

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
An Industry Coordination Committee)
System for Broadcast Digital) ET Docket No. 99-34
Television Service)

NOTICE OF PROPOSED RULE MAKING

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By the Commission:

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I. INTRODUCTION

1. By this action, we seek comment on the establishment of an industry coordination committee to assist the Commission in the implementation of digital television (DTV) service. This committee system would evaluate proposed changes to the DTV Table of Allotments and perform other related functions. We specifically request comment on proposals addressing the following issues: 1) the structure of a DTV industry coordination committee system; 2) its functions; 3) the rules for its operation; 4) the criteria that would be used in selecting the DTV frequency coordinators; and 5) the Commission's oversight of the committee operations. We believe that such an industry committee system may aid our efforts to provide fair and efficient means for adjusting the DTV Table of Allotments and for managing requests for DTV station modifications as the transition to DTV progresses. In this regard, we believe that an industry coordination committee could serve to improve our existing procedures by minimizing the number of petitions for rule making that are filed to change the DTV Table and encouraging the development of local and regional solutions to problems that may arise. A coordination committee might also serve to provide assistance in managing any further requests for modification of analog (NTSC) television stations during the transition and on other issues such as inter-service sharing arrangements.

II. BACKGROUND

2. In the *Sixth Report and Order* in the DTV proceeding, we adopted a Table of Allotments for digital television (DTV), rules for initial DTV allotments, procedures for assigning DTV channels, and plans for spectrum recovery.¹ As part of that action, we recognized that the implementation of DTV service will be a dynamic process and that mechanisms are needed to provide for modifying DTV allotments and station operating facilities.² We therefore established procedures and technical standards for adding future DTV allotments and for modifying the DTV Table and stations' operating facility specifications, *i.e.*, effective radiated power, antenna height above average terrain (antenna HAAT), antenna pattern, and transmitter site coordinates.³ We permitted broadcasters the flexibility to negotiate among themselves station changes and alternative allotment plans, provided no new interference results or affected parties agree.⁴

3. In various filings prior to the *Sixth Report and Order*, the Association for Maximum Service Television, Inc. (MSTV), the Broadcasters' Caucus (Caucus), and other parties representing broadcasting interests had recommended an approach under which industry coordinating committees would evaluate proposals for changes to the DTV Table.⁵ Under this

¹ See *Sixth Report and Order*, MM Docket No. 87-268, 12 FCC Rcd 14588 (1997).

² See *Sixth Report and Order*, at paras. 172-173 and 182.

³ *Id.*, at paras. 213 and 221-222; see also 47 CFR 73.622 and .623..

⁴ We further indicated that any negotiated changes would be subject to international coordination, as appropriate.

⁵ See for example, "Broadcasters' Proposed ATV Allotment/Assignment Approach submitted by MSTV in the DTV proceeding on January 13, 1995. Broadcasters elaborated on the idea of industry coordinating committees for DTV in their comments in response to the *Sixth Further Notice of Proposed Rule Making* in the DTV proceeding, MM Docket No. 87-268 (*Sixth Further Notice*), 11 FCC Rcd 10968 (1996), and implemented a prototype of such a system in ten regions across the country.

approach, the industry committees would make recommendations to the Commission about how to dispose of allotment/assignment proposals or would provide the Commission with the detailed coverage and interference data necessary to make these decisions. A comprehensive plan for the structure, operating rules and composition of such industry coordinating committees was presented in a petition for further rule making submitted by the Caucus on January 10, 1997.⁶

4. In the *Sixth Report and Order*, we recognized and supported broadcasters' voluntary efforts to establish an industry coordination committee system to evaluate post-assignment changes to the DTV Table.⁷ We agreed that an industry coordination system could promote a smoother and more orderly process for modifying the DTV Table and encouraged the industry to continue their voluntary coordination efforts. We indicated that an approach similar to that set forth in the Broadcasters Caucus' petition would appear to provide an appropriate model for industry coordination of DTV allotment and facility modifications. We stated that it is important, however, that any voluntary negotiation or coordination effort be open to all affected parties, including low power broadcasters and the public, and that we will require that such negotiations be open to all affected parties. In this regard, we stated that we will review all requests for modification of the DTV Table for their impact on low power stations. Industry coordinating committees therefore were strongly advised that they should consider LPTV and TV translator stations in developing proposed modifications to the DTV Table and avoid impact on such stations wherever possible. We also advised parties coordinating proposals for changes to the DTV Table that we will not consider requests for allotment modifications that would relocate an allotment to a channel in channels 60-69, nor will we consider creating new DTV allotments in this area of the spectrum.

5. In the *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order (Allotment Reconsideration Order)* addressing petitions for reconsideration of the *Sixth Report and Order*, we clarified our rules regarding negotiations for exchange of DTV channel allotments to fully reflect our desire to provide licensees the maximum flexibility to negotiate such exchanges where the changes do not cause interference to other stations or where all affected stations agree to accept any interference that may result.⁸ In this regard, we modified Sections 73.622(c) and 73.623(f) of our rules to specify that DTV licensees and permittees may file applications that implement exchanges of allotments on an intra-community, intra-market, or inter-market basis, provided that the exchanges do not result in additional interference to other stations beyond the *de minimis* standard in Section 73.623(c)(2) of our rules or that all affected stations agree to accept any additional interference that would result from the exchange, and that all other requirements of the DTV allotment rules are met with respect to the

⁶ The Caucus suggested that DTV coordinating committees function according to the basic principles established in the private land mobile radio service for frequency coordinators. In particular, it proposed that the coordinating committees: 1) be representative of the industry; 2) generally process requests in the order in which they are received; 3) provide all stations that might be affected by a proposed change notice and an opportunity to comment, object, or submit their own proposals that could be precluded by a proposal under consideration; 4) provide coordination services on a nondiscriminatory basis for reasonable fees; 5) serve in a purely advisory role to the Commission; and 6) help resolve licensee disputes. The Caucus also proposed that the committees function on a coordinated fashion nationwide, using an updated data base.

⁷ See *Sixth Report and Order*, at para. 182.

⁸ See *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, MM Docket No. 87-268, adopted February 17, 1998, 13 FCC Rcd 7418 (1998), at paras. 141-147.

application.⁹ We also recognized broadcasters' continuing interest in establishing a formal industry committee system for coordination of DTV allotment changes with oversight by the Commission. We therefore stated that we would initiate a separate rule making proceeding to consider whether to establish such an industry committee system. We further indicated that it is our intention that consideration of an industry coordination system not delay the implementation of DTV service and that we will continue to process voluntary coordinations and negotiated agreements throughout the pendency of our coordination committee proceeding.

III. DISCUSSION

6. In its petition, the Broadcasters' Caucus suggests that the land mobile private frequency coordinators provide an appropriate model for the DTV service. The general principles underlying the land mobile frequency coordination system were articulated in the Commission's 1969 *Memorandum Opinion and Order* on frequency coordination in the industrial radio services.¹⁰ Therein, the Commission stated, *inter alia*, that: 1) land mobile frequency coordinators must be representative of all eligible entities in the radio service the committee purports to serve; 2) their recommendations are advisory only; 3) coordinators may not discriminate between members and non-members in providing service; 4) the Commission retains the power to remedy discrimination or other abuses by coordinating committees; 5) an alternative coordinating committee would be recognized if it is more representative of the eligible licensees; 6) any coordination fees must be reasonable and cost-based; and 7) all requests for coordination must be considered. In 1982, Congress amended the Communications Act to affirm and clarify the Commission's authority to use frequency coordinators in the private mobile services and the fixed services.¹¹

7. In its 1986 *Report and Order* in PR Docket No. 83-737 (*1986 Coordination Report and Order*), the Commission took a number of steps to improve the frequency coordination rules and procedures for the private land mobile services.¹² In that action, the Commission decided to recognize a single frequency coordinator for each radio service, group or pool of frequencies.¹³ It also required that coordinators:¹⁴

- Provide coordination services on a non-discriminatory basis, including charges for

⁹ See 47 CFR 73.622(c)(2), 73.623(c)(2), and 73.623(f).

¹⁰ See *Memorandum Opinion and Order* on Frequency Coordination in the Industrial Radio Services, 16 FCC 2d 300 (1986), at 305-306. The Commission first recognized land mobile frequency coordinators in 1958. See In re: Amendment of Part 11, Rules Governing the Industrial Radio Services, to Delete, Modify, and Create Services and to Effect Changes in the Availability of Frequencies, *First Report and Order*, 23 FR 4784 (June 28, 1958). In that decision, the Commission provided that applicants could obtain frequency recommendations from frequency coordination committees and that committee recommendations would be given consideration in frequency assignment decisions.

¹¹ See 47 U.S.C. 332(b); see also The Communications Amendments Act of 1982. P.L. 97-259, 96 Stat. 1087, September 13, 1982.

¹² See *Report and Order*, PR Docket No. 83-737, 103 FCC 2d 1093 (1986).

¹³ *Id.*, at paras. 57-61.

¹⁴ *Id.*, paras. 16-53.

- services rendered.
- Perform the coordination function by: 1) checking applications for completeness, accuracy and compliance with the applicable FCC rules; 2) identifying the most appropriate frequency (requests for specific frequencies were to be accompanied by a technical showing); 3) sending the application and recommendation to the FCC.
 - Process applications in order of receipt even if this does not lead to actions in the same order.
 - Forward a recommendation to the Commission within 20 work days of the receipt of an application (speed of service requirement).
 - Assist in resolution of post-licensing conflicts.
 - Handle inter-service sharing requests.
 - Provide services on a reasonable cost-based fee schedule.
 - Facilitate the introduction of new services.
 - Provide a single nationwide point of contact with the Commission.

8. The Commission retained responsibility for making determinations on eligibility, permissible usage, whether the use of a particular communications facility is in the public interest, and waiver requests.¹⁵ It also stated that it would oversee the performance of the frequency coordinators.¹⁶ The Commission indicated that where it appeared that a coordinator had established a pattern of failing to perform in accordance with the requirements, the Commission would conduct an inquiry into the coordinator's performance. It stated that after such an investigation, which might include seeking comments from the public, it would determine whether decertification was warranted.

9. As we observed in the DTV proceeding, it is expected that the implementation of DTV service by broadcasters will be a dynamic process in which various adjustments will need to be made by both broadcasters and the Commission. In order for the DTV implementation to proceed in a smooth and expeditious manner, it is important that there be an efficient process for modification of DTV channel allotments and assignments and for making other changes relating to use of the TV frequencies in a timely manner. As suggested by a number of broadcasters and their representatives, a system of private industry coordinating committees could provide assistance by working with parties involved in or affected by such changes and by providing technical evaluations of the various requests that arise. In addition, there are a number of other areas where such committees could provide service that would aid in promoting the rapid implementation of DTV. For example, industry committees could help with activities such as coordination of the use of broadcast auxiliary frequencies, analyses relating to protection of land mobile and noncommercial FM radio services, and maintenance of a national TV engineering data base.

10. We therefore believe it is desirable to consider the industry's suggestion for a private industry coordination committee system that would assist the Commission in matters relating to managing the DTV transition. As suggested by the Broadcasters' Caucus, we believe the general principles and policies that were applied in establishing rules for frequency coordination in the land mobile services are also relevant and appropriate for guiding the development of an industry coordination committee system for broadcast television. The proposals set forth below, which are generally based on the plan suggested by the Caucus, address the following issues in relation to an industry coordination committee system for the broadcast television service: 1)

¹⁵ *Id.*, at para. 20.

