conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance Number for the principal FHA mortgage insurance program is 14.155.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Wages.

Accordingly, for the reasons stated above, HUD proposes to amend 24 CFR part 200 as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1703, 1709, and 1715b; 42 U.S.C. 3535(d).

2. Revise § 200.24 to read as follows:

§ 200.24 Existing projects.

A mortgage financing the purchase or refinance of an existing rental housing project or refinance of the existing debt of an existing cooperative project under section 207 of the Act, or for refinancing the existing debt of an existing nursing home, intermediate care facility, assisted living facility, or board and care home, or any combination thereof, under section 232 of the Act, may be insured pursuant to provisions of section 223(f) of the Act and such terms and conditions established by HUD.

Dated: December 20, 2010.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2011–2170 Filed 1–31–11; 8:45 am]

BILLING CODE 4210–67–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15 and 73

[ET Docket No. 10–235; FCC 10–196]

Innovation in the Broadcast Television Bands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission initiated a process to further its ongoing commitment to addressing America's growing demand for wireless broadband services, spur ongoing innovation and investment in mobile and ensure that America keeps pace with the global wireless revolution, by making a significant amount of new spectrum available for broadband. The approach proposed is consistent with the goal set forth in the *National Broadband Plan* (the "*Plan*") to repurpose up to 120 megahertz from the broadcast television bands for new wireless broadband uses through, in part, voluntary contributions of spectrum to an incentive auction. Reallocation of this spectrum as proposed will provide the necessary flexibility for meeting the requirements of these new applications.

DATES: Comments must be filed on or before March 18, 2011, and reply comments must be filed on or before April 18, 2011.

ADDRESSES: You may submit comments, identified by ET Docket No. 10–235, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *E-mail:* [Optional: Include the E-mail address only if you plan to accept comments from the general public]. Include the docket number(s) in the subject line of the message.
- *Mail:* [Optional: Include the mailing address for paper, disk or CD–ROM submissions needed/requested by your Bureau or Office. Do not include the Office of the Secretary's mailing address here.]
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** of this document.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, Office of Engineering and Technology, (202) 418–2925, e-mail: *Alan.Stillwell@fcc.gov*, TTY (202) 418–2989.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking,* ET Docket No. 10–235, FCC 10–196, adopted and released on November 30, 2010. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.*

Pursuant to §§ 1.415, 1.419, and 1.430 of the Commission's rules, 47 CFR 1.415, 1.419, and 1.430, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 2, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours 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, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Summary of Notice of Proposed Rulemaking

1. In the *Notice of Proposed Rulemaking* (*NPRM*), the Commission initiated a process to further its ongoing commitment to addressing America's growing demand for wireless broadband services, spur ongoing innovation and investment in mobile and ensure that America keeps pace with the global wireless revolution, by making a significant amount of new spectrum available for broadband. Through this NPRM, the Commission takes preliminary steps to enable the repurposing of a portion of the UHF and VHF frequency bands that are currently used by the broadcast television service, which in later actions it expects to make available for flexible use by fixed and mobile wireless communications services, including mobile broadband. At the same time, the Commission recognizes that over-the-air TV serves important public interests, and its approach will help preserve this service as a healthy, viable medium. The approach the Commission proposed is consistent with the goal set forth in the National Broadband Plan (the "Plan") to repurpose up to 120 megahertz from the broadcast television bands for new wireless broadband uses through, in part, voluntary contributions of spectrum to an incentive auction. Reallocation of this spectrum as proposed will provide the necessary flexibility for meeting the requirements of new applications.

2. The specific bands under consideration are the low VHF spectrum at 54–72 MHz (TV channels 2–4) and 76–88 MHz (TV channels 5 and 6), the high VHF spectrum at 174–216 MHz (TV channels 7–13), and the UHF bands at 470–608 MHz (TV channels 14–36) and 614–698 MHz (TV channels 38–51); for purposes of this NPRM, the Commission will refer to this spectrum as the "U/V Bands." This NPRM proposes three actions that will establish the underlying regulatory framework to facilitate wireless broadband uses of the U/V Bands, while maintaining current license assignments in the band. First, the Commission proposes to add new allocations for fixed and mobile services in the U/V Bands to be co-primary with the existing broadcasting allocation in those bands. The additional allocations would provide the maximum flexibility for planning efforts to increase spectrum available for flexible use, including the possibility of assigning portions of the U/V Bands for new mobile broadband services in the future. Second, the Commission proposes to establish a framework that, for the first time, permits two or more television stations to share a single six-megahertz channel, thereby fostering efficient use of the U/V Bands. Third, the Commission intends to consider approaches to improve service for television viewers and create additional value for broadcasters by increasing the utility of the VHF bands for the operation of television services.

3. By taking these important steps to facilitate wireless broadband uses in the U/V Bands, this NPRM is the first in a series of actions that will allow us to make progress toward our goal of improving efficient use of the bands and enable ongoing innovation and investment through flexible use. The Commission intends to propose further actions consistent with other of the *Plan's* recommendations for the U/V Bands, including, but not limited to, the process of voluntarily returning broadcast licenses to the Commission and the licensing process and service rules for new fixed and mobile wireless communications services. As part of that process, the Commission will address the *Plan's* proposal for channel re-packing, the band plan for recovered spectrum and other related issues and will provide full opportunity for public comment on those issues at that time.

4. *The National Broadband Plan.* The *Plan* was issued on March 17, 2010. As required under the Recovery Act, the *Plan* seeks to ensure that every American has access to broadband capability and establishes clear benchmarks for meeting that goal. The *Plan* recommends making 500 megahertz of spectrum between 225 MHz and 3.7 GHz newly available to meet the needs of mobile, fixed and unlicensed wireless broadband in the next 10 years and for providing 300 megahertz of that amount for mobile flexible uses within 5 years, of which up to 120 megahertz would come from the broadcast television bands.

5. This NPRM takes the first step towards achieving these important objectives by proposing additional frequency allocations, a framework that will permit two or more television stations to share a single six-megahertz channel, and changes to rules for use of the VHF band to improve its utility for television service. The Commission recognizes that broadcast television provides an important service to the public, and our actions in this proceeding will take full account of the vital role played by over-the-air television while increasing the flexible use of spectrum in a manner that meets consumer and business needs. The Commission remains committed to preserving the free, over-the-air broadcast television service and maintaining the diversity of local voices and important informational and entertainment benefits it provides the American public.

6. It is our strong intention to provide for an orderly transition of a portion of the U/V Bands to flexible use, in a manner that will minimize any impact on over-the-air television broadcasting and the consumers it serves, both off-the-air and through multichannel video program distributors. In this regard, broadcast television stations and other primary services operating on the spectrum to be recovered will be co-primary with and be protected from interference from new broadband services for as long as they remain on channels in that spectrum.

7. To facilitate the recovery of underutilized television channels while continuing to maintain existing broadcast television services, the Commission also proposes in this NPRM new rules that would allow a television service licensee to voluntarily reduce its occupation of spectrum by offering to operate on a shared six megahertz channel. Under this provision, all of the stations sharing a channel would broadcast their services through the same ATSC digital television signal using that signal's multicasting capabilities. Each licensee would have the same rights and service obligations as a licensee operating from a full channel today, including the right to carriage by cable and satellite providers pursuant to the rules for mandatory carriage or retransmission consent. The Commission believes that channel sharing could be beneficial to certain licensees, particularly those that wish to save on their operating costs or minimize the amount of their investment in spectrum or transmission facilities. In addition, channel sharing

could provide an incentive for broadcasters to relinquish spectrum for a portion of the proceeds of the revenues of a U/V Band spectrum auction, subject to Congress providing the Commission the authority to conduct an incentive auction. Further, channel sharing could offer opportunities for broadcasters serving minority, foreign language and niche interests that might have smaller audiences and lower income to operate at reduced cost and thereby improve their viability. In allowing stations to share channels, the Commission notes that in some instances changes in the operation of television stations could raise the possibility of interference to radio astronomy operations on channel 37 or to services operating on frequencies immediately above channel 51. It is the Commission's intent that any channel or other facilities changes that might be requested as part of sharing agreements not result in increased interference to radio astronomy operations on channel 37 or to operations of other services above channel 51. The Commission requests comments on specific steps that could be taken as part of the implementation of its sharing rules to mitigate the potential for such interference. The Commission describes its initial proposed rules for channel sharing by television licensees in this NPRM. The Commission is also aware that broadcasters have encountered technical issues in using VHF channels to provide satisfactory service to viewers. It intends to consider rule changes and other alternatives for making the VHF channels more desirable for DTV operation. The Commission's proposals for adding new allocations to the U/V bands, channel sharing by television stations and improving television service from VHF channels are discussed.

