

TV, Inc. licensee of station WTKR-TV, NTSC Channel 3, Norfolk, Virginia, requesting the substitution of DTV Channel 40 for station WTKR-TV's assigned DTV Channel 58. DTV Channel 40 can be allotted to Norfolk, Virginia, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 36-48-56 N. and 76-28-00 W. As requested, we propose to allot DTV Channel 40 to Norfolk with a power of 1000 (kW) and a height above average terrain (HAAT) of 313 meters.

DATES: Comments must be filed on or before June 12, 2000, and reply comments on or before June 27, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Arthur B Goodkind, Koteen & Naftalin, L.L.P., 1150 Connecticut Avenue, NW, Suite 1000, Washington, DC 20036 (Counsel for WTKR-TV, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00-68, adopted April 19, 2000, and released April 21, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting.

Federal Communications Commission.
Barbara A. Kreisman,
Chief, Video Services Division, Mass Media Bureau.
[FR Doc. 00-10542 Filed 4-26-00; 8:45 am]
BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[PP Docket No. 00-67; FCC 00-137]

Compatibility Between Cable Systems and Consumer Electronics Equipment

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission has adopted a *Notice of Proposed Rulemaking* (NPRM) on compatibility between cable television systems and consumer electronics equipment. The NPRM is designed to resolve outstanding compatibility issues, in particular requirements for labeling digital television (DTV) receivers to describe their capabilities to operate with digital cable television systems and questions regarding licensing terms for copy protection technology. Resolving these issues will not only insure that consumers make informed purchasing decisions with respect to DTV equipment but also promote the overall transition from analog to digital television.

DATES: Comments must be received on or before May 24, 2000, and reply comments on or before June 8, 2000. Written comments by the public on the proposed information collections are due May 24, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before June 26, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. 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, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW, Washington, DC 20503 or via the Internet to edward.springer@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Jonathan Levy (202-418-2030), Office of

Plans and Policy. For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202-418-0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: *This Notice of Proposed Rulemaking*, adopted April 13, 2000 and released April 14, 2000, addresses compatibility between cable television systems and digital television receivers, set top boxes, and other consumer electronics equipment, in accordance with Section 624A of the Communications Act of 1934, 47 U.S.C. 544A. The NPRM seeks comment on two issues: How to label digital television receivers with different features, including the proper designation for receivers providing two-way interactive capability; and licensing terms for copy protection technology.

The NPRM recognizes that DTV receivers both with and without the IEEE 1394 two-way connector will be able to access an array of cable services. Hence the labeling challenge is to provide descriptions that are informative to consumers, rather than to distinguish among receivers that are and are not "cable-ready." The NPRM does not propose specific nomenclature, but simply asks for comment on appropriate equipment labeling terminology, in accordance with the requirements of Section 624A. The NPRM also asks for comment on whether the transition from analog to digital requires any changes in Commission requirements for cable operators to offer supplemental equipment to subscribers to enable them to use special features of their television receivers (e.g., picture-in-picture).

With respect to copy protection technology licensing, the NPRM asks if there are unresolved hardware issues that might prevent consumer electronics manufacturers from designing DTV receivers that will operate with cable systems delivering copy protected digital content. The NPRM also seeks comment on an issue related to the Commission's navigation devices rules. Whether the inclusion of copy protection technology provisions in question of whether certain proposed copy protection technology licensing terms violate the Commission's navigation devices rules.

Pursuant to the navigation devices rules, cable operators are required by July 1, 2000 to offer separate security modules for use with commercially-available navigation devices, including television receivers and set top boxes. See 47 CFR 76.1200-1210. In order to build a DTV receiver that can receive and display encrypted cable

programming by means of a cable-supplied security module, consumer electronics manufacturers need a license for the security module technology so they can incorporate it in the interface that they build into the DTV receiver. Commission rules in essence forbid cable operators from imposing conditions on licensees of their security technology that prohibit those licensees from offering navigation devices that do not perform conditional access or security functions. It has been argued that licensing terms for security modules that impose obligations relating to copy protection, as opposed to conditional access, violate Commission rules. The NPRM seeks comment on this issue in order to ascertain whether any revision or clarification of those rules is needed.

