

lived. Accordingly, we do not find that frequency coordination would be unnecessarily complicated by aggregate treatment of BAS emissions within a channel, and consequently deny SBE's Petition. We therefore find separate treatment of analog and digital emissions unnecessary.

C. Additional Requests

7. *Elective Registration of BAS TVPU Receive Sites:* In its Petition, SBE asks that we allow licensees to electively register fixed receive sites associated with BAS TVPU stations in the ULS. SBE states that this information would be used to protect TVPU receive sites, especially during frequency coordination along international borders. As noted by SBE, frequency coordination of BAS TVPU stations necessitates information on TVPU receive sites, and registration of such receive sites may offer some benefit to frequency coordination by facilitating their identification. However, we find that, because registration of BAS TVPU receive sites in the ULS was neither at issue nor addressed by the *R&O*, it is beyond the scope of the *Memorandum Opinion and Order*. At this time, we find that such elective registration is unnecessary. However if parties continue to believe that such a requirement would be beneficial they may file a petition for rulemaking seeking the imposition of TVPU receive site registration.

8. *Reduced Bandwidth on TV BAS Channels:* SBE seeks clarification of several issues related to the use of digital links in the TV BAS bands. First, SBE asks that the Commission clarify that the Commission will not routinely dismiss applications specifying narrowband digital emissions. SBE notes that only a wideband (25 MHz) channel plan currently exists for the 7 and 13 GHz bands, but some newer digital equipment operates with only 6.5 MHz bandwidths. Second, SBE asks that the Commission clarify that a narrowband channel may operate on a frequency offset from the channel center. Finally, SBE asks the Commission to clarify that licensees may stack multiple narrowband emissions within a channel.

9. As an initial matter, we note that the Commission does not routinely dismiss applications for underutilization of the spectrum. If no other deficiencies exist, an application for narrowband emissions within a wideband channel will not be routinely dismissed. In addition, we note that the Commission grants licenses for these bands by specifying a band of operation, not a specific operating frequency.

Therefore, a licensee has flexibility to locate its emissions within a channel where it is most advantageous. Finally, to promote spectrum efficiency, we note that the rules allow licensees to multiplex multiple signals within a channel. Under this rule, licensees may provide information using multiple narrowband channels within the larger channel subject to the condition that the composite emissions meet the rules for out-of-band emissions. In these instances, we note that spectral efficiency will be further enhanced if the presence of systems operating on frequencies other than the channel center is accounted for in the frequency coordination process.

10. *RPU BAS with 20 kHz and 25 kHz Bandwidths:* Finally, in its Petition, SBE notes that the Commission, in the *R&O*, rechannelized the BAS RPU 450/455 MHz band into 6.25 kHz blocks, stackable to 50 kHz maximum channel bandwidth, and adopted certain Part 90 technical standards, including the § 90.210 emission mask requirements, for authorized bandwidths of 30 kHz or less. SBE, claiming that the part 90 technical standards only allow a maximum channel width of 12.5 kHz, requests that we clarify that licensees may continue to use channel widths up to 25 kHz. The rules adopted in the *R&O*, which permit narrowband channels to be stacked to form wider channels, have not changed and are not restricted by the part 90 limitations on channel bandwidth. Thus, licensees may continue to stack these channels as needed, up to a maximum channel bandwidth of 50 kHz. However, we encourage licensees to operate with spectrally efficient equipment and use the minimum bandwidth necessary for their operation.

Final Regulatory Flexibility Certification

11. The Regulatory Flexibility Act of 1980, as amended (RFA) ¹ requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."² The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."³ In

addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁴ 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).⁵

12. In the *Report and Order* in this proceeding, the Commission established Wireless Assist Video Devices (WAVDs), allowing them to operate on certain unused TV channels on a secondary basis to other services. To provide flexibility, WAVDs are authorized on 42 TV channels, which include TV channels 8–12, 14–36, and 38–51, with operation subject to certain separation rules to protect other services. In this connection, WAVD operation is excluded on four channels, TV channels 14–17, in the New York/NE New Jersey (NY/NJ) area, to protect incumbent land mobile operations. In the *Memorandum Opinion and Order*, the Commission excludes WAVD operation on three additional channels, TV channels 18–20, in the NY/NJ area, to protect incumbent public safety land mobile operations authorized pursuant to waivers of the Commission's rules.

13. We believe that these additional exclusions are necessary to protect incumbent public safety land mobile licensees and will have only minimal impact on prospective WAVD licensees. We note that public safety operations are extensive in this area on these frequencies and it is unlikely that perspective WAVD licensees could find the frequencies usable. We find that increasing the number of channels from which WAVD operation is excluded in the NY/NJ area from four to seven is insignificant given the total number of TV channels generally available to WAVD licensees. We also note that no WAVDs have yet been applied for or licensed, and we thus find that no existing WAVD licensee is affected by these new exclusions. Finally, we note that wherever WAVDs cannot be used, whether due to these exclusions, to other channel separations, or to conflicting frequency usage, cabled video assist devices would remain a

¹ The RFA, see 5 U.S.C. 601–612, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWA). Title II of the CWA is the Small Business Regulatory Enforcement Fairness Act (SBREFA).

² 5 U.S.C. 605(b).

³ 5 U.S.C. 601(6).

⁴ 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), 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 Small Business Act, 15 U.S.C. 632.