

must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

13. *Regulatory Flexibility Act.* As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this Second FNPRM. The IRFA is set forth below. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the Second FNPRM, and they should have a separate and distinct heading designating them as responses to the IRFA.

14. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Second FNPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### **Initial Regulatory Flexibility Analysis**

15. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA") the Commission has prepared this present Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Second FNPRM portion of this item. 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 Second FNPRM portion of this item provided above. The Commission will send a copy of this entire Second Order and Second Further Notice of Proposed Rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA"). In addition, the Second FNPRM portion of this item and the IRFA (or summaries thereof) will be published in the **Federal Register**.

16. *Need for, and Objectives of, the Proposed Rules.* In connection with the Commission's efforts to ensure the commercial availability of navigation devices pursuant to section 629 of the Communication's Act, the Second Report and Order and Second FNPRM adopts technical, labeling and encoding

rules which will set a one-way specification for digital cable "plug and play" compatibility for DTV equipment. The negotiations between the consumer electronics and cable television industries which led to the agreement underlying these rules call for the cable television industry to make initial determinations about which new device connectors and associated content protection technologies may be used in connection with unidirectional digital cable products produced under this specification. Commenters have indicated that the cable industry should not be the sole arbiter of such decisions, however, the record currently before the Commission is insufficient on this matter. In order to ensure the connectivity and interoperability of unidirectional digital cable products, and to fulfill the Commission's commercial availability mandate under section 629, we are initiating the Second FNPRM to seek comment on the mechanisms and standards by which new connectors and associated content protection technologies can be approved for use in this context. The Second FNPRM also seeks comment on: (1) The potential extension of the transmission requirements applicable to digital cable systems with an activated channel capacity of 750 MHz or higher to digital cable systems with an activated channel capacity of 550 MHz or higher; (2) whether it is necessary to require consumer electronics manufacturers to provide pre-sale information to consumers regarding the functionalities of unidirectional digital cable televisions; and (3) whether the Commission should ban or permit the down-resolution of non-broadcast MVPD programming.

17. *Legal Basis.* The authority for this proposed rulemaking is 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.

18. *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").

19. *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.

20. 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 and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

21. *Cable and Other Program Distribution.* The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating \$12.5 million or less in revenue annually. This category includes, among others, cable operators, direct broadcast satellite ("DBS") services, home satellite dish ("HSD") services, multipoint distribution services ("MDS"), multichannel multipoint distribution service ("MMDS"), Instructional Television