

substances, Reporting and recordkeeping requirements.

Dated: November 18, 2004.

Michael O. Leavitt,
Administrator.

■ For the reasons set out in the preamble, part 63, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart C—[AMENDED]

■ 2. Subpart C is amended by adding § 63.63 to read as follows:

§ 63.63 Deletion of ethylene glycol monobutyl ether from the list of hazardous air pollutants.

The substance ethylene glycol monobutyl ether (EGBE, 2-Butoxyethanol) (CAS Number 111-76-2) is deleted from the list of hazardous air pollutants established by 42 U.S.C. 7412(b)(1).

[FR Doc. 04-26071 Filed 11-26-04; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MB Docket No. 03-185; FCC 04-220]

Broadcast Services; Television Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts rules for digital low power television (LPTV) and television translator stations, and resolves issues related to digital television booster stations. This proceeding marks the beginning of the digital television conversion for these services. The rules and policies provide the framework for this conversion.

DATES: Effective January 28, 2005, except §§ 73.6027, 74.703, 74.705, 74.707, 74.710, 74.786 through 74.788, 74.790, and 74.793 through 74.796 of the Commission's rules, which contain information collection requirements under the Paperwork Reduction Act (PRA) and are not effective until approved by the Office of Management and Budget (OMB). Written comments by the public on the new and modified

information collections are due January 28, 2005. The Commission will publish a document in the **Federal Register** announcing the effective date for these rules.

FOR FURTHER INFORMATION CONTACT:

Shaun Maher, *Shaun.Maher@fcc.gov*, (202) 418-1600. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Leslie Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:

Shaun Maher, Media Bureau (202) 418-1600. For additional information concerning the information collection(s) contained in this document, contact Leslie Smith at 202-418-0217, or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the *Report and Order (R&O)* in MB Docket No. 03-185, FCC 04-220, adopted September 9, 2004, and released September 30, 2004. This proceeding was initiated by the *Notice of Proposed Rule Making*, 68 FR 55566, September 26, 2003. The complete text of this *R&O* 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, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street SW, CY-B402, Washington, DC 20554. The *R&O* is also available on the Internet at the Commission's Web site: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365 or at *Brian.Millin@fcc.gov*

Paperwork Reduction Act

This document contains information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the information collection requirements contained in this proceeding.

Summary of the Report and Order

1. The *R&O* adopts definitions and permissible use provisions for digital TV translator and LPTV stations to

mirror the analog operation of these stations. Digital translators will rebroadcast DTV broadcast signals. Whenever operating, a digital LPTV station must use some of its channel capacity to provide a free video programming service to the public. Upon meeting this requirement, LPTV stations may offer ancillary and supplementary services on the same basis as DTV broadcast licensees.

2. As to the timing of the digital transition for these stations, LPTV, TV translator, and Class A stations are required to convert to digital operation, but the Commission has discretion to set the date by which analog operations of these stations must cease. The *R&O* states that the Commission will seek to hasten their transition to digital service and will work toward the goal of achieving an end-date at, or soon after, the end date of the full-power transition. Although the Commission intends to hasten their transition to digital service, certain issues regarding the transition of full service stations must be resolved before a low-power transition deadline can be set. The final transition date of these stations will be considered in the Commission's Third DTV periodic review proceeding.

3. Existing LPTV and TV translator stations may convert to digital operations ("flash cut") on their current channel. Applications for this purpose will be accepted on a first-come, first serve basis. Mutually exclusive applicants will be resolved by auction. In addition, to facilitate their digital transition, licensees and permittees of LPTV, TV translator, and Class A stations will be allowed to seek a digital companion channel for their analog station operations. A filing window for this purpose will be announced at a later date. The Commission will determine the deadline and process for stations' obtaining a digital companion channel to return of one of their channels. At a later date, the Commission will institute a separate first-come-first-served filing procedure not limited to incumbent low power stations.

4. Due to limited spectrum availability, the *R&O* makes available VHF channels 2-13, inclusive, and UHF channels 14-51, inclusive (except channel 37) for digital LPTV and TV translator operations. The *R&O* also permits the use of channels 52-69 on a limited basis. Existing LPTV and TV translator stations on channels 52-69 may flash-cut to digital operations. The use of channels 52-59 for digital companion channels is limited to those stations that can certify the unavailability of any in-core channel

(channels 2–51). The use of channels 60–69 for companion channels is prohibited. Applicants for operations on channels 52–69 must notify potentially affected commercial wireless and public safety licensees before filing their applications. Additionally, applicants proposing to flash-cut to digital on channels allocated for public safety use (channels 63, 64, 68 and 69) are required to coordinate with regional and state entities representing potentially affected public safety licensees.

5. All digital LPTV and TV translator stations will operate on a secondary, non-interfering basis with respect to primary services, including the commercial wireless and public safety services. The *R&O* adopts for digital stations in the LPTV service the protected contour values for digital Class A stations. For digital stations in the LPTV and Class A services, the *R&O* replaces the current contour protection methodology with the DTV interference prediction methodology.

Procedural Matters

6. Paperwork Reduction Act of 1995 Analysis. This *R&O* contains new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection(s) contained in this proceeding.

7. Written comments by the public on the proposed information collection(s) are due January 28, 2005. Written comments must be submitted by the public, Office of Management and Budget and other interested parties on the proposed information collection(s) on or before January 28, 2005. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to Leslie.Smith@fcc.gov, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to Kristy.L.LaLonde@omb.eop.gov, or via fax at 202–395–5167.

Final Regulatory Flexibility Analysis

8. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the

Notice of Proposed Rule Making (NPRM), 68 FR 55566, September 26, 2003. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. One comment was received on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for and Objectives of the Report and Order

9. The *R&O* establishes a regulatory framework that will hasten the transition of LPTV and TV translator stations to digital operations while minimizing disruption of existing service to consumers served by analog LPTV and TV translator stations. These stations are a valuable component of the nation's television system, delivering over-the-air TV service, including locally produced service, to millions of viewers in rural and discrete urban communities. The Commission desires to facilitate, wherever possible, the digital transition of these stations, thereby enabling their viewers to realize the many benefits of digital broadcast television (DTV) technology. The rules and policies adopted in the *R&O* provide flexible and affordable opportunities for low power digital television service, both through the conversion of existing analog service and, where spectrum is available, new digital stations.

10. The *R&O* provides additional flexibility for existing broadcasters to transition to digital. The *R&O* declines to apply the full-service deadline for stations to cease analog operations finding that low power television broadcasters and their viewers do not have the resources to “flash-cut” from analog to digital and need additional time to identify available channels for digital use. Setting a transition deadline at some fixed time after the full-service transition would be less disruptive and minimize potential loss of service.

11. The *R&O* allows existing broadcasters the first opportunity to either immediately convert from analog to digital (“flash-cut”) on their existing analog channel or to apply for a digital companion channel. This will provide existing broadcasters the flexibility to identify a workable digital channel for operation before new broadcasters are allowed to apply for channels. These applications will be filed as “minor changes,” thus reducing the overall time and processing burden on the stations.

