vertical antenna patterns that the Commission adopted in the 2004 *Digital LPTV Order*.<sup>198</sup> We now conclude that by incorporating the actual vertical antenna patterns into our interference analysis we will achieve 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. Realizing the full benefits of this approach will 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.

66. We shall not, however, require that all licensees, permittees and applicants for low power television facilities submit their actual vertical antenna patterns. We have received numerous comments

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<sup>193</sup> Cellular South Comments at 9.

<sup>194</sup> *Id.*

<sup>195</sup> See duTreil Comments at 3. We note that this requirement was set out in the *Further Notice*, 25 FCC Rcd at 13846, ¶ 38.

<sup>196</sup> *Further Notice*, 25 FCC Rcd at 13848.

<sup>197</sup> See *Digital LPTV Order*, 19 FCC Rcd at 19360.

<sup>198</sup> *Further Notice*, 25 FCC Rcd at 13847.

and reply comments in regard to this subject.<sup>199</sup> The commenters unanimously agree that it will be beneficial to have the option of submitting actual vertical pattern relative field values. In some instances, however, the commenters disagree as to how we should implement such changes. Although Harris suggests that the Commission obtain such data from all existing low power television stations in order to “maximize the utilization of broadcasters existing spectrum allocations,”<sup>200</sup> we find that such a requirement may be costly and burdensome to applicants that may not have the need or means to prepare an engineering showing of their actual vertical pattern. Therefore, rather than requiring that all existing stations and permittees, and all future applicants submit this information, we shall instead use the assumed vertical patterns set forth in Section 74.793(d) for applicants and permittees that choose not to submit their actual vertical patterns.<sup>201</sup> We find the burden such a task would impose on applicants greatly outweighs the spectrum maximization benefit that Harris believes would come from it. We believe that by the **September 1, 2015** transition date those stations that find it useful to do so will have an opportunity to submit their actual vertical patterns.

67. Venture states that it “is concerned by the number of LPTV construction permits granted that propose antenna patterns that just do not work under the laws of physics.”<sup>202</sup> For example, Venture cites to applications that “propose horizontal patterns that range from full field to less than 10 percent field in less than 10 degrees . . . .”<sup>203</sup> Further, Venture states that “construction permits have been granted with antenna patterns that propose to lower field strength to 0.001 field 90 degrees off horizontal full field of an antenna pattern.”<sup>204</sup> Venture recommends that the Commission “revise its rules to prohibit field strength off of any antenna to be less than 0.01 field and should not allow any signal strength proposal to fall by more than 50 percent within 10 degrees.”<sup>205</sup> We decline to adopt Venture’s proposal. Applicants, by specifying a specific antenna pattern, will certify that such a pattern can be built by manufacturers. It is the applicant’s responsibility to make sure that in actuality its pattern can be designed. PBS noted that for the foreseeable future, interference analysis will be based on a mix of actual and assumed antenna patterns.<sup>206</sup> Thus, PBS recommends that the Commission give “special consideration to waiver requests that are premised on the notion that the mix of actual and assumed patterns creates an overestimation of a proposed facility’s interference potential to other stations.”<sup>207</sup> We shall continue to consider alternative showings contained in waiver requests wherein applicants will continue to have an opportunity to discuss any issues, including compliance with interference rules, and bring any issues to the staff’s attention.

#### **J. Use of Full Power DTV Emission Mask**

68. In order to provide more flexibility for low power television stations to secure channels, we adopt our proposal to permit low power television applicants to use the DTV emission mask available

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<sup>199</sup> See, e.g., NTA Comments at 4-5 and Reply Comments at 12-13; LPTV Licensee Group Comments at 9; Harris Comments at 11; Cohen Comments at 3; Cellular South Comments at 10; Venture Comments at 7; Airwaved Comments at 3; duTreil Comments at 3-4; PBS Comments at 10.

<sup>200</sup> See Harris Comments at 11.

<sup>201</sup> See 47 C.F.R. § 74.793(d).

<sup>202</sup> See Venture Comments at 7.

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> See PBS Comments at 10.

