

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

In the Matter of )  
 )  
Reallocation of Television Channels ) ET Docket No. 97-157  
60-69, the 746-806 MHz Band )

**NOTICE OF PROPOSED RULE MAKING**

Adopted: July 9, 1997

Released: July 10, 1997

Comment Date: **[45 days after Fed. Reg. publication]**

Reply Comment Date: **[75 days after Fed. Reg. publication]**

By the Commission:

**INTRODUCTION**

1. By this action, we propose to reallocate the 746-806 MHz band, currently comprising television (TV) channels 60-69. We propose to allocate 24 megahertz, at 764-776 MHz and 794-806 MHz, to the fixed and mobile services, and to designate this spectrum for public safety use.<sup>1</sup> We propose to allocate the remaining 36 megahertz at 746-764 MHz and 776-794 MHz to the fixed, mobile, and broadcasting services; and we anticipate that licenses in this portion of the band may be assigned through competitive bidding. These allocations would help to meet the needs of public safety for additional spectrum, make new technologies and services available to the American public, and allow more efficient use of spectrum in the 746-806 MHz band. We also consider issues related to protecting existing and proposed TV stations on channels 60-69 from interference until the transition to digital TV (DTV) is complete, but defer specific interference protection standards to a separate proceeding on service rules in the 746-806 MHz band.<sup>2</sup>

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<sup>1</sup> Public safety radio services are identified in 47 C.F.R. § 90.15. See also *In re Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the rules Governing Them*, WT Docket No. 92-235, FCC 97-61, *Second Report and Order*, released March 12, 1997 at ¶ 20.

<sup>2</sup> See *In re Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service (DTV Proceeding)*, MM Docket No. 87-268, *Sixth Report and Order*, FCC No. 97-115, released April 21, 1997, at ¶ 3. The target date for the termination of the DTV transition period is the year 2006. This date is subject to review and change as the DTV transition progresses. See *DTV Proceeding, Fifth Report and Order*, FCC 97-116, released April 21, 1997, at ¶¶ 98-100.

## BACKGROUND

2. Channels 60-69 (746-806 MHz) are relatively lightly used for full service television operations. There are currently only 95 full service analog stations, either operating or with approved construction permits on these channels.<sup>3</sup> In the *Sixth Report and Order* in MM Docket No. 87-268 (*DTV Proceeding*),<sup>4</sup> we adopted a Table of Allotments for digital television. This Table provides all eligible broadcasters with a second 6 MHz channel to be used for DTV service during the transition from analog to digital television service. The DTV Table also, *inter alia*, facilitates the early recovery of a portion of the existing broadcast spectrum, specifically, channels 60-69, by minimizing the use of these channels for DTV purposes. The DTV Table provides only 15 allotments for DTV stations on channels 60-69 in the continental United States.<sup>5</sup>

3. In providing for early recovery of spectrum, we also observed that there is an urgent need for additional spectrum to meet important public safety needs, including voice and data communications, and to provide for improved interoperability between public safety agencies. We indicated that spectrum in the region of the 746-806 MHz band may be appropriate to meet some of these needs. We stated that we would initiate a separate proceeding to reallocate the spectrum at channels 60-69 in the very near future, and that we would give serious consideration to allocating 24 megahertz of this spectrum for public safety use and consider allocating the remaining 36 megahertz in the 746-806 MHz band for assignment by auction.<sup>6</sup>

4. In 1995, the Commission, along with the National Telecommunications and Information Administration, established the Public Safety Wireless Advisory Committee (PSWAC) to study public safety telecommunications requirements. The PSWAC was chartered, *inter alia*, to advise the Commission on total spectrum requirements for the operational needs of public safety entities in the United States through the year 2010.<sup>7</sup> On September 11, 1996, the PSWAC issued its *Final Report*. The PSWAC found that the currently allocated public safety spectrum is insufficient to support current voice and data needs of the public safety community, does not provide adequate capacity for interoperability channels, and is inadequate to meet future

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<sup>3</sup> There are also approximately 1309 low power TV and TV translator stations on channels 60-69. See ¶¶ 18-21 *infra*.

<sup>4</sup> *DTV Proceeding*, MM Docket No. 87-268, *Sixth Report and Order*, FCC No. 97-115, released April 21, 1997.

<sup>5</sup> There are seven DTV allotments in channels 60-69 outside the continental United States.

<sup>6</sup> See *DTV Proceeding*, *Sixth Report and Order*, at ¶ 80.

<sup>7</sup> See PSWAC, *Final Report of the Public Safety Wireless Advisory Committee to the Federal Communications Commission, Reed E. Hundt, Chairman, and the National Telecommunications and Information Administration, Larry Irving, Assistant Secretary of Commerce for Communications and Information (Final Report)* (1996)(this report is not numbered), at 7.

needs, based on projected population growth and demographic changes. In the *Final Report*, the PSWAC stated that data communication needs are also expected to grow rapidly in the next few years, and wireless video needs are expected to expand quickly. In addition, new spectrum is required to support new capabilities and technologies, including high speed data and video.<sup>8</sup> The PSWAC found that, in the short term, 24 or 25 megahertz of new public safety spectrum is needed,<sup>9</sup> and concluded that public safety users should be granted access to portions of the unused spectrum in the 746-806 MHz band.<sup>10</sup>

5. On April 10, 1996, the Commission released a *Notice of Proposed Rule Making (Notice)* in a proceeding to address current and future public safety wireless communications and spectrum needs (*Public Safety Proceeding*).<sup>11</sup> The *Notice* proposes measures to address current and future communications needs of public safety agencies. The *Notice* also sought comment on regulatory approaches that would facilitate the development of interoperable equipment and technologies and system requirements essential to the effective performance of public safety functions. We requested comment on technological issues regarding the enhancement and improvement of public safety wireless communications and measures to foster spectrally efficient communications. Finally, the *Notice* addressed additional spectrum allocations for public safety agencies.<sup>12</sup> This instant proceeding also addresses spectrum allocations for public safety communications; and, therefore further addresses some of the issues raised in the *Public Safety Proceeding*.

