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39. *Ex Parte Rules*. This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

40. *Initial Regulatory Flexibility Analysis*. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following IRFA of the possible significant economic impact on small entities of the proposals contained in this *NPRM*. Written public comments are requested on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions in our IRFA regarding the prevalence of small businesses in the radio broadcasting industry. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *NPRM*, but they must have a distinct heading designating them as responses to the IRFA.

41. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *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 on the *NPRM* provided above in paragraph 16. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). See 5 U.S.C. 603(a). In addition, the *NPRM* and the IRFA (or summaries thereof) will be published in the **Federal Register**.

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

42. As described in the *NPRM*, the proposed rules are intended to permit LPTV, television translator, and television booster stations to transition to digital service. Provisions in the *NPRM* may also facilitate the digital transition of Class A TV stations. Beginning in 1987, the Commission undertook to bring the most up-to-date technology to broadcast television. That resulted in several Commission decisions, including those adopting a digital television (DTV) standard, DTV service rules, and a Table of DTV

Allotments. The rules proposed in the Notice are a fundamental part of the Commission's effort to establish rules to help effectuate the transition of the nation's television broadcast service from analog to digital format.

43. The proposed rules are intended to meet the need recognized by the Commission to provide flexible and affordable opportunities for low power digital service, both through the digital conversion of existing analog service and, where spectrum is available, new digital stations. The Commission's goals are to hasten the transition of LPTV and TV translator stations to digital operations, and to do so in a manner that minimizes disruption of existing service to the consumers served by analog LPTV and translator stations. The following proposals in the Notice serve as examples of how the Commission seeks to realize these objectives. As one example, the *NPRM* seeks comment on flexible means for digital translator operations, including combining the signals of two or more DTV broadcast station signals on a translator's transmitted output channel, provided such operations are technically and economically feasible. The *NPRM* also proposes to permit digital LPTV stations to provide ancillary and supplementary services upon meeting a minimum video program service requirement, and seeks to impose as few interference requirements on digital low power service stations as necessary to ensure interference-free operation. In addition, to expedite authorization of service, the *NPRM* proposes that LPTV and translator operators be permitted to convert to digital on their existing analog channels by applying for a minor facilities change at any time. The *NPRM* also seeks comment on filing procedures for new digital stations that would facilitate the transition of existing LPTV and translator service and quicken the authorization of digital service.

#### *B. Legal Basis*

44. The authority for the action proposed in this rulemaking is contained in Sections 4(i) & (j), 303, 307, 309 and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) & (j), 303, 307, 309 and 336.

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

45. 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 proposed rules. The RFA generally defines the term "small entity" as

having the same meaning as the terms "small business," "small organization," and "small governmental entity." 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").

46. In this context, the application of the statutory definition to television stations is of concern. An element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimates that follow of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and therefore might be over-inclusive.

47. An additional element of the definition of "small business" is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses might therefore be over inclusive.

48. *Class A TV, LPTV, TV translator, and TV booster stations*. The proposed rules and policies would apply to licensees of LPTV, TV translator, and TV booster stations, and to potential licensees in these television services. Certain rules and policies would also apply to licensees of Class A TV stations. The Small Business Administration defines a television broadcasting station that has no more than \$12 million in annual receipts as a small business. Television broadcasting consists of establishments primarily engaged in broadcasting images together with sound, including the production or transmission of visual programming which is broadcast to the public on a predetermined schedule. Included in this category are establishments primarily engaged in television broadcasting and which produce programming in their own studios. Separate establishments primarily engaged in producing programming are classified under other NAICS numbers.

49. Currently, there are approximately 2,100 licensed LPTV stations, 600 licensed Class A stations, 4,700 licensed TV translators and 11 TV booster stations. According to Commission staff review of the BIA Publications, Inc.,