system are included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in this document. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

By Mail. Send your comments (in duplicate, if possible) to: EPA West (Air Docket), U.S. EPA, Room B–108 (MD–6102T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR–2002–0045.

By Hand Delivery or Courier. Deliver your comments (in duplicate, if possible) to: EPA Docket Center (Air Docket), U.S. EPA, Room B–108 (MD–6102T), 1301 Constitution Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR–2002–0045. Such deliveries are only accepted during the Docket Center's normal hours of operation as identified in this document.

By Facsimile. Fax your comments to: (202) 566–1741, Attention Docket ID OAR–2002–0045.

CBI. Do not submit information that you consider to be CBI through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Jeff Telander, c/o OAQPS Document Control Officer (MD–C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. OAR–2002–0045. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposal will also be available on the WWW through EPA's Technology Transfer Network (TTN). Following the Administrator's signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

What Are the Administrative Requirements for This Action?

For information regarding other administrative requirements for this action, please see the direct final rule action that is located in the Rules and Regulations section of this **Federal Register**.

Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that has fewer than 750 employees for NAICS codes 32211, 32212, and 32213 (pulp, paper, and paperboard mills); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives which minimize any significant economic impact of the proposed rule on small entities (5 U.S.C. 603–604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive effect on the small entities subject to the rule. The amendments in today's rule make improvements to the emission standards, primarily by clarifying issues in the areas of testing and monitoring and add a new compliance option. We have, therefore, concluded that today's proposed rule will have no adverse impacts on any small entities and may relieve burden in some cases.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: January 27, 2003.

Christine Todd Whitman,

Administrator.

[FR Doc. 03–3701 Filed 2–14–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73, 74, 76 and 90

RIN 4214

[MB Docket No. 03–15; FCC 03–8]

Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document commences the Commission's second periodic review of the progress of the conversion to digital television. The document revisits several issues addressed in the first periodic review and solicits comment on a number of additional issues that the Commission believes essential to resolve to ensure continued progress on the transition.

DATES: Comments are due on or before April 14, 2003; reply comments are due on or before May 14, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC, 20554. See supplementary information for filing information.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Policy Division, Media Bureau at (202) 418–2154, or Peter Corea, Policy Division, Media Bureau at (202) 418–7931.

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau's *Notice of Proposed Rule Making* (''*NPRM*'') MB Docket No. 03–15; FCC 03–8, adopted January 15, 2003, and released January 27, 2003. The complete text of this *NPRM* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy

contractor, Qualex International, Portals II, 445 12th Street SW., Room CY–B–402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via email *qualexint@aol.com.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419 comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings* (63 FR 24121, May 1, 1998). This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact Brian Millin at (202) 418–7426 (voice), (202) 418–7365 (TTY), or via email at *bmillin@fcc.gov.* Parties may submit their comments using the Commission's Electronic Comment Filing System (''ECFS'') or by filing paper copies. Comments may be filed as an electronic file via the Internet at *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To obtain filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message: ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Additional information on ECFS is available at *http://www.fcc.gov/e-file/ecfs.html.*

Filings may also 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). 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, commenters must submit two additional copies for each additional docket or rulemaking number. The Commission's contractor, Histrionics, Inc., 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 a.m. to 7 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 mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Synopsis of Notice of Proposed Rulemaking

Channel Election

1. In the DTV Sixth Memorandum Opinion and Order (''*6th MO&O*''), (63 FR 15774, April 1, 1998), we determined that, after the transition, DTV service would be limited to a ''core spectrum'' consisting of current television channels 2 through 51 (54–698 MHz). Although some stations received transition channels out of the core, and a few have both their NTSC and DTV channels outside the core, we believe that there will be sufficient spectrum to accommodate all DTV stations within the core by the end of the transition. Having stations with two in-core channels decide which one of the channels would be most suitable for use in digital broadcasting will assist us in determining what channels will be available for stations with two out-of-core channels and in clearing the out-of-core spectrum.

2. In the First DTV Periodic Review Memorandum Opinion and Order, (''*1st MO&O*''), (66 FR 65122, December 18, 2001), we temporarily deferred channel election deadlines until this next periodic review. Accordingly, we now request comment on the new channel election deadline. We propose that commercial and noncommercial broadcast licensees with two in-core assigned channels make their final channel election by May 1, 2005. This date provides three years for commercial broadcasters and two years for noncommercial broadcasters after the applicable digital construction deadline to make the channel election. A May 1, 2005, channel election deadline also provides licensees that will have to move into the core time to plan for their move before December 31, 2006. We seek comment on this proposal.

3. As an alternative, we seek comment on whether establishing the same deadline(s) for channel election as for replication and maximization protection, would be more effective in speeding the transition. As our proposed replication and maximization protection deadlines are later than May 1, 2005, aligning the channel election deadline with these deadlines would give broadcasters more time to increase to full power before they determine which channel is preferable for digital broadcasting. We seek comment on whether we should align the channel election deadline(s) with the replication and maximization protection deadlines we establish herein and, if so, what the deadline(s) should be.

4. As we stated in the First DTV Periodic Review Report and Order (''*1st R&O*''), (MM 00–39, 66 FR 09973, February 13, 2001), in all cases, including stations with both channels in-core, we reserve the right to select the final channel of operation in order to minimize interference and maximize the efficiency of broadcast allotments in the public interest. We intend to review the channel elected to ensure that its use furthers these goals.

DTV/Analog In-Core Channel Swaps

5. Some stations with two in-core channels have already determined that they prefer to use their current analog NTSC channel for DTV operations and want to commence digital operations on the new channel before the end of the transition. Currently a station with in-core DTV and NTSC channels can swap those channels only through a dual rulemaking proceeding to change both the DTV and NTSC Tables of Allotments. As the DTV transition proceeds, it is possible that many stations will want to explore this swap option. Accordingly, we seek comment on whether we should allow such channel swaps through an application process.

Replication and Maximization for In-Core Channels

6. In the *1st MO&O* we stated that we would establish in this second DTV periodic review a date by which broadcasters must either replicate their NTSC service areas or lose DTV service protection to the unreplicated areas, and by which broadcasters with authorizations for maximized digital facilities must either provide service to the associated coverage area or lose DTV service protection to the uncovered portions of those areas. We stated that these replication and maximization protection deadlines may be earlier than, but will in no event be later than,

the latest of either the end of 2006 or the date by which 85% of the television households in a licensee's market are capable of receiving the signals of digital broadcast stations. We now seek comment on establishing new dates for maintaining interference protection for the unserved portions of both the replication and maximization service areas of DTV stations on channels 2–51.