¹⁶ *Id.*, at para. 126.

the structure of a DTV industry coordination committee system; 2) its functions; 3) the operation of the committee system; 4) the criteria to be used in selecting the DTV channel coordinators; and 5) Commission oversight of the committees' activities, including review of their recommendations.

11. We invite comment on the need for an industry coordination committee system for the television service and on all aspects of the proposals set forth herein. We also invite interested parties to submit suggestions for any changes in these proposals or alternative approaches relating to an industry committee system that they believe would serve to improve the process for modifying the DTV Table and/or to provide other assistance to the Commission on television spectrum matters. If we decide to establish a DTV coordination committee system, we will need to decide whether to make participation in the committee process mandatory or voluntary. We therefore request comment on whether we should require television station applicants, construction permit holders, licensees and others with proposals that would affect TV spectrum to coordinate their proposals through the industry committee process or simply to make participation in that process voluntary. We note that under a mandatory approach, the industry coordination committee system would replace our existing rules for voluntary negotiation of DTV allotment and facility modifications. As we indicated in the *Allotment Reconsideration Order*, it is our intention that consideration of an industry coordination committee system not delay the implementation of DTV service.¹⁷ In this regard, we advise broadcasters that we will continue to process applications for DTV stations and requests for modification of facilities during the course of this proceeding. Broadcasters preparing DTV applications and or station modification requests therefore should not delay the filing of those applications. We also encourage broadcasters to continue to participate in voluntary coordination activities and negotiations relating to allotment additions and modifications while we consider this matter.

A. Committee Structure

12. We believe the plan proposed in the Caucus' petition generally offers an appropriate structure for the DTV coordination committee system. Under this plan, the coordination of DTV allotment and station changes would be organized on the basis of regional committees operating under the umbrella of a national organization (national coordinator). The national coordinator would establish an organizational structure and administrative system for the regional committees, manage a nationwide television data base, maintain procedures and software systems for performing technical analyses, and monitor the work of the regional committees. The regional coordinating committees would conduct evaluations and provide recommendations/ advice to the Commission and also would coordinate among local stations and within the industry. We believe that a system of multiple committees that coordinate modification requests and other matters on the basis of regional areas would foster participation in the coordination process by local broadcasters and also allow the coordinators to focus specific experience in, and knowledge of, local matters to work out allotment solutions. Such experience and knowledge could perhaps be especially useful in resolving requests that are mutually exclusive. The national data base and analyses capabilities and monitoring function provided by the national umbrella organization would ensure that evaluations are conducted on a uniform basis, in accordance with applicable standards and policies, and consider all other pending requests, including those from other regions.

¹⁷ See *Allotment Reconsideration Order*, at para. 147.

13. We request comment on this proposal for the general structure of a DTV industry coordination system. We are not presenting a plan for a specific number of regional coordinating committees or for the boundaries of the regions in which they would operate. Rather, we request that interested parties submit comments and suggestions with regard to these issues and we will select an appropriate number of committees and define the boundaries of the regions in which the individual committees would operate after considering such submissions.¹⁸ We generally do not believe it is necessary for the Commission to prescribe a specific organizational structure for the regional committees and/or the national coordinator beyond that indicated above. Rather, we believe the coordinating committees themselves would be in the best position to determine how to organize themselves to best accomplish their functions. Specific issues in this area include committee size and composition (in terms of number of members and professional abilities), functional organization and leadership, distribution of responsibilities, authority in performing coordination evaluations, and procedures for resolving intra organizational disputes. We request comment on this proposal. We also request comment on whether it might be more desirable to adopt an alternative approach under which the Commission would specify requirements for the organization and administration of the regional committees and the national coordinator and for the manner in which they would interact. Parties supporting such an approach are requested to submit specific suggestions for a plan of organizational requirements. We note that in planning an organizational structure of the committee system it will be necessary to consider the functions to be performed by the industry coordinators, as discussed below. In addition, it is possible that the organizational structures of individual committees may vary across regions. For example, the size and internal structure of committees for regions encompassing congested areas such as the northeast may need to be larger than that of regions covering less congested areas.

14. Consistent with our position on frequency coordinators in the DTV proceeding, we do, however, believe it is important that any coordination system for the broadcast television industry be open to all affected parties, including low power television and TV translator stations and the public.¹⁹ We therefore propose to require that the membership and processes of the DTV coordinating committee system be open to all affected parties.

B. Committee Functions

15. We envision that the principal function of the DTV industry coordination system would be to evaluate proposals for changes in DTV and NTSC station facilities and for changes to the DTV Table of Allotments and to make recommendations to the Commission on these matters.²⁰ Such proposals would be evaluated for compliance with the Commission's technical

¹⁸ We note that at the time the DTV Table was being developed, the Caucus attempted to arrange a rudimentary coordination system for assisting the Commission and broadcasters in understanding issues relating to DTV allotments. The Caucus established 10 regional groups to organize meetings of stations across the country and created a central office to provide coverage maps of the draft allotment tables that had been developed by the Commission and a group of more than 200 parties with broadcast interests known as the "Broadcasters." See "Broadcasters" in joint comments filed in response to the *Sixth Further Notice*. These comments included a proposal for a DTV Table of Allotments.

¹⁹ See *Sixth Report and Order*, at para. 182; and *Allotment Reconsideration Order*, at para. 147.