12. While the *R&O* concludes that digital flash-cut and companion channel applications filed by low power broadcasters are subject to auction (except Class A flash-cut applications), an opportunity is provided for

applicants to find settlements or engineering solutions to avoid having to go to auction. This will facilitate the processing of applications and permit applicants to avoid having to use limited resources to bid for their digital channels.

13. Applicants that choose to flash-cut or file for digital companion channels will have greater flexibility to seek channels between 52–69 (with restrictions). This will enable numerous stations that otherwise could not find a digital channel with the opportunity to participate in the digital transition.

14. Stations will have the flexibility to choose the types of service to provide for their viewers. Translators will be limited to rebroadcasting programs and signals of full-service DTV stations without alteration to content or video format but may insert the types of local messages permitted for analog translators and may rebroadcast a DTV signal as an analog signal. LPTV stations must provide a free over-the-air video program service but have the freedom to use the remainder of their spectrum to offer ancillary services on the same basis as full-service DTV stations (including a 5% fee on gross revenues of feeable services).

15. The interference rules and methodology in the *R&O* provide the needed flexibility for stations to engineer new digital operations without undermining established interference protection rights of existing broadcasters. The equipment rules will enable stations to use much of their existing equipment, thus reducing the overall cost of digital implementation.

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

16. There were no comments filed in response to the Initial Regulatory Flexibility Analysis.

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

17. 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 jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation;

and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

18. 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.

19. 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.

20. Class A TV, LPTV, and TV translator stations. The rules and policies apply to licensees of LPTV and TV translator, and to potential licensees in these television services. Certain rules and policies also apply to licensees of Class A TV stations. The Small Business Administration defines a television broadcasting station that has no more than \$12 million in annual receipts as a small business. Television broadcasting consists of establishments primarily engaged in broadcasting images together with sound, including the production or transmission of visual programming which is broadcast to the public on a predetermined schedule. Included in this category are establishments primarily engaged in television broadcasting and which produce programming in their own studios. Separate establishments primarily engaged in producing programming are classified under other NAICS numbers.

21. Currently, there are approximately 2,100 licensed LPTV stations, 600 licensed Class A stations, 4,700 licensed TV translators and 11 TV booster stations. According to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database, virtually all LPTV broadcast stations, including LPTV stations that have converted to Class A status, have revenues of less than \$12 million. 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 \$12 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

22. Cable and Other Program Distribution. Cable systems often receive the television service transmitted over the cable system from a TV translator or LPTV station. Thus, cable systems may also be affected by the rules in the *R&O*. The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating \$12.5 million or less in revenue annually. 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 below each service individually to provide a more precise estimate of small entities.

23. Cable Operators. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. We last estimated that there were 1,439 cable operators that qualified as small cable companies. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, 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 Notice.

24. The Communications Act, as amended, also contains a size standard for a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate less than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that there are 68,500,000

subscribers in the United States. Therefore, an operator serving fewer than 685,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

25. Direct Broadcast Satellite (DBS) Service. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Program Distribution services. This definition provides that a small entity is one with \$12.5 million or less in annual receipts. There are four licensees of DBS services under part 100 of the Commission's rules. Three of those licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge, despite the absence of specific data on this point, that there are entrants in this field that may not yet have generated \$12.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated. Therefore, we will assume all four licensees are small, for the purpose of this analysis.

26. Home Satellite Dish (HSD) Service. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Cable and Other Program Distribution services. This definition provides that a small entity is one with \$12.5 million or less in annual receipts. The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled

channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, 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. As noted, supra, for the category Cable and Other Program Distribution, most of providers of these services are considered small.

27. Multipoint Distribution Service (MDS), Multichannel Multipoint Distribution Service (MMDS) Instructional Television Fixed Service (ITFS) and Local Multipoint Distribution Service (LMDS). MMDS systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the MDS and ITFS services. LMDS is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.

28. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues of less than \$40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. In addition, MDS includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, which includes all such companies generating \$12.5 million or less in annual receipts. This definition includes multipoint distribution services, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of \$12.5 million annually. Therefore, using the SBA small business size standard, we find

that there are approximately 850 small MDS providers.

29. The SBA definition of small entities for Cable and Other Distribution services, which includes such companies generating \$12.5 million in annual receipts, seems reasonably applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

30. Additionally, the auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding calendar years. These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

31. Satellite Master Antenna Television (SMATV) Systems. The SBA definition of small entities for Cable and Other Program Distribution services includes SMATV services and, thus, small entities are defined as all such companies generating \$12.5 million or less in annual receipts. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of July 2001. The best available estimates indicate that the largest SMATV operators serve between 15,000 and

55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. As noted, supra, for the category Cable and Other Program Distribution, most of providers of these services are considered small.

32. Open Video Systems (OVS). Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with \$ 12.5 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

33. Electronics Equipment Manufacturers. Rules adopted in this proceeding could affect manufacturers of digital transmitting and receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment as well as radio and television broadcasting and wireless communications equipment. These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer

equipment. Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore 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.

34. Computer Manufacturers. The Commission has not developed a definition of small entities applicable to computer manufacturers. Therefore, we will utilize the SBA definition of electronic computers manufacturing. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity. Census Bureau data indicates that there are 563 firms that manufacture electronic computers and of those, 544 have fewer than 1,000 employees and qualify as small entities. The remaining 19 firms have 1,000 or more employees. We conclude that there are approximately 544 small computer manufacturers.

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

35. The *R&O* contains additional reporting and recordkeeping requirements. For example, stations must file an application to either flash-cut to digital or for a companion digital channel. Applicants proposing digital channels 52–69 must make a

certification in their application that no suitable channel 2–51 is available. In addition, applicants proposing to use digital channel 60–69 must certify that they have coordinated the use of their facilities with public safety entities. In addition, applicants in mutually exclusive groups may file settlements or engineering solutions with the Commission to avoid having to go to auction. Without these filings, stations cannot participate in the digital television transition. Factors that could make the digital transition time consuming are not likely to be related to whether the entity is small or large. These requirements will serve to promote the overall DTV transition and represent a temporary burden on stations. We expect that stations will be able to recoup the cost of these filings with advance DTV operation.

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

36. 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.

37. The Commission is aware that many low power licensees, including smaller entities, operate with limited budgets. Accordingly, every effort was taken to craft rules that impose the least possible burden on all licensees, including smaller licensed entities.

38. The *R&O* allows low power broadcasters additional time (as compared to full-service broadcasters) to transition from analog to digital service. The amount of additional time has not yet been determined. Allowing additional time for the low power DTV transition is less disruptive to low power broadcasters and will minimize potential loss of service. The Commission considered making low power broadcasters cease operating their analog facilities at the deadline applicable to full-service broadcasters but we found that this would result in many low power stations being unable to obtain the spectrum they needed to accomplish the digital transition. The Commission rejected this approach in

order to prevent low power broadcasters from prematurely flash-cutting to digital and the loss of service that would result.

