

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

REPORT AND ORDER

Adopted: May 8, 2009

Released: May 8, 2009

By the Commission:

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I. INTRODUCTION

1. With this Report and Order, we create a new, "replacement" digital television translator service to permit full-service television stations to continue to provide service to viewers within their coverage areas who have lost service as a result of those stations' digital transition. In the Notice of Proposed Rulemaking, we sought comments on how to implement this new service and tentatively concluded 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.<sup>1</sup> Moreover, we adopted interim procedures in the *NPRM* to begin acceptance of applications for replacement digital television translators and to provide authorization of temporary replacement digital television translator facilities pending our adoption of permanent rules.<sup>2</sup> We have received 20 applications for replacement digital television translators filed by 14 stations, and 8 requests for authorization of temporary replacement digital television translator facilities.<sup>3</sup> We received 18 comments, 8 reply comments, and one *ex parte* letter in response to the *NPRM*.<sup>4</sup>

## II. BACKGROUND

2. The Commission created television translator stations to bring television service to viewers “otherwise unserved or underserved” by existing service providers.<sup>5</sup> Full-service television stations often use television translators to fill in their protected service areas that are not receiving service due to terrain, engineering, or other limitations, while stations, local governments, community groups, and others use translators to provide service outside the primary station’s service contours, often in very rural or isolated areas. In this proceeding we address “in-contour” or “fill-in” translators but, to address the problems faced by more distant translators as a result of the digital transition, we will soon be releasing a Public Notice to announce the initiation of first-come, first-serve licensing for new digital LPTV and TV translator facilities, consistent with our rules.

3. Full-service television stations must complete their transition to digital transmission of signals by June 12, 2009, when they must terminate all analog operations.<sup>6</sup> Full-service television stations are continuing to make 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 that their viewers previously received. In some cases, a portion of the existing analog service area of a full-service station 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 service area of certain full-service stations could not be fully 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) construct a

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<sup>1</sup> *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, 23 FCC Rcd 18534, ¶ 1 (2008) (“*NPRM*”).

<sup>2</sup> *NPRM*, 23 FCC Rcd at 18534, ¶ 1; *see also* “Media Bureau Announces Application and STA Filing Procedures for New Replacement Digital Television Translators Beginning January 5, 2009, DA 08-2818, released December 30, 2008.

<sup>3</sup> *See* Appendix D – List of Interim Applications for Replacement Digital Translators and Requests for Temporary Replacement Digital Translator Facilities.

<sup>4</sup> *See* Appendix A – List of Commenters. Comments in response to the *NPRM* were due on Jan. 12, 2009, and replies were due Jan. 22, 2009.

<sup>5</sup> *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 collectively as “low power television stations.”

<sup>6</sup> *See DTV Delay Act*, Pub. L. No. 111-4, 123 Stat. 112 (2009) (“*DTV Delay Act*”). The *DTV Delay Act* extended the DTV transition date from February 17, 2009 to June 12, 2009.

distributed transmission system (“DTS”)<sup>7</sup> with synchronized translators on the same channel; (3) apply to change broadcast channels; (4) change antennas to improve coverage; (5) move transmitting towers; (6) negotiate a multicast programming arrangement to use the subchannel of a nearby station whose signal covers the loss area; or (7) partner with a low power station whose analog or digital signal covers the loss area to provide the station’s programming.

4. It is the Commission’s goal that, following the digital transition, all Americans continue to receive the television broadcast service that they are accustomed to receiving to the greatest extent feasible. To assist full-service stations to replace service to any loss areas, we establish a new, “replacement” digital television translator service for the purpose of maintaining broadcast service that the public has come to depend upon and enjoy. However, to the extent that these replacement translators will operate on a different channel than the main station, we encourage broadcasters to consider potentially more spectrally efficient means to maintain service to existing analog viewers (e.g., maximization, DTS).

### III. DISCUSSION

#### A. Creation of New, Replacement Digital Television Translator Service

5. Based upon the record, we adopt our proposal to create a new, “replacement” digital television translator service to enable full-service television stations to continue to provide service to viewers in loss areas inside their protected analog service contour created as a result of their transition to digital operations. Numerous commenters agree with our assessment that creation of this new translator service will permit television stations to reach existing in-contour analog viewers that will not receive service upon completion of the DTV transition.<sup>8</sup> The National Association of Broadcasters and the Association of Maximum Service Television, Inc (“NAB/ MSTV”) state that, like the rest of the nation, broadcasters are “eagerly awaiting the switch to all-digital broadcasting;” however, with the improved quality of DTV “comes some new challenges, including possible reception issues.”<sup>9</sup> We agree with NAB/MSTV that replacement translators and other solutions adopted by the Commission “will help broadcasters fill in some of those areas.”<sup>10</sup> Thomas C. Smith points out the reception problems experienced during the early DTV transition in Wilmington, North Carolina, and states that the Commission should “do all it can to provide broadcasters with the tools to guarantee service to all TV viewers.”<sup>11</sup> Since the adoption of the *NPRM* and the interim filing procedures, we have received 20 applications from 14 stations seeking replacement translators. All of these stations cite the need to replace service to analog viewers lost as a result of the stations’ transition to digital.

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<sup>7</sup> See *Digital Television Distributed Transmission System Technologies*, MB Docket No.05-312, Report and Order, 23 FCC Rcd 16731, 16748, ¶28 (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).

<sup>8</sup> See, e.g., Association of Public Television Stations (“APTS”) Comments at 1; NAB/MSTV Comments at 1-2; Idaho Public Television Comments at 2; Thomas C. Smith Comments at 1; Cohen, Dippell and Everist (“CDE”) Comments at 1; see also Community Broadcasters Association (“CBA”) Comments at 2, stating that the Commission’s proposal “points in the right direction in terms of ensuring that if replacement translators are authorized and are given any priority treatment, they will be confined to meeting the need for fill-in service.”

<sup>9</sup> NAB/MSTV Comments at 1-2.

<sup>10</sup> *Id.*; see also NAB/MSTV Reply Comments at 1-2.

<sup>11</sup> Thomas C. Smith Comments at 1.

6. The National Translator Association (“NTA”) opposes our creation of a replacement translator service and believes that “a much simpler and more productive approach to providing needed translators” would be to “simply open unrestricted TV translator filings....”<sup>12</sup> Although we are sympathetic to the desires of the low power television community to provide new and expanded low power digital service, we continue to believe that we must place a priority on the facilitation of the full-service television digital transition and the avoidance of the loss of service that may result from the transition.<sup>13</sup> Therefore, we conclude that the licensing of replacement digital television translators must take precedence over the licensing of new digital translators and low power television stations. We do not believe that this approach will unduly diminish new low power digital service opportunities because we will shortly announce a near-term date upon which we will begin accepting applications pursuant to the first-come, first-serve licensing scheme for new digital translators and low power television stations originally envisioned in our 2004 LPTV digital order.<sup>14</sup> This action will create the opportunities for new and expanded digital low power television service sought by NTA.

