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

The RFA requires an agency to describe any significant alternatives that it has considered that might reduce economic impact on small entities, such as: establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities; clarifying, consolidating, or simplifying such requirements for small entities; using performance rather than design standards; or completely or partially exempting small entities from new requirements.

We have not considered exempting small entities from the emission limits we are adopting here or prescribing more lenient requirements or compliance timetables for small entities, as we do not believe that such measures could be effected without thwarting fulfillment of our regulatory objective of preventing interference. We have taken steps, however, to minimize adverse impact on affected licensees. Most notably, in the interest of minimizing consequent equipment obsolescence, we have decided to exempt equipment currently in service from full compliance until January 1, 2005.

Report to Congress: The Commission will send a copy of this Report and Order, including a copy of this Final Regulatory Flexibility Analysis (''FRFA''), in a report to Congress pursuant to the Congressional Review Act. The Commission will also send a copy of this Report and Order and FRFA to the Chief Counsel for Advocacy of the SBA, and a copy of the Report and Order and FRFA (or a summary thereof) will be published in the **Federal Register**.

Ordering Clauses

It is ordered that, pursuant to sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g), 303(r), 307, 309(a), 310, part 25 of the Commission's rules is amended, as specified in the rule changes, effective November 1, 2002.

It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Report and Order the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 25

Satellite communications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 25 as follows:

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

§ 25.200 [Removed]

2. Section 25.200 is removed.

§ 25.213 [Removed and reserved]

3. Section 25.213 is amended by removing and reserving paragraph (b).

4. Add § 25.216 to read as follows:

§ 25.216 Limits on emissions from mobile earth stations for protection of aeronautical radionavigation-satellite service.

(a) The e.i.r.p. density of emissions from mobile earth stations placed in service on or before July 21, 2002 with assigned uplink frequencies between 1610 MHz and 1660.5 MHz shall not exceed −70 dBW/MHz, averaged over any 20 millisecond interval, in the band 1559–1587.42 MHz. The e.i.r.p. of discrete emissions of less than 700 Hz bandwidth generated by such stations shall not exceed −80 dBW, averaged over 20 milliseconds, in that band.

(b) The e.i.r.p. density of emissions from mobile earth stations placed in service on or before July 21, 2002 with assigned uplink frequencies between 1610 MHz and 1626.5 MHz shall not exceed −64 dBW/MHz, averaged over 20 milliseconds, in the 1587.42–1605 MHz band. The e.i.r.p. of discrete emissions of less than 700 Hz bandwidth generated by such stations shall not exceed −74 dBW, averaged over 20 milliseconds, in the 1587.42–1605 MHz band.

(c) The e.i.r.p. density of emissions from mobile earth stations placed in service after July 21, 2002 with assigned uplink frequencies between 1610 MHz and 1660.5 MHz shall not exceed −70 dBW/MHz, averaged over 20 milliseconds, in the 1559–1605 MHz band. The e.i.r.p. of discrete emissions of less than 700 Hz bandwidth from such stations shall not exceed −80 dBW, averaged over 20 milliseconds, in the 1559–1605 MHz band.

(d) As of January 1, 2005 and from then on, the e.i.r.p. density of emissions from mobile earth stations placed in service on or before July 21, 2002 with assigned uplink frequencies between 1610 MHz and 1660.5 MHz (except Standard A Inmarsat terminals used as Global Maritime Distress and Safety System ship earth stations) shall not exceed −70 dBW/MHz, averaged over 20 milliseconds, in the 1559–1605 MHz band or a level in the 1605–1610 MHz band determined by linear interpolation from −70 dBW/MHz at 1605 MHz to −10 dBW/MHz at 1610 MHz, and the e.i.r.p. of discrete emissions of less than 700 Hz bandwidth from such stations shall not exceed −80 dBW, averaged over 20 milliseconds, in the 1559–1605 MHz band.