7. For DTV channels within the core spectrum, we propose to set new replication and maximization protection dates close to the end of the transition: for the top-four network affiliates (*i.e.,* ABC, CBS, Fox and NBC) in markets 1–100—July 1, 2005; and for all other commercial DTV licensees as well as noncommercial DTV licensees—July 1, 2006.

8. We seek comment generally on the appropriateness of these dates. We also invite commenters to propose alternative approaches for establishing interference protection deadlines, such as giving stations a certain amount of time (*e.g.,* 24 months) after the station commences digital service or after adoption of the Report and Order (*''R&O''*) in this proceeding, whichever is later, to fully replicate or maximize, or establishing a replication/maximization deadline for each market based on when that market reaches a specified digital service penetration level.

9. If a station fails to construct and operate facilities that fully replicate its NTSC service area or provide signal coverage over an authorized maximized service area by the interference protection deadline(s) we will establish in this proceeding, we seek comment on how the Commission should dispose of any construction permits or applications for replication or maximization facilities at that time. Should applications for facilities in excess of those in actual operation by the station be dismissed? How should the Commission treat authorizations for facilities not being fully used by the station? For example, a station has a construction permit for facilities that would serve a larger area than facilities it is operating pursuant to Special Temporary Authority. Should such a construction permit be modified to specify the facilities in actual operation? In addition, we invite comment on how the Commission should treat the spectrum use opportunity that would be created after the interference protection deadline(s). Who should be permitted to file an application for this spectrum? Should any applications for this spectrum be subject to competing applications? Our inclination is to restrict any station that has failed to fully replicate or construct its authorized maximization facilities by the applicable deadline from filing an application to expand coverage for a certain period of time in order to allow other existing or new stations, including Class A eligible LPTV stations on out-of-core channels, to apply to use this spectrum. If we were to adopt this approach, how long should the restriction on the filing of expansion applications by stations that did not fully replicate or maximize by the deadline last? Any decision we reach in this proceeding regarding future licensing of this spectrum will be consistent with 47 U.S.C. 309(j).

10. Finally, we seek comment on whether we should adopt an intermediate signal coverage requirement beyond a broadcaster's current obligation to cover its community of license and in addition to the ultimate ''use-or-lose'' deadline for full replication or maximization. In the *1st MO&O*, the Commission predicted that the ''requirement that broadcasters serve their community of license will ensure that, for most stations, the majority of their analog service populations will receive initial digital service.'' We seek comment on whether this predictive judgment has been borne out in practice. For instance, we seek comment on whether some of the larger cities in which stations can operate under low-power STAs have large suburban populations that may not be served by a signal that only covers a station's community of license. If there are significant numbers of consumers not being served by stations operating under low-power STAs, we seek comment on what actions, if any, the Commission should take. Should the Commission establish a deadline by which time stations must provide DTV service within the entire area of their analog ''city-grade'' coverage contour or their Grade A coverage? Yet another alternative would be to require broadcast stations to deploy transmission equipment that is capable of being upgraded to serve broader coverage areas (*e.g.*, their analog Grade ''B'' coverage), but permit the stations themselves to determine when any intermediate power increases occur prior to the full replication ''use-or-lose'' date. In general, our goal is to ensure that the maximum number of consumers is able to receive digital television as quickly as possible while providing broadcasters a realistic timetable for increasing to full power.

Band-Clearing Arrangements

11. In the *1st MO&O*, we temporarily deferred the deadline for loss of interference protection for unserved areas for broadcasters involved in a band-clearing arrangement that are left with a DTV single-channel allotment. We stated that we will continue to protect throughout the course of the transition the analog TV service area of stations that do not have a paired DTV channel, either because they were not assigned a paired DTV channel or because they elect voluntarily to relinquish their paired DTV channel and convert to single channel analog operation as part of the 700 MHz band clearing, as long as the stations continue to operate in an analog mode.

12. We stated that our intention was to provide broadcasters involved in band-clearing with the same treatment as other broadcasters in terms of our DTV replication policy. We also said that, in our next periodic review, we would establish a new replication protection deadline for these broadcasters within the same timeframe as that established for replication and maximization for other broadcasters. We hereby seek comment on the timeframe needed and appropriate for broadcasters involved in band-clearing proposals to replicate their service area once commencing digital operation.

Interference Protection of Analog and Digital Television Service in TV Channels 51–69

13. We seek comment on whether we should adopt the same or different replication and maximization interference protection deadlines for stations operating on TV channels 52–69 (698–806 MHz, also referred to as the ''700 MHz band'') as for stations operating on core channels. In order to reclaim and relicense channels 52–69 in accordance with statutory mandate, the Commission is relocating television operations in this spectrum to the core spectrum (TV channels 2–51), and has reallocated the 698–806 MHz band to other services. During the transition to digital broadcasting, incumbent broadcasters are permitted to continue to operate in the 698–806 MHz band. Licensees of new public safety, commercial wireless, and other services are permitted to operate in the band prior to the end of the transition, provided they do not interfere with incumbent analog and digital broadcasters.

1. Definition of ''Actual'' Broadcast Parameters Under Sections 90.545(c)(1)(ii) and 27.60(b)(1)(iii)

14. A number of the interference protection issues raised herein with respect to the 698–806 MHz band relate to the interpretation of the alternative protection criteria for wireless operators

set forth in §§ 90.545(c) and 27.60(b) of the rules, and whether those provisions require protection of broadcast authorizations and allotments. In particular, do these provisions require protection of broadcast authorizations and allotments when the station's operating parameters are less than the parameters described in an existing authorization or allotment?

15. Sections 90.545(c) and 27.60(b) describe alternative methods for a wireless applicant or licensee in the 700 MHz band to move its stations closer to an analog TV or DTV antenna while still complying with the interference protection requirements in the rules. Pursuant to one of these alternatives, the applicant or licensee may submit an engineering study that considers the ''actual,'' rather than ''hypothetical,'' parameters of the analog TV or DTV station and that demonstrates that intervening terrain or other factors permit the land mobile stations and these facilities to be more closely spaced. In the Order adopting this alternative, we stated that applicants should be allowed to submit engineering studies showing how they propose to meet the appropriate desired/undesired (''D/U'') signal strength ratio at the existing TV station's ''authorized or applied for'' Grade B service contour or equivalent contour for DTV stations instead of the hypothetical Grade B contour.