7. Dell, Inc., Google, Inc. and Microsoft Corp. (“Dell/Google/Microsoft”) also oppose our proposal for replacement translators, arguing that replacement translators “should not be authorized in any manner that would decrease broadcasters’ incentive to deploy DTS systems and/or the other more spectrally efficient means the Commission has provided.”<sup>15</sup> These commenters, as well as CBA, request that replacement translators not be authorized “absent a showing that [other technical solutions are] technically infeasible.”<sup>16</sup> Dell/Google/Microsoft argue that “[b]ecause white space devices cannot transmit within the service contour of a full-power television station even when a viewable signal is not present, replacement translator systems would result in numerous locations where a white space device would have to avoid two television channels simply to protect a single television signal.”<sup>17</sup> CBA argues that replacement translators will “shrink opportunities for small business and new entrants to improve existing Class A and LPTV facilities and to apply for new stations to bring new programming to the

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<sup>12</sup> NTA Comments at 1.

<sup>13</sup> See generally Digital Television and Public Safety Act of 2005 (“DTV Act”), which is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006), codified at 47 U.S.C. §§ 309(j)(14) and 337(e), as amended by DTV Delay Act, Pub. L. No. 111-4, 123 Stat. 112 (2009) (establishing June 12, 2009 as a new hard deadline for the end of analog transmissions by full-power stations); 47 U.S.C. § 309 Note (directing the Commission to “take such actions as are necessary (1) to terminate all licenses for full-power television stations in the analog television service, and to require the cessation of broadcasting by full-power stations in the analog television service, by February 18, 2009; and (2) to require by February 18, 2009, ... all broadcasting by full-power stations in the digital television service, occur only on channels between channels 2 and 36, inclusive, or 38 and 51, inclusive (between frequencies 54 and 698 megahertz, inclusive).”); *id.* at §§ 336 Note (requiring the Commission to assign paired digital television channels “to further promote the orderly transition to digital television”), 336(b) (expressing Congressional interest in the transition from analog to digital television and reading, in pertinent part, “[i]n prescribing the regulations required by subsection (a), the Commission shall ... (5) prescribe such other regulations as may be necessary for the protection of the public interest, convenience, and necessity.”).

<sup>14</sup> See *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Report and Order, 19 FCC Rcd 19331, 19354, ¶71 (2004) (“*Digital Low Power Report and Order*”).

<sup>15</sup> Dell/Google/Microsoft Reply Comments at 3-4.

<sup>16</sup> *Id.*; CBA Comments at 2.

<sup>17</sup> Dell/Google/Microsoft Reply Comments at 3.

nation's communities.”<sup>18</sup> We disagree that our adoption of a new, replacement translator service will unduly impact either the use of “white spaces” or the ability of interested parties to establish new or improve existing translator or LPTV service. The rules we adopt today will limit the service areas of replacement translators to only those areas where an existing full-service television station is able to demonstrate a loss in service as a result of its transition to digital and *de minimis* extension areas where necessary to provide service to loss areas. With service limited to only those areas that were previously served by a full-service station, and with licenses associated with the full-service station license so that they cannot be separately assigned or transferred, it is not likely that replacement translators will have a substantial impact on other uses of this spectrum. Furthermore, we seek to provide full-service stations with the flexibility to employ the technical means they find most feasible to replace service to potential loss areas. While we therefore will not adopt a requirement that stations demonstrate that all other technical solutions are infeasible before authorizing a replacement translator, we do encourage stations to consider other, potentially more spectrally efficient solutions such as maximization and DTS.

8. Dell/Google/Microsoft also argue that a “replacement translator service that is not carefully tailored in the proper way could foreclose the use of many unlicensed white space channels – taking away with one hand what the Commission just gave to consumers with the other hand.”<sup>19</sup> We are unpersuaded by this argument because unlicensed white space devices are already required to protect television translators. As we stated in the *NPRM*, consistent with the *Unlicensed Operation in the TV Bands* decision,<sup>20</sup> unlicensed devices must continue to fully protect replacement digital television translators in order to ensure that full-power post-transition digital television stations can deliver uninterrupted service to their entire pre-transition analog service area through the use of this service. Furthermore, we find that the importance of providing broadcasters flexibility to replace lost service with translator service outweighs concerns about impinging on the use of unlicensed white space devices in such a limited number of areas.

#### **1. Licensing of Replacement Digital Television Translators on Channels 2-51**

9. We adopt our tentative conclusion that replacement digital television translators should be licensed only for digital operation. No commenters suggest that replacement translators be authorized as analog facilities, and we continue to believe that we must focus on the licensing of digital-only stations for the low power television services. We also conclude that we should forego licensing replacement translators on channels 60-69 in order to prevent possible interference to public safety entities and to avoid the potential for immediate displacement of critical replacement translator facilities.<sup>21</sup>

10. Contrary to our tentative conclusion, we will not license replacement translators on television channels 52-59.<sup>22</sup> Based upon the record developed in this proceeding, we conclude that the use of channels 52-59 for the new fill-in translator service would not be appropriate. Although we have

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<sup>18</sup> CBA Comments at 2.

<sup>19</sup> Dell/Google/Microsoft Reply Comments at 2.

<sup>20</sup> *NPRM*, 23 FCC Rcd at ¶ 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*”).

<sup>21</sup> See National Public Safety Telecommunications Council (“NPSTC”) Comments at 3, concurring with the Commission’s tentative conclusion that replacement translators should be licensed only on channels 2-59 and not on channels 60-69.

<sup>22</sup> Channels 60 – 69, 746-806 MHz, have been reallocated to Public Safety Entities upon completion of the digital television transition. *Reallocation of Television Channels 60-69, the 746-806 MHz Band*, Report and Order, 12 FCC Rcd 22953 (1997).

previously allowed for the licensing of digital LPTV and TV translator facilities on channels 52-59 in conjunction with the digital low power television transition,<sup>23</sup> we recognize the concerns of the 700 MHz wireless entities that oppose allowing new replacement translators to be licensed on channels 52-59.<sup>24</sup> We agree with United States Cellular Corporation (“USCC”) that licensing of new replacement translators on channels 52-59 may “impede and complicate the prompt deployment of advanced wireless services by Auction 73 and other 700 MHz licensees.”<sup>25</sup> We do not agree with those wireless commenters that “overstate the potential”<sup>26</sup> for interference to new wireless facilities from replacement translators. However, we appreciate AT&T’s concern that “while a primary wireless licensee would have a theoretical legal right to terminate the [interfering] DTV translator operations of the secondary user, vindicating that right can be difficult, costly, and time-consuming.”<sup>27</sup> We find that it is unlikely that television stations would seek a replacement translator on an out-of-core channel only to later be displaced by a primary wireless licensee. None of the applications we have received for replacement translators have proposed channels 52-59. Therefore, it does not appear that prohibiting the use of channels 52-59 for new replacement translators will diminish the opportunities for full-power stations to replace lost analog service. Therefore, we shall limit replacement translators to only in-core channels 2-51.

