FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 20-145; FCC 20-181; FRS 17327]

Promoting Broadcast Internet Innovation through ATSC 3.0

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Through this final rule, the Commission fosters the efficient and robust use of broadcast spectrum capacity for the provision of Broadcast Internet services consistent with statutory directives. In this document, the Commission concludes that ancillary and supplementary (A&S) fees should be calculated based on the gross revenue received by the broadcaster, without regard to the gross revenue of an unaffiliated third party, such as a spectrum lessee; should retain the existing standard of derogation of broadcast service, but amend the wording of the rules to eliminate the outdated reference to analog television; and should reaffirm that noncommercial educational television broadcast stations (NCEs) may offer Broadcast Internet services. The Commission also reinterprets the application to permit noncommercial educational stations (NCEs) to devote the substantial majority of their spectrum not just to free over-the-air television but also ancillary and supplementary services; lowers the ancillary and supplementary service fee for certain NCE services; and clarifies that NCEs may offer limited Broadcast Internet services to donors without transforming those donations into feeable ancillary and supplementary service revenue.

DATES: Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Lyle Elder, Lyle.Elder@fcc.gov, of the Media Bureau, Policy Division, (202) 418-2120.

Direct press inquiries to Janice Wise at (202) 418-8165.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 20-181, adopted and released on December 10, 2020. The full text of this document is available electronically via the FCC's Electronic Document Management System (EDOCS) Web Site at https://www.fcc.gov/edocs or via the FCC's Electronic Comment Filing System (ECFS) Web Site at https://www.fcc.gov/ecfs. (Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an e-mail to fcc504@fcc.gov or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Synopsis:

1. Earlier last year, the Commission initiated a proceeding to encourage the provision of new and innovative Broadcast Internet services enabled by ATSC 3.0—the "Next Generation" broadcast television standard often referred to as Next Gen TV—that can complement the nation's 5G wireless networks.[1] In so doing, the Commission sought to eliminate uncertainty cast on such services by legacy regulations and to consider whether, and if so how, to update the Commission's rules regarding ancillary and supplementary services, adopted over 20 years ago. With this item, we take additional steps to clarify and update the regulatory landscape in order to foster the efficient and robust use of broadcast spectrum capacity for the provision of Broadcast Internet services consistent with statutory directives.

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[1] *Promoting Broadcast Internet Innovation through ATSC 3.0*, MB Docket No. 20-145, Declaratory Ruling and notice of proposed rulemaking, 85 FR 43142 and 85 FR 43195 (July 16, 2020) (*Declaratory Ruling* and *NPRM*). The Commission referred to these new ancillary offerings over broadcast spectrum as "Broadcast Internet" services to distinguish them from traditional over-the-air video services. We note that the rule changes we adopt herein will apply equally to all ancillary and supplementary services provided using either the ATSC 1.0 or 3.0 transmission standards.

2. In this Report and Order (Order), we adopt, with only minor changes, four of the tentative conclusions set forth in the *NPRM*. Specifically, we clarify the basis on which to calculate ancillary and supplementary service fees. We retain the existing standard of derogation of broadcast service. We also, however, amend the derogation rule to eliminate an outdated reference to analog television. We reaffirm the freedom of noncommercial educational television stations (NCEs) to provide ancillary and supplementary services. And while we generally decline at this time to adjust the fee imposed on ancillary and supplementary services, we intend to revisit this issue at a future date to determine whether we should adjust the fee or the basis of the fee once the market for Broadcast Internet services develops.

3. Recognizing the unique educational public service mission of NCEs seeking to provide Broadcast Internet services, we also adopt a number of additional proposals designed to preserve and expand this essential mission. Notably, we find that an NCE television broadcast station may use its 6 MHz channel capacity primarily not only for its free, over-the-air nonprofit, noncommercial, educational, television broadcast service, as under our current interpretation of the rule, but also for any nonprofit, noncommercial, educational ("primary") ancillary and supplementary services. We also adopt a reduced fee of 2.5% on gross revenue generated by such "primary" ancillary and supplementary services, as opposed to the 5% fee applied to ancillary and supplementary services generally. With these actions, this Order continues to lay the groundwork for broadcasters, and thereby the general public, to explore and benefit from the possibilities and opportunities that Broadcast Internet provides.

4. *Background*. As the Commission explained in the *NPRM*, the ATSC 3.0 IP-based standard offers greater effective spectral capacity than ATSC 1.0, the current digital broadcast television standard. The additional capacity will allow broadcasters to expand their traditional television offerings, including by offering higher quality video

and audio and a wider range of programming choices. Broadcasters may also provide innovative non-traditional services, and the *NPRM* asked about the "types of Broadcast Internet services that are likely to be provided in the future." Commenters describe a wide array of exciting possibilities. APTS/PBS explain that NCEs might expand and roll out offerings in "a variety of areas that further their public service missions, especially education, child development, public safety, national security, job training, and telehealth." PMG describes a wide range of possible uses, including: (i) distance learning services, such as distributing subject- and classroom-specific lectures and reading materials to students, and broadcasting content to school buses during long rural commutes to make that time more enriching for students; (ii) trusted, encrypted, and curated distribution of health-related content to those unserved and underserved by high-speed Internet; (iii) emergency alerting services that allow more homes, vehicles, and first responders to gain access to life-saving information; (iv) expanded distribution of local and hyper-local news to audiences across a community; and (iv) software and cybersecurity updates to power smart cities, automobiles, and "Internet of Things" (IoT) products and applications. ONE Media explains that:

> [i]n addition to enhanced broadcast programming, the ATSC 3.0 standard enables use of television spectrum to communicate with devices over wide areas efficiently, expanding opportunities for distance learning, advanced emergency alerting and information functions, highly secure file delivery and authentication, offloading large data files (including video) needed by carriers to cache programming directly on user devices, dramatically improving efficient distribution of data to autonomous driving vehicles, facilitating near-instantaneous needs for IoT devices and telemedicine or smart agriculture activities, and other innovative services yet to be conceived.

5. In June 2020, the Commission commenced this proceeding to ensure that

our rules will help foster the development of innovative and efficient uses of broadcast spectrum like the ones described above. In the *Declaratory Ruling*, the Commission clarified that the lease of excess broadcast television spectrum to a third party, including another broadcaster, for the provision of ancillary and supplementary services does not result in attribution under our broadcast television station ownership rules or for any other requirements related to television station attribution (e.g., filing ownership reports). The Commission explained that regulatory clarity will help ensure that broadcasters and other innovators have the flexibility to generate the scale—both locally and nationally—that may be necessary to support certain Broadcast Internet services, and that regulatory reform can ensure that market forces, rather than outdated rules, determine the success of the nascent Broadcast Internet industry. In the accompanying *NPRM*, the Commission sought comment on any rule changes needed to further promote regulatory certainty and greater investment in innovative Broadcast Internet services.

