

Notice of Proposed Rulemaking is hereby adopted.

22. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order and Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E7-15606 Filed 8-15-07; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1, 15, 73, 74, and 76

[MB Docket No. 07-148; FCC 07-128]

#### DTV Consumer Education Initiative

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to require broadcasters, multichannel video programming distributors, retailers, and manufacturers to take steps to publicize the DTV transition. These would include public service announcements by broadcasters, including notices in cable, satellite, and other MVPD bills, notices from consumer electronics manufacturers, employee training by retailers, and adjustments to the DTV.gov Partners program. Because of the importance of making the benefits of the Digital Television transition understandable and available to the public, the Commission seeks comment generally on the best means of creating a coordinated, national DTV consumer education campaign.

**DATES:** Comments for this proceeding are due on or before September 17, 2007; reply comments are due on or before October 1, 2007.

**ADDRESSES:** You may submit comments, identified by MB Docket No. 07-148, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters,

CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

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

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact *Eloise Gore*, [Eloise.Gore@fcc.gov](mailto:Eloise.Gore@fcc.gov), or *Lyle Elder*, [Lyle.Elder@fcc.gov](mailto:Lyle.Elder@fcc.gov), of the Media Bureau, Policy Division, (202) 418-2120.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rulemaking (NPRM)*, FCC 07-128, adopted on July 21, 2007, and released on July 30, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

#### I. Introduction

1. In this Notice of Proposed Rulemaking, we seek public comment on several proposals relating to consumer education about the digital television ("DTV") transition. From the beginning of the transition of the nation's broadcast television service from analog to digital television service, the Commission has been committed to working with representatives from industry, public interest groups, and Congress to make the significant benefits of digital broadcasting available to the public. The digital transition will make valuable spectrum available for both public safety uses and expanded wireless competition and innovation. It will also provide consumers with better quality television picture and sound, and make new services available through multicasting. These innovations, however, are dependent upon widespread consumer

understanding of the benefits and mechanics of the transition. The Congressional decision to establish a hard deadline of February 17, 2009, for the end of full-power analog broadcasting has made consumer awareness even more critical.

2. While the Commission has been engaged in various DTV outreach efforts, we seek comment on whether there are additional steps which we can and should take. Representatives John D. Dingell, Chairman of the Committee on Energy and Commerce, and Edward J. Markey, Chairman of the Subcommittee on Telecommunications and the Internet, recently wrote to the Commission to express interest in the pace and scope of consumer education about the transition. As the Congressmen observed, "the Commission is particularly well suited to lead this effort given its existing expertise and resources." Noting the particular dangers of insufficient outreach to certain communities, they proposed a number of specific actions that they believe the Commission should take. This notice requests comment on the Commission's authority to take these actions and invites discussion of their benefits and any other measures we could take to facilitate the transition.

#### II. Discussion

3. The Letter suggests that, as a general matter, "the Commission could use its existing authority to compel industry to contribute time and resources to a coordinated, national consumer education campaign." We agree that we should take whatever steps we can to promote a coordinated, national DTV consumer education campaign and seek comment on the best means of achieving that goal. In particular, we seek comment on the potential Commission initiatives raised by Representatives Dingell and Markey. For each potential initiative, we particularly seek comment on: (1) The Commission's authority to implement the proposal; (2) the likely effectiveness of the proposal (*i.e.*, whether it would appreciably increase public awareness and understanding of the DTV transition); (3) the best methods of implementation; (4) the policy implications; and (5) constitutional concerns, if any.

##### A. Broadcaster Public Service Announcements and Other Consumer Education Requirements

4. The Letter suggests that the Commission consider using its regulatory authority to "require television broadcasters to air periodic

public service announcements and a rolling scroll about the digital transition.”