Spectrum Allocations

8. *New Spectrum Allocations.* The Commission proposes changes to the U.S. Table of Frequency Allocations in § 2.106 of the rules that would allow it to make a significant portion of the spectrum currently used for broadcast television available for flexible use, including fixed and mobile wireless broadband services. To facilitate repurposing of a portion of the U/V Bands in a later action, the Commission proposed in this NPRM to add allocations for fixed and mobile services in the U/V Bands (excluding channel 37) for non-Federal use, to be co-primary with that for broadcast services. This proposal would also expand the existing land mobile allocation in the areas where PLMRS and CMRS systems operate on specified frequencies in the 470–512 MHz band to be the same more generalized and flexible mobile allocation that would be specified for other frequencies in the U/V Bands.

9. These new allotments would allow us to consider the entire range of the U/V Bands in selecting the specific frequencies to be designated for new licensed and/or unlicensed uses. This approach will provide maximum flexibility in planning for the future assignment of a portion of the U/V Bands for flexible use, including new broadband services. The Commission's goal is to adopt a band that will provide for flexible use while continuing to support the needs of the television service. It is not proposing to change or add to the existing allocations for land mobile (medical telemetry and medical telecommand) and radio astronomy that are at 608–614 MHz (at channel 37). The Commission requests comments on this proposed plan for adding new allocations to the U/V Bands and invite suggestions for alternative approaches.

Broadcast Television Channel Sharing

10. The *Plan* recommends that, to facilitate the recovery of spectrum, the Commission initiate a rulemaking proceeding to "establish a licensing framework to permit two or more stations to share a six-megahertz channel." The Commission believes that the option of channel sharing, in addition to aiding in the broadband goals of the *Plan,* could also be beneficial to the television industry and to viewers. Television stations operating on shared channels could use the cost savings and additional income from such arrangements to strengthen their financial condition and to develop new and enhanced programming. Channel sharing could also provide existing small- and minority-owned stations an opportunity to enhance or preserve their local program offerings. The Commission anticipates providing broadcast stations an opportunity to voluntarily elect to share a channel. The Commission therefore seeks comment in this proceeding on the development of an appropriate regulatory structure for voluntary television channel sharing that will preserve over-the-air television as a healthy, viable medium going forward, in a way that would benefit consumers overall, while establishing mechanisms to make available additional spectrum for flexible broadband uses.

11. The Commission envisions, consistent with the Plan, that two stations could generally broadcast one primary HD video stream each over a shared six-megahertz channel or more than two stations broadcasting in SD (not HD) could share a six-megahertz channel. As noted in the Plan, "numerous permutations are possible, including dynamic arrangements whereby broadcasters sharing a channel reach agreements to exchange capacity to enable higher or lower transmission bit rates depending on market-driven choices." In this regard, the Commission observes that at the Broadcast Engineering Forum participants expressed concerns that sharing a single channel would not be practical because it would not provide sufficient transmission capacity for two or more stations to offer the highest quality HD programming simultaneously. Stations were also concerned that channel sharing could impact or eliminate current and future DTV services, such as expansion of high-definition programming and deployment of mobile television service. The Commission intends to consider these issues in this proceeding and welcomes comments on these concerns.

12. Other approaches to channel sharing that involve sub-channel services such as mobile broadcast may also be possible. The Commission seeks comment on those approaches. The only requirement would be that all stations utilizing a shared channel be required to retain at least enough spectrum to operate one SD channel. The Commission seeks comment on this approach and whether stations sharing a single channel will be able to continue to comply with the requirement to operate at least one SD channel.

13. In designing a channel sharing plan that will result in the more efficient use of television spectrum and free channels for flexible use, the Commission indicated that its goal will be to retain as much of its existing policy framework for allocating, licensing, and operating television stations as possible. Despite sharing a single channel and transmission facility, each station will continue to be licensed and operated separately, have its own call sign and be separately subject to all of the Commission's obligations, rules, and policies. Each station's programming obligations will remain the same (*e.g.,* children's programming, political broadcasting, EAS, indecency), and a station will not be responsible for the programming or violations of any other station sharing its channel. In addition, stations sharing a channel will retain their rights to mandatory carriage on multiple video program distributors (MVPDs). While the licensees sharing a given channel and facility will independently maintain their own

rights and obligations under their respective licenses, the Commission does not envision that channel sharing, from a technological perspective, would entail a fixed split of the six-megahertz channel into two three-megahertz blocks. Rather, the capacity of the six-megahertz would be shared and the Commission would leave it up to the licensees to determine the precise manner in which that capacity would be shared. Moreover, the Commission observed that it has licensed spectrum on a shared use basis—with each licensee remaining responsible for its own obligations and holding its own licensed rights—for a variety of services and under a number of different frameworks. For example, during the course of charting out an MSS licensing regime for Big LEO systems, the Commission adopted a plan in which four CDMA systems would each be authorized to operate over 11.35 megahertz of bandwidth in the same 1.6 GHz band, leaving the inter-system coordination to the satellite licensees themselves. Other examples of shared use include certain part 90 Private Land Mobile Radio Services (where the large number of shared users are coordinated through a system of frequency coordinators), many part 95 Personal Radio Services (such as the General Mobile Radio Service, where licensees share the same channels through an informal system of cooperation), and the part 97 Amateur Radio Service (where all frequencies are shared and coordinated by adherence to rules of operation set forth in part 97). The Commission seeks comment on how television broadcast stations can most effectively coordinate their individual rights and responsibilities while operating under the type of sharing arrangement proposed here. Finally, the Commission points out that only where necessary to implement a shared channel licensing scheme will it seek to change the existing policies and rules.

14. The Commission also proposes to limit channel sharing to television stations with existing applications, construction permits or licenses as of the date of adoption of this NPRM. The dual intentions in proposing this channel option are to provide (1) a means for stations that may need to be more economically efficient in their operations to share transmission resources and (2) a path for stations to make their spectrum available for new broadband services and continue to operate a broadcast television service. The Commission requests comment on this proposal.

Basic Qualifications for Channel Sharing

15. Voluntary operation of broadcast stations on shared channels will help to increase the efficient use of the U/V Bands while ensuring that local public interest and service requirements continue to be fulfilled. Since it ultimately seeks an appropriate, market-based balance with flexible use in the U/V Bands, the Commission expects that the extent of channel sharing will vary between markets.

a. Commercial and Noncommercial Educational Stations

16. The Commission seeks comment on whether commercial and noncommercial educational (NCE) stations should be permitted to share a single television channel. NCE television stations operate on special reserved channels and are prohibited from airing commercial material. The Commission contemplates that stations that share a channel will continue to be licensed and operated separately, although they will be sharing a single transmitting facility. Therefore, there would be no overlap of programming between a commercial and NCE station. However, the Commission seeks comment on whether a commercial station should be permitted to operate on a shared channel reserved for NCE use. The Commission seeks to determine how the new "shared" channel might be partitioned or designated to preserve the NCE status while allowing the channel to be shared by a non-NCE entity.

b. Consideration of Service Losses

17. The Commission seeks comment on whether to require that a certain level of television service be preserved in the shared channel environment. Specifically, it seeks comment on whether the Commission should consider any prospective loss of television service when determining whether to permit stations to make the modifications to their transmission facilities necessary to achieve channel sharing. Since stations sharing a single television channel must operate from a single transmission facility, changes to one or more of the stations' existing facilities will be necessary for sharing to occur. Such changes could result in a loss of television service to some persons presently able to receive over-the-air signal from one or more of the stations, and could also result in gains to television service.