6. Specifically, the *NPRM* sought comment on a number of general matters concerning the potential uses and applications of excess broadcast spectrum capacity resulting from the transition to ATSC 3.0; on whether the amount and method of calculating the ancillary and supplementary services fee should be reconsidered given the new potential uses of excess spectrum capacity; and on whether the Commission should clarify or modify the rules prohibiting derogation of broadcast service and defining an analogous service. The *NPRM* elicited 17 comments, 12 replies, and numerous ex parte filings from commenters representing companies and industry groups from the broadcast, cable, wireless, and consumer electronics industries, as well as non-profit groups and groups hoping to explore new Broadcast Internet opportunities. Commenters are largely supportive of the Commission's tentative conclusions, although as discussed below there is notable opposition to the proposal to exclude third party facility improvements from revenue calculations, a proposal we decline to adopt today. There is also disagreement

regarding the proposal to clarify the derogation standard, both from parties who support a significant change and parties who oppose any change at all to the existing text. The record also reflects widespread skepticism about any Commission action that would go beyond the tentative conclusions, with two notable exceptions. First, NCEs and associated parties make a compelling case that substantial public benefits could accrue through the widespread deployment of Broadcast Internet over public television spectrum, justifying additional steps to encourage that deployment. Second, a large number of low power television (LPTV) station representatives and interested parties propose changes to the rules governing LPTV service, though the proposals are largely unrelated to Broadcast Internet services.

7. *Discussion. Ancillary and Supplementary Service Fee*. With one exception, discussed below, we decline at this time to adjust the fee program associated with ancillary and supplementary services. Rather, we will revisit the size and basis of the fee, as well as other relevant issues, when we have a better understanding of how the transition to ATSC 3.0 is progressing. We do, however, adopt our tentative conclusion that fees should be calculated based on the gross revenue received by the broadcaster rather than revenue received by a spectrum lessee. Finally, we decline at this time to adopt the proposal made by Public Knowledge et al. that we use the fees we collect for ancillary and supplementary services to fund a program to offset costs for consumers who upgrade their equipment as part of the transition to ATSC 3.0, and we decline at this time to exempt from the ancillary and supplementary service fee "in-kind" contributions, or otherwise change our fee for ancillary and supplementary services that fall into certain classes of service.

8. The Telecommunications Act of 1996 (1996 Act) requires broadcasters to pay a fee to the United States Treasury to the extent they use their digital television (DTV) spectrum to provide ancillary and supplementary services for which the payment

of a subscription fee is required in order to receive such services, or for which the licensee directly or indirectly receives compensation from a third party in return for transmitting material furnished by such a third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required). The 1996 Act further provides that the ancillary and supplementary services fee program shall be designed to recover for the public a portion of the value of the public spectrum resource made available for such commercial use, and to avoid unjust enrichment through the method employed to permit such uses of that resource; and to recover for the public an amount that, to the extent feasible, equals but does not exceed (over the term of the license) the amount that would have been recovered had such services been licensed at auction. In addition, the Commission is required by statute to adjust the ancillary and supplementary services fee from time to time in order to ensure that these requirements continue to be met.

9. As a preliminary matter, we reaffirm that section 336 of the 1996 Act gives the Commission flexibility to determine the appropriate fee for ancillary and supplementary services within the parameters set forth in the statute. Section 336 directs the Commission to "establish a program to assess and collect … an annual fee or other schedule or method of payment that promotes the objectives" described by the statute. Specifically, the statute requires that the fee program be designed to recover for the public some portion of the value of the spectrum, prevent the unjust enrichment of broadcasters providing ancillary and supplementary services, and approximate the revenues that would have been received had the spectrum on which the services are provided been licensed through an auction. As the Commission has observed, "the 1996 Act gives the Commission broad discretion in setting the amount of the fee for ancillary and supplementary services," bounded by the criteria set forth in section 336(e). Commenters who addressed this issue agree with this analysis.

10. *Fee for Commercial Television Broadcast Stations*. We conclude that we do not have sufficient information at this early stage in the ATSC 3.0 transition to evaluate fully whether a change to, much less elimination of, the current fee for feeable ancillary and supplementary services offered by commercial television stations would better reflect the directives of section 336(e). Accordingly, we retain the current fee of 5% for such stations and intend to reevaluate the fee once the marketplace for Broadcast Internet services has become more mature.

11. As the Commission previously has recognized, in considering how to calculate the appropriate ancillary and supplementary fee, we must balance potentially competing statutory goals: recover a portion of the value of the spectrum used for ancillary and supplementary services, avoid unjust enrichment, and approximate the revenue that would have been received had these services been licensed through an auction. A fee that is too high could dissuade broadcasters from providing Broadcast Internet services and thereby reduce the potential benefits to consumers of such services and preclude the Commission from collecting fees approximating the amount that would have been recovered for the spectrum at auction. On the other hand, a fee that is too low may both fail to prevent the unjust enrichment of licensees and to recover for the public an amount approximating the amount that would have been recovered at auction.

12. In considering these statutory mandates, we conclude that it would be premature at this time to adjust the ancillary and supplementary service fee without knowing more about the kinds of Broadcast Internet services that will be provided and the economics thereof. The conversion to ATSC 3.0 is entirely voluntary, and commercial service has only recently commenced in a few television markets. We cannot yet gauge the extent to which ATSC 3.0 will be deployed and adopted by consumers or which ATSC 3.0-based services and features will be offered as feeable Broadcast Internet services. Indeed, the Commission recently reached a similar

conclusion when it first authorized the voluntary transmission to ATSC 3.0. Accordingly, we reject commenters' suggestions that we reconsider the current 5% fee on broadcast commercial stations, at this time. Instead, consistent with recommendations in the record, we believe it would be better to revisit the ancillary and supplementary service fee when the ATSC 3.0 marketplace has further developed.

13. *Calculation of Gross Revenue*. We adopt our tentative conclusion that fees should be calculated based on the gross revenue received by the broadcaster rather than revenue received by a spectrum lessee. As the Commission stated in the *NPRM*, to hold otherwise could subject a broadcaster to a fee payment in excess of the gross revenue it actually receives. All commenters who addressed this issue agree with this approach regarding the calculation of gross revenue. As proposed in the *NPRM*, we also conclude that to the extent the licensee and the lessee are affiliated, we will attribute the gross revenue of the lessee to the licensee for purposes of calculating the ancillary and supplementary services fee, based on a share of gross revenue that is proportional to the licensee's stake in the lessee. Otherwise, as the Commission noted in the *NPRM*, the licensee (or its parent company) could create a subsidiary for the sole purpose of evading the fee while retaining all of the financial benefit of the arrangement.

