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Summary of the Notice of Proposed Rule Making

Proposed Changes in the Commission's Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields

1. The National Environmental Policy Act of 1969 (NEPA) requires agencies of the Federal Government to evaluate the effects of their actions on the quality of the human environment. To meet its responsibilities under NEPA, the Commission has adopted requirements for evaluating the potential environmental impact of its actions. One of several environmental factors that must be considered is human exposure to radiofrequency (RF) energy emitted by FCC-regulated transmitters and facilities.

2. In 1996 and 1997, the Commission established its most recent comprehensive guidelines for evaluating the environmental impact of RF energy. These guidelines include limits for Maximum Permissible Exposure (MPE), including limits for both whole-body and partial-body exposures. The Commission's guidelines were based on recommendations from expert scientific bodies as well as on guidance received from Federal agencies with responsibility for protecting the public health and for worker safety.

3. Since adoption and implementation of its guidelines, the Commission has determined that certain revisions and changes may be needed in the procedures and regulations used in ensuring compliance with the RF exposure guidelines. For example, additional transmitters and devices

under FCC jurisdiction may be eligible for categorical exclusion from routine evaluation while others may have been inappropriately excluded. Also, certain criteria used for categorical exclusion should be harmonized to govern similar facilities in different services. In addition, it appears that certain aspects of the Commission's RF exposure rules may require revision to clarify the responsibilities of licensees and grantees and to ensure compliance in a more practical, consistent and efficient manner.

4. This *NPRM* makes several proposals to accomplish these goals, and Commission is requesting comment on all of the proposals. These proposals are related only to the Commission's implementation of procedures for compliance with the adopted limits for human exposure from fixed, mobile and portable transmitters regulated by the FCC. This *NPRM* does not invite comment regarding the exposure limits themselves, which have been developed in conjunction with other organizations and agencies that have primary expertise in health and safety.

Initial Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rule Making (NPRM)*. 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 provided in this *NPRM*. The Commission will send a copy of this *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).²

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

6. The National Environmental Policy Act of 1969 (NEPA) requires agencies of the Federal Government to evaluate the effects of their actions on the quality of the human environment.³ To meet its responsibilities under NEPA, the Commission has adopted requirements for evaluating the environmental impact of its actions. One of several

environmental factors addressed by these requirements is human exposure to radiofrequency (RF) energy emitted by FCC-regulated transmitters, facilities and devices.⁴

7. The *NPRM* proposes to amend parts 1 and 2 of our rules relating to the compliance of FCC regulated transmitters, facilities, and devices with the guidelines for human exposure to radiofrequency (RF) energy adopted by the Commission in 1996 and 1997. Specifically we are proposing to make certain revisions in our rules that we believe will result in more efficient, practical and consistent application of compliance procedures.

B. Legal Basis

8. The proposed action is authorized under sections 4(i), 301, 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 303(f) and 303(r).

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

9. 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.⁵ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁶ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities.⁷ A "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration ("SBA").⁸

Experimental Radio Service (Other Than Broadcast)

10. The Commission has not developed a definition of small entities

⁴ See 47 CFR 1.1307(b).

⁵ 5 U.S.C. 603(b)(3).

⁶ 5 U.S.C. 601(6).

⁷ 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).

⁸ 15 U.S.C. 632.

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

² See 5 U.S.C. 603(a).

³ National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321-4335.