



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 15 and 74**

**[MB Docket No. 03-185; GN Docket No. 12-268; ET Docket No. 14-175; FCC 14-151]**

**Low Power Television Digital Rules**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this Third Notice of Proposed Rulemaking, the Federal Communications Commission (Commission) seeks comment on a number of issues involving low power television (LPTV) and TV translator stations including measures to facilitate the final conversion of LPTV and TV translator stations to digital service and consider additional means to mitigate the potential impact of the incentive auction and the repacking process on LPTV and TV translator stations to help preserve the important services they provide.

**DATES:** Comments Due: **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Reply Comments Due: **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Written comments on the proposed information collection requirements, subject to the Paperwork Reduction Act (PRA) of 1995, Pub. L. 104-13, should be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by MB Docket No. 03-185, GN Docket No. 12-268 and ET Docket No. 14-175 and/or FCC 14-151, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- Mail: 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.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to filing comments with the Secretary, a copy of any PRA comments on the proposed collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to [PRA@fcc.gov](mailto:PRA@fcc.gov) and to [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov) and also to Nicholas A. Fraser, Office of Management and Budget, via e-mail to [Nicholas\\_A.\\_Fraser@omb.eop.gov](mailto:Nicholas_A._Fraser@omb.eop.gov) or via fax at 202-395-5167.

**FOR FURTHER INFORMATION CONTACT:** Shaun Maher, [Shaun.Maher@fcc.gov](mailto:Shaun.Maher@fcc.gov) of the Media Bureau, Video Division, (202) 418-2324. For additional information concerning the PRA information collection requirements contained in this document, contact Cathy Williams, Federal Communications Commission, at (202) 418-2918, or via e-mail [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov)

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Third Notice of Proposed Rulemaking, FCC 14-151, adopted October 9, 2014, in MB Docket No. 03-185 (Third NPRM). The Commission released its Notice of Proposed Rulemaking, 18 FCC Rcd 18365 (2003) in 2003 and Further Notice of Proposed Rulemaking, 25 FCC Rcd 13833 (2010) in 2010. The full text of the Third NPRM is available for inspection and copying during regular

business hours in the FCC Reference Center, 445 12th Street, SW., Room CY-A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, <http://www.bcpi.com>, or call 1-800-378-3160. This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact the FCC by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

Paperwork Reduction Act of 1995 Analysis:

This Third NPRM contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. 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; (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; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

PRA comments should be submitted to Cathy Williams, Federal Communications Commission via email at [PRA@fcc.gov](mailto:PRA@fcc.gov) and [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov) and Nicholas A. Fraser, Office of

Management and Budget via fax at 202-395-5167 or via email to

[Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov).

To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

**OMB Control Numbers:** 3060-1100.

**Title:** Section 15.117(k), TV Broadcast Receivers; section 15.117(b), Elimination of Analog Tuner Requirement.

**Form Number:** None.

**Type of Review:** Revision of a currently approved collection.

**Respondents:** Business or other for profit entities.

**Number of Respondents/Responses:** 1,550; 5,550 responses.

**Estimated Hours per Response:** 0.25 – 5 hrs.

**Frequency of Response:** One time reporting requirement; Third party disclosure requirement.

**Total Annual Burden:** 4,000 hours.

**Total Annual Cost:** No cost.

**Obligation to Respond:** Mandatory for the disclosure requirement and required to obtain or retain benefits for the other requirement. The statutory authority for this information collection is contained in sections 1, 2(a), 3(33) and (52), 4(i) and (j), 7, 154(i), 301, 303(r) and (s), 307, 308, 309, 336, 337 and 624(a) of the Communications Act of 1934, as amended.

**Nature and Extent of Confidentiality:** There is no need for confidentiality with this collection

of information.

**Privacy Act Assessment:** No impact(s).

**Needs and Uses:** In this Third NPRM, the Commission proposed eliminating the analog tuner requirement contained in § 15.117(b) of the rules. Should it adopt its proposal, the Commission also proposed that broadcast receiver manufacturers and importers who market digital-only equipment to educate consumers and retailers about the devices' limits and capabilities to prevent consumer confusion.

The information collection requirements that are contained in 47 CFR 15.117(k) remain a part of this collection and it is not impacted by the Third NPRM. Therefore, it remains unchanged since the information collection requirements were last approved by OMB.

**OMB Control Numbers:** 3060-0017.

**Title:** Application for a Low Power TV, TV Translator or TV Booster Station License, FCC Form 347.

**Form Numbers:** FCC Form 347.

**Type of Review:** Revision of a currently approved collection.

**Respondents:** Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

**Number of Respondents/Responses:** 550 respondents; 550 responses.

**Estimated Hours per Response:** 1.5 hours per response.

**Frequency of Response:** One time reporting requirement; On occasion reporting requirement.

**Total Annual Burden:** 825 hours.

**Total Annual Cost:** \$66,446.

**Obligation to Respond:** Required to obtain benefits. The statutory authority for this information collection is contained in sections 154(i), 301, 303, 307, 308 and 309 of the Communications Act of 1934, as amended.

**Nature and Extent of Confidentiality:** There is no need for confidentiality with this collection

of information.

**Privacy Act Assessment:** No impact(s).

**Needs and Uses:** In this Third NPRM, it is proposed that low power television and TV translator stations be permitted to share a channel. FCC Form 347 will be used to license channel sharing between these types of stations. This Third NPRM adopts the following proposed information collection requirements:

The information collection requirements that are contained in 47 CFR 74.800(b) (Licensing of Channel Sharing Stations) proposes to require that the LPTV or TV translator channel sharing station relinquishing its channel must file an application for the initial channel sharing construction permit (FCC Form 346), include a copy of the channel sharing agreement as an exhibit, and cross reference the other sharing station(s). Any engineering changes necessitated by the channel sharing arrangement may be included in the station's application. Upon initiation of shared operations, the station relinquishing its channel must notify the Commission that it has terminated operation pursuant to § 73.1750 of this part and each sharing station must file an application for license (FCC Form 347). Therefore, FCC Form 347, Application for Low Power TV, TV Translator or TV Booster Station License, will be modified to allow applicants to propose that their stations be licensed on a shared basis.

**OMB Control Numbers:** 3060-1086.

**Title:** Section 74.787 Digital Licensing; §74.790, Permissible Service of Digital TV Translator and LPTV Stations; § 74.794, Digital Emissions, and § 74.796, Modification of Digital Transmission Systems and Analog Transmission Systems for Digital Operation; § 74.798, LPTV Digital Transition Consumer Education Information, Protection of Analog LPTV.

**Form Number:** Not applicable.

**Type of Review:** Revision of a currently approved collection.

**Respondents:** Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

**Number of Respondents/Responses:** 8,445 respondents; 27,386 responses.

**Estimated Hours per Response:** 0.50 - 4 hours.

**Frequency of Response:** Recordkeeping requirement; One-time reporting requirement; Third party disclosure requirement.

**Total Annual Burden:** 56,386 hours.

**Total Annual Cost:** \$69,033,000.

**Obligation to Respond:** Required to obtain or retain benefits. The statutory authority for this information collection is contained in section 301 of the Communications Act of 1934, as amended.

**Nature and Extent of Confidentiality:** There is no need for confidentiality with this collection of information.

**Privacy Act Assessment:** No impact(s).

**Needs and Uses:** In this Third NPRM, the Commission proposed rules and policies for a digital-to-digital replacement digital replacement translator to permit full power television stations to continue to provide service to viewers that may have otherwise lost service as a result of the station being “repacked” in the Commission’s incentive auction process.