14. We decline at this time to take up the issue of whether to exclude from gross revenue the value of "in-kind" facility improvements. Although the Commission tentatively concluded in the *NPRM* that the value of such improvements should be excluded from the gross revenue calculation, the record on this issue was limited and the comments were mixed. We will continue to monitor the progress of the transition to ATSC 3.0, the provision of Broadcast Internet services, and the status of "in-kind" facility improvements in the marketplace, and may address this issue in the future if warranted.

15. *ATSC 3.0 Consumer Equipment*. We decline at this time to adopt the proposal made by Public Knowledge et al. that we use the fees collected from ancillary and supplementary services to fund a program offsetting costs for consumers who upgrade their consumer premises equipment as part of the ATSC 3.0 transition. These commenters note that ATSC 3.0 is not compatible with current television devices and contend that, because consumers will have to replace their television sets or purchase converter devices to receive ATSC 3.0 signals, the transition to ATSC 3.0 "will create high consumer costs, similar to those faced by consumers during the DTV transition." Thus, they maintain we should act now, to develop a program to offset ATSC 3.0 transition costs for consumers. We note that the transition to ATSC 3.0 is voluntary and still in its early stages; therefore, we find it is premature to consider such a program at this time. We also note that the DTV transition equipment subsidy program was explicitly mandated by Congress.

16. *Classes of Ancillary and Supplementary Service*. We decline to grant fee exemptions for certain classes of Broadband Internet service, such as telehealth, distance learning, public safety, or homeland security-related services, or for services that promote Internet access in rural areas. Although, according to the record, such services are currently beginning to be provided by, or are in development by, NCE stations, we believe it is premature to take any such action given the nascent state of the market for these ATSC 3.0 services. As discussed further below, we take action in this Order to encourage the development of "primary" NCE ancillary and supplementary services (those used for nonprofit, noncommercial, educational purposes), by reducing the fee associated with such services. At the same time, we conclude that we do not have a sufficient basis at this time to support changing our fee approach for any other type of ancillary and supplementary service that are not considered "primary." Among other things, we lack information regarding how such services are likely to be provided,

whether they will be revenue-generating, whether there will be sufficient demand to support the provision of such services, or whether our current fee for ancillary and supplementary services will dissuade broadcasters from offering such services. For similar reasons, we also decline at this time to exempt from fees, or adopt a lower fee for, services that promote Internet access in rural areas. We will continue to monitor the transition to ATSC 3.0, including the provision of Broadcast Internet services such as telehealth, public safety, and homeland security-related services, as well as services that provide Internet access in rural areas, and may reconsider this issue in the future.

17. *NCE Television Stations*. NCE television stations play an important role in providing nonprofit, noncommercial, and education services to communities nationwide, and the Commission is committed to supporting their enthusiastic embrace of the possibilities that Next Gen TV provides. Accordingly, we adopt, in part, the commenter proposal to reinterpret § 73.621 of our rules, which will allow NCEs to provide a wider range of services that align with their core mission. While, as discussed above, we generally decline to adjust the fee associated with ancillary and supplementary services, to the extent that NCE television stations offer feeable ancillary and supplementary services that are nonprofit, noncommercial, and educational, we adopt a reduced fee based on 2.5% of gross revenues generated by such "primary" ancillary and supplementary services. We also clarify that when an NCE television station provides "donor exclusive" ancillary and supplementary services that are nominal in value in return for contributions to the licensee, we will not treat such contributions as "subscription fees" under section 336 of the 1996 Act or § 73.621 of our rules.

18. *NCE Ancillary and Supplementary Services*. We conclude that an NCE television licensee may provide Broadcast Internet services, provided that the substantial majority of its 6 MHz channel capacity is dedicated to a combination of free, over-the-air nonprofit, noncommercial, educational, television broadcast service and any nonprofit,

noncommercial, educational (or "primary") ancillary and supplementary services it chooses to provide.[2] In this regard, we modify the 2001 *NCE Ancillary Services Report and Order*'s interpretation of § 73.621,[3] which held that a substantial majority of an NCE television licensee's digital capacity must be dedicated to nonprofit, noncommercial, educational broadcast service, limiting ancillary and supplementary services to an NCE television licensee's excess capacity. In so doing, we seek to preserve the nonprofit, noncommercial, educational nature of an NCE television licensee's service to its community, while affording such NCE licensees increased flexibility to provide "primary" services that are not traditional broadcasting. Although we decline to define what constitutes a "substantial majority" of the NCE's digital bitstream at this time, we expect to seek comment in a future proceeding on whether it is appropriate to revise § 73.621(j) regarding the amount of its 6 MHz channel capacity that an NCE television licensee must devote to "primary" uses, the scope of those primary uses, and any other related matters.[4]

19. As an initial matter, we adopt our unopposed tentative conclusion that NCE television licensees are allowed to provide ancillary and supplementary services. Indeed, the 2001 *NCE Ancillary Services Report and Order* sought to clarify not *whether*

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[2] An NCE television licensee may provide ancillary and supplementary services that are *not* nonprofit, noncommercial, and educational—including commercial services—on the licensee's excess (i.e., non-primary) capacity. Such services will be subject to the standard fee of 5% of gross revenues. We note that an NCE licensee, like all other television broadcasters, must broadcast at least one free over-the-air video programming stream, and its ancillary and supplementary services must not derogate this service. During the transition period to ATSC 3.0 service, we are affording NCE television broadcasters significant flexibility to determine the best mix of services for their communities. However, as during the DTV transition, our expectation remains that the fundamental use of the DTV license will be for the provision of free, over-the-air television service. We do not decide at this time the separate, broader issue of how much spectral capacity a broadcast television station (commercial or NCE) must use after the ATSC 3.0 transition period for the provision of its free over-the-air television service. We will consider this issue in a future proceeding, such as when we decide it is the appropriate time to consider eliminating the ATSC 1.0 simulcasting requirement.

[3] 66 FR 58973 (Nov. 26, 2001).

[4] In addition, until we address this issue in this future proceeding, we will consider waiver requests as necessary to allow public safety or other ancillary and supplementary uses that are nonprofit and noncommercial, but may not be educational in nature, to be applied to the "substantial majority" portion of an NCE licensee's spectrum dedicated for "primary" purposes.

NCEs could offer ancillary and supplementary services, but "the *manner* in which [NCE] television licensees may use their excess [DTV] capacity for remunerative purposes." The 2001 *NCE Ancillary Services Report and Order* amended § 73.621 of the rules "to clarify that the [s]ection's requirements apply to the entire digital bitstream of NCE [television] licensees, including the provision of ancillary or supplementary services," in order to "preserve the noncommercial educational nature of public broadcasting, while allowing NCE [television] licensees some flexibility in remunerative use of their spectrum." The Commission concluded at the time that this balance required NCE television licensees to "use their entire digital capacity *primarily* for a nonprofit, noncommercial, educational broadcast service." The Commission "decline[d] to quantify the term 'primarily,'" but "consider[ed] it to mean a '*substantial majority*' of [the NCE television licensee's] entire digital capacity."