18. The Commission notes that its current policy is to consider losses of service on a case-by-case basis, and it seeks comment on continuing that policy in the context of channel sharing arrangements. Although the Commission historically has viewed any loss of service as *prima facie* inconsistent with the public interest, its policy has been to consider and evaluate any counterbalancing factors an applicant may present to justify service losses. This balancing process, to determine whether the projected loss of service will be outweighed by other factors, involves more than a mere comparison of numbers. The Commission examines the extent of the loss, and whether any "white" or "gray" loss areas will be created. The Commission defines "white area" as an area where the population does not receive any over-the-air television service and "gray area" as one where the population receives only one over-the-air television service. The Commission may also examine whether the loss area is "underserved," *i.e.,* where the population receives less than five other existing services. The Commission may also examine whether the loss involves specialized programming such as that from a network.

19. In terms of counterbalancing factors, the Commission has examined whether gain areas will be created including establishment of first television service, second television service, first network service, etc. However, the mere fact that total gains exceed losses does not, standing alone, constitute an affirmative factor offsetting those losses. The Commission may also consider the availability of other television services in the loss area as well as whether the population which would lose service is outside the station's DMA and is predicted to receive the same network programming from a station in their home DMA. The Commission seeks comment on whether to consider these factors in a similar fashion when evaluating losses that result from facility modifications and relocations related to channel sharing.

20. In weighing the public interest benefits that will result from channel sharing, should the Commission consider mitigating circumstances such as the percentage of local cable penetration or satellite use in the loss area? Should sharing stations be allowed to offset otherwise disqualifying service losses by offering to deploy on-channel Digital Transmission Systems (DTS) or other technical measures to restore service to the loss area?

c. Other Issues

21. In addition to the specific areas set forth in this proceeding, the

Commission seeks comment on other areas of interest with respect to channel sharing in conjunction with the recommendations of the Plan. For instance, what is the impact of channel sharing on the media ownership rules? The Commission contemplates that stations that share a channel will continue to be licensed and operated separately, although they will be sharing a single transmitting facility. What are the implications of channel sharing for the local TV ownership rule, the radio/TV cross-ownership rule and the newspaper/broadcast cross-ownership rule?

Preservation of Must Carry Rights

22. Full power television broadcast stations, and certain qualified low-power television broadcast stations, have a right to carriage on cable systems that the Supreme Court has recognized as essential to preserving "the widest possible dissemination of information from diverse and antagonistic sources." Full power broadcasters have similar rights to mandatory carriage on satellite (DBS) systems. The rules proposed in this proceeding are designed to ensure that stations voluntarily electing to share a channel retain their existing rights to mandatory carriage, and the Commission seeks comment on such rules.

23. The Communications Act of 1934, as amended, provides for the mandatory carriage, by cable operators and satellite providers, of certain local broadcast signals. The Act and the Commission's implementing rules establish slightly different thresholds for carriage, depending on whether the station is full power or low-power, or commercial or noncommercial, and also depending on whether carriage is sought on a cable or DBS system. Stations meeting these thresholds are guaranteed carriage of only a single "primary" stream of programming, and carriage for any additional streams must always be negotiated. It is the Commission's intent to adopt a channel sharing framework that will neither increase nor decrease the carriage rights of any broadcaster on any type of system. The Commission anticipates, therefore, that regardless of the number of licensed stations sharing a six-megahertz channel, each would continue to have at least one, but only one, "primary" stream of programming. The Commission seeks comment on specific proposals and in general on the rules necessary to achieve this result.

24. *Cable Carriage.* A full power commercial station is entitled to carriage on a cable system when it is "licensed and operating on a channel regularly assigned to its community by the Commission," and that community is within the same DMA as the cable system. A qualified noncommercial educational station ("NCE"), on the other hand, can be considered "local," and eligible for mandatory carriage on a cable system, in one of two ways. It may either be licensed to a principal community within 50 miles of the system's headend, or the system's headend is within the station's noise limited signal contour (NLSC). Under very narrow circumstances, certain low-power broadcasters can also become "qualified" and eligible for must carry. Among the several requirements for reaching "qualified" status with respect to a particular cable operator, the low-power station must be "located no more than 35 miles from the cable system's headend."

25. *DBS Carriage.* A full power station is entitled to request carriage by a DBS provider any time that provider relies on the statutory copyright license to retransmit the signal of any other "local" full power station (*i.e.,* one located in the same DMA). The standards are the same for both commercial and noncommercial broadcasters, and low-power broadcasters do not have DBS carriage rights.

26. *Carriage of Shared Signals.* The Commission seeks comment on whether the procedures proposed herein would ensure that a television station operating on a shared channel would continue to be:

- "Licensed and operating on a channel regularly assigned to its community by the Commission (for purposes of cable carriage of a commercial station)";
- Licensed to a specific "principal community" or configured with technical facilities that have an NLSC that encompasses the cable system's principal headend (for purposes of cable carriage of a non-commercial station); and
- "Located within" a designated market area (for purposes of DBS carriage of commercial and noncommercial stations).

27. *NCE Issues.* The Commission seeks comment on whether an NCE television station sharing a channel with a commercial television station could affect the NCE station's continued eligibility for carriage. This is particularly relevant in the cable context, because, as discussed, commercial stations and NCEs must meet different criteria in order to be eligible for mandatory carriage. Because the Commission anticipates that sharing stations would continue to be licensed and operated separately, it does not anticipate that an NCE television station would lose its NCE status or eligibility by sharing a channel with a commercial station. The Commission seeks comment on this issue.

28. *Technical Issues.* The Commission also seeks comment on whether a station sharing a channel with one or more other stations, or the redesignation of a given 6 MHz channel as a "shared" channel, would affect the stations' ability to request local carriage on cable and DBS systems serving subscribers within the stations' market. Are there any unique aspects of channel sharing that could prevent a broadcaster, of any type, from achieving the necessary thresholds for mandatory carriage on any cable or DBS system on which it is currently carried? Cable and DBS systems are currently receiving the full 6 MHz signal from broadcasters but only carrying certain streams; would there be any technical differences, from the carrier's perspective, if two or more of these streams on a shared channel were the "primary" streams of different, individually licensed stations? Are there other technical issues that would be unique to a sharing scenario?

29. *Differing Elections.* Even if a commercial station meets the threshold for carriage, it may elect to pursue retransmission consent agreements with one or more MVPDs. When a station has made such an election, it may not be carried by the MVPD without its consent. The Commission seeks comment on how stations' carriage rights would be affected if one sharing station elects retransmission consent and the other elects must carry. The Commission anticipates that each station operating on a shared channel will be licensed and operated as a totally distinct entity with its own "primary" stream of programming, and that the sharing of a channel would not affect a sharing station's carriage election options or rights. The Commission seeks comment on this issue, particularly any technical implications for carrying one stream of a broadcast channel while not carrying another.

30. *Shared signal issues.* There are certain essential issues inherent to sharing a channel that we expect will be resolved by stations sharing a channel. For example, in addition to the threshold requirements discussed earlier, local stations are only eligible for mandatory carriage if they provide a "good quality signal" of at least -61 dBm to the cable or satellite provider. Failure to provide this signal level would therefore affect the carriage rights of all stations using the same channel. The Commission anticipates that stations will make any necessary

changes to their proposed shared transmission facility to ensure continued carriage for sharing stations. The Commission seeks comment on what those changes might be, and, in general, what matters must be resolved by the stations themselves to ensure the success of channel sharing.

31. *New Stations.* Currently, licensees of newly operating stations that are otherwise qualified local stations may seek mandatory carriage of such stations, even outside of the standard election cycle. If the Commission permits new stations, or permittees with unbuilt stations, to operate on shared channels, will any revisions to its rules be in order to ensure that they are eligible to seek mandatory carriage as new stations after they commence broadcasting? The Commission seeks comment on this issue.

32. *Low-power Stations.* The Commission is considering allowing LPTV, Class A, and translator stations to operate on shared channels, both among themselves and with full power stations. If it does permit low-power stations to operate on shared channels, the Commission is also proposing to provide that currently qualified low-power stations retain their eligibility for must carry rights, but to create no new rights. The Commission seeks comment on these proposals. Are there other issues that should be considered with regard to allowing low power stations to channel share?