Unlike other television translator licenses, the replacement digital television translator license will be associated with the full-service station's main license and will have the same four letter call sign as its associated main station. As a result, a replacement digital television translator license may not be separately assigned or transferred and will be renewed or assigned along with the full-service station's main license. Almost all other rules associated with television translator stations are applied to replacement digital television translators.

Moreover, the Third NPRM proposes an information collection requirement contained in 47 CFR 74.787(a)(5)(v). The proposed information collection requirements contained in proposed rule 47 CFR 74.787(a)(5)(v) states that an application for a digital to digital replacement digital television translator may be filed by a full power television station that can

demonstrate that a portion of its digital service area will not be served by its post-incentive auction digital facilities. The service area of the replacement digital television translators shall be limited to only a demonstrated loss area. However, an applicant for a replacement digital television translator may propose a de minimis expansion of its full power pre-incentive auction digital service area upon demonstrating that it is necessary to replace its post-incentive auction digital loss area.

The information collection requirements that are contained in 47 CFR 74.787(a)(2)(iii), (a)(3), (a)(4) and (a)(5)(i), 47 CFR 74.790(f), (e) and (g), 47 CFR 74.794, 47 CFR 74.796(b)(5) and 74.796(b)(6), 47 CFR 74.798 and the protection of analog LPTV requirement remain a part of this information collection. The information collection requirements contained in these rule sections remain unchanged and FCC 14-151 did not impact on them.

Synopsis of Third Notice of Proposed Rulemaking:

1. In this Third NPRM, the Commission considers measures to ensure the successful completion of the LPTV and TV translator digital transition, help preserve the important services LPTV and TV translator stations provide, and other related matters. Specifically, the Commission: (1) tentatively concludes to extend the September 1, 2015 digital transition deadline for LPTV and TV translator stations; (2) tentatively concludes to adopt rules to allow channel sharing by and between LPTV and TV translator stations; (3) tentatively concludes to create a “digital-to-digital replacement translator” service for full power stations that experience losses in their pre-auction service areas; (4) seeks comment on the proposed use of the incentive auction optimization model to assist LPTV and TV translator stations displaced by the auction and repacking process to identify new channels; (5) seeks comment on whether to permit digital LPTV stations to operate analog FM radio-type services on an ancillary or supplementary basis; and (6) seeks comment on whether to eliminate the requirement in § 15.117(b) of our rules that TV receivers include analog tuners. The Commission also invites input on any other

measures it should consider to further mitigate the impact of the auction and repacking process on LPTV and TV translator stations.

Extending the September 1, 2015 LPTV and TV Translator Digital Transition Date

2. The Commission tentatively concluded that it should postpone the September 1, 2015 deadline for LPTV and TV translator stations to transition to digital. The Commission concluded that it appears that the current LPTV and TV translator digital transition deadline may occur in close conjunction with the incentive auction, leaving LPTV and TV translator stations little or no time to consider its impact before having to complete their digital conversion. The Commission noted that, as of the release date of the Third NRPM, approximately 56% of LPTV and 80% of TV translator stations have completed their transition to digital. However, 795 LPTV and 779 TV translator stations have not yet completed their conversion. Because a significant number of stations have yet to complete their transition to digital service, and with less than a year before the digital transition deadline, the Commission tentatively concluded that it should postpone the transition deadline in order to avoid requiring stations to incur the costs of digital transition before completion of the auction and repacking process, which is likely to impact a significant number of LPTV and TV translator stations. The Commission also sought input from the industry about why the remaining analog stations have not yet converted.

3. The Commission noted that this proceeding concerns matters related only to LPTV and TV translator stations and not Class A television stations. Because Class A stations are not similarly impacted by the incentive auction and repacking process, the measures discussed in this Third NRPM to mitigate the impact on LPTV and TV translator stations, including extending the digital transition deadline, do not extend to Class A stations.

4. Although the Commission tentatively concluded that postponement of the digital transition deadline is appropriate, it noted that, since the initiation of the digital television conversion process, the Commission has consistently sought to ensure an expedited and successful transition for all television services, so that the public will be able to enjoy the benefits

of digital broadcast television technology. It sought comment on whether and how postponement of the low power transition date will impact these goals. In addition, it sought comment from existing LPTV and TV translator stations on the status of their conversion efforts and the additional costs they may have to incur should they have to “double build” their digital facilities. The Commission also invited comment from low power stations that have completed the conversion process regarding their experience and the extent of their current digital service offerings.

5. Should it decide to adopt its tentative conclusion and postpone the September 1, 2015 transition date, the Commission sought comment on whether to establish a new deadline now or wait until after the incentive auction. The advantage of the latter approach would be to allow the Commission to examine the outcome of the incentive auction and take into account the overall impact of the repacking process on LPTV and TV translator stations before settling on a new transition date. Alternatively, prior to the auction, the Commission could establish a new transition date based on the record in this proceeding. That approach would provide LPTV and TV translator stations with more certainty about when the transition will end and might expedite completion of the digital transition. The Commission sought comment on the advantages and disadvantages of both approaches.

6. If the Commission decides to set, prior to the auction, a new transition date, it sought comment on an appropriate new transition date. The Commission noted that LPTV and TV translator stations may have to wait several months after the conclusion of the incentive auction to determine whether they are displaced as well as the channel availability for displacement applications. The Commission sought comment on whether a postponement of the current deadline to twelve months after the close of the incentive auction would be appropriate in order to further its goal of expediting the transition to digital for these services. The Commission also invited comment on alternative approaches and dates. Whatever the new deadline, the Commission announced that it intended that it will continue to be a “hard” deadline and that all

analog transmissions will be required to cease even if stations' digital facilities are not yet constructed.

7. If the Commission extends the digital transition deadline for LPTV and TV translator stations, it proposed to make corresponding rule changes and to modify transition-related digital construction permits to effectuate any new transition date. In addition, the Commission proposed to modify the rules to continue to allow transitioning stations to request one "last minute" extension beyond the transition deadline of up to six months, so long as the request is filed at least four months before the new deadline and meets the other criteria in our current rule. As in the current rule, the Commission proposed that extension requests no longer be accepted after that deadline and that use of the tolling rule commence the following day. The Commission sought comment on these proposals.

8. The Commission noted that the September 1, 2015 digital transition date does not apply to holders of unbuilt construction permits for new digital LPTV and TV translator stations. These permits are issued a three-year construction deadline at the time the initial construction permit is granted. Many of the more than 1,700 outstanding new digital LPTV and TV translator station permittees have been granted two extensions of time to construct by the Media Bureau staff and some have filed applications requesting a third extension of time. In order to treat these permittees similarly to the permittees of transitioning LPTV and TV translator stations, the Commission noted that, by a Public Notice that was released the same day, it had suspended the expiration date and construction deadlines of construction permits for new digital LPTV and TV translator stations pending final action in this proceeding. In the event the Commission extends the deadline for transitioning analog LPTV and TV translator stations in this proceeding, it tentatively concluded to extend the deadline for construction permits for new digital stations to conform their construction deadline to the new digital transition deadline. The Commission sought comment on this tentative conclusion.

#### LPTV and TV Translator Channel Sharing

9. The Commission tentatively concluded that it should adopt rules to permit channel sharing by and between LPTV and TV translator stations, and sought comment on a variety of rules to implement channel sharing for these stations. The Commission tentatively concluded that such rules are permitted under its general authority in Title III of the Communications Act of 1934, as amended.

10. The Commission tentatively concluded that authorizing channel sharing between and among LPTV and TV translator stations would serve the public interest, and we sought comment on this tentative conclusion.