²⁰ "NTSC" is the name commonly used for the existing analog television transmission system. This system was developed by, and named for, the National Television Systems Committee, an industry group established many years ago to develop television broadcast standards. We currently have on file a number of applications for modification of existing NTSC stations. Also, we have on file a number of applications and petitions for rule making seeking to establish new NTSC stations. However, effective July 25, 1996, we no longer accept petitions for rule making for

rules for television station allotment and operation and, where applicable, interference impact to other stations. As suggested by the Caucus, the goal of the coordination system would be to accommodate reasonable requests for facility and allotment changes/additions without creating unacceptable interference to neighboring DTV or NTSC stations. In this regard, the industry coordinating committees would provide assistance to both broadcasters and the Commission in assessing the feasibility, in terms of effects on interference and service areas, of modifications in the power, antenna height, antenna pattern, or transmitter site of DTV and NTSC stations, of changes in DTV channels, including negotiated exchanges on an intra- or inter-market basis, and of proposed new DTV allotments. The coordinating committees would also work with the requesting parties and, as appropriate, any other affected parties to develop solutions where a request would result in conflicts or other problems. In addition, the coordinating committees would also serve as a resource to provide information on coverage and interference.

16. In addition to the station/allotment coordination function, there are a number of activities relating to evaluations of service coverage and interference and selection of channels that the coordinating committees could perform to aid in the implementation of DTV service. In this regard, we ask whether the coordinating committees should perform or assist with the following additional activities:

- Coordination of station and allotment additions/changes with land mobile licensees operating on frequencies in the TV bands and on frequencies in adjacent bands to avoid interference.²¹
- Coordination of station and allotment additions/changes on channel 6, at 82-88 MHz, with noncommercial FM radio stations in the reserved band, at 88-92 MHz, to avoid interference.
- Assist in identifying and resolving any other issues or problems that might arise with regard to a proposal, such as proximity of television operations to AM radio towers and operation in radio Quiet Zones.
- Coordination of requests for television special temporary authorizations (STAs) and requests for experimental authorizations under the television service.
- Coordination of the use of broadcast auxiliary frequencies among TV stations
- Coordination of low power TV and TV translator station additions/changes, including assisting low power television and TV translator stations affected by DTV implementation. For example, the coordinators could aid low power operators in developing changes in their operations to avoid causing interference to DTV stations or, where necessary, to identify replacement channels.
- Coordination among antenna site users to ensure that such sites comply with the rules for exposure of humans to radio frequency radiation set forth in Sections 1.1301-1319 of the rules.²²
- For stations on channels 60-69, identification of channels in the DTV core spectrum,

new NTSC allotments and effective September 20, 1996, we no longer accept applications for new NTSC stations (except in cases where a petition filed before July 25, 1996, is granted). *See Sixth Further Notice*, at paras. 60-61.

²¹ The rules currently authorize sharing between land mobile and TV operations on frequencies in the range of UHF TV channels 14-20, which occupy the 470-512 MHz band, in 13 urbanized areas, the Gulf of Mexico and Hawaii. *See* 47 CFR 2.106, notes NG66, NG 114, and NG 127. In addition, channels 60-69, which occupy the 746-806 MHz band, were reallocated for public safety and a broad range of other services, including broadcasting, in the *Report and Order* in ET Docket No. 97-157, 12 FCC Rcd 22953 (1998). Existing TV stations and DTV stations in this band will share spectrum with new services until the end of the transition.

²² 47 CFR §§1.1301-1.1319.

i.e. channels 2-51, for relocation prior to the end of the transition.

17. As indicated above, the national coordinator would be responsible for maintaining an accurate, up-to-date engineering data base of allotments, licensed stations, construction permits, applications and petitions for rule making. This data base, which would correspond in content and format with the engineering data base maintained by the FCC, would be used by the regional coordinating committees in their coordination work. The national coordinator would be required to work with both the industry (licensees, construction permit holders, applicants and trade associations) and the FCC staff to ensure the data base is complete and accurate and matches the FCC data base.²³ The national coordinator would also be responsible for maintaining and managing a national system of methodology and software for use in performing studies and engineering evaluations. This methodology and software would be required to conform to the Commission's DTV allotment and station modification standards and to the methodological guidance provided in our OET Bulletin No. 69, and would be developed and maintained through consultation with the FCC staff.²⁴ The regional committee coordinators would be required to use the analytical methodology and software maintained by the national coordinator for all routine analyses and evaluations. This would ensure that studies and evaluations performed by different coordinators are consistent and comparable on a nationwide basis and also establish a central source for providing assistance in resolving methodological issues, implementing changes in technical developments and policy, and coordinating these issues with the Commission. Where necessary, the national coordinator would also resolve any conflicts in committee recommendations involving overlapping requests in adjacent regions. The national coordinator would further be responsible for monitoring the performance of the regional committees to ensure that studies and evaluations were being performed in a consistent manner and in accordance with all applicable policies and regulations. This monitoring would take place on a regular basis, through a random review of processing actions and meetings with the regional coordinating committees.

18. We request comment on these functions for the coordinating committee system and whether there are other functions that the coordinating committees and the national coordinator could perform. For example, we note that the Advanced Television Systems Committee has adopted a specification for a Program and System Information Protocol (PSIP) for the transmission of system information and program guide data for broadcast DTV stations.²⁵ We

²³ Our staff will, of course, coordinate with the national committee organization in providing information on data base changes, resolving inaccuracies and other problems.

²⁴ See *OET Bulletin No. 69*, issued by our Office of Engineering and Technology on July 2, 1969. *OET Bulletin No. 69* provides guidance for evaluating TV service coverage and interference in accordance with Sections 73.622, 73.623, and 73.624 of the rules, 47 CFR 73.622, 623, and 704.