16. We tentatively conclude that §§ 90.545(c)(1)(ii) and 27.60(b)(1)(iii) should be amended to make clear that the interference protection specified in those provisions should be afforded to authorized and/or applied for NTSC and DTV facilities, including the facilities specified on the broadcast station's license or construction permit or both when a station has both a license and a construction permit. We invite comment on this approach. If we do not protect all authorized and/or applied for facilities, what facilities should be protected?

2. Replication

17. We invite comment on the extent to which facilities defined in the DTV Table of Allotments on channels 52–69 should be protected by wireless operators and other services in those bands. In other words, in addition to protecting authorized and/or applied for facilities, should we interpret the requirement that wireless operators and other services protect the ''actual'' parameters of existing TV stations to require protection of full replication facilities, regardless of whether the DTV station is currently operating, or has filed an application to operate, pursuant to those facilities? If so, how long should this interference protection last?

18. We tentatively conclude that DTV full replication facilities should be protected as ''actual.'' We seek comment on this view and on whether we should establish the same interference protection deadline for replication facilities for stations on channels 52–69 as we will establish in this proceeding for stations on in-core channels.

3. Maximization

19. We invite comment on whether we should establish an earlier deadline for loss of interference protection to the unserved areas described in existing maximization authorizations on channels 52–69 than the deadline we establish for maximization facilities on in-core channels. We also invite comment on whether we should establish the same maximization interference protection deadline for the entire 700 MHz band, or treat the upper and lower bands differently. If we were to establish a different deadline for all or part of channels 52–69, what should that deadline be?

4. Future Modification Applications

20. In June 2002, the Media Bureau adopted a freeze on the filing of analog TV and DTV ''maximization'' applications in channels 52–59. The Bureau announced that it would not accept for filing television modification applications that would increase a station's analog or DTV service area in channels 52–59 in one or more directions beyond the combined area resulting from the station's parameters as defined in the following: (1) The DTV Table of Allotments; (2) Commission authorizations (license and/or construction permit); and (3) applications on file with the Commission prior to release of the Public Notice. The Bureau will consider, on a case-by-case basis, requests for waiver of the freeze on new maximization applications in channels 52–59 where the application would permit co-location of transmitter sites or is otherwise necessary to maintain quality service to the public. The freeze was adopted to assist participants in Auction No. 44, consisting of spectrum licenses in the Lower 700 MHz Band, to determine the areas potentially available in the band for the provision of service by auction winners before the channels are cleared of broadcast stations. That auction was scheduled to begin June 19, 2002, but was postponed in compliance with the Auction Reform Act of 2002.

21. The Media Bureau recently adopted a similar freeze on the filing of analog TV and DTV ''maximization'' applications in channels 60–69. As with the freeze on maximization in channels 52–59, the Bureau will consider requests for waiver of the freeze on channels 60–69 on a case-by-case basis for stations that propose an increase or shift in coverage under certain circumstances, including to permit co-location at a common antenna site or to resolve certain technical difficulties. We intend to protect applications for waiver under these maximization filing freezes in the same manner that we protect other pending applications. Absent a waiver, future applications for maximization of facilities on channels 52–69 now are foreclosed.

5. Applications for New Analog TV or DTV Facilities

22. With respect to the Lower 700 MHz Band, digital service in the band could be proposed after the auction by a station with an existing DTV allotment on a channel outside the 52–58 band seeking to move to a channel inside this band or by a DTV station inside this band seeking to move to another channel inside the band. We invite comment on whether and how we should protect such proposed digital service on channels 52–58. We also seek comment on whether 47 CFR 73.622 should be amended to require that a broadcaster proposing a channel change that would cause harmful interference to a new entrant on channels 52–59 demonstrate that no other suitable channels are available on 2–58 that would avoid such interference.

6. Channel 51

23. Finally, we seek comment on the interference protection that should be afforded by wireless entities and other new service providers to future analog TV and DTV facilities on channel 51 that are authorized or requested after the auction of the spectrum comprising channel 52.

Pending DTV Construction Permit Applications

24. A number of television licensees have not yet been granted an initial construction permit (CP) for a DTV facility. Almost all of these licensees have filed an application for a digital CP, but grant of these applications has been delayed for a variety of reasons including delays in international coordination with Canada and Mexico and unresolved interference issues. While the Commission has successfully resolved a number of obstacles to grant of outstanding digital CP applications, and the number of licensees without an initial digital CP has been significantly reduced, approximately 140 commercial

and noncommercial television licensees still have not yet been granted an initial DTV CP. To date, these applicants have not been required to construct DTV facilities pending action on their outstanding DTV applications.

25. To ensure that all licensees that have been awarded digital spectrum begin to provide digital service, we propose to require that all such television licensees that have filed an application for a digital CP with the Commission that has not yet been granted must commence digital service pursuant to special temporary authority (''STA'') within one year from adoption of the *R&O* in this proceeding. Within this time frame, these applicants would be required to request an STA from the Commission and to construct at least the minimum initial facilities required to serve their community of license, as specified in the policy outlined in the *1st MO&O.* We request comment on this proposal. We also request comment on whether the channel election and interference protection deadlines adopted in this proceeding should apply to these licensees and, if not, what other deadlines would be appropriate.

Noncommercial Educational Television Stations

26. Noncommercial television broadcasters are scheduled to complete construction of their digital stations and commence digital service by May 1, 2003. We invite comment on whether noncommercial broadcasters that are not already airing a digital signal anticipate they will meet the May 1, 2003 construction deadline. For any station that does not anticipate meeting the deadline, what obstacles are preventing completion of construction? We also invite comment generally on what steps, if any, the Commission should take to assist noncommercial stations in the transition to DTV. For example, should the financial hardship standard for grant of an extension of time to construct a digital television station be applied differently to noncommercial licensees?