11. Should the Commission decide to authorize channel sharing by and between LPTV and TV translator stations, it announced that channel sharing would be entirely voluntary. The Commission stated that it did not intend to be involved in the process of matching licensees interested in channel sharing with potential partners. Rather, LPTV and TV translator stations would decide for themselves whether and with whom to enter into a channel sharing arrangement. The Commission proposed to require all LPTV and TV translator stations to operate in digital on the shared channel and to retain spectrum usage rights sufficient to ensure at least enough capacity to operate one standard definition (“SD”) programming stream at all times. The Commission proposed to allow stations flexibility within this “minimum capacity” requirement to tailor their agreements and allow a variety of different types of spectrum sharing to meet the individualized programming and economic needs of the parties involved. The Commission will not propose to prescribe a fixed split of the capacity of the six megahertz channel between the stations from a technological or licensing perspective and that all channel sharing stations be licensed for the entire capacity of the six megahertz channel and that the stations be allowed to determine the manner in which that capacity will be divided among themselves subject only to the minimum capacity requirement.

12. The Commission proposed to retain its existing policy framework for the licensing and operation of channel sharing LPTV and TV translator stations. Under this policy,

despite sharing a single channel and transmission facility, each station would continue to be licensed separately. Each station would have its own call sign, and each licensee would separately be subject to all of the Commission's obligations, rules, and policies. The Commission sought comment on these proposals.

13. The Commission proposed a licensing scheme for reviewing and approving channel sharing between LPTV and TV translator stations that differs from the one adopted for full power and Class A stations. Because the implementation of a channel sharing arrangement does not involve construction that requires Commission pre-approval, and because channel sharing arrangements involving full power and Class A stations will have been reviewed already in conjunction with the stations submitting bids in the incentive auction, the Commission found that there was no need for such stations to go through a two-step process by first applying for construction permits to implement their channel sharing proposals and then filing for new shared licenses. In contrast, LPTV and TV translator stations will not have already participated in the incentive auction, and the Commission will not have had an opportunity to review their proposed channel sharing arrangements, including any technical changes to the stations' facilities. Therefore, the Commission proposed the following two-step process for implementing channel sharing between LPTV and TV translator stations that addresses the particularities of the low power television service while minimizing costs and burdens in order to encourage channel sharing among these stations.

14. As the first step, if no technical changes are necessary for sharing, a channel sharing station relinquishing its channel would file an application for digital construction permit (FCC Form 346) for the same technical facilities as the sharer station, including a copy of the channel sharing agreement ("CSA") as an exhibit, and cross reference the other sharing station(s). In this case, the sharer station would not need to take action at this time. If the CSA required technical changes to the sharer station's facilities, each sharing station would file an application for construction permit for identical technical facilities proposing to share the channel, along with

the CSA. As a second step, after the sharing stations have obtained the necessary construction permits, implemented their shared facility and initiated shared operations, a station relinquishing its channel would notify the Commission that it has terminated operation on that channel. At the same time, sharing stations would file applications for license (FCC Form 347) to complete the licensing process. The Commission sought comment on these proposed procedures.

15. The Commission comment on an appropriate length of time for channel sharing LPTV and TV translator stations to implement their arrangements. The Commission required that channel sharing arrangements involving full power and Class A stations in the incentive auction be implemented within three months after the relinquishing station receives its reverse auction proceeds. While the Commission found that this deadline would expedite the transition to the reorganized UHF band, it does believe it is necessary to set a similar deadline for LPTV and TV translator stations to implement their channel sharing arrangements. Therefore, the Commission sought comment on whether to allow channel sharing stations the standard three-year construction period under the rules to implement their sharing deals. It stated that it expected that many stations will not need a full three-year time period. Indeed, some LPTV and TV translator stations displaced by the repacking process and forced to go silent will need to resume operations within twelve months to avoid automatic cancellation of their license pursuant to section 312(g) of the Communications Act. Finding a channel sharing partner and resuming operations on a shared facility within the twelve months could be an important way for displaced stations to avoid automatic cancellation of their license. Other stations not facing this timing constraint may want or need more time to implement their new shared facilities. The Commission sought comment on this issue.

16. The Commission also sought comment on whether to apply existing restrictions on relocation proposals to LPTV and TV translator channel sharing arrangements. LPTV and TV translator stations may need flexibility in their ability to move their facilities in order to take advantage of channel sharing. Specifically, LPTV and TV translator stations may need to

propose to relocate to a shared transmission site that is several miles from the location of their current transmission site. However, under our current rules, LPTV and TV translator stations filing a minor change application may not propose a move of their transmitter site of greater than 30 miles (48 kilometers) from the reference coordinates of the existing station's antenna location. In addition, LPTV and TV translator stations may file a minor change application only if there is contour overlap between the proposed and existing facilities. The Commission sought comment on whether continued application of these limitations is necessary and appropriate or whether their application in the context of channel sharing modifications would unduly limit channel sharing between LPTV and TV translator stations. Alternatively, should these restrictions be waived in certain cases to allow LPTV and TV translators more flexibility in their channel sharing arrangements, and if so, under what circumstances?

17. The Commission proposed to adopt "channel sharing operating rules" similar to those adopted for full power and Class A television stations in the Incentive Auction Report and Order with respect to the terms of CSAs, as well as the transfer or assignment of channel sharing licenses. The Commission proposed a different approach, however, when a channel sharing station's license is terminated due to voluntary relinquishment, revocation, or failure to renew.

18. CSAs for full power and/or Class A stations must include provisions governing certain key aspects of their operations. In so requiring, the Commission recognized that channel sharing will create new and complex relationships, and sought to avoid disputes that could lead to a disruption in service to the public and to ensure that each licensee is able to fulfill its independent obligation to comply with all pertinent statutory requirements and our rules. At the same time, the Commission noted that it ordinarily does not become involved in private contractual agreements and that it does not wish to discourage channel sharing relationships.

19. The Commission tentatively concluded that the same requirements are warranted in the context of LPTV and TV translator channel sharing. As with full power and Class A sharing arrangements, the Commission believes this approach will protect the public interest and

ensure the success of channel sharing with minimal intrusion into channel sharing relationships. Therefore, it proposed that LPTV and TV translator CSAs be required to contain provisions outlining each licensee's rights and responsibilities in the following areas: (1) access to facilities, including whether each licensee will have unrestrained access to the shared transmission facilities; (2) allocation of bandwidth within the shared channel; (3) operation, maintenance, repair, and modification of facilities, including a list of all relevant equipment, a description of each party's financial obligations, and any relevant notice provisions; and (4) termination or transfer/assignment of rights to the shared licenses, including the ability of a new licensee to assume the existing CSA. The Commission proposed to reserve the right to review CSA provisions and require modification of any that do not comply with these requirements or the Commission's rules. The Commission sought comment on these proposals.

20. The Commission sought comment on a streamlined approach to the situation in which an LPTV or TV translator channel sharing station's license is terminated due to voluntary relinquishment, revocation, failure to renew, or any other circumstance. Under the proposed approach, where an LPTV or TV translator sharing station's license is terminated, the Commission would modify the license(s) of the remaining channel sharing station(s) to reflect that its channel is no longer shared with the terminated licensee. In the event that only one station remains on the shared channel, that station could request that the shared channel be re-designated as a non-shared channel or could enter into a CSA with another LPTV or TV translator station and resume shared operations, subject to Commission approval. This approach differs from the approach the Commission adopted for full power and Class A television channel sharing arrangements in order to reduce the cost and burden to LPTV and TV translator stations and to encourage channel sharing among these stations.

