

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Amendment of Parts 73 and 74 of the
Commission's Rules to Establish Rules for
Replacement Digital Low Power Television
Translator Stations
MB Docket No. 08-253

NOTICE OF PROPOSED RULEMAKING

Adopted: December 22, 2008

Released: December 23, 2008

Comment Date: (10 days after date of publication in Federal Register)
Reply Comment Date: (20 days after date of publication in Federal Register)

By the Commission: Commissioner McDowell issuing a statement.

I. INTRODUCTION

1. With this Notice of Proposed Rulemaking, we propose creation of a new "replacement" digital television translator service to permit full-service television stations to continue to provide service to viewers within their coverage area who have lost service as a result of those stations' digital transition. We seek comment on how to implement this new service and tentatively conclude that it should be subject to all other rules for television translators with respect to secondary frequency use, filing and processing of applications, construction and operation. Finally, we announce interim filing procedures to begin acceptance of applications for replacement translators and the authorization of temporary facilities.

II. BACKGROUND

2. The Commission created television translator stations to bring television service to viewers "otherwise unserved or underserved" by existing service providers. Full-service television stations often use television translators to fill-in their protected service area that is not receiving service due to terrain, engineering, or other limitations. Full-service television stations are nearing the completion of their transition to digital transmission of signals by February 17, 2009, when all analog operations must terminate. Full-service television stations have been undertaking changes to their final, post-transition digital facilities in order to continue to provide the high level of service to their community of license after the completion of the transition. In some cases, a portion of the existing analog service areas of some full-service stations will no longer be able to receive service after the station transitions to digital broadcasting. Some of these "loss" areas are a result of unavoidable engineering changes that stations were required to implement in order to avoid interference or other problems on their post-transition digital channel. At times, the analog signal of certain full-service stations could not be replicated because of technical complexities and in some cases relocation of the facility was mandated by environmental and zoning issues. In order to replace service to loss areas, stations could pursue a number of potential options: (1) maximize their service area by increasing height or power; (2) apply for and construct translators on a different channel to re-broadcast their signal; (3) construct a distributed

1 See An Inquiry into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System, Report and Order, 51 R.R. 2d 476 (1982). In the instant item, Class A TV stations, other low power television stations, and TV translators are referred to herein collectively as "low power television stations."

transmission system (DTS)² with synchronized translators on the same channel to provide service to lost areas or to populations in areas with difficult terrain; (4) apply to change broadcast channels; (5) change antennas to improve coverage; (6) move transmitting towers; (7) negotiate to use the subchannel of a nearby station whose signal covers the loss area to multicast programming to the population losing the station's over-the-air signal; or (8) partner with a low power station whose analog or digital signal covers the potential loss area to provide the station's programming.

3. It is a priority of the Commission that all Americans continue to receive the television broadcast service that they are accustomed to receiving following the digital transition. To assist full-service stations to replace service to any loss areas, we propose to establish a new "replacement" digital television translator service for the purpose of maintaining broadcast service that the public has come to enjoy and depend upon. Accordingly, we propose to create a new "replacement" translator service that would permit full-service television stations to operate new digital translators to maintain existing service, and we request comment on this proposal on an expedited basis.

III. NOTICE OF PROPOSED RULEMAKING

A. Creation of New Replacement Digital Television Translator Service

4. We tentatively conclude that replacement translators should be licensed only for digital operation and should be licensed only on channels 2-59 and not for out-of-core channels 60-69. In order to prevent possible interference to public safety entities, and avoid the potential for displacement of replacement translator facilities, we believe that replacement translators should not be licensed on channels 60-69. We tentatively conclude that stations seeking a replacement translator on channels 52-59 be required to certify in their applications the unavailability of any suitable in-core channel for this purpose. We propose defining "suitable in-core channel" as one that would enable the station to produce a digital service area comparable to its analog service area. This is similar to the requirement we adopted for stations proposing a digital companion channel on channels 52-59.³ We further propose requiring stations seeking replacement translators on channels 52-59 to provide the notifications to wireless licensees that we adopted for low power television and TV translator stations seeking to flash cut or a digital companion channel on channels 52-59.⁴ We seek comment on these proposals.