7. Simulcasting

27. In the DTV *5th R&O,* we adopted rules requiring DTV licensees to simulcast 50% of the video programming of their analog channel on their DTV channel by April 1, 2003. This requirement increases to a 75% simulcast requirement in April 2004, and a 100% requirement in April 2005. We seek comment on whether we should retain, revise or remove the simulcast requirement, how to define simulcasting, and whether the existing dates are appropriate. What extent of program duplication should be required to fulfill simulcasting obligations? Does the ultimate requirement of 100% simulcasting other than at the very end of the transition create disincentives for broadcasters to innovate? If broadcasters have a market-based incentive to simulcast and currently are simulcasting 100% of their analog programming on their digital channel, is a regulatory requirement to simulcast necessary? Is the simulcasting requirement causing broadcasters to forego creative uses of digital technology? Would something less than a 100% simulcast requirement be sufficient to protect analog viewers while allowing for innovation on the DTV channels? If maintaining some simulcast obligation is appropriate, we seek comment on whether we should revise the current dates for the phase-in of simulcast requirements.

28. We propose a definition of simulcasting in the DTV context as follows: Within a 24-hour period, the broadcast on a digital channel of the same programming broadcast on the analog channel, excluding commercials and promotions and allowing for enhanced features and services.

We request comment on this proposed definition. We also seek comment on how simulcast requirements and the definition of ''simulcasting'' relate to the substantial duplication decisions in the must carry portions of the Act.

Effect on Prime Time Broadcasting Requirements

29. If we decide to eliminate or change the simulcasting requirements, we must adjust the digital broadcast schedule requirements that are currently pegged to the simulcast requirements. We propose that, if we eliminate or reduce the simulcasting requirements in § 73.624(f), we amend § 73.624(b)(1) to require DTV stations subject to the May 1, 2002, or May 1, 2003, construction deadlines to air, by April 1, 2003, a digital signal for an amount of time equivalent to 50% of the amount of time they provide an analog signal. The digital signal must be aired during prime time hours. This minimum digital operation requirement would increase to 75% on April 1, 2004 (requiring airing of a digital signal for an amount of time equivalent to at least 75% of the amount of time the station airs an analog signal), and to 100% on April 1, 2005. We seek comment on this proposal and invite alternatives as well.

Section 309(j)(14)

30. Section 309(j)(14)(A) of the Communications Act requires the Commission to reclaim the 6 MHz each broadcaster uses for transmission of analog television service by December 31, 2006. Congress recognized, however, that not all stations will convert to DTV at the same time. Thus, ''to ensure that a significant number of consumers in any given market are not left without broadcast television service as of January 1, 2007,'' Congress required the Commission in section 309(j)(14)(B) to grant extensions to any station in any television market if one or more of three conditions exist. We review the language of section 309(j)(14) and invite comment on how we should interpret certain portions of that statutory provision. We also seek comment on establishing rules and filing deadlines governing how and when extension requests will be made.

Filing of Extension Requests

31. Section 309(j)(14)(B) provides that the Commission shall extend the date by which stations must cease analog service for qualifying stations that request an extension. We intend to develop a form to be used by stations to request an extension under this provision. We invite comment on when stations seeking an extension should be required to file their extension request. We invite comment on the period of time for which extensions should be granted. We also invite comment on whether the Commission may grant a blanket extension under section 309(j)(14)(B) to all stations in a market or nationally if the Commission finds that the criteria for return of analog spectrum have not been met. What findings would the Commission need to make in order to grant a blanket extension?

Definition of Television Market

32. Under section 309(j)(14)(B), the Commission must consider whether any one of the three conditions for an extension exist in the requesting station's ''television market.'' For purposes of applying section 309(j)(14)(B), we invite comment on how we should define ''television market.'' One option would be to define ''television market'' as the designated market area or DMA, as defined by Nielsen Media Research, in which the television station requesting the extension is located. Another option would be to define ''television market'' as the requesting station's Grade B contour.

33. Use of DMAs to define the applicable market may be more consistent with the language of section 309(j)(14), which requires the Commission to grant an extension to ''any station that requests such an extension in any television market.'' This language seems to contemplate that

each market will contain more than one television station, as is generally true of DMAs. The Grade B contour of any station requesting an extension, in contrast, is generally unique for each station, and therefore contains only one station. A Grade B test may also be more difficult to administer as market data, including information about digital-to-analog converter technology and the number of television households with digital television reception capability, would have to be compiled for the area within each requesting station's Grade B contour, rather than DMA-wide.

34. Use of DMAs to define the applicable market for purposes of section 309(j)(14)(B) would ensure that transition progress throughout the DMA is considered in determining whether the criteria for extension have been met. As parts of the United States, particularly in rural areas, do not lie within the Grade B contour of any full-power television station, a Grade B test would not consider transition progress in these areas before cessation of analog service.

35. If we define the applicable market by reference to a station's Grade B contour, we invite comment on whether we should refer to the station's analog Grade B or the equivalent digital contour. In addition, does the market of a station requesting an extension under section 309(j)(14) include only the requesting station's Grade B contour, or also the Grade B contour of any TV translator retransmitting the requesting station's signal?

36. The Grade B contour of many stations reaches more than one DMA. Under a DMA-only market test, a station could be denied an extension of its analog license without consideration of the status of the transition in a neighboring DMA where the station may have a significant number of viewers. To address this situation, another option would be to adopt a modified DMA market test that considers viewers in adjacent DMAs in situations where stations have a significant number of viewers in those DMAs. For example, where a station requesting a transition extension has a significant number of viewers in a DMA other than its designated DMA (''home DMA''), we could require that both DMAs meet the statutory criteria for the transition in section 309(j)(14)(B). We request comment on this approach.

37. How we define the ''market'' is important in applying each of the conditions for an extension under section 309(j)(14)(B). We request comment on the impact of a DMA, modified DMA, or Grade B market definition on the availability of extensions under each of these conditions.