5. We propose to require television broadcast licensees to conduct on-air consumer education efforts. Such on-air efforts, we believe, are the most effective and efficient way to reach over-the-air television viewers about the coming digital switch-over. What should these announcements include, and when and how often should they run? Should we impose similar requirements on all television broadcast licensees or should there be distinctions made among licensees? Should the Commission produce an announcement or group of announcements to be used by all broadcasters, or simply provide a list of points that must be conveyed in any compliant announcement? What text or images should the rolling scroll include? Would it be constant or intermittent? On what date would it begin to run, and during which hours would it be required? Would the on-air education requirements increase as the transition date approaches? How would we track the effectiveness of the outreach efforts? Should broadcasters be required to formally assess and report on consumer awareness and preparedness, particularly in certain communities? If so, which communities warrant special attention? Should there be some mechanism for making adjustments in our requirements to reflect these ongoing assessments? Should we adopt certification requirements to ensure that broadcasters are complying? Would forfeitures for noncompliance be appropriate in this area? If so, how would they be calculated?

6. We recognize that, even if the proposals discussed herein are successful at increasing consumer awareness of the February 17, 2009 deadline, many consumers will need additional assistance in preparing themselves for that date. For instance, consumers may have specific questions about the adequacy of their existing antenna or how to install a converter box when they get it home. We seek comment on what steps the Commission or industry can and should take to ensure that consumers have access to the information and assistance they need. This could include, for instance, the establishment or further development of a dedicated consumer help-line or other targeted assistance.

#### *B. Broadcaster Consumer Education Reporting*

7. The Letter suggests that the Commission consider requiring “broadcast licensees and permittees to

report, every 90 days, their consumer education efforts, including the time, frequency, and content of public service announcements aired by each station in a market, with civil penalties for noncompliance.”

8. What level of detail should reports to the Commission on consumer education efforts contain? What additional burdens would preparing, submitting, and retaining such reports place on licensees and permittees? Could these burdens be met by small broadcasters and NCE stations? Is there an alternative to requiring the filing of such reports with the Commission? For example, could broadcasters publicly summarize and describe their consumer outreach efforts via web pages, press releases, in their public file, or otherwise? How would this approach be monitored and enforced by the Commission? What benefits would these reports create for the government and public? How should any forfeitures for noncompliance be calculated?

#### *C. MVPD Customer Bill Notices*

9. The Letter suggests that the Commission consider requiring, “as a license condition or through customer service or other consumer protection or public interest requirements, all multichannel video programming distributors (MVPDs) to insert periodic notices in customer bills that inform consumers about the digital television transition and their customers’ future viewing options, with civil penalties for noncompliance.”

10. What should these notices include and how often should they be provided? Should the Commission provide a standard text, describing the transition, to be used by MVPDs, or simply a list of points that must be conveyed? How should these notices be conveyed to customers who rely on electronic billing or automatic billing? How should the phrase “future viewing options” be interpreted? How should any forfeitures for noncompliance be calculated?

#### *D. Consumer Electronics Manufacturer Notices*

11. The Letter suggests that the Commission consider requiring “manufacturers to include information with television receivers and related devices about the transition, with civil penalties for noncompliance.”

12. This proposal would require manufacturers to include information describing the transition with any television set or related device that they import or distribute in the United States. What would it mean to “include” information? Must this information be in written form and

physically packaged with each unit shipped? Could manufacturers make arrangements with retailers to provide information, either written or verbal, at the point of sale? As for the information itself, should the Commission provide a standard text to be used by all manufacturers, or simply a list of points that must be conveyed? What devices and classes of devices should be considered “related”? For example, should the requirement apply to VCRs, DVRs, DVD players, etc? Should this requirement apply to all new “television receivers and related devices,” that are imported or distributed in the United States after the effective date of these rules?

#### *E. Consumer Electronics Retailer Training and Education Reporting*

13. The Letter suggests that the Commission consider working “with NTIA to require retailers who participate in the converter box coupon program to detail their employee training and consumer information plans and have Commission staff conduct spot inspections to ascertain whether such objectives are being met at stores.”

14. We anticipate that any requirements and enforcement efforts tied to the converter box coupon program will be developed in consultation with the National Telecommunications and Information Administration. What would be an appropriate employee training and consumer information plan? Should NTIA and the FCC establish the elements of a legally sufficient plan? Would penalties for noncompliance be appropriate in this area? If so, would they most appropriately be based on failure to report a plan, failure to follow a reported plan, failure to establish a sufficient plan, or any of these?