5. We further tentatively conclude that applications for replacement translators should be given licensing priority over all other low power television and TV translator applications except displacement applications (for which they would have co-equal priority). Therefore, a replacement

² See Digital Television Distributed Transmission System Technologies, MB Docket No.05-312, *Report and Order*, FCC 08-256, ¶28, released November 7, 2008 (*DTS Report and Order*) (adopting a waiver policy to enable stations to address the situation where analog viewers of a station lose service when the station transitions to digital-only operations).

³ See Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, 19 FCC Red 19331, ¶71 (2004).

⁴ *Id.* Low power television and TV translator station digital flash cut and digital companion channel applicants on channels 52-59 are required to notify all potentially affected 700 MHz commercial wireless licensees of the spectrum comprising the proposed TV channel and the spectrum in the first adjacent channels thereto. They are also required to provide notification to co-channel and first adjacent channel licensees whose geographic service area boundaries lie within 75 miles and 50 miles, respectively, of the proposed digital LPTV or TV translator station location. A station seeking an on-channel digital conversion must provide such written notification at least 30 days in advance of filing its minor change application. An applicant for a digital companion channel must provide the required notifications within 30 days of submitting its "long-form" application. In both cases, applicants must certify in their applications that the notification requirements have been met.

translator application, when filed, would have processing priority over other applications for new stations, major changes and minor changes. Furthermore, we tentatively conclude that we should limit the eligibility for such service to only those full-service television stations that can demonstrate that a portion of their analog service area⁵ will not be served by their full, post-transition digital facilities and for translators to be used for that purpose. We seek comment on these tentative conclusions.

6. In *Unlicensed Operation in the TV Broadcast Bands*, we adopted rules to allow unlicensed radio transmitters to operate in the broadcast television spectrum at locations where that spectrum is not being used by licensed services (this unused TV spectrum is often termed “white spaces”).⁶ Unlicensed devices must fully protect the licensed services, such as television translators, that operate in the TV bands. We seek to comment on the effect, if any, of this new translator service on the prospects for future white spaces use of the spectrum.

7. We further tentatively conclude that the service area of the replacement translator should be limited to only a demonstrated loss area and seek comment on whether a replacement translator should be permitted to expand nominally a full-service station’s post-transition, digital service area in order to fully cover the loss area. We recognize that it may be impossible for some full-service stations to site a translator that replaces a loss area without also slightly expanding the station’s digital service area. Although we seek to limit these new translators to replacing service in a loss area, and not to expanding service, we tentatively conclude that we should allow *de minimis* expansion of service and seek comment on how to define the term “*de minimis*” in this context.

8. We tentatively conclude that replacement digital television translator stations should be licensed with “secondary” frequency use status. These stations would not be permitted to cause interference to, and must accept interference from, full-service television stations, certain land mobile radio operations and other primary services.⁷

B. Licensing of Replacement Digital Television Translator Stations

9. We tentatively conclude that, unlike other television translator licenses, the license for the replacement translator will be associated with the full power station’s main license.⁸ Therefore, the replacement translator license could not be separately assigned or transferred and would be renewed or assigned along with the full-service station’s main license. We believe that such a measure is necessary to ensure that the replacement translator service is limited to only those situations where a station seeks to restore service to a loss area and is used for that purpose.

10. We tentatively conclude that the other rules associated with television translator stations would apply to the new replacement translator service, including those rules concerning the filing of applications,⁹ payment of filing fees,¹⁰ processing of applications,¹¹ power limits,¹² out-of-channel

⁵ We define “analog service area” as the authorized service area actually served by the analog signal prior to analog termination for the transition, consistent with our approach in the DTS proceeding. *See DTS Report and Order* at ¶28.

⁶ *See Unlicensed Operation in the TV Broadcast Bands*, ET Docket No. 04-186, *Second Report and Order and Memorandum Opinion and Order*, FCC 08-260, November 14, 2008 (*Unlicensed Operation in the TV Broadcast Bands*).

⁷ *See, e.g.*, 47 C.F.R. §§ 74.703, 74.709, 90.303.

⁸ *See* 47 C.F.R. § 73.3540(e).

⁹ *See* 47 C.F.R. § 73.3572(a)(2).

¹⁰ *See* 47 C.F.R. § 1.1102.