33. *Other Carriage Issues.* There are a number of other issues that may be relevant to the mandatory carriage of shared signals. For instance, if, as proposed, one stream of each individually licensed station on a single 6 MHz channel will be "primary" for purposes of must carry rights, should sharing broadcasters have any special obligation to identify the "primary" signals at the time they elect carriage? Given the variety of questions that may have some bearing on the development of these rules, the Commission seeks comment on any additional issues pertaining to the mandatory carriage of shared broadcast signals, including those not specifically raised in this NPRM.

Improving Reception of VHF TV Service

34. Recognizing that UHF spectrum is highly desirable for flexible use, the Commission is interested in exploring the steps needed to increase the utility of VHF spectrum for television broadcasts. VHF channels have certain characteristics that have posed challenges for their use in providing digital television service. In particular, the propagation characteristics of these channels allow undesired signals and noise to be receivable at relatively farther distances, nearby electrical devices tends to emit noise in this band that can cause interference, and reception of VHF signals requires physically larger antennas that are generally not well suited to the mobile applications expected under flexible use, relative to UHF channels. The Commission recognizes that television broadcasters have had some difficulty in ensuring consistent reception of VHF signals, and it seeks comment through this NPRM on technical changes to the Commission's rules, broadcast transmission equipment, or television receiver technology that would improve the performance of VHF channels for television broadcasts, including the costs and benefits associated with such changes. The Commission's intent is to treat stakeholders in a fair and equitable manner through procedures established in later actions.

35. *Solutions for VHF Reception Challenges.* It is plain from the channel choices being made by broadcasters that reception issues are posing problems for use of the VHF channels. The Commission is therefore seeking solutions to the VHF digital TV reception difficulties. In this regard, it is considering changes to the DTV operating rules to mitigate or overcome these challenges. The Commission also intends to consider other solutions, including the possibility of indoor antenna performances standards, to make the VHF channels more useful to broadcasters. The Commission also noted that it has seen no indications that there are issues with the performance of television receivers, either traditional models with display screens or stand-alone set-top tuners, in receiving VHF channels.

36. *VHF Band Noise/Power Increases.* One of the problems with indoor VHF reception is noise from nearby (typically in the same room) consumer electronics equipment. While it would be desirable to reduce that noise, the rules limiting spurious emissions from unintentional radiators have been crafted to provide protection of licensed services while allowing production of economically viable devices. Further, any more stringent emissions limits the Commission might impose would not reduce emissions from existing products, nor would such limits reduce noise from incidental emitters (electric motors, switches, etc.), atmospheric disturbances and long range propagation effects that occur in the VHF bands (the latter especially at the low-VHF channels). Thus, at least at this time, the Commission does not believe it would be fruitful to attempt to reduce the permitted level of noise in the VHF bands. The Commission requests comment on whether there are actions it might take to reduce noise levels in the VHF bands used by the television service.

37. The other approach to overcoming noise is to increase the signal-to-noise ratio (S/N ratio) by raising the transmitted power, *i.e.,* effective radiated power (ERP). A number of stations operating on high-VHF channels have already improved their service by increasing their transmitted power. Those stations received special temporary authorizations from the Commission for power increases that exceed the existing maximum power limits. In each of these cases, either the power increase does not cause increased interference to other stations or the station licensee has negotiated with another station to accept some minimum level of new interference. While the Commission is cognizant of the views regarding the limited expectations from power increases expressed at the Broadcast Engineers' Forum, the Commission nonetheless believes that, as demonstrated by the stations that have already increased their transmitted power, such increases can provide some level of improvement in reception of VHF television service. The Commission therefore believes it may be desirable to amend its rules to increase the maximum allowed ERP for VHF stations at least in Zone I, where the current maximum power levels are relatively low. The Commission is specifically proposing to raise the maximum allowed ERP for low-VHF stations in Zones I to 40 kW and for high-VHF stations in Zone I to 120 kW if the station's antenna height above average terrain is 305 meters or less. At antenna heights above 305 meters, the maximum power for both low-VHF and high-VHF stations would be lower in accordance with the table in the proposed rules in Appendix A. This proposal would effectively increase the maximum power for low-VHF and high-VHF stations in Zone I by 6 dB, a level consistent with that indicated as achievable by the VHF Reception Panel. The Commission does not propose to raise the maximum power limits for VHF stations in Zones II and III, as the existing limits still afford those stations the ability to provide stronger signals indoors to consumers who view their signals at locations close to their transmitters. The proposed new maximum power limits for VHF stations would allow such stations to provide signal strengths to areas close to their

transmitters, *i.e.,* generally their principle community areas, that are higher by an amount that would help to compensate for some of the higher noise levels that tend to be present where consumers use indoor antennas.

38. Stations requesting power increases under the proposed new limits would be required to afford protection to other full power television stations from new interference under the existing regime of desired-to-undesired (D/U) signals limits. The Commission believes such an increase would allow many VHF stations experiencing difficulties in reaching viewers indoors to raise their signal levels by a reasonable level to overcome localized noise indoors, consistent with maintaining the approximate range of service provided by the existing maximum power limits. It does, however, recognize that higher power operation would increase the service range of VHF stations by as much at 14 km (9 miles). The Commission stated that is intention is not generally to extend the service range of these stations, as such expansions can to some degree limit the potential for introduction of new stations and changes by other co-channel and first-adjacent channel stations by enlarging the service area that must be protected. Nonetheless, it believes the interests of making the VHF channels more useful to stations and consumers outweigh these concerns about limiting opportunities of other stations. The Commission requests comment on this proposal and suggestions for alternative approaches, including both power limits and protection of service. In this regard, any increases in VHF power under this proposal by existing stations and new stations that are located within 300 kilometers (183 miles) of our border with Canada or within 400 kilometers (248.5 miles) of our border with Mexico will need to be coordinated with the appropriate foreign administration.

39. The Commission also observes that the provisions governing transmission of television signals in §§ 73.682(a)(14) and 73.625(c) of the rules specify that it shall be standard to employ horizontal polarization. The ERP of a television station is therefore considered to be that of its horizontally polarized component. However, § 73.682(a)(14) also provides that circular or elliptical polarization may be employed and that, in such cases, transmission of the horizontal and vertical components in time and space quadrature shall be used. Where such polarizations are used, the ERP of the vertically polarized component may not exceed the ERP of the horizontally polarized component. Stations therefore could achieve an increase in signal levels at indoor locations of perhaps 3 dB by using circular polarization. This step could also be combined with an increase in ERP (horizontal ERP) under the proposal to allow higher VHF maximum power levels. We encourage stations to make use of the option to use increased power under the vertical polarization provisions as a means to improve reception of their signals by indoor viewers.

40. A collateral issue that arises in the context of consideration of increases in the power limits for digital television stations on VHF channels is whether the Commission should also increase the minimum distance requirements for new, post-transition VHF channel allotments with regard to other stations or channel allotments on the same and first-adjacent channels, as specified in §§ 73.616 and 73.623(d) of the rules. Stations on new allotments that operate at the proposed new power limits and are at or close to the current minimum distances with regard to other stations could cause more interference to such stations (and vice versa) than would occur under the current power limits. Increasing those distances would resolve the interference concerns but would also tend to limit opportunities or new stations or for stations desiring to change channels (which necessitates modifying the allotment on which they operate). The Commission generally believes it would be desirable to maintain the current distance standards for new and changed allotments in order to avoid further limiting opportunities for new allotments. The Commission therefore is not proposing to change the minimum distance requirements for new and modified allotments.

41. In taking this approach, the Commission observes that the rules require a station that operates on a new allotment that meets the distance standards to protect other co-channel and adjacent channel stations from new interference in accordance with the desired-to-undesired (D/U) ratio interference protection criteria in § 73.616(e). In describing the services to be protected, this paragraph provides that "[f]or this purpose, the population served by the station receiving additional interference does not include portions of the population within the noise-limited service contour of that station that are predicted to receive interference from the post-transition DTV allotment facilities of the applicant * * *" The rules are not specific, however, as to the post-transition DTV allotment facilities of the applicant, that is, the facilities that a station would be allowed under the allotment without concern for new interference. The Commission proposes to amend § 73.616(e) to clarify that the post-transition DTV allotment facilities are the maximum facilities allowed currently under § 73.622(f). Thus, an applicant for a new station would be allowed to operate up to the current maximum facilities of ERP and antenna height on a new allotment that meets the distance requirements.

