

**FCC FACT SHEET**\*

**Modernization of Media Regulation Initiative: Elimination of Reporting Obligation for DTV Stations with No Feeable Ancillary or Supplementary Services**  
Report and Order – MB Docket Nos. 17-105 and 17-264

**Background:** With the advent of digital television (DTV) technology, Congress in the Telecommunications Act of 1996 allowed broadcasters to use their digital spectrum to offer certain services in addition to their free, over the air television service. Those services are known as “ancillary or supplementary services.” In 1998, the Commission developed a program to assess fees on revenues received from the provision of ancillary or supplementary services. To facilitate collection of those fees, the Commission required all DTV stations to file annual reports (currently Form 2100, Schedule G) about their provision of ancillary or supplementary services, even if they provided no such services during the reporting period.

In a Notice of Proposed Rulemaking issued in October 2017, the Commission proposed to modify Section 73.624(g)(2) of its rules to require only those DTV stations that provide feeable ancillary or supplementary services to submit Schedule G. The Commission received unanimous support for this proposal because it will spare thousands of DTV stations from expending time and resources to submit Schedule G without compromising the Commission’s ability to fulfill its statutory obligations.

**What the Report and Order Would Do:**

- Revise Section 73.624(g) of the Commission’s rules to require only those DTV stations that have provided feeable ancillary or supplementary services during the reporting period to submit Schedule G.

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\* This document is being released as part of a "permit-but-disclose" proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in MB Docket No. 17-264, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs/>). Before filing, participants should familiarize themselves with the Commission’s *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR § 1.1200 *et seq.*

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

In the Matter of )
)
Amendment of Section 73.624(g) of the ) MB Docket No. 17-264
Commission's Rules Regarding Submission of )
FCC Form 2100, Schedule G, Used to Report TV )
Stations' Ancillary or Supplementary Services )
)
Modernization of Media Regulation Initiative ) MB Docket No. 17-105

REPORT AND ORDER\*

Adopted: []

Released: []

By the Commission:

I. INTRODUCTION AND BACKGROUND

1. In this Report and Order (Order), we adopt our proposal to revise Section 73.624(g) of the Commission's rules to require only those digital television (DTV) broadcast stations that actually provided feeable ancillary or supplementary services during the relevant reporting period to submit Form 2100, Schedule G to the Commission. In conjunction with our Modernization of Media Regulation Initiative, parties have urged us to amend this provision because it imposes pointless burdens on a substantial number of broadcasters. This action advances our efforts to modernize our regulations and eliminate outdated or unnecessary rules.

2. Section 336 of the Communications Act of 1934, as amended (Act), authorizes DTV stations to offer ancillary or supplementary services in addition to their free, over-the-air television service. Section 336(e) of the Act directs the Commission to establish a fee program for any such services for which the payment of a subscription fee is required, or for which the licensee receives

\* This document has been circulated for tentative consideration by the Commission at its April 2018 open meeting. The issues referenced in this document and the Commission's ultimate resolutions of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public's ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The Commission's ex parte rules apply and presentations are subject to "permit-but-disclose" ex parte rules. See, e.g., 47 CFR §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission's meeting. See 47 CFR §§ 1.1200(a), 1.1203.

1 47 CFR § 73.624(g)(2); Amendment of Section 73.624(g) of the Commission's Rules Regarding Submission of FCC Form 2100, Schedule G, Used to Report TV Stations' Ancillary or Supplementary Services et al., MB Docket No. 17-264 et al., Notice of Proposed Rulemaking, FCC 17-138 (Oct. 24, 2017) (NPRM).

2 Commission Launches Modernization of Media Regulation Initiative, Public Notice, 32 FCC Rcd 4406 (MB 2017) (Modernization Initiative Public Notice).

3 47 U.S.C. § 336.