In order to ensure that consumers have clear information about the capabilities of DTV receivers on the market and in order to encourage the transition from analog to digital video delivery, it is important that the labeling and copy protection technology licensing issues be resolved promptly.

Procedural Matters

As required by the Regulatory Flexibility Act (RFA),¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*. The Commission will send a copy of the *Notice of Proposed Rulemaking*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 603(a). In addition, the *Notice of Proposed Rulemaking* and IRFA (or summaries thereof) will be published in the **Federal Register**. See *id.*

Need for and Objectives of the Proposed Rules: This NPRM is designed to help ensure that digital television receivers and cable television systems will function smoothly together and to promote the implementation of digital television ("DTV") service. In order to provide consumers with information about how digital television receivers will operate with cable television

systems and thereby avoid consumer confusion, the NPRM seeks comment on labeling of digital television receivers. In order to encourage the provision of valuable digital content and to ensure that copy protection technology licensing issues do not stand in the way of designing DTV receivers that operate with cable television systems, the Notice seeks comment on some outstanding copy protection technology licensing issues as well.

Legal Basis: Authority for this proposed rulemaking is contained in Sections 4(i), 4(j), 336, and 624A of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 336, and 544a.

Description and Estimate of Small Entities to Which the Proposed Rules Will Apply: The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.² The Regulatory Flexibility Act defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act.³ 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 SBA.⁴

Rules adopted in this proceeding could apply to manufacturers of DTV equipment, including television receivers, set-top boxes and "point of deployment" modules. Distributors of this equipment, including retailers of consumer electronics equipment and, in the case of "point of deployment" modules, cable operators, would also be affected. Labeling rules would require all manufacturers, small and large, to adhere to certain terminology in the descriptive labels that they attach to the receivers that they produce. Regulations relating to copy protection licensing technology could affect the terms and conditions under which manufacturers, small and large, acquire copy protection technology licenses. However, with or without Commission regulations, all those entities would need a license for proprietary technology that they utilize. Cable operators will also be affected by any new requirements to offer supplementary equipment to subscribers to enable them to use special features of their DTV receivers. This proceeding seeks comment on whether the burden, if any, of

compliance with rules adopted pursuant to this NPRM could be mitigated for small entities.

Cable Systems: SBA has developed a definition of small entity for cable and other pay television services, which includes all such companies generating less than \$11 million in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,323 such cable and other pay television services generating less than \$11 million in revenue that were in operation for at least one year at the end of 1992.⁵

The Commission has developed its 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.⁶ Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.⁷ Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, 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 Notice.

The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."⁸ The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with

⁵ U.S. Census Bureau, 1992 Economic Census, 1992 Census of Transportation, Communications and Utilities at Firm Size 1-123.

⁶ 47 CFR 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of \$100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 (1995).

⁷ Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995). 8 47 U.S.C. 543(m)(2).

⁸ 47 U.S.C. 543(m)(2).

¹ See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² 5 U.S.C. 603(b)(3).

³ *Id.* 601(3).

⁴ *Id.* 632.

the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.⁹ Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450.¹⁰ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

Small Manufacturers: The SBA has developed definitions of small entity for manufacturers of household audio and video equipment (SIC 3651) and for radio and television broadcasting and communications equipment (SIC 3663). In each case, the definition includes all such companies employing 750 or fewer employees.

Electronic Equipment Manufacturers: The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment. Therefore, we will utilize the SBA definition of manufacturers of Radio and Television Broadcasting and Communications Equipment.¹¹ According to the SBA's regulations, a TV equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.¹² Census Bureau data indicates that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities.¹³ The Census Bureau category is very broad, and specific figures are not available as to how many of these firms are exclusive manufacturers of television equipment or how many are independently owned and operated. We conclude that there are approximately 778 small manufacturers of radio and television equipment.

Electronic Household/Consumer Equipment: The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial

use by television licensees and related businesses. Therefore, we will utilize the SBA definition applicable to manufacturers of Household Audio and Visual Equipment. According to the SBA's regulations, a household audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.¹⁴ Census Bureau data indicates that there are 410 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 386 of these firms have fewer than 500 employees and would be classified as small entities.¹⁵ The remaining 24 firms have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Furthermore, the Census Bureau category is very broad, and specific figures are not available as to how many of these firms are exclusive manufacturers of television equipment for consumers or how many are independently owned and operated. We conclude that there are approximately 386 small manufacturers of television equipment for consumer/household use.