21. In addition, the Commission proposes to allow rights under a CSA to be assigned or transferred, subject to the requirements of section 310 of the Communications Act, the Commission's rules, and the requirement that the assignee or transferee comply with the

applicable CSA. The Commission sought comment on the above proposals and on any alternative approaches it should consider.

22. Should the Commission adopt rules authorizing channel sharing for LPTV and TV translator stations, it sought comment on whether to permit these stations to channel share with full power and Class A television stations as well. The Commission sought comment on the feasibility of allowing channel sharing between primary (full power and Class A) and secondary (LPTV and TV translator) services, each of which operate with differing power levels and interference protection rights. In the Incentive Auction Report and Order, the Commission allowed channel sharing between full power and Class A television stations despite the fact that each operate with different technical rules. It concluded that the Class A television station sharing a full power television station's channel after the incentive auction would be permitted to operate under the part 73 rules governing power levels and interference. To facilitate channel sharing and further assist displaced LPTV and TV translator stations to find a new channel, the Commission sought comment on whether to allow LPTV and TV translator stations that share a full power or Class A television station's channel to similarly operate under the rules governing power levels and interference for full power and Class A television stations. In the unlikely event a full power or Class A television station proposes to share an LPTV or TV translator station's channel, the Commission proposes that the full power or Class A station would be subject to the power level and interference protection rules associated with the channel of the LPTV or TV translator station. The Commission sought comment on these proposals, including any regulatory difficulties that would result from channel sharing between a full power or Class A television station and an LPTV or TV translator station.

#### Creation of a New Digital-to-Digital Replacement Translator Service

23. The Commission proposes to establish a new "digital-to-digital" replacement translator service that will allow eligible full power television stations to recover lost digital service area that results from the reverse auction and repacking process. The Commission

tentatively concluded that eligibility for the digital-to-digital replacement translator service should be limited to those full power television stations whose channels are changed following the incentive auction that can demonstrate that (1) a portion of their pre- auction service area will not be served by the facilities on their new channel, and (2) the proposed digital-to-digital replacement translator will be used solely to fill in such loss areas. The Commission sought comment on this tentative conclusion.

24. The Commission proposed to limit the service area of digital-to-digital replacement translators to digital loss areas resulting from the reverse auction and repacking process. To implement this restriction, it proposed to require applicants for a digital-to-digital replacement translator to demonstrate a digital loss area through an engineering study that depicts the station's pre- and post-incentive auction digital service areas. The Commission tentatively concluded that "pre-auction digital service area" should be defined as the geographic area within the full power station's noise-limited contour (of its facility licensed by the pre-auction licensing deadline). The Commission recognized that, due to the lack of available transmitter sites, it may be impossible or extremely costly for stations to locate a translator that replaces digital loss areas without also slightly expanding their pre-auction digital service areas. The Commission stated that it believed a better approach would be to allow applicants to propose de minimis expansions of pre-auction digital service areas on a showing that the expansions are necessary to replace service area lost as a result of their new channel assignments. To demonstrate necessity, the Commission proposed that stations be required to show that it is not possible to site a digital-to-digital replacement translator without de minimis expansion of the station's pre-auction digital service area. Further, it proposed to define de minimis on a case-by-case basis, consistent with the approach it took for processing analog to digital replacement translator applications. The Commission sought comment on these proposals.

25. The Commission also sought comment on the appropriate timing for the availability of this proposed new service. Specifically, the Commission proposed that the

opportunity to apply for a digital-to-digital replacement translator be limited, commencing with the opening of the post-auction LPTV and TV translator displacement window and ending one year after the completion of the 39-month post-incentive auction transition period. Under this proposal, stations could begin applying for digital-to-digital replacement translators during the LPTV and TV translator displacement window and would then have one year beyond the completion of the post-auction transition period to identify the need and apply for a digital-to-digital replacement translator. The Commission stated that it believed this proposed deadline will provide full power television stations sufficient time to identify any possible loss areas that result from their new channel assignments while also helping to limit this service to its proposed objective of replacing a loss that results from the reverse auction and repacking process. The Commission sought comment on this proposal and on any alternative commencement and expiration dates it should consider.

26. The Commission proposed to afford applications for new digital-to-digital replacement translators co-equal processing priority with displacement applications for existing DRTs that are displaced as a result of the auction and repacking process. The Commission proposed co-equal processing treatment of these two types of applications to meet two goals. First, we seek to assist those full power stations that need a new digital-to-digital replacement translator to quickly obtain an authorization and schedule construction to coincide with the completion of their repacked facilities. The Commission also recognized that full power stations with existing DRTs that are displaced by the repacking process will need to construct on their new channel to help preserve their existing service. Therefore, to balance these two goals, it proposed that applications for new digital-to-digital replacement translators be afforded a co-equal processing priority with displacement applications for existing DRTs in cases of mutual exclusivity.

27. The Commission also proposed that both applications for new digital-to-digital replacement translators and displacement applications for existing DRTs would have processing

priority over all other LPTV and TV translator applications including new, minor change and displacement applications. Under this approach, the Commission would begin to accept applications for new digital-to-digital replacement translators commencing with the opening of the post-auction LPTV and TV translator displacement window. All applications for new digital-to-digital replacement translators and displacement applications for existing DRTs filed during the post-auction displacement window would be considered filed on the last day of the window, would have priority over all other displacement applications filed during the window by LPTV and TV translator stations, and would be considered co-equal if mutually exclusive. Following the close of the displacement window, applications for new digital-to-digital replacement translators would be accepted on a first-come, first-served basis, would continue to have priority over all LPTV and TV translator new, minor change or displacement applications, even if first-filed, and co-equal priority with applications for displacement applications for existing DRTs filed on the same day. The Commission sought comment on these proposals and requested input on any alternative approaches it should consider.

28. The Commission sought comment on a number of proposed licensing and operating rules for digital-to-digital replacement translators analogous to those the Commission adopted for analog to digital replacement translators in 2009. Although the Commission tentatively concluded that the same rules would be appropriate, it welcomed input regarding why a different approach might be preferable in this context and any alternative proposals.

29. The Commission proposed that the digital-to-digital replacement translator license could not be separately assigned or transferred and would be renewed, transferred, or assigned along with the main license. The Commission also proposed that applications for digital-to-digital replacement translators be filed on FCC Form 346, be treated as minor change applications, and be exempt from filing fees. The Commission proposed that digital-to-digital replacement translator stations be licensed with “secondary” frequency use status. Under this approach, these translators would not be permitted to cause interference to, and must accept

interference from, full power television stations, certain land mobile radio operations, and other primary services, and would be subject to the interference protections to land mobile station operations in the 470- 512 MHz band set forth in the rules.

30. The Commission proposed to apply the existing rules associated with television translator stations to digital-to-digital replacement translators, including the rules concerning power limits, out-of-channel emission limits, unattended operation, time of operation, and resolution of mutual exclusivity. The Commission also proposed to assign digital-to-digital replacement translators the same call sign as their associated full power television station.

31. The Commission proposed that stations be given a full three-year construction period to build their digital-to-digital replacement translators. The Commission believes that a full three-year period for completion of replacement translator facilities will help to ensure the successful implementation of this new service. Among other things, the Commission believes it will allow stations that are reassigned to new channels in the repacking process, some of which will have 39 months to complete construction of their post-auction facilities, to schedule construction of their replacement translator to coincide with the completion of their full power facilities. The Commission is concerned that a shorter construction period could discourage licensees from taking advantage of their processing priority by applying for digital-to-digital replacement translators at the earliest possible time.

32. The Commission tentatively concluded that allowing the licensing of new analog-to-digital replacement translators is no longer necessary and proposed to no longer accept applications for such facilities. Given the length of time that has passed since the digital transition deadline, the Commission believes any future applications will be unnecessary for stations to replace an analog loss area that occurred as a result of the digital transition. The Commission sought comment on this tentative conclusion.