4 In implementing Section 336, the Commission defined ancillary or supplementary services to include, among other things:

(continued....)

compensation from a third party in return for transmitting material furnished by that party,<sup>5</sup> otherwise known as “feeable” ancillary or supplementary services.<sup>6</sup> Under Section 336(e)(4), the Commission must advise Congress annually on “the amounts collected pursuant to [the fee] program.”<sup>7</sup>

3. To carry out its mandate under Section 336(e)(4), the Commission in 1998 adopted rules that: (i) set the fee for feeable ancillary or supplementary services at five percent of the gross revenues received from the provision of those services;<sup>8</sup> and (ii) require all DTV licensees and permittees annually to file Schedule G, which is used to report information about their use of the DTV bitstream to provide such services.<sup>9</sup> Such stations must submit Schedule G every year even if they provided no ancillary or supplementary services during the relevant reporting period.<sup>10</sup> Failure to file the form “regardless of revenues from ancillary or supplementary services or provision of such services may result in appropriate

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computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, audio signals, subscription video, and any other services that do not derogate DTV broadcast stations' obligations. . . . Such services may be provided on a broadcast, point-to-point or point-to-multipoint basis, provided, however, that any video broadcast signal provided at no direct charge to viewers shall not be considered ancillary or supplementary.

47 CFR § 73.624(c).

<sup>5</sup> 47 U.S.C. § 336(e)(1). Such compensation excludes advertising revenues “used to support broadcasting for which a subscription fee is not required.” *Id.* § 336(e)(1)(B).

<sup>6</sup> *Id.* § 336(e). Section 336(e) provides, in pertinent part:

(e) Fees

(1) Services to which fees apply -- If the regulations prescribed pursuant to [Section 336(a)] permit a licensee to offer ancillary or supplementary services on a designated frequency--

(A) for which the payment of a subscription fee is required in order to receive such services, or

(B) for which the licensee directly or indirectly receives compensation from a third party in return for transmitting material furnished by such third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required),

the Commission shall establish a program to assess and collect from the licensee for such designated frequency an annual fee or other schedule or method of payment that promotes the objectives described in [Section 336(e)(2)(A) and (B)].

*Id.* For a more detailed discussion of the history of Section 336 and its implementing rules, *see* NPRM at paras. 2-3.

<sup>7</sup> *Id.* § 336(e)(4) (“Within 5 years after February 8, 1996, the Commission shall report to the Congress on the implementation of the program required by [Section 336(e)], and shall annually thereafter advise the Congress on the amounts collected pursuant to such program”).

<sup>8</sup> 47 CFR § 73.624(g).

<sup>9</sup> *Id.* § 73.624(g)(2)(i). *See also Fees for Ancillary or Supplementary Use of Digital Television Spectrum Pursuant to Section 336(e)(1) of the Telecommunications Act of 1996*, Report and Order, 14 FCC Rcd 3259 (1998) (*Ancillary or Supplementary Services Report and Order*), *recon. denied*, Memorandum Opinion and Order, 14 FCC Rcd 19931 (1999).

<sup>10</sup> *See, e.g., Annual DTV Ancillary/Supplementary Use Services Report for Digital Television Stations (Form 2100 – Schedule G) Due December 1, 2016*, Public Notice, DA 16-1274 (MB Nov. 14, 2016) (reminding digital television stations to file Form 2100-Schedule G detailing whether they provided “ancillary and supplementary services” during the reporting period and briefly describing (i) the ancillary and supplementary services provided, (ii) which services were feeable, (iii) whether any services provided were not subject to a fee, (iv) the gross revenues received from all feeable services provided during the reporting period, (v) the amount of bitstream used to provide services during the applicable period; and to remit a fee of five percent of the gross revenues derived from such feeable services).

sanctions.”<sup>11</sup>

4. In May 2017, the Commission launched a review of its media regulations to eliminate or modify those that are outdated, unnecessary, or unduly burdensome.<sup>12</sup> In response to the Public Notice commencing that review, several parties urged the Commission to revise Section 73.624(g) of its rules to require the filing of Schedule G only by DTV stations that have provided feeable ancillary or supplementary services during the relevant reporting period and thus must pay the five percent fee on gross revenues derived from such services.<sup>13</sup>

5. In October 2017, the Commission issued a Notice of Proposed Rulemaking (NPRM) proposing to modify Section 73.624(g)(2) to require only those DTV stations that provide feeable ancillary or supplementary services to submit Schedule G on an annual basis.<sup>14</sup> The following month, the Media Bureau, on its own motion, waived the December 1, 2017 deadline for the filing of Schedule G by DTV stations that received no revenues from such services during the reporting period ending September 30, 2017, pending Commission action on the proposal to eliminate the Section 73.264(g)(2) reporting obligation.<sup>15</sup> In response to the NPRM, we received no opposition to the proposed revisions to Section 73.624(g).<sup>16</sup>

## II. DISCUSSION

6. We adopt our proposal to modify Section 73.624(g)(2) of the Commission’s rules to require only those DTV stations that provide feeable ancillary or supplementary services during the relevant reporting period to submit Schedule G.<sup>17</sup> We find persuasive commenters’ unanimous assertions that requiring all DTV stations to file this form, regardless of whether they have provided ancillary or supplementary services or received revenue from those services, imposes unnecessary regulatory burdens

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<sup>11</sup> 47 CFR § 73.624(g)(2)(i)(E).