20. In light of the unique educational public service mission of noncommercial educational television stations (NCEs) seeking to provide ancillary and supplementary services, we clarify that § 73.621 allows NCE television licensees to count as part of the "primary" use of their spectrum not just "nonprofit, noncommercial, educational, broadcast service," but also ancillary and supplementary services that are nonprofit, noncommercial, and educational in nature. Specifically, we conclude that § 73.621(j) permits an NCE television licensee to count nonprofit, noncommercial, and educational ancillary and supplementary services, together with its free, over-the-air nonprofit, noncommercial, educational television broadcast service, as "primary" services that fall within § 73.621(a). Section 73.621(j) states that § 73.621 "will apply to the entire digital bitstream of noncommercial educational television stations, including the provision of ancillary or supplementary services." We recognize that the 2001 *NCE Ancillary Services Report and Order*, which adopted § 73.621(j), interpreted this provision to mean that NCE television licensees are required to use their entire digital

capacity "primarily" for their free, over-the-air television nonprofit, noncommercial, educational broadcast service and that ancillary and supplementary services do not qualify as a "primary" use. We reject this interpretation of § 73.621(j) of our rules as unnecessarily narrow. Rather, we agree with APTS/PBS and PMVG that it is reasonable to afford greater flexibility to NCE television licensees to provide ancillary and supplementary services that are nonprofit, noncommercial, and educational in nature as a "primary" use, and that there is a wide potential variety of such services.[5] We are unpersuaded by Public Knowledge's contention that "allowing NCEs to count spectrum used for ancillary and supplementary services as primary service … violates 47 U.S.C. [397](11)."[6] Accordingly, we interpret the language of § 73.621(j) providing that the requirements of § 73.621 will apply to the entire digital bitstream of NCE television stations, "including the provision of ancillary or supplementary services," to broaden the scope of § 73.621(a) such that NCE television stations have the flexibility to make "primary" use of their "entire digital bitstream" through provision of not only a nonprofit, noncommercial, educational television broadcast service, but also any nonprofit, noncommercial, and educational ancillary and supplementary services it chooses to provide.

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[5] APTS/PBS maintain that any ancillary or supplementary service that "'serve[s] the educational needs of the community' or furthers the 'advancement of educational programs'" should be considered "primary." We reject this view because it would permit *for-profit, commercial* educational services (or *non-educational* television broadcasts) to be counted among the "primary" uses of an NCE's spectrum. Instead, consistent with the requirements in § 73.621(a) that the station qualify as "noncommercial educational" and is licensed "only to [a] nonprofit educational organization," the rule requires that all "primary" uses, whether broadcast television or ancillary and supplementary, must be nonprofit, noncommercial, *and* educational. We find this reading best preserves the nonprofit, noncommercial, and educational nature of public broadcasting. We note that our decision today applies only to the application of § 73.621(a) to the provision of ancillary and supplementary services pursuant to § 73.621(j); it does not change an NCE television licensee's broadcast and other obligations under § 73.621(a).

[6] Applying the last-antecedent rule, which "provides that 'a limiting clause or phrase ... should ordinarily be read as modifying only the noun or noun phrase that it immediately follows,'" we observe that "engaged primarily in the production, acquisition, distribution, or dissemination of educational and cultural television or radio programs" is defining "any nonprofit institution," and not "any licensee or permittee of a public broadcast station." Furthermore, our "primary service" decision applies to the use of a licensee's spectrum, not the activities of the licensee itself.

21. Although we adopt the NCE proposal to reinterpret our rules to permit "primary" ancillary and supplementary services, we decline to "pre-approve" specific services that could be considered primary. APTS/PBS and PMVG ask us essentially to create a "safe harbor" for Broadcast Internet services by identifying specific services that will qualify as "primary" uses under § 73.621(a). Given the nascent state of the Broadcast Internet market, we find that it would be premature to classify such services in this manner. Instead, consistent with our precedent in applying § 73.621(a) to broadcast programming, we will defer to the judgment of the broadcaster when evaluating whether a given ancillary and supplementary service is educational unless such categorization appears to be arbitrary or unreasonable.

22. We also decline, at this time, to adopt the NCE television broadcasters' proposal to redefine the term "primarily," as used in § 73.621(a), to mean a "simple majority" instead of a "substantial majority," which is the definition adopted by the Commission in the 2001 *NCE Ancillary Services Report and Order*. We disagree with APTS/PBS that there is a plain or common meaning of the term "primarily," and instead find that the term is ambiguous.[7] In light of this ambiguity, the Commission previously determined in 2001 that "primarily" means "substantial majority." This definition was not challenged at the time, and we are not persuaded by the arguments in the record that present circumstances warrant reconsideration of this earlier decision. Given the retention of our substantial majority requirement, Public Knowledge is incorrect that our rules "will allow NCEs to sublease or otherwise monetize *the majority of their spectrum* to third parties instead of providing free service to the public." Moreover, we find that our decision to include certain ancillary and supplementary services as part of the

[7] We note that the Merriam-Webster online dictionary defines "primarily" as "for the most part; chiefly." Webster's New World Dictionary defines it as "mainly; principally." Thus, while "primarily" could be used to mean a "simple majority," that is far from the "common" understanding.

"primary" use of their spectrum affords NCE television licensees substantial additional flexibility in light of the enhanced capabilities made possible by the ATSC 3.0 standard.[8] As these services reach the market, we will have additional context upon which to evaluate whether any changes to the definition of "primarily" are warranted. Accordingly, we defer examination of this issue and any other related matters until the Broadcast Internet marketplace matures.[9]

23. *Fee for NCE Primary Ancillary and Supplementary Services*. While we generally decline to adjust the fee associated with ancillary and supplementary services, to the extent that NCE television stations offer feeable ancillary and supplementary services that are nonprofit, noncommercial, and educational, we adopt a reduced fee of 2.5% on gross revenues generated by such "primary" services. As discussed above, § 73.621 of our rules provides that NCE stations must "be used primarily to serve the educational needs of the community; for the advancement of educational programs; and to furnish a nonprofit and noncommercial television broadcast service," and extends this requirement to all services provided via the station's digital bitstream. Given the benefit of the "distinctive content of public broadcast programming" provided by NCEs, and the fact that the auction value of spectrum that must be "primarily" used for such services is likely lower than that of spectrum used for services without such restrictions, we believe this lower fee is appropriate.

24. Although we decline at this time to exempt NCE television stations entirely from all fees on ancillary and supplementary service revenues devoted to the

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[8] Public Knowledge's claims to the contrary notwithstanding, nothing in this Order undermines the policy of ensuring free, over-the-air, educational television programming. As required by existing rules, each NCE station must continue to provide a free, over-the-air, nonprofit, noncommercial, educational television broadcast service.

