

the Postal Service routinely implements mail preparation changes at the same time notice of the change is provided to the mailer. It is at this time the 30-day clock to file a motion with the Commission would be triggered. Alternatively, when the Postal Service publishes notice of a mail preparation change that it intends to implement on a date certain in the future, the 30-day clock would be triggered upon notice of the implementation date, not from the actual date of implementation.

The Full Service IMb change serves as an example of how the proposed 30-day timeframe would work. The Full Service IMb change was published as a revision to the Postal Service's Domestic Mail Manual and set forth in a **Federal Register** notice on April 18, 2013.² In the Notice, the Postal Service indicated it planned to implement this change to the IMb requirements beginning on January 26, 2014. *Id.* Accordingly, under the Commission's proposed rule, mailers would be required to file a motion with the Commission within 30 days of the Notice (by May 20, 2013, allowing for a Monday filing), not within 30 days of the January 26, 2014 implementation date.

The proposed procedure is intended to provide a reasonable but definite timeframe by which interested parties may challenge a mail preparation change where the Postal Service has failed to indicate that it would be subject to the price cap rules. The Commission intends for the proposed rule to encourage the Postal Service to affirmatively designate only those changes that require compliance with § 3010.23(d)(2). For example, in a **Federal Register** notice implementing a mail preparation change that implicated the price cap, the Postal Service would confirm that the change would be subject to the price cap. For a change that does not implicate the price cap, the **Federal Register** notice would be silent and the absence of such a designation will inform mailers that the Postal Service does not recognize this change as requiring price cap compliance.

The procedure is also intended to allow the Postal Service to implement mail preparation changes with limited disruption. The proposed rule is not intended to stay implementation of any mail preparation change required by the Postal Service, rather it is intended to set forth a reasonable timeframe by which users of the mail may file a motion with the Commission where such mail preparation changes may have rate effects. The proposed rule

does not change the Postal Service's burden to first determine whether the mail preparation change has a rate effect under the Commission's standard articulated in Order No. 3047. The proposed rule also does not change the Postal Service's obligation to comply with the rules regarding the price cap, which require the Postal Service to adjust for the effects of mail preparation changes that result in the introduction, deletion, or redefinition of a rate cell. Rather, the proposed rule provides an avenue for interested parties to raise the possibility that the Postal Service may have erred by failing to account for the price cap impact of a mail preparation change.

IV. Comments Requested

Interested persons are invited to provide written comments concerning the proposed rule. Comments are due no later than 30 days after the date of publication of this notice in the **Federal Register**. All comments and suggestions received will be available for review on the Commission's Web site, <http://www.prc.gov>.

Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in the above-captioned docket.

IV. Ordering Paragraphs

It is ordered:

1. Docket No. RM2016-6 is established for the purpose of receiving comments on the proposed change to part 3001, as discussed in this Order.
2. Interested persons may submit comments no later than 30 days from the date of the publication of this notice in the **Federal Register**.
3. Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is appointed to serve as the Public Representative in this proceeding.
4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,
Secretary.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

For the reasons discussed in the preamble, the Commission proposes to amend chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

- 1. The authority citation of part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(d); 503; 504; 3661.

- 2. Amend § 3001.21 by adding paragraph (d) to read as follows:

§ 3001.21 Motions

* * * * *

(d) *Motions concerning mail preparation changes.* Motions regarding mail preparation changes are challenges to instances where an announced mail preparation change does not contain a Postal Service indication that the change has a rate effect requiring compliance with § 3010.23(d)(2) of this chapter. Motions may be filed by any interested party and shall set forth with particularity the mail preparation change at issue and the grounds by which the mail preparation change must comply with § 3010.23(d)(2) of this chapter. Motions concerning mail preparation changes must be filed at least 30 days after a party has actual or constructive notice of the implementation date of the change.