#### *F. DTV.gov Partner Consumer Education Reporting*

15. The Letter suggests that the Commission consider requiring “partners identified on the Commission’s digital television Web site to report their specific consumer outreach efforts.”

16. At the moment, more than 50 partners are listed at [www.dtv.gov/partners.html](http://www.dtv.gov/partners.html). What level of detail would be mandated in these reports? Would they be confidential reports to the Commission or publicly filed? Alternatively, could we provide partners with guidelines and allow them to publicly announce, via web pages, press releases, or otherwise, their consumer outreach efforts? How would this approach be monitored and

enforced by the Commission? Would reporting simply become a requirement for "partner" status, such that failure to comply leads only to removal from the "Partners" page? If other penalties would be appropriate, what would they be and what would be the basis for our authority to impose them?

#### G. Other Proposals

17. We note that the Letter contains several other potential consumer education mechanisms, including broadcaster public file requirements or other public announcements, notice requirements by telecommunications carriers that receive funds under the Low Income Federal universal service program, or reporting requirements by 700 MHz auction winners. We seek comment on these and other initiatives that the Commission can and should undertake to educate the public on the DTV transition.

### III. Procedural Matters

#### A. Filing Requirements

18. *Ex Parte Rules.* This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under Section 1.1206(b) of the Commission's rules, *see* 47 CFR 1.1206(b). *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b).

19. *Comments and Reply Comments.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998). To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer &

Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

20. Comments filed through ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message: "Get form <your e-mail address>." A sample form and directions will be sent in reply.

21. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail, should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary: Office of the Secretary, Federal Communications Commission.

22. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418-0267 (voice), (202) 418-7365 (TTY), or [bill.cline@fcc.gov](mailto:bill.cline@fcc.gov). These documents also will be available from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Best Copy and

Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554; they can also be reached by telephone, at (202) 488-5300 or (800) 378-3160; by e-mail at [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com); or via their Web site at <http://www.bcpiweb.com>. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

23. *Additional Information.* For additional information on this proceeding, contact Eloise Gore, [Eloise.Gore@fcc.gov](mailto:Eloise.Gore@fcc.gov), or Lyle Elder, [Lyle.Elder@fcc.gov](mailto:Lyle.Elder@fcc.gov), of the Media Bureau, Policy Division, (202) 418-2120.

#### B. Paperwork Reduction Act of 1995 Analysis

24. This document contains potential information collection requirements. The Commission will invite the general public to comment at a later date on any rules developed as a result of this proceeding that require the collection of information, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. The Commission will publish a separate notice seeking these comments from the public. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we will also seek specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

#### C. Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA) the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible economic impact on a substantial number of small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking* ("NPRM"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided in paragraph 18 of the Order. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

#### *D. Need for, and Objectives of, the NPRM*

2. Our goals in this proceeding are to further educate consumers about the digital television transition; to engage all sectors of the television industry in support of that transition; and, in so doing, to facilitate the nation's transition to digital broadcast television. Specifically, the *NPRM* considers whether the Commission should compel industry to participate in a coordinated, nationwide consumer outreach campaign, and seeks comment on other potential Commission initiatives. For each of these potential initiatives, we are concerned with the Commission's authority to implement them; the best method of implementation; their likely effectiveness; any policy implications; and any constitutional concerns.

3. Despite extensive consumer outreach efforts by the Commission and others, a large percentage of the public is not sufficiently informed about the DTV transition. This is a serious concern, because the many benefits of the transition could be severely limited by insufficient consumer awareness. Therefore, this *NPRM* proposes that the Commission spearhead a nationwide consumer education campaign, and solicits comment on six specific elements that might be part of such a campaign. These elements are based on specific potential Commission initiatives raised by Congressmen Dingell and Markey. The first potential initiative would require all MVPDs to include periodic notices about the transition in customer bills, and asks how these notices should be conveyed to customers who rely on electronic or automatic billing. The second would require all manufacturers of "television receivers or related devices" to include transition information with the devices, and asks about the scope of the term "related devices." The third potential initiative would require that the Commission work with NTIA to require retailers who participate in the converter box coupon program to create employee training and consumer information plans and file them with the Commission, which would conduct spot checks to verify compliance. The fourth potential initiative would require the "Partners" listed on the Commission's DTV.gov page to report their consumer outreach efforts, and asks what level of detail would be required and whether these reports would be publicly available. The final two potential initiatives would require public service announcements ("PSAs") about the transition and filings by broadcasters detailing their consumer

education efforts. The *NPRM* asks about the content of the announcements, the frequency with which they would be shown, and whether there should be forfeitures for noncompliance. Finally, the *NPRM* seeks comment generally on other proposals for consumer education.