[9] We will also consider waiver requests, as necessary, to allow public safety or other ancillary and supplementary uses that are nonprofit and noncommercial, but may not be educational in nature, to be applied to the "substantial majority" portion of an NCE licensee's spectrum committed to "primary" purposes.

station's nonprofit activities as APTS/PBS suggest, we believe that the reduction we adopt is an appropriate incremental and balanced approach. While some commenters suggest that we make no change to the 5% fee under any circumstances, and others asked us to eliminate it entirely, we find that a fee of 2.5% for "primary" NCE ancillary and supplementary services that are feeable under the statute appropriately recognizes the public service mission of public television stations without creating a significant disparity with the 5% fee applied to other ancillary and supplementary services offered by NCE and commercial television stations. While we decline to adjust the 5% fee generally, choosing instead to wait until the ATSC 3.0 marketplace further develops and after a further review is conducted, we believe a different approach is warranted for NCE stations. We seek to support the ability of public television stations to provide and expand their nonprofit, noncommercial, educational services and engage in new and innovative educational efforts using ATSC 3.0 technology.[10] NCE nonprofit, noncommercial, educational services, provided by the nonprofit, education-focused licensees of NCE stations, uniquely advance the public interest and therefore should be treated differently under our fee program than other ancillary and supplementary services that are provided by NCE and commercial broadcast stations. Given this, our approach appropriately reduces the fees on any revenue generated by such "primary" NCE ancillary and supplementary services, thereby permitting the nonprofit, education-focused licensees of NCE television stations to retain a larger percentage of any such revenue, providing more funds to support the core educational public service missions of such stations.

25. We find that our approach is consistent with section 336 of the 1996 Act.

[10] We note that Public Knowledge et al. contend that the Commission is prohibited from setting a fee of zero for any licensee. Because we will continue to collect ancillary and supplementary fees from every licensee, both commercial and noncommercial, we need not address Public Knowledge et al.'s argument.

As discussed above, the language of section 336 gives the Commission wide discretion to select the appropriate fee for feeable ancillary and supplementary services. Thus, we conclude that we have discretion under the statute to establish a fee for NCE primary ancillary and supplementary services that is lower than the fee for other ancillary and supplementary services, including those provided by commercial stations. Section 336(e)(1) directs the Commission to establish "a program to assess and collect" ancillary and supplementary fees that, pursuant to section 336(e)(2), recover "a portion of the value of the public spectrum," "avoid unjust enrichment," and, eventually, recover an amount approximately equivalent to the spectrum's value at auction. Section 336 does not require the Commission to levy fees in direct proportion to the amount of spectrum held by each licensee. Adjusting our program of fees to impose a reduced fee of 2.5% for NCE stations' "primary" ancillary and supplementary services will not undermine the Commission's ability to recover for the public a portion of the value of the spectrum made available for ancillary and supplementary uses. Furthermore, a reduced fee on the nonprofit, noncommercial, educational ancillary and supplementary services offered by NCEs will not create a danger of unjust enrichment. Any additional "primary" NCE ancillary and supplementary services offered as a result of these lower fees will, by their nature, redound to the public's benefit more than to the benefit of the nonprofit educational organization licensees of the NCE stations.

26. Finally, we conclude that a 2.5% fee is consistent with our directive under section 336(e)(2)(B) to recover for the public an amount that would have been recovered "had such services been licensed" pursuant to an auction. The reduced fee of 2.5% will apply only to feeable ancillary and supplementary services that qualify as "primary" NCE services under § 73.621 of our rules, which means they must be nonprofit, noncommercial, and educational in nature. If spectrum restricted in this manner were offered for auction, we expect that bidders would offer a more modest amount of money

for the right to build facilities that are restricted to providing services that are "primarily" nonprofit, noncommercial, and educational as opposed to spectrum designated for commercial use.[11] In other words, the requirements imposed on the use of the NCE station spectrum make this spectrum inherently less valuable at auction than spectrum without such use restrictions.[12] Given the benefits to the public of an accelerated rollout of NCE primary Broadcast Internet services, we find it is appropriate to adopt this reduced fee even though it may overstate the auction value of spectrum so restricted. We are directed not only to "collect an amount that … equals but does not exceed" the auction value of the spectrum, but also to recover a "portion of the value of the public spectrum resource" while avoiding unjust enrichment. While we find 2.5% to be appropriate at this time, we intend to monitor the development of the NCE Broadcast Internet marketplace and may adjust the fee if conditions warrant.

27. In reaching our decision, we are not constrained by the Commission's previous decision to apply to NCE licensees the same fee for ancillary and supplementary services that we apply to commercial licensees. Instead, we conclude that advances in technology and the associated new offerings anticipated by NCE stations suggest a different approach is currently warranted when assessing the appropriate fee for NCE "primary" ancillary and supplementary services. Public television stations are already experimenting with ancillary and supplementary services that advance the public interest. Applying a reduced fee for "primary" NCE services will give NCE licensees both an additional incentive to pursue the expensive transition to ATSC 3.0 and additional resources to devote to their core mission. We find that the 2.5% rate for "primary"

[11] Our analysis is consistent with the analysis the Commission applied to section 336(e)(2)(B) in the *NCE Ancillary Services Report and Order*.

[12] We agree with BitPath that, in considering among other things the appropriate level of the fee, the Commission should consider the auction value of the spectrum in the context of the ancillary and supplementary services being provided, not merely the auction value of the spectrum in the abstract.

ancillary and supplementary services is sufficient to meet our obligations under section 336 of the 1996 Act and will advance our goals of promoting Broadcast Internet services and supporting the mission of NCE television stations to provide nonprofit, noncommercial, educational services.

28. We note that this limited change does not excuse NCEs from their obligation to file an "Annual DTV Ancillary/Supplementary Services Report" whenever they receive feeable ancillary and supplementary services revenue. We expect that, in this report, NCE filers will clearly identify any services that are nonprofit, noncommercial, and educational and therefore qualify for the reduced fee.[13]

29. *Donor Contributions to NCE Television Stations*. As requested by PMVG and unopposed by other commenters, we clarify that, when an NCE television station provides "donor exclusive" ancillary and supplementary services that are nominal in value in return for contributions to the licensee, we will not treat such contributions as "subscription fees" under section 336 of the 1996 Act or § 73.621 of our rules. For example, PMVG notes that stations may provide donor households with exclusive links to supplemental content, such as extended interviews or reference materials relevant to public affairs programming, or stations could offer donor households enhanced viewing experiences, such as the opportunity to view a local orchestra performance in 4K definition with immersive sound. We will not treat such donor exclusive services as feeable as long as the ancillary and supplementary service provided in return is comparable in terms of value to the kinds of small gifts (e.g., coffee mugs, tote bags) that NCE stations often give donors in return for contributions. We agree with PMVG that the type of limited content offerings described above are comparable to the traditional donor gifts provided by NCE stations and should not be treated as ancillary and

[13] We dismiss as moot NTCA's proposal for a detailed reporting and audit system, which they suggest should apply if we waived all fees for certain Broadcast Internet services.

supplementary services provided in return for a subscription fee. We also agree that, unlike programming provided in return for a subscription fee, the value of such content offerings made in return for a donation is likely minimal as compared to the value of the donation. In addition, unlike a subscription fee, the donation is made voluntarily and not pursuant to a subscription agreement. We intend to monitor the provision of "donor exclusive" services, however, and we may reconsider our decision in the future if such donor services appear to be comparable to subscription-based services.