[FR Doc. 2016-01735 Filed 1-29-16; 8:45 am]

BILLING CODE 7710-FW-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 03-185; GN Docket No. 12-268; ET Docket No. 14-175; FCC 15-175]

Low Power Television Digital Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on additional issues relating to channel sharing outside of the auction context and announces that it intends to resolve all of the outstanding issues regarding channel sharing outside the incentive auction context, including those raised in a prior notice, in a forthcoming decision.

DATES: Comments Due: February 22, 2016. Reply Comments Due: March 3, 2016.

ADDRESSES: You may submit comments, identified by MB Docket No. 03-185, GN Docket No. 12-268 and ET Docket No. 14-175 and/or FCC 15-175, by any of the following methods:

² 78 FR 23137 (April 18, 2013) (Notice).

• *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.

• *Mail*: Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail.) All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• *People with Disabilities*: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: 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: Shaun Maher, Shaun.Maher@fcc.gov of the Media Bureau, Video Division, (202) 418-2324. For additional information concerning the PRA information collection requirements contained in this document, contact Cathy Williams, Federal Communications Commission, at (202) 418-2918, or via email Cathy.Williams@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fourth Notice*. The full text is available for inspection and copying during regular business hours in the FCC Reference Center, 445 12th Street SW., Room CY-A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street SW., Room CY-B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, <http://www.bcpi.com>, or call 1-800-378-3160. This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact the FCC by email: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

Paperwork Reduction Act of 1995 Analysis: This document contains new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the

information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13, *see* 44 U.S.C. 3507. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Synopsis

1. In this *Fourth Notice*, the Commission tentatively concluded to allow channel sharing between primary (full power and Class A television) and secondary (LPTV and TV translator) stations and, in the event that it decides to allow such channel sharing, it proposes rules for primary-secondary sharing that are consistent with those adopted for secondary-secondary sharing in the companion *Third Report and Order*, FCC 15-175, released December 17, 2015, and proposed for primary-primary sharing outside of the auction context in the *Primary-Primary Channel Sharing NPRM*, 30 FCC Rcd 6668 (2015) (*Primary-Primary Channel Sharing NPRM*). This includes licensing rules, operating rules, and rules regarding termination, assignment/transfer, and relinquishment of channel sharing rights.

2. The Commission sought comment on whether it would be appropriate for a secondary station to be permitted to obtain "de facto" interference protection by sharing with a primary station. It also sought comment on whether it would be appropriate to allow a secondary station to obtain the coverage area of a primary station through channel sharing. In addition, it sought comment on whether the benefits of channel sharing between a primary station and a secondary station could be obtained alternatively by the primary station entering into a commercial agreement to air the secondary station's programming as a multicast stream. The Commission announced that it intended to resolve all of the outstanding issues regarding channel sharing outside the incentive auction context in a single decision, based on the record developed in both proceedings. This approach will also ensure consistency and promote efficient decision-making regarding these issues, without unduly delaying their final resolution.

3. For both primary-secondary and secondary-secondary sharing, the Commission proposed to adopt rules pertaining to the term length of channel sharing agreements (CSAs) and MVPD notice consistent with what we have

proposed in the *Primary-Primary Channel Sharing NPRM*. The Commission also proposed to not reimburse the costs imposed on MVPDs as a result of CSAs between secondary stations or between primary and secondary stations. The Commission also sought comment on issues pertaining to MVPD carriage in the context of both primary-secondary and secondary-secondary sharing. The Commission tentatively conclude that a secondary station that shares with a primary or secondary sharer station, and a primary station that shares with a secondary sharer station, has the same satellite and cable carriage rights under the Communications Act on their new shared channels that the station would have at the shared location if it was not channel sharing. The Commission proposed to adopt the same approach to MVPD carriage for both primary-secondary and secondary-secondary sharing as we proposed in the *Primary-Primary Channel Sharing NPRM* to fulfill the objectives underlying Section 1452(a)(4), with one modification. Given the relatively small number of unbuilt LPTV stations that would meet the criteria for obtaining cable carriage, the Commission proposed to permit secondary stations to become sharees regardless of whether they possessed carriage rights or were operating on a non-shared channel prior to entering into a sharing agreement.