## DISCUSSION

6. In the *DTV Proceeding*, we stated that all existing analog and DTV full service broadcast operations on channels 60-69 will be fully protected during the transition, which is targeted for completion in the year 2006.<sup>13</sup> At that time, we anticipate that analog TV operations

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<sup>8</sup> See *id.* at 19-20.

<sup>9</sup> See *id.* at 3, recommending an additional allocation of 25 megahertz to public safety; *id.* at 59, Table 4-4-2, recommending reallocation of 24 megahertz to public safety.

<sup>10</sup> See *id.* at 21.

<sup>11</sup> *In re the Development of Operational, Technical, and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010*, WT Docket No. 96-86, *Notice of Proposed Rule Making*, 11 FCC Rcd 12460 (1996).

<sup>12</sup> See *id.* at ¶ 4.

<sup>13</sup> See *DTV Proceeding, Sixth Report and Order*, ¶ 80; see also *Fifth Report and Order* in MM Docket No. 87-268, FCC 97-116, released April 21, 1997, at ¶¶ 99-100.

will cease<sup>14</sup> and all digital TV stations on channels 60-69 will be relocated to other channels.<sup>15</sup> The allocation proposals set forth below are consistent with this plan.

*I. Allocation of Spectrum for Public Safety in the 746-806 MHz Band.*

7. Public safety services are essential to the well-being of the American public. Public safety agencies work to ensure the security of the public both on a daily basis and in times of natural disasters and other crises. The ability of public safety agencies such as police and fire departments, emergency medical services, and forestry and emergency response services to react swiftly and efficiently to crimes, traffic and aircraft accidents, natural disasters, and special events is enhanced by public safety agencies' use of communications technology. Radio-based communications allow public safety agencies to pass information quickly, coordinate their efforts, and warn of impending danger. As telecommunications technology has become more sophisticated, its contribution to the effectiveness of public safety agencies has dramatically increased.

8. The increase in radio communications among public safety agencies, however, has led to a shortage of spectrum available for public safety communications. We agree with the PSWAC that there is a critical need for more public safety spectrum in the United States. This need has been recognized by the Commission,<sup>16</sup> the Congress,<sup>17</sup> and the Administration.<sup>18</sup> The allocation of more spectrum for public safety services will not only alleviate current spectrum crowding, but will also facilitate public safety agencies' access to new technologies for data and video communications. Allocation of more spectrum for public safety will allow better communications interoperability between different jurisdictions; between different levels of jurisdiction, *e.g.*, Federal, state, and local agencies; and between different agencies, *e.g.*, fire and police departments. Spectrum for interoperability is critical to coordination of public safety efforts at all levels. For example, fighting forest fires can require interoperability among the fire departments of several cities and counties. Many law enforcement operations and responses to natural disasters require interoperability between Federal, state, and local public safety agencies. Response to major traffic accidents on interstate highways also requires interoperability between

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<sup>14</sup> See *DTV Proceeding, Fifth Report and Order* at ¶¶ 98-99.

<sup>15</sup> See *DTV Proceeding, Sixth Report and Order* at ¶ 84.

<sup>16</sup> See *In re Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS)*, GN Docket No. 96-228, FCC 97-50, *Report and Order* at ¶ 78 (released Feb. 19, 1997).

<sup>17</sup> See *The Law Enforcement and Public Safety Telecommunications Empowerment Act*, S. 255, 105th Cong., 1st Sess. § 4(a), 143 Cong. Rec. S945-05 (1997).

<sup>18</sup> See Testimony of Larry Irving, Assistant Secretary for Communications and Information, U.S. Department of Commerce, before the Subcommittee on Telecommunications, Trade and Consumer Protection of the U.S. House of Representatives Committee on Commerce, February 12, 1997, at 24.

the police, the fire department, and emergency medical services. The PSWAC states that there is a severe shortage of interoperability spectrum, and recommends the creation of a band dedicated to interoperability.<sup>19</sup>

9. To address the need for more public safety spectrum, we propose to allocate 24 megahertz within the 746-806 MHz band to the fixed and mobile services, for use by public safety agencies. Such an allocation would significantly increase the amount of spectrum available to non-Federal public safety agencies in the United States.<sup>20</sup> This proposal would also provide very nearly the amount of spectrum requested by public safety in the *Final Report* of the PSWAC. We request comment on our proposed allocation. We specifically inquire whether 24 megahertz is the appropriate amount of spectrum to allocate for public safety from this band, or whether a greater or lesser amount of spectrum should be allocated to public safety in this region of the spectrum.

10. The 746-806 MHz band is currently divided into ten television channels, each having a bandwidth of six megahertz. We believe that the allocation of spectrum to public safety would be best served by aligning the allocation with current television channels. This approach will minimize the restrictions on public safety use of the spectrum caused by the need to protect current television channels against objectionable interference as required during the DTV transition period. Thus, an allocation of 24 MHz of spectrum to public safety would coincide with only four television channels, thereby minimizing the number of existing television stations that must be protected against interference.

11. We tentatively propose to allocate the spectrum at TV channels 63, 64, 68, and 69 (the 764-776 MHz and 794-806 MHz bands) for public safety. There are several reasons why we believe these channels would best serve the needs of public safety. These channels are relatively lightly used by full service television broadcasting, so this spectrum would offer the fewest restrictions on public safety operations. Further, since the 794-806 MHz band is subjacent to existing public safety operations in the 806-824 MHz band, it holds the best potential for expansion of and interoperability with existing systems. The close proximity to existing spectrum used for public safety could also reduce the difficulty and cost of designing equipment. We are aware that public safety systems typically employ systems that for technical reasons require some minimum separation between the receive and transmit frequencies. We believe our proposed allocation would permit systems to be deployed with adequate separation between transmit and receive frequencies.

