

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 Further NPRM. 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 Further NPRM, 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 Further NPRM, 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 Further Notice of Proposed Rulemaking 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 Further Notice of Proposed Rulemaking portion of this item provided in paragraph 69 of the item. The Commission will send a copy of this entire Report and Order and Further Notice of Proposed Rulemaking ("Report and Order and Further NPRM"), including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA"). In addition, the Further Notice of Proposed Rulemaking 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.* Content providers have suggested that they should have the ability to make determinations about which new content protection and recording technologies may be used in connection with demodulator products under an ATSC flag-based redistribution control system. Commenters have indicated that content providers should not be the sole arbiters of such decisions. However, the record

currently before the Commission is insufficient on this matter. In order to ensure the connectivity and interoperability of Demodulator Products and peripheral devices, we are initiating the Further NPRM to seek comment on the process and criteria by which new content protection and recording technologies can be evaluated and approved for use in this context. The Further NPRM also seeks comment on whether cable operators should be allowed to encrypt the digital basic tier in order to be able to give effect to the ATSC flag through cable operators' conditional access system. The Further NPRM also seeks comment on the interplay between an ATSC flag system and open source software for DTV applications, such as software defined radio.

17. *Legal Basis.* The authority for this proposed rulemaking is contained in sections 1, 2, 4(i) and (j), 303, 307, 309(j), 336, 337, 396(k), 403, 601, 614(b) and 624a of the Communications Act of 1934, 47 U.S.C 151, 152, 154(i) and (j), 303, 307, 309(j), 336, 337, 396(k), 403, 521, 534(b) and 544a.

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 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 Fixed Service ("ITFS"), local multipoint distribution service ("LMDS"), satellite master antenna television ("SMATV") systems, and open video systems ("OVS"). According to the Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than \$10 million in revenue. We address below each service individually to provide a more precise estimate of small entities.

22. *Cable Operators.* The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. We last estimated that there were 1,439 cable operators that qualified as small cable companies. Since then,