Network Digital Television Broadcast Test

38. Under the first ground for an extension under section 309(j)(14)(B), the Commission must grant an extension if one or more of the stations in the market that are licensed to or affiliated with one of the four largest national television networks is not ''broadcasting a digital television service signal, and the Commission finds that each such station has exercised due diligence and satisfies the conditions for an extension of the Commission's applicable construction deadlines for digital television service in that market.'' We invite comment on how we should interpret this provision. We read the language of section 309(j)(14)(B)(i) to require that all stations in a market licensed to or affiliated with a top-four network must be broadcasting in digital before analog service is required to cease in the market, even if a top-four network has more than one affiliate in the market. We request comment on this view. Should we consider a station that is broadcasting a digital signal pursuant to a DTV STA, and providing service in compliance with the Commission's minimum initial digital television construction requirements, to be ''broadcasting a digital television service signal'' for purposes of this provision? We propose that a station not meeting such minimum initial DTV operating requirements would not be considered to be ''broadcasting a digital television signal'' within the meaning of this provision. Thus, extensions would be available under section 309(j)(14)(B)(i) in any market where a top four network affiliate is not providing digital service in accordance with at least the Commission's minimum requirements for coverage of the community of license and hours of operation. We request comment on this proposal.

39. Alternatively, we could require that a station be providing service to the entire area encompassed within the station's DTV allotment in order to be considered ''broadcasting a digital television service signal'' in the market under section 309(j)(14)(B)(i). To ensure that stations not postpone replication to delay return of analog spectrum, we propose that if we require service to the full replication area under section 309(j)(14)(B)(i), we would not consider lack of replication to constitute lack of service after the replication protection deadline adopted in this proceeding.

Converter Technology Test

40. Under the second ground for an extension under section 309(j)(14)(B), the Commission must grant an extension to a requesting station if the Commission finds that digital-to-analog converter technology is not ''generally available'' in the market. For purposes of section 309(j)(14)(B)(ii), we propose to define as a ''digital-to-analog converter'' units that are capable of converting a digital television broadcast signal to a signal that can be displayed on an analog television set. We invite comment on this definition. Should we consider as a ''digital-to-analog converter'' a unit that is not capable of displaying in analog format signals originally broadcast in all digital formats? We also request comment on how we should interpret the phrase ''generally available'' under section 309(j)(14)(B)(ii). For example, should we require only that digital-to-analog converter boxes be available for sale at retail outlets in the market or for sale or lease from cable operators or satellite providers? How widespread must the availability be to be considered ''generally available?'

15 Percent Test

41. Section 309(j)(14)(B)(iii) provides for a third ground for extension for markets that do not qualify under section 309(j)(14)(B)(i) or (ii). Section 309(j)(14)(B)(iii) sets forth a two-part test. The first prong of the test, described in section 309(j)(14)(B)(iii)(I), is met where 15 percent or more of the television households in the market do not subscribe to an MVPD (as defined in 47 U.S.C. 602) that ''carries one of the digital television service programming channels of each of the television stations broadcasting such a channel in such a market.''

42. Read literally, section 309(j)(14)(B)(iii)(I) appears to require that an MVPD, such as a cable system, must be carrying all of the television stations broadcasting a digital channel as a first step to satisfy this prong of the test. Read thus, if one or two digital television stations in a market are not carried by a cable or satellite provider (*e.g,* because the station is not carried voluntarily and is not eligible for mandatory carriage), then the criterion is not met. In almost all DMAs, there are stations that are not entitled to must-carry on cable systems in the DMA and that are not carried by the systems voluntarily. Did Congress intend that this prong would be very rarely satisfied in a market?

43. We invite comment on whether there is a more flexible interpretation of

the language in the statute. How should this language influence our definition of ''market?'' Can we conclude that only television broadcast stations that provide a good quality digital signal to the MVPD headend or local receive facility are contemplated by this language? If we interpret section 309(j)(14)(B)(iii)(I) as requiring carriage of only those digital stations in the market entitled to must-carry, the availability of extensions under this provision will be more limited, and the market is likely to transition to digital more quickly. On the other hand, if we interpret section 309(j)(14)(B)(iii)(I) as requiring that all stations broadcasting digital signals be carried regardless of the station's must-carry rights and signal delivery capability, this prong may be satisfied less often. Moreover, a station could refuse to grant retransmission consent, and prevent carriage, which would in turn prevent the MVPD from counting towards the market transition. As a result, the analog licenses would be extended in every market in which the 15% criteria is not met by households possessing over-the-air digital or down-conversion equipment. Is this the result that Congress intended or that is compelled by the language in the statute?

44. We also invite comment on whether, under section 309(j)(14)(B)(iii), MVPDs must carry only primary, full power television stations in the market, or also Class A LPTV stations or other secondary non-Class A LPTV stations and TV translators. If section 309(j)(14)(B)(iii) is read to require carriage of all of these facilities in the market, and ''market'' is defined as DMA, then this prong of the transition criteria will be satisfied less often. If the market is defined as the station's Grade B contour or service area, then it may be more likely that cable systems within the station's Grade B area would carry that station (*e.g.*, the signal quality issue is less likely to arise). How does this result influence our decision on the proper definition of market?''

45. Under the second part of the 15% test, an extension should be granted if 15 percent or more of the television households in the market do not have either ''(a) at least one television receiver capable of receiving the digital television service signals of the television stations licensed in such market; or (b) at least one television receiver of analog television service signals equipped with digital-to-analog converter technology capable of receiving the digital television service signals of the television stations licensed in such market.''

46. We invite comment on how we should interpret the phrase ''capable of receiving the digital television service signals of the television stations licensed in such market.'' Does this phrase require that a household be capable of over-the-air reception of all television stations licensed in the market in order not to be counted toward the 15 percent threshold for an extension? Under this interpretation, any household outside the service contour of any digital station in the market would be counted toward the 15 percent threshold under these provisions (recognizing that such households could be excluded from counting toward the 15 percent under section 309(j)(14)(B)(iii)(I) if they are MVPD subscribers as defined in that provision). What if a household receives a parent station's signal rebroadcast in analog format via TV translator (*e.g.*, the parent station originally broadcast the signal in digital format and the signal was downconverted to analog format by a TV translator)? We note that § 74.701 of the Commission's rules requires that TV translators retransmit the signals of the parent station ''without significantly altering any characteristic of the original signal other than its frequency and amplitude.'' Should our rules permit TV translators to downconvert to analog format a signal originally broadcast by the parent station in digital format? As a separate issue, we propose to define television receivers ''capable of receiving'' DTV signals under section 309(j)(14)(B)(iii)(II)(a) as television sets equipped with either integrated or separate (*e.g.*, set-top box) DTV tuners, and request comment on this definition.