#### *E. Legal Basis*

4. The authority for the action proposed in this rulemaking is contained in Sections 1, 4(i) and (j), 309(j), 325, 336, 338, 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 309(j), 325, 336, 338, 534, and 535.

#### *F. Description and Estimate of the Number of Small Entities To Which the NPRM Will Apply*

5. The IRFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The IRFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act. Under the Small Business Act, a small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). The rules we may adopt as a result of the comments filed in response to this *NPRM* would affect all MVPDs (including satellite carriers and cable operators), broadcast television stations, consumer electronics ("CE") retailers, and CE manufacturers. A description of these small entities, as well as an estimate of the number of such small entities, is provided below.

6. *Cable and Other Program Distribution.* The SBA has developed a small business size standard for cable and other program distribution services (aka multichannel video programming distributors, "MVPDs"), which includes all such companies generating \$13.5 million or less in revenue annually. This category includes, among others, cable operators, direct broadcast satellite services, fixed-satellite services, home satellite dish services, multipoint distribution services, multichannel multipoint distribution service, Instructional Television Fixed Service, local multipoint distribution service, satellite master antenna television systems, and open video systems. Those MVPDs relying primarily or exclusively on satellite transmission could also be considered to fall under the "Satellite Telecommunications" category, NAICS Code 517410. According to Census

Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than \$10 million in revenue. The amount of \$10 million was used to estimate the number of small business firms because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$12.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. We address below each service individually to provide a more precise estimate of small entities.

7. *Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of \$100 million or less. The most recent estimates indicate that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies adopted herein.

8. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that there are 67,700,000 subscribers in the United States. Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Based on available data, the Commission estimates that the number of cable operators serving 677,000

subscribers or fewer, totals 1,450. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, although the Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. Therefore the Commission is unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

9. *Satellite Carriers.* The term "satellite carrier" includes entities providing services as described in 17 U.S.C. 119(d)(6) using the facilities of a satellite or satellite service licensed under Part 25 of the Commission's rules to operate in Direct Broadcast Satellite (DBS) or Fixed-Satellite Service (FSS) frequencies. As a general practice, not mandated by any regulation, DBS licensees usually own and operate their own satellite facilities as well as package the programming they offer to their subscribers. In contrast, satellite carriers using FSS facilities often lease capacity from another entity that is licensed to operate the satellite used to provide service to subscribers. These entities package their own programming and may or may not be Commission licensees themselves. In addition, a third situation may include an entity using a non-U.S. licensed satellite to provide programming to subscribers in the United States pursuant to a blanket earth station license.

10. *Direct Broadcast Satellite ("DBS") Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic "dish" antenna at the subscriber's location. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Program Distribution. This definition provides that a small entity is one with \$13.5 million or less in annual receipts. Currently, only four operators hold licenses to provide DBS service, which requires a great investment of capital for operation. All four currently offer subscription services. Two of these four DBS operators, DIRECTV and EchoStar Communications Corporation ("EchoStar"), report annual revenues that are in excess of the threshold for a small business. DirecTV is the largest DBS operator and the second largest MVPD, serving an estimated 13.04

million subscribers nationwide. EchoStar, which provides service under the brand name Dish Network, is the second largest DBS operator and the fourth largest MVPD, serving an estimated 10.12 million subscribers nationwide. A third operator, Rainbow DBS, which provides service under the brand name VOOM, reported an estimated 25,000 subscribers. It is a subsidiary of Cablevision's Rainbow Network, which also reports annual revenues in excess of \$13.5 million, and thus does not qualify as a small business. The fourth DBS operator, Dominion Video Satellite, Inc. ("Dominion"), which provides service under the brand name Sky Angel, offers religious (Christian) programming and does not report its annual receipts or publicly disclose its subscribership numbers on an annualized basis. The Commission does not know of any source which provides this information and, thus, we have no way of confirming whether Dominion qualifies as a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS licensee. Nevertheless, given the absence of specific data on this point, we acknowledge the possibility that there are entrants in this field that may not yet have generated \$13.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