42. A station on a new allotment could also operate with facilities that exceed the post-transition allotment facilities if such operation would not cause new interference to other stations as defined under § 73.616(e). In addition, a licensee could apply to operate a station on a new allotment at facilities that exceed the post-transition allotment facilities (up to the proposed new limits) and could possibly cause new interference to another station by taking steps to avoid such interference. Such steps could include use of a directional antenna and/or location of the station's transmitter at a site that is different from the site of the allotment (such sites are generally farther from any stations that would otherwise receive interference). The Commission requests comment on its plan to maintain the existing distance requirements as it increases the maximum allowed power for digital TV stations on VHF channels and on whether it should alternatively increase the minimum distance requirements to match the changes in the power limits. The Commission also asks parties that advocate that it increase the minimum distance requirements to submit suggestions for new minimum distance standards.

43. *Indoor Antennas.* The antenna used to receive signals is a critical element in the television service path. The antenna component of a TV receive system (which consists of an antenna, connecting cable and receiver) should be able to pick up as much of the available signal energy as possible. If an antenna has a very low ability to receive signals or if the level of the desired signal is low, reception may not be possible. In view of the observed poor high-VHF reception capabilities of the majority of the indoor antennas examined in two studies by Meintel, Sgrignoli and Wallace and the FCC Laboratory mentioned in the NPRM and the likelihood that the low-VHF performance of those antennas is even poorer, the Commission intends to consider establishing standards to ensure that indoor antennas are effective for low-VHF channel reception. While the Commission has not regulated these

products previously, it believes that it has authority to set standards to ensure that the performance of indoor antennas is adequate to allow reception of low-VHF channels by TV receive systems under the All Channel Receiver Act, which is codified in section 303(s) of the Communications Act of 1934, as amended. In this regard, section 303(s) specifically provides that the Commission shall "[h]ave authority to require that apparatus designed to receive television pictures broadcast simultaneously with sound be capable of *adequately* receiving all frequencies allocated by the Commission to television broadcasting * * *" Because an antenna capable of adequately picking up low-VHF channels is necessary to allow all-channel reception of over-the-air broadcast signals, the Commission believes that the standards proposed would further its section 303(s) mandate. The Commission requests comment on its authority to establish standards for the ability of indoor antennas to receive all of the channels allocated for television service.

44. The Commission request comment, information and suggestions regarding the need for, and desirability of, standards for indoor antennas. The Commission is specifically proposing to require that indoor antennas comply with the industry set standards in ANSI/CEA–2032–A, "Indoor TV Receiving Antenna Performance Standard," February 2009. The ANSI/CEA–2032–A standard defines test and measurement procedures for determining the performance of indoor TV receiving antennas. Section 3.2.2 of this standard provides that to meet the standard, an antenna must have measured gain that exceeds:

- −12 dBd on all CEA test channels 2, 4, and 6 in the VHF low band
- −8 dBd on all CEA test channels 7, 9, 11 and 13 in the VHF high band and
- −8 dBd on all CEA test channels contained in the UHF band (channels 14–[51])

ANSI/CEA–2032–A further specifies that the test procedures in CEA–744–B are to be employed to measure the antenna performance. It also provides standards for active (amplified) antennas, including gain, intermodulation and spurious emission. Further, ANSI/CEA–2032–A provides for labeling antenna packaging and antennas to indicate the channels or bands of channels for which the antenna meets the specified technical requirements. The Commission observes that the high-VHF and UHF performance levels under this industry-developed standard are well within the capabilities of the antennas tested in the MSW and FCC Laboratory studies of indoor antennas. Under this proposal, all indoor television antennas would be required to meet the ANSI/CEA–2032–A standards for reception of low-VHF, high-VHF and UHF signals. In addition, to ensure compliance with these standards indoor antennas would be subject to the Commission's "verification" equipment procedure in part 2 of the rules. This would promote the Commission's objective of improving indoor reception in the VHF bands and well as ensure that indoor antennas are able to adequately receive UHF signals. Antennas that are built-in to, or designed for use with, specific devices such as portable television receivers, dongles, laptop computers, and similar TV reception equipment would not be subject to this requirement. Given the findings of the antenna studies by MSW and its Laboratory staff the Commission believes that the performance levels set forth in ANSI/CEA–2032–A are well within the capabilities of currently available consumer grade television receive antennas.

45. The Commission requests comment on whether the ANSI/CEA–2032–A performance standards are sufficient to ensure adequate reception of digital television signals at most indoor locations and whether the CEA–744–B measurement procedures are appropriate for determining compliance. The Commission also asks whether there might be other standards or measurement methods that might be more appropriate. Its intent is to ensure that consumers are able to achieve indoor reception of digital television signals, and especially of VHF signals, that are comparable to indoor reception of the signals of the former analog television system. The Commission also asks for comment an alternative approach under which it would require only that manufacturers measure indoor antennas using the CEA–744–B test procedure and comply with the labeling requirements of ANSI/CEA–2032–A. Under that approach, antennas would also be subject to the Commission's verification equipment authorization procedure. The Commission invites interested parties to submit comment, information and suggestions for alternative standards regarding all aspects of the indoor antenna issue.

46. *Other Approaches/Solutions for Improving Reception of VHF TV Services.* In addition to power increases for VHF band stations and standards for indoor antennas, the Commission also intends to consider additional options for improving television service in the VHF bands. Interested parties are invited to submit ideas and suggestions for additional measures we could take to improve reception of television signals on VHF channels. The Commission requests that parties submit materials information and analyses describing conditions and phenomenon that contribute to VHF reception difficulties and ideas for overcoming or mitigating them.

Procedural Matters

Initial Regulatory Flexibility Analysis

47. As required by the Regulatory Flexibility Act (RFA),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rule Making* (*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 specified on the first page of this *NPRM.* The Commission will send a copy of this *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2]

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

48. In this *NPRM* the Commission is initiating a process to address America's growing demand for wireless broadband services, spur ongoing innovation and investment in mobile and ensure that America keeps pace with the global wireless revolution, by making a significant amount of new spectrum available for broadband. Through this *NPRM,* we take preliminary steps to repurpose a portion of the UHF and VHF frequency bands that are currently used by the broadcast television service, which in later actions we expect to make available for flexible use by fixed and mobile wireless communications services, including mobile broadband. This approach is consistent with the National Broadband Plan (the "Plan")[3] recommendation to repurpose 120 megahertz from the broadcast television

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.,* has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] *See* 5 U.S.C. 603(a).

[3] *See Connecting America: The National Broadband Plan,* Federal Communications Commission, Washington, DC (March 2010); available at *http://www.broadband.gov/plan/.* The *Plan* was developed by the Commission pursuant to the direction of Congress in the American Recovery and Reinvestment Act of 2009 (Recovery Act), *see* American Recovery and Reinvestment Act of 2009, Public Law 111–5, 123 Stat. 115 (2009).

bands for new wireless broadband uses through revising (repacking) the channel assignments of TV stations and voluntary contributions of spectrum to an incentive auction. Reallocation of this spectrum as proposed will provide the Commission flexibility in providing additional spectrum resources for meeting the needs of these new applications. At the same time, we recognize that over-the-air TV serves important public interests, and our approach will help preserve this service as a healthy, viable medium. We remain mindful of the informational and entertainment benefits broadcast television provides the public, and our goal is to provide additional options for broadcast licensees.

B. Legal Basis

49. The proposed action is authorized under sections 4(i), 301, 302, 303(e), 303(f), 303(r),of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), and 303(r).