12. We request comment on our proposal to allocate channels 63, 64, 68, and 69 (764-776 and 794-806 MHz) for public safety. Specifically, we inquire whether the presence of high power TV transmitters on channels 65-67 would interrupt signals transmitted by public safety

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<sup>19</sup> See PSWAC, *Final Report* at 52.

<sup>20</sup> See *id.* at 16.

entities using paired frequencies for operations. We also invite parties to suggest alternatives for allocation of spectrum within the 746-806 MHz band for public safety use. Parties suggesting alternative proposals should also identify the factors they took into account in deciding which bands to recommend for allocation for public safety. We emphasize that this division of the spectrum is proposed for allocation purposes only and is not determinative of whether to adopt a channeling plan for licensing and, if so, which particular channeling plan should be adopted. Any such issues will be addressed in a subsequent proceeding, dealing with licensing of the public safety spectrum.

## *II. Allocation of Remaining Spectrum in the 746-806 MHz Band.*

13. We propose to reallocate the remaining 36 MHz of spectrum in the 746-806 MHz band to the fixed and mobile services, and retain the existing broadcast allocation. This would allow the maximum diversity in service offerings and the broadest licensee discretion, consistent with international allocations. Internationally, the band is allocated on a primary basis to the broadcasting service and on a secondary basis to the fixed and mobile services in Region 2. A footnote to the International Table of Frequency Allocations elevates the allocation to the fixed and mobile services to primary status in the United States, Mexico, and several other Region 2 countries. This spectrum is located near spectrum now used for cellular telephone and other land mobile services, and it could be used to expand the capacities of these services. Other possible applications for this spectrum include wireless local loop telephone service, video and multimedia applications, wireless cable services, and industrial communications services. Additionally, under our proposal, parties would be able to obtain licenses in this spectrum to offer broadcasting. We request comment on whether this broad allocation is appropriate, or whether some other allocation would better serve the public interest.

14. Retaining the allocation of this spectrum for broadcasting, however, raises certain concerns. The DTV transition plan anticipates that broadcasters will vacate this spectrum at the end of the DTV transition period.<sup>21</sup> For this reason, we would distinguish between those broadcasters who have received their authorizations pursuant to the current allocation and current service rules, and who may receive some protection or accommodation from new licensees, and who will have to vacate this spectrum at the end of the transition period, and new licensees in the spectrum who may provide broadcasting service and who will be subject to the rules we will adopt for the regulation of the reallocated spectrum.

15. We intend to address licensing and service issues, such as the size of the spectrum blocks for assignment, service areas, spectrum aggregation and disaggregation, etc., in a separate proceeding. For example, while we have aligned this spectrum with the 6 megahertz TV channels for the purposes of allocation, we may ultimately determine that the 36 MHz of non-public safety spectrum should be licensed in any size blocks. We also anticipate that licenses in this spectrum may be assigned by competitive bidding. We will address issues related to

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<sup>21</sup> See *DTV Proceeding, Fifth Report and Order*, FCC 97-116, released April 21, 1997, at ¶¶ 98-100.

licensing and the possibility of auctions in a separate proceeding. It is our purpose to accommodate as broad a range of services and technologies as feasible, and we have proposed a broad allocation to promote this purpose. We recognize, however, that permitting a diverse array of services and technologies to share the same spectrum could pose technical challenges in avoiding interference. For example, different services may employ different output powers, modulation techniques, and system architectures. Also, receivers are likely to have different interference rejection characteristics. We request comment on how these issues may affect the proposed allocations. We once again point out that licensing issues, including the appropriate size of spectrum blocks per license, will be addressed in a subsequent proceeding.

16. *Summary of Proposed Allocations.* In sum, our proposal calls for the reallocation of the ten 6-megahertz blocks of spectrum which comprise TV Channels 60-69 into two 12-megahertz spectrum blocks for public safety services plus two 18-megahertz spectrum blocks for fixed, mobile, and broadcasting services. The chart below shows the relationship between the existing allocation and the proposed reallocation for this spectrum.

TV 60	TV 61	TV 62	TV 63	TV 64	TV 65	TV 66	TV 67	TV 68	TV 69
Fixed, Mobile & Broadcasting 18 megahertz		Public Safety 12 megahertz		Fixed, Mobile & Broadcasting 18 megahertz		Public Safety 12 megahertz			
746 MHz		764 MHz		776 MHz		794 MHz		806 MHz	

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*III. Other Issues Affecting the Entire 746-806 MHz Band.*

17. *Protection of TV Services.* In the *DTV Proceeding*, we stated that all existing analog TV and new DTV stations in the 746-806 MHz bands would be fully protected during the DTV transition period.<sup>22</sup> Thus, it will be necessary for licensees in the reallocated spectrum to protect both analog TV and DTV stations in the 746-806 MHz band from interference. We will address the issue of protection of TV stations in our separate proceeding on licensing and service rules in the 746-806 MHz band.

18. *Low Power Operations.* In our *DTV Proceeding*, we found that there is insufficient spectrum to preserve all existing LPTV and TV translator stations, and concluded that LPTV and TV translator stations should retain their secondary allocation status. We also stated our continuing belief that the important benefits of spectrum recovery, such as providing new spectrum for public safety, outweigh the impact this action will have on secondary LPTV and TV translator operations.<sup>23</sup> In the DTV proceeding, we adopted a number of changes to our rules, however, to mitigate the impact on LPTV and TV translators. These rule changes included allowing LPTV stations displaced by new DTV stations to apply for suitable replacement channels; considering such applications on a first-come, first-served basis without subjecting them to competing applications; and technical rules changes to provide additional operating flexibility for low power stations.<sup>24</sup> We also stated that any industry negotiation and coordination efforts must be open to all parties, including LPTV stations.<sup>25</sup> In addition, LPTV and TV translator operations will not be required to alter or cease their operations until they actually cause interference to new DTV service or to any primary services operating in the 746-806 MHz band. We believe that it may be possible for many low power stations operating on channels 60-69 to co-exist with public safety and other new service operations on a non-interfering basis. For example, in certain regions of the country, such as rural areas and the western mountainous states, low power TV stations and TV translators may not be affected by new service operations, at least not in the near future.