39. The *R&O* allows existing broadcasters the first opportunity to either flash-cut on their existing analog channel or to apply for a digital companion channel. This will provide existing broadcasters the flexibility to identify a workable digital channel for operation before new broadcasters are allowed to apply for channels. The Commission considered allowing applicants to seek new channels at the same time that incumbent stations seek companion channels but rejected this approach because new channels would use valuable spectrum that must be used by incumbent stations to successfully transition to digital.

40. The *R&O* concludes that digital flash-cut and companion channel applications filed by low power broadcasters are subject to auction (except Class A flash-cut applications). The Commission concluded that the statute provides the discretion in this case. At the same time, the Commission sought to alleviate the burden on all stations by allowing all applicants an opportunity to find settlements or engineering solutions to avoid having to go to auction. The Commission concluded that the settlement opportunity will facilitate the processing of applications and permit applicants to avoid having to use limited resources to bid for their digital channels.

41. The *R&O* allows applicants to seek digital channels between 52–69 on a limited secondary basis. The Commission found that this approach will provide stations with greater flexibility to seek channels where a core channel (between 2 and 51) cannot be identified. The Commission considered not allowing any additional licensing on these channels because of concerns of interference to new wireless and public safety users. This approach was rejected because it was found that limited use of channels 52–69 was necessary for the successful DTV transition of many LPTV and TV translator stations. This will enable numerous stations that otherwise could not find a digital channel with the opportunity to participate in the digital transition.

42. The *R&O* provides stations with the flexibility to choose the types of service to provide for their viewers. Translators will be limited to rebroadcasting programs and signals of full-service DTV stations without alteration to content or video format but may insert the types of local messages permitted for analog translators and may rebroadcast a DTV signal as an analog

signal. LPTV stations must provide a free over-the-air video program service but have the freedom to use the remainder of their spectrum to offer ancillary services on the same basis as full-service DTV stations (including 5% fee on gross revenues of feeable services). We considered allowing LPTV and TV translator stations to operate without restrictions but that proposal was rejected because it would interfere with the Commission's overall DTV goals and the rules and policies adopted for full-service stations.

43. The R&O adopts interference rules and methodology to provide the needed flexibility for stations to engineer new digital operations without undermining established interference protection rights of existing broadcasters. The equipment rules will enable stations to use much of their existing equipment, thus reducing the overall cost of digital implementation. The Commission considered adoption of stricter rules but concluded that such rules would interfere with low power stations being able to successfully propose and construct new DTV facilities and to afford to convert their analog facilities.

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

44. None.

G. Report to Congress

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

Ordering Clauses

46. *It is ordered* that pursuant to the authority contained in sections 1, 4(i) and (j), 5(c)(1), 7, 301, 302, 303(f), 303(r), 303(u), 303(w), 303(x), 307, 308, 309, 316, 319, 324, 336(c), 336(f), 337, 330(b), 330(c), 332(c) of the Communications Act of 1934, 47 U.S.C 151, 154(i) and (j), 155(c)(1), 157, 301, 302, 303(f), 303(r), 303(u), 303(w), 303(x), 307, 308, 309, 316, 319, 324, 336(c), 336(f), 337, 330(b), 330(c), 332(c) that the Commission's rules *are hereby amended* as set forth in the rules changes and shall become effective January 28, 2005 except §§ 73.6027, 74.703, 74.705, 74.707, 74.710, 74.786 through 74.788, 74.790, and 74.793 through 74.796 of the Commission's rules, which contain information

collection requirements under the Paperwork Reduction Act (PRA) that are not effective until approved by the Office of Management and Budget (OMB). Written comments by the public on the new and modified information collections are due January 28, 2005. The Commission will publish a document in the **Federal Register** announcing the effective date for these rules.

47. *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 Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

48. *It is further ordered*, that the Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Parts 73 and 74

Communications equipment, Reporting and recordkeeping requirements, and Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rule Changes

■ For the reasons set forth in the preamble, the Federal Communications Commission amends 47 CFR parts 73 and 74 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

Subpart J—Class A Television Broadcast Stations

■ 2. Section 73.6000 is amended by redesignating paragraph (2) as paragraph (3) and adding a new paragraph (2) to read as follows:

§ 73.6000 Definitions.

* * * * *

(2) Produced within the predicted DTV noise-limited contour (see § 73.622(e) of this part) of a digital Class A station broadcasting the program or within the contiguous predicted DTV noise-limited contours of any of the digital Class A stations in a commonly owned group; or

* * * * *

■ 3. Section 73.6016 is revised to read as follows:

§ 73.6016 Digital Class A TV station protection of TV broadcast stations.

Digital Class A TV stations must protect authorized TV broadcast stations, applications for minor changes in authorized TV broadcast stations filed on or before November 29, 1999, and applications for new TV broadcast stations that had been cut-off without competing applications or that were the winning bidder in a TV broadcast station auction as of that date, or that were the proposed remaining applicant in a group of mutually-exclusive applications for which a settlement agreement was on file as of that date. This protection must be based on meeting the requirements of § 74.793 (b)–(d) and (f) of this chapter. An application for DTV operation of an existing Class A TV station or to change the facilities of a digital Class A TV station will not be accepted if it fails to protect these TV broadcast stations and applications pursuant to these requirements.

■ 4. Section 73.6017 is revised to read as follows:

§ 73.6017 Digital Class A TV station protection of Class A TV and digital Class A TV stations.

An application for digital operation of an existing Class A TV station or to change the facilities of a digital Class A TV station will not be accepted if it fails to protect authorized Class A and digital Class A stations in accordance with the requirements of § 74.793 (b) through (d) and § 74.793(g) of this chapter. This protection must be afforded to applications for changes in other authorized Class A and digital Class A stations filed prior to the date the digital Class A application is filed.

■ 5. Section 73.6018 is revised to read as follows:

§ 73.6018 Digital Class A TV station protection of DTV stations.

Digital Class A TV stations must protect the DTV service that would be provided by the facilities specified in the DTV Table of Allotments in § 73.622, by authorized DTV stations and by applications that propose to expand DTV stations' allotted or authorized coverage contour in any direction, if such applications either were filed before December 31, 1999 or were filed between December 31, 1999 and May 1, 2000 by a DTV station licensee or permittee that had notified the Commission of its intent to "maximize" by December 31, 1999. Protection of these allotments, stations

and applications must be based on meeting the requirements of § 74.793 (b) through (e) of this chapter. An application for digital operation of an existing Class A TV station or to change the facilities of a digital Class A TV station will not be accepted if it fails to protect these DTV allotments, stations and applications in accordance with this section.

■ 6. Section 73.6019 is revised to read as follows:

§ 73.6019 Digital Class A TV station protection of low power TV, TV translator, digital low power TV and digital TV translator stations.