<sup>12</sup> *Modernization Initiative Public Notice*, 32 FCC Rcd at 4406.

<sup>13</sup> America’s Public Television Stations, Corporation for Public Broadcasting, National Public Radio, Inc., and Public Broadcasting Service (Public Broadcasters) Comments in MB Docket No. 17-105, at 8-9; CBS Corporation, the Walt Disney Company, 21<sup>st</sup> Century Fox, Inc., and Univision Communications, Inc. (Content Companies) Comments in MB Docket No. 17-105, at 12-13; National Association of Broadcasters (NAB) Comments in MB Docket No. 17-105, at 19; Nexstar Broadcasting, Inc. (Nexstar) Comments in MB Docket No. 17-105, at 18; ABC Television Affiliates Association, CBS Television Network Affiliates Association, and FBC Television Affiliates Association (Affiliates Associations) Reply in MB Docket No. 17-105, at 5, 9-10; Named State Broadcasters Associations (NSBA) Reply in MB Docket No. 17-105, at 8-10; San Bernardino Community College District (SBCCD) Reply in MB Docket No. 17-105, at 3-4.

<sup>14</sup> NPRM at para. 1.

<sup>15</sup> *Amendment of Section 73.624(g) of the Commission’s Rules Regarding Submission of FCC Form 2100, Schedule G, Used to Report TV Stations’ Ancillary or Supplementary Services*, MB Docket No. 17-264, Order, DA 17-1112 (MB Nov. 15, 2017) (finding good cause to waive the deadline because doing so would temporarily relieve certain DTV stations of a regulatory burden that the Commission has tentatively concluded is unnecessary). The Commission had directed the Media Bureau to consider whether to waive the December 1, 2017 deadline pending final action on its proposed revisions to Section 73.624(g). NPRM at para. 7, n. 31.

<sup>16</sup> Meredith Corporation, Raycom Media, Inc., and Graham Media Group, Inc. (Broadcast Commenters) Comments in MB Docket No. 17-264, at 1; NAB Comments in MB Docket No. 17-264, at 2-4; Nexstar Comments in MB Docket No. 17-264, at 3-4; Public Broadcasters Comments in MB Docket No. 17-264, at 2-3; NAB Reply in MB Docket No. 17-264, at 3-4. We note that many of the comments filed in MB Docket No. 17-264 are unrelated to the NPRM.

<sup>17</sup> As proposed in the NPRM, we also revise Schedule G to conform to the rule amendments adopted herein. NPRM at para. 6, n.26 (proposing to revise Schedule G to conform to the proposed rule amendments and in particular to revise the form to eliminate the question “whether a fee was charged for the provision of [ancillary or supplementary] services” and the subsequent question “[f]eeable – yes or no?”).

and wastes resources.<sup>18</sup> The record has not shown there will be any impact on our ability to discharge our statutory obligations by modifying our rules as proposed. Requiring the submission of Schedule G only by DTV stations that have provided feeable ancillary or supplementary services will continue to provide the Commission with the necessary information to assess and collect the required fees<sup>19</sup> and to fulfill its reporting obligation to Congress.<sup>20</sup> Stations that provide feeable ancillary or supplementary services and fail to file the required information will be subject to appropriate sanctions.<sup>21</sup> In addition, as we noted in the NPRM, only a small fraction of all television broadcast stations provide feeable ancillary or supplementary services.<sup>22</sup> Based on a Media Bureau staff review of Schedule G filings, only twelve out of more than 6,000 DTV stations required to file Schedule G received revenues from their provision of ancillary or supplementary services in 2017, and the Commission collected less than \$1,300 in fees from those revenues.<sup>23</sup> We thus agree with commenters who assert that the costs of applying Section 73.624(g)(2) to all DTV stations outweigh any associated public interest benefits.<sup>24</sup>