30. *Derogation and Analogous Services*. We adopt our tentative conclusion that whether a broadcast station's signal has been derogated should continue to be evaluated by whether it provides "at least one standard definition over-the-air video program signal at no direct charge to viewers that is at least comparable in resolution to analog television programming." We also adopt our tentative conclusion to amend the wording of § 73.624(b) to define the precise resolution that is considered to be "at least comparable in resolution to analog television programming" as 480i, with a slight modification.[14] Based on the record, we decline to adopt two other proposals on which we sought comment in the *NPRM*—a presumption that Broadcast Internet services are not analogous to any other service regulated by the Commission and a de minimis service threshold under which ancillary and supplementary services might be exempted from the need to comply with the regulations applicable to an analogous service otherwise regulated by the Commission.

31. As discussed in the *NPRM*, section 336 of the 1996 Act allows broadcasters the flexibility to provide ancillary and supplementary services on their DTV channels.[15] In authorizing such services, Congress directed the Commission to adopt

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[14] The number "480" identifies a vertical resolution of 480 lines, and the "i" signifies an interlaced resolution.

[15] In general, the 1996 Act seeks "[t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid

rules ensuring that broadcasters providing ancillary and supplementary services: (1) avoid derogating any advanced television services that the Commission may require; and (2) are subject to Commission regulations applicable to analogous services. In furtherance of these statutory requirements, the Commission adopted § 73.624(c) of the rules, which permits broadcasters to offer ancillary and supplementary services provided they "do not derogate the DTV broadcast stations' obligations under paragraph (b) of this section." Section 73.624(b) of the rules, in turn, requires that each DTV broadcast licensee transmit at least one standard definition (SD) over-the-air video program signal on its digital channel, at no charge to viewers, that is at least comparable in resolution to analog television programming. The Commission also adopted rules codifying that broadcasters are permitted to provide ancillary and supplementary services on their broadcast spectrum that are analogous to other regulated services. If they choose to do so, however, they are required to adhere to any rules specific to such type of service.

32. *Derogation of Service*. *Derogation of Service Standard*. We adopt our tentative conclusion that whether a broadcast station's signal has been derogated should continue to be evaluated by whether it provides "at least one standard definition over-the-air video program signal at no direct charge to viewers that is at least comparable in resolution to analog television programming." As acknowledged both in this proceeding and by the Commission in the *Next Gen TV Report and Order*,[16] the ATSC 3.0 standard will provide expanded capacity for broadcasters to offer not only HD programming, but also other enhanced television resolutions such as 4K and 8K more efficiently. However, as noted by NAB and BitPath, in light of the ATSC 3.0 local simulcasting requirement, requiring broadcasters to provide a higher resolution above SD at this early stage of

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deployment of new telecommunications technologies." More specifically, the 1996 Act gives the Commission discretion to determine, in the public interest, whether to permit broadcasters to offer ancillary and supplementary services.

[16] 83 FR 4998 (Feb. 2, 2018), 84 FR 60350 (Dec. 20, 2017).

ATSC 3.0 deployment could jeopardize their ability to preserve both primary and secondary ATSC 1.0 signals as stations convert to ATSC 3.0. Moreover, we agree with NAB, Pearl, and BitPath that current marketplace forces are sufficient to incentivize broadcasters to maintain their existing standards of service for viewers, which notably may include HD programming streams.

33. Next, we deny requests from several commenters that we prohibit broadcasters from transitioning a signal from HD to SD in order to provide an ancillary and supplementary service. Earlier this year, the Commission rejected NCTA's proposal to require that ATSC 1.0 signals be simulcast in HD. While we agree with NCTA that transitioning an ATSC 1.0 signal from HD to SD to facilitate the deployment of ancillary and supplementary services is different than transitioning a signal from HD to SD in order to comply with the ATSC 1.0 simulcast requirement, we reiterate that there is no obligation that broadcasters provide an HD signal, even if they have chosen to do so in the past. Imposing such a signal quality requirement remains inappropriate, for the same reasons it did six months ago – broadcasters have strong market incentives to maintain HD service, and a decision not to do so would be in response to competitive marketplace conditions. We therefore "decline to substitute our own judgment for that of local television stations that best know their communities' needs," but will continue to monitor broadcasters' deployment of ATSC 3.0 services and evaluate the need for changes to our derogation standard as part of a planned future proceeding.[17]

34. *Definition of a Standard Definition Signal*. Notwithstanding our decision

[17] In the Spring of 2022, the Commission expects to open a proceeding to evaluate the sunsetting of certain ATSC 3.0 technical provisions. Separately, the Commission has stated that it will consider as part of a future proceeding the continued necessity of the ATSC 1.0 simulcasting requirement, which does not sunset. As part of a future proceeding, based on the development of the ATSC 3.0 marketplace, we expect likewise to determine whether to reevaluate our derogation standard. While we have elected to maintain our current derogation standard at this time, we continue to "expect that the fundamental use of the 6 MHz DTV license will be for the provision of free over-the-air television service."

to maintain the existing derogation standard, we adopt our tentative conclusion to modernize § 73.624(b) so that a standard definition signal is defined as one that has a resolution of at least 480i (vertical resolution of 480 lines, interlaced), as supported by multiple broadcast commenters. Despite NAB's suggestion to the contrary, the record provides no evidence that clarifying and modernizing the definition of a "standard definition signal" will place an increased burden on broadcasters. Rather, this change will merely remove an outdated reference to analog television and codify what is universally accepted as the digital resolution of a standard definition broadcast signal. While, as pointed out by BitPath, the 480i resolution standard was adopted over 20 years ago, it is universally utilized by television sets today for displaying standard definition programming. Continued reliance on an obsolete analog broadcasting standard would be an outdated method by which to determine what is an acceptable digital standard definition signal. Further, we conclude that this rule update is fully consistent with the broad initiative the Commission has undertaken the past four years to modernize its rules by removing outdated references that no longer reflect the current media marketplace.