11. *Fixed-Satellite Service ("FSS").* The FSS is a radiocommunication service between earth stations at a specified fixed point or between any fixed point within specified areas and one or more satellites. The FSS, which utilizes many earth stations that communicate with one or more space stations, may be used to provide subscription video service. Therefore, to the extent FSS frequencies are used to provide subscription services, FSS falls within the SBA-recognized definition of Cable and Other Program Distribution, which includes all such companies generating \$13.5 million or less in revenue annually. Although a number of entities are licensed in the FSS, not all such licensees use FSS frequencies to provide subscription services. Two of the DBS licensees (EchoStar and DirecTV) have indicated interest in using FSS frequencies to broadcast signals to subscribers. It is possible that other entities could similarly use FSS frequencies, although we are not aware of any entities that might do so.

12. *Private Cable Operators (PCOs) also known as Satellite Master Antenna Television (SMATV) Systems.* PCOs,

also known as SMATV systems or private communication operators, are video distribution facilities that use closed transmission paths without using any public right-of-way. PCOs acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. The SBA definition of small entities for Cable and Other Program Distribution Services includes PCOs and, thus, small entities are defined as all such companies generating \$13.5 million or less in annual receipts. Currently, there are approximately 135 members in the Independent Multi-Family Communications Council (IMCC), the trade association that represents PCOs. Individual PCOs often serve approximately 3,000–4,000 subscribers, but the larger operations serve as many as 15,000–55,000 subscribers. In total, PCOs currently serve approximately 1.1 million subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten PCOs, we believe that a substantial number of PCOs qualify as small entities.

13. *Home Satellite Dish ("HSD") Service.* Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Cable and Other Program Distribution, which includes all such companies generating \$13.5 million or less in revenue annually. HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. There are approximately 30 satellites operating in the C-band, which carry over 500 channels of programming combined; approximately 350 channels are available free of charge and 150 are scrambled and require a subscription. HSD is difficult to quantify in terms of annual revenue. HSD owners have access to program

channels placed on C-band satellites by programmers for receipt and distribution by MVPDs. Commission data shows that, between June 2003 and June 2004, HSD subscribership fell from 502,191 subscribers to 335,766 subscribers, a decline of more than 33 percent, after falling more than 28 percent during the previous year. The Commission has no information regarding the annual revenue of the four C-Band distributors.

14. *Open Video Systems ("OVS")*. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of Cable and Other Program Distribution Services, which provides that a small entity is one with \$13.5 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises, even though OVS is one of four statutorily-recognized options for local exchange carriers (LECs) to offer video programming services. As of June 2003, BSPs served approximately 1.4 million subscribers, representing 1.49 percent of all MVPD households. Among BSPs, however, those operating under the OVS framework are in the minority, with approximately eight percent operating with an OVS certification. Serving approximately 460,000 of these subscribers, Affiliates of Residential Communications Network, Inc. ("RCN") is currently the largest BSP and 11th largest MVPD. WideOpenWest is the second largest BSP and 15th largest MVPD, with cable systems serving about 288,000 subscribers as of September 2003. The third largest BSP is Knology, which currently serves approximately 174,957 subscribers as of June 2004. RCN received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. The Commission does not have financial information regarding the entities authorized to provide OVS, some of which may not yet be operational. We thus believe that at least some of the OVS operators may qualify as small entities.

