

collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street, SW., Room C-1804, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Kim Johnson, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to Kim.A.Johnson@omb.eop.gov.

75. *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 *NPRM*. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *NPRM*, and they should have a separate and distinct heading designating them as responses to the IRFA.

Initial Regulatory Flexibility Analysis

76. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"), the Commission has prepared this 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*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for and Objectives of the Proposed Rules

77. As described in the *NPRM*, the proposed rules are required to ensure a smooth transition of the nation's television system to digital television.

Legal Basis

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

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

79. 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").

80. 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.

81. 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.

Television Broadcasting

82. The proposed rules and policies could apply to television broadcasting licensees, and potential licensees of television service. There were 1,509 television stations operating in the nation in 1992. The majority of firms can be considered small.

Cable and Other Program Distribution

83. 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 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 each service individually to provide a more precise estimate of small entities.

Cable Operators. We estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules proposed in this *NPRM*.

Direct Broadcast Satellite ("DBS") Service

84. There are four licensees of DBS services under part 100 of the Commission's Rules. We will assume all four licensees are small, for the purpose of this analysis.

Home Satellite Dish ("HSD") Service

85. HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion. Most of providers of these services are considered small.

Multipoint Distribution Service ("MDS"), Multichannel Multipoint Distribution Service ("MMDS"), Instructional Television Fixed Service ("ITFS") and Local Multipoint Distribution Service ("LMDS")

86. MMDS systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the MDS and ITFS. LMDS is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.

87. We find that there are approximately 850 small MDS providers.

88. We tentatively conclude that at least 1,932 ITFS licensees are small businesses.

89. We conclude that there are a total of 133 small entity LMDS providers.

Satellite Master Antenna Television ("SMATV") Systems

90. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Most providers of these services are considered small.