35. *Analogous Services Analysis*. In light of the limited record on this topic and the present lack of clarity concerning the precise Broadcast Internet services that broadcasters may offer, we find it is premature to adopt a presumption that certain Broadcast Internet services are or are not analogous to any other service regulated by the Commission. For the same reasons, we decline to adopt a de minimis service threshold under which ancillary and supplementary services might be exempted from the need to comply with the regulations of an analogous service otherwise regulated by the Commission.

36. In reaching both of these conclusions, we agree with NCTA and CTIA that, at this initial stage in the development of Broadcast Internet services, the Commission should continue to evaluate whether or not a service is analogous to other

regulated services on a case-by-case basis. While we do not foreclose adopting specific indicia of whether a service is or is not likely to be found to be analogous at some future point, we must first gain a better understanding of how Broadcast Internet services ultimately evolve in the marketplace. While, as argued by PMG, it may in fact end up being the case that Broadcast Internet services will be provided only on a one-way, one-to-many basis, as is the case with traditional video broadcast services, without knowing the precise services broadcasters will offer we cannot universally conclude that such services are inherently not analogous to any other service regulated by the Commission.[18] We also agree with commenters that it is premature to adopt a presumptive or de minimis threshold under which ancillary and supplementary services otherwise akin to other regulated services would be found not to be analogous.[19]

37. Though we decline to adopt additional rules at this time, we recognize that broadcasters may continue to seek clarification from the Commission, from time to time, about whether a particular service would be analogous to another, or whether specific broadcast rules would apply. Finally, we will continue to monitor the marketplace and provide any necessary clarification in the future once both broadcasters and the Commission know the type of Broadcast Internet services that may be deployed and offered to consumers.

38. *Other proposals*. *Low Power Television*. We decline to adopt any of the

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[18] Pearl also requests that the Commission "clarify broadly that broadcast television regulations do not apply to broadcast internet services." For the same reasons discussed above, we are unable to conclude on a blanket basis, as requested by Pearl, that *all* broadcast television rules do not apply to Broadcast Internet services. While as a general matter we envision that many broadcast television rules (such as those related to children's television or indecency, and, as discussed by Pearl, our rules on attribution) would not apply to Broadcast Internet services, others (such as technical rules governing station operations) may still be applicable. We note that our analysis in the *Declaratory Ruling* was conducted solely in the context of evaluating our media ownership and attribution rules and the applicability of those rules to the leasing of excess broadcast television spectrum to a third party, including another broadcaster, for the provision of ancillary and supplementary services.

[19] NCTA maintains that the plain language of section 336(b) of the 1996 Act does not permit a de minimis exemption, and no commenters disagree.

proposals by low power television and translator (LPTV) station representatives and others to change our LPTV service rules in this proceeding. In addition to seeking comments on the ancillary and supplementary service fee and derogation of service issues, the *NPRM* generally sought comment on the provision of Broadcast Internet services by LPTV stations and what steps, if any, the Commission should take to facilitate the provision of such services by LPTV stations. In response, LPTV groups and interested parties, such as ARK, ATBA, Edge Spectrum, Evoca, NRB, NTA, Spectrum Evolution, and One Ministries, proposed a wide range of changes to the rules governing LPTV service. Among other things, these proposals include: equalizing LPTV interference protection with that of full power and Class A TV stations (essentially eliminating LPTV's secondary status); creating a path for certain LPTV stations to attain primary status; lifting certain restrictions on LPTV service; granting blanket construction permit and license extensions for LPTV stations seeking to build ATSC 3.0 facilities; abolish the ATSC 3.0 consumer education requirement for silent and newly built LPTV stations, changing aspects of the interference rules; and changing aspects of the Commission's distributed transmission systems (DTS) rules.

39. We find that all of these proposals, many of which call for sweeping changes to the nature of LPTV service or translator service specifically, are insufficiently related to Broadcast Internet and are thus beyond the scope of this proceeding. We note, however, that all LPTV stations transitioning to digital service are eligible to request a one-time, six-month extension of their construction permit, and that we will continue to consider requests to extend LPTV licenses pursuant to the equity and fairness provision of section 312(g) of the Act on a case-by-case basis.[20] Further, pursuant to our existing

[20] We note that the Commission intended that the LPTV exemption from the local simulcasting requirement would help ensure that analog LPTV/translator stations and stations that have been displaced due to the post-incentive auction repacking process were not forced to build both an ATSC 1.0 and an ATSC 3.0 facility. We also note that under section 312(g) of the Communications Act of 1934, as amended (the Act), if a station fails to transmit a broadcast signal for any consecutive 12-month period its license automatically

rules, LPTV stations that are unable to air the required ATSC 3.0 consumer education notifications because they not operational (i.e., silent or newly constructed) may seek a waiver of the Commission's notice requirement from the Media Bureau.[21] Finally, we note that the proposals to allow LPTV stations to use DTS and to protect LPTV stations from full power DTS service are presently being considered in the DTS proceeding.

40. *Retransmission Consent. MVPD Carriage of Broadcast Internet Services*. We likewise decline to interpret our retransmission consent rules in the context of this proceeding. NCTA asks us to clarify that a broadcaster's use of retransmission consent to negotiate for carriage of Broadcast Internet services provided by a consortium of non-commonly owned broadcasters in the same market is prohibited by the bar on joint or coordinated retransmission consent negotiations. NAB opposes this proposal as premature, urging us "to reject, now for the third time, NCTA's efforts to impose restraints on negotiations in the absence of any demonstration of real world market failure."[22] We decline to address this issue, finding it beyond the scope of this proceeding.[23]

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expires at the end of that period. However, under that section a licensee may request an extension of its license if doing so would "promote equity and fairness." The Commission has exercised its discretion under section 312(g) to extend or reinstate a station's expired license "to promote equity and fairness" only in limited circumstances where a station's failure to transmit a broadcast signal is due to compelling circumstances that were beyond the licensee's control. The Commission has stated that it would consider extensions in cases where stations were forced to remain dark for more than 12 months by the repack process. The Media Bureau will continue to consider such relief for LPTV stations impacted by the repack.

[21] Stations should file requests for waiver as a Legal STA in the Commission's Licensing and Management System (LMS). All waiver requests will be evaluated on a case-by-case basis and must include the following information: (1) an explanation describing why the station is unable to comply with the existing consumer education requirements; (2) an alternative but comparable means the station will use to notify viewers of the station's new channel or if the station has previously not been operational (i.e., is newly built) why notice would not be in the public interest; and (3) how grant of the waiver request complies with the Commission's general waiver standard. A station may propose to provide alternative notification to viewers through, for example, local newspaper, radio, other in-market television stations, and/or digital and social media.

[22] Although we note that NCTA's request is more narrowly focused than NAB suggests, we nonetheless agree that retransmission consent issues are not relevant to this proceeding.