Assistance to LPTV and TV Translator Stations in Finding Displacement Channels After the Incentive Auction

33. The Commission stated that it believes that the availability of the repacking and optimization software may provide a unique opportunity for the Commission to assist with the challenges displaced LPTV and TV translator stations face in finding new channel homes. The Commission sought comment on the use of these software tools to facilitate the relocation of displaced low power stations. In particular, because it is likely that a number of low power stations will be displaced from UHF channels, the Commission sought comment on whether and, if so how, our optimization software could facilitate the ability of low power stations to relocate to VHF channels where UHF channels are unavailable. One possibility is that, prior to opening the special window for LPTV and TV translator stations affected by the repacking process to file displacement applications, the Media Bureau could utilize the optimization model to identify market areas where all displaced LPTV and TV translator stations can be accommodated onto new channels. For such markets, the Media Bureau would issue a Public Notice listing potential channel assignments for displaced low power stations. Displaced low power stations would be encouraged to file for those channels in the displacement window. In cases where not all LPTV and TV translator stations can be accommodated onto new channels using current operating parameters, the Media Bureau could use the software to identify possible arrangements based on other objectives, such as maximizing the number of stations assigned or minimizing the interference that stations might experience, to assist stations in examining engineering solutions to find channels. In addition, the Commission seek comment on alternative methods for efficiently assigning the spectrum that will remain available post-auction for LPTV and TV translator stations.

34. The Commission emphasized that stations' decision to seek channel assignments recommended by the Media Bureau as a result of using repacking and optimization software or another method to assist with the displacement process would be voluntary. It does not propose

to require stations to accept channel assignments identified by the Media Bureau. It intends that these stations continue to be permitted to seek displacement channels that work best for their particular circumstances, so long as the channel selections comply with our licensing and technical rules. The Commission sought comment on these proposals.

Operation of Analog Radio Services by Digital LPTV Stations as Ancillary or Supplementary Services

35. The Commission sought comment on whether to allow LPTV stations on digital television channel 6 (82-88 MHz) to operate analog FM radio-type services on an ancillary or supplementary basis pursuant to § 73.624(c) of the rules. Currently, some analog LPTV stations licensed on channel 6 are operating with very limited visual programming and an audio signal that is programmed like a radio station. FM radio listeners are able to receive the audio portion of these LPTV stations at 87.76 MHz, which is adjacent to noncommercial educational (NCE) FM channel 201 (88.1 MHz). When these LPTV stations convert to digital, however, they are unable to continue providing such radio service because the digital audio portion of their signal can no longer be received by standard FM receivers. LPTV stations have been proposing engineering solutions to allow their continued FM radio-type operation following their conversion to digital. For example, a station has proposed using a single transmitter that allows a digital visual and audio stream, as well as a separate analog audio transmission, to simultaneously operate a digital LPTV station on channel 6 and an analog FM radio-type service at 87.76 MHz. Under this proposal, the Commission would treat the analog FM audio transmission as an “ancillary or supplementary” service offering under § 74.790(i) of the Commission’s rules, which provides that “a digital LPTV station may offer services of any nature, consistent with the public interest, convenience, and necessity, on an ancillary or supplementary basis in accordance with the provisions of § 73.624(c) . . . .” Section 73.624(c) in turn provides that: The kinds of services that may be provided include, but are not limited to computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, audio signals,

subscription video, and any other services that do not derogate DTV broadcast stations' obligations under paragraph (b) of this section.

36. The Commission seeks comment on whether to permit LPTV stations on digital television channel 6 (82-88 MHz) to operate dual digital and analog transmission systems in this manner. These stations are low power television stations and, following the eventual transition, will be operating solely in digital. The Commission sought comment on whether a digital LPTV station can provide an analog FM radio-type service as an ancillary or supplementary service consistent with the Communications Act and our rules.

37. The Commission sought comment on the potential for a digital LPTV station's analog FM radio-type service to interfere with or disrupt the LPTV station's digital TV service. Section 336(b)(2) of the Act provides that the Commission shall "limit the broadcasting of ancillary or supplementary services on designated frequencies so as to avoid derogation of any advanced television services, including high definition television broadcasts, that the Commission may require using such frequencies." Would a digital LPTV station be able to operate an analog transmitter without interfering or derogating its co-channel digital operation?

38. In addition, the Commission sought comment on the potential of interference to other primary licensees. Because an LPTV station operates on a secondary interference basis, the provision of an ancillary or supplementary service by the station must also be on a secondary basis. Therefore, it must protect the operations of all primary licensees. LPTV stations on channel 6 are second and third adjacent to FM channels 201 and 202, which are licensed on a primary basis for NCE FM radio operations. The Commission sought comment on the potential for interference from digital LPTV stations' ancillary or supplementary analog FM radio-type operations to primary licensees, including NCE FM radio stations. It also sought comment on what rules we might adopt to prevent such interference. If it permits such operations, should the Commission prohibit any overlap between the 100 dBu interfering contour of the channel 6 LPTV station and the 60 dBu protected contour of the NCE FM station? In addition, should the

Commission propose that if the operation of the LPTV station causes any actual interference to the transmission of any authorized FM broadcast station, the LPTV station would be required to eliminate the interference or immediately suspend operations? Would such a prohibition of contour overlap adequately prevent interference to primary licensees including NCE FM stations?

39. If the Commission decides to permit analog FM radio-type operations by LPTV stations on an ancillary or supplementary basis, it sought comment on whether such operations should be subject to the part 73 rules applicable to FM radio stations. Section 336(b)(3) of the Communications Act mandates that the Commission “apply to any other ancillary or supplementary service such of the Commission’s regulations as are applicable to the offering of analogous services by any other person . . . .” The Commission sought comment on whether the analog FM radio-type service discussed herein is “analogous to other services subject to regulation by the Commission” within the meaning of section 336(b)(3) and the Commission’s implementing rules and, if so, on which of the part 73 rules should apply to the offering of an analog FM radio-type service.

40. Finally, should the Commission permit the provision of an analog FM radio-type service on an ancillary or supplementary basis, it sought comment on whether that service would be subject to a five percent fee. The ancillary and supplementary rule provides that digital television stations “must annually remit a fee of five percent of the gross revenues derived from all ancillary and supplementary services . . . which are feeable . . . .” “Feeable” services are defined as “[a]ll ancillary or supplementary services for which payment of a subscription fee or charge is required in order to receive the service.” “Feeable” services are also defined as “[a]ny ancillary or supplementary service for which no payment is required from consumers in order to receive the service . . . if the DTV licensee directly or indirectly receives compensation from a third party in return for the transmission of material provided by that third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required).” The FM radio-type services provided by LPTV stations, thus far, appear to have

been available to the general public without subscription. Given these definitions, the Commission sought comment on whether, and under what circumstances, an LPTV station's ancillary or supplementary analog FM radio service should be deemed "feasible" and subject to the five percent fee.

#### Elimination of Analog Tuner Requirement

41. The Commission sought comment on a proposed change to § 15.117(b) of our rules that would eliminate any obligation to integrate analog tuners in TV receivers. This proposed modification would allow TV broadcast receiver manufacturers and importers to ship and import devices without analog tuners before all LPTV and TV translator stations cease analog broadcasting, but would continue to require those devices to be able to receive all digital broadcast TV channels. The Commission asked if it should eliminate the analog tuner requirement before all broadcast TV stations cease broadcasting in analog. The Commission sought comment on the costs to manufacturers of continuing to build analog tuners into their devices in comparison with the benefits to consumers. If the Commission eliminates the analog tuner requirement, it sought comment on whether to modify § 15.117 to remove requirements that apply to analog tuners.