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

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

51. Television Broadcasting. This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public." [8] The SBA has created the following small business size standard for Television Broadcasting firms: Those having $14 million or less in annual receipts.[9] The Commission has estimated the number of licensed commercial television stations to be 1,395.[10] In addition, according to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database (BIA) on March 30, 2007, about 986 of an estimated 1,395 commercial television stations (or approximately 72 percent) had revenues of $13 million or less.[11] We therefore estimate that the majority of commercial television broadcasters are small entities.

52. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations [12] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

53. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 390.[13] These stations are non-profit, and therefore considered to be small entities.[14]

54. In addition, there are also 2,386 low power television stations (LPTV).[15] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

55. Cable Television Distribution Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." [16] The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts.[17] According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.[18] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[19] Thus, the majority of these firms can be considered small.

56. Cable Companies and Systems. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.[20]

[4] 5 U.S.C. 603(b)(3).

[5] 5 U.S.C. 601(6).

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

[7] Small Business Act, 15 U.S.C. 632 (1996).

[8] U.S. Census Bureau, 2007 NAICS Definitions, "515120 Television Broadcasting" (partial definition); *http://www.census.gov/naics/2007/def/ND515120.HTM#N515120.*

[9] 13 CFR 121.201, NAICS code 515120 (updated for inflation in 2008).

[10] *See FCC News Release,* "Broadcast Station Totals as of June 30, 2009," dated September 4, 2009; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.*

[11] We recognize that BIA's estimate differs slightly from the FCC total given *supra.*

[12] "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 CFR 21.103(a)(1).

[13] *See FCC News Release,* "Broadcast Station Totals as of June 30, 2009," dated September 4, 2009; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.*

[14] *See generally* 5 U.S.C. 601(4), (6).

[15] *See FCC News Release,* "Broadcast Station Totals as of June 30, 2009," dated September 4, 2009; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.*

[16] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[17] 13 CFR 121.201, NAICS code 517110.

[18] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[19] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[20] 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation,* Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[21] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[22] Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers.[23] Thus, under this second size standard, most cable systems are small.

57. Cable System Operators. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent 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."[24] The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[25] Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.[26] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[27] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

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

58. The specific bands under consideration are the low VHF spectrum at 54–72 MHz (TV channels 2–4) and 76–88 MHz (TV channels 5 and 6), the high VHF spectrum at 174–216 MHz (TV channels 7–13), and the UHF bands at 470–608 MHz (TV channels 14–36) and 614–698 MHz (TV channels 38–51); for purposes of this *NPRM,* we will refer to this spectrum as the "U/V Bands."[28] This *NPRM* proposes three actions that will establish the underlying regulatory framework to facilitate wireless broadband uses of the U/V Bands, without affecting current license assignments in the band. First, we are proposing to add new allocations for fixed and mobile services in the U/V Bands to be co-primary with the existing broadcasting allocation in those bands. The additional allocations would provide the maximum flexibility for planning efforts to increase spectrum available for flexible use, including the possibility of assigning portions of the U/V Bands for new mobile broadband services in the future. Second, we are proposing to establish a framework that permits two or more television stations to share a single six-megahertz channel, thereby enhancing efficient use of the U/V Bands. Third, we intend to consider approaches to create value for television viewers and broadcasters by increasing the utility of the VHF bands for the operation of television services.

59. By establishing the underlying regulatory framework to facilitate wireless broadband uses in the U/V Bands, this *NPRM* is the first in a series of actions that will allow us to make progress toward our goal of improving efficient use of the bands and enable ongoing innovation and investment through flexible use. We will propose further actions consistent with other of the *Plan's* recommendations for the U/V Bands, including, but not limited to, the process of voluntarily returning broadcast licenses to the Commission and the licensing process and service rules for new fixed and mobile wireless communications services.

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

60. 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.[29]

61. We do not propose in this *NPRM* to specify a band plan for the spectrum to be recovered, we do, however, request comment on how we should re-configure the current U/V Bands to ensure that the services involved, *i.e.,* broadcast television as well as new fixed and mobile services, can best be supported. Recognizing that UHF spectrum is useful for mobile services, one approach would be to select the spectrum to be recovered from the upper portion of the UHF band and designate it for use by the wireless communications service (WCS). This would effectively extend the current allocation plan and WCS spectrum in the adjacent WCS bands at 700 MHz (WCS 700 MHz bands) to include new lower adjacent frequencies. Alternatively, it might be technically desirable to configure the bands to provide paired spectrum in separate bands for broadband applications, or to designate a portion of the spectrum for unpaired uses or different wireless services. For example, current rules in the U/V Band allow for unlicensed use of unassigned channels ("white spaces"), and the *Plan* recommended the creation of a nationwide contiguous band for unlicensed use. We also request comment on whether a new U/V Band plan should incorporate an unlicensed block of spectrum, or if other bands would be better suited to this purpose.

62. We seek comment on other areas of interest with respect to channel sharing in conjunction with the recommendations of the National Plan. We welcome comments from stations that anticipate that they may participate in channel sharing as well as from other interested parties.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

63. None.

[21] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006,* "Top 25 Cable/Satellite Operators," pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006,* "Ownership of Cable Systems in the United States," pages D–1805 to D–1857.

[22] 47 CFR 76.901(c).

[23] Warren Communications News, *Television & Cable Factbook 2008,* "U.S. Cable Systems by Subscriber Size," page F–2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

[24] 47 U.S.C. 543(m)(2); *see* 47 CFR 76.901(f) & nn. 1–3.

[25] 47 CFR 76.901(f); *see* Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator,* DA 01–158 (Cable Services Bureau, Jan. 24, 2001).

[26] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006,* "Top 25 Cable/Satellite Operators," pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006,* "Ownership of Cable Systems in the United States," pages D–1805 to D–1857.

[27] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. *See* 47 CFR 76.909(b).

[28] The band 608–614 MHz, *i.e.,* TV channel 37, is used for radio astronomy and is not part of the spectrum being considered for reallocation. *See* 47 CFR 2.106., US 74 and US 246.

[29] *See* 5 U.S.C. 603(c).

Ordering Clauses

64. Pursuant to sections 4(i), 301, 302, 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C.154(i), 301, 302, 303(e), 303(f) and 303(r), this *Notice of Proposed Rule Making is adopted.*

65. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Notice of Proposed Rule Making,* including the Initial Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 2, 15 and 73

Communications equipment, Incorporation by reference, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 2, 15, and 73 to read as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

a. Pages 19, 20, 24, and 28 are revised.

b. In the list of Non-Federal Government (NG) Footnotes, footnotes NG66 and NG149 are removed.

The revisions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

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Table of Frequency Allocations			47-137 MHz (VHF)		Page 19
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
47-68 BROADCASTING 5.162A 5.163 5.164 5.165 5.169 5.171	47-50 FIXED MOBILE	47-50 FIXED MOBILE BROADCASTING 5.162A	47-49.6	47-49.6 LAND MOBILE NG124	Private Land Mobile (90)
			49.6-50 FIXED MOBILE	49.6-50	
	50-54 AMATEUR 5.162A 5.166 5.167 5.167A 5.168 5.170		50-73	50-54 AMATEUR	Amateur Radio (97)
	54-68 BROADCASTING Fixed Mobile 5.172	54-68 FIXED MOBILE BROADCASTING 5.162A		54-72 FIXED MOBILE BROADCASTING NG5 NG14 NG115	Broadcast Radio (TV)(73) LPTV, TV Translator/ Booster (74G) Low Power Auxiliary (74H)
68-74.8 FIXED MOBILE except aeronautical Mobile	68-72 BROADCASTING Fixed Mobile 5.173	68-74.8 FIXED MOBILE			
	72-73 FIXED MOBILE			72-73 FIXED MOBILE NG3 NG49 NG56	Public Mobile (22) Aviation (87) Private Land Mobile (90) Personal Radio (95)
	73-74.6 RADIO ASTRONOMY 5.178		73-74.6 RADIO ASTRONOMY US74 US246		
	74.6-74.8 FIXED MOBILE		74.6-74.8 FIXED MOBILE US273		Private Land Mobile (90)
5.149 5.175 5.177 5.179		5.149 5.176 5.179			
74.8-75.2 AERONAUTICAL RADIONAVIGATION 5.180 5.181			74.8-75.2 AERONAUTICAL RADIONAVIGATION 5.180		Aviation (87)
75.2-87.5 FIXED MOBILE except aeronautical mobile	75.2-75.4 FIXED MOBILE 5.179		75.2-75.4 FIXED MOBILE US273		Private Land Mobile (90)