7. We therefore affirm our tentative conclusion that such a broad application of the reporting requirement is not necessary to fulfill our statutory requirement to “report to Congress on the [fee] program . . . and [give the agency] the information necessary to adjust the fee program as appropriate consistent with the use of the spectrum.”<sup>25</sup> Rather, the form-filing requirement will only continue to apply to DTV stations that actually receive revenue from feeable services.<sup>26</sup> As some parties have noted, waiver of the December 1, 2017 deadline for filing Schedule G spared thousands of DTV

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<sup>18</sup> Broadcast Commenters Comments in MB Docket No. 17-264, at 1; NAB Comments in MB Docket No. 17-264, at 2-4; Nexstar Comments in MB Docket No. 17-264, at 3-4; Public Broadcasters Comments in MB Docket No. 17-264, at 2-3; NAB Reply in MB Docket No. 17-264, at 3-4.

<sup>19</sup> See 47 U.S.C. § 336(e)(2). For example, requiring DTV stations that have provided feeable ancillary or supplementary services to file Schedule G will allow us to continue to assure that a portion of the value of the public spectrum resource made available for commercial use is recovered for the public benefit and to avoid unjust enrichment of the station. *Id.*

<sup>20</sup> See *supra* n.7. The Commission fulfills its reporting obligation by providing the required information in the *Video Competition Report*, which identifies the total reported revenues from ancillary or supplementary services and the amount of fees collected by the Commission. See, e.g., *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 16-247, Eighteenth Report, 32 FCC Rcd 568, 615 n.372 (MB 2017) (reporting that total revenues from non-broadcast “ancillary or supplementary” services were approximately \$160,000 in 2015 and that the Commission collected approximately \$8,000 in fees from these services).

<sup>21</sup> See *infra* App. A (§ 73.624(g)(2)(i)(C) (“Failure to file information required by this section may result in appropriate sanctions”)).

<sup>22</sup> NPRM at para. 6, n.28 (stating that fewer than 15 stations reported receiving revenues from their provision of ancillary or supplementary services in 2016 and that the Commission collected roughly \$13,000 in fees based on those revenues).

<sup>23</sup> These totals are based on a review of all Schedule G filings for the 2017 reporting period. The data underlying these totals are publicly available through the Commission’s LMS database application search, <https://enterprise.filing.fcc.gov/dataentry/public/tv/publicAppSearch.html>.

<sup>24</sup> Affiliates Associations Reply in MB Docket No. 17-105, at 9; Content Companies Comments in MB Docket No. 17-105, at 12. See also NAB Comments in MB Docket No. 17-264, at 3-4; Nexstar Comments in MB Docket No. 17-264, at 3-4; Public Broadcasters Comments in MB Docket No. 17-264, at 2-3 (all asserting that the burdens imposed by requiring all DTV stations to submit Schedule G on an annual basis are greater than any resulting benefits).

<sup>25</sup> *Ancillary or Supplementary Services Report and Order*, 14 FCC Rcd at 3275, para. 54; 47 U.S.C. § 336(e)(4) (directing the Commission to “advise the Congress on the amounts [of fees] collected”).

<sup>26</sup> NPRM at para. 7.

stations from expending time and resources to submit such reports, without compromising the Commission's fulfillment of its obligation to report to Congress under Section 336.<sup>27</sup> For these reasons, we conclude that eliminating this reporting obligation for DTV stations that have provided no feeable ancillary or supplementary services during the reporting period serves the public interest by reducing unnecessary regulatory burdens.

### III. PROCEDURAL MATTERS

#### A. Regulatory Flexibility Act

8. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>28</sup> the Commission has prepared a Final Regulatory Flexibility Act Analysis (FRFA) relating to the Order. The FRFA is set forth in Appendix B.

#### B. Paperwork Reduction Act

9. This document eliminates, and thus does not contain new or revised, information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. §§ 3501-3520). In addition, therefore, it does not contain any new or modified "information burden for small business concerns with fewer than 25 employees" pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. § 3506(c)(4).

#### C. Congressional Review Act

10. The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

#### D. Additional Information

11. For additional information on this proceeding, contact Raelynn Remy of the Policy Division, Media Bureau, at [raelynn.remy@fcc.gov](mailto:raelynn.remy@fcc.gov) or (202) 418-2120.

### IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in Sections 1, 4(i), 4(j), 303(r), and 336 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303(r), and 336, this Report and Order **IS ADOPTED**, effective as of the date of publication of a summary in the Federal Register.<sup>29</sup>

13. **IT IS FURTHER ORDERED** that, pursuant to the authority found in Sections 1, 4(i), 4(j), 303(r), and 336 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303(r), and 336, the Commission's rules **ARE HEREBY AMENDED** as set forth in Appendix A.

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

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<sup>27</sup> Broadcast Commenters Comments in MB Docket No. 17-264, at 1; Nexstar Comments in MB Docket No. 17-264, at 4.

<sup>28</sup> 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

<sup>29</sup> These rule changes serve to "reliev[e] a restriction." 5 U.S.C. § 553(d)(1).

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A****Final Rules**

The Federal Communications Commission amends Part 73 of Title 47 of the Code of Federal Regulations (CFR) as set forth below:

**PART 73 – RADIO BROADCAST SERVICES**

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

**AUTHORITY:** 47 U.S.C. 154, 303, 309, 310, 334, 336, and 339.

2. Amend § 73.624 to read as follows:

§ 73.624 Digital television broadcast stations.

\* \* \* \* \*

(g)(2)(i) Each December 1, all commercial and noncommercial DTV licensees and permittees that provided feeable ancillary or supplementary services as defined in this section at any point during the 12-month period ending on the preceding September 30 will electronically report, for the applicable period:

(A) A brief description of the feeable ancillary or supplementary services provided;

(B) Gross revenues received from all feeable ancillary and supplementary services provided during the applicable period; and

(C) The amount of bitstream used to provide feeable ancillary or supplementary services during the applicable period. Licensees and permittees will certify under penalty of perjury the accuracy of the information reported. Failure to file information required by this section may result in appropriate sanctions.

(g)(2)(ii) A commercial or noncommercial DTV licensee or permittee that has provided feeable ancillary or supplementary services at any point during a 12-month period ending on September 30 must additionally file the FCC's standard remittance form (Form 159) on the subsequent December 1. Licensees and permittees will certify the amount of gross revenues received from feeable ancillary or supplementary services for the applicable 12-month period and will remit the payment of the required fee.

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## APPENDIX B

## Final Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM).<sup>2</sup> The Commission sought written public comments on proposals in the NPRM, including comment on the IRFA. The Commission received no comments on the IRFA. The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

**A. Need for, and Objectives of, the Rule Changes**

2. In the Report and Order (Order), we revise Section 73.624(g) of the Commission's rules, which requires all digital television (DTV) broadcast stations to report to the Commission every year on their provision of ancillary or supplementary services.<sup>3</sup> In particular, we adopt our proposal in the NPRM to amend Section 73.624(g)(2) to relieve television broadcasters that have received no feeable revenues from the provision of ancillary or supplementary services, and thus are not required to pay fees on those revenues, of the obligation to submit FCC Form 2100, Schedule G annually.<sup>4</sup>

3. In response to the NPRM, commenters have uniformly asserted that requiring all DTV stations to file this form—regardless of whether they have provided ancillary or supplementary services or received revenue from those services—imposes unnecessary regulatory burdens. The Order states that the record has not shown there will be any impact on the Commission's ability to discharge the Commission's statutory obligations by modifying its rules as proposed. The Order additionally notes that few broadcast stations receive feeable revenue from ancillary or supplementary services, and in 2017, the Commission collected less than \$1,300 in fees based on such revenues. The Order thus finds that the costs of applying Section 73.624(g)(2) to all DTV stations outweigh any public interest benefits, and that eliminating this reporting obligation for most television stations serves the public interest by reducing needless regulation and regulatory burdens that can impede competition and innovation in the video marketplace.

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

4. No parties filed comments in response to the IRFA or otherwise addressed the impact on smaller entities of the proposed revisions to Section 73.624(g).

**C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration**

5. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.<sup>5</sup> The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (CWAAA).

<sup>2</sup> *Amendment of Section 73.624(g) of the Commission's Rules Regarding Submission of FCC Form 2100, Schedule G, Used to Report TV Stations' Ancillary or Supplementary Services et al.*, MB Docket No. 17-264 et al., Notice of Proposed Rulemaking, FCC 17-138 (Oct. 24, 2017).