19. Our primary objective in this proceeding is to maximize the availability of this spectrum for new public safety and other services. As noted above, we have already taken a variety of steps in the *DTV Proceeding* to provide more flexibility for low power operations. These measures would of course be similarly available to low power operations on channels 60-69. LPTV and TV translator stations in channels 60-69 will retain secondary status, as do LPTV and TV translator stations in other portions of the TV bands. This means that LPTV and TV translator stations shall not cause harmful interference to stations of primary services, including

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<sup>22</sup> See *DTV Proceeding, Sixth Report and Order* at ¶ 80.

<sup>23</sup> See *id.* at ¶¶ 11, 81, 141-142.

<sup>24</sup> See *id.* at ¶¶ 141-147.

<sup>25</sup> See *DTV Proceeding Sixth Report and Order* at ¶ 182.

new licensees in channels 60-69, and cannot claim protection from harmful interference from stations of primary services, including new licensees in channels 60-69.<sup>26</sup> Although we recognize that LPTV and TV translator stations retain this secondary status, we seek comment as to whether our proposed allocations might suggest any additional considerations to further mitigate the impact on low power operations on channels 60-69 during the transition period. We emphasize, however, that any accommodation of low power operations should not impede public safety use of the spectrum nor reduce the opportunity for other services to use this spectrum.

20. One option would be to provide some level of accommodation to low power operations in channels 60-69 until the end of the DTV transition period in the year 2006, in order to give these stations time to relocate to other portions of the spectrum, change transmission channels, seek licensing as primary services, or otherwise modify their operations. We request comment on the issue of accommodation of displaced LPTV and TV translator stations and whether we should allow incumbent LPTV and TV translator stations to negotiate private arrangements with new licensees under which the new licensees would tolerate otherwise unacceptable levels of interference from LPTV or TV translator stations, and whether we should provide incentives to new licensees to seek such arrangements. We invite commenters to suggest alternative ways we might alleviate the impact of this allocation on low power operations.<sup>27</sup>

21. *TV Stations Construction Permits, Applications, and Allotment Petitions.* In our *DTV Proceeding*, we concluded that all existing analog and new DTV full service broadcast operations on channels 60-69 will be fully protected during the DTV transition period.<sup>28</sup> More than 200 petitions for reconsideration of the *DTV Proceeding Sixth Report and Order* have been filed. Many of these petitions request allotments in channels 60-69 during the DTV transition period. Our decisions on these petitions could affect the allocations proposed herein. If any additional DTV full service allotments are made as a result of these petitions, they would be afforded full protection during the DTV transition period. Further, in addition to the 73 licensed stations on channels 60-69, construction permits have been authorized to 22 stations, of which 11 operate under program test authority. There are also 78 applications on file for 33 stations on these channels which have been accepted or tendered for filing, of which 33 request waivers of

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<sup>26</sup> See 47 C.F.R. § 2.104(d)(4).

<sup>27</sup> In the *DTV Proceeding*, we stated that we intend to consider in a future rule making whether to create a new class of LPTV broadcast stations that would modify the secondary status of these stations and provide them some level of interference protection. Any such new class of LPTV stations would not include those in channels 60-69. We do not believe that the instant proceeding is the appropriate forum for such considerations, because this proceeding deals with only a small portion of the TV spectrum. However, we wish to remind commenters that we will undertake such a proceeding in the future.

<sup>28</sup> See *DTV Proceeding Sixth Report and Order* at ¶ 80.

the TV filing freeze and have not been accepted for filing.<sup>29</sup> In addition, there are 9 petitions for rule making on file, requesting changes in the TV Table of Allotments to allow applicants to apply for TV broadcasting licenses in channels 60-69.<sup>30</sup> We invite comment as to the appropriate disposition of these various matters so as to maximize the availability of the 746-806 MHz band for public safety and new services. We tentatively conclude that stations for which a construction permit has been granted should be treated the same as operating TV stations and receive protection from new service providers. We note that parties holding construction permits were considered eligible broadcasters in the DTV proceeding and were, in fact, awarded companion DTV channels; a number of these are already operating under program test authority. Other stations for which construction permits have been issued are under various stages of construction. At the same time, however, we note that there has been little activity with regard to a few of these permits. In this regard we remind permittees that, in the absence of compelling circumstances, they must progress toward constructing their stations within the allotted time or risk cancellation of their permits, regardless of their assigned channels. We request comment on whether these permittees should be given the option to begin operations directly on their DTV channels without being required to provide analog TV service on channels 60-69. Such an approach would allow these permittees to eliminate the cost of building new analog facilities that may be used for only a temporary period of time and would increase the spectrum available for public safety and other new service providers. We also request comment on whether we should allow public safety and new service licensees in the 746-806 MHz band to make arrangements with broadcast licensees and permittees for ceasing existing or planned broadcast operations in this band or relinquishing their interest in a new station on these channels. If so, could such arrangements include monetary compensation? In either case, where the broadcaster has a channel below channel 60, we would propose to continue to allow the broadcaster to initiate DTV operations without a companion analog channel. For example, for those broadcasters with DTV channels on channels 60-69 and an existing analog channel below channel 60, we would permit them to continue their current analog operations on that channel or, if possible, to convert that channel to DTV use. We also seek comment on whether, or under what circumstances, we should continue to permit stations authorized on channels 60-69 to relocate transmitting antenna sites or to increase radiated power or antenna height up to the maximum values in the service.

22. With regard to applications for new broadcast stations and petitions for rule making to create new analog TV allotments on channels 60-69, we believe the public is best served by maximizing the potential availability of this spectrum for public safety and new

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<sup>29</sup> These applications have not been acted upon because we froze applications for TV licensing in the 30 largest markets in the United States in 1987. See *In re Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, RM-5811, Order, 52 Fed. Reg. 28,346 (1987).