5.175 5.179 5.187 87.5-100 BROADCASTING 5.190	75.4-76 FIXED MOBILE	75.4-87 FIXED MOBILE 5.182 5.183 5.188	75.4-88	75.4-76 FIXED MOBILE NG3 NG49 NG56	Public Mobile (22) Aviation (87) Private Land Mobile (90) Personal Radio (95)
	76-88 BROADCASTING Fixed Mobile 5.185	87-100 FIXED MOBILE BROADCASTING		76-88 FIXED MOBILE BROADCASTING NG5 NG14 NG115	Broadcast Radio (TV)(73) LPTV, TV Translator/ Booster (74G) Low Power Auxiliary (74H)
	88-100 BROADCASTING		88-108 US93	88-108 BROADCASTING NG2 US93 NG5	Broadcast Radio (FM)(73) FM Translator/Booster (74L)
100-108 BROADCASTING 5.192 5.194					
108-117.975 AERONAUTICAL RADIONAVIGATION 5.197 5.197A			108-117.975 AERONAUTICAL RADIONAVIGATION US93 US343		Aviation (87)
117.975-137 AERONAUTICAL MOBILE (R) 5.111 5.200 5.201 5.202			117.975-121.9375 AERONAUTICAL MOBILE (R) 5.111 5.200 US26 US28 US403		
			121.9375-123.0875 US30 US31 US33 US80 US102 US213	121.9375-123.0875 AERONAUTICAL MOBILE US30 US31 US33 US80 US102 US213	
			123.0875-123.5875 AERONAUTICAL MOBILE 5.200 US32 US33 US112		
			123.5875-128.8125 AERONAUTICAL MOBILE (R) US26 US403		
			128.8125-132.0125	128.8125-132.0125 AERONAUTICAL MOBILE (R)	
			132.0125-136 AERONAUTICAL MOBILE (R) US26		
			136-137 US244	136-137 AERONAUTICAL MOBILE (R) US244	

174-223 BROADCASTING 5.235 5.237 5.243	174-216 BROADCASTING Fixed Mobile 5.234	174-223 FIXED MOBILE BROADCASTING 5.233 5.238 5.240 5.245	174-216	174-216 FIXED MOBILE BROADCASTING NG5 NG14 NG115	Broadcast Radio (TV)(73) LPTV, TV Translator/Booster (74G) Low Power Auxiliary (74H)
	216-220 FIXED MARITIME MOBILE Radiolocation 5.241 5.242		216-217 Fixed Land mobile US210 US241 G2	216-219 FIXED MOBILE except aeronautical mobile US210 US241 NG173	Maritime (80) Private Land Mobile (90) Personal Radio (95)
			217-220 Fixed Mobile US210 US241	219-220 FIXED MOBILE except aeronautical mobile Amateur NG152 US210 US241 NG173	Maritime (80) Private Land Mobile (90) Amateur Radio (97)
	220-225 AMATEUR FIXED MOBILE Radiolocation 5.241		220-222 FIXED LAND MOBILE US241 US242		Private Land Mobile (90)
223-230 BROADCASTING Fixed Mobile 5.243 5.246 5.247		223-230 FIXED MOBILE BROADCASTING AERONAUTICAL RADIONAVIGATION Radiolocation 5.250	222-225	222-225 AMATEUR	Amateur Radio (97)
	225-235 FIXED MOBILE		225-235 FIXED MOBILE G27	225-235	
230-235 FIXED MOBILE 5.247 5.251 5.252		230-235 FIXED MOBILE AERONAUTICAL RADIONAVIGATION 5.250			
235-267 FIXED MOBILE 5.111 5.252 5.254 5.256 5.256A			235-267 FIXED MOBILE 5.111 5.256 G27 G100	235-267 5.111 5.256	Page 24

456-459 FIXED MOBILE 5.286AA 5.271 5.287 5.288			456-459 5.287 5.288	456-460 FIXED LAND MOBILE 5.287 5.288 NG12 NG112 NG124 NG148	Public Mobile (22) Maritime (80) Private Land Mobile (90)
459-460 FIXED MOBILE 5.286AA 5.209 5.271 5.286A 5.286B 5.286C 5.286E	459-460 FIXED MOBILE 5.286AA MOBILE-SATELLITE (Earth-to-space) 5.286A 5.286B 5.286C 5.209	459-460 FIXED MOBILE 5.286AA 5.209 5.271 5.286A 5.286B 5.286C 5.286E	459-460		
460-470 FIXED MOBILE 5.286AA Meteorological-satellite (space-to-Earth) 5.287 5.288 5.289 5.290			460-470 Meteorological-satellite (space-to-Earth) 5.287 5.288 5.289 US73 US201 US209	460-462.5375 FIXED LAND MOBILE 5.289 US201 US209 NG124	Private Land Mobile (90)
				462.5375-462.7375 LAND MOBILE 5.289 US201	Personal Radio (95)
				462.7375-467.5375 FIXED LAND MOBILE 5.287 5.289 US73 US201 US209 NG124	Private Land Mobile (90)
				467.5375-467.7375 LAND MOBILE 5.287 5.289 US201	Personal Radio (95)
				467.7375-470 FIXED LAND MOBILE 5.288 5.289 US73 US201 NG124	Maritime (80) Private Land Mobile (90)
470-790 BROADCASTING 5.149 5.291A 5.294 5.296 5.300 5.302 5.304 5.306 5.311A 5.312	470-512 BROADCASTING Fixed Mobile 5.292 5.293	470-585 FIXED MOBILE BROADCASTING 5.291 5.298	470-608	470-608 FIXED MOBILE BROADCASTING NG5 NG14 NG115	Public Mobile (22) Broadcast Radio (TV)(73) LPTV, TV Translator/Booster (74G) Low Power Auxiliary (74H) Private Land Mobile (90)
	512-608 BROADCASTING 5.297	585-610 FIXED MOBILE BROADCASTING RADIONAVIGATION 5.149 5.305 5.306 5.307			
	608-614 RADIO ASTRONOMY Mobile-satellite except aeronautical mobile-satellite (Earth-to-space)		608-614 LAND MOBILE (medical telemetry and medical telecommand) RADIO ASTRONOMY US74 US246		Personal Radio (95)
	614-698 BROADCASTING Fixed Mobile 5.293 5.309 5.311A	610-890 FIXED MOBILE 5.313A 5.317A BROADCASTING 5.149 5.305 5.306 5.307 5.311A 5.320	614-698	614-698 FIXED MOBILE BROADCASTING NG5 NG14 NG115	Broadcast Radio (TV)(73) LPTV, TV Translator/Booster (74G) Low Power Auxiliary (74H)

BILLING CODE 6712–01–C

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PART 15—RADIO FREQUENCY DEVICES

3. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, and 544a.

4. Section 15.38 is amended by adding paragraphs (b)(14) and (b)(15) to read as follows:

§ 15.38 Incorporation by reference.

* * * * *

(b) * * *

(14) ANSI/CEA–2032–A: "Indoor TV Receiving Antenna Performance Standard," May 2005, IBR approved for § 15.117(l).

(15) ANSI/CEA–744–B: "TV Receiving Antenna Performance Presentation and Measurement," February 2009, IBR approved for § 15.117(l).

* * * * *

5. Section 15.117 is amended by adding paragraph (l) to read as follows:

§ 15.117 TV broadcast receivers.

* * * * *

(l) *Indoor Antennas.* Effective [12 MONTHS AFTER ADOPTION OF THE FINAL ORDER IN THIS PROCEEDING], antennas intended for indoor reception of television broadcast service shall comply with the standards set forth in ANSI/CEA–2032–A: "Indoor TV Receiving Antenna Performance Standard," May 2005, (incorporation by reference, *see* § 15.38(c)), including the requirement for measurements in accordance with the procedures set forth in ANSI/CEA–744–B: "TV Receiving Antenna Performance Presentation and Measurement," February 2009, (incorporated by reference, *see* § 15.38(c). Antennas that are built-in to, or designed for use with specific devices, such as portable television receivers, dongles, laptop computers, and similar TV reception equipment are not be subject to this requirement.