Computer Manufacturers: The Commission has not developed a definition of small entities applicable to computer manufacturers. Therefore, we will utilize the SBA definition of Electronic Computers. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity.¹⁶ Census Bureau data indicates that there are 716 firms that manufacture electronic computers and of those, 659 have fewer than 500 employees and qualify as small entities.¹⁷ The remaining 57 firms have 500 or more employees; however, we are unable to determine how many of those have fewer than 1,000 employees and therefore also qualify as small entities under the SBA definition. We conclude that there are approximately 659 small computer manufacturers.

Small Retailers: The Commission has not developed a definition of small entities applicable to retail sellers of navigation devices. Therefore, we will

utilize the SBA definition. The 1992 Bureau of the Census data indicate: there were 9,663 U.S. firms classified as Radio, Television, and Consumer Electronic Stores (SIC 5731), and that 9,385 of these firms had \$4.999 million or less in annual receipts and 9,473 of these firms had \$7.499 million or less in annual receipts.¹⁸ Consequently, we tentatively conclude that there are approximately 9,663 such small retailers that may be affected by the decisions and rules proposed in this NPRM.

Reporting, Recordkeeping, and Other Compliance Requirements: The proposed actions may require manufacturers of DTV equipment to adhere to some labeling standards. Moreover, the proposed actions may affect the terms under which manufacturers acquire licenses to utilize certain copy protection technology in their products. We believe that the impact of any rules that might be adopted pursuant to this NPRM would be minimal. We seek comment on this.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered: The RFA, see 5 U.S.C. 603, requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; the use of performance, rather than design, standards; and an exemption from coverage of the rule, or any part thereof, for small entities.

We believe that our proposals would have the positive result of providing consumers with clear information about the capabilities of DTV equipment and promote the implementation of DTV service. We believe that labeling requirements would have a minimal impact on manufacturers and retailers and that not applying requirements adapted to all manufacturers would

⁹ 47 CFR 76.1403(b).

¹⁰ Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

¹¹ This category excludes establishments primarily engaged in the manufacturing of household audio and visual equipment which is categorized as SIC 3651. See *infra* for SIC 3651 data.

¹² 13 CFR 121.201, (SIC) Code 3663.

¹³ U.S. Dept. of Commerce, 1992 Census of Transportation, Communications and Utilities, Table 1D, (issued May 1995), SIC category 3663.

¹⁴ 13 CFR 121.201, (SIC) Code 3651.

¹⁵ U.S. Small Business Administration 1995 Economic Census Industry and Enterprise Report, Table 3, SIC Code 3651, (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

¹⁶ 13 CFR 121.201, (SIC) Code 3571.

¹⁷ U.S. Small Business Administration 1995 Economic Census Industry and Enterprise Report, Table 3, SIC Code 3571, (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

¹⁸ U.S. Small Business Administration 1992 Economic Census Industry and Enterprise Report, Table 2D, SIC 7812, (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration)(SBA 1992 Census Report). The Census data does not include a category for \$6.5 million therefore, we have reported the closest increment below and above the \$6.5 million threshold. There is a difference of 88 firms between the \$4.999 and \$7.499 million annual receipt categories. It is possible that these 88 firms could have annual receipts of \$6.5 million or less and therefore, would be classified as small businesses.

defeat the basic purpose of the requirements. Given that manufacturers would need to license copy protection technology that they incorporate in their equipment regardless of our rules, the potential impact of any rules appears to be minimal.¹⁹ We do not believe that different treatment of small and large entities with respect to their technology licensing is warranted. Any supplementary equipment that cable operators might be required to offer to subscribers is likely to be standardized and manufactured in large enough

quantities that the cost to small cable operators is unlikely to be substantial.²⁰ Moreover, cable operators are entitled to recover from subscribers the cost of supplementary equipment offered. Should commenters disagree with any of our conclusions, we welcome comments suggesting ways in which any perceived burden upon small entities could be mitigated.

Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules: None.

This NPRM contains proposed information collection(s) subject to the

Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00-10448 Filed 4-26-00; 8:45 am]

BILLING CODE 6712-01-U

¹⁹ See Notice at paras. 18-20.

²⁰ *Id.* at paras. 14, 17.