<sup>207</sup> *Id.*

to full power television stations to protect existing stations operating on first adjacent channels.<sup>208</sup> In the *Further Notice*, we noted that the *Digital LPTV Order* adopted the use of relaxed emission masks, specifically simple and stringent masks.<sup>209</sup> However, over time the staff has received numerous waiver requests from low power television station applicants to substitute the full power DTV emission mask.<sup>210</sup> The applicants argue that in areas where 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 Broadband Plan recommended allowing “LPTV stations to use certain technologies (such as mask filters) to enable more efficient channel allotments....”<sup>211</sup> We conclude that our current approach, using the two different emission masks that are part of the low power television rules, needlessly limits these stations from identifying a workable channel, and that use of the full power television DTV emission mask may be the preferable approach for some low power television stations.

69. We agree with those commenters that support allowing low power television applicants to specify the use of the full power television DTV emission mask because this can accommodate additional LPTV stations and enable more efficient use of the available spectrum.<sup>212</sup> As NTA states, the full power DTV emission mask will enable licensees to use a channel that is adjacent to a channel used at the same or a nearby antenna location.<sup>213</sup> This will be important for low power television stations with the need for increasing adjacent channel spacing to accommodate possible spectrum reallocation initiatives. Cellular South agrees that allowing low power television stations to use the full power DTV emission mask will allow for more efficient reallocations and, in addition, states that the mask will lessen interference by low power television stations on channel 51 to lower 700 MHz wireless operations.<sup>214</sup>

#### **K. Issues Outside the Scope of the Proceeding**

70. A number of commenters raised issues that were not raised in the *Further Notice*. NPR, Venture, Syncom, and Signal all raise issues with respect to the use of channel 6 for low power television operations.<sup>215</sup> LPTV Entrepreneurs proposes that low power television licensees be allowed to participate in the incentive auction contemplated by the Broadband Plan.<sup>216</sup> Cohen recommends that the Commission consider expanded freeze waiver criteria should the Commission implement a freeze on new

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<sup>208</sup> See 47 C.F.R. §73.622(h)(1).

<sup>209</sup> *Further Notice*, 25 FCC Rcd at 13849 citing *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>210</sup> See 47 C.F.R. §73.622(h)(1).

<sup>211</sup> See *Broadband Plan*, at 94.

<sup>212</sup> See, e.g., Verizon Comments at 3-4 and Reply Comments at 7; PBS Comments at 11; NTA Comments at 5-6 and Reply Comments at 13; LPTV Licensee Group Comments at 7; Harris Comments at 12; Cellular South Comments at 11; Venture Comments at 7; H & D Comments at 3; duTreil Comments at 3; Renard Reply Comments at 3; Entravision Comments at 7.

<sup>213</sup> NTA Comments at 6.

<sup>214</sup> Cellular South Comments at 11.

<sup>215</sup> See NPR Comments at 3 -7; Venture Reply Comments at 2 - 6; Syncom Reply Comments at 1-3; Signal Reply Comments at 7- 9; see also Minority Media and Telecommunications Council Petition for Rulemaking, RM-11565, filed July 20, 2009 in MM Docket 09-35.

<sup>216</sup> See LPTV Entrepreneurs Comments at 4-5; see also *Broadcast Innovation NPRM*, 25 FCC Rcd at 16512 (seeking comment on whether low power stations should be permitted to participate in the Commission’s channel sharing efforts).

low-power translator facilities.<sup>217</sup> Venture requests that the Commission re-visit stations' compliance with the Class A eligibility requirements.<sup>218</sup> One Ministries proposes that low power television stations be allowed to assist in filling the need for wireless spectrum and be allowed to provide wireless content through using OFDM modulation standards instead of 8VSB.<sup>219</sup> Lastly, Cellular South, as supported by King Street Wireless and AT&T, suggests "that the Commission limit the filing of displacement applications to channels below Channel 50 in order to minimize the potential for interference to wireless operations in the 700 MHz band."<sup>220</sup> We find that these issues are beyond the scope of this proceeding or, as indicated, are being addressed in other proceedings. If the FCC were to be granted incentive auction authority by Congress, it is imperative that we consider, in keeping with the requirements of the legislation, how LPTV services would be impacted. Because these issues are addressed in other proceedings we shall not address them here.

