

that would constitute a small business under the SBA definition.

24. *Direct Broadcast Satellites.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of "Cable and Other Pay Television Services."⁶⁵ This definition provides that a small entity is one with \$11.0 million or less in annual receipts.⁶⁶ Currently, there are nine DBS authorizations, though there are only two DBS companies in operation at this time. We do not request nor collect annual revenue information for DBS services, and are unable to determine the number of DBS operators that would constitute a small business under the SBA definition.

Media Services

25. *Commercial Radio and Television Services.* The proposed rules and policies will apply to television broadcasting licensees and radio broadcasting licensees.⁶⁷ The SBA defines a television broadcasting station that has \$10.5 million or less in annual receipts as a small business.⁶⁸ Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.⁶⁹ Included in this industry are commercial, religious, educational, and other television stations.⁷⁰ Also included are establishments primarily engaged in television broadcasting and which produce taped television program

materials.⁷¹ Separate establishments primarily engaged in producing taped television program materials are classified under another NAICS number.⁷² There were 1,509 television stations operating in the nation in 1992.⁷³ That number has remained fairly constant as indicated by the approximately 1,714 operating television broadcasting stations in the nation as of September 30, 2002.⁷⁴ For 1992,⁷⁵ the number of television stations that produced less than \$10.0 million in revenue was 1,155 establishments.⁷⁶ Only commercial stations are subject to regulatory fees.

26. Additionally, the SBA defines a radio broadcasting station that has \$5 million or less in annual receipts as a small business.⁷⁷ A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.⁷⁸ Included in this industry are commercial, religious, educational, and other radio stations.⁷⁹ Radio broadcasting stations, which primarily are engaged in radio broadcasting and which produce radio program materials, are similarly included.⁸⁰ However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number.⁸¹ The 1992 Census indicates that 96 percent (5,861 of 6,127) of radio station establishments produced less than \$5 million in revenue in 1992.⁸² Official Commission records indicate that a total of 11,334 individual radio stations were operating in 1992.⁸³ As of September 30, 2002, Commission records indicate that a total of 13,296 radio stations were operating, of which 8,492 were FM stations.⁸⁴ Only

commercial stations are subject to regulatory fees.

27. The rules may affect an estimated total of 1,714 television stations, approximately 1,320 of which are considered small businesses.⁸⁵ The revised rules will also affect an estimated total of 13,296 radio stations, approximately 12,764 of which are small businesses.⁸⁶ These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. There are also 2,127 low power television stations (LPTV).⁸⁷ Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

28. *Auxiliary, Special Broadcast and Other Program Distribution Services.* This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.⁸⁸

29. The Commission estimates that there are approximately 3,790 translators and boosters. The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (\$5 million for a radio station or \$10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.⁸⁹

30. *Multipoint Distribution Service (MDS).* This service has historically provided primarily point-to-multipoint and one-way

⁶⁵ 13 CFR 121.201, NAICS codes 51321 and 51322.

⁶⁶ *Id.*

⁶⁷ While we tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this *Report and Order* we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply. We reserve the right to adopt, in the future, a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to the proposed rules in this *Report and Order*, and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities. See *Report and Order in MM Docket No. 93-48 (Children's Television Programming)*, 11 FCC Rcd 10660, 10737-38 (1996), 61 FR 43981 (Aug. 27, 1996), citing 5 U.S.C. 601(3).

⁶⁸ 13 CFR 121.201, NAICS code 51312.

⁶⁹ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995) (1992 Census, Series UC92-S-1)*.

⁷⁰ *Id.*; see Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987), at 283, which describes "Television Broadcasting Stations" (SIC code 4833, now NAICS code 51312) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

⁷¹ 1992 Census, Series UC92-S-1, at Appendix A-9.

⁷² *Id.*, NAICS code 51211 (Motion Picture and Video Tape Production); NAICS 51229 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs).

⁷³ FCC News Release No. 31327 (January 13, 1993); 1992 Census, Series UC92-S-1, at Appendix A-9.

⁷⁴ FCC News Release, "Broadcast Station Totals as of September 30, 2002."

⁷⁵ A census to determine the estimated number of Communications establishments is performed every five years, in years ending with a "2" or "7." See 1992 Census, Series UC92-S-1, at III.

⁷⁶ The amount of \$10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

⁷⁷ 13 CFR 121.201, NAICS codes 513111 and 513112.

⁷⁸ 1992 Census, Series UC92-S-1, at Appendix A-9.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

⁸³ FCC News Release, No. 31327 (Jan. 13, 1993).

⁸⁴ FCC News Release, "Broadcast Station Totals as of September 30, 2002."

⁸⁵ We use an estimated figure of 77 percent (from 1992) of TV stations operating at less than \$10 million and apply it to the 2003 total of 1,714 TV stations to arrive at 1,320 stations categorized as small businesses.

⁸⁶ We use the 96% figure of radio station establishments with less than \$5 million revenue from data presented in the year 2003 estimate (FCC News Release, September 30, 2002) and apply it to the 13,296 individual station count to arrive at 12,764 individual stations as small businesses.

⁸⁷ FCC News Release, "Broadcast Station Totals as of September 30, 2002."

⁸⁸ 13 CFR 121.201, NAICS codes 513111 and 513112.

⁸⁹ 15 U.S.C. 632.