## 2. Processing Priority

11. We adopt our tentative conclusion that applications for replacement digital television translators will have processing priority over applications filed by other low power television and TV translator stations, except displacement applications (with which they would have co-equal priority). Thus, replacement translator applications and low-power displacement applications will be processed on a first-come, first-served basis, and the earlier filed application will prevail. By contrast, a replacement translator application will receive priority over non-displacement low-power and translator applications even if the latter are first-filed. Applications for replacement translator stations, however, must provide the requisite interference protection to authorized analog and digital low power television, and TV translator facilities. We further clarify that applications filed for full-service television and Class A television stations will continue to have processing priority over applications for replacement digital television translators.

12. It is a Commission priority to expeditiously assist full-service television stations both to transition to digital broadcasting and to digitally replicate their pre-transition analog service areas by the

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<sup>23</sup> See *Digital Low Power Report and Order*, 19 FCC Rcd at 19354, ¶ 71.

<sup>24</sup> See USCC Comments at 3 and Reply Comments at 1-3; QUALCOMM Comments 2-4; AT&T Comments at 2-6 and Reply Comments at 1-4; CTIA Comments at 1-4; Consolidated Telecommunications Co. Comments at 2-6; Rural Telecommunications Group, Inc. Comments at 2-4; TCA, Inc. Comments at 2-8 and Reply Comments at 2-6. Consolidated Telecommunications Co. incorrectly states that licensing of additional low power television stations on channels 52-59 is in “direct opposition to Commission’s policies regarding the continued use of the Lower 700 MHz Band for low power television and television translator services.” Consolidated Telecommunications Co. Comments at 4. However, when channels 52-59 were reallocated for new commercial wireless uses, the Commission concluded that it would continue to permit use of channels 52-59 by low power television stations. See *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Report and Order, 17 FCC Rcd 1022 (2002). Furthermore, in the *Digital Low Power Report and Order*, the Commission noted its previous conclusion and permitted channels 52-59 to be used on a digital basis by LPTV and TV translator stations. See *Digital Low Power Report and Order*, 19 FCC Rcd at 19354, ¶ 71.

<sup>25</sup> USCC Comments at 3.

<sup>26</sup> NAB/MSTV Reply Comments at 4.

<sup>27</sup> *Id.* at 6.

DTV statutory deadline.<sup>28</sup> We envision that replacement digital television translators will be a tool that full-service stations can use to successfully provide digital television service to their entire pre-transition analog service areas. We conclude that applications for replacement translators must be given processing priority to ensure that stations are quickly able to obtain the necessary authorization to begin constructing their replacement facility. Low power television and TV translator stations are not currently required to convert to digital broadcast by a congressionally mandated date and therefore do not require the expedited processing needed for replacement translators.<sup>29</sup> We find that displaced low power television and television translator applicants, however, warrant co-equal priority because their viewers have lost television service that they are accustomed to receiving, and we seek to assist all television stations to maintain their existing analog service coverage through the digital transition.

13. Only CBA and NTA submitted comments on the proposal that applications for replacement digital television translators should be given priority over all other low power television and television translator applications except displacement applications (with which they would have co-equal priority). CBA supports our tentative conclusion that replacement digital television translators should not have priority over displacement applications. CBA urges the Commission to “adhere to its proposal not to afford replacement translator applications priority over Class A or LPTV displacement applications because where the alternative is between enhancing a voice or silencing a voice, no voice should be silenced.”<sup>30</sup> NTA, on the other hand, suggests that “any pending translator/LPTV application that is rendered ungrantable by an RD translator [replacement digital television translator] application should be allowed full displacement privileges including a channel change.”<sup>31</sup> NTA also proposes that “[a]ny RD translator application that renders a pending LPTV/translator application ungrantable should be required to demonstrate that the RD translator applicant cannot reach its fill-in coverage objective without negatively impacting the earlier-filed lower-priority application.”<sup>32</sup> We reject NTA’s proposal because giving full displacement privileges to pending translator and low power television applicants rendered not grantable by this new service would frustrate achievement of the Commission’s goal of expeditiously assisting full-service television station applicants seeking to fully transition their entire analog service areas to digital broadcasting by June 12, 2009. NTA’s proposal would increase the number of co-equal applications and delay processing for full-service stations seeking this service. Furthermore, we reject NTA’s proposal to burden full-service replacement digital television translator applicants with the requirement of making a showing that they cannot achieve their fill-in coverage objectives without negatively impacting an earlier-filed, lower-priority translator or low power television application. The goal of this new service is to ease the digital transition for full-service stations, not create more obstacles. Moreover, replacement digital television translator applicants will be full-service stations seeking to duplicate their pre-transition analog service areas, thereby serving an important public policy goal for the reasons explained above. Therefore, we adopt our tentative conclusion that applications for replacement digital television translators will be entitled to processing priority over the applications of low power television and television translator stations, except displacement applications (with which they will have

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<sup>28</sup> See *supra* n.13.

<sup>29</sup> 47 U.S.C. §§ 309(j)(14) and 337(e). The Commission previously determined that it has discretion under 47 U.S.C. § 336(f)(4) to set the date by which analog operations of stations in the low power and translator service must cease. *Digital Low Power Report and Order*, 19 FCC Rcd at 19336, ¶ 12. The Commission opted not to establish a fixed termination date for the low power digital television transition until it resolved the issues concerning the transition of full-power television stations. *Id.* at 19336 ¶ 19.

<sup>30</sup> CBA Comments at 3.

<sup>31</sup> NTA Comments at 1.

<sup>32</sup> *Id.*

co-equal priority).

### 3. Eligibility

14. We also adopt our tentative conclusion that eligibility for the replacement digital television translator service be limited to only those full-service television stations<sup>33</sup> that can demonstrate that a portion<sup>34</sup> of their analog service areas will not be served by their full, post-transition digital facilities and that the proposed replacement digital television translator service will be used for that purpose. We adopt this requirement because only full-service television stations are required to transition to digital broadcast by June 12, 2009, and the Commission's priority is to expeditiously assist full-service stations to maintain their analog service areas through the digital transition. Furthermore, the goal of this new service is digital replication of full-power analog television service areas, not their expansion.

15. Few commenters tendered specific comments on this proposal. All but one of these commenters express support for our proposal that this new service be available only to full-service stations that can demonstrate that a portion of their analog service areas will not be served by their full, post-transition digital facilities.<sup>35</sup> We agree with Thomas C. Smith that "these stations [should] be used to fill reception gaps that arise in differences from their analog and digital coverage areas."<sup>36</sup> Only NTA objects to limiting this new service to post-transition full-service digital television stations that can demonstrate loss in their former analog service areas.<sup>37</sup> NTA proposes that all television applicants should be eligible for this service and that this new service should not be restricted to demonstrated loss areas.<sup>38</sup> We reject NTA's proposal as the Commission's current priority is to assist full-power television stations with the digital conversion. As noted earlier, however, we will also shortly address the need for new digital low power service outside of full-service stations' contours.<sup>39</sup> We conclude that eligibility for the replacement digital television translator service will be limited to only those full-service television stations that can demonstrate that a portion of their analog service areas will not be served by their full, post-transition digital facilities and the proposed digital television translator will be used for that purpose.