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

7. Section 73.616 is amended by adding paragraph (e)(3) to read as follows:

§ 73.616 Post-transition DTV station interference protection.

* * * * *

(e) * * *

(3) The facilities of a post-transition DTV allotment are as follows:

(i) (A) For a station that operates on a channel 2–6 allotment, the allotment ERP is 40 kW if its antenna HAAT is at or below 305 meters and the station is located in Zone I or 45 kW if its HAAT is at or below 305 meters and the station is located in Zone II or Zone III. For a station located in Zone I that operates on channels 2–6 with HAAT that exceeds 305 meters, the allotment ERP, expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$$ERP = 92.57 - 33.24*\log_{10}(HAAT)$$

(B) For a station located in Zone II or Zone III that operates on channels 2–6 with an antenna HAAT that exceeds 305 meters, the allotment ERP level is determined from the following table (the allotment ERP for intermediate values of HAAT is determined using linear interpolation based on the units employed in the table):

ALLOTMENT ERP AND ANTENNA HEIGHT FOR DTV STATIONS IN ZONES II OR III ON CHANNELS 2–6

Antenna HAAT (meters)	ERP (kW)
610	10
580	11
550	12
520	14
490	16
460	19
425	22
395	26
365	31
335	37
305	45

(C) For a DTV station located in Zone II or Zone III that operates on channels 2–6 with an antenna HAAT that exceeds 610 meters, the allotment ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$$ERP = 57.57 - 17.08*\log_{10}(HAAT)$$

(ii)(A) For a station that operates on a channel 7–13 allotment, the allotment ERP is 120 kW if its antenna HAAT is at or below 305 meters and the station is located in Zone I or 160 kW if its HAAT is at or below 305 meters and the station is located in Zone II or Zone III. For a station located in Zone I that operates on channels 7–13 with HAAT that exceeds 305 meters, the allotment ERP, expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$$ERP = 97.35 - 33.24*\log_{10}(HAAT)$$

(B) For a station located in Zone II or Zone III that operates on channels 7–13 with an antenna HAAT above 305 meters, the allotment ERP level is determined from the following table (the allotment ERP for intermediate values of HAAT is determined using linear interpolation based on the units employed in the table):

ALLOTMENT ERP AND ANTENNA HEIGHT FOR DTV STATIONS IN ZONES II OR III ON CHANNELS 7–13

Antenna HAAT (meters)	ERP (kW)
610	30
580	34
550	40
520	47
490	54
460	64
425	76
395	92
365	110
335	132
305	160

(C) For a station located in Zone II or Zone III that operates on channels 7–13 with an antenna HAAT that exceeds 610 meters, the allotment ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$$ERP = 62.34 - 17.08*\log_{10}(HAAT)$$

(iii)(A) For a station that operates on a channel 14–51 allotment, the allotment ERP is 1000 kW if its antenna HAAT is at or below 365 meters. At higher antenna HAAT levels, the allotment ERP level for such a station is determined from the following table (the allotment ERP for intermediate values of HAAT is determined using linear interpolation based on the units employed in the table):

ALLOTMENT ERP AND ANTENNA HEIGHT FOR DTV STATIONS ON CHANNELS 14–51, ALL ZONES

Antenna HAAT (meters)	ERP (kW)
610	10
580	11
550	12
520	14
490	16
460	19
425	22
395	26
365	31

(B) For a station located in Zone I, II or III that operates on channels 14–51 with an antenna HAAT that exceeds 610 meters, the allotment ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP = 72.57 - 17.08*\log_{10}(HAAT)$

* * * * *

8. Section 73.622 is amended by revising paragraphs (f)(6) and (f)(7) to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(f) * * *

(6) A DTV station that operates on a channel 2–6 allotment will be allowed a maximum ERP of 40 kW if its antenna HAAT is at or below 305 meters and the station is located in Zone I or a maximum ERP of 45 kW if its HAAT is at or below 305 meters and the station is located in Zone II or Zone III. An existing DTV station that operates on a channel 2–6 allotment may request an increase in power and/or HAAT up to these power levels, provided that the increase also complies with the provisions of paragraph (f)(5) of this section.

(i) For DTV stations located in Zone I that operate on channels 2–6 with an antenna HAAT that exceeds 305 meters, the allowable maximum ERP, expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max} = 98.57 - 33.24*\log_{10}(HAAT)$

(ii) For DTV stations located in Zone II or Zone III that operate on channels 2–6 with an antenna HAAT that exceeds 305 meters, the allowable maximum ERP level is determined from the following table (the allowable maximum ERP for intermediate values of HAAT is determined using linear interpolation based on the units employed in the table):

MAXIMUM ALLOWABLE ERP AND ANTENNA HEIGHT FOR DTV STATIONS IN ZONES II OR III ON CHANNELS 2–6

Antenna HAAT (meters)	ERP (kW)
610	10
580	11
550	12
520	14
490	16
460	19
425	22
395	26
365	31
335	37
305	45

(iii) For DTV stations located in Zone II or Zone III that operate on channels 2–6 with an antenna HAAT that exceeds 610 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max} = 57.57 - 17.08*\log_{10}(HAAT)$

(7) A DTV station that operates on a channel 7–13 allotment will be allowed a maximum ERP of 120 kW if its antenna HAAT is at or below 305 meters and the station is located in Zone I or a maximum ERP of 160 kW if its HAAT is at or below 305 meters and the station is located in Zone II or Zone III. An existing DTV station that operates on a channel 7–13 allotment may request an increase in power and/or HAAT up to these power levels, provided that the increase also complies with the provisions of paragraph (f)(5) of this section.

(i) For DTV stations located in Zone I that operate on channels 7–13 with an antenna HAAT that exceeds 305 meters, the allowable maximum ERP, expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max} = 103.35 - 33.24*\log_{10}(HAAT)$

(ii) For DTV stations located in Zone II or Zone III that operate on channels 7–13 with an antenna HAAT above 305 meters, the allowable maximum ERP level is determined from the following table (the allowable maximum ERP for intermediate values of HAAT is determined using linear interpolation based on the units employed in the table):

MAXIMUM ALLOWABLE ERP AND ANTENNA HEIGHT FOR DTV STATIONS IN ZONES II OR III ON CHANNELS 7–13

Antenna HAAT (meters)	ERP (kW)
610	30
580	34
550	40
520	47
490	54
460	64
425	76
395	92
365	110
335	132
305	160

(iii) For DTV stations located in Zone II or Zone III that operate on channels 7–13 with an antenna HAAT that exceeds 610 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max} = 62.34 - 17.08*\log_{10}(HAAT)$

* * * * *

[FR Doc. 2011–2102 Filed 1–31–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385, 390, and 395

[Docket No. FMCSA–2010–0167]

RIN 2126–AB20

Electronic On-Board Recorders and Hours of Service Supporting Documents

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) proposes to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to require certain motor carriers operating commercial motor vehicles (CMVs) in interstate commerce to use electronic on-board recorders (EOBRs) to document their drivers' hours of service (HOS). Under this proposal, all motor carriers currently required to maintain Records of Duty Status (RODS) for HOS recordkeeping would be required to use EOBRs to systematically and effectively monitor their drivers' compliance with HOS requirements. Additionally, this proposal sets forth the supporting documents that all motor carriers currently required to use RODS would still be required to obtain and keep, as required by section 113(a) of the Hazardous Materials Transportation Authorization Act (HMTAA). It explains, however, that although motor carriers subject to the proposed EOBR requirements would still need to retain some supporting documents, they would be relieved of the requirements to retain supporting documents to verify driving time. FMCSA also proposes to require all motor carriers—both RODS and timecard users—to systematically monitor their drivers' compliance with HOS requirements. Motor carriers would be given 3 years after the effective date of the final rule to comply with these requirements.

DATES: Comments must be received on or before April 4, 2011. Comments sent to the Office of Management and Budget (OMB) on the collection of information must be received by OMB on or before April 4, 2011.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–