#### IV. PROCEDURAL MATTERS

##### A. Final Regulatory Flexibility Act Analysis

71. The Final Regulatory Flexibility Analysis is attached to this Second Report and Order as Appendix C.

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

72. This Second Report and Order adopts a revised information collection requirement subject to the Paperwork Reduction Act of 1995 ("PRA")<sup>221</sup> pertaining to DTV transition related issues.<sup>222</sup> Specifically, this Second Report and Order will: (1) 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 September 1, 2011; (2) require all low power television stations to provide notice of their upcoming digital transition to their viewers; (3) require low power television stations that have not taken steps to convert to digital by a date certain to submit a notification of their conversion plan; (4) require Class A TV station licensees to file a license 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 and certify therein that their proposed facilities meet all Class A interference protection requirements; (5) require permittees of low power television stations operating pursuant to a digital STA to file the annual ancillary and supplementary services report; and (6) permit applicants and permittees in the low power television service to submit actual vertical pattern relative field values as part of their applications (FCC Form 346 and 301-CA) on a voluntary basis. These requirements will not go into effect until OMB has approved them and the Commission has published a notice announcing the effective date of the information collection requirement. For additional

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<sup>217</sup> See Cohen Comment at 2-3; see also "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, 25 FCC Rcd 8179 (MB 2010).

<sup>218</sup> See Venture Comments at 6.

<sup>219</sup> See One Ministries Comment at 1.

<sup>220</sup> See Cellular South Comments at 6; King Street Wireless Comments at 1; AT&T Reply Comments at 4; see also "Petition for Rulemaking and Request for Licensing Freezes," filed by CTIA – the Wireless Association and Rural Cellular Association, March 15, 2011 and "Media Bureau Seeks Comment on Petition for Rulemaking and Request for Licensing Freezes," *Public Notice*, RM 11626, DA 11-562, released March 28, 2011.

<sup>221</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>222</sup> See OMB Control No. 3060-0016 (Form 346).

information concerning the information collection requirement contained in this Report and Order, contact the Office of Managing Director (“OMD”), Performance Evaluation & Records Management (“PERM”), Cathy Williams, Cathy.Williams@fcc.gov, at 202-418-2918.

73. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

74. The Commission will send a copy of this Second Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

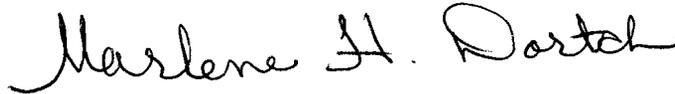
## V. ORDERING CLAUSES

75. 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, this Second Report and Order IS ADOPTED and the Commission’s rules ARE HEREBY AMENDED as set forth in Appendix B. The rules and procedures adopted in this Second Report and Order are effective 30 days after the date of publication of the summary of this Second Report and Order in the Federal Register, provided, however, that the rules and procedures that contain information collection requirements subject to the PRA shall not be effective until approved by OMB. The Commission will publish a notice in the Federal Register announcing when OMB approval for these rules has been received.

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

77. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Second Report and Order in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch  
Secretary

## APPENDIX A

## List of Commenters

**Comments**

AT&T Inc. (“AT&T”)  
Cohen, Dippell and Everist, P.C (“Cohen”)  
Consumer Electronics Association (“CEA”)  
Consumer Electronics Retailers Coalition (“CERC”)  
Cellular South, Inc. (“Cellular South”)  
Cordillera Communications, Inc. (“Cordillera”)  
CTIA- The Wireless Association (“CTIA”)  
duTreil, Lundin & Rackley, Inc. (“duTreil”)  
Entravision Holdings, LLC (“Entravision”)  
Folse Communications, LLC (“Folse”)  
George S. Flinn, Jr.  
Harris Corporation (“Harris”)  
Hatfield & Dawson Consulting Engineers, LLC (“H&D”)  
Inspiration television, Inc (“Inspiration”)  
Island Broadcasting Company (“Island”)  
Liberty University, Inc. (“Liberty”)  
Low Power Television Licensee Group (“LPTV Licensee Group”)  
Lotus TV of Houston, LLC (“Lotus TV”)  
LPTV Entrepreneurs  
Motorola, Inc. (“Motorola”)  
National Public Radio, Inc (“NPR”)  
National Public Safety Telecommunications Council (“NPSTC”)  
National Translator Association (“NTA”)  
Nickolaus E. Leggett  
One Ministries, Inc. (“One Ministries”)  
PBS, APTS, and CPB (“PBS”)  
Obidia Porras  
Signal Above LLC (“Signal”)  
Smartcomm, L.L.C. (“Smartcomm”)  
SpectrumEvolution.org (“SpectrumEvolution”)  
State Board of Education, State of Idaho (“State of Idaho”)  
John Terrill  
Trinity Christian Center of Santa Ana, Inc. (“Trinity”)  
Elizabeth Trinkle  
Venture Technologies Group, LLC (“Venture”)  
Verizon Wireless (“Verizon”)  
WLFM, LLC (“WLFM”)