42. In its waiver orders, the Media Bureau also conditioned the waivers on the recipients' voluntary commitments to educate consumers and retailers about the devices' limits and capabilities to prevent consumer confusion. If the Commission adopts its proposal, it sought comment on whether to impose similar consumer protection or education measures on broadcast receiver manufacturers and importers who market digital-only equipment prior to the LPTV and TV translator digital transition deadline. If so, should such measures only be required for a defined period of time? Or would such requirements be unnecessary because the effect on consumers by the time any elimination would become effective will be "de minimis"? The Commission sought comment on its statutory authority to adopt consumer protection or education measures and on any other issues related to our analog tuner rule that we should consider.

### Additional Measures to Preserve LPTV and TV Translator Services

43. Finally, the Commission sought comment on additional measures it should consider in order to mitigate the impact of the incentive auction on LPTV and TV translator stations and to help preserve the important services they provide. Commenters proposing other measures for consideration should identify the legal authority to take the proposed measures and describe in detail any perceived benefits and disadvantages of the measures advocated.

### **Initial Regulatory Flexibility Act Analysis**

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 Third Notice of Proposed Rulemaking, FCC 14-151, adopted October 9, 2014 in MB Docket No. 03-185 (Third NPRM). 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 Third NPRM. The Commission will send a copy of the Third NPRM including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the Third NPRM and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

### Need for and Objectives of the Proposed Rules

On June 2, 2014, the Federal Communications Commission (Commission) released its Incentive Auction Report and Order, 29 FCC Rcd 657 (2014), adopting rules to implement the broadcast television spectrum incentive auction authorized by the Middle Class Tax Relief and

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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. 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> Id.

Job Creation Act (Spectrum Act). The Commission recognized in the Incentive Auction Report and Order that the incentive auction will have a significant impact on low power television stations and TV translator stations. As part of the incentive auction, the Commission will (1) conduct a “reverse auction,” whereby full power and Class A television stations may opt to relinquish some or all of their spectrum usage rights in exchange for incentive payments, and (2) reorganize or “repack” the broadcast television bands in order to free up a portion of the ultra high frequency (UHF) band for new flexible uses. The Commission concluded in the Incentive Auction Report and Order that the Spectrum Act does not mandate the protection of LPTV and TV translator stations because the scope of mandatory protection under section 6403(b)(2) is limited to full power and Class A television stations. The Commission also declined to extend discretionary protection to these stations because of the detrimental impact such protection would have on the repacking process and the success of the incentive auction. Accordingly, some LPTV and TV translator stations will be displaced as a result of the repacking process and required to either find a new channel or discontinue operations.

In order to mitigate the impact of the auction and repacking process on LPTV and TV translator stations, the Commission stated that it intended to initiate an LPTV/TV Translator rulemaking proceeding “to consider additional measures that may help alleviate the consequences of LPTV and TV translator station displacements resulting from the auction and repacking process. In this Third NPRM, the Commission considers the measures discussed in the Incentive Auction Report and Order as well as other measures to ensure the successful completion of the LPTV and TV translator digital transition and the continued viability of these services.

In this Third NPRM, the Commission seeks comment on whether to extend the September 1, 2015 digital transition deadline for LPTV and TV translator stations. Because a significant number of stations have yet to complete their transition to digital service, and with less than a year before the digital transition deadline, the Commission believes that it is appropriate to

reconsider whether the deadline should be postponed in light of the projected timing of its incentive auction. The Commission seeks comment on an appropriate new transition date and whether to revise its related rules to accommodate the change.

The Commission also tentatively concludes to adopt rules to permit channel sharing by and between LPTV and TV translator stations, and seeks comment on a variety of rules to implement channel sharing for these stations. The Commission's existing channel sharing rules apply only to full power and Class A stations bidding in the incentive auction. The Commission now considers creating channel sharing rules for LPTV and TV translator stations outside of the auction context.

The Commission also tentatively concludes to create a "digital-to-digital replacement translator" service for full power stations that are reassigned to new channels in the incentive auction, either in the repacking process and or through a winning UHF-to-VHF or high-VHF-to-low-VHF bid, if those full power stations discover that a portion of their existing pre-auction service area will no longer be able to receive service after the station transitions to its new channel. The Commission seeks comment on various rules and policies to implement the new digital-to-digital replacement translator service.

In this Third NPRM, the Commission seeks comment on a proposed use of the incentive auction optimization model to assist LPTV and TV translator stations displaced by the incentive auction repacking process to identify new channels.

The Commission also seeks comment on whether to permit digital LPTV stations to operate analog FM radio-type services on an ancillary or supplementary basis. Currently, some analog LPTV stations licensed on channel 6 are operating with very limited visual programming and an audio signal that is programmed like a radio station. FM radio listeners are able to receive the audio portion of these LPTV stations at 87.76 MHz, which is adjacent to noncommercial educational (NCE) FM channel 201 (88.1 MHz). When these LPTV stations convert to digital,

however, they are unable to continue providing such radio service because the digital audio portion of their signal can no longer be received by standard FM receivers. Anticipating the end of their FM radio-type operations, LPTV stations have been proposing engineering solutions to allow their continued operation following their conversion to digital. The Commission seeks comment on whether to permit LPTV stations to operate dual digital and analog transmission systems in this manner and whether the provision of an analog FM radio-type service is what Congress intended when it passed the 1996 Telecom Act to allow digital television stations, including LPTV stations, to offer ancillary or supplementary services.

In this Third NPRM, the Commission seeks comment on whether to eliminate the requirement in § 15.117(b) of our rules that TV receivers include analog tuners. This proposed modification would allow TV broadcast receiver manufacturers and importers to build and import devices without analog tuners before all LPTV and TV translator stations cease analog broadcasting, but would continue to require those devices to be able to receive all digital broadcast TV channels.

Finally, the Commission invites input on any other measures it should consider to further mitigate the impact of the auction and repacking process on LPTV and TV translator stations.

#### Legal Basis

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.

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

##### Apply

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>

Television Broadcasting. This economic census category “comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.”<sup>8</sup> The SBA has created the following small business size standard for Television Broadcasting firms: those having \$14 million or less in annual receipts.<sup>9</sup> The Commission has estimated the number of licensed commercial television stations to be 1,387.<sup>10</sup> In addition, according to Commission staff review of the BIA Advisory Services, LLC’s Media Access Pro Television Database on March 28, 2012, about 950 of an estimated 1,300 commercial television

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<sup>4</sup> Id. at 603(b)(3).

<sup>5</sup> 5 U.S.C. 601(6).

<sup>6</sup> Id. at 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> U.S. Census Bureau, 2012 NAICS Definitions: 515120 Television Broadcasting, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515120&search=2012> (last visited Mar. 6, 2014).

<sup>9</sup> 13 CFR 121.201 (NAICS code 515120) (updated for inflation in 2010).

<sup>10</sup> See FCC News Release, Broadcast Station Totals as of June 30, 2014 (rel. July 9, 2014).

stations (or approximately 73 percent) had revenues of \$14 million or less.<sup>11</sup> We therefore estimate that the majority of commercial television broadcasters are small entities.

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

In addition, the Commission has estimated the number of licensed noncommercial educational (“NCE”) television stations to be 395.<sup>13</sup> These stations are non-profit, and therefore considered to be small entities.<sup>14</sup>

There are also 2,460 LPTV stations, including Class A stations, and 3838 TV translator stations.<sup>15</sup> Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

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

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<sup>11</sup> We recognize that BIA’s estimate differs slightly from the FCC total given the information provided above.