47. For purposes of calculating households in the market to determine whether the 15 percent test is met under both prongs of section 309(j)(14)(iii), we propose to interpret that provision as requiring grant of an extension where 15 percent or more of the television households in the market neither subscribe to an MVPD that carries local DTV signals (section 309(j)(14)(B)(iii)(I)), nor have equipment capable of displaying signals originated in DTV (section 309(j)(14)(B)(iii)(II)). In other words, for a household to be counted in the 15 percent, that household must both be a non-subscriber (''non-subscriber'' may include subscribers to MVPDs that carry the required DTV stations but who lack equipment to view such signals in either analog or digital format) *and* lack the capability to receive DTV signals over-the-air, either through a set with an integrated DTV tuner, via a DTV set-top box, or via a digital-to-analog downconverter. We believe that this interpretation best reflects the intent of Congress that ''a significant number of consumers in any given market are not left without broadcast television service'' as we transition from analog to digital. Accordingly, we propose to grant extensions under section 309(j)(14)(B)(iii) only where the requisite number of television households (15 percent or more) in the market are not capable of receiving digital signals either over the air or via an MVPD. We request comment on this view.

Fact Finding Under Section 309(j)(14)(B)

48. We request comment on the extent to which the Commission is required to conduct consumer surveys or otherwise obtain information to determine whether an extension is required under section 309(j)(14)(B). In addition, we invite comment on the nature of any survey that must be performed, the type of questions that should be included, and the percent of the television households in the market that must be included in the sample. Is it necessary to survey each market separately, or would a more wide-spread survey suffice to establish that a market meets one or more of the criteria for grant of an extension request? If the first survey conducted demonstrates that an extension is warranted, when should a new survey be performed to see if there has been further transition progress in the market?

DTV Labeling Requirements and Consumer Awareness

49. As part of our commitment to continue monitoring the marketplace, we seek further comment on whether manufacturers are producing or plan to produce digital television receivers that can receive digital format transmissions via cable or satellite but that cannot receive digital broadcast signals over the air. We also seek information on the number of ''pure monitors'' (without any tuner) intended for use in display of signals from video service providers that are currently produced or planned for production. Do equipment manufacturers plan to label such equipment to describe the reception limitations or need for additional receiving equipment? What is the potential for consumer confusion in connection with these devices? Should we require labeling on pure monitors that can be used to display video services, which neither receive off-air signals, nor are designed to be ''digital cable ready,'' to advise consumers that the monitor cannot function to receive programming unless it is attached to an

off-air tuner, or cable, or satellite receiver? Should we require labeling on digital television receivers that are not ''digital cable ready'' to indicate that the set ''will not receive cable or satellite programming without the use of a converter''? We seek comment on these and other labeling options, as well as the need for and costs of such required disclosures.

50. In addition, we seek comment on whether the Commission should require a disclosure label on analog-only sets to inform consumers that a converter or external DTV tuner will be needed to ensure reception of television broadcast signals after stations in the consumer's market complete conversion to digital-only broadcasting.

Distributed Transmission Technologies

51. In the *1st R&O,* we addressed comments requesting that the Commission adopt rules for on-channel DTV boosters, including an allowance for a distributed transmission system, but deferred consideration of distributed transmission techniques until we could address the issue in a more comprehensive manner. Commenters have defined distributed transmission as being similar to a cellular telephone system in that a service area is divided into a number of cells, each served by its own transmitter. DTV boosters retransmit the primary DTV station's programming on the same channel.

52. *Primary vs. secondary status.* We have received comments suggesting that the Commission should grant primary status to the multiple transmitters in distributed transmission systems and license them under part 73 of the rules, as opposed to treating them similarly to LPTV, translator, and booster stations. We seek comment on the implications of granting primary status to DTV boosters in distributed transmission systems, and on whether we should license some categories of such stations with primary status.

53. *Location and service area.* Currently, all analog TV boosters must be located and must have a service area contained within the Grade B contour of the associated full service station. Should an equivalent requirement be established for DTV boosters used as part of a distributed transmission system?

54. *Power, antenna height and emission mask.* If multiple DTV booster stations can be used to replace, or significantly augment, a single central transmitter in a distributed transmission system, what maximum or minimum limitations, if any, should be placed on the power and/or antenna height used at each DTV booster?

55. *Interference protection.* What standards are needed to protect distributed transmission systems from interference and how should those standards be calculated and applied?

56. *Technical standards.* What standards would be appropriate for boosters in distributed transmission systems with respect to specific technical requirements, such as frequency tolerance, type certification of transmitters, control circuitry and performance measurements?

57. We seek comment generally on whether the Commission should permit the deployment of distributed transmission systems. We ask commenters to specifically address the relevant rules and policies that would have to be put in place to permit distributed transmission systems, and any new or amended forms, policies and/or procedures that would be needed with respect to the Commission's current system for filing, processing and granting television station licenses.

DTV Public Interest Obligations

58. Both Congress and the Commission have recognized that digital television broadcasters have an obligation to serve the public interest. Congress established the statutory framework for the transition to digital television in the 1996 Act, making it clear that public interest obligations would continue for broadcasters in the new digital world. In section 336 of the Act, Congress stated that ''[n]othing in this section shall be construed as relieving a television broadcasting station from its obligation to serve the public interest, convenience, and necessity.'' The Commission also reaffirmed that ''digital broadcasters remain public trustees with a responsibility to serve the public interest,'' and stated that ''existing public interest requirements continue to apply to all broadcast licensees.'' Under our current rules, commercial television broadcast station licensees must provide coverage of issues facing their communities, and place lists of programming used in providing significant treatment of those issues (issues/programs lists) in the station's public inspection files on a quarterly basis. Licensees must also maintain in their station's public inspection files records that substantiate certification of compliance with the commercial limits on children's programming and quarterly Children's Television Programming Reports (FCC Form 398) reflecting the licensee's efforts to serve the educational and informational needs of children.

59. It is thus clear that DTV broadcasters must air programming responsive to their communities of license, comply with the statutory requirements concerning political advertising and candidate access, and provide children's educational and informational programming, among other things. What remains unresolved is how these obligations will apply in the digital environment, and whether they should be applied differently or otherwise adapted to reflect the enhancements available in digital broadcasting.