**Reply Comments**

AT&T, Inc.  
Cesar Rincon International (“Rincon”)  
CTIA – The Wireless Association  
George S. Flinn, Jr.  
Harris Corporation  
Island Broadcasting Company (“Island”)  
King Street Wireless, L.P. (“King Street Wireless”)

S. Moore  
National Public Radio, Inc.  
National Translator Association  
Renard Communications Corporation (“Renard”)  
Signal Above, LLC  
Syncom Media Group, Inc. (“Syncom”)  
Una Vez Mas, LP (“Una Vez Mas”)  
Venture Technologies Group, LLC  
Verizon Wireless

**Ex Parte**

Jaime Arbona  
Blackstrap Broadcasting  
Joint Commenters  
Lin Television Corporation  
National Public Radio, Inc.  
Venture Technologies Group, LLC

## APPENDIX B

## Final 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.

\* \* \* \* \*

(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 *feeable*, as defined in paragraphs (g)(2)(i) and through (ii) of this section.

\* \* \* \* \*

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.

\* \* \* \* \*

(h) Class A TV station licensees shall file a license 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 74.731 to read as follows:

§ 74.731 Purpose and permissible service.

\* \* \* \* \*

(l) After 11:59 pm local time on September 1, 2015, low power television, TV translators and Class A television stations may no longer operate any facility in analog (NTSC) mode.

6. Amend Section 74.735 to read as follows:

§ 74.735 Power limitations.

\* \* \* \* \*

(b) The maximum ERP of a digital low power TV, TV translator, or TV booster station (average power) shall not exceed:

(1) 3 kW for VHF channels 2–13; and

(2) 15 kW for UHF channels 14–69.

\* \* \* \* \*

7. Amend Section 74.786 to read as follows:

\* \* \* \* \*

(g) After 11:59 pm local time on December 31, 2011, low power television and TV translator stations may no longer operate any analog (NTSC) or digital facilities above Channel 51.

8. Amend Section 74.787 to read as follows:

Section 74.787 – Digital licensing.

\* \* \* \* \*

(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.

(c) Not later than 11:59 pm local time on September 1, 2011, low power television or TV translator stations operating analog (NTSC) or digital facilities above Channel 51, that have not already done so, must file a digital displacement application for a channel below Channel 52 pursuant to the procedures in subsection (a)(4) of this rule. Low power television and TV translator stations operating analog (NTSC) or digital facilities above Channel 51 that have not submitted a digital displacement application by 11:59 pm local time on September 1, 2011 will be required to cease operations altogether by December 31, 2011. These stations’ authorization for facilities above Channel 51 shall be cancelled. Any digital displacement application submitted by a low power television or TV translator station operating analog (NTSC) or digital facilities above Channel 51 that is submitted after 11:59 pm local time on September 1,

2011 will be dismissed. In addition, any outstanding construction permit (analog or digital) for a channel above Channel 51 will be rescinded on December 31, 2011, and any pending application (analog or digital) for a channel above Channel 51 will be dismissed on December 31, 2011, if the permittee has not submitted a digital displacement application by 11:59 pm local on September 1, 2011.

\* \* \* \* \*

9. Amend Section 74.788 to read as follows:

Section 74.788 - Digital construction period.

\* \* \* \* \*

(c) Authority delegated. (1) For the September 1, 2015 digital construction deadline, authority is delegated to the Chief, Media Bureau to grant an extension of time of up to six months beyond September 1, 2015 upon demonstration by the digital licensee or permittee that failure to meet the construction deadline is due to circumstances that are either unforeseeable or beyond the licensee's control where the licensee has taken all reasonable steps to resolve the problem expeditiously.

