

mandatory. We responded to their concern by creating an indefinite transition period during which electronic filing will be optional. A waiver of the requirement may also be granted.

*C. Description and Estimate of the Number of Small Entities to Which the 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 rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" 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").

A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small government jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 governmental entities in the United States. This number includes 38,978 counties, cities, and towns: of these, 37,566, or 96%, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by these rules. It is possible that various types of small organizations are cable operators or other types of Multichannel Video Programming Distributor.

The rules we adopt will apply to all Multichannel Video Programming Distributors. This includes cable systems, the Multipoint Distribution Service ("MDS"), the Multichannel, Multipoint Distribution Service ("MMDS"), and Private Cable Operators ("PCOs").

*Small MVPDs.* SBA has developed a definition of small entities for cable and other pay television services, which includes such companies generating \$12.5 million or less in annual receipts. This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, open video systems, and subscription television services. According to the Census Bureau, there were 1,423 such cable and other pay television services generating less than \$12.5 million in revenue. We address below services individually to provide a more precise estimate of small entities.

The Commission has developed, with SBA's approval, its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies 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. The Commission's rules define a "small system," for the purposes of rate regulation, as a cable system with 15,000 or fewer subscribers. The Commission does not request nor does the Commission collect information concerning cable systems serving 15,000 or fewer subscribers and thus is unable to estimate, at this time, the number of small cable systems nationwide.

The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly of through an affiliate, serves in the aggregate fewer than 1% 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 61,700,000 subscribers in the United States. Therefore, a cable operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals approximately 1450. 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 definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total of 64,000,000 subscribers and we have based our fee revenue estimates on that figure.

*Private Cable Operators/Satellite Master Antenna Systems.* Based on our most recent information, we estimate that there are 3400 private cable operators ("PCOs"). Most of these qualify as small cable companies under the SBA and Commission rate regulation definitions. These operators primarily serve multiple dwelling units ("MDU") and commercial multiple tenant units ("MTU"). The MDU market is comprised of 20 to 25 million units. Commercial multiple tenant units (and there SBA size standards) include hotels (\$6.0 million), hospitals (\$29.0 million), nursing care facilities (\$11.5 million), homes for the elderly (\$6.0 million), and similar facilities. PCOs serve 3,000 to 4,000 customers each, but some serve 15,000 to 55,000 subscribers each. Consequently, most PCOs are small entities, and we estimate that there are more than 3,400 small entity private cable system operators that may be affected by the decisions and rules we are adopting.

*Open Video System ("OVS").* The Commission has certified 26 OVS operators. As an OVS is comparable in most ways to a cable system, the cable system size standards are appropriate. Of these, one, Affiliates of Residential Communications Network, Inc. ("RCN"), is clearly not a small system. RCN received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has approximately 506,700 video subscribers; is the largest broadband service provider in the country, 1.5 million homes passed; and is the thirteenth largest MVPD. The Commission has not set a separate size standard for an OVS. Under that standard RCN is not a small system operator. Little financial information is available for the other entities authorized to provide OVS service that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities under FCC standards.

*Multichannel, Multipoint Distribution Service ("MMDS").* The Commission refined the definition of "small entity" for the auction of MMDS as an entity