(e) The e.i.r.p. density of emissions from mobile earth stations with assigned uplink frequencies between 1990 MHz and 2025 MHz shall not exceed −70 dBW/MHz, averaged over 20 milliseconds, in frequencies between 1559 MHz and 1610 MHz. The e.i.r.p. of discrete emissions of less than 700 Hz bandwidth from such stations shall not exceed −80 dBW, averaged over 20 milliseconds, in frequencies between 1559 MHz and 1605 MHz.

(f) Mobile earth stations placed in service after July 21, 2002 with assigned uplink frequencies in the 1610–1660.5 MHz band shall suppress the power density of emissions in the 1605–1610 MHz band to an extent determined by linear interpolation from −70 dBW/MHz at 1605 MHz to −10 dBW/MHz at 1610 MHz.

Note to § 25.216: Operation of mobile earth stations is also subject to all pertinent emissions limits specified in other sections of the Commission's rules. *See* §§ 25.202(f) and 25.213(a)(1).

[FR Doc. 02–24892 Filed 10–1–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 00–39; FCC 02–253]

Conversion to Digital Television

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial.

SUMMARY: This item denies a Petition for Reconsideration, filed by Diversified Broadcasting, Inc., of the *Memorandum Opinion and Order* in this proceeding, which addressed a number of issues related to the conversion of the nation's

broadcast television system from analog to digital television (''DTV''). This item affirms the decision made in the *Memorandum Opinion and Order* that certain NTSC applications filed prior to July 1, 1997, must be protected by later-filed DTV area expansion applications.

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

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Policy Division, Media Bureau, Federal Communications Commission, (202) 418–2120.

SUPPLEMENTARY INFORMATION:

Diversified Broadcasting, Inc., licensee of WCJB(TV), Gainesville, Florida (''Diversified'') filed a Petition for Reconsideration of the *Memorandum Opinion and Order* (''*MO&O*'') in MM Docket No. 00–39, 66 FR 65122 (December 18, 2001), which addressed a number of issues related to the conversion of the nation's broadcast television system from analog to digital television (''DTV''). Specifically, Diversified objects to the determination in the *MO&O* that certain NTSC applications filed prior to July 1, 1997, must be protected by later-filed DTV area expansion applications. Community Television of Florida, Inc. (''CTF'') filed an Opposition to Diversified's Petition. For the reasons discussed below, the Commission denies Diversified's Petition.

The *Report and Order and Further Notice of Proposed Rule Making* (''*Report and Order*''), 66 FR 10001 (February 13, 2001), in this proceeding addressed the procedures to be used in processing mutually-exclusive applications filed by licensees seeking to expand or ''maximize'' their DTV allotments (referred to herein as ''expansion applications''). In the *Report and Order*, we gave processing and protection priority to then pending DTV expansion applications, filed on or prior to January 18, 2001, over previously filed NTSC applications except those NTSC applications that fell into one of three categories: post-auction applications, applications proposed for grant in pending settlements, and singleton applications cut off from further filings. We stated that these applications must have been accepted for filing in order to be protected from DTV expansion applications. When a pending DTV application conflicts with an NTSC application in one of these categories, we stated that we would treat the applications as mutually exclusive (''MX'') and follow the procedures adopted in the *Report and Order* for MX applications—that is, we required that parties resolve their MX conflict within 90 days or we would subsequently dismiss both applications.

In the *MO&O,* we revised the procedures for determining priority between conflicting DTV expansion applications and NTSC applications. We noted that in the *Broadcast Auctions Report and Order,* 63 FR 48615 (September 11, 1998), we had found that, by application of Section 309(l) of the Communications Act, pending NTSC application groups on file prior to July 1, 1997, are entitled to compete in an auction that does not include applications filed on or after July 1, 1997. Pursuant to that statutory directive, we concluded that we may not find DTV expansion applications (all of which were filed after June 30, 1997) to be MX with NTSC application groups on file prior to July 1, 1997. This also is the case when an NTSC application that was cut-off as part of a group of NTSC applications filed before July 1, 1997, has become a singleton because other applications in the group have been dismissed. We concluded in the *MO&O* that NTSC applications in these two categories—NTSC application groups on file prior to July 1, 1997, and any singletons remaining from such a group—should be protected against DTV expansion applications. DTV expansion applicants are permitted to file minor amendments to resolve conflicts with NTSC applications in these categories.