15. *Television Broadcasting*. The SBA defines a television broadcasting station as a small business if such station has no more than \$13 million in annual receipts. Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound." This category description continues, "These establishments

operate television broadcasting studios and facilities for the programming and transmission of programs to the public. 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 studios, from an affiliated network, or from external sources." Separate census categories pertain to businesses primarily engaged in producing programming. According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database (BIA) on March 30, 2007, about 986 of an estimated 1,374 commercial television stations (or approximately 72 percent) have revenues of \$13.5 million or less and thus qualify as small entities under the SBA definition. Although we are using BIA's estimate for purposes of this revenue comparison, the Commission has estimated the number of licensed commercial television stations to be 1374. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. According to 13 CFR 121.103(a)(1), "[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." 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. The Commission has estimated the number of licensed NCE television stations to be 380. The Commission 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.

16. *Class A TV, LPTV, and TV translator stations*. The rules and policies could also apply to licensees of Class A TV stations, low power television (LPTV) stations, and TV translator stations, as well as to potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than \$13 million in annual receipts.

17. Currently, there are approximately 567 licensed Class A stations, 2,227 licensed LPTV stations, 4,518 licensed

TV translators and 11 TV booster stations. Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than \$13 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

18. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

19. *Retailers*. The proposals in this NPRM would apply only to retailers that choose to participate in the converter box coupon program. The list of retailers who will be participating will not be finalized until March 2008, but they will likely include dedicated consumer electronics stores and Internet-based stores.

20. *Radio, Television, and Other Electronics Stores*. The Census Bureau defines this economic census category as follows: "This U.S. industry comprises: (1) Establishments known as consumer electronics stores primarily engaged in retailing a general line of new consumer-type electronic products; (2) establishments specializing in retailing a single line of consumer-type electronic products (except computers); or (3) establishments primarily engaged in retailing these new electronic products in combination with repair services." The SBA has developed a

small business size standard for Radio, Television, and Other Electronics Stores, which is: All such firms having \$8 million or less in annual receipts. According to Census Bureau data for 2002, there were 10,380 firms in this category that operated for the entire year. Of this total, 10,080 firms had annual sales of under \$5 million, and 177 firms had sales of \$5 million or more but less than \$10 million. An additional 123 firms had annual sales of \$10 million or more. As a measure of small business prevalence, the data on annual sales are roughly equivalent to what one would expect from data on annual receipts. Thus, the majority of firms in this category can be considered small.

21. *Electronic Shopping.* According to the Census Bureau, this economic census category “comprises establishments engaged in retailing all types of merchandise using the Internet.” The SBA has developed a small business size standard for Electronic Shopping, which is: All such entities having \$23 million or less in annual receipts. According to Census Bureau data for 2002, there were 4,959 firms in this category that operated for the entire year. Of this total, 4,742 firms had annual sales of under \$10 million, and an additional 133 had sales of \$10 million to \$24,999,999. Thus, the majority of firms in this category can be considered small.

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

equipment. According to the SBA’s regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities. The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information. The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA’s regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

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

23. The *Notice of Proposed Rulemaking* seeks comment on a range of potential changes to existing reporting, recordkeeping or other compliance requirements. If adopted, these proposals would require: MVPDs to modify their customer billing notices; broadcasters to make public service announcements and report their efforts; CE retailers to prepare and report transition plans and subject themselves to audit; CE manufacturers to provide customer notices about the transition;

and DTV.gov Partners to report their consumer education efforts.

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

24. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. In this instance, we seek comment on the specific proposals outlined by Congressmen Dingell and Markey, but we are particularly interested in comments regarding alternatives that would reduce any burdens from these proposed rules. We urge small entities to provide data on the impact of the questions raised in the *Notice of Proposed Rulemaking* and how we might tailor our rules to address and minimize the impact on these small businesses. We expect that whichever alternatives are chosen, the Commission will seek to minimize any adverse effects on small entities.

#### *I. Federal Rules Which Duplicate, Overlap, or Conflict With the Commission’s Proposals*

25. None.

### **IV. Ordering Clauses**

26. *It is ordered* that, pursuant to authority contained in Sections 4(i), 303(r), 335, and 336, of the Communications Act of 1934, as amended, 47 U.S.C. 54(i), 303(r), 335, and 336, this *Notice of Proposed Rulemaking* is hereby adopted.

27. *It is further ordered* that the Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Jacqueline R. Coles,**  
*Associate Secretary.*

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