Initial Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act of 1980, as amended ("RFA")¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis ("IRFA") concerning the possible significant economic impact on small entities by the policies and rules proposed in this *Fourth Notice of Proposed Rulemaking (FNPRM)*. 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 indicated on the first page of the (FNPRM). The Commission will send a copy of the (FNPRM), including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *Notice* and IRFA (or summaries thereof)

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

² See 5 U.S.C. 603(a).

will be published in the **Federal Register**.³

Need for and Objectives of the Proposed Rules

In the *Notice*, the Commission seeks comment on additional issues relating to channel sharing between primary (full power and Class A) and secondary (LPTV and TV translator) stations (“primary-secondary sharing”), as well as between secondary stations (“secondary-secondary sharing”), outside of the auction context. First, the Commission tentatively concludes to permit channel sharing between primary and secondary stations and proposes rules for primary-secondary sharing that are consistent with those adopted for secondary-secondary sharing in the *Third Report and Order*, FCC 15–175, released December 17, 2015 (*Third R&O*), and proposed for primary-primary sharing outside of the auction context in the *Primary-Primary Channel Sharing NPRM*, 30 FCC Rcd 6668 (2015) (*Primary-Primary Channel Sharing NPRM*). Moreover, with respect to both primary-secondary and secondary-secondary sharing outside of the incentive auction context, the Commission seeks comment on issues pertaining to the term length of channel sharing agreements and issues pertaining to multichannel video programming distributors (MVPD) carriage, reimbursement, and notice.

Legal Basis

The authority for the action proposed in this rulemaking is contained in sections 1, 4, 301, 303, 307, 308, 309, 310, 316, 319, 338, 403, 614 and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 301, 303, 307, 308, 309, 310, 316, 319, 338, 403, 614 and 615.

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

The RFA 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, if adopted.⁴ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.”⁵ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁶ The

statutory definition of a small business applies unless an agency 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**. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁷

Television Broadcasting. This economic census category “comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.”⁸ The SBA has created the following small business size standard for Television Broadcasting firms: those having \$14 million or less in annual receipts.⁹ The Commission has estimated the number of licensed commercial television stations to be 1,390.¹⁰ In addition, according to Commission staff review of the BIA Advisory Services, LLC’s *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of \$14 million or less.¹¹ We therefore estimate that the majority of commercial television broadcasters are small entities.

We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included.¹² 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

U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies 5 U.S.C. 601(3).

⁷ 15 U.S.C. 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.

⁸ U.S. Census Bureau, *2012 NAICS Definitions: 515120 Television Broadcasting*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515120&search=2012> (last visited Mar. 6, 2014). U.S. Census Bureau, *2012 NAICS Definitions: 515120 Television Broadcasting*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515120&search=2012> (last visited Mar. 6, 2014).

⁹ 13 CFR 121.201 (NAICS code 515120) (updated for inflation in 2010).

¹⁰ See FCC News Release, Broadcast Station Totals as of March 31, 2015 (rel. April 8, 2015).

¹¹ We recognize that BIA’s estimate differs slightly from the FCC total given the information provided above.

¹² 13 CFR 121.103(a)(1).

aggregate revenues from affiliated companies. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

In addition, the Commission has estimated the number of licensed noncommercial educational (“NCE”) television stations to be 395.¹³ These stations are non-profit, and therefore considered to be small entities.¹⁴

There are also 2,344 LPTV stations, including Class A stations, and 3689 TV translator stations.¹⁵ Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

Wired Telecommunications Carriers. The North American Industry Classification System (“NAICS”) defines “Wired Telecommunications Carriers” as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”¹⁶ The SBA has developed a

¹³ See FCC News Release, Broadcast Station Totals as of March 31, 2015 (rel. April 8, 2015).

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

¹⁵ See FCC News Release, Broadcast Station Totals as of March 31, 2015 (rel. April 8, 2015).