(2) Such circumstances shall include, but shall not be limited to: (i) Inability to construct and place in operation a facility necessary for transmitting digital television, such as a tower, because of delays in obtaining zoning or FAA approvals, or similar constraints; (ii) The lack of equipment necessary to obtain a digital television signal; or (iii) Where the cost of construction exceeds the station's financial resources.

(3) Applications for extension of time shall be filed not later than May 1, 2015, absent a showing of sufficient reasons for late filing.

(d) For construction deadlines occurring after September 1, 2015, the tolling provisions of Section 73.3598 shall apply.

(e) A low power television, TV translator or Class A television station that holds a construction permit for an unbuilt analog and corresponding unbuilt digital station and fails to complete construction of the analog station by the expiration date on the analog construction permit shall forfeit both the analog and digital construction permits notwithstanding a later expiration date on the digital construction permit.

(f) A low power television, TV translator or Class A television station that holds a construction permit for an unbuilt analog and corresponding unbuilt digital station and completes construction of the digital station by the expiration date on the analog construction permit, begins operating and files a license application for the digital station may forego construction of the unbuilt analog station.

10. Amend Section 74.793 to read as follows:

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

\* \* \* \* \*

(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 if provided by the applicant will be used instead of the values in Table 8 in OET Bulletin 69.

\* \* \* \* \*

11. Amend Section 74.794 to read as follows:

Section 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.

\* \* \* \* \*

(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:

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.

\* \* \* \* \*

12. A new Section 74.798 is added as follows:

Section 74.798 - Digital Television Transition Notices by Broadcasters

(a) Each low power television, TV translator and Class A television station licensee or permittee must air an educational campaign about the transition from analog broadcasting to digital television (DTV).

(b) Stations that have already terminated analog service and begun operating in digital prior to effective date of this rule shall not be subject to this requirement.

(c) Stations with the technical ability to locally-originate programming must air viewer notifications at a time when the highest number of viewers is watching. Stations have the discretion as to the form of these notifications.

(d) Stations that lack the technical ability to locally-originate programming, or find that airing of viewer notifications would pose some sort of a hardship, may notify their viewers by some other reasonable means, *e.g.* publication of a notification in a local newspaper. Stations have discretion as to the format and time-frame of such local notification.

## APPENDIX C

## Final Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”)<sup>1</sup> an Initial Regulatory Flexibility Analysis (“IRFA”) was included in the *Notice of Proposed Rulemaking (Further Notice)* in this proceeding.<sup>2</sup> Written public comments were requested on the IRFA. This present Final Regulatory Flexibility Analysis.<sup>3</sup>

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

2. In the *Second Report and Order*, the Commission adopts rules to facilitate the low power television digital transition. The Commission to the following steps as more fully described below: adopted a September 1, 2015 analog shutoff date for low power television stations; adopted a December 31, 2011 transition date for low power television stations on TV channels 52-69 (the so-called “out-of-core” channels); adopted procedures for stations that have not already completed their transition to notify the Commission of their final digital channel; made low power television permittees subject to the Commission’s ancillary and supplementary fee rules; modified 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; revised the vertical antenna patterns used in the prediction methodology for the low power television services; and allowed low power television stations to use the emission mask used by full power television stations.

3. The *Second Report and Order* establishes an analog shutoff date of September 1, 2015 for low power TV, TV translator and Class A TV stations, giving these stations the flexibility of four additional years 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 *Second Report and Order* established a date of December 31, 2011, by which all existing analog and digital low power television stations on channels 52-69 (the so-called “out of core” channels) must terminate operations on their out-of-core channel and requires that those stations that have not already done so must file an application for an in-core channel 2-51 by September 1, 2011.

5. The *Second Report and Order* increases to 3 kilowatts the maximum amount of power that low power stations operating on VHF channels may specify.

6. The *Second Report and Order* delegates to the Media Bureau the authority to establish timeframes and procedures for stations that have not already transitioned to notify the Commission as to their final digital channel selection.

7. The *Second Report and Order* mandates that stations with the technical ability to locally-originate programming provide some type of notification to their viewers prior to ceasing analog operations and transitioning to digital while leaving the format and timeframe for such notification to the station’s discretion.

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<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).

<sup>2</sup> See 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, *Further Notice*, 25 FCC Rcd 13833 (2010) (*Further Notice*).