<sup>30</sup> We have also proposed to amend the TV Table of Allotments to add a new analog Channel 60 at Mililani Town, HI. See *In re Amendment of Section 73.606(b), Table of Allotments, TV Broadcasting Stations (Mililani Town, Hawaii)*, MM Docket 96-136, Notice of Proposed Rule Making, 11 FCC Rcd 16265 (1996). These figures are effective May 16, 1997, and change on a daily basis. Appendix B contains a list of licenses, construction permits, and applications.

services. We note that applicants for new broadcast stations were not among the initial eligibles for a second DTV channel and would be required to vacate this spectrum at the end of the DTV transition period. We seek comment on whether we should dismiss these pending applications and petitions for new allotments for new broadcast stations that would operate on channels 60-69. Alternatively, should we dismiss only those applications and allotment petitions in major metropolitan areas where additional spectrum for public safety is most needed, and which are precluded by the 1987 TV freeze? Consistent with this approach, we also seek comment on whether we should provide these parties an opportunity to amend their applications or petition proposals to obtain analog or DTV channels below channel 60. We invite commenters to address all these issues, and to suggest other methods of dealing with pending applications and petitions.

23. *International Coordination.* In addition to protecting services in adjacent frequency bands from harmful interference, we are obligated to consider the effects of U.S. operations on neighboring countries. For this reason, we propose to apply the international coordination requirements of Section 27.57 of our rules to fixed, mobile, and broadcasting licensees in this spectrum.<sup>31</sup> We will address international coordination requirements for the public safety spectrum in a subsequent proceeding.<sup>32</sup>

24. *Minor Changes to the Table of Frequency Allocations.* Finally, there are currently three footnotes to the Table of Frequency Allocations that permit the operation of non-TV services in the 746-806 MHz band in all or part of the United States.<sup>33</sup> The 716-890 MHz band is also currently available on an interim basis through footnote NG30 to stations in the international fixed public radiocommunication service<sup>34</sup> south of Miami, Florida, on the condition that harmful interference is not caused to the broadcasting service of any country.<sup>35</sup> Footnote NG30 was an interim measure which is no longer needed. The 800-830 MHz band is also currently available through footnote NG43 to fixed stations in the Common Carrier Fixed Point-

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<sup>31</sup> See 47 C.F.R. § 27.57.

<sup>32</sup> Coordination of public safety and other land mobile frequencies with Canada and Mexico are governed by special rules. See, e.g., 47 C.F.R. § 90.619.

<sup>33</sup> See 47 C.F.R. § 2.106.

<sup>34</sup> See 47 C.F.R. Part 23.

<sup>35</sup> Specifically, footnote NG 30 reads: Stations in the international fixed public radiocommunication service in Florida, south of 25° 30' north latitude, may be authorized to use frequencies in the band 716-890 MHz on the condition that harmful interference will not be caused to the broadcasting service of any country. This is an interim allocation the termination of which will later be specified by the Commission when it is determined that equipments are generally available for use in bands allocated internationally to the fixed services.

to-Point Microwave Service<sup>36</sup> in the southeastern corner of Alaska on the condition that harmful interference is not caused to the broadcasting service of any country.<sup>37</sup> We have reviewed our records and determined that there are no licensees operating under footnote NG43. For these reasons, and to provide public safety licensees with spectrum as free of other users as possible, we propose to delete footnotes NG30 and NG43. Additionally, the TV broadcast bands are allocated to the Fixed Service to permit subscription TV operations.<sup>38</sup> We propose to delete this allocation for the 746-806 MHz band. This would ensure that no subscription TV operations would be permitted in the public safety portion of the band. At the same time, because the non-public safety portion of the band is being reallocated to the fixed and mobile services, as well as the broadcasting service, this allocation by footnote is no longer needed to allow subscription TV operations in the non-public safety portion of the band. We invite comment on our proposal to eliminate footnotes NG30 and NG43, and modify footnote NG149 to eliminate the 746-806 MHz band from its provisions.

### PROCEDURAL MATTERS

25. This action is taken pursuant to Sections 4(i), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(c), 303(f), 303(g), and 303(r).

26. *Initial Regulatory Flexibility Analysis:* An initial regulatory flexibility analysis is contained in Appendix C.

27. *Ex Parte Presentations.* The rule making proposals in this *Second Notice of Proposed Rule Making* constitute a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

28. *Comments.* Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before **[45 days after**

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<sup>36</sup> Most of the services in the Domestic Public Fixed Radio Service were recently merged into Part 101, Fixed Microwave Services. The rules for the Common Carrier Fixed Point-to-Point Microwave Service are at 47 C.F.R. § 101, Subpart I.

<sup>37</sup> Specifically, footnote NG43 reads: Fixed stations in the domestic public radio services in Alaska, south of 56° north latitude and east of 134° west longitude, may be authorized to use frequencies in the band 800-830 MHz, on the condition that harmful interference will not be caused to the broadcasting service of any country.

<sup>38</sup> Specifically, footnote NG149 reads: The frequency bands 54-72 MHz, 76-88 MHz, 174-216 MHz, 470-512 MHz, 512-608 MHz, and 614-806 MHz are also allocated to the Fixed Service to permit subscription TV operations in accordance with Part 73 of the rules.

**Federal Register publication]**, and reply comments on or before **[75 days after Federal Register publication]**. All relevant and timely comment will be considered by the Commission before final action is taken in this proceeding. Comments relevant to the *Public Safety Proceeding* and comments relevant to any subsequent proceeding to establish service rules for spectrum in the 746-806 MHz band will be incorporated into the record in those proceedings, and considered before final action is taken. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M. Street, N.W., Washington, D.C. 20554.

29. For further information concerning this rule making contact Sean White at (202) 418-2453 or e-mail [swhite@fcc.gov](mailto:swhite@fcc.gov), Office of Engineering and Technology, Federal Communications Commission, Washington, D.C. 20554.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton  
Acting Secretary

**APPENDIX A****Proposed Rules**

Part 2 of title 47 of the Code of Federal Regulations is proposed to be amended 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: Sections 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154, 302, 303 and 307, unless otherwise noted.