²⁵ See *Program and System Information for Broadcast and Cable*, Advanced Television Systems Committee, Doc. A/65, December 23, 1997. The PSIP information and data would be used to enable a number of features of DTV television service, including the naming/identification of service channels and digital bit streams, electronic program guides, and program ratings. It also provides for selection through the program guide function of the type and language of closed captioning to be viewed and transmission of program ratings information to allow parents to use technological features ('v-chip' technology) to selectively block the display of programs on consumer receiving equipment, as required under the provisions of the Sections 551(c), (d), and (e) of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996). Section 551 of this Act amends Sections 303 and 330 of the Communications Act of 1934, as amended. See 47 U.S.C. 303 and 330. We adopted requirements for inclusion of v-chip blocking capabilities in TV receivers in the *Report and Order* in ET Docket No. 97-206, 13 FCC Rcd 11245 (1998). We are not addressing herein the standards to be specified for DTV closed captioning. That matter will be addressed in a separate proceeding.

seek comment on whether the coordination committees and the national coordinator could assist in the administration of this voluntary industry system by assigning the unique PSIP station identifier and negotiating the naming and numbering of channels among broadcasters in local markets. We also request comment on whether the coordinating committee system could be established in a time frame that would allow it to administer the assignment of PSIP station identifiers or whether more expeditious arrangements need to be made to perform this task.

C. Committee Operations

19. Coordination committee actions would begin with the submission of a request for facility or allotment changes or for information on interference and coverage. Requests would be submitted to the appropriate regional coordinators on standard forms, with justification as applicable. Applicants requesting changes would also have to be prepared to submit technical studies to assist the coordinators in evaluating their requests. The coordinators would then evaluate the proposed request for compliance with the applicable FCC technical and/or spacing rules, and where appropriate or necessary, seek to develop alternative solutions that would resolve any interference or mutually exclusivity among requests. In cases where UHF DTV stations would seek to increase their power above the interim 200 kilowatt power limit under the policy recently adopted in the *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders* in this proceeding or to use increased power through beam tilting techniques under Section 73.622(f)(4) of the rules, the coordinators would ensure that the applicant complies with the Commission's notification requirements.²⁶ In this role, the coordinating committees would also be expected to facilitate negotiations between the party or parties seeking changes and any stations that would be affected by those changes. After completing these activities, a committee coordinator would submit its assessment of the change proposed in the request and any alternative proposals, as appropriate, to the Commission, along with its recommendations. These assessments and recommendations would be limited to the technical viability of the proposal, without regard to whether the requested changes would be consistent with any other applicable regulations.

20. Consistent with the approach used with land mobile frequency coordinators and the recommendations of the Caucus, we believe is desirable to establish certain rules for the processing of coordination requests by the DTV industry coordination committees. Our proposals in this area address: non-discriminatory service, fees, processing order and timeliness, and channel selection. We request comment on all aspects of the proposals for processing rules set forth below. We also invite interested parties to submit proposals for any additional processing rules that they might believe are necessary to ensure the fair, efficient and effective operation of the DTV coordination committee system.

21. Nondiscriminatory Service. We believe it is both basic and essential to the success of any private coordination system that services be provided in a non-discriminatory manner. While we believe that our plan to require that the coordination committees generally be open to all affected parties will promote fair treatment of all parties, we also understand that it is possible that some of those performing the coordination work may have affiliations with a particular group of broadcasters and the like. It is important that such relationships not affect the manner in which the coordinating committees perform, so that all requests are treated similarly and impartially, without discrimination. Therefore, following the principles that we

²⁶ See *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders* in MM Docket No. 87-268, adopted November 24, 1998, FCC 98-315, at para. 49; and 47 CFR § 73.622(f)(4).

have applied to frequency coordinators in other services, we propose to require that the DTV industry coordinators accept and process all requests without discriminating among users.

22. Fees. We do not believe there is any need for the Commission to become involved in regulating or approving a fixed schedule of fees for the services performed by the DTV industry coordination committees. At the same time, we are concerned that the fees charged for such services not become a source of abuse. We therefore are proposing to approach fees for TV coordination services in the same manner as we do fees charged by the private land mobile service coordinators. Under this approach, the DTV industry coordination committees would be permitted to charge reasonable, cost-based fees for providing information to stations and processing requests for facility and channel changes/additions. If necessary, coordination fees would be reviewed by the Commission, but only to ensure that they reasonably reflect the cost of providing the overall coordination service. Parties with concerns about fees could submit complaints to the Commission asking for review. If we were to find abuses, we would move expeditiously to address and correct any such problems. We believe this approach would achieve an appropriate balancing of the concerns in this issue by providing the coordinators with the flexibility to allow for the differences in the costs of providing different services and addressing requests of differing complexity, while ensuring the fees charged for services are reasonable.

23. Processing Order and Timeliness. In order to ensure fair treatment of those requesting services, we are proposing to require that, as a general practice, the committee coordinators process requests in the order received and to require that they maintain logs. We agree with the Caucus that exceptions should be made for cases that reflect coordination among stations, such as where a group of stations might propose a market or area-wide change in channels and/or facilities, and would allow a coordinator to take requests out of order to consider all stations in an affected group together.

24. We recognize that coordination requests will vary greatly in complexity, and that the time needed to respond will vary with the nature of the request. Tasks could range from a request to evaluate the interference to a single station to a joint request from multiple stations for service and interference analyses and assistance in determining appropriate channels and facilities. We therefore are not proposing to establish a specific time limit for completing actions in response to requests or to require that such actions be completed in the order in which the requests were received. Rather, we are proposing simply to require that requests be processed in a timely manner. To enable monitoring of speed of service, we are proposing to require that the coordinating committees record completion dates in the logs indicated above. We are further proposing to require that the request and processing logs be made available to the Commission on request. We would investigate complaints relating to processing order and speed and take appropriate action where a problem was found to exist in these areas.