<sup>3</sup> See 5 U.S.C. § 604.

8. The *Second Report and Order* makes low power television station permittees subject to the Commission's ancillary and supplementary fee rules.

9. The *Second Report and Order* changes the Commission's minor change rule to limit 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.

10. The *Second Report and Order* changes the Commission's rules to allow low power television stations to use the emission mask used by full power television stations.

11. Finally, the *Second Report and Order* revises 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*.

#### **B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

12. There were no comments received in response to the IRFA.

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

13. **Television Broadcasting** The SBA defines a television broadcasting station as a small business if such station has no more than \$14.0 million in annual receipts.<sup>4</sup> Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound."<sup>5</sup> The Commission has estimated the number of licensed commercial television stations to be 1,390.<sup>6</sup> According to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) as of January 31, 2011, 1,006 (or about 78 percent) of an estimated 1,298 commercial television stations<sup>7</sup> in the United States have revenues of \$14 million or less and, thus, qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 391.<sup>8</sup> We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations<sup>9</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 does not compile and otherwise does not have access to information on the revenue of

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<sup>4</sup> See 13 C.F.R. § 121.201, NAICS Code 515120 (2007).

<sup>5</sup> *Id.* 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 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>6</sup> See News Release, "Broadcast Station Totals as of December 31, 2010," 2011 WL 484756 (F.C.C.) (dated Feb. 11, 2011) ("*Broadcast Station Totals*"); also available at [http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db0211/DOC-304594A1.pdf](http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0211/DOC-304594A1.pdf).

<sup>7</sup> We recognize that this total differs slightly from that contained in *Broadcast Station Totals*, *supra*, note 15; however, we are using BIA's estimate for purposes of this revenue comparison.

<sup>8</sup> See *Broadcast Station Totals*, *supra*, note 15.

<sup>9</sup> "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 C.F.R. § 121.103(a)(1).

NCE stations that would permit it to determine how many such stations would qualify as small entities.

14. 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.

15. ***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>10</sup>

16. Currently, there are approximately 522 licensed Class A stations, 2,191 licensed LPTV stations, 4,527 licensed TV translators, and 11 TV booster stations.<sup>11</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 \$14 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

17. 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.

18. ***Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.*** The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.”<sup>12</sup> The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 784 had less than 500 employees and 155 had

<sup>10</sup> See 13 C.F.R. § 121.201, NAICS Code 515120.

<sup>11</sup> See “Broadcast Station Totals as of December 31, 2010,” *News Release*, February 11, 2011.

<sup>12</sup> The NAICS Code for this service 334220. See 13 C.F.R 121/201. See also [http://factfinder.census.gov/servlet/IBOTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-skip=300&-ds\\_name=EC0731SG2&-lang=en](http://factfinder.census.gov/servlet/IBOTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=300&-ds_name=EC0731SG2&-lang=en)

more than 100 employees.<sup>13</sup> Thus, under this size standard, the majority of firms can be considered small.

19. **Audio and Video Equipment Manufacturing.** The SBA has classified the manufacturing of audio and video equipment under in NAICS Codes classification scheme as an industry in which a manufacturer is small if it has less than 750 employees.<sup>14</sup> Data contained in the 2007 U.S. Census indicate that 492 establishments operated in that industry for part or all of that year. In that year 374 establishments had between 1 and 19 employees; 82 had between 20 and 99 employees; and 36 had more than 100 employees. Thus, under the applicable size standard, a majority of manufacturers of audio and visual equipment may be considered small.

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

20. The *Second Report and Order* adopts the following new reporting requirements: (1) to require, where technically feasible, low power television services to provide notice of their upcoming digital transition to their viewers; (2) require low power television stations that have not taken steps to convert to digital by a date certain to submit a notification of their conversion plan; and (3) require permittees of low power television stations operating pursuant to a digital STA to file the annual ancillary and supplementary services report. These new reporting requirements will not differently affect small entities.

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

21. 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>15</sup>

22. The Commission's adoption of an analog shutoff date of September 1, 2015 will minimize impact on small entities by allowing them four additional years from the full power television transition that occurred on June 12, 2009, to complete their transition to digital. Adoption of an earlier low power transition date was rejected as it was felt that many small entities would not be ready to transition any sooner and would be forced off the air.