<sup>3</sup> For a definition of ancillary or supplementary services, see Order at para. 2, n. 4.

<sup>4</sup> Form 2100, Schedule G is used to report information about the provision of ancillary or supplementary services.

<sup>5</sup> 5 U.S.C. § 604(a)(3).

#### D. Description and Estimates of the Number of Small Entities to Which the Rules Will Apply

6. 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.<sup>6</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>7</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>8</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>9</sup> The rules proposed herein will directly affect small television and radio broadcast stations. Below, we provide a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

7. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.”<sup>10</sup> These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.<sup>11</sup> These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts.<sup>12</sup> The 2012 Economic Census reports that 751 firms in this category operated in that year. Of this number, 656 had annual receipts of \$25 million or less, 25 had annual receipts between \$25 million and \$49,999,999, and 70 had annual receipts of \$50 million or more.<sup>13</sup> Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

8. The Commission has estimated the number of licensed commercial television stations to be 1,384.<sup>14</sup> Of this total, 1,264 stations had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on February 24, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the

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<sup>6</sup> 5 U.S.C. § 603(b)(3).

<sup>7</sup> *Id.* § 601(6).

<sup>8</sup> *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” *Id.* § 601(3).

<sup>9</sup> *Id.* § 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission’s statistical account of television stations may be over-inclusive.

<sup>10</sup> U.S. Census Bureau, 2012 North American Industry Classification System (NAICS) Definitions, “515120 Television Broadcasting,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>11</sup> *Id.*

<sup>12</sup> 13 CFR § 121.201; 2012 NAICS Code 515120.

<sup>13</sup> U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515120 Television Broadcasting), [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ4&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table).

<sup>14</sup> *Broadcast Station Totals as of December 31, 2016*, FCC News Release (rel. Jan. 5, 2017), <https://www.fcc.gov/document/broadcast-station-totals-december-31-2016>.

Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 394.<sup>15</sup> The Commission, however, does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

9. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations<sup>16</sup> must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an 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 broadcast 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.

10. There are also 417 Class A stations.<sup>17</sup> Given the nature of these services, including their limited ability to cover the same size geographic areas as full power stations thus restricting their ability to generate similar levels of revenue, we will presume that these licensees qualify as small entities under the SBA definition. In addition, there are 1,968 LPTV stations and 3,776 TV translator stations. Given the nature of these services as secondary and in some cases purely a “fill-in” service, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

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

11. In this section, we identify the reporting, recordkeeping, and other compliance requirements adopted in the Order and consider whether small entities are affected disproportionately by any such requirements.

12. *Reporting Requirements.* The Order does not adopt reporting requirements.

13. *Recordkeeping Requirements.* The Order does not adopt recordkeeping requirements.

14. *Other Compliance Requirements.* The Order does not adopt other compliance requirements.

#### **F. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

15. The RFA requires an agency to describe any significant, specifically small business, 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 and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>18</sup>

16. The Order revises Section 73.624(g) to require only those DTV stations that receive feeable revenues from their provision of ancillary or supplementary services to submit Form 2100,

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<sup>15</sup> *Id.*

<sup>16</sup> “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.” 13 CFR § 21.103(a)(1).

<sup>17</sup> *Broadcast Station Totals as of June 30, 2017*, FCC News Release (rel. July 11, 2017).

<sup>18</sup> 5 U.S.C. § 603(c)(1)-(c)(4).

Schedule G, on an annual basis. As noted, under the current rule, all DTV stations must submit this form annually, yet requiring the submission of the form only by DTV stations that have provided feeable ancillary or supplementary services will continue to provide the Commission with the necessary information to discharge its statutory obligations. In addition, few such stations offer feeable ancillary or supplementary services. Accordingly, the Order eliminates an annual reporting obligation and the expenditure of resources associated with filing the annual reports for a substantial number of broadcast stations, including small entities. Because the revisions to Section 73.624(g) adopted in the Order are unopposed, we expect that DTV stations, including affected small entities, will benefit from such revisions.

#### **G. Report to Congress**

The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>19</sup> In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register.<sup>20</sup>

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<sup>19</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>20</sup> See *id.* § 604(b).