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

- a. Remove the existing entries for 614-790 MHz and 790-806 MHz.
- b. Add entries in numerical order for 614-746 MHz, 746-790 MHz and 790-806 MHz.
- c. In the International Footnotes under heading I., add footnotes S5.293, S5.296, S5.300, S5.309, S5.310, S5.311, S5.312, S5.313, S5.314, S5.315, and S5.316 in numerical order.
- d. Remove footnotes NG30 and NG43.

The revisions and additions read as follows:

**§ 2.106 Table of Frequency Allocations.**

\* \* \* \* \*

International table			United States table		FCC use designators	
Region 1 — allocation MHz	Region 2 — allocation MHz	Region 3 — allocation MHz	Government	Non-Government	Rule part(s)	Special-use frequencies
(1)	(2)	(3)	Allocation MHz (4)	Allocation MHz (5)	(6)	(7)
*	*	*	*	*	*	*
614 – 746 BROADCASTING  S5.296 S5.300 S5.311 S5.312	614 – 746 BROADCASTING Fixed Mobile  S5.293 S5.309 S5.310 S5.311	614 – 746 FIXED MOBILE BROADCASTING  S5.311	614 – 746	614 – 746 BROADCASTING  NG128 NG149	RADIO BROADCAST (TV) (73) Auxiliary Broadcasting (74)	
746 – 790 BROADCASTING  S5.296 S5.300 S5.311 S5.312	746 – 790 BROADCASTING Fixed Mobile  S5.293 S5.309 S5.310 S5.311	746 – 790 FIXED MOBILE BROADCASTING  S5.311	746 – 790	746 – 790 FIXED MOBILE BROADCASTING  NG128 NG149 NG158 NG159	FIXED MICROWAVE (101) PRIVATE LAND MOBILE (90) RADIO BROADCAST (TV) (73) Auxiliary Broadcasting (74)	
790 – 806 FIXED BROADCASTING  S5.312 S5.313 S5.314 S5.315 S5.316	790 – 806 BROADCASTING Fixed Mobile  S5.293 S5.309 S5.310	790 – 806 FIXED MOBILE BROADCASTING	790 – 806	790 – 806 FIXED MOBILE BROADCASTING  NG128 NG158 NG159	FIXED MICROWAVE (101) PRIVATE LAND MOBILE (90) RADIO BROADCAST (TV) (73) Auxiliary Broadcasting (74)	
*	*	*	*	*	*	*

## INTERNATIONAL FOOTNOTES

\* \* \* \* \*

### I. New "S" Numbering Scheme

\* \* \* \* \*

S5.293 *Different category of service:* in Chile, Colombia, Cuba, the United States, Guyana, Honduras, Jamaica, Mexico and Panama, the allocation of the bands 470-512 MHz and 614-806 MHz to the fixed and mobile services is on a primary basis, (see No. S5.33), subject to agreement obtained under Article 14/No. S9.21.

S5.296 *Additional allocation:* in Germany, Austria, Belgium, Cyprus, Denmark, Spain, Finland, France, Ireland, Israel, Italy, Libya, Malta, Morocco, Monaco, Norway, the Netherlands, Portugal, the United Kingdom, Sweden, Switzerland, Swaziland, Syria, Tunisia and Turkey, the band 470-790 MHz is also allocated on a secondary basis to the land mobile service, intended for applications ancillary to broadcasting. Stations of the land mobile service in the countries mentioned in this footnote, shall not cause harmful interference to existing or planned stations operating in accordance with the Table of Frequency Allocations in countries other than those listed in this footnote.

S5.300 *Additional allocation:* in Israel, Libya, Syria and Sudan, the band 582-790 MHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a secondary basis.

S5.309 *Different category of service:* in Costa Rica, El Salvador and Honduras, the allocation of the band 614-806 MHz to the fixed service is on a primary basis (see No. S5.33), subject to agreement obtained under Article 14/No. S9.21.

S5.310 *Additional allocation:* in Cuba, the band 614-890 MHz is also allocated to the radionavigation service on a primary basis, subject to agreement obtained under Article 14/No. S9.21.

S5.311 Within the frequency band 620-790 MHz, assignments may be made to television stations using frequency modulation in the broadcasting-satellite service subject to agreement between the administrations concerned and those having services, operating in accordance with the Table, which may be affected (see Resolutions 33 and 507). Such stations shall not produce a power flux-density in excess of the value  $-129$  dB(W/m<sup>2</sup>) for angles of arrival less than 20° (see Recommendation 705) within the territories of other countries without the consent of the administrations of those countries.

S5.312 *Additional allocation:* in Armenia, Azerbaijan, Belarus, Bulgaria, Georgia, Hungary, Kazakhstan, Latvia, Lithuania, Moldova, Mongolia, Uzbekistan, Poland, Kyrgyzstan, Slovakia, the Czech Republic, Romania, Russia, Tajikistan, Turkmenistan and Ukraine, the band 645-862 MHz is also allocated to the aeronautical radionavigation service on a primary basis.

S5.313 *Alternative allocation:* in Spain and France, the band 790-830 MHz is allocated to the broadcasting service on a primary basis.

S5.314 *Additional allocation:* in Austria, Italy, the United Kingdom and Swaziland, the band 790-862 MHz is also allocated to the land mobile service on a secondary basis.

S5.315 *Alternative allocation:* in Greece, Italy, Morocco and Tunisia, the band 790-838 MHz is allocated to the broadcasting service on a primary basis.