An application for digital operation of an existing Class A TV station or to change the facilities of a digital Class A TV station will not be accepted if it fails to protect authorized low power TV, TV translator, digital low power TV and digital TV translator stations in accordance with the requirements of § 74.793 (b) through (d) and (h) of this chapter. This protection must be afforded to applications for changes filed prior to the date the digital Class A station is filed.

■ 7. Section 73.6020 is revised to read as follows:

§ 73.6020 Protection of stations in the land mobile radio service.

An application for digital operation of an existing Class A TV station or to change the facilities of an existing Class A TV or digital Class A TV station will not be accepted if it fails to protect stations in the land mobile radio service pursuant to the requirements specified in § 74.709 of this chapter. In addition to the protection requirements specified in § 74.709(a) of this chapter, Class A TV and digital Class A TV stations must not cause interference to land mobile stations operating on channel 16 in New York, NY.

* * * * *

■ 8. Section 73.6024 is amended by adding paragraph (d) to read as follows:

§ 73.6024 Transmission standards and system requirements.

* * * * *

(d) A digital Class A station must meet the emission requirements of § 74.794 of this chapter.

■ 9. Section 73.6027 is added to subpart J to read as follows:

§ 73.6027 Class A TV notifications concerning interference to radio astronomy, research and receiving installations.

An applicant for digital operation of an existing Class A TV station or to change the facilities of an existing Class A TV or digital Class A TV station shall

be subject to the requirements of § 73.1030—Notifications concerning interference to radio astronomy, research and receiving installations.

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

■ 10. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

■ 11. Section 74.701 is revised by adding paragraphs (j) through (p) to read as follows:

§ 74.701 Definitions.

* * * * *

(j) *Digital television broadcast translator station* (“*digital TV translator station*”). A station operated for the purpose of retransmitting the programs and signals of a digital television (DTV) broadcast station, without significantly altering any characteristic of the original signal other than its frequency and amplitude, for the purpose of providing DTV reception to the general public.

(k) *Digital low power TV station* (“*digital LPTV station*”). A station authorized under the provisions of this subpart that may retransmit the programs and signals of a DTV broadcast station, may originate programming in any amount greater than 30 seconds per hour for the purpose of providing digital television (DTV) reception to the general public and, subject to a minimum video program service requirement, may offer services of an ancillary or supplementary nature, including subscription-based services. (See § 74.790).

(l) *Digital program origination*. For purposes of this part, digital program origination shall be any transmissions other than the simultaneous retransmission of the programs and signals of a TV or DTV broadcast station or transmissions related to service offerings of an ancillary or supplementary nature. Origination shall include locally generated television program signals and program signals obtained via video recordings (tapes and discs), microwave, common carrier circuits, or other sources.

(m) *Existing low power television or television translator station*. When used in subpart G of this part, the terms existing low power television and existing television translator station refer to an analog or digital low power television station or television translator station that is either licensed or has a valid construction permit.

(n) *Suitable in core channel*. When used in subpart G of this part, the term “suitable in core channel” refers to a channel that would enable a digital low power television or television translator station to produce a protected service area comparable to that of its associated analog LPTV or TV translator station.

(o) *Companion digital channel*. When used in subpart G of this part, the term “companion digital channel” refers to a digital channel authorized to an existing low power television or television translator station to be associated with the station’s analog channel.

(p) *Digital conversion channel*. When used in subpart G of this part, the term “digital conversion channel” refers to a channel previously authorized to an existing low power television or television translator station that has been converted to digital operation.

■ 12. Section 74.703 is revised by redesignating paragraphs (f) and (g) as paragraphs (h) and (i) and adding new paragraphs (f) and (g) to read as follows:

§ 74.703 Interference.

* * * * *

(f) It shall be the responsibility of a digital low power TV or TV translator station operating on a channel from channel 52–69 to eliminate at its expense any condition of interference caused to the operation of or services provided by existing and future commercial or public safety wireless licensees in the 700 MHz bands. The offending digital LPTV or translator station must cease operations immediately upon notification by any primary wireless licensee, once it has been established that the digital low power TV or translator station is causing the interference.

(g) An existing or future wireless licensee in the 700 MHz bands may notify (certified mail, return receipt requested), a digital low power TV or TV translator operating on the same channel or first adjacent channel of its intention to initiate or change wireless operations and the likelihood of interference from the low power TV or translator station within its licensed geographic service area. The notice should describe the facilities, associated service area and operations of the wireless licensee with sufficient detail to permit an evaluation of the likelihood of interference. Upon receipt of such notice, the digital LPTV or TV translator licensee must cease operation within 120 days unless:

- (1) It obtains the agreement of the wireless licensee to continue operations;
- (2) The commencement or modification of wireless service is

delayed beyond that period (in which case the period will be extended); or

(3) The Commission stays the effect of the interference notification, upon request.

* * * * *

■ 13. Section 74.705 is amended by revising paragraph (e) to read as follows:

§ 74.705 TV broadcast analog station protection.

* * * * *

(e) As an alternative to the preceding paragraphs of 74.705, an applicant for a low power TV, TV translator or TV booster may make full use of terrain shielding and Longley-Rice terrain dependent propagation prediction methods to demonstrate that the proposed facility would not be likely to cause interference to TV broadcast stations. Guidance on using the Longley-Rice methodology is provided in *OET Bulletin No. 69* (but also see § 74.793(d)). Copies of *OET Bulletin No. 69* may be inspected during normal business hours at the: Federal Communications Commission, CY-C203, 445 12th Street, SW., Reference Information Center, Washington, DC 20554. This document is also available through the Internet on the *FCC Home Page* at <http://www.fcc.gov>.

■ 14. Section 74.707 is amended by revising paragraph (e) to read as follows:

§ 74.707 Low power TV and TV translator station protection.

* * * * *

(e) As an alternative to the preceding paragraphs of § 74.707, an applicant for a low power TV or TV translator station may make full use of terrain shielding and Longley-Rice terrain dependent propagation prediction methods to demonstrate that the proposed facility would not be likely to cause interference to low power TV, TV translator and TV booster stations. Guidance on using the Longley-Rice methodology is provided in *OET Bulletin No. 69* (but also see § 74.793(d)). Copies of *OET Bulletin No. 69* may be inspected during normal business hours at the: Federal Communications Commission, Room CY-C203, 445 12th Street, SW., Reference Information Center, Washington, DC 20554. This document is also available through the Internet on the *FCC Home Page* at <http://www.fcc.gov>.

■ 15. Section 74.710 is added to subpart G to read as follows:

§ 74.710 Digital low power TV and TV translator station protection.

(a) An application to construct a new low power TV, TV translator, or TV

booster station or change the facilities of an existing station will not be accepted if it fails to protect an authorized digital low power TV or TV translator station or an application for such station filed prior to the date the low power TV, TV translator, or TV booster application is filed.

(b) Applications for low power TV, TV translator and TV booster stations shall protect digital low power TV and TV translator stations pursuant to the following requirements:

(1) An application must not specify an antenna site within the protected contour of a co-channel or adjacent channel digital low power TV or TV translator station, as defined in § 74.792.