¹¹ *See* 47 C.F.R. § 73.3572(a).

emission limits,¹³ call signs,¹⁴ unattended operation,¹⁵ and time of operation.¹⁶ We tentatively conclude that stations seeking a replacement digital television translator would submit a completed FCC Form 346 and pay the requisite \$675.00 filing fee for a new station. The Commission would process such applications, and those found acceptable would be placed on a “proposed grant” public notice subject to petitions to deny. New stations would receive a call sign assigned to digital translator stations (*e.g.*, K20AA-D). Although we expect full-service stations to quickly construct their replacement translator facilities, we seek comment on whether to limit the construction period for replacement translators to six months. Although TV translators are ordinarily afforded a three-year period for completion of construction,¹⁷ we believe that expedited construction of replacement translators is vital to the continued provision of television service following the digital transition and that a shorter construction period is warranted.

C. Interim Filing Procedures

11. In order to preserve service to possible loss areas and expedite the future consideration of applications for replacement translator facilities, we will begin accepting applications for replacement digital television translator stations following the release date of this Notice of Proposed Rulemaking. We will withhold the processing of such applications pending the outcome of this proceeding.¹⁸ In the interim full-service stations will be permitted to submit requests for special temporary authority (STA) pursuant to our existing STA procedures in order to operate temporary replacement translator facilities during the pendency of this proceeding. Applications will be filed on a first-come, first-serve basis.¹⁹ If we adopt our proposal to create this new service, and provide with them a processing priority, the processing of applications for replacement translators will be completed and mutually exclusive applications will be resolved by our broadcast competitive bidding rules.²⁰ We propose to allow a 10-day opportunity for mutually exclusive replacement translator applicants to settle or otherwise find an engineering solution to resolve their mutual exclusivity. We propose that this will expedite the final processing of such applications and ensure that stations are able to replace service to loss areas as quickly as possible

IV. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Act Analysis

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

(Continued from previous page) _____

¹² See 47 C.F.R. § 74.735.

¹³ See 47 C.F.R. § 74.736.

¹⁴ See 47 C.F.R. § 74.791.

¹⁵ See 47 C.F.R. § 74.734.

¹⁶ See 47 C.F.R. § 74.763.

¹⁷ See 47 C.F.R. § 73.3598.

¹⁸ We delegate to the Media Bureau authority to announce the exact date that applications for replacement translator stations will begin to be accepted and the interim procedures and policies that will be applied to such filings.

¹⁹ Any applications filed on or before the effective date of any rules adopted in this proceeding will be treated as if they were filed the day after the effective date.

²⁰ See 47 C.F.R. § 73.5000 *et seq.*

B. Initial Paperwork Reduction Act of 1995 Analysis

13. This NPRM proposes new information collection requirements to require full power stations seeking a replacement translator station to submit attachments to FCC Form 346 for new construction permit.²¹ As part of its continuing effort to reduce paperwork burdens and as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501-3520), the Commission will invite comments on the proposed information collection requirement and provide instructions for submitting such comments in the summary of this document that it will publish in the Federal Register. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), the Commission will also seek specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

C. Ex Parte Rules

14. Permit-But-Disclose. This proceeding will be treated as a “permit-but-disclose” proceeding subject to the “permit-but-disclose” requirements under section 1.1206(b) of the Commission’s rules.²² *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.²³ Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

D. Filing Requirements

15. Comments and Replies. Pursuant to Sections 1.415 and 1.419 of the Commission’s rules,²⁴ interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission’s Electronic Comment Filing System (“ECFS”), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies.²⁵

16. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response.

17. Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding,

²¹ See OMB Control No. 3060-0016 (Form 346).

²² See 47 C.F.R. § 1.1206(b); *see also* 47 C.F.R. §§ 1.1202, 1.1203.

²³ *See id.* § 1.1206(b)(2).

²⁴ *See id.* §§ 1.415, 1.419.

²⁵ *See Electronic Filing of Documents in Rulemaking Proceedings*, 13 FCC Rcd 11322 (1998).

filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

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

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

V. ORDERING CLAUSES

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

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Proposed Rules

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

Part 74 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority for Part 74 continues to read as follows:
Authority: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

Amend Section 74.787 to read as follows:

Section 74.787 Digital Licensing

* * * * *

(a) Applications for digital low power television and television translator stations.

* * * * *

(5) *Application for replacement digital television translator.*

(i) An application for replacement digital television translator may be filed by a full-service television station that can demonstrate that a portion of its analog service area will not be served by its full, post-transition digital facilities. Replacement digital television translator may operate on channels 2-59. Applications for replacement digital television translator shall be given licensing priority over all other low power television and TV translator applications except displacement applications (for which they shall have co-equal priority). The service area of the replacement translator shall be limited to only a demonstrated loss area. The license for the replacement digital television translator will be associated with the full power station's main license and may not be separately assigned or transferred and will be renewed with the full-service station's main license.