D. Selection of Coordinators

25. We request comment on how those who would lead the DTV coordination committee system should be selected and how we should provide for the start-up of this organization. One approach would be for the Commission to select an entity to head the national committee organization, and then allow the national organization to proceed with selection of the regional committees, in accordance with that organization's stated plan for the regional committee structure and administrative system. This plan would be the most administratively efficient for the Commission and would allow the industry, through the national organization, to implement its plan for the regional committee organizations at the start-up

phase of the coordination system. Another approach would be for the Commission to select entities to head the national organization and the regional coordination committees. Under this approach, the Commission would need to become more involved in defining the structure of the regional committees and in getting the coordination system started. We invite interested parties to comment on these approaches and also to submit alternative approaches for selecting those who would lead the frequency coordination system and how to accomplish the start-up phase of this organization.

26. In selecting parties to lead the coordination committee system, we propose to consider a number of factors. First, we would consider the extent to which the applicant is representative of all broadcast television interest groups, including low power television and TV translator stations and also provides for participation by the public. The applicant would be required to indicate its prospective leadership and membership in its request for selection, and also to indicate how it would select additional or replacement members. Second, applicants would need to demonstrate technical knowledge and expertise in performing the analyses and evaluations used in the coordination process and describe the software and methodology to use in accomplishing DTV and NTSC interference and service area engineering studies on a nationwide basis. And third, we would consider the applicant's plan for coordinating the DTV service, *e.g.*, its plan for the portion of the organization that it would lead, how recommendations would be made, estimate of fees and processing times, and, in the case of the national organization, the applicant's ability to manage an automated national TV engineering data base, software and methodology.

E. Oversight

27. We believe it is important to exercise appropriate oversight of the DTV coordination committee system and its work. In this regard, we would, on a routine basis, perform our own review and verification of the technical evaluations and recommendations of the frequency coordinators as appropriate. We would, however, in all cases continue to process petitions for changes to the DTV Table of Allotments in our normal manner. We would also investigate complaints from those using the coordinating committees' services, as indicated above. In addition, we would conduct periodic and *ad hoc* reviews of the performance of the national organization and the regional committees to review their performance, to ensure they are conducting evaluations and analyses in accordance with established policies and regulations, and also to determine whether any changes might be needed in our policies based on experience gained through their work. In this regard, we would view our routine oversight of the committee systems as a cooperative effort towards improving the overall service provided to stations, applicants and others making use of this process. At the same time, our oversight would look for abuses or lack of performance in the coordination process and we would be prepared to investigate issues such as unreasonable delays, allegations of excessive changes for services, and other complaints. As suggested by the Caucus, our policies in this oversight would be developed on a case-by-case basis, so that an effective "common law" would develop. We request comments on these proposals and suggestions for alternative approaches for oversight of the industry committee system.

28. We recognize that establishing these coordinating committees to perform some of the functions proposed herein, including advising the Commission on some of these matters, could implicate the Federal Advisory Committee Act (FACA).²⁷ We note that when Congress

²⁷ See 5 U.S.C. App. 2; 41 CFR §§ 101-6.1001 to 101.6.1035.

authorized the Commission to use frequency coordinators in the private mobile and fixed services area, it explicitly provided that "[a]ny advisory coordinating committee which furnishes assistance to the Commission under this subsection shall not be subject to the provisions of the FACA."²⁸ We invite comment on this issue and on how the application of FACA would affect all of the issues discussed above.

IV. PROCEDURAL MATTERS

29. Paperwork Reduction Act of 1995 Analysis. This Notice of Proposed Rule Making has been analyzed with respect to the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, and found to impose no new or modified information collection requirements on the public.

30. Regulatory Flexibility Act Analysis. As required by the Regulatory Flexibility Act, 5 U.S.C. § 603, the Commission has prepared an initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix A. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice of Proposed Rule Making, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis.

31. Comments. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on before March 29, 1999, and reply comments on or before April 28, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rule Making Proceedings, 63 FR 24,121 (1998).

32. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rule making numbers appear in the caption of this proceeding, however, commenting parties must transmit one electronic copy of the comments to each docket or rule making number referenced in the caption. In completing the transmittal screen, commenting parties should include their full name, Postal Service mailing address, and the applicable docket or rule making number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenting parties should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

33. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rule making number appear in the caption of this proceeding, commenting parties must submit two additional copies for each additional docket or rule making number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, The Portals, 445 Twelfth Street, S.W., Room TW-A325, Washington, D.C. 20554.

34. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Alan Stillwell, Federal Communications Commission, Office of Engineering and Technology, Washington, D.C. 20554. Such a submission should be

²⁸ 47 U.S.C. § 332(b)(4).

on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenting party's name, proceeding (including the docket number in this case, ET Docket No. 99-34), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenting parties must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

35. *Ex Parte Presentations*. This is a permit-but-disclose notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during any Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 CFR §§ 1.1200(a), 1.1203, and 1.1206.

36. *Ordering Clauses/Authority*. IT IS ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration. Actions herein are taken pursuant to authority contained in Sections 4(i), 7, 301, 303, 307, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 301, 302, 303, 307, and 336.

37. For additional information concerning this matter, contact Alan Stillwell, Office of Engineering and Technology, (202) 418-2470.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDIX A
INITIAL REGULATORY FLEXIBILITY ANALYSIS

As required by Section 603 of the Regulatory Flexibility Act,²⁹ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rule Making in ET Docket No. 99-34. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided above in Section VI.

Need for and Objectives of the Proposed Rule:

In this rule making action the Commission seeks comment on proposals for the establishment of an industry DTV coordination committee system to process and evaluate proposed changes to the Table of Allotments for digital television (DTV) service and related matters involving use of the television frequencies. We believe that such an industry committee system may aid our efforts to provide fair and efficient means for adjusting the DTV Table and for managing requests for DTV station modifications as the transition to DTV progresses. In this regard, we believe that an industry coordination committee system could serve to improve our existing procedures by minimizing the number of petitions for rule making that are filed to change the DTV Table and encouraging the development of regional solutions to shared problems. A coordination committee system might also serve to provide assistance in managing any further requests for modification of analog (NTSC) television stations during the transition and on other issues such as inter-service sharing arrangements. The objective of this action is to obtain comment and information that will assist us in determining whether such an industry committee system is needed and to establish rules and policies for its structure, functions, operation, membership selection and oversight by the Commission.