(2) The ratio in dB of the field strength of the low power TV, TV translator or TV booster station at the protected contour of a co-channel digital TV or TV translator station must meet the requirements specified in § 74.706(d)(1).

(3) The ratio in dB of the field strength of the low power TV, TV translator or TV booster station at the protected contour of a digital low power TV or TV translator station on the lower and upper adjacent channels must not exceed 49 dB and 48 dB, respectively.

(4) The analysis used in 74.710 should use the propagation methods specified in § 74.706(c).

(c) As an alternative to the requirements of paragraph (b) of this section, an applicant for a low power TV, TV translator or TV booster may make full use of terrain shielding and Longley-Rice terrain dependent propagation prediction methods to demonstrate that the proposed facility would not be likely to cause interference to digital low power TV or TV translator stations, as described in § 74.707(e) (*i.e.*, reduce the service population by no more than 0.5% within the station's protected contour based on the interference thresholds of § 73.623(c) of this chapter).

■ 16. Section 74.786 is added to read as follows:

§ 74.786 Digital channel assignments.

(a) An applicant for a new low power television or television translator digital station or for changes in the facilities of an authorized digital station shall endeavor to select a channel on which its operation is not likely to cause interference. The applications must be specific with regard to the channel requested. Only one channel will be assigned each station.

(b) Any one of the 12 standard VHF Channels (2 to 13 inclusive) may be assigned to a VHF digital low power television or television translator

station. Channels 5 and 6 assigned in Alaska shall not cause harmful interference to and must accept interference from non-Government fixed operation authorized prior to January 1, 1982.

(c) UHF channels 14 to 36 and 38 to 51 may be assigned to a UHF digital low power television or television translator station. In accordance with § 73.603(c) of this chapter, Channel 37 will not be assigned to such stations.

(d) UHF Channels 52-59 may be assigned to a digital low power television or television translator station for use as a *digital conversion channel*. These channels may also be assigned as a *companion digital channel* if the applicant is able to demonstrate that a *suitable in core channel* is not available. Stations proposing use of such channels shall notify all potentially affected 700 MHz wireless licensees not later than 30 days prior to the submission of their application (FCC Form 346). Applicants shall notify wireless licensees of the 700 MHz spectrum comprising the same TV channel and the adjacent channel within whose licensed geographic boundaries the digital LPTV or translator station is proposed to be located, and also notify licensees of co-channel and adjacent channel spectrum whose service boundaries lie within 75 miles and 50 miles, respectively, of their proposed station location. Specific information for this purpose can be obtained from the Commission's auction Web site at <http://www.fcc.gov/auctions>.

(e) UHF Channels 60-69 may be assigned to a digital low power television or television translator station for use as a *digital conversion channel* only. Stations proposing use of such channels shall notify all potentially affected 700 MHz commercial licensees not later than 30 days prior to the submission of their application (FCC Form 346) in the manner provided in paragraph of this section. Stations proposing use of channels 63, 64, 68 and 69 must secure a coordinated spectrum use agreement with the pertinent 700 MHz public safety regional planning committee and state administrator prior to the submission of their application (FCC Form 346). Coordination shall be undertaken with regional planning committee and state administrator of the region and state within which the digital LPTV or translator station is proposed to be located, and those of adjoining regions and states with boundaries within 75 miles of the proposed station location. Stations proposing use of channels 62, 65, and 67 must notify the pertinent regional planning committee and state administrator not later than 30 days

prior to the submission of their application (FCC Form 346). Notification shall be made to the regional and state administrators of region and state within which the digital LPTV or translator station is proposed to be located, and those of adjoining regions and states with boundaries within 50 miles of the proposed station location. Information for this purpose is available at the above web site and also at the following internet sites: <http://wireless.fcc.gov/publicsafety700MHzregional.html>, <http://wireless.fcc.gov/publicsafety/700MHz/state.html>, and <http://wireless.fcc.gov/publicsafety/700MHz/interop-contacts.html>.

(f) Application for new analog low power television or television translator stations specifying operation above Channel 51 will not be accepted for filing. Applications for displacement relief on channels above 51 will continue to be accepted.

■ 17. Section 74.787 is added to read as follows:

§ 74.787 Digital licensing.

(a) *Applications for digital low power television and television translator stations*—(1) Applications for *digital conversion channels* may be filed at any time. Such applications shall be filed on FCC Form 346 and will be treated as a minor change application. There will be no application fee.

(2) *Applications for companion digital channel.* (i) A public notice will specify a time period or “window” for filing applications for companion digital channels. During this window, only existing low power television or television translator stations or licensees and permittees of Class A TV stations may submit applications for companion digital channels. Applications submitted prior to the initial window identified in the public notice will be returned as premature. At a subsequent time, a public notice will announcement the commencement of a filing procedure in which applications will accepted on a first-come, first-served basis not restricted to existing station licensees and permittees;

(ii) Applications for companion digital channels filed during the initial window shall be filed in accordance with the provisions of §§ 1.2105 and 73.5002 of this chapter regarding the submission of the short-form application, FCC Form 175, and all appropriate certifications, information and exhibits contained therein. To determine which applicants are mutually exclusive, applicants must submit the engineering data contained

in FCC Form 346 as a supplement to its short-form application. Such engineering data will not be studied for technical acceptability, but will be protected from subsequently filed applications as of the close of the initial window period. Determinations as to the acceptability or grantability of an applicant’s proposal will not be made prior to an auction;

(iii) After the close of the initial window, a public notice will identify the short-form applications received during the window filing period which are found to be mutually exclusive. Such short-form applications will 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. Such applicants shall be afforded an opportunity to submit settlements and engineering solutions to resolve mutual exclusivity pursuant to § 73.5002(d) of this chapter;

(iv) After the close of the window, a public notice will identify short-form applications received that are found to be non-mutually exclusive. All non-mutually exclusive applicants will be required to submit an FCC Form 346 pursuant to § 73.5005 of this chapter. Such applications shall be processed pursuant to § 73.5006 of this chapter; and

(v) With regard to fees, an application (FCC Form 346) for companion digital channels shall be treated as a minor change application and there will be no application fee.

(3) *Construction permit applications for new stations, major changes to existing stations in the low power television service.* A public notice will specify the date upon which interested parties may begin to file applications for new stations and major facilities changes to existing stations in the low power television service. It will specify parameters for any applications that may be filed. Applications submitted prior to date announced by the public notice will be returned as premature. Such applications shall be accepted on a first-come, first-served basis, and shall be filed on FCC Form 346. Applications for new or major change shall be subject to the appropriate application fee. 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. Such applicants shall be afforded an opportunity to submit settlements and engineering solutions to resolve mutual exclusivity pursuant to § 73.5002(d) of this chapter.