¹⁶ U.S. Census Bureau, *2012 NAICS Definitions, “517110 Wired Telecommunications Carriers”* at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

Examples of this category are: Broadband Internet service providers (e.g., cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed circuit television (“CCTV”) services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home

³ *Id.*

⁴ *Id.* at section 603(b)(3).

⁵ 5 U.S.C. 601(6).

⁶ *Id.* at section 601(3) (incorporating by reference the definition of “small business concern” in 15

small business size standard for wireline firms for the broad economic census category of “Wired Telecommunications Carriers.” Under this category, a wireline business is small if it has 1,500 or fewer employees.¹⁷ Census data for 2007 shows that there were 3,188 firms that operated for the entire year.¹⁸ Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees.¹⁹ Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

Cable Television Distribution Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which category is defined above.²⁰ The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer employees.²¹ Census data for 2007 shows that there were 3,188 firms that operated for the entire year.²² Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees.²³ Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

Cable Companies and Systems. The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide.²⁴

satellite system (“DTH”) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (“MMDS”).

¹⁷ 13 CFR 121.201; NAICS code 517110.

¹⁸ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ5; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

¹⁹ *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

²⁰ See also U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

²¹ 13 CFR 121.201; NAICS code 517110.

²² U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ5; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

²³ *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

²⁴ 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a

Industry data shows that there are currently 660 cable operators.²⁵ Of this total, all but ten cable operators nationwide are small under this size standard.²⁶ In addition, under the Commission’s rate regulation rules, a “small system” is a cable system serving 15,000 or fewer subscribers.²⁷ Current Commission records show 4,629 cable systems nationwide.²⁸ Of this total, 4,057 cable systems have less than 20,000 subscribers, and 572 systems have 20,000 or more subscribers, based on the same records. Thus, under this standard, we estimate that most cable systems are small entities.

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.”²⁹ There are approximately 54 million cable video subscribers in the United States today.³⁰ Accordingly, an operator serving fewer than 540,000 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.³¹ Based on available data, we

size standard of \$100 million or less in annual revenues. *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket No. 92–266, MM Docket No. 93–215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408, ¶ 28 (1995).

²⁵ NCTA, Industry Data, Number of Cable Operators and Systems, <http://www.ncta.com/Statistics.aspx> (visited October 13, 2014). Depending upon the number of homes and the size of the geographic area served, cable operators use one or more cable systems to provide video service. See *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, MB Docket No. 12–203, Fifteenth Report, 28 FCC Rcd 10496, 10505–6, ¶ 24 (2013) (“15th Annual Competition Report”).

²⁶ See SNL Kagan, “Top Cable MSOs—12/12 Q”; available at <http://www.snl.com/InteractiveX/TopCableMSOs.aspx?period=2012Q4&sortcol=subscribersbasic&sortorder=desc>.

²⁷ 47 CFR 76.901(c).

²⁸ The number of active, registered cable systems comes from the Commission’s Cable Operations and Licensing System (COALS) database on October 10, 2014. A cable system is a physical system integrated to a principal headend.

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

³⁰ See NCTA, Industry Data, Cable’s Customer Base, <http://www.ncta.com/industry-data> (visited October 13, 2014).

³¹ 47 CFR 76.901(f); see *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (Cable Services Bureau 2001).

find that all but ten incumbent cable operators are small entities under this size standard.³² We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.³³ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

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. DBS, by exception, is now included in the SBA’s broad economic census category, Wired Telecommunications Carriers,³⁴ which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.³⁵ Census data for 2007 shows that there were 3,188 firms that operated for that entire year.³⁶ Of this

³² See NCTA, Industry Data, Top 25 Multichannel Video Service Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013).

³³ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission’s rules. See 47 CFR 76.901(f).

³⁴ See 13 CFR 121.201, 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. *By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.*” (*Emphasis added to text relevant to satellite services.*) U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers,” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

³⁵ 13 CFR 121.201; 2012 NAICS code 517110.