(ii) Each original construction permit for the construction of a replacement digital television translator station shall specify a period of six months from the date of issuance of the original construction permit within which construction shall be completed and application for license filed. The provisions of Section 74.788(c) of this chapter shall apply for stations seeking additional time to complete construction of their replacement digital television translator station.

(iii) A public notice will specify the date upon which interested parties may begin to file applications for replacement digital television translators. Such applications shall be filed on FCC Form 346, shall be subject to the appropriate application fee and shall be accepted on a first-come, first-serve basis. Mutually exclusive applications shall be resolved via the Commission's part 1 and broadcast competitive bidding rules, §1.2100 *et seq.* and §73.5000 *et seq.* of this chapter.

APPENDIX B

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”)¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (“IRFA”) concerning the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking (Notice)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments indicated on the first page of the *Notice*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for and Objectives of the Proposed Rules

2. Full-service television stations have been undertaking changes to their final, post-transition digital facilities in order to continue to provide the high level of service to their community of license after the completion of the digital transition. In some cases, a portion of the existing analog service areas of some full-service stations will no longer be able to receive service after the station transitions to digital broadcasting. Some of these “loss” areas are a result of unavoidable engineering changes that stations were required to implement in order to avoid interference or other problems on their post-transition digital channel. At times, the analog signal of certain full-service stations could not be replicated because of technical complexities. To assist full-service stations to replace service to these loss areas, this NPRM proposes to establish a new “replacement” digital television translator service that would permit full-service television stations to obtain new digital translators to maintain existing service and request comment on an expedited basis.

3. The NPRM tentatively concludes that replacement translators should be licensed only for digital operation and should be licensed on only channels 2-59 and not for out-of-core channels 60-69. The NPRM tentatively concludes that stations seeking a replacement translator on channels 52-59 be required to certify in their applications the unavailability of any suitable in-core channel for this purpose.

4. The NPRM further tentatively concludes that applications for replacement translators should be given licensing priority over all other low power television and TV translator applications except displacement applications (for which they would have co-equal priority). The NPRM also tentatively concludes that the Commission should limit the eligibility for such service to only those full-service television stations that can demonstrate that a portion of their analog service area will not be served by their full, post-transition digital facilities and for translators to be used for that purpose. The NPRM further tentatively concludes that the service area of the replacement translator should be limited to only a demonstrated loss area and seeks comment on whether a replacement translator should be permitted to expand slightly a full-service station’s post-transition, digital service area. Finally, the NPRM tentatively concludes that replacement digital television translator stations should be licensed with “secondary” frequency use status.

5. The NPRM tentatively concludes that, unlike other television translator licenses, the license for the replacement translator should be associated with the full power station’s main license. Therefore, the replacement translator license could not be separately assigned or transferred and would be renewed or assigned along with the full-service station’s main license. The NPRM also tentatively

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996).

² See 5 U.S.C. § 603(a).

³ See *id.* § 603(a).

concludes that the other rules associated with television translator stations would apply to the new replacement translator service including those rules concerning the filing of applications, payment of filing fees, processing of applications, power limits, out-of-channel emission limits, call signs, unattended operation, and time of operation. The NPRM seeks comment whether to limit the construction period for replacement translators to six months.

6. In order to preserve service to possible loss areas, and expedite the future consideration of applications for replacement translator facilities, the NPRM announces that the Commission will begin accepting applications for replacement digital television translator stations following the release date of the NPRM. The Commission will withhold the processing of such applications pending the outcome of the rulemaking proceeding. In the interim, full-service stations will be permitted to submit requests for special temporary authority (STA) in order to operate temporary replacement translator facilities during the pendency of this proceeding. The NPRM delegates to the Media Bureau authority to announce the exact date that applications for replacement translator stations will begin to be accepted and the interim procedures and policies that will be applied to such filings. Applications will be filed on a first-come, first-serve basis.

B. Legal Basis

7. The authority for the action proposed in this rulemaking is contained in Sections 1, 4(i) and (j), 7, 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336, 337, 614 and 615 of the Communications Act of 1934, 47 U.S.C §§ 151, 154(i) and (j), 157, 301, 302a, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336, 337, 534, and 535. [conform to para. 22]

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

8. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted.⁴ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.”⁵ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁶ 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.⁷

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

⁴ *Id.* § 603(b)(3).