(4) *Displacement applications.* A digital low power television or television translator station which is

causing or receiving interference or is predicted to cause or receive interference to or from an authorized TV broadcast station, DTV station or allotment or other protected station or service, may at any time file a displacement relief application for change in channel, together with technical modifications that are necessary to avoid interference or continue serving the station’s protected service area, provided the proposed transmitter site is not located more than 30 miles from the reference coordinates of the existing station’s community of license. See § 76.53 of this chapter. A displacement relief application shall be filed on FCC Form 346 and will be considered a minor change and will be placed on public notice for a period of not less than 30 days to permit the filing of petitions to deny. These applications will not be subject to the filing of competing applications. Where a displacement relief application for a digital low power television or television translator station becomes mutually exclusive the application(s) for new analog or digital low power television or television translator stations, with a displacement relief application for an analog low power television or television translator station, or with other non-displacement relief applications for facilities modifications of analog or digital low power television or television translator stations, priority will be afforded to the displacement application for the digital low power television or television translator station to the exclusion of other applications. Mutually exclusive displacement relief applications for digital low power television and television translator stations 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. Such applicants shall be afforded an opportunity to submit settlements and engineering solutions to resolve mutual exclusivity pursuant to § 73.5002(d) of this chapter.

(b) *Definitions of “major” and “minor” changes to digital low power television and television translator stations.* (1) Applications for major changes in digital low power television and television translator stations include any change in the frequency (output channel) not related to displacement relief or transmitting antenna location where the protected contour resulting from the change does not overlap some portion of the protected contour of the authorized facilities of the existing station.

(2) Other facilities changes will be considered minor.

■ 18. Section 74.788 is added to read as follows:

§ 74.788 Digital construction period.

(a) Each original construction permit for the construction of a new digital low power television or 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.

(b) Any construction permit for which construction has not been completed and for which an application for license or extension of time has not been filed, shall be automatically forfeited upon expiration without any further affirmative cancellation by the Commission.

(c) *Authority delegated.* (1) Authority is delegated to the Chief, Media Bureau to grant an extension of time of up to six months beyond the relevant construction period for each original construction permit upon demonstration by the digital licensee or permittee that failure to meet the construction deadline is due to circumstances that are either unforeseeable or beyond the licensee's control where the licensee has take all reasonable steps to resolve the problem expeditiously.

(2) Such circumstances shall include, but shall not be limited to:

(i) Inability to construct and place in operation a facility necessary for transmitting digital television, such as a tower, because of delays in obtaining zoning or FAA approvals, or similar constraints;

(ii) The lack of equipment necessary to obtain a digital television signal; or

(iii) Where the cost of construction exceeds the station's financial resources.

(3) The Bureau may grant no more than two extension requests upon delegated authority. Subsequent extension requests shall be referred to the Commission. The Bureau may deny extension requests upon delegated authority.

(4) Applications for extension of time shall be filed no earlier than 90 and no later than 60 days prior to the relevant construction deadline, absent a showing of sufficient reasons for filing within less than 60 days of the relevant construction deadline.

■ 19. Section 74.789 is added to read as follows:

§ 74.789 Broadcast regulations applicable to digital low power television and television translator stations.

The following sections are applicable to digital low power television and television translator stations:

§ 73.1030 Notifications concerning interference to radio astronomy, research and receiving installations.

§ 74.600 Eligibility for license.

§ 74.703 Interference.

§ 74.709 Land mobile station protection.

§ 74.732 Eligibility and licensing requirements.

§ 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.

■ 20. Section 74.790 is added to read as follows:

§ 74.790 Permissible service of digital TV translator and LPTV stations.

(a) Digital TV translator stations provide a means whereby the signals of DTV broadcast stations may be retransmitted to areas in which direct reception of such DTV stations is unsatisfactory due to distance or intervening terrain barriers.

(b) Except as provided in paragraph (f) of this section, a digital TV translator station may be used only to receive the signals of a TV broadcast or DTV broadcast station, another digital TV translator station, a TV translator relay station, a television intercity relay station, a television STL station, or other suitable sources such as a CARS or common carrier microwave station, for the simultaneous retransmission of the programs and signals of a TV or DTV broadcast station. Such retransmissions may be accomplished by any of the following means:

(1) Reception of TV broadcast or DTV broadcast station programs and signals directly through space and conversion to a different channel by one of the following transmission modes:

(i) Heterodyne frequency conversion and suitable amplification, subject to a digital output power limit of 30 watts for transmitters operating on channels 14–69 and 3 watts for transmitters operating on channels 2–13; or

(ii) Digital signal regeneration (*i.e.*, DTV signal demodulation, decoding, error processing, encoding, remodulation, and frequency upconversion) and suitable amplification; or,

(2) Demodulation, remodulation and amplification of TV broadcast or DTV broadcast station programs and signals received through a microwave transport.

(c) The transmissions of each digital TV translator station shall be intended for direct reception by the general public, and any other use shall be incidental thereto. A digital TV translator station shall not be operated solely for the purpose of relaying signals to one or more fixed receiving points for retransmission, distribution, or further relaying.

(d) Except as provided in (e) and (f) of this section, the technical characteristics of the retransmitted signals shall not be deliberately altered so as to hinder reception on consumer DTV broadcast receiving equipment.

(e) A digital TV translator station shall not retransmit the programs and signals of any TV broadcast or DTV broadcast station(s) without the prior written consent of such station(s). A digital TV translator may multiplex on its output channel the video program services of two or more TV broadcast and/or DTV broadcast stations, pursuant to arrangements with all affected stations, and for this limited purpose, is permitted to alter a TV broadcast and/or DTV broadcast signal.

(f) A digital TV translator station may transmit locally originated visual and/or aural messages limited to emergency warnings of imminent danger, to local public service announcements (PSAs) and to seeking or acknowledging financial support deemed necessary to the continued operation of the station. Acknowledgments of financial support may include identification of the contributors, the size and nature of the contribution and the advertising messages of the contributors. The originations concerning financial support and PSAs are limited to 30 seconds each, no more than once per hour. Emergency transmissions shall be no longer or more frequent than necessary to protect life and property. Such originations may be accomplished by any technical means agreed upon between the TV translator and DTV station whose signal is being retransmitted, but must be capable of being received on consumer DTV broadcast reception equipment. A digital TV translator shall modify, as necessary to avoid DTV reception tuning conflicts, the Program System and Information Protocol (PSIP) information in the DTV broadcast signal being retransmitted.

(g) A digital LPTV station may operate under the following modes of service:

(1) For the retransmission of programming of a TV broadcast or DTV

broadcast station, subject to the prior written consent of the station whose signal is being retransmitted;

(2) For the origination of programming and commercial matter as defined in § 74.701(l).

(3) Whenever operating, a digital LPTV station must transmit an over-the-air video program signal at no direct charge to viewers at least comparable in resolution to that of its associated analog (NTSC) LPTV station or, in the case of an on-channel digital conversion, that of its former analog LPTV station.

(4) A digital LPTV station may dynamically alter the bit stream of its signal to transmit one or more video program services in any established DTV video format.

(h) A digital LPTV station is not subject to minimum required hours of operation and may operate in either of the two modes described in paragraph (g) of this section for any number of hours.