³⁶ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ5; available at <http://factfinder2.census.gov/faces/tableservices/jsf/>

Continued

total, 2,940 firms had fewer than 100 employees, and 248 firms had 100 or more employees.³⁷ Therefore, under this size standard, the majority of such businesses can be considered small entities. However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled "Cable and Other Program Distribution." As of 2002, the SBA defined a small Cable and Other Program Distribution provider as one with \$12.5 million or less in annual receipts.³⁸ Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network.³⁹ Each currently offers subscription services. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined under the superseded SBA size standard would have the financial wherewithal to become a DBS service provider.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

The (FNPRM) proposes the following new or revised reporting or recordkeeping requirements.

To implement channel sharing between primary and secondary stations, stations will follow a two-step process proposed by the Commission—first filing an application for construction permit and then application for license. Stations terminating operations to share a channel would be required to submit a termination notice pursuant to the existing Commission rule. These existing forms and collections will need to be revised to accommodate these new channel-sharing related filings and to expand the burden estimates. In addition, the Commission proposes that channel sharing stations submit their channel sharing agreements (CSAs) with the Commission and be required to include certain provisions in their CSAs. In addition, if upon termination

of the license of a party to a CSA only one party to the CSA remains, the remaining licensee may file an application to change its license to non-shared status. The existing collection concerning the execution and filing of CSAs will need to be revised.

Finally, the Commission proposes to require channel sharing stations to notify affected MVPDs.

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

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.⁴⁰

The (FNPRM) proposes rules pertaining to primary and secondary station channel sharing outside the context of the incentive auction. The Commission has previously concluded that channel sharing can help broadcasters, including existing small, minority-owned, and niche stations, to reduce operating costs and provide broadcasters with additional net income to strengthen operations and improve programming services. Thus, the proposals in the Fourth Notice may help smaller broadcasters conserve resources. In addition, channel sharing is voluntary and only those stations that determine that channel sharing will be advantageous will enter into this arrangement. With respect to LPTV and TV translator stations specifically, channel sharing will allow such stations that are displaced by the incentive auction reorganization of spectrum to reduce the cost of having to build a new facility to replace the one that was displaced; could minimize the number of mutually exclusive applications filed in the post-incentive auction displacement window, thereby freeing up valuable channels for use by other displaced stations; and could be used as a means to prevent or settle the mutual exclusivity of applications and avoid lengthy delays in the processing of their displacement applications. In addition, the (FNPRM) proposes licensing and

operating rules for channel sharing that are designed to minimize the burden and cost on small entities. The Commission will consider all comments submitted in connection with the (FNPRM), including any suggested alternative approaches to channel sharing that would reduce the burden and costs on smaller entities.

The rules to provide notice to MVPDs were also designed to minimize impact on small entities. Very few stations will be impacted because very few LPTV and TV translator stations have carriage rights and will be subject to the notice requirement.

Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Proposals

None.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Sheryl Todd,
Deputy Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

- 2. In § 73.3572, revise paragraph (a)(3) to read as follows:

§ 73.3572 Processing of TV broadcast, Class A TV broadcast, low power TV, TV translators, and TV booster applications.

(a) * * *

(3) Other changes will be considered minor including changes made to implement a channel sharing arrangement provided they comply with the other provisions of this section and provided, until October 1, 2000, proposed changes to the facilities of Class A TV, low power TV, TV translator and TV booster stations, other than a change in frequency, will be considered minor only if the change(s) will not increase the signal range of the Class A TV, low power TV or TV booster in any horizontal direction.

* * * * *

- 3. Add § 73.3800 to read as follows:

§ 73.3800 Full Power Television Channel Sharing Outside the Auction Context.

(a) *Channel sharing generally.* (1) Subject to the provisions of this section,

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³⁷ *Id.*

³⁸ See 13 CFR 121.201, NAICS code 517510 (2002).

³⁹ See *15th Annual Competition Report*, 28 FCC Rcd at 10507, ¶ 27. As of June 2012, DIRECTV is the largest DBS operator and the second largest MVPD in the United States, serving approximately 19.9 million subscribers. DISH Network is the second largest DBS operator and the third largest MVPD, serving approximately 14.1 million subscribers. *Id.* at 10507, 10546, ¶ 27, 110–11.