Diversified requests that we reconsider and reverse our decision that pending DTV expansion applications filed on or prior to January 18, 2001, must protect certain NTSC applications filed prior to July 1, 1997. Diversified argues that we should reinstate our initial decision (in the *Report and Order*) and treat these DTV expansion applications as MX with these NTSC applications so that the parties may work together to resolve interference issues. According to Diversified, under the determination in the *Report and Order,* its DTV expansion application for WCJB(TV) would have been MX with CTF's competing NTSC application for Marianna, Florida, and the parties then would have had 90 days within which to negotiate a resolution to the interference conflict. Under the revised decision in the *MO&O,* however, the NTSC application for Marianna will take priority, as it was filed prior to July 1, 1997, and was cut-off as part of a group of two competing NTSC applications filed before July 1, 1997. Diversified argues that this processing change puts DTV applicants at a severe disadvantage despite the importance of DTV to the future of television broadcasting. Diversified also argues that we incorrectly interpreted Section 309(l) of the Communications Act, which Diversified claims was intended to resolve exclusivity only among competing *analog* television applications. According to Diversified, that provision was not intended to address processing of subsequently filed DTV expansion applications, and Congress did not intend that DTV expansion applications be treated as secondary to analog station applications. In its Opposition, CTF argues that Diversified's application must be dismissed as a result of the Commission's decision in the *MO&O* according priority to NTSC applications filed prior to July 1, 1997.

We decline to revise our determination that Section 309(l) of the Communications Act entitles pending NTSC application groups on file prior to July 1, 1997, to compete in an auction that does not include applications filed on or after July 1, 1997. Section 309(l) provides:

> With respect to competing applications for initial licenses or construction permits for commercial radio or television stations that were filed with the Commission before July 1, 1997, the Commission shall—
>
> (2) treat the persons filing such applications as the only persons eligible to be qualified bidders for purposes of such proceeding* * *

Statutory construction must begin with the language employed by the statute and the assumption that the ordinary meaning of the language accurately expresses the legislative purpose. The language of Section 309(l)(2) is unambiguous that, where competing applications were filed with the Commission before July 1, 1997, ''the Commission shall * * * treat the persons filing such applications as the only persons eligible to be qualified bidders.'' The Conference Report confirms that ''[t]he Commission shall limit the class of eligible applicants who may be considered qualified bidders * * * to the persons who filed applications with the Commission before that date [July 1, 1997].''

In implementing section 309(l) the Commission determined, first, that it would resolve by competitive bidding any mutually exclusive application group not resolved by a settlement agreement and, second, that pending NTSC applications submitted for filing by September 20, 1996 constituted pre-July 1st competing applications within the meaning of section 309(l) even if the related freeze area waiver had not been processed. Except for the circumstance in which only one application (and waiver request) was ever submitted for a particular allotment, the Commission determined that it was precluded by the

unambiguous language of subsection (2) from soliciting additional potentially mutually exclusive applications, despite its earlier explicit pledge to provide the opportunity for the filing of competing applications with respect to any analog television application accepted for filing. This interpretation was upheld in *Orion Communications, Ltd* v. *FCC,* 221 F.3d 196 (D.C. Cir. 2000) (Table).

Consistent with the determination to resolve competing NTSC applications by competitive bidding and the resulting obligation to insulate such applicants from having to compete for the construction permit against post-June 30, 1997 applicants, the Commission may not require NTSC applications within the scope of section 309(l) to resolve any interference conflicts with pending DTV expansion applicants or face dismissal or otherwise direct that the rights of this category of broadcast applicants are secondary to those of DTV expansion applicants. To do so would vitiate completely the special protections Congress expressly extended to ''[c]ompeting applications * * * for commercial radio or television stations filed with the Commission before July 1, 1997.'' Congress, although clearly aware in 1997 of the impending transition to DTV, did not offer any guidance either in the statutory language or in the Conference Report as to how the Commission is to accommodate the competing spectrum needs of this group of applicants and of DTV expansion applicants. Even without such express guidance, however, the Commission must devise a solution faithfully effectuating the express protections afforded this category of competing commercial broadcast applications. Notwithstanding Diversified's contention, the Commission's original procedure, requiring the dismissal of certain NTSC applicants within the scope of section 309(l), contravened Congress's manifest intent regarding these particular applicants. Its repeal in the *MO&O* was therefore compelled by the unambiguous language of section 309(l).