S5.316 *Additional allocation:* in Germany, Bosnia and Herzegovina, Burkina Faso, Cameroon, Côte d'Ivoire, Croatia, Denmark, Egypt, Finland, Israel, Kenya, The Former Yugoslav Republic of Macedonia, Libya, Liechtenstein, Monaco, Norway, the Netherlands, Portugal, Sweden, Switzerland and Yugoslavia, the band 790-830 MHz, and in these same countries and in Spain, France, Gabon, Malta and Syria, the band 830-862 MHz, are also allocated to the mobile, except aeronautical mobile, service on a primary basis. However, stations of the mobile service in the countries mentioned in connection with each band referred to in this footnote shall not cause harmful interference to, or claim protection from, stations of services operating in accordance with the Table in countries other than those mentioned in connection with the band.

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#### NON-GOVERNMENT (NG) FOOTNOTES

\* \* \* \* \*

NG149 The frequency bands 54-72 MHz, 76-88 MHz, 174-216 MHz, 470-512 MHz, 512-608 MHz, and 614-746 MHz are also allocated to the fixed service to permit subscription television operations in accordance with Part 73 of the rules.

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NG158 The frequency bands 764-776 MHz and 794-806 MHz are available for assignment exclusively to the public safety radio services, as defined by Section 90.15 of this Chapter.

NG159 Existing and new television and digital television (DTV) broadcasting operations in the 746-806 MHz band will be entitled to protection from harmful interference until the end of the DTV transition period. After the end of the DTV transition period, the Commission may assign licenses in the 746-806 MHz band without regard to existing television and DTV operations.

## **APPENDIX B**

The following pages contain a list of all TV stations currently licensed in the United States, effective May 16, 1997, including construction permits and pending applications; maps showing the Grade B contours of all co-channel and adjacent channel (including channel 59) TV stations in the United States; and a list of DTV stations to be added during the DTV transition period.

## APPENDIX C

### Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act,<sup>39</sup> the Commission has prepared an Initial Regulatory Flexibility Analysis of the expected significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rule Making (Notice)*. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice* provided above. The Secretary shall send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>40</sup>

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

This Notice proposes to reallocate the 746-806 MHz band, television (TV) Channels 60-69, to other services. We propose to allocate 24 megahertz at 764-776 MHz and 794-806 MHz for public safety use. We propose to allocate the remaining 36 megahertz at 746-764 MHz and 776-794 MHz to the fixed and mobile services, and to retain the allocation to the broadcasting service in these bands. We further propose to protect full-power TV stations in the band until the transition to digital television (DTV) is complete, and to retain the secondary status in the band of Low Power TV (LPTV) and TV translator stations. These allocations would help alleviate a critical shortage of public safety spectrum, make new technologies and services available to the American public, and allow more efficient use of spectrum in the 746-806 MHz band.

#### B. Legal Basis.

The proposed action is taken pursuant to Sections 4(i), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(c), 303(f), 303(g), and 303(r).

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

##### 1. Definition of a "Small Business"

Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. § 601(6). The RFA, 5 U.S.C. § 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. § 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). According to the SBA's regulations, entities engaged in television broadcasting Standard Industrial

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<sup>39</sup> 5 U.S.C. § 603.

<sup>40</sup> *See id.* § 603(a).

Classification ("SIC") Code 4833 -- Television Broadcasting Stations, may have a maximum of \$10.5 million in annual receipts in order to qualify as a small business concern. This standard also applies in determining whether an entity is a small business for purposes of the RFA.

## 2. Issues in Applying the Definition of a "Small Business"

As discussed below, we could not precisely apply the foregoing definition of "small business" in developing our estimates of the number of small entities to which the rules will apply. Our estimates reflect our best judgments based on the data available to us.

An element of the definition of "small business" is that the entity not be dominant in its field of operation. We were 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 following estimates of small businesses to which the new rules will apply do not exclude any television station from the definition of a small business on this basis and are therefore overinclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. As discussed further below, we could not fully apply this criterion, and our estimates of small businesses to which the rules may apply may be overinclusive to this extent. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

## 3. Television Station Estimates Based on Census Data

The *Notice of Proposed Rule Making* will affect full service television stations, TV translator facilities, and LPTV stations. The Small Business Administration defines a television broadcasting station that has no more than \$10.5 million in annual receipts as a small business.<sup>41</sup> Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.<sup>42</sup> Included in this industry are commercial, religious, educational, and other television stations.<sup>43</sup> Also included are establishments primarily engaged in television broadcasting and which produce

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<sup>41</sup> 13 C.F.R. § 121.201, Standard Industrial Code (SIC) 4833 (1996).

<sup>42</sup> Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995).

<sup>43</sup> *Id.* See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes "Television Broadcasting Stations (SIC Code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

taped television program materials.<sup>44</sup> Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.<sup>45</sup>

There were 1,509 television stations operating in the nation in 1992.<sup>46</sup> That number has remained fairly constant as indicated by the approximately 1,551 operating television broadcasting stations in the nation as of February 28, 1997.<sup>47</sup> For 1992<sup>48</sup> the number of television stations that produced less than \$10.0 million in revenue was 1,155 establishments, or approximately 77 percent of the 1,509 establishments.<sup>49</sup> Thus, the rules will affect approximately 1,551 television stations; approximately 1,194 of those stations are considered small businesses.<sup>50</sup> These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies. We recognize that the rules may also impact minority and women owned stations, some of which may be small entities. In 1995, minorities owned and controlled 37 (3.0%) of 1,221 commercial television stations in the United States.<sup>51</sup> According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and non-commercial television stations in the United States.<sup>52</sup>

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<sup>44</sup> Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 7, Appendix A-9.

<sup>45</sup> *Id.*; SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services (producers of live radio and television programs)).

<sup>46</sup> FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 7, Appendix A-9.

<sup>47</sup> FCC News Release No. 7033, March 6, 1997.

<sup>48</sup> Census for Communications' establishments are performed every five years ending with a "2" or "7". *See* Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 7, at III.

<sup>49</sup> The amount of \$10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

<sup>50</sup> We use the 77 percent figure of TV stations operating at less than \$10 million for 1992 and apply it to the 1997 total of 1551 TV stations to arrive at 1,194 stations categorized as small businesses.