⁴⁰ 5 U.S.C. 603(c)(1)–(c)(4).

full power television stations may voluntarily seek Commission approval to share a single six megahertz channel with other full power television, Class A, low power and TV translator television stations.

(2) Each station sharing a single channel pursuant to this section shall continue to be licensed and operated separately, have its own call sign, and be separately subject to all applicable Commission obligations, rules, and policies.

(b) *Licensing of channel sharing stations.* A full power television channel sharing station relinquishing its channel must file an application for the initial channel sharing construction permit (FCC Form 2100), include a copy of the channel sharing agreement as an exhibit, and cross reference the other sharing station(s). Any engineering changes necessitated by the channel sharing agreement may be included in the station's application. Upon initiation of shared operations, the station relinquishing its channel must notify the Commission that it has terminated operation pursuant to 47 CFR 73.1750 and each sharing station must file an application for license (FCC Form 2100).

(c) *Deadline for implementing channel sharing agreements.* Channel sharing agreements submitted pursuant to this section must be implemented within three years of the grant of the initial channel sharing construction permit.

(d) *Channel Sharing Agreements (CSAs).* (1) Channel sharing agreements submitted under this section must contain provisions outlining each licensee's rights and responsibilities regarding:

(i) Access to facilities, including whether each licensee will have unrestrained access to the shared transmission facilities;

(ii) Operation, maintenance, repair, and modification of facilities, including a list of all relevant equipment, a description of each party's financial obligations, and any relevant notice provisions; and

(iii) Transfer/assignment of a shared license, including the ability of a new licensee to assume the existing CSA; and

(iv) Termination of the license of a party to the CSA, including reversion of spectrum usage rights to the remaining parties to the CSA.

(2) Channel sharing agreements submitted under this section must include a provision affirming compliance with the channel sharing requirements in this section including a provision requiring that each channel

sharing licensee shall retain spectrum usage rights adequate to ensure a sufficient amount of the shared channel capacity to allow it to provide at least one Standard Definition (SD) program stream at all times.

(e) *Termination and assignment/transfer of shared channel.* Upon termination of the license of a party to a CSA, the spectrum usage rights covered by that license may revert to the remaining parties to the CSA. Such reversion shall be governed by the terms of the CSA in accordance with paragraph (d)(1)(iv) of this section. If upon termination of the license of a party to a CSA only one party to the CSA remains, the remaining licensee may file an application to change its license to non-shared status using FCC Form 2100, Schedule B (for a full power licensee) or F (for a Class A licensee).

(f) *Notice to MVPDs.* (1) Stations participating in channel sharing agreements must provide notice to MVPDs that:

(i) No longer will be required to carry the station because of the relocation of the station;

(ii) Currently carry and will continue to be obligated to carry a station that will change channels; or

(iii) Will become obligated to carry the station due to a channel sharing relocation.

(2) The notice required by this section must contain the following information:

(i) Date and time of any channel changes;

(ii) The channel occupied by the station before and after implementation of the CSA;

(iii) Modification, if any, to antenna position, location, or power levels;

(iv) Stream identification information; and

(v) Engineering staff contact information.

(3) Sharee stations (those relinquishing a channel in order to share) must provide notice as required by this section at least 30 days prior to terminating operations on the sharee's channel. Sharer stations (those hosting a sharee as part of a channel sharing agreement) and sharee stations must provide notice as required by this section at least 30 days prior to initiation of operations on the sharer channel. Should the anticipated date to either cease operations or commence channel sharing operations change, the stations must send a further notice to affected MVPDs informing them of the new anticipated date(s).

(4) Notifications provided to cable systems pursuant to this section must be either mailed to the system's official address of record provided in the cable

system's most recent filing in the FCC's Cable Operations and Licensing System (COALS) Form 322, or emailed to the system if the system has provided an email address. For all other MVPDs, the letter must be addressed to the official corporate address registered with their State of incorporation.