16. CBA suggests that replacement digital television "translators should be authorized only where the applicant can demonstrate clearly that an on-channel booster or the new recently authorized distributed transmission technology would not be effective."<sup>40</sup> We reject this proposal for the reasons

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<sup>33</sup> "Full-service television stations," as used in the context of this Report and Order, is defined as any operating full-service television station, including full-service stations that are operating under special temporary authority ("STA") to maintain existing service.

<sup>34</sup> TCA, Inc. and USCC object to this tentative conclusion and allege that the *NPRM* fails to define the term "portion," and therefore "the Commission's proposed method of identifying qualifying 'loss areas' lacks specificity." TCA, Inc. Comments at 4; USCC Reply Comments at 3. We did not intend in the *NPRM* to imply that a minimum or maximum amount of analog loss area is required for a full-service post-transition digital station to apply for the replacement digital television translator service. Rather, any full-service post-transition digital station has the flexibility to serve any size analog loss area as long as the station is otherwise able to comply with the other technical requirements adopted in this proceeding.

<sup>35</sup> CDE Comments at 1; CBA Comments at 2; Thomas C. Smith Comments at 1; Joseph M. Davis Reply Comments at 1.

<sup>36</sup> Thomas C. Smith Comments at 1.

<sup>37</sup> NTA *ex parte* Letter at 2.

<sup>38</sup> NTA *ex parte* Letter at 2; NTA Comments at 1.

<sup>39</sup> *See supra* ¶ 2.

<sup>40</sup> CBA Comments at 2.

stated above, although, as also stated above, we encourage stations to consider potentially more spectrally efficient methods for maintaining service to existing analog viewers.<sup>41</sup> We agree with NAB/MSTV that “[r]equiring broadcasters to show that DTS or on-channel boosters are not viable alternatives is an unnecessary time-consuming hurdle that runs contrary to the purpose of this proceeding.”<sup>42</sup> As NAB/MSTV state, “DTS requires a larger investment in a more complex technology than translators,”<sup>43</sup> and not all stations have the financial means to utilize DTS technology. We desire to provide full-service stations with the flexibility to decide the best method for replacing service in analog loss areas.

17. We also reject NAB/MSTV’s proposal that “[t]he Commission should provide [b]roadcasters flexibility when demonstrating ‘loss area’” by providing “latitude in methodology for broadcasters to demonstrate the existence of a loss area<sup>44</sup> and to allow broadcasters to demonstrate (with field strength measurements conducted per § 73.686(c)) that there is deficient field strength in such areas.”<sup>45</sup> We reject this proposal because it would be unduly burdensome to oversee and administer. Furthermore, in this Report and Order, we adopt our tentative conclusion to allow post-transition full-service stations *de minimis* expansion of their analog service areas,<sup>46</sup> and we believe that measure will provide broadcasters with sufficient flexibility.

#### 4. Service Area

18. We adopt our tentative conclusion to limit the service area of the replacement translator to post-transition full-service stations’ analog loss areas.<sup>47</sup> All applicants for the replacement digital television translator service must submit an engineering study that depicts both the full-service station’s analog service area, as well as its post-transition digital facility which does not serve that station’s entire analog service area and therefore demonstrates an analog loss area. The purpose of replacement digital television translators is to provide service to analog loss areas, not to expand full-service post-transition stations’ service areas. However, we recognize that it may be impossible for some post-transition full-service stations to site translators that replace analog loss areas without also slightly expanding their analog service areas. Therefore, as outlined below, we adopt our proposal and allow full-service stations seeking replacement digital television translators to propose a *de minimis* expansion of their analog service areas upon a showing that it is necessary<sup>48</sup> to replace service in their post-transition analog loss areas.

19. In addition, we adopt our conclusion that “analog service area” be defined “as the existing, authorized, protected service area actually served by the analog signal prior to analog termination for the [DTV] transition, consistent with our approach in the DTS proceeding.”<sup>49</sup> We adopt

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<sup>41</sup> See *supra* ¶ 7.

<sup>42</sup> NAB/MSTV Reply Comments at 6-7.

<sup>43</sup> *Id.* at 6.

<sup>44</sup> OET Bulletin No. 69, "Longley-Rice Methodology for Evaluating TV Coverage and Interference" (rel. Feb 6, 2004).

<sup>45</sup> NAB/MSTV Comments at 3.

<sup>46</sup> See *infra* ¶ 22.

<sup>47</sup> *NPRM*, 23 FCC Rcd at 18536, ¶7.

<sup>48</sup> In this context, a showing of “necessary” requires that the post-transition full-service digital television station demonstrate, through an engineering exhibit, that it is not possible to site a replacement digital television translator without “*de minimis*” expansion of the station’s analog service area.

<sup>49</sup> *NPRM*, 23 FCC Rcd at 18535, ¶5, ft. note 5 (citing *DTS Report and Order*, 23 FCC Rcd 16745, ¶ 28).

this definition because the purpose of this new service is to provide digital television service to post-transition analog loss areas. We do not agree with NTA's interpretation of the *NPRM* that "the allowed location and coverage area [of replacement digital television translators] would be governed by the 'Table of Distances' in the 'Distributed Transmission System Technologies Report and Order.'"<sup>50</sup> The Table of Distances approach to defining service contour presented in the *DTS Report and Order* "defines each full-power DTV station's hypothetically maximized service areas" and "in the vast majority of cases, ... exceed[s] a station's currently authorized [analog] coverage contour."<sup>51</sup> Replacement digital television translators are intended to serve digital full-service stations' analog loss areas. This new service is not intended for digital full-service stations to use in proposed digital service areas, where analog service did not formerly exist. There is no expectation of continued service in these newly served areas. Traditional, lower priority translators can be used to improve service in these areas.

20. We believe that some post-transition full-service stations should be allowed a *de minimis* expansion of their analog service areas, in order to properly engineer their replacement translators. Several commenters<sup>52</sup> support our tentative conclusion that replacement digital television translators should be permitted *de minimis* expansion of their full-service stations' post-transition digital service areas in order to fully cover their analog loss areas. APTS argues that "[t]he secondary status of replacement translators, combined with procedures to address mutually exclusive replacement translator applications, is sufficient to ensure that such expansion would not be problematic."<sup>53</sup> Commenter du Treil, Lundin & Rackley, Inc., as well, explains that "[t]hese translator stations will generally be implemented with off-the-shelf, or standard, directional antennas in order to be quickly constructed. Therefore, these standard directional antennas will inherently limit the flexibility of constraining the translator protected contour with that of the associated analog Grade B contour."<sup>54</sup>

21. Some commenters,<sup>55</sup> however, express concern about permitting replacement digital television translators *de minimis* expansion. CTIA, for example, cautions that the "FCC should be wary of inadvertently creating incentives for full-service broadcast stations to expand their service area beyond the 'loss area'" and suggests that "should broadcasters require additional spectrum to fill in coverage holes, they have the option of acquiring it on the secondary market in the same manner as wireless carriers."<sup>56</sup> We find, however, that *de minimis* expansion is necessary and unavoidable due to the nature of certain analog loss areas and therefore should be permitted in such circumstances upon a suitable showing. To that end, we reject CTIA's proposal to require replacement digital television translator applicants to purchase additional spectrum in the secondary market in order to fill in analog loss areas that cannot be covered without *de minimis* expansion. CTIA's proposal is contrary to the Commission's goal to expeditiously assist post-transition full-service stations to digitally replicate their former analog service areas; it would take time to negotiate such a purchase on the secondary market.