<sup>51</sup> Minority Commercial Broadcast Ownership in the United States, U.S. Dep't of Commerce, National Telecommunications and Information Administration, The Minority Telecommunications Development Program ("MTDP") (April 1996). MTDP considers minority ownership as ownership of more than 50% of a broadcast corporation's stock, voting control in a broadcast partnership, or ownership of a broadcasting property as an individual proprietor. *Id.* The minority groups included in this report are Black, Hispanic, Asian, and Native American.

<sup>52</sup> *See* Comments of American Women in Radio and Television, Inc. in MM Docket No. 94-149 and MM Docket No. 91-140, at 4 n.4 (filed May 17, 1995), *citing* 1987 Economic Censuses, Women-Owned Business, WB87-1, U.S. Dep't of Commerce, Bureau of the Census, August 1990 (based on 1987 Census). After the 1987 Census report, the Census Bureau did not provide data by particular communications services (four-digit Standard Industrial Classification (SIC) Code), but rather by the general two-digit SIC Code for communications (#48). Consequently, since 1987, the U.S. Census Bureau has not updated data on ownership of broadcast facilities by women, nor does

There are currently 4,977 TV translator stations and 1,952 LPTV stations which would be affected by the allocation policy and other policies in this proceeding.<sup>53</sup> The Commission does not collect financial information of any broadcast facility and the Department of Commerce does not collect financial information on these broadcast facilities. We will assume for present purposes, however, that most of these broadcast facilities, including LPTV stations, could be classified as small businesses. As indicated earlier, approximately 77 percent of television stations are designated under this analysis as potentially small business. Given this, LPTV and TV translator stations would not likely have revenues that exceed the SBA maximum to be designated as small businesses.

#### 4. Alternative Classification of Small Television Stations

An alternative way to classify small television stations is by the number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity ("EEO") rule for broadcasting.<sup>54</sup> Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and recordkeeping requirements.<sup>55</sup> We estimate that the total number of commercial television stations with 4 or fewer employees is 132 and that the total number of noncommercial educational television stations with 4 or fewer employees is 136.<sup>56</sup>

We have concluded that the 746-806 MHz band can be recovered immediately, and that it is in the public interest to reallocate this spectrum to uses in addition to TV broadcasting. We

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the FCC collect such data. However, we sought comment on whether the Annual Ownership Report Form 323 should be amended to include information on the gender and race of broadcast license owners. Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities, Notice of Proposed Rule Making, 10 FCC Rcd 2788, 2797 (1995).

<sup>53</sup> FCC News Release No. 7033, March 6, 1997.

<sup>54</sup> The Commission's definition of a small broadcast station for purposes of applying its EEO rule was adopted prior to the requirement of approval by the Small Business Administration pursuant to Section 3(a) of the Small Business Act, 15 U.S.C. § 632(a), as amended by Section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Pub. L. No. 102-366, § 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Pub. L. No. 103-403, § 301, 108 Stat. 4187 (1994). However, this definition was adopted after public notice and an opportunity for comment. See Report and Order in Docket No. 18244, 23 FCC 2d 430 (1970).

<sup>55</sup> See, e.g., 47 C.F.R. § 73.3612 (Requirement to file annual employment reports on Form 395-B applies to licensees with five or more full-time employees); First Report and Order in Docket No. 21474 (In the Matter of Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395), 70 FCC 2d 1466 (1979). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. Order and Notice of Proposed Rule Making in MM Docket No. 96-16 (In the Matter of Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines), 11 FCC Rcd 5154 (1996). One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees. Id. at ¶ 21.

<sup>56</sup> We base this estimate on a compilation of 1995 Broadcast Station Annual Employment Reports (FCC Form 395-B), performed by staff of the Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

believe that such a reallocation is possible while continuing to protect TV. There are 95 full power TV stations, either operating or with approved construction permits, in Channel 60-69. There are also nine proposed stations, and approximately 15 stations will be added during the DTV transition period, for a total of approximately 119 nationwide. There are also approximately 1,366 LPTV stations and TV translator stations in the band, operating on a secondary basis to full power TV stations. We propose to immediately reallocate the 746-806 MHz band in order to maximize the public benefit available from its use.

The RFA also includes small governmental entities as a part of the regulatory flexibility analysis.<sup>57</sup> The definition of a small governmental entity is one with a population of fewer than 50,000.<sup>58</sup> There are approximately 85,006 governmental entities in the nation.<sup>59</sup> This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number have populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,566, or 96 percent, have populations of fewer than 50,000.<sup>60</sup> The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the approximately 85,006 governmental entities, we estimate that 96 percent, or 81,600, are small entities that may be affected by our rules.

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

None.

#### **E. Significant Alternatives to Proposed Rules which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives.**

We do not propose to provide LPTV and TV translator stations with the same protection afforded to full-power TV stations. Because of the large number of such stations, protecting them would significantly diminish the utility of the 746-806 MHz band to both public safety and commercial users. Also, LPTV and TV translator stations are secondary in this band, and we have proposed to make public safety and commercial services primary in the band. We remain concerned, however, for the interests of LPTV and TV translator stations because they are a valuable part of the American telecommunications structure and economy. For this reason, we seek measures which will allow as many LPTV and TV translator stations as possible to remain in operation. At a minimum, we propose to continue the secondary status of these stations, so that they will not be required to change or cease their operations until they actually interfere with one of the newly-allocated services. We also request comment on a number of measures which may alleviate the impact of reallocation of the 746-806 MHz band on LPTV and TV translator

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<sup>57</sup> 5 U.S.C. § 601(5).

<sup>58</sup> *Id.*

<sup>59</sup> 1992 Census of Governments, U.S. Bureau of the Census, U.S. Department of Commerce.

<sup>60</sup> *Id.*

stations. We request comment on these options, with emphasis on how we can ensure fairness to all licensees, and how we can best balance the interests of current and future licensees to the benefit of the public.

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.**

None.