[23] We note that the *NPRM* indicated that changes to our rules and policies regarding retransmission consent agreements are beyond the scope to this proceeding.

41. *Retransmission Consent Agreements Including Ancillary and Supplementary Services*. We also reject NTCA's proposal that we exempt broadcasters from all ancillary and supplementary service fees if they provide ancillary and supplementary services at no additional charge to unaffiliated MVPDs with which they have an existing retransmission consent agreement. No commenters addressed this proposal. We note that ancillary and supplementary services that are solely being offered free of charge do not generate revenue and, therefore, are not subject to the ancillary and supplementary services fee.

42. *Procedural Matters*. *Final Regulatory Flexibility Analysis*. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM* in this proceeding. The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. We received no comments specifically directed toward the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

43. *Need for, and Objective of, the Report and Order*. The Commission seeks to promote and preserve free, universally available, local broadcast television by providing a clear regulatory landscape that permits licensees the flexibility to succeed in a competitive market and incentivizes the most efficient use of prime spectrum. We undertook this proceeding to ensure that our rules, most over 20 years old, will help foster the introduction of new Broadcast Internet services and the efficient use of existing television broadcast spectrum under the new ATSC 3.0 standard. In this Report and Order, we therefore conclude that ancillary and supplementary (A&S) fees should be calculated based on the gross revenue received by the broadcaster, without regard to the gross revenue of an unaffiliated third party, such as a spectrum lessee; should retain the existing standard of derogation of broadcast service, but amend the wording of the rules to eliminate the outdated reference to analog television; and should reaffirm that

noncommercial educational television broadcast stations (NCEs) may offer Broadcast Internet services. We also reinterpret the application of § 73.621 of our rules to permit noncommercial educational stations (NCEs) to devote the substantial majority of their spectrum not just to free over-the-air television but also ancillary and supplementary services; lower the ancillary and supplementary service fee for certain NCE services; and clarify that NCEs may offer limited Broadcast Internet services to donors without transforming those donations into feeable ancillary and supplementary service revenue. With these changes, we seek to clarify the regulatory landscape in order to foster the efficient and robust use of broadcast spectrum capacity for the provision of Broadcast Internet services consistent with statutory directives.

44. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA*. There were no comments filed in response to the IRFA.

45. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration*. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.

46. The Chief Counsel did not comment in response to the proposed rules in this proceeding.

47. *Description and Estimate of the Number of Small Entities to Which Rules Will Apply*. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term

"small business concern" under the Small Business Act. 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. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

48. *Television Broadcasting*. This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound." These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having $41.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of this number, 656 had annual receipts of less than $25 million, 25 had annual receipts ranging from $25 million to $49,999,999, and 70 had annual receipts of $50 million or more. Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

49. Additionally, the Commission has estimated the number of licensed commercial television stations to be 1,374. Of this total, 1,282 stations (or 94.2%) had revenues of $41.5 million or less in 2018, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on April 15, 2019, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates the number of licensed noncommercial educational (NCE) television stations to be 388. The Commission does not compile and does not have

access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

50. We note, however, that in assessing whether a business concern qualifies as "small" under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of "small business" requires that an 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 broadcast 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.

51. There are also 387 Class A stations. Given the nature of these services, the Commission presumes that all of these stations qualify as small entities under the applicable SBA size standard. In addition, there are 1,892 LPTV stations and 3,621 TV translator stations. Given the nature of these services as secondary and in some cases purely a "fill-in" service, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

52. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities*. This Report and Order imposes no new reporting, recordkeeping, or compliance requirements.

53. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered*. The RFA requires an agency to describe any significant alternatives that it has considered in developing its 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 an reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."

54. Our rules will not impose a negative economic impact on any parties, because they increase opportunities for broadcasters without imposing additional obligations. Indeed, by clarifying the scope of feeable revenue our rule may allow small broadcast entities transitioning to ATSC 3.0 to experience positive economic impacts through partnership with unaffiliated third parties. NCE television stations in particular, both large and small, will experience positive benefits from the decisions made in this item, which will allow them to offer nonprofit, noncommercial, educational Broadcast Internet services alongside their television programming as part of the primary use of their spectrum, and which imposes a reduced two and a half percent fee on these services.

55. *Report to Congress*. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the *Federal Register*.

56. *Final Paperwork Reduction Act Analysis*. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002 (SBPRA), Pub. L. 107-198, *see* 44 U.S.C. 3506(c)(4).

57. *Congressional Review Act*. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is "non-major" under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the Order to Congress and the Government Accountability Office, pursuant to 5 U.S.C. 801(a)(1)(A).

58. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j), 303(r), and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), and 336, the Report and Order IS ADOPTED.

59. IT IS FURTHER ORDERED that the Commission's rules ARE HEREBY AMENDED as set forth in the Final Rules, effective as of 30 days after the date of publication in the *Federal Register*.

60. IT IS FURTHER ORDERED that the Commission will send a copy of the Report and Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA).

61. IT IS FURTHER ORDERED that should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 20-145 SHALL BE TERMINATED and its docket closed.

List of Subjects in 47 CFR Part 73

Communications equipment, Television.

Federal Communications Commission.

Marlene Dortch,
Secretary.

For the reasons stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73– RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

2. Amend § 73.624 by revising paragraphs (b) introductory text and (g) introductory text to read as follows:

§ 73.624 Digital television broadcast stations.

* * * * *

(b) DTV broadcast station permittees or licensees must transmit at least one over-the-air video program signal at no direct charge to viewers on the DTV channel. Until such time as a DTV station permittee or licensee ceases analog transmissions and returns that spectrum to the Commission, and except as provided in paragraph (b)(1) of this section, at any time that a DTV broadcast station permittee or licensee transmits a video program signal on its analog television channel, it must also transmit at least one over-the-air video program signal on the DTV channel. The DTV service that is provided pursuant to this paragraph (b) must have a resolution of at least 480i (vertical resolution of 480 lines, interlaced).

* * * * *

(g) Commercial DTV licensees and permittees, and low power television, TV translator and Class A television stations DTV licensees and permittees, must annually remit a fee of 5 percent of the gross revenues derived from all ancillary and supplementary services, as defined by paragraph (b) of this section, which are feeable, as defined in paragraphs (g)(1)(i) and (ii) of this section. Noncommercial DTV licensees and permittees must annually remit a fee of 5 percent of the gross revenues derived from all ancillary and

supplementary services, as defined by paragraph (b) of this section, which are feeable, as defined in paragraphs (g)(1)(i) and (ii) of this section, except that such licensees and permittees must annually remit a fee of 2.5 percent of the gross revenues from such ancillary or supplementary services which are nonprofit, noncommercial, and educational.

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[FR Doc. 2020-28615 Filed: 2/22/2021 8:45 am; Publication Date: 2/23/2021]