Legal Basis:

The proposed action is authorized under Sections 4(i), 7, 301, 303, 307, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303, 307, and 336.

Description and Estimate Of The Number Of Small Entities To Which The Rules Will Apply:

1. Definition of a "Small Business"

Under the Regulatory Flexibility Act, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. § 601(6). The Regulatory Flexibility Act, 5 U.S.C. § 601(3) generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. § 632. 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 Small Business Administration ("SBA"). *Id.* According to the SBA's regulations, entities engaged in television broadcasting may have a maximum of \$10.5 million in annual receipts in

²⁹ 5 U.S.C. § 603.

order to qualify as a small business concern.³⁰ 13 CFR § 121.201, published May 1, 1999. This standard also applies in determining whether an entity is a small business for purposes of the Regulatory Flexibility Act.

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." For purposes of this Notice of Proposed Rule Making, we utilize the SBA's definition in determining the number of small businesses to which the rules apply, although we believe that that definition of "small business" overstates the number of television broadcast stations that are small businesses. Further, in this IRFA, we will identify the different classes of small television stations that may be impacted by the rules adopted in this Notice of Proposed Rule Making.

2. Issues in Applying the Definition of a "Small Business"

SBA has defined "annual receipts" specifically in 13 CFR § 104, and its calculations include an averaging process. We do not currently require submission of financial data from licensees that we could use to apply the SBA's definition of a small business. Thus, for purposes of estimating the number of small entities to which the rules apply, we are limited to considering the revenue data that are publicly available, and the revenue data on which we rely may not correspond completely with the SBA definition of annual receipts.

Under SBA criteria for determining annual receipts, if a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period for determining annual receipts, the annual receipts in determining size status include the receipts of both firms. 13 CFR §121.104(d)(1). The SBA defines affiliation in 13 CFR § 121.103. While we refer to an affiliate generally as a station affiliated with a network, the SBA's definition of affiliate is analogous to our attribution rules. Generally, under the SBA's definition, 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). The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. 13 CFR § 121.103(a)(2). Instead of making an independent determination of whether television stations were affiliated based on SBA's definitions, we relied on the industry data bases available to us to afford us that information.

3. Estimates Based on Census and BIA Data

According to the Census Bureau, in 1992, there were 1,155 out of 1,478 operating television stations with revenues of less than ten million dollars. This represents 78 percent of

³⁰ This revenue cap appears to apply to noncommercial educational television stations, as well as to commercial television stations. See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes "Television Broadcasting Stations (SIC Code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

all television stations, including non-commercial stations.³¹ See *1992 Census of Transportation, Communications, and Utilities, Establishment and Firm Size*, May 1995, at 1-25. The Census Bureau does not separate the revenue data by commercial and non-commercial stations in this report. Neither does it allow us to determine the number of stations with a maximum of 10.5 million dollars in annual receipts. Census data also indicates that 81 percent of operating firms (that owned at least one television station) had revenues of less than \$10 million.³²

We have also performed a separate study based on the data contained in the BIA Publications, Inc. Master Access Television Analyzer Database, which lists a total of 1,141 full-power commercial television stations. It should be noted that the percentage figures derived from the data base may be underinclusive because the data base does not list revenue estimates for noncommercial educational stations, and these are therefore excluded from our calculations based on the data base. Non-commercial stations would be subject to the allotment rules and policies proposed herein. The data indicate that, based on 1995 revenue estimates, 440 full-power commercial television stations had an estimated revenue of 10.5 million dollars or less. That represents 54 percent of commercial television stations with revenue estimates listed in the BIA program. The data base does not list estimated revenues for 331 stations. Using a worst case scenario, if those 331 stations for which no revenue is listed are counted as small stations, there would be a total of 771 stations with an estimated revenue of 10.5 million dollars or less, representing approximately 68 percent of the 1,141 commercial television stations listed in the BIA data base.

Alternatively, if we look at owners of commercial television stations as listed in the BIA data base, there are a total of 488 owners. The data base lists estimated revenues for 60 percent of these owners, or 295. Of these 295 owners, 158 or 54 percent had annual revenues of \$10.5 million or less. Using a worst case scenario, if the 193 owners for which revenue is not listed are assumed to be small, the total of small entities would constitute 72 percent of owners.

In summary, based on the foregoing worst case analysis using census data, we estimate that our rules could affect as many as 1,155 commercial and non-commercial television stations (78 percent of all stations) that could be classified as small entities. Using a worst case analysis based on the data in the BIA data base, we estimate that as many as approximately 771 commercial television stations (about 68 percent of all commercial television stations) could be classified as small entities. As we noted above, these estimates are based on a definition that we believe greatly overstates the number of television broadcasters that are small businesses. Further, it should be noted that under the SBA's definitions, revenues of affiliates that are not television stations should be aggregated with the television station revenues in determining whether a concern is small. The estimates overstate the number of small entities since the revenue figures on which they are based do not include or aggregate such revenues from non-television affiliated companies.

³¹ Our own records indicate that there are approximately 1,600 UHF and VHF commercial and noncommercial full service television stations that could make use of the coordination services proposals set forth in this Notice.

³² Alternative data supplied by the U.S. Small Business Administration Office of Advocacy indicate that 65 percent of TV owners (627 of 967) have less than \$10 million in annual revenue and that 39 percent of TV stations (627 of 1,591) have less than \$10 million in annual revenue. U.S. Small Business Administration 1992 Economic Census Industry and Enterprise Receipts Report, Table 2D (U.S. Census Business Data adopted by SBA). These data were prepared by the U.S. Census Bureau under contract to the Small Business Administration. These data show a lower percentage of small businesses than the data supplied directly to us by the Census Bureau. Therefore, for purposes of our worst case analysis, we will use the data supplied directly to us by the Census Bureau.

