

DTV allotment available. The Commission also announced that the station will be required to surrender its analog authorization at the end of the DTV transition.

#### Administrative Matters

4. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> and Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Order and Notice of Proposed Rulemaking*, 67 FR 38459, June 4, 2002.<sup>2</sup> The Commission sought written public comment on the proposals in the *Order and Notice of Proposed Rulemaking* including comment on the IRFA. The comments received are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>3</sup>

#### A. Need for, and Objectives of, the Proposed Rules

5. The Commission adopts these remedial measures to prevent undue delay in the required build out of DTV facilities.

#### B. Summary of Significant Issues Raised By Public Comments in Response to the IRFA

6. New Life Evangelistic Center, Inc (NLEC) filed comments on the IRFA. NLEC complains that television stations will have to spend millions of dollars to comply with the DTV construction requirement. However, that matter was previously considered in the DTV rulemaking proceeding wherein the Commission adopted the DTV construction requirement and timetable. In the instant proceeding, the Commission only considered what steps to take when a station fails to meet its construction requirement. Therefore, NLEC's comments were not on point.

#### C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

7. 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 proposed rules, if adopted.<sup>4</sup> The RFA defines the term "small entity" as having the same meaning as "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 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.<sup>7</sup>

8. The proposals in the *R&O* will affect only full-power television broadcasters. As of September 30, 2001, the Commission had licensed a total of 1,686 full-power television stations.<sup>8</sup> SBA defines television broadcasting establishments that have \$12 million or less in annual receipts as a small business.<sup>9</sup> According to Census Bureau data for 1997, there were 906 firms in this category, total, that operated for the entire year.<sup>10</sup> Of this total, 728 firms had annual receipts of under \$10 million, and an additional 71 had receipts of \$10 million to \$24,999,999. Thus, under this size standard, the majority of the firms are considered small.

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

9. The *R&O* contains a new reporting requirement. Stations that fail to construct their DTV stations by the requisite deadline and fail to justify an extension of their DTV construction permit will fall into the remedial measures set forth in the document. Among the remedial measures, is the requirement that the station submit periodic reports detailing their efforts to comply with the extended DTV construction deadline. The reports will be filed in letter form with the Secretary's office.

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

<sup>6</sup> *Id.* 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 32). 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> *Id.* 632.

<sup>8</sup> News Release, "Broadcast Station Totals as of September 30, 2001" (released October 30, 2001).

<sup>9</sup> NAICS Code 513120.

<sup>10</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size," Table 4, NAICS code 513120 (issued Oct. 2000).

#### E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

10. 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 and 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.<sup>11</sup>

11. The *R&O* contains remedial steps for failure of broadcast stations to comply with the DTV construction schedule. These steps are applied only after a station has failed to demonstrate this it qualifies for an extension of its schedule. The Commission's rules and policies already contain flexible measures for allowing stations in smaller markets to seek an extension of their DTV construction deadline. Those measures remain unchanged by the *R&O*.

12. One of the sanctions that may be used is the issuance of a notice of apparent liability for forfeiture to stations that do not comply with their DTV construction obligation. We already take small entity status, including potential inability to pay, into account when assessing the need for, and amount of, monetary forfeitures.<sup>12</sup>

#### F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

13. None.

#### G. Report to Congress

14. The Commission will send a copy of the *R&O*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>13</sup> In addition, the Commission will send a copy of the *R&O* including this FRFA to the Chief Counsel for Advocacy of the SBA. A copy of the *R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**.<sup>14</sup>

15. *Authority.* This *R&O* is issued pursuant to authority contained in

<sup>11</sup> 5 U.S.C. 603(c).

<sup>12</sup> See, e.g., In the Matter of the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to incorporate the Forfeiture Guidelines, CI Docket No. 95-6, *Report and Order*, 12 FCC Rcd 17087, 17109 (1997).

<sup>13</sup> See 5 U.S.C. 801(a)(1)(A).

<sup>14</sup> See 5 U.S.C. 604(b).

<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), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> Remedial Steps For Failure to Comply With Digital Television Construction Schedule, 17 FCC Rcd 9962 (2002) (*Order and Notice of Proposed Rulemaking*).

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

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