(i) Upon transmitting a signal that meets the requirements of paragraph (g)(3) of this section, a digital LPTV station may offer services of any nature, consistent with the public interest, convenience, and necessity, on an ancillary or supplementary basis in accordance with the provisions of § 73.624(c) and (g) of this chapter.

(j) A digital LPTV station may not be operated solely for the purpose of relaying signals to one or more fixed receiving points for retransmission, distribution or relaying.

(k) A digital LPTV station may receive input signals for transmission or retransmission by any technical means, including those specified in paragraph (b) of this section.

■ 21. Section 74.791 is added to read as follows:

§ 74.791 Digital call signs.

(a) *Digital low power stations.* Call signs for digital low power stations will be made up of a prefix consisting of the initial letter K or W followed by the channel number assigned to the station and two additional letters and a suffix consisting of the letters – D.

(b) *Digital television translator stations.* Call signs for digital television translator stations will be made up of a prefix consisting of the initial letter K or W followed by the channel number assigned to the station and two additional letters and a suffix consisting of the letter – D.

(c) *Digital low power television stations and Class A television stations.* Digital low power television and Class A television stations may be assigned a call sign with a four-letter prefix

pursuant to § 73.3550 of the Commission's rules. Digital low power stations with four-letter prefixes will be assigned the suffix – LD and digital Class A stations with four-letter prefixes will be assigned the suffix – CD.

■ 22. Section 74.792 is added to read as follows:

§ 74.792 Digital low power TV and TV translator station protected contour.

(a) A digital low power TV or TV translator will be protected from interference from other low power TV, TV translator, Class A TV or TV booster stations or digital low power TV, TV translator or Class A TV stations within the following predicted contours:

(1) 43 dBu for stations on Channels 2 through 6;

(2) 48 dBu for stations on Channels 7 through 13; and

(3) 51 dBu for stations on Channels 14 through 69.

(b) The digital low power TV or TV translator protected contour is calculated from the authorized effective radiated power and antenna height above average terrain, using the F(50,90) signal propagation method specified in § 73.625(b)(1) of this chapter.

■ 23. Section 74.793 is added to read as follows:

§ 74.793 Digital low power TV and TV translator station protection of broadcast stations.

(a) An application to construct a new digital low power TV or TV translator station or change the facilities of an existing station will not be accepted if it fails to meet the interference protection requirements in this section.

(b) Except as provided in this section, interference prediction analysis is based on the interference thresholds (D/U signal strength ratios) and other criteria and methods specified in § 73.623(c)(2) through (c)(4) of this chapter. Predictions of interference to co-channel DTV broadcast, digital Class A TV, digital LPTV and digital TV translator stations will be based on the interference thresholds specified therein for "DTV-into-DTV." Predictions of interference to co-channel TV broadcast, Class A TV, LPTV and TV translator stations will be based on the interference threshold specified for "DTV-into-analog TV." Predictions of interference to TV broadcast, Class A TV, LPTV and TV translator stations with the following channel relationships to a digital channel will be based on the threshold values specified for "Other Adjacent Channels (Channels 14–69 only)," where N is the analog channel: N–2, N+2, N–3, N+3, N–4,

N+4, N–7, N+7, N–8, N+8, N+14, and N+15.

(c) The following D/U signal strength ratios (dB) shall apply to the protection of stations on the first adjacent channel. The D/U ratios for "Digital TV-into-analog TV" shall apply to the protection of TV broadcast, Class A TV, LPTV and TV translator stations. The D/U ratios for "Digital TV-into-digital TV" shall apply to the protection of DTV, digital Class A TV, digital LPTV and digital TV translator stations. The D/U ratios correspond to the digital LPTV or TV translator station's specified out-of-channel emission mask.

	Simple mask	Stringent mask
Digital TV-into-analog TV	10	0
Digital TV-into-digital TV	–7	–12

(d) For analysis of predicted interference from digital low power TV and TV translator stations, the relative field strength values of the assumed antenna vertical radiation pattern in Table 8 in OET Bulletin 69 shall be doubled up to a value of 1.0.

(e) Protection to the authorized facilities of DTV broadcast stations shall be based on not causing predicted interference to the population within the service area defined and described in § 73.622(e) of this chapter, except that a digital low power TV or TV translator station must not cause a loss of service to 0.5 percent or more of the population predicted to receive service from the authorized DTV facilities.

(f) Protection to the authorized facilities of TV broadcast stations shall be based on not causing predicted interference to the population within the Grade B field strength contours defined and described in § 73.683 of this chapter, except that a digital low power TV or TV translator station must not cause a loss of service to 0.5 percent or more of the population predicted to receive service from the authorized TV broadcast facilities.

(g) Protection to the authorized facilities of Class A and digital Class A TV stations shall be based on not causing predicted interference to the population within the service area defined and described in § 73.6010 (a) through (d) of this chapter, respectively, except that a digital low power TV or TV translator station must not cause a loss of service to 0.5 percent or more of the population predicted to receive service from the authorized Class A TV or digital Class A TV facilities.

(h) Protection to the authorized facilities of low power TV and TV

translator stations and digital low power TV and TV translator stations shall be based on not causing predicted interference to the population within the service area defined and described in §§ 74.707(a) and 74.792, respectively, except that a digital low power TV or TV translator station must not cause a loss of service to 2.0 percent or more of the population predicted to receive service from the authorized low power TV, TV translator, digital low power TV or digital TV translator station.

■ 24. Section 74.794 is added to read as follows:

§ 74.794 Digital emissions.

(a)(1) An applicant for a digital LPTV or TV translator station construction permit shall specify that the station will be constructed to confine out-of-channel emissions within one of the following emission masks: simple or stringent.

(2) The power level of emissions on frequencies outside the authorized channel of operation must be attenuated no less than following amounts below the average transmitted power within the authorized 6 MHz channel. In the mask specifications listed in § 74.794(a)(2) and (a)(3), A is the attenuation in dB and Δf is the frequency difference in MHz from the edge of the channel.

(i) *Simple mask.* At the channel edges, emissions must be attenuated no less than 46 dB. More than 6 MHz from the channel edges, emissions must be attenuated no less than 71 dB. At any frequency between 0 and 6 MHz from the channel edges, emissions must be attenuated no less than the value determined by the following formula: $A \text{ (dB)} = 46 + (\Delta f^2 / 1.44)$

(ii) *Stringent mask.* In the first 500 kHz from the channel edges, emissions must be attenuated no less than 47 dB. More than 3 MHz from the channel edges, emissions must be attenuated no less than 76 dB. At any frequency between 0.5 and 3 MHz from the channel edges, emissions must be attenuated no less than the value determined by the following formula: $A \text{ (dB)} = 47 + 11.5 (\Delta f - 0.5)$

(3) The attenuation values for the simple and stringent emission masks are based on a measurement bandwidth of 500 kHz. Other measurement bandwidths may be used and converted to the reference 500 kHz value by the following formula:

$$A \text{ (dB)} = A_{\text{alternate}} + 10 \log (BW_{\text{alternate}} / 500)$$

where A(dB) is the measured or calculated attenuation value for the reference 500 kHz bandwidth, and

$A_{\text{alternate}}$ is the measured or calculated attenuation for a bandwidth $BW_{\text{alternate}}$. Emissions include sidebands, spurious emissions and radio harmonics. Attenuation is to be measured at the output terminals of the transmitter (including any filters that may be employed). In the event of interference caused to any service by out-of-channel emissions, greater attenuation may be required.