Diversified has advanced no argument that leads us to a different conclusion. Diversified claims that Section 309(l) was intended to resolve mutual exclusivity among analog television applications only, and that it was not intended to determine priority among competing analog and DTV expansion applications. Nothing in the statutory text suggests that DTV expansion applications were intended to be treated differently under Section 309(l), or that they were intended to be treated as MX with applications filed prior to July 1, 1997. Elsewhere in the statute Congress did expressly provide for different treatment of digital stations when, for example, in Section 309(j)(2), it expressly excluded certain digital stations from our competitive bidding authority. Congress made no provision for disparate treatment of DTV expansion applications under Section 309(l), however, and the unambiguous language of that provision compels the result we reached in the *MO&O.*

The Petition for Reconsideration filed January 17, 2002, by Diversified Broadcasting, Inc. *is denied.*

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–25071 Filed 10–1–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 360, 365, 372, 382, 383, 386, 387, 388, 390, 391, and 393

Motor Carrier Safety Regulations; Technical Amendments

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

ACTION: Final rule.

SUMMARY: The FMCSA is amending the Federal Motor Carrier Safety Regulations (FMCSRs) to update obsolete references and make certain grammatical corrections for clarity. In addition, we are correcting an error in the final rule on Brake Performance Requirements for Commercial Motor Vehicles published on August 9, 2002 in the **Federal Register**. FMCSA is not making any substantive changes to its regulations by these technical amendments.

EFFECTIVE DATE: This final rule is effective October 2, 2002.

ADDRESSES: Ms. Janet Nunn, Office of Policy Plans and Regulation (MC–PRR), 202–366–2797, U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Janet Nunn, (202) 366–2797.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at 202–512–1661. Internet users may also reach the Office of the Federal Register Web site: *http://www.archives.gov/federal_register*; and Government Printing Office Web page: *http://www.access.gpo.gov.*

Summary of Changes

Title 49 of the Code of Federal Regulations (CFR), chapter III, subchapter B, contains the Federal Motor Carrier Safety Regulations (FMCSRs) for truck and bus safety. This final rule corrects inaccurate references, citations, and technical errors resulting from statutory changes in laws governing interstate commerce. It also makes other editorial revisions for clarity.

In the § 360.3(f) table, a filing fee has been added for applications involving the merger, transfer, or lease of operating rights of motor passenger and property carriers, property brokers, and household goods freight forwarders under 49 U.S.C. 10321 and 10926. The ICC Termination Act of 1995 (ICCTA) sunsetted the Interstate Commerce Commission (ICC) and transferred the ICC's registration and insurance functions to the Secretary of Transportation, who delegated these functions to the Federal Highway Administration (FHWA) in 1996 and redelegated them to FMCSA in 2000. Filing fees related to these functions were initially assessed under ICC regulations codified in 49 CFR part 1002. In February 1999, FHWA adopted its own filing fee and fee collection regulations in a new part 360 (64 FR 7134, February 12, 1999). The preamble to this rule stated that ''(i)n this rulemaking proceeding the FHWA is adopting the ICC's fee regulations related to the recently transferred motor carrier functions without any substantive changes.'' However, the rule inadvertently omitted the fee for transfers of operating authority codified at 49 CFR 1002.2(f)(25). Both FHWA and FMCSA have assessed this fee since 1996. Therefore, restoring the transfer fee to the fee table will impose no new burdens on the public.

We are also amending part 360 by revising § 360.3(g)(2) to clarify that a credit card may be required in situations involving dishonored checks.

In part 365, references to water carriers have been removed because the