⁵ 5 U.S.C. § 601(6).

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

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

⁸ See 13 C.F.R. § 121.201, NAICS Code 515120 (adopted Oct. 2002).

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

Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database (BIA) on March 30, 2007, about 986 of an estimated 1,374 commercial television stations¹⁰ (or approximately 72 percent) have revenues of \$13.5 million or less and thus qualify as small entities under the SBA definition. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations¹¹ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission has estimated the number of licensed NCE television stations to be 380.¹² The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

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

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

12. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

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

¹⁰ Although we are using BIA's estimate for purposes of this revenue comparison, the Commission has estimated the number of licensed commercial television stations to be 1374. See News Release, "Broadcast Station Totals as of December 31, 2006" (dated Jan. 26, 2007); see <http://www.fcc.gov/mb/audio/totals/bt061231.html>.

¹¹ "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 C.F.R. § 121.103(a)(1).

¹² Broadcast Stations Total as of December 31, 2006.

¹³ See 13 C.F.R. § 121.201, NAICS Code 515120.

¹⁴ See News Release, "Broadcast Station Totals as of December 31, 2006" (dated Jan. 26, 2007); <http://www.fcc.gov/mb/audio/totals/bt061231.html>.

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

13. The *Notice* proposes one new reporting requirement. The *Notice* proposes that full-service stations seeking a new replacement digital television translator station submit a showing with their FCC Form 346 that they have a loss area as a result of their transition to digital and that the proposed replacement translator will serve the loss area. The new reporting requirement will not differently affect small entities.

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

14. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹⁵

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

16. The NPRM tentatively concludes that replacement translators should be licensed only for digital operation and should be licensed on only channels 2-59 and not for out-of-core channels 60-69. Alternatively, the Commission could have allowed stations to file for analog facilities but the digital transition for full power stations is closely approaching thus making the need for further analog service unnecessary. Further, the Commission could have allowed for replacement translators to be filed on channels 60-69, but it is likely that these stations would very quickly be displaced by wireless and public safety entities and small entities would waste their resources and time having to find a new channel for their proposed facility. The NPRM tentatively concludes that stations seeking a replacement translator on channels 52-59 be required to certify in their applications the unavailability of any suitable in-core channel for this purpose. The alternative approach would be to not require a certification, but that could lead to administrative delay and a waste of administrative resources as the staff would have to verify the lack of channels.

17. The NPRM further tentatively concludes that applications for replacement translators should be given licensing priority over all other low power television and TV translator applications except displacement applications (for which they would have co-equal priority). The Commission could have proposed allowing no such priority, but this alternative was not considered because it would result in many more mutually exclusive filings and delay the implementation of this valuable service. The NPRM also tentatively concludes that the Commission should limit the eligibility for such service to only those full-service television stations that can demonstrate that a portion of their analog service area will not be served by their full, post-transition digital facilities and for translators to be used for that purpose. Alternatively, the Commission could have allowed all interested parties to file for new translators, however such approach was not considered because it would also result in numerous mutually exclusive filings and would greatly delay implementation of this needed service. The NPRM further tentatively concludes that the service area of the replacement translator should be limited to only a demonstrated loss area and seeks comment on whether a replacement translator should be permitted to expand slightly a full-service station's post-transition, digital service area. Once again, the Commission could have

¹⁵ 5 U.S.C. § 603(c)(1)-(c)(4).

allowed stations to file for expansion of their existing service areas but such an alternative was not seriously considered because it could result in the use of valuable spectrum that the Commission seeks to preserve for other uses such as new digital low power service. Finally, the NPRM tentatively concludes that replacement digital television translator stations should be licensed with “secondary” frequency use status. The Commission could have proposed that replacement translators be licensed on a primary frequency use basis, but this alternative was not proposed because it would result in numerous interference and licensing problems and could disrupt the full-power digital transition.