23. With respect to the adoption of extending all outstanding low power television station digital construction permits to September 1, 2015, this adoption will minimize the impact on small entities as it will provide them with additional time to complete construction of their digital facilities. Requiring that these outstanding construction permits expire pursuant to their original construction deadlines, prior to the September 1, 2015 low power digital transition deadline, was rejected as digital operations is not required until September 1, 2015. The Commission felt that many small entities may be forced to abandon digital construction and subsequently forced off the air should they unnecessarily be forced to complete construction prior to September 1, 2015, pursuant to their original digital construction permits.

24. The Commission's dismissal as moot of all pending low power television station digital construction permit extension applications will minimize the impact on small entities as these stations will no longer have to use resources to pursue these applications. Small entities will still receive the

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<sup>13</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-\\_skip=300&-ds\\_name=EC0731SG2&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=300&-ds_name=EC0731SG2&-_lang=en)

<sup>14</sup> 13 CFR § 121.201, NAICS Code 334310.

<sup>15</sup> 5 U.S.C. § 603(c)(1)-(c)(4).

benefit of an extension as all outstanding low power television station digital construction permits have been extended until September 1, 2015. The Commission rejected maintaining these extension applications as these applications are moot and would unnecessarily force small entities to expend resources to continue to pursue them.

25. With regards to the adoption of the “last minute” extensions for low power stations who demonstrate that they meet the criteria pursuant to Section 74.788(c) of the rules,<sup>16</sup> this adoption will minimize the impact on qualified small entities as these small entities will be given one last six-month extension to complete construction of their digital facilities. The Commission rejected disallowing a “last minute” extension for qualified low power stations because without the “last minute” extension, small entities may be forced to abandon construction and to go off the air due to unexpected delays in the months leading up to the September 1, 2015 transition date.

26. Concerning the Commission’s adoption of the hard deadline of May 1, 2015, after which low power stations must meet the stricter tolling criteria established in Section 73.3598 of the rules,<sup>17</sup> to apply for a “last minute” extension pursuant to the criteria set forth in Section 74.788(c) of the rules,<sup>18</sup> the Commission found that the burden on small entities is justified. The Commission determined that the burden of requiring small entities to meet the stricter tolling criteria established in Section 73.3598 of the rules<sup>19</sup> after May 1, 2015 is outweighed by the public interest in bringing the low power digital transition to a successful and timely conclusion and by the ample time low power stations will have had to complete their transition to digital..

27. With respect to requiring stations on out-of-core channels to transition at an earlier date – on December 31, 2011, the Commission found that the burden on small entities of adopting this earlier deadline is 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. The Commission determined that adoption of a later transition date for low power television stations on these channels would delay progress on clearing these channels.

28. With regards to requiring all out-of-core low power television stations to file a displacement application for an in-core channel by September 1, 2011, the Commission found that this deadline is necessary to meet the December 31, 2011 out-of-core digital transition deadline. Furthermore, as with the December 31, 2011 transition deadline, the burden on small entities to meet the September 1, 2011 out-of-core displacement application deadline is outweighed by the need to clear out-of-core channels for new uses by commercial wireless (including mobile broadband) and public safety entities. Additionally, the Commission determined that adoption of a later out-of-core displacement application deadline would delay progress on clearing these channels.

29. The Commission adopted streamlined 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 help to prevent a significant impact on small entities. As a result of the streamlined procedures, 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.

30. With respect to requiring all stations in the low power television service, which terminate their analog service after the effective date of the rule provisions in this proceeding, to notify their

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<sup>16</sup> 47 C.F.R. § 74.788(c)

<sup>17</sup> *Id.* at § 74.3598.

<sup>18</sup> *Id.* at § 74.788(c).

<sup>19</sup> *Id.* at § 74.3598.

viewers of their transition to digital operations, the Commission determined that the burden on small entities is outweighed by the public's need to be informed of individual stations' digital transitions. The Commission, however, eased the impact on small entities by giving those low power stations that locally originate programming and would be required to notify their viewers with on-air announcements, the option to notify their viewers by some other reasonable means should compliance cause financial hardship.