60. The Commission issued a formal Notice of Inquiry *(''NOI''),* (MM 99–360, 65 FR 4211, January 26, 2000), on DTV public interest obligations in December 1999, followed by two *NPRMs* in September, 2000 (65 FR 66951, November 8, 2000, 65 FR 62683, October 19,2000). In the *NOI,* the Commission sought comment on several issues related to how broadcasters might best serve the public interest during and after the transition from analog to digital television. Among the areas of inquiry in the *NOI* were questions regarding how broadcasters might make information about how they serve the public interest more accessible to the public.

61. The DTV Public Interest Form *NPRM* proposed that the Commission adopt rules regarding the disclosure of broadcasters' activities in the public interest, essentially putting the contents of the public file on the Internet to make it more accessible to viewers. In light of the concerns about disclosure expressed in the record of the *NOI,* the *NPRM* proposed to replace the issues/programs list with a standardized form and to enhance the public's ability to access information on a station's public interest obligations by requiring broadcasters to make their public inspection files available on the Internet.

62. The Children's DTV Public Interest *NPRM* (65 FR 66951, November 8, 2000), proposed clarifying broadcaster obligations under the Children's Television Act and related Commission guidelines in a digital television environment. This *NPRM* focused primarily on two areas: the obligation of television broadcast licensees to provide educational and informational programming for children, and the requirement that television broadcast licensees limit the amount of advertising in children's programs. It sought comment on how the current three-hour children's core educational programming processing guideline should be applied in light of the many possible ways broadcasters

may choose to use their DTV spectrum; whether the current preemption rules for core educational programming should be revised or adapted for the digital environment; and whether steps should be taken to ensure that programs designed for children or families do not contain age-inappropriate product promotions that are unsuitable for children to watch.

63. To date, the Commission has not issued any decisions in the DTV Public Interest Form *NPRM,* the Children's DTV Public Interest *NPRM,* or the NOI. Given the significant time that has passed since the comment periods in these proceedings were closed, we invite additional comment in those dockets in order to reflect more recent developments. We are particularly interested in those issues relating to the application of public interest obligations to broadcasters that choose to multicast (*e.g.*, the application of our children's television rules or the statutory political broadcasting rules in a multicast environment). We are also interested in whether our approach to multicast public interest obligations should vary with the scope of whatever final digital must-carry obligation the Commission adopts. Our goal is to bring these proceedings concerning the public interest obligations of broadcasters in the digital environment to conclusion promptly in order to provide certainty to broadcasters and the public as the digital television transition continues.

Other Issues

1. ATSC Standards

64. We hereby seek comment on whether our rules should be further changed to reflect any revisions to the ATSC DTV standard A/53B since the August 7, 2001, version.

2. PSIP

65. We seek comment on both whether to require use of PSIP and which aspects of PSIP should be adopted into our rules. If we decide not to require use of PSIP, it is, nevertheless, important to decide if some or all of the PSIP information set forth in ATSC A/65A must be used by those who voluntarily use PSIP. Likewise, are there certain aspects of the PSIP standard that should not be used or required?

3. Closed Captioning

66. We seek comment on whether there are additional actions the Commission should take to ensure the accessibility and functioning of closed captioning service for digital television.

4. V-Chip

67. We seek comment on whether the Commission needs to do more to ensure that v-chip functionality is available in the digital world. We seek comment on whether the Commission should adopt the provisions of the ATSC A/65A standard that requires all digital television broadcasters to place v-chip rating information in the PSIP.

5. TV Translators

68. We request comment on how the proper PSIP information is to be provided on TV translator rebroadcasts and who will be responsible for ensuring that that information is so provided. We also request comment regarding the costs of providing PSIP information on TV translators as well as any other concerns that translator operators might have in implementing PSIP on their DTV operations.

6. DTV Station Identification

69. In general, we propose to require digital television stations to follow the same rules for station identification as analog television stations. Recognizing that channel number identification is not currently required for all television stations by our rules, we ask whether channel identification should be required for DTV stations? If station identification announcements include channel numbers, we request comment on whether our rules should specify which channel number stations should use: the major (analog) channel number, minor (digital) channel number, or over-the-air channel number. Stations considering multicasting have raised concerns about separate identification of their separate digital programming streams for purposes of obtaining audience ratings. While we are not inclined to assign separate call signs for additional program streams for stations that choose to multicast, we propose to permit such stations to include additional information in their station announcements identifying each program stream.

7. Satellite Stations

70. Because satellite stations, by definition, operate in small or sparsely populated areas which have insufficient economic bases to support full-service operations, we seek comment on whether the public interest would be served by allowing such stations to turn in their digital authorization and ''flash-cut'' to DTV transmission at the end of the transition period. We request comment on the advantages and disadvantages of granting this special designated status to satellite stations, specifically whether it will hinder the overall transition to digital television and harm viewers by delaying their access to digital signals, or whether disallowing such status will overly burden satellite stations financially.

71. We also invite comment on whether allowing satellite stations to ''flash-cut'' to digital would present legal impediments to satisfying section 309(j)(14).

Procedural Matters

72. *Ex Parte Rules.* This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See* 47 CFR 1.1202, 1.1203, and 1.1206(a).

73. *Comment Information.* Pursuant to § 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before April 14, 2003, and reply comments on or before May 14, 2003. Comments filed addressing issues in the *DTV Public Interest Form NPRM, Children's DTV Public Interest NPRM,* and NOI proceedings should also be filed by these dates and should reference the docket numbers in those proceedings, not the docket number of this DTV periodic review proceeding. Commenters wishing to address both public interest issues and other issues raised in the DTV periodic review should put their public interest comments in a separate document to be filed in the appropriate public interest docket(s) and file their comments on other issues raised in the periodic review in the docket number of this proceeding (MB 03–15; RM 9832).

Paperwork Reduction Act

74. *Initial Paperwork Reduction Act Analysis.* This *NPRM* may contain proposed information collections subject to the Paperwork Reduction Act of 1995. As part of our continuing effort to reduce paperwork burdens, we invite OMB, the general public, and other federal agencies to take this opportunity to comment on the information collections contained in this *NPRM,* as required by the Paperwork Reduction Act of 1995. Public and agency comments are due at the same time as other comments on the *NPRM.* Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected; and (c) ways to minimize the burden of the

collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street, SW., Room C–1804, Washington, DC 20554, or via the Internet to *jboley@fcc.gov* and to Kim Johnson, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *Kim A. Johnson@omb.eop.gov.*

75. *Regulatory Flexibility Act.* As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this *NPRM.* Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *NPRM,* and they should have a separate and distinct heading designating them as responses to the IRFA.