■ 4. Revise § 73.6028 to read as follows:

§ 73.6028 Class A television channel sharing outside the auction context.

(a) *Channel sharing generally.* (1) Subject to the provisions of this section, Class A television stations or television stations may voluntarily seek Commission approval to share a single six megahertz channel with a full power, low power or TV translator station.

(2) Each station sharing a single channel pursuant to this section shall continue to be licensed and operated separately, have its own call sign, and be separately subject to all of the Commission's obligations, rules, and policies.

(b) *Licensing of channel sharing stations.* A station relinquishing its channel must file an application for the initial channel sharing construction permit, include a copy of the channel sharing agreement as an exhibit, and cross reference the other sharing station(s). Any engineering changes necessitated by the channel sharing agreement may be included in the station's application. Upon initiation of shared operations, the station relinquishing its channel must notify the Commission that it has terminated operation pursuant to 47 CFR 73.1750 and each sharing station must file an application for license.

(c) *Deadline for implementing channel sharing agreements.* Channel sharing agreements submitted pursuant to this section must be implemented within three years of the grant of the initial channel sharing construction permit.

(d) *Channel Sharing Agreements (CSAs).* (1) Channel sharing agreements submitted under this section must contain provisions outlining each licensee's rights and responsibilities regarding:

(i) Access to facilities, including whether each licensee will have unrestrained access to the shared transmission facilities;

(ii) Operation, maintenance, repair, and modification of facilities, including a list of all relevant equipment, a description of each party's financial obligations, and any relevant notice provisions; and

(iii) Termination or transfer/assignment of rights to the shared

licenses, including the ability of a new licensee to assume the existing CSA.

(2) Channel sharing agreements submitted under this section must include a provision affirming compliance with the channel sharing requirements in this section including a provision requiring that each channel sharing licensee shall retain spectrum usage rights adequate to ensure a sufficient amount of the shared channel capacity to allow it to provide at least one Standard Definition (SD) program stream at all times.

(e) *Termination and assignment/transfer of shared channel.* Upon termination of the license of a party to a CSA, the spectrum usage rights covered by that license may revert to the remaining parties to the CSA. Such reversion shall be governed by the terms of the CSA in accordance with paragraph (d)(1)(iv) of this section. If upon termination of the license of a party to a CSA only one party to the CSA remains, the remaining licensee may file an application for license to change its status to "non-shared."

(f) Notice to MVPDs. (1) Stations participating in channel sharing agreements must provide notice to MVPDs that:

(i) No longer will be required to carry the station because of the relocation of the station;

(ii) Currently carry and will continue to be obligated to carry a station that will change channels; or

(iii) Will become obligated to carry the station due to a channel sharing relocation.

(2) The notice required by this section must contain the following information:

(i) Date and time of any channel changes;

(ii) The channel occupied by the station before and after implementation of the CSA;

(iii) Modification, if any, to antenna position, location, or power levels;

(iv) Stream identification information; and

(v) Engineering staff contact information.

(3) Sharee stations (those relinquishing a channel in order to share) must provide notice as required

by this section at least 30 days prior to terminating operations on the sharee's channel. Sharer stations (those hosting a sharee as part of a channel sharing agreement) and sharee stations must provide notice as required by this section at least 30 days prior to initiation of operations on the sharer channel. Should the anticipated date to either cease operations or commence channel sharing operations change, the station(s) must send a further notice to affected MVPDs informing them of the new anticipated date(s).

(4) Notifications provided to cable systems pursuant to this section must be either mailed to the system's official address of record provided in the cable system's most recent filing in the FCC's Cable Operations and Licensing System (COALS) Form 322, or emailed to the system if the system has provided an email address. For all other MVPDs, the letter must be addressed to the official corporate address registered with their State of incorporation.

[FR Doc. 2016-00059 Filed 1-29-16; 8:45 am]

BILLING CODE 6712-01-P