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<sup>50</sup> NTA Comments at 2.

<sup>51</sup> *DTS Report and Order*, 23 FCC Rcd at 16746 - 47, ¶26 -27.

<sup>52</sup> CDE Comments at 2; NTA Comments at 2; du Treil, Lundin & Rackley, Inc. Reply Comments at 3; Joseph M. Davis, P.E. Reply Comments at 3; APTS Comments at 4. See *supra* ¶ 21 for definition of "*de minimis*."

<sup>53</sup> APTS Comments at 4.

<sup>54</sup> du Treil, Lundin & Rackley, Inc. Reply Comments at 3.

<sup>55</sup> NAB/MSTV Comments at 3; CBA Comments at 2, CTIA Comments at 5; Dell/Google/Microsoft Corp Reply Comments at 4.

<sup>56</sup> CTIA Comments at 5.

22. In the *NPRM*, we sought comment on how to define the term “*de minimis*.”<sup>57</sup> We conclude that the Commission will determine the *de minimis* threshold on a case-by-case basis, consistent with our approach in the DTS proceeding.<sup>58</sup> We find this approach necessary as the record does not adequately support a definitive threshold. We note that we have not received a replacement translator application seeking to expand a full-service station’s post-transition digital service area beyond its analog contour. CDE, NTA, and Joseph M. Davis, P.E. proposed how best to define *de minimis*. CDE, supported by Joseph M. Davis, argue that *de minimis* should be defined as permitting a replacement digital television translator applicant “to expand outside the predicted Grade B service area by 25 percent of the translator’s normally protected service area.”<sup>59</sup> Yet NTA suggests that *de minimis* be defined as “a population limit of 25% of the total population from the RD translator in its protected (regulatory) contour beyond the primary station’s boundary.”<sup>60</sup> In cases where the “area inside the RD translator’s protected contour and outside the allowed primary station’s determined boundary is irregular,” NTA “suggest[s] that the 25% requirement be considered satisfied if the RD translator’s contour does not extend more than 10 km outside the boundary of the primary station.”<sup>61</sup> We reject these proposals as their proponents do not adequately justify defining *de minimis* as proposed. Further, the proposals seem inconsistent with a common sense understanding of the term *de minimis*, as they would routinely allow expansion by one-fourth beyond the original coverage area. We believe that a more tailored, case-specific threshold will permit us to better limit the unnecessary use of spectrum. We therefore conclude that we will determine each applicant’s *de minimis* threshold on a case-by-case basis to that which is necessary to provide service to loss areas.

## **B. Licensing of Replacement Digital Television Translator Stations**

### **1. Associated With Main Station License**

23. We conclude that, unlike other television translator licenses, the license for replacement digital television translators will be associated with the full-service station’s main license.<sup>62</sup> Therefore, the replacement digital translator license may not be separately assigned or transferred and will 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 the license is used for that purpose. This measure will also prevent a replacement translator from being converted to an LPTV station, thus defeating its purpose, a concern raised by CBA.<sup>63</sup> The CBA supports this restriction, stating that licenses of replacement translators “should not be assignable. When and if they are no longer needed, the spectrum should be returned to the Commission so that it is available for new applications.”<sup>64</sup> CDE also supports the intent of the proposed objective “that the translator license be associated with the main TV license.”<sup>65</sup> We continue to believe that such a measure is necessary to ensure that the replacement translator service is

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<sup>57</sup> *NPRM*, 23 FCC Rcd at 18536, ¶ 7.

<sup>58</sup> *DTS Report and Order*, 23 FCC Rcd 16750, ¶ 33.

<sup>59</sup> CDE Comments at 2; Joseph M. Davis, P.E. Reply Comments at 3.

<sup>60</sup> NTA Comments at 2.

<sup>61</sup> NTA Comments at 2.

<sup>62</sup> See 47 C.F.R. § 73.3540(e).

<sup>63</sup> CBA Comments at 2.

<sup>64</sup> CBA Comments at 2.

<sup>65</sup> CDE Comments at 2.

limited to only those situations where a station seeks to restore service to a loss area and is used for that purpose. This measure will also prevent a replacement translator from being converted to an LPTV station, thus defeating its purpose, a concern raised by CBA.<sup>66</sup>

24. Given our decision that replacement translator stations shall be associated with the full-service station's main license, we will not adopt our proposal in the *NPRM* that stations seeking a replacement digital television translator be required to submit a completed FCC Form 346 and pay the requisite \$675.00 filing fee for a new station, but rather will treat applications for replacement translators like those for auxiliary facilities. Thus, applications for replacement translators will be filed on FCC Form 346, will be treated as a minor change application, and there will be no filing fee.

## 2. Secondary Frequency Use Status

25. We adopt our tentative conclusion that replacement digital television translator stations be licensed with "secondary" frequency use status. These stations will 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. CDE and the National Public Safety Telecommunications Council ("NPTSC") agree that any replacement digital translator should have secondary frequency status.<sup>67</sup> Per NPTSC's recommendation, we clarify that replacement translator stations are subject to the interference protections to land mobile station operations in the 470- 512 MHz band set forth in the rules.<sup>68</sup>

## 3. Other Translator Rules Apply

26. In order to facilitate the application and licensing of replacement translators, except as specified herein,<sup>69</sup> we will apply the rules associated with television translator stations to the replacement digital television translator service, including the rules concerning power limits,<sup>70</sup> out-of-channel emission limits,<sup>71</sup> unattended operation,<sup>72</sup> and time of operation.<sup>73</sup> Commenters generally supported this approach.<sup>74</sup> Although mutually exclusive applications for replacement translators are unlikely, given the limited service area of these translators, if mutually exclusive applications are received, they will be resolved through the Commission's Part 1 and Part 73 competitive bidding rules and procedures.<sup>75</sup> Mutually exclusive applicants for replacement translator stations will be permitted a limited period of time to resolve their mutual exclusivity through settlement or engineering solutions.<sup>76</sup>

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<sup>66</sup> CBA Comments at 2.

<sup>67</sup> NPTSC Comments at 4; CDE Comments at 2.

<sup>68</sup> See 47 C.F.R. § 74.709; NPTSC Comments at 4-5.

<sup>69</sup> See *supra* ¶¶ 25-26, 29.

<sup>70</sup> See 47 C.F.R. § 74.735.

<sup>71</sup> See 47 C.F.R. § 74.736.

<sup>72</sup> See 47 C.F.R. § 74.734.

<sup>73</sup> See 47 C.F.R. § 74.763.

<sup>74</sup> Thomas C. Smith Comments at 1.

<sup>75</sup> See 47 C.F.R. §§ 1.2100 *et seq.* & 73.5000 *et seq.*

<sup>76</sup> See 47 C.F.R. § 73.5002(c).

#### 4. Call Signs

27. After consideration of the comments received, we will not adopt our proposal to assign the same type of call sign to replacement translators that is assigned to all other digital translator stations. In the 2004 *Digital Low Power Report and Order*, we determined that digital translators should receive a unique call sign such as “K20AA-D.”<sup>77</sup> We made this determination to prevent confusion with other call sign combinations as well as possible technical problems.<sup>78</sup> However, we agree with those commenters who point out that use of a unique call sign for replacement translators “serves little or no purpose and will only cause confusion.”<sup>79</sup>

28. NAB/MSTV argues that we should “not require that the emissions from these translators be identified with their own TSID numbers, rather than the TSID of the primary station, to ensure consistency with ATSC system design.”<sup>80</sup> The Consumer Electronics Association (“CEA”) maintains that requiring replacement translators to take a different call sign than their full-service counterparts would result in a translator having to “replace the elements of the Program and System Information Protocol (“PSIP”) in the digital bit stream it receives from the full-service station with alternative values specific to the translator.”<sup>81</sup> This would cause a problem with the PSIP receiver response. CEA explains that ordinarily when a TV receiver “sees” duplicate transmissions on different frequencies, it should recognize the duplication, and create a channel lineup that shows the user one channel rather than two. CEA also claims that this functionality exists to “minimize consumer confusion, but it requires transmission of identical PSIP data, not just identical video data, for optimal receiver functionality.”<sup>82</sup> Requiring the use of a separate call sign by the replacement translator would interfere with this practice and cause confusion. Furthermore, CEA states that use of a separate call sign would impose “unnecessary cost and complexity on translator operators” as they “would be forced to purchase additional equipment and devote personnel resources, in order to “(i) capture and decode the main-station digital bit stream; (ii) replace certain PSIP values in that bit stream with values for the translator; and (iii) reassemble the bit stream for transmission by the translator facilities.”<sup>83</sup> CEA concludes that the replacement translator service is “more analogous to a traditional TV broadcast booster”<sup>84</sup> and that boosters use the primary station’s call sign. NAB/MSTV believe that confusion as to station identification can be rectified by a search through the FCC database.<sup>85</sup>

29. We agree that the associated costs to stations and technical problems outweigh any benefit that would be received by assigning replacement translators a separate call sign. To eliminate these burdens and avoid technical problems, we will not adopt our proposal and instead will assign to replacement translators the same four letter call sign as their associated full-service station.

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<sup>77</sup> See *Digital Low Power Report and Order*, 19 FCC Rcd at 19396, ¶197.

<sup>78</sup> *Id.*

<sup>79</sup> NAB/MSTV Comments at 3; see also CEA Comments at 1-3.

<sup>80</sup> NAB/MSTV Comments at 3-4.

<sup>81</sup> CEA Comments at 1-3.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> NAB/MSTV Comments at 4.

## 5. Construction Period

30. Although we expect full-service stations to quickly construct their replacement digital television translator facilities, we will not adopt our original proposal and require that replacement digital television translators be constructed within six months. We are persuaded by the commenters who argued that such a requirement would unfairly disadvantage certain licensees and would actually be counterproductive.<sup>86</sup> APTS argues that the construction period for replacement translators should be three years, the same period afforded all other digital LPTV and TV translator facilities.<sup>87</sup> APTS maintains that “[s]tate and federal grant programs do not support a six-month construction period and in some cases grant programs require station matching contribution[s] before grant money can be released.”<sup>88</sup> Idaho Public Television states that public television licensees that are state agencies “cannot go to a bank and get a loan” and state agencies “must wait for annual funding cycle.”<sup>89</sup> Furthermore, APTS and Idaho Public Television point out that the typical equipment purchase, delivery, and installation process will exceed six months, especially for government and university licensees that are required to conduct competitive bidding for equipment purchases.<sup>90</sup> APTS, NAB/MSTV, and Thomas C. Smith all note that many licensees must receive local zoning approvals and work with federal and state governments to secure permission to place translators.<sup>91</sup> Finally, APTS represents that stations in cold-weather climates only have a short season during which construction is feasible.<sup>92</sup>

31. We agree with the commenters that affording stations building replacement translators a full three-year period for completion of construction is necessary to ensure the successful implementation of this new service and will not undermine our desire that replacement translators be quickly constructed. We agree with NAB/MSTV that broadcasters “do not need extra motivation, this proceeding is a voluntary commitment and based on the assumption that broadcasters will be singularly motivated.”<sup>93</sup> We conclude that stations do not need a shortened construction period to motivate expedited construction of replacement digital translators. Stations that voluntarily seek authority to build a replacement digital translator would not likely do so absent an intent to construct. Moreover, forcing licensees to construct in a much abbreviated period could discourage them from applying in the first instance, a result clearly contrary to our purpose. We are also persuaded that the benefits of the replacement translator service established herein will be obtained even if some interruption of service occurs because a broadcaster is unable to complete construction and initiate service within the first six months.

### C. Other Issues

32. Certain engineering firms raised issues that were not addressed in the *NPRM*. CDE requests that the Commission modify its rules to permit “computer model[s] [to] be optionally modified to permit the actual elevation pattern(s) to be used.”<sup>94</sup> They also request that the Commission permit

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<sup>86</sup> See APTS Comments at 2; Idaho Public Television Comments 2-4; NAB/MSTV Comments at 6-7; CBA Comments at 2; Thomas C. Smith Comments 1-2; CDE Comments at 2.

<sup>87</sup> APTS Comments at 2.

<sup>88</sup> *Id.*

<sup>89</sup> Idaho Public Television Comments at 2.

<sup>90</sup> APTS Comments at 2; Idaho Public Television Comments at 4.

<sup>91</sup> APTS Comments at 2; NAB/MSTV Comments at 6-7; Thomas C. Smith Comments at 1-2.

<sup>92</sup> APTS Comments at 2.

<sup>93</sup> NAB/MSTV Comments at 6.

<sup>94</sup> CDE Comments at 2.

“waivers of Section 73.622(e)(6)(i) (maximum facility) and Section 73.622(f)(5) (largest in the market) of the rules for low-band VHF stations trying to achieve replication within their Grade B service area by permitting greater than that [the power] now permitted by the FCC Rules if interference criteria are met.”<sup>95</sup> Renard Communications Corp., du Treil, Lundin & Rackley, Inc., and Joseph M. Davis, P.E. recommend that the Commission immediately adopt a provision to allow low power stations to specify a full-power mask filter in addition to ‘simple’ or ‘stringent’ masks.<sup>96</sup> We find that these issues are beyond the scope of this proceeding or are being addressed in other proceedings. Therefore, we shall not address them in this proceeding.

#### **IV. PROCEDURAL MATTERS**

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

33. The Final Regulatory Flexibility Analysis is attached to this Report and Order as Appendix B.

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

34. This Report and Order adopts a revised information collection requirement subject to the Paperwork Reduction Act of 1995 (“PRA”), Public Law 104-13 (44 U.S.C. 3501-3520) pertaining to DTV transition related issues. Specifically, this Report and Order will allow full-service stations seeking to use the new replacement digital television translator service to submit specified attachments to FCC Form 346 when applying for a construction permit.<sup>97</sup> The requirement will be submitted to the Office of Management and Budget (“OMB”) for review under the emergency processing rules.<sup>98</sup> The requirement will not go into effect until OMB has approved it and the Commission has published a notice announcing the effective date of the information collection requirement. For additional information concerning the information collection requirement contained in this Report and Order, contact the Office of Managing Director (“OMD”), Performance Evaluation & Records Management (“PERM”), Cathy Williams, Cathy.Williams@fcc.gov, at 202-418-2918.

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

#### **V. ORDERING CLAUSES**

36. IT IS ORDERED that, pursuant to the authority contained in Sections 1, 4(i) and (j), 7, 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336, and 337 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, and 337, this Report and Order IS ADOPTED and the Commission’s rules ARE HEREBY AMENDED as set forth in Appendix B. The rules and procedures adopted in this Report and Order are

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<sup>95</sup> *Id.*

<sup>96</sup> Renard Communications Corp. Comments at 1; du Treil, Lundin & Rackley, Inc. Reply Comments at 2; Joseph M. Davis, P.E. Reply Comments at 1.

<sup>97</sup> OMB Control Number 3060-1086 will be revised to include the information collection requirement.

<sup>98</sup> 5 C.F.R. § 1320.13.

effective 30 days after the date of publication of the summary of this Report and Order in the Federal Register, provided, however, that the rules and procedures that contain information collection requirements subject to the PRA shall not be effective until approved by OMB. The Commission will publish a notice in the Federal Register announcing when OMB approval for these rules has been received.

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

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

36 FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A****List of Commenters****Comments:**

- 1) Association of Public Television Stations (“APTS”) (Filed: 01/12/09).
- 2) NAB and MSTV (“NAB/MSTV”) (Filed: 01/12/09).
- 3) Community Broadcasters Association (“CBA”) (Filed: 01/12/09).
- 4) United States Cellular Corporation (“USCC”) (Filed: 01/12/09).
- 5) Idaho Public Television (Filed: 01/12/09).
- 6) National Public Safety Telecommunications Council (“NPSTC”) (Filed: 01/12/09).
- 7) Renard Communications Corp. (Filed: 01/12/09).
- 8) Thomas C. Smith (Filed: 01/12/09).
- 9) Consumer Electronics Association (“CEA”) (Filed: 01/12/09).
- 10) QUALCOMM Incorporated (“QUALCOMM”) (Filed: 01/12/09).
- 11) AT&T, Inc. (“AT&T”) (Filed: 01/12/09).
- 12) CTIA - The Wireless Association (“CTIA”) (Filed: 01/12/09).
- 13) Consolidated Telecommunications Co., *et al.*<sup>1</sup>. (Filed: 01/12/09).
- 14) Rural Telecommunications Group, Inc. (Filed: 01/12/09).
- 15) TCA, Inc. (Filed: 01/12/09).
- 16) Cohen, Dippell and Everist, P.C. (“CDE”) (Filed: 01/12/09).
- 17) National Translator Association (“NTA”) (Filed: 01/15/09).

**Reply Comments:**

- 1) NTA (Filed: 01/21/09).
- 2) du Treil, Lundin & Rackley, Inc. (Filed: 01/22/09).
- 3) USCC (Filed: 01/22/09).
- 4) TCA, Inc. (Filed: 01/22/09).
- 5) Joseph M. Davis, P.E. (Filed: 01/22/09).
- 6) AT&T (Filed: 01/22/09).
- 7) NAB/MSTV (Filed: 01/22/09).
- 8) Dell, Inc., Google Inc., and Microsoft Corp. (“Dell/Google/Microsoft”) (Filed: 01/22/09).

**ex parte Letter:**

- 1) National Translator Association (Dated: 12/09/08; Filed: 01/16/09).

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<sup>1</sup> The complete list of commenters jointly filing with Consolidated Telecommunications Co. in this pleading include: Grand River Communications, Inc., Interstate Enterprises, Ltd., Kanokla Telephone Association, Inc., Kaplan Telephone Company, Inc., Northeast Missouri Rural Telephone Company, Panhandle Telecommunication Systems, Inc., Southern Iowa 700, LLC, and West Carolina Communications, LLC.

**APPENDIX B****Final 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.

2. 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 translators.*

(i) “An application for a replacement digital television translator may be filed at any time. A license for a replacement digital television translator will be issued only to a television broadcast station licensee that demonstrates in its application that a portion of the station’s pre-transition analog service area will not be served by its full, post-transition digital facilities and that the proposed translator will be used to provide service to the area where service has been lost.” Replacement digital television translators may operate on channels 2-51. Applications for replacement digital television translator shall be given processing priority over all other low power television and TV translator applications except displacement applications (with which they shall have co-equal priority) as set forth in 47 C.F.R. 73.3572(a)(4)(ii). The service area of the replacement translator shall be limited to only a demonstrated loss area with the full-service station’s pre-transition analog service area. “Analog service area” is defined as the existing, authorized, protected service area actually served by the analog signal prior to analog termination for the DTV transition. An applicant for a replacement digital television translator may propose a *de minimis* expansion of its full-service pre-transition analog service area upon demonstrating that the expansion is necessary to replace its analog loss area. The license for the replacement digital television translator will be associated with the full power station’s main license, will be assigned the same call sign, may not be separately assigned or transferred, and will be renewed with the full-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 three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed. The provisions of 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 treated as an application for minor change and shall be accepted on a first-come, first-served 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.

(iv) The following sections are applicable to replacement digital television translator stations:

- § 73.1030 Notifications concerning interference to radio astronomy, research and receiving installations.
- § 74.703 Interference
- § 74.709 Land mobile station protection.
- § 74.734 Attended and unattended operation
- § 74.735 Power Limitations
- § 74.751 Modification of transmission systems.
- § 74.763 Time of Operation
- § 74.765 Posting of station and operator licenses.
- § 74.769 Copies of rules.
- § 74.780 Broadcast regulations applicable to translators, low power, and booster stations (except §73.653 – Operation of TV aural and visual transmitters and §73.1201 – Station identification).
- §74.781 Station records.
- §74.784 Rebroadcasts.

## APPENDIX C

## Final Regulatory Flexibility Act Analysis

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

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

2. This Report and Order (“R&O”) establishes a new “replacement” digital television translator service that will allow full-service television stations to obtain new digital translators to maintain existing service.

3. The R&O concludes that replacement translators will be licensed only for digital operation and only on channels 2-51 and not for out-of-core channels 52-59 and 60-69.

4. The R&O concludes that applications for replacement translators will be given licensing priority over all other low power television and TV translator applications except displacement applications (for which they will have co-equal priority). The R&O concludes that the eligibility for such service will be limited 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 R&O concludes that the service area of the replacement translator will be limited to only a demonstrated loss area but that a replacement translator should be permitted to expand slightly a full-service station’s post-transition, digital service area. Finally, the R&O concludes that replacement digital television translator stations will be licensed with “secondary” frequency use status.

5. The R&O concludes that, unlike other television translator licenses, the license for the replacement translator will be associated with the full power station’s main license. Therefore, the replacement translator license may not be separately assigned or transferred and will be renewed or assigned along with the full-service station’s main license. The R&O concludes that most of the other rules associated with television translator stations will apply to the new replacement translator service including those rules concerning the filing of applications, processing of applications, power limits, out-of-channel emission limits, unattended operation, and time of operation. The R&O concludes that replacement translators will not be assigned a separate call sign but rather will have to same call sign as their associated full-service station. Finally, the R&O concludes that the construction period for replacement translators will be the standard three-year period that is provided for other low power television digital facilities.

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

6. TCA, Inc. (“TCA”) argued that the IRFA “shows that very little consideration was made towards the many wireless license holders that could be affected.” TCA maintains that the NPRM “calls

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

<sup>2</sup> See Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Replacement Digital Low Power Television Translator Stations, MB Docket No. 08-253, *Notice of Proposed Rulemaking*, 23 FCC Rcd 18534 (2008) (“NPRM”).

<sup>3</sup> See 5 U.S.C. § 604.

for small wireless entities to incur additional costs by hiring counsel, monitoring Commission filings, and obtaining technical assistance to prove interference from a translator station.” TCA concludes that this “additional and unnecessary expense is an unacceptable burden for a small company to bear.” TCA is concerned with the Commission’s proposal to require that replacement digital translators proposed for out-of-core channels 52-59 to be subject to the requirements previously adopted by the Commission for proposed facilities on these channels. Specifically, applicants for a digital translator on channels 52-59 must demonstrate that no in-core channel is available and must notify wireless entities on the affected channel(s) of their filing. The Commission decided to not allow replacement translators on channels 52-59, thus TCA’s concerns are moot.

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

7. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted.<sup>4</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.”<sup>5</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>6</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>7</sup>

8. **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.<sup>8</sup> Business concerns included in this industry are those “primarily engaged in broadcasting images together with sound.”<sup>9</sup> According to 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 stations<sup>10</sup> (or

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<sup>4</sup> *Id.* § 603(b)(3).

<sup>5</sup> 5 U.S.C. § 601(6).

<sup>6</sup> *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).

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

<sup>8</sup> *See* 13 C.F.R. § 121.201, NAICS Code 515120 (adopted Oct. 2002).

<sup>9</sup> 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 programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.” Separate census categories pertain to businesses primarily engaged in producing programming. *See* Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

<sup>10</sup> 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>.

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) affiliations<sup>11</sup> must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission has estimated the number of licensed NCE television stations to be 380.<sup>12</sup> 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.

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

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

11. 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.

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

12. The *R&O* adopts one new reporting requirement. Full-service stations seeking a new replacement digital television translator station must 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**

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

<sup>12</sup> Broadcast Stations Total as of December 31, 2006.

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

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

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

14. 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.

15. The *R&O* concludes that replacement translators will be licensed only for digital operation and should be licensed on only channels 2-51 and not for out-of-core channels 52-59 and 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 52-59 and 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.

16. The *R&O* further concludes that applications for replacement translators shall 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 *R&O* also 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 *R&O* further 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 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 *R&O* concludes that replacement digital television translator stations will 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.

17. The *R&O* 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 may not be separately assigned or transferred and will be renewed or assigned along with the full-service station's main license. Alternatively, the Commission could have

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

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 *R&O* also concludes that most of the other rules associated with television translator stations would apply to the new replacement translator service including those rules concerning the filing of applications, processing of applications, power limits, out-of-channel emission limits, 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 *R&O* concluded that replacement translators not be assigned a separate call sign, as the record demonstrated that assigning a separate call sign would be costly and cause technical problems. The *R&O* adopts a three-year construction period for replacement translators finding that the proposed shorter construction period in the *NPRM* would unfairly affect certain licensees and be counterproductive.

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

18. None.

**G. Report to Congress**

19. The Commission will send a copy of the *R&O*, including the FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>16</sup> In addition, the Commission will send a copy the *R&O*, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *R&O* and FRFA (or summaries thereof) will be published in the Federal Register.<sup>17</sup>

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<sup>16</sup> See 5 U.S.C. § 801(a)(1)(A). The Congressional Review Act is contained in Title II, § 251, of the CWAAA, see Pub. L. No. 104-121, Title II, § 251, 110 Stat. 868.

<sup>17</sup> See 5 U.S.C. § 604(b).

## APPENDIX D

## Stations Seeking Replacement Translators

CALL SIGN	CITY	ST	PREFIX	ARN	STA	LICENSEE
KCWC-TV	LANDER	WY	BDRTET	20090224ABJ	Y-G	CENTRAL WYOMING COLLEGE
KCWC-TV	LANDER	WY	BDRTET	20090224ABL	Y-G	CENTRAL WYOMING COLLEGE
KIRO-TV	SEATTLE	WA	BDRTCT	20090403ACH		KIRO-TV, INC.
KIRO-TV	SEATTLE	WA	BDRTCT	20090403ACA		KIRO-TV, INC.
KNPB	RENO	NV	BDRTET	20090204ABK	Y-G	CHANNEL 5 PUBLIC BROADCASTING, INC.
KOLD-TV	TUCSON	AZ	BDRTCT	20090227ABY	Y	KOLD LICENSE SUBSIDIARY, LLC
KRMA-TV	DENVER	CO	BDRTET	20090107AIL	Y-G	ROCKY MOUNTAIN PUBLIC BROADCASTING NETWORK, INC.
KRXI-TV	RENO	NV	BDRTCT	20090318AAQ		KTVU PARTNERSHIP
KSYS	MEDFORD	OR	BDRTET	20090108AGB		SOUTHERN OREGON PUBLIC TV, INC.
KXLY-TV	SPOKANE	WA	BDRTCT	20090406ALC		SPOKANE TELEVISION, INC.
KXLY-TV	SPOKANE	WA	BDRTCT	20090406ALA		SPOKANE TELEVISION, INC.
WDTV	WESTON	WV	BDRTCT	20090217AFW		WITHERS BROADCASTING COMPANY OF WEST VIRGINIA
WDTV	WESTON	WV	BDRTCT	20090217AFX		WITHERS BROADCASTING COMPANY OF WEST VIRGINIA
WHSV-TV	HARRISONBURG	VA	BDRTCT	20090401APJ		GRAY TELEVISION LICENSEE, LLC
WSB-TV	ATLANTA	GA	BDRTCT	20090320AFV		GEORGIA TELEVISION COMPANY
WSB-TV	ATLANTA	GA	BDRTCT	20090320AFR		GEORGIA TELEVISION COMPANY
WTAE-TV	PITTSBURGH	PA	BDRTCT	20090224AAU		WTAE HEARST-ARGYLE TV, INC. (CA CORP.)
WTVI	CHARLOTTE	NC	BDRTET	20090114ACC	Y-G	CHARLOTTE-MECKLENBURG PUBLIC BROADCASTING AUTHORITY
WWAZ-TV	FOND DU LAC	WI	BDRTCT	20090223ABX	Y	WWAZ LICENSE, LLC
WWAZ-TV	FOND DU LAC	WI	BDRTCT	20090223ABW	Y	WWAZ LICENSE, LLC