

requirement that WAVDs contain a permanently attached antenna or contain a unique connector that allows for easy antenna repair while preventing the use of unauthorized antennas.

55. We believe that notification is more appropriate than full coordination for WAVDs. We take this position based on the low ERP, limited range, and non-interference status of WAVDs. In addition, because WAVDs may be used at multiple locations in support of a production, notification will be less burdensome than coordination for both the WAVD licensee and the coordinator while still providing adequate protection to broadcast transmissions. In this connection, we have adopted our proposal to consider the absence of a response from a coordinator after ten business days have passed as an approval. Once the WAVD operator has made reasonable attempts to notify the BAS coordinator or appropriate TV stations, we find that failure of these entities to respond to the WAVD operator approval is an insufficient basis to delay use of WAVDs. We find that this approach strikes a reasonable balance between the requirements of producers and the needs of the coordinator to study notifications and respond to operators as necessary. We will require WAVD licensees to notify, for informational purposes only, nearby co-channel and adjacent channel TV stations (*i.e.*, those stations within 161 km of the WAVD location). As stated, this will be informational only and television stations will not be able to prevent a WAVD from operating. However, this informational notification may help identify the source of interference if any is experienced after a WAVD begins operating. We have adopted all other aspects of the notification proposal as proposed in the *NPRM*.

### Final Regulatory Flexibility Analysis

56. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making, Revisions to Broadcast Auxiliary Service Rules in Part 74 and Conforming Technical Rules for Broadcast Auxiliary Service, Cable Television Relay Service and Fixed Services in Parts 74, 78 and 101 of the Commission's Rules*.<sup>2</sup> The

Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. The comments received are discussed further. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>3</sup>

#### (A) Need for and Objective of the Report and Order

57. The *Report and Order* updates the Broadcast Auxiliary Service (BAS) rules in part 74 and will permit increased compatibility between Broadcast Auxiliary Services, the Cable Television Relay Service (CARS), and Fixed Service Microwave (FS) systems operating on shared spectrum. Specifically, we permit TV and aural BAS stations to use any available digital modulation technique in all BAS frequency bands so that BAS stations can take advantage of the latest developments in technology and make smooth the transition to digital TV and digital radio; update BAS emission masks to facilitate the introduction of digital equipment and to provide consistency with emission masks used in part 101 of the rules; modify the equation used by BAS and CARS services for determining the maximum effective isotropic radiated power (EIRP) for short path lengths (this change eliminates the steep reduction in EIRP for BAS and CARS path lengths shorter than the minimum); allow BAS and CARS stations to use automatic transmit power control (ATPC) in order to facilitate more efficient spectrum use; update transmitter power rules for BAS and CARS services to provide EIRP limits for all frequency bands; require TV BAS and CARS services to prior coordinate their frequency use when using shared frequency bands to minimize the potential for harmful interference occurring when a new station begins transmitting. We also permit "wireless assist video devices" to operate on certain VHF and UHF TV spectrum, thereby increasing spectrum efficiency and promoting equipment, which will increase safety at production sites as well as lower film and television production costs. In addition, we update many other BAS rules and make minor rule changes to clarify or fix typographical errors in the existing rules.

#### (B) Summary of Significant Issues Raised by Public Comments in Response to the IRFA

58. In the Notice, the Commission performed an IRFA and asked for comments that specifically addressed

issues raised in the IRFA. No parties filed comments directly in response to the IRFA. However, commenters made recommendations regarding channel splitting, and the Commission, in response, is overlaying narrowband channels in various bands and is authorizing an effective date for channel splitting in the 950 MHz aural BAS band.

#### (C) Description and Estimate of the Number of Entities Affected to Which Rules Will Apply

59. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the action taken.<sup>4</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>5</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>6</sup> A small business concern is one that: (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).<sup>7</sup> A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>8</sup> Nationwide, as of 1992, there were approximately 275,801 small organizations.<sup>9</sup> Finally, "small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."<sup>10</sup> As of 1992, there were approximately 85,006 such jurisdictions in the United States.<sup>11</sup> This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations

<sup>4</sup> 5 U.S.C. 603(b)(3).

<sup>5</sup> *Id.*, 601(6).

<sup>6</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

<sup>7</sup> Small Business Act, 15 U.S.C. 632.

<sup>8</sup> 5 U.S.C. 601(4).

<sup>9</sup> 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

<sup>10</sup> 5 U.S.C. 601(5).

<sup>11</sup> U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

<sup>1</sup> See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See *Notice of Proposed Rule Making*, ET Docket No. 01–75, 16 FCC Rcd 10556, 10601 (2001), 66 FR 28686, May 24, 2001.

<sup>3</sup> See 5 U.S.C. 604.