<sup>12</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 CFR 121.103(a)(1).

<sup>13</sup> See FCC News Release, Broadcast Station Totals as of June 30, 2014 (rel. July 9, 2014).

<sup>14</sup> See generally 5 U.S.C. 601(4), (6).

<sup>15</sup> See FCC News Release, Broadcast Station Totals as of June 30, 2014 (rel. July 9, 2014)

equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment<sup>16</sup> as well as radio and television broadcasting and wireless communications equipment.<sup>17</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>18</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>19</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

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<sup>16</sup> 13 C.F.R. 121.201, NAICS Code 334310.

<sup>17</sup> 13 C.F.R. 121.201, NAICS Code 334220.

<sup>18</sup> 13 C.F.R. 121.201, NAICS Code 334310.

<sup>19</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.

concern.<sup>20</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>21</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.

#### Description of Projected Reporting, Recordkeeping and other Compliance Requirements

This Third NRPM proposes the following new or revised reporting or recordkeeping requirements.

To implement channel sharing between LPTV and TV translator stations, stations will follow a two-step process proposed by the Commission – first filing an application for construction permit (Form 346) and then application for license (Form 347). Stations terminating operations to share a channel would be required to submit a termination notice pursuant to the existing Commission rule. These existing forms and collections will need to be revised to accommodate these new channel-sharing related filings and to expand the burden estimates. In addition, the Commission proposes that channel sharing stations submit their channel sharing agreements (CSAs) with the Commission and be required to include certain provisions in their CSAs. The existing collection concerning the execution and filing of CSAs will need to be

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<sup>20</sup> 13 C.F.R 121.201, NAICS Code 334220.

<sup>21</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.

revised.

To implement its proposed new digital-to-digital replacement translator service, the Commission will need to revise its existing replacement translator forms (346 and 347), rules and collections and to expand the burden estimates.

Should the Commission eliminate its rule requiring that television receivers include an analog tuner, prior to the time that all broadcasters are operating digital-only, it is considering requiring that all broadcast receiver manufacturers and importers who market digital-only equipment prior to the LPTV and TV translator digital transition deadline educate consumers and retailers about the devices' limits and capabilities to prevent consumer confusion.

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

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>

The Commission's proposal to extend the September 1, 2015 LPTV and TV Translator digital transition date will greatly minimize the impact on small entities having to complete their transition to digital. Instead of having to possibly endure the expense of having to construct a digital facility only to be displaced by the incentive auction reorganization of spectrum and having to finance the construction of a second digital facility, the Commission's proposal will

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

allow small entities to wait until the incentive auction is complete and to determine the impact on their digital transition plan.

The Commission's proposal to allow LPTV and TV Translator to share channels between themselves and with other television services would greatly minimize the impact on small entities. Many stations will be displaced by the incentive auction reorganization of spectrum and allowing these stations to channel share will reduce the cost of having to build a new facility to replace the one that was displaced. Stations can share in the cost of building a shared channel facility and will experience cost savings by operating a shared transmission facility. In addition, channel sharing is voluntary and only those stations that determine that channel sharing will be advantageous will enter into this arrangement.

The Commission's proposed licensing and operating rules for channel sharing between LPTV and TV translator stations and other television services were designed to minimize impact on small entities. The rules provide a streamlined method for reviewing and licensing channel sharing for these stations as well as a streamlined method for resolving cases where a channel sharing station loses its license on the shared channel. These rules were designed to reduce the burden and cost on small entities.

The Commission is aware that some full service television stations operate with limited budgets. Accordingly, every effort was taken to propose rules for the new digital-to-digital replacement translator that impose the least possible burden on all licensees, including small entities. Existing forms will be used to implement this new service thereby reducing the burden on small entities.

The Commission proposes that applications for digital-to-digital replacement translators should be given licensing priority over all other low power television and TV translator applications except displacement applications for analog-to-digital replacement translators (for which they would have co-equal priority). The Commission could have proposed allowing no

such priority, but this alternative was not considered because it would result in many more mutually exclusive filings and delay the implementation of this valuable service.

The Commission also proposes to limit the eligibility for such service to only those full-service television stations that can demonstrate that a portion of their digital service area will not be served by their post-incentive auction facilities and for translators to be used for that purpose. Alternatively, the Commission could have allowed all interested parties to file for new translators, however such approach was not considered because it would also result in numerous mutually exclusive filings and would greatly delay implementation of this needed service.

The Commission further proposes that the service area of the replacement translator should be limited to only a demonstrated loss area and seeks comment on whether a replacement translator should be permitted to expand slightly a full-service station's post-incentive auction service area. Once again, the Commission could have allowed stations to file for expansion of their existing service areas but such an alternative was not seriously considered because it could result in the use of valuable spectrum that the Commission seeks to preserve for other uses.

The Commission proposes that replacement digital television translator stations should be licensed with "secondary" frequency use status. The Commission could have proposed that replacement translators be licensed on a primary frequency use basis, but this alternative was not proposed because it would result in numerous interference and licensing problems.

The Commission proposes that, unlike other television translator licenses, the license for the replacement translator should be associated with the full power station's main license. Therefore, the replacement translator license could not be separately assigned or transferred and would be renewed or assigned along with the full-service station's main license. Alternatively, the Commission could have proposed that the replacement translator license be separate from the main station's license however this approach was not seriously considered because it could result in licenses being sold or modified to serve areas outside of the loss area, and thus would

undermine the purpose of this new service.

The Commission also tentatively concludes that the other rules associated with television translator stations should apply to the new replacement translator service including those rules concerning the filing of applications, payment of filing fees, processing of applications, power limits, out-of-channel emission limits, call signs, unattended operation, and time of operation. The alternative could have been to design all new rules for this service, but that alternative was not considered as it would adversely impact stations ability to quickly implement these new translators.

The Commission's proposal to discontinue accepting applications for analog-to-digital replacement translators may impact small entities. However, the Commission determined that the need to prevent a negative impact on the post-incentive auction displacement window that could occur if the precious few channels were used for this service rather than for use by displaced LPTV and TV translator stations outweighed the limited impact on full power stations seeking a replacement translator given that the DTV transition was completed over five years ago.

The Commission's efforts to assist LPTV and TV translator stations in finding displacement channels after the incentive auction will greatly benefit small entities. By helping stations find new channels from an ever shrinking universe of channels that will remain after the incentive auction reorganization of channels, the Commission will save small entities time and money by not having to consult with an engineer to make such determinations. Such savings can then be used to construct and operate the displacement facility.

The Commission seeking comment on whether to permit operation of analog radio services by digital LPTV stations as ancillary or supplementary services could greatly benefit small entity LPTV stations by allowing them to find new business operations and sources of income. LPTV stations could establish a separate radio operation on an ancillary basis in addition to their primary digital television service. Such ancillary operation could provide a separate

source of income to supplement their television operation and provide a separate audience for their programming and advertising.

The Commission seeking comment on whether to permit equipment manufacturers to forego having to include an analog tuner in their television sets could benefit small entity equipment manufacturers. Having to include an analog tuner increases the cost of a television sets and equipment manufacturers, some of whom may be small entities, would enjoy a cost savings as a result of the Commission's proposal. Any impact that not including an analog tuner in new television sets may have upon consumers should be minimal now that the digital transition has been complete for over five years and would be outweighed by the benefit of less expensive digital television sets.

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

None.

**List of Subjects**

**47 CFR Part 15**

Communications equipment.

**47 CFR Part 74**

Television.

FEDERAL COMMUNICATIONS COMMISSION.

Marlene H. Dortch,  
Secretary.

## Proposed rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 15 and 74 as follows:

### PART 15 – RADIO FREQUENCY DEVICES

1. The authority citation for part 15 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a, and 549.

2. Amend § 15.117 by revising paragraph (b) to read as follows:

#### **§ 15.117 TV broadcast receivers.**

\* \* \* \* \*

(b) TV broadcast receivers shall be capable of adequately receiving all digital channels allocated by the Commission to the television broadcast service.

\* \* \* \* \*

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

3. The authority citation for part 74 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 302a, 303, 307, 309, 336 and 554

4. Amend §74.731 by revising paragraph (l) to read as follows:

#### **§ 74.731 Purpose and permissible service.**

\* \* \* \* \*

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

5. Amend §74.787 by revising paragraphs (a)(5) to read as follows:

**§74.787 Digital licensing.**

(a) \* \* \*

(5) Applications for analog-to-digital and digital-to-digital replacement television translators.

(i) Applications for new analog-to-digital replacement translators will not be accepted.

Displacement applications for analog-to-digital replacement translators will continue to be accepted. An application for a digital-to-digital replacement translator may be filed beginning the first day of the low power television and TV translator displacement window set forth in § 73.3700(g)(1) of this chapter to one year after the completion of the 39 month transition period set forth in § 73.3700(b)(4) of this chapter. Applications for digital-to-digital replacement translators filed during the displacement window will be considered filed on the last day of the window. Following the completion of the displacement window, applications for digital-to-digital replacement translators will be accepted on a first-come, first-serve basis.

(ii) Applications for analog-to-digital replacement television translator shall be given processing priority over all other low power television and TV translator applications except displacement applications (with which they shall have co-equal priority) as set forth in §73.3572(a)(4)(ii) of this chapter. Applications for digital-to-digital replacement television translator shall be given processing priority over all other low power television and TV translator applications and shall have co-equal priority with displacement applications filed for analog-to-digital replacement translators.

(iii) The service area of the digital-to-digital replacement translator shall be limited to only a demonstrated loss area within the full-service station's pre-auction digital service area. "Pre-auction digital service area" is defined as the geographic area within the full power station's noise-limited contour (of its facility licensed by the pre-auction licensing deadline prior to the incentive auction conducted under Title VI of the Middle Class Tax Relief and Job Creation Act

of 2012 (Pub. L. 112-96)). An applicant for a digital-to-digital replacement television translator may propose a de minimis expansion of its full power pre-auction digital service area upon demonstrating that the expansion is necessary to replace its digital loss area.

(iv) The license for the analog-to-digital and digital-to-digital replacement television translator will be associated with the full power station's main license, will be assigned the same call sign, may not be separately assigned or transferred, and will be renewed with the full power station's main license.

(v) Analog-to-digital and digital-to-digital replacement television translators may only operate on those television channels designated for broadcast television use following completion of the auctions conducted under Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96).

(vi) Each original construction permit for the construction of an analog-to-digital or digital-to-digital replacement television translator station shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed. The provisions of § 74.788(c) of this chapter shall apply for stations seeking additional time to complete construction of their replacement television translator station.

(vii) Applications for analog-to-digital and digital-to-digital replacement television translators shall be filed on FCC Form 346 and shall be treated as an application for minor change. Mutually exclusive applications shall be resolved via the Commission's part 1 and broadcast competitive bidding rules, §1.2100 –§1.2114. and §73.5000-§73.5009 of this chapter.

(viii) The following sections are applicable to analog-to-digital and digital-to-digital replacement television translator stations:

§ 73.1030 Notifications concerning interference to radio astronomy, research and receiving installations.

§ 74.703 Interference

§ 74.709 Land mobile station protection.

- § 74.734 Attended and unattended operation
- § 74.735 Power Limitations
- § 74.751 Modification of transmission systems.
- § 74.763 Time of Operation
- § 74.765 Posting of station and operator licenses.
- § 74.769 Copies of rules.
- § 74.780 Broadcast regulations applicable to translators, low power, and booster stations  
(except §73.653 – Operation of TV aural and visual transmitters and §73.1201  
– Station identification).
- §74.781 Station records.
- §74.784 Rebroadcasts.

6. Amend §74.788 by revising paragraphs (c) (1), (c)(3) and (d) to read as follows:

§ 74.788 - Digital construction period.

\* \* \* \* \*

(c) Authority delegated. (1) For the September 1, 2015 Class A television 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. For the (insert new transition date) low power television and TV translator station digital construction deadline, authority is delegated to the Chief, Media Bureau to grant an extension of time of up to six months beyond (insert new transition date) 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.

\* \* \* \* \*

(3) Applications for extension of time filed by Class A television stations shall be filed not later than May 1, 2015 absent a showing of sufficient reasons for late filing. Applications for extension of time filed by low power television and TV translator stations shall be filed not later than (insert new filing deadline) absent a showing of sufficient reasons for late filing.

(d) For Class A television digital construction deadlines occurring after May 1, 2015, the tolling provisions of §73.3598 of this chapter shall apply. For low power television and TV translator digital construction deadlines occurring after (insert new transition date), the tolling provisions of § 73.3598 of this chapter shall apply.

\* \* \* \* \*

7. Add §74.800 to read as follows

**§74.800 Low power television channel sharing.**

(a) Channel sharing generally. (1) Subject to the provisions of this section, low power television and TV translator stations may voluntarily seek Commission approval to share a single six megahertz channel with other low power television, TV translator, full power television and Class A television station.

(2) Each station sharing a single channel pursuant to this section shall continue to be licensed and operated separately, have its own call sign and be separately subject to all of the Commission's obligations, rules, and policies.

(b) Licensing of channel sharing stations. The LPTV or TV translator channel sharing station relinquishing its channel must file an application for the initial channel sharing construction permit (FCC Form 346), include a copy of the channel sharing agreement as an exhibit, and cross reference the other sharing station(s). Any engineering changes necessitated by the channel sharing arrangement may be included in the station's application. Upon initiation of shared operations, the station relinquishing its channel must notify the Commission that it has terminated operation pursuant to section 73.1750 of this part and each sharing station must file an application for license (FCC Form 347).

(c) Deadline for implementing channel sharing arrangements. Channel sharing arrangements submitted pursuant to this section must be implemented within three years of the grant of the initial channel sharing construction permit.

(d) Channel sharing agreements. (1) Channel sharing agreements submitted under this section must contain provisions outlining each licensee's rights and responsibilities regarding:

(i) Access to facilities, including whether each licensee will have unrestrained access to the shared transmission facilities;

(ii) Operation, maintenance, repair, and modification of facilities, including a list of all relevant equipment, a description of each party's financial obligations, and any relevant notice provisions; and

(iii) Termination or transfer/assignment of rights to the shared licenses, including the ability of a new licensee to assume the existing CSA.

(2) Channel sharing agreements submitted under this section must include a provision affirming compliance with the channel sharing requirements in this section including a provision requiring that each channel sharing licensee shall retain spectrum usage rights adequate to ensure a sufficient amount of the shared channel capacity to allow it to provide at least one Standard Definition (SD) program stream at all times.

(e) Termination and assignment/transfer of shared channel. If a channel sharing station's license authorized under this section is terminated, the remaining channel sharing station or stations will continue to have rights to their portion(s) of the shared channel. The license(s) of the remaining channel sharing station(s) shall be modified to reflect that its channel is no longer shared with the terminated licensee. In the event that only one station remains on the shared channel, that station may request that the shared channel be re-designated as a non-shared channel or could enter into a CSA with another station and resume shared operations, subject to Commission approval.

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