Initial Regulatory Flexibility Analysis

76. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA''), the Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on small entities by the policies and rules proposed in this *NPRM* written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM.* The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for and Objectives of the Proposed Rules

77. As described in the *NPRM,* the proposed rules are required to ensure a smooth transition of the nation's television system to digital television.

Legal Basis

78. The authority for the action proposed in this rulemaking is contained in sections 4(i) and (j), 303, 307, 309 and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and (j), 303, 307, 309 and 336.

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

79. 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. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental entity.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'').

80. In this context, the application of the statutory definition to television stations is of concern. 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 estimates that follow 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 therefore might be over-inclusive.

81. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses might therefore be over inclusive.

Television Broadcasting

82. The proposed rules and policies could apply to television broadcasting licensees, and potential licensees of television service. There were 1,509 television stations operating in the nation in 1992. The majority of firms can be considered small.

Cable and Other Program Distribution

83. This category includes, among others, cable operators, direct broadcast satellite (''DBS'') services, home satellite dish (''HSD'') services, multipoint distribution services (''MDS''), multichannel multipoint distribution service (''MMDS''), Instructional Television Fixed Service (''ITFS''), local multipoint distribution service (''LMDS''), satellite master antenna television (''SMATV'') systems, and open video systems (''OVS''). According to Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than $10 million in revenue. We address each service individually to provide a more precise estimate of small entities.

Cable Operators. We estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules proposed in this NPRM.

Direct Broadcast Satellite (''DBS'') Service

84. There are four licensees of DBS services under part 100 of the Commission's Rules. We will assume all four licensees are small, for the purpose of this analysis.

Home Satellite Dish (''HSD'') Service

85. HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion. Most of providers of these services are considered small.

Multipoint Distribution Service (''MDS''), Multichannel Multipoint Distribution Service (''MMDS'') Instructional Television Fixed Service (''ITFS'') and Local Multipoint Distribution Service (''LMDS'')

86. MMDS systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the MDS and ITFS. LMDS is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.

87. We find that there are approximately 850 small MDS providers.

88. We tentatively conclude that at least 1,932 ITFS licensees are small businesses.

89. We conclude that there are a total of 133 small entity LMDS providers.

Satellite Master Antenna Television (''SMATV'') Systems

90. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Most providers of these services are considered small.

Open Video Systems ("OVS")

91. The Commission has certified 25 OVS operators with some now providing service. We conclude that at least some of the OVS operators qualify as small entities.

Electronics Equipment Manufacturers

92. Rules adopted in this proceeding could apply to manufacturers of DTV receiving equipment and other types of consumer electronics equipment. We conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

Computer Manufacturers

93. We conclude that there are approximately 544 small computer manufacturers.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

94. At this time, we do not expect that the proposed rules would impose any significant additional recordkeeping or recordkeeping requirements. While the requirements proposed in the *NPRM* could have an impact on consumer electronics manufacturers and broadcasters, such impact would be similarly costly for both large and small entities. We seek comment on whether others perceive a need for more extensive recordkeeping and, if so, whether the burden would fall on large and small entities differently.

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

95. 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.

96. The deadlines we proposed for replication and maximization for in-core channels would give the largest commercial stations in the largest markets on in-core channels three years to acquire necessary financing, develop business plans, and expand their digital service areas. Taking into consideration smaller-market commercial stations, smaller commercial stations in larger markets, and noncommercial DTV licensees, which may face greater obstacles in moving towards full replication or service maximization, we proposed alternative replication and maximization deadlines allowing close to the maximum time under the current statutory transition period to complete their replication and maximization facilities. We welcome comment on modifications of the proposals if such modifications might assist small entities and especially if such are based on evidence of potential differential impact.

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

97. None.

Ordering Clause

98. Pursuant to the authority contained in sections 4(i) and (j), 303, 307, 309 and 336 of the Communications Act of 1934 as amended, 47 U.S.C. 154(i) and (j), 303, 307, 309 and 336, this *NPRM is adopted.*

99. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *NPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

List of Subjects in 47 CFR Parts 73, 74, 76, and 90

Administrative practice and procedure, Cable television, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–3812 Filed 2–14–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 03–14477, No. 1]

Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition for rulemaking.

SUMMARY: The agency denies a petition for rulemaking from Mr. Ronald J. Slaughter requesting that NHTSA initiate rulemaking to consider requiring motor vehicle manufacturers to equip new vehicles with instrumentation sufficient to alert vehicle drivers and nearby police whenever the vehicles are being operated while one or more of the occupants is unbelted. Mr. Slaughter suggested that implementation of the requested amendment would lead to increases in the rate of safety belt use.

The agency is denying the petition for the following reasons. First, implementation of the requested amendment would be costly since it would necessitate the installation of seat belt use sensors, seat occupancy sensors, and light sources in each vehicle. Second, the requested amendment would have limited effect on safety belt use rates in the states whose safety belt use laws permit officers to stop a vehicle or issue a citation for failure to use a safety belt only if the officers also observe a separate concurrent violation. Third, the agency is concerned about consumer acceptance of the system proposed by the petitioner. Fourth, occupants who do not want to wear their seat belts can easily circumvent the system by placing the seat belt behind them or modifying the light to stay on all the time.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Sanjay Patel of the NHTSA Office of Crashworthiness Standards. Telephone: (202) 366–4583, facsimile: (202) 366–4329.

For legal issues, you may call Ms. Rebecca MacPherson of the NHTSA Office of the Chief Counsel. Telephone: (202) 366–2992, facsimile: (202) 366–3820.

SUPPLEMENTARY INFORMATION: On January 25, 2000, Mr. Ronald J. Slaughter submitted a petition for rulemaking requesting that NHTSA consider requiring motor vehicle manufacturers to equip new vehicles with lights inside and outside the vehicle that would continuously burn and be visible to the driver and to those outside the vehicle as long as all vehicle occupants are belted. Mr. Slaughter believes that continuously burning lights on the instrument panel would give the driver more control over his or her passengers, reminding them to "buckle up." Further, Mr. Slaughter suggested that lights visible outside the vehicle would help police officers enforce mandatory seat belt use laws. He believes that such lights would increase safety belt use, assist in the identification of drunk or otherwise