The proposed DTV industry coordination committee system could also affect low power television (LPTV) and TV translator stations. Our records indicate that currently there are about 1,750 licensed LPTV stations and 5,050 licensed TV translators. We have also issued about 1,400 construction permits for new LPTV stations. We do not collect individual station financial data for LPTV and TV translator stations. However, based on our experience with LPTV and TV translator stations, we believe that all such stations have revenues of less than \$10.5 million. We also seek information on the number of low power stations that operate commercially and noncommercially.

4. Alternative Classification of Small Stations

An alternative way to classify small television stations is by the number of employees. We currently apply a standard based on the number of employees in administering its Equal Employment Opportunity Rule (EEO) for broadcasting.³³ Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and recordkeeping requirements.³⁴ We estimate that the total numbers of commercial and noncommercial television stations with 4 or fewer employees are 132 and 136, respectively.³⁵ These estimates do not include LPTV stations, for which we do not collect employment data.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements:

The proposals set forth in this action would involve no changes to reporting, recordkeeping and other compliance requirements beyond what is already required under the current regulations.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

Significant Alternatives To Proposed Rules Which Minimize Significant Economic Impact of Small Entities and Accomplish Stated Objectives:

³³ Our definition of a small broadcast station for purposes of applying the EEO rule was adopted prior to the requirement of approval by the Small Business Administration pursuant to Section 3(a) of the Small Business Act, 15 U.S.C. § 632(a), as amended by Section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Pub. L. No. 102-366, § 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Pub. L. No. 103-403, § 301, 108 Stat. 4187 (1994). However, this definition was adopted after the public notice and the opportunity for comment. See Report and Order in Docket No. 18244, 23 FCC 2d 430 (1970).

³⁴ See, e.g., 47 CFR § 73.3612 (Requirement to file annual employment reports on Form 395 applies to licensees with five or more full-time employees); First Report and Order in Docket No. 21474 (In the Matter of Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395), 70 FCC 2d 1466 (1979). We are currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. Order and Notice of Proposed Rule Making in MM Docket No. 96-16 (In the Matter of Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines), 11 FCC Rcd 5154 (1996). One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees. Id. at ¶ 21.

³⁵ Compilation of 1995 Broadcast Station Annual Employment Reports (FCC form 395B), Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

The DTV industry coordination committee system proposed in this action would be available for use by all commercial and noncommercial broadcast television stations desiring to change their DTV facilities and/or channels or their NTSC facilities and by parties seeking to add new channel allotments to the DTV Table of Allotments. This coordination system would be used by existing full service stations, low power stations and those seeking to establish new stations on a voluntary basis. Stations would also be allowed to use their own internal resources or the services of consultants to obtain the analyses and evaluations that would be performed by the committee coordinators. We therefore believe that our proposal would result in the minimum impact on those needing such services. We have, however, requested comment on whether we should require that facility changes, channel changes, and new allotments be coordinated through the services of the industry coordination committee system. In this case, we have sought to minimize the impact on those using the coordination system by requiring that charges for services be reasonable and cost based and that services be provided in a timely manner. At this time we have no information on the approximate cost of the services that would be provided by the industry coordinating committees. We also do not know how many stations may seek such changes, although we expect that most of the changes sought will be to increase station's DTV service areas. We expect that the number of requests for addition of new DTV allotments will be approximately the same as we now receive each year, *i.e.* approximately 50 requests.

An alternative approach would be to establish specific allowable charges for services and specific time-periods within which requests for coordination must be completed. However, we generally believe that it would be difficult to establish a schedule of appropriate fees and required completion time-periods due to the great variation in complexity of the services to be performed and the time and resources needed to fulfill the requests. We seek comment and suggestions for alternatives that would further reduce any impact that an industry coordination committee system would have on those seeking to modify existing stations or to establish new stations.

As we observed in the DTV proceeding, implementation of DTV service will affect low power television (LPTV) and TV translator stations. Total investment in the LPTV and TV translator facilities is estimated to be about \$150 - \$250 million.³⁶ Studies by our staff indicate that there is not sufficient spectrum to accommodate both low power stations and DTV stations.³⁷ These studies estimate that up to about one-third of all LPTV stations and one-quarter of all TV translators may have to cease operation to make way for DTV stations. In general, most LPTV stations within major markets will be affected, while rural operations will be affected to lesser degrees. We generally believe that the industry coordinating committee system would serve to provide a relatively low-cost source of assistance to LPTV and TV translator stations that will need to modify their existing operations or seek displacement channels to avoid interference to DTV service. We seek comment on whether there are specific actions we could take in establishing the industry coordination system to further aid low power stations.

³⁶ See Comments of the Community Broadcasters Association in response to the Fourth Further Notice, at p. 1.

³⁷ See Second Report and Order/Further Notice of Proposed Rule Making (Second Report/Further Notice) in MM Docket No. 87-268, 7 FCC Rcd 3340, at paras. 39-45; and Second Further Notice of Proposed Rule Making (Second Further Notice), 7 FCC Rcd 5376 (1992), at para. 41. See also "Interim Report: Estimate of the Availability of Spectrum for Advanced Television (ATV) in the Existing Broadcast Television Bands," OET Technical Memorandum, FCC/OET TM88-1, August 1988 and, "Interim Report: Further Studies on the Availability of Spectrum for Advanced Television," OET Technical Memorandum, FCC/OET TM89-1, December 1989; and, "Preliminary Analysis of VHF and UHF Planning Subcommittee Working Party 3, Doc. 0174 (June 1991).