18. The NPRM tentatively concludes that, unlike other television translator licenses, the license for the replacement translator should be associated with the full power station’s main license. Therefore, the replacement translator license could not be separately assigned or transferred and would be renewed or assigned along with the full-service station’s main license. Alternatively, the Commission could have proposed that the replacement translator license be separate from the main station’s license however this approach was not seriously considered because it could result in licenses being sold or modified to serve areas outside of the loss area, would undermine the purpose of this new service. The NPRM also tentatively concludes that the other rules associated with television translator stations would apply to the new replacement translator service including those rules concerning the filing of applications, payment of filing fees, processing of applications, power limits, out-of-channel emission limits, call signs, unattended operation, and time of operation. The alternative could have been to design all new rules for this service, but that alternative was not considered as it would adversely impact stations ability to quickly implement these new translators. The NPRM seeks comment whether to limit the construction period for replacement translators to six months. Alternatively, the Commission could have proposed that the existing three-year construction period be allowed, however that alternative was not proposed in an effort to ensure that replacement translators are built and operating quickly to replace loss areas.

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

19. None.

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

RE: Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Replacement Digital Low Power Television Translator Stations (MB Docket No. 08-253)

I support this new rulemaking as another potential means of helping consumers who may find themselves without over-the-air access to one or more of their favorite broadcast stations after February 17, 2009, the nation's digital television transition deadline. Like the rules we adopted in November 2008 for Distributed Transmission System ("DTS") technology, these proposed rules for establishing a new DTV "replacement" translator service could assist television broadcasters in overcoming two types of technical issues that may limit the reach of their over-the-air digital signals. First, new translator facilities may help TV broadcasters solve a "digital cliff" problem, *i.e.*, the abrupt loss of the signal due to interference within their authorized DTV service area. Second, those broadcasters whose digital signals are designed to cover a smaller territory than their old analog signals might use these new DTV translators to push their signals out to regain lost ground.

It remains to be seen, however, just how feasible – both technically and financially – this new TV translator service may be. For example, in contrast to DTS technology which operates on the same frequency as the broadcaster's existing TV station, the proposed TV translators must use different frequencies. How much room, particularly in big-city markets, will there be for such new facilities? And what effect, if any, would the new TV translator service have on the future use of "white spaces" for other wireless services? From the financial perspective, some posit that the proposed DTV replacement service is a more economically attractive option than DTS. Even if that is so, are financially strapped broadcasters today going to spend their money on these new facilities when it is tough enough to keep the core service going? I look forward to reviewing comments on these questions and the many others posed in the Notice.

No matter how this rulemaking ends, it will not resolve all DTV coverage problems by February 17. Those issues have been troubling to me for awhile. During my DTV outreach trips, I have made a special point of urging each local TV station to educate its own audience *now* about any known technical issues that may deprive some viewers of access to a good over-the-air signal after the transition. Whether a broadcaster chose to contract its DTV signal or was forced by technical circumstances to do so, I believe that the station's public interest obligation includes informing its local audience, directly and plainly, about any predicted loss of over-the-air service.

And all broadcasters need to keep up – and, in fact, step up – the pace to educate and assist the approximately 12 percent of the nation's households that rely solely on rabbit-ear or rooftop antennas to obtain television service. It is these viewers who most concern me now. There are some hopeful developments on this front. Recent NTIA statistics show that a growing number of Americans are applying for the government coupons to help subsidize the purchase of DTV converter boxes that will keep analog sets operating after February 17. TV broadcasters in many markets are jointly running "soft tests" in their communities to warn consumers with analog sets about the need to take action. I hope that stations continue to run such tests, and that they do so for increasingly longer intervals to make sure that the message gets heard. I continue to encourage broadcasters in each market to band together to operate local phone banks and work with third-party groups to assist those who need help installing converter boxes or adjusting antennas. I also applaud NAB for recently announcing the establishment of a nationwide hotline to answer consumer calls about the transition. And I'm pleased that Congress has passed the SAFER Act – the so-called "DTV Analog Nightlight" legislation – that will allow broadcasters to continue to provide DTV education and public safety information in analog format for 30 days after the transition deadline.

Despite these signs of progress, it appears likely that the DTV transition will be messy for those who, by choice or circumstance, must depend on converter boxes to keep TV service in their homes. For that reason, I strongly encourage everyone to join the government and industry to help those most at risk of being left behind when the change comes: the elderly, the infirm, low-income individuals, and non-English speakers. People should not wait until February 17 to help themselves and their neighbors, friends, and family get ready for DTV. I particularly urge those who don't need the government subsidy not to wait on that process before purchasing a converter box for themselves or as a gift for someone else. During the weeks it takes for the government to process coupon requests, you will lose precious time to hook up the box, check antenna connections, and start enjoying free digital broadcast TV right away.