31. The Commission's adoption of streamlined procedures for Class A stations to choose to either "flash cut" to digital on their analog channel or to operate on their digital companion channel, while preserving their primary, protected status on the channel they chose to retain, will aid to prevent a significant impact on small entities. As a result of these streamlined procedures, Class A stations will not be burdened with filing a minor change application with the Commission to transfer their primary protected status from their analog channel to their desired digital channel.

32. 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 is outweighed by the need to eliminate ambiguity in the rules and to provide efficient use and administration of spectrum.

33. 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.

34. The Commission did not find that there would a significant impact on small entities by its decision 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.

35. The Commission's decision 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.

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

36. None.

**G. Report to Congress**

The Commission will send a copy of the *Second Report and Order*, including the FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>20</sup> In addition, the Commission will send a copy the *Second Report and Order*, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *Second Report and Order* and FRFA (or summaries thereof) will be published in the Federal Register.<sup>21</sup>

<sup>20</sup> See 5 U.S.C. § 801(a)(1)(A). The Congressional Review Act is contained in Title II, § 251, of the CWAAA, see Pub. L. No. 104-121, Title II, § 251, 110 Stat. 868.

<sup>21</sup> See 5 U.S.C. § 604(b).

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

Re: *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, (MB Docket No. 03-185).*

The clearest lesson learned from the Full Power DTV transition is the amount of preparation that is needed in advance in order to best educate the impacted citizens and to be ready to respond to the unpredictable and the unexpected. It is evident from the Second Report and Order that we are not taking the Low Power transition lightly. But it's a long road and we need to be constantly vigilant and consistently active. I am grateful that we are determining a clear path forward with sufficient time for the remaining stations to transition and that we are also beginning to form strategies for consumer outreach.

We recognize that this transition will be unique as readily a large majority of LPTVs do not originate programming and therefore may not be able to alert their viewers of an impending transition. But that does not make the alert any less essential-it makes smart planning essential. Hopefully by crafting regional strategies and implementing creative outreach efforts, coordinating with civic groups, faith centers, and utilizing local government infrastructure that proved so successful in the Full Power transition, we will minimize the disruption to the communities who rely upon LPTV. The value of LPTV is especially important to consider as decisions are made about spectrum and the benefits of having local programming that serve local needs in the future.

**STATEMENT OF  
COMMISSIONER ROBERT M. McDOWELL**

Re: *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster and to Amend Rules for Digital Class A Television Stations, (MB Docket No. 03-185).*

I vote in support of this Order, which will start the process to bring the DTV transition to a close by establishing procedures and a September 1, 2015 deadline for low power television stations to transition to digital signals. The Order also requires all low power television stations located in channels 52 to 69, also known as the 700 MHz band, to either relocate to television channels below Channel 52 or cease operations by December 31, 2011. The relocation of these stations will clear the 700 MHz band allowing for the successful deployment of wireless services by commercial wireless providers and public safety entities.

Our action today promotes a well-established Commission goal of putting the nation's spectrum resources to the most efficient and productive use. I remain mindful, however, of the significant benefits delivered by low power television to local communities, especially throughout rural America. For this reason, we must ensure that this digital transition is implemented as smoothly as possible, building upon the lessons learned from the DTV transition. I am pleased to see that many of the rules and procedures implemented in this Order include improvements based upon the wealth and breadth of experience gained by the committed FCC staff during the full power digital transition. It should always be our goal to improve our processes and strive to do better.

The one thing I learned from my involvement with the full power DTV transition is to expect the unexpected. As was the case with the first digital transition, unanticipated challenges are bound to arise. Although our past experiences may be useful in mitigating such surprises, there are significant differences in scope between the digital transition of full power and low power television stations. In this light, I do have some concerns about the Commission's representations regarding possible consumer outreach efforts, such as third-party and expanded FCC call centers, walk-in DTV help centers, and staff contact with local communities. Although we do not "decide on the exact form and extent of our consumer education," consumers and policymakers alike should be made aware that we may not have at our disposal the same private sector resources and funding for consumer education that was available for the first digital transition. We therefore must be careful to not raise undue expectations regarding potential outreach efforts. Furthermore, we should manage our available assets prudently to ensure that we are able to provide assistance to those areas that are most dependent on low power television and most likely to be affected.

I thank the Media Bureau for their work on this Order and the hard work that is yet to be done as we prepare to embark on what will hopefully be a seamless and successful digital transition.