(b) In addition to meeting the emission attenuation requirements of the simple or stringent mask (including attenuation of radio frequency harmonics), digital low power TV and TV translator stations authorized to operate on TV channels 22–24, (518–536 MHz), 32–36 (578–608 MHz), 38 (614–620 MHz), and 65–69 (776–806 MHz) must provide specific “out of band” protection to Radio Navigation Satellite Services in the bands: L5 (1164–1215 MHz); L2 (1215–1240 MHz) and L1 (1559–1610 MHz).

(1) An FCC-certificated transmitter specifically certified for use on one or more of the above channels must include filtering with an attenuation of not less than 85 dB in the GPS bands, which will have the effect of reducing harmonics in the GPS bands from what is produced by the digital transmitter, and this attenuation must be demonstrated as part of the certification application to the Commission.

(2) For an installation on one of the above channels with a digital transmitter not specifically FCC-certificated for the channel, a low pass filter or equivalent device rated by its manufacturer to have an attenuation of at least 85 dB in the GPS bands, which will have the effect of reducing harmonics in the GPS bands from what is produced by the digital transmitter, and must be installed in a manner that will prevent the harmonic emission content from reaching the antenna. A description of the low pass filter or equivalent device with the manufacturer’s rating or a report of measurements by a qualified individual shall be retained with the station license. Field measurements of the second or third harmonic output of a transmitter so equipped are not required.

■ 25. Section 74.795 is added to read as follows:

§ 74.795 Digital low power TV and TV translator transmission system facilities.

(a) A digital low power TV or TV translator station shall operate with a transmitter that is either certificated for licensing based on the following provisions or has been modified for digital operation pursuant to § 74.796.

(b) The following requirements must be met before digital low power TV and TV translator transmitter will be certificated by the FCC:

(1) The transmitter shall be designed to produce digital television signals that can be satisfactorily viewed on consumer receiving equipment based on the digital broadcast television transmission standard in § 73.682(d) of this chapter;

(2) Emissions on frequencies outside the authorized channel, measured at the output terminals of the transmitter (including any filters that may be employed), shall meet the requirements of § 74.794, as applicable;

(3) The transmitter shall be equipped to display the digital power output (*i.e.*, average power over a 6 MHz channel) and shall be designed to prevent the power output from exceeding the maximum rated power output under any condition;

(4) When subjected to variations in ambient temperature between 0 and 40 degrees Centigrade and variations in power main voltage between 85% and 115% of the rated power supply voltage, the frequency stability of the local oscillator in the RF channel upconverter shall be maintained within 10 kHz of the nominal value; and

(5) The transmitter shall be equipped with suitable meters and jacks so that appropriate voltage and current measurements may be made while the transmitter is in operation.

(c) The following additional requirements apply to digital heterodyne translators:

(1) The maximum rated power output (digital average power over a 6 MHz channel) shall not exceed 30 watts for transmitters operating on channels 14–69 and 3 watts for transmitters operating on channels 2–13; and

(2) The transmitter shall contain circuits which will maintain the digital average power output constant within 1 dB when the strength of the input signal is varied over a range of 30 dB.

(d) Certification will be granted only upon a satisfactory showing that the transmitter is capable of meeting the requirements of paragraph (b) of this section, pursuant to the procedures described in § 74.750(e).

■ 26. Section 74.796 is added to read as follows:

§ 74.796 Modification of digital transmission systems and analog transmission systems for digital operation.

(a) The provisions of § 74.751 shall apply to the modification of digital low power TV and TV translator transmission systems and the modification of existing analog

transmission systems for digital operation.

(b) The following additional provisions shall apply to the modification of existing analog transmissions systems for digital operation, including installation of manufacturers' certificated equipment ("field modification kits") and custom modifications.

(1) The modifications and related performance-testing shall be undertaken by a person or persons qualified to perform such work.

(2) The final amplifier stage of an analog transmitter modified for digital operation shall not have an "average digital power" output greater than 25 percent of its previous NTSC peak sync power output, unless the amplifier has been specifically refitted or replaced to operate at a higher power.

(3) Analog heterodyne translators, when modified for digital operation, will produce a power output (digital average power over the 6 MHz channel) not exceeding 30 watts for transmitters operating on channels 14-69 and 3 watts for transmitters operating on channels 2-13.

(4) After completion of the modification, suitable tests and measurements shall be made to demonstrate compliance with the applicable requirements in this section including those in § 74.795. Upon installation of a field modification kit, the transmitter shall be performance-tested in accordance with the manufacturer's instructions.

(5) The station licensee shall notify the Commission upon completion of the transmitter modifications. In the case of custom modifications (those not related to installation of manufacturer-supplied and FCC-certificated equipment), the licensee shall certify compliance with all applicable transmission system requirements.

(6) The licensee shall maintain with the station's records for a period of not less than two years the following information and make this information to the Commission upon request:

(i) A description of the modifications performed and performance tests or, in the case of installation of a manufacturer-supplied modification kit, a description of the nature of the modifications, installation and test instructions and other material provided by the manufacturer;

(ii) Results of performance-tests and measurements on the modified transmitter; and

(iii) Copies of related correspondence with the Commission.

(c) In connection with the on-channel conversion of existing analog transmitters for digital operation, a limited allowance is made for transmitters with final amplifiers that do not meet the attenuation of the Simple emission mask at the channel edges. Station licensees may obtain equivalent compliance with this attenuation requirement in the following manner:

(1) Measure the level of attenuation of emissions below the average digital

power output at the channel edges in a 500 kHz bandwidth; measurements made over a different measurement bandwidth should be corrected to the equivalent attenuation level for a 500 kHz bandwidth using the formula given in § 74.794;

(2) Calculate the difference in dB between the 46 dB channel-edge attenuation requirement of the Simple mask;

(3) Subtract the value determined in the previous step from the authorized effective radiated power ("ERP") of the analog station being converted to digital operation. Then subtract an additional 6 dB to account for the approximate difference between analog peak and digital average power. For this purpose, the ERP must be expressed in decibels above one kilowatt: $ERP(dBk) = 10 \log ERP(kW)$;

(4) Convert the ERP calculated in the previous step to units of kilowatts; and

(5) The ERP value determined through the above procedure will produce equivalent compliance with the attenuation requirement of the simple emission mask at the channel edges and should be specified as the digital ERP in the minor change application for an on-channel digital conversion. The transmitter may not be operated to produce a higher digital ERP than this value.

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