

that could be applied to various categories of programming.

2. *Paperwork Reduction Act:* This *Second Report and Order* contains either a new or modified information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this *Second Report and Order* as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due January 27, 2004.

3. *Final Regulatory Flexibility Analysis:* As required by the Regulatory Flexibility Act, the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") relating to this *Second Report and Order*. The FRFA is set forth within.

4. *Ordering Clauses:* It is ordered that pursuant to the authority contained in sections 1, 4(i) and (j), 303, 403, 601, 624A and 629 of the Communications Act of 1934, 47 U.S.C 151, 154(i) and (j), 303, 403, 521, 544a and 549, that the Commission's rules are hereby amended as set forth herein, and shall become effective December 29, 2003, except that §§ 15.123, 76.1905, and 76.1906 that contain information collection requirements under the PRA is not effective until approved by OMB. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Second Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Final Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA") an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the Further Notice of Proposed Rulemaking ("FNPRM"). The Commission sought written public comment on the proposals in the FNPRM, including comment on the IRFA. Comments were received on the IRFA. This present Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.

6. *Need for, and Objectives of, the Second Report and Order and Second Further Notice of Proposed Rulemaking.* The need for FCC regulation in this area derives from the lack of a so-called cable compatibility "plug and play" standard for a digital cable television receiver and related digital cable television consumer electronics equipment. The absence of

such a standard has been identified as a key impediment to the anticipated rate and scope of the transition to digital television ("DTV"). Such a standard would allow consumers to directly attach their DTV receivers to cable systems and receive certain cable television services without the need for an external navigation device. Since more than sixty percent of television households subscribe to cable programming services, the availability of digital cable television receivers and products would encourage more consumers to convert to DTV, thereby furthering the transition. Private industry negotiations between cable operators and consumer electronics manufacturers resulted in a Memorandum of Understanding ("MOU") on a cable compatibility standard for an integrated, unidirectional digital cable television receiver, as well as for other unidirectional digital cable products. The MOU requires the consumer electronics and cable television industries to each commit to certain voluntary acts and sought the creation or revision of certain relevant Commission rules. The objective of the final rules, as set forth in the *Second Report and Order* portion of the *Second Report and Order* and Further Notice of Proposed Rulemaking ("Second Report and Order"), is to facilitate the DTV transition.

7. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* The Commission received comments from the American Cable Association ("ACA") in response to the IRFA accompanying the FNPRM. In these comments, ACA expresses its support for the Commission's efforts to advance the DTV transition, but asks that the Commission take into account the special circumstances of smaller cable companies in this proceeding. Specifically, ACA asks that the Commission consider: (1) the costs of compliance for smaller cable systems, (2) how plug-and-play requirements might affect smaller cable systems that use Comcast's Headend-in-the-Sky ("HITS") programming, and (3) why some of the plug-and-play requirements are limited to systems having 750 MHz activated channel capacity or higher, while other requirements apply to all digital cable systems. To the extent that the Commission determines that there would be a disparate cost impact upon small cable systems, ACA asks that the Commission consider waivers and an extended phase-in for small system compliance. We have discussed

compliance impacts in this FRFA in below.

8. *Description and Estimate of the Number of Small Entities to Which the Proposed 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 proposed rules. The RFA generally defines the term "small entity" as encompassing 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").

9. *Television Broadcasting.* The Small Business Administration defines a television broadcasting station that has no more than \$12 million in annual receipts as a small business. Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound." According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States have revenues of \$12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,127 low power television stations (LPTV). Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

10. In addition, 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 estimate 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 are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned