

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[REG-106486-98 and INTL-0015-91]

RIN 1545-AW33 and RIN 1545-PP78

**Guidance Regarding the Treatment of Certain Contingent Payment Debt Instruments With One or More Payments That Are Denominated in, or Determined by Reference to, a Nonfunctional Currency; Correction****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Correction to notice of proposed rulemaking; notice of public hearing; and withdrawal of previous proposed regulations section.

**SUMMARY:** This document contains corrections to proposed regulations (Reg-106486-98; INTL-0015-91) that were published in the **Federal Register** on August 29, 2003 (68 FR 51944) regarding the treatment of contingent payment debt instruments for which one or more payments are denominated in, or determined by reference to, a currency other than the taxpayer's functional currency.

**FOR FURTHER INFORMATION CONTACT:** Milton Cahn at (202) 622-3860 (not a toll free number).

**SUPPLEMENTARY INFORMATION:****Background**

The proposed regulations that are the subject of these corrections are under Section 1275 of the Internal Revenue Code.

**Need for Correction**

As published, the notice of proposed rulemaking; notice of public hearing; and withdrawal of previous proposed regulations (REG-106486-98; INTL-0015-91), contains errors that may prove to be misleading and are in need of clarification.

**Correction of Publication**

Accordingly, the publication of the notice of proposed rulemaking, notice of public hearing; and withdrawal of previous proposed regulations (REG-106486-98; INTL-0015-91), which was the subject of FR Doc. 03-21827, is corrected as follows:

On page 51944, column 2, in the preamble under the subject heading **FOR FURTHER INFORMATION CONTACT**, line 2, the language "Milton Cahn at (202) 622-

3870;" is corrected to read "Milton Cahn at (202) 622-3860;".

**Cynthia E. Grigsby,**

*Acting Chief, Publication and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. 03-29728 Filed 11-26-03; 8:45 am]

BILLING CODE 4830-01-P

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Parts 15 and 76**

[CS Docket No. 97-80; PP Docket No. 00-67; FCC 03-225]

**Commercial Availability of Navigation Devices and Compatibility Between Cable Systems and Consumer Electronics Equipment****AGENCY:** Federal Communications Commission.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this document, the Commission seeks comment on the mechanisms and standards by which new connectors and associated content protection technologies can be approved for use with unidirectional digital cable products. The Second Further Notice of Proposed Rulemaking also seeks comment on: the potential extension of digital cable system transmission requirements to digital cable systems with an activated channel capacity of 550 MHz or higher; 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 whether the Commission should ban or permit the down-resolution of non-broadcast MVPD programming. Potential Commission action in these areas is intended to further the commercial availability of unidirectional digital cable products and other navigation devices pursuant to section 629 of the Communications Act.

**DATES:** Comments due January 14, 2004; reply comments are due February 13, 2004.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. For further filing information, see **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Susan Mort, 202-418-1043 or [Susan.Mort@fcc.gov](mailto:Susan.Mort@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Second Further Notice of Proposed Rulemaking portion of the Commission's Second Report and Order and Second Further Notice of Proposed Rulemaking ("Second FNPRM"), FCC 03-225, adopted September 10, 2003; released October 9, 2003. The full text of the Commission's Second FNPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257) at its headquarters, 445 12th Street, SW, Washington, DC 20554, or may be purchased from the Commission's copy contractor, Qualex International, (202) 863-2893, Portals II, Room CY-B402, 445 12th St., SW, Washington, DC 20554, or may be reviewed via Internet at <http://www.fcc.gov/mb>.

**Synopsis of the Second Further Notice of Proposed Rulemaking**

1. Although the Commission believes that its adoption of the technical, labeling and encoding rules set forth herein will further the digital transition and facilitate the wider availability of digital cable services to consumers, further comment is needed on several issues. As an initial matter, we seek comment on whether the transmission standards applicable to digital cable systems with an activated channel capacity of 750 MHz or greater should be extended to digital cable systems with an activated channel capacity of 550 MHz or greater. In particular, we seek comment on the potential cost impact on such cable systems and whether waivers or other relief mechanisms are appropriate for cable systems that might experience economic hardship as a result of these obligations.

2. With respect to the issue of consumer information disclosures, we seek comment on whether the Commission should require consumer electronics manufacturers to provide consumers with pre-sale information regarding the functionalities of unidirectional digital cable televisions. For example, we seek comment on whether it is appropriate to require consumer electronics manufacturers to inform potential purchasers of unidirectional digital cable televisions of: (1) The need to use a set-top box in order to receive interactive services, (2) the necessity to obtain a POD from their cable operator, or (3) any other relevant information disclosing the functionalities or limitations of these devices. If so, we seek comment on the appropriate mechanism to communicate this information to consumers, including but not limited to point of sale marketing materials to be provided to retailers, more informative labeling

on device packaging, the use of Internet web sites, or any other appropriate format designed to reach consumers before they make purchasing decisions.

3. Another area in which we seek additional comment relates to the down-resolution of non-broadcast MVPD programming. As discussed above, content providers assert that down-resolution is a necessary tool to incite the retirement of component analog outputs. Despite this assertion, the cable and consumer electronics industries have been unable to reach agreement on whether down-resolution was an appropriate content protection tool. We seek comment on whether the Commission should prohibit the activation by MVPDs of down-resolution for non-broadcast MVPD programming content. If so, we seek comment on the potential impact of such a ban on the availability of high value digital content to consumers. In the alternative, if the Commission were to permit the use of down-resolution in this manner, we seek comment on the potential impact on consumers with DTV equipment that only has component analog outputs. In particular, we seek comment on the number of consumers that might be affected and on the number of sets to be produced in the future with only analog outputs. Finally, we seek comment on the potential impact of down-resolution upon consumers who own DTV equipment with both digital and analog outputs.

4. As discussed above, we are concerned that because CableLabs is not a standards-setting body, its proposed role as the sole initial arbiter of outputs and associated content protection technologies to be used in unidirectional digital cable products could affect innovation and interoperability. This Second Further Notice seeks comment on whether standards and procedures should be adopted for the approval of new connectors or content protection technologies to be used with unidirectional digital cable televisions and products. If so, we seek comment on whether these standards and procedures should encompass other related consumer electronics equipment, including non-cable compatible DTV receivers. We also seek comment on the various types of content protection technologies that should be considered as a part of this process, including but not limited to digital rights management, wireless and encryption-based technologies.

5. With respect to the particular standards and procedures to be employed, we seek comment on

whether objective criteria should be used to evaluate new connectors and content protection technologies and, if so, what specific criteria should be used. For example, Microsoft Corporation and Hewlett Packard Corporation have submitted a detailed proposal suggesting functional requirements that could be used to evaluate digital rights management technologies for use with digital cable ready products. We seek comment on this proposal, as well as other proposals relying on objective criteria, and any new proposals that commenters may submit to the Commission.

6. We also seek comment on whether CableLabs is the appropriate entity to make initial approval determinations, or whether another entity should have decision-making authority. In particular, we seek comment on whether the Commission, a qualified third party, or an independent entity representing various industry and consumer interests should make approval determinations.

7. As to the issue of how approved connectors or content protection technologies may be revoked should their security be compromised, we seek comment on the appropriate standard for revocation. Specifically, we seek comment on whether revocation is appropriate where a connector or content protection technology is perceived to be insecure, or whether the appropriate standard is where security has been compromised in a significant, widespread manner. Once a connector or content protection technology has been revoked, we seek comment on the appropriate mechanism by which revocation should be effectuated. For example, should revoked connectors or content protection technologies be eliminated on a going-forward basis, while preserving their functionality for existing devices? We also seek comment on whether there are technological or other means of revoking connectors or content protection technologies while preserving the functionality of consumer electronics devices.

8. *Authority.* This Second FNPRM is issued pursuant to authority contained in sections 1, 4(i) and (j), 303, 403, 601, 624A and 629 of the Communications Act of 1934, as amended.

9. *Ex Parte Rules—Non-Restricted Proceeding.* This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

10. *Accessibility Information.* Accessible formats of this Second

Further Notice (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418-7426, TTY (202) 418-7365, or at [Brian.Millin@fcc.gov](mailto:Brian.Millin@fcc.gov).

11. *Comment Information.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before January 14, 2004, and reply comments on or before February 13, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

12. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail)

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 part of 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

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, 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 Second FNPRM.

23. The Communications Act, as amended, also contains a size standard for 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." The Commission has determined that there are 68,500,000 subscribers in the United States. Therefore, an operator serving fewer than 685,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450. 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.

24. *Direct Broadcast Satellite ("DBS") Service.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small

entity is one with \$12.5 million or less in annual receipts. There are four licensees of DBS services under part 100 of the Commission's rules. Three of those licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge, despite the absence of specific data on this point, that there are entrants in this field that may not yet have generated \$12.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

25. *Home Satellite Dish ("HSD") Service.* Because HSD provides subscription services, HSD falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with \$12.5 million or less in annual receipts. The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, 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.

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

27. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues of less than \$40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, which includes all such companies generating \$12.5 million or less in annual receipts. This definition includes multipoint distribution services, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of \$12.5 million annually. Therefore, for purposes of the IRFA, we find there are approximately 850 small MDS providers as defined by the SBA and the Commission's auction rules.

28. The SBA definition of small entities for cable and other program distribution services, which includes such companies generating \$12.5 million in annual receipts, seems reasonably applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

29. Additionally, the auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the

preceding calendar years. These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

30. In sum, there are approximately a total of 2,000 MDS/MMDS/LMDS stations currently licensed. Of the approximate total of 2,000 stations, we estimate that there are 1,595 MDS/MMDS/LMDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

31. *Satellite Master Antenna Television ("SMATV") Systems.* The SBA definition of small entities for cable and other program distribution services includes SMATV services and, thus, small entities are defined as all such companies generating \$12.5 million or less in annual receipts. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of July 2001. The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

32. *Open Video Systems ("OVS").* Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with \$ 12.5 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Affiliates of

Residential Communications Network, Inc. ("RCN") received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

33. *Electronics Equipment Manufacturers.* Rules adopted in this proceeding could apply to manufacturers of DTV receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment as well as radio and television broadcasting and wireless communications equipment. These categories both include all such companies employing 750 or fewer employees. 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 definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 12 establishments 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. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or

fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 65 establishments 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. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

34. *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 manufacturing. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity. Census Bureau data indicates that there are 563 firms that manufacture electronic computers and of those, 544 have fewer than 1,000 employees and qualify as small entities. The remaining 19 firms have 1,000 or more employees. We conclude that there are approximately 544 small computer manufacturers.

35. *Description of Projected Reporting, Recordkeeping and other Compliance Requirements.* At this time, we do not expect that the proposed rules would impose any additional reporting or recordkeeping requirements. However, compliance with the rules, if they are adopted, may require consumer electronics manufacturers to seek approval for new device connectors and associated content protection technologies to be used in conjunction with unidirectional digital cable products. These requirements could have an impact on consumer electronics manufacturers, including small entities. We seek comment on the possible burden these requirements would place on small entities. Also, we seek comment on whether a special approach toward any possible compliance burdens on small entities might be appropriate.

36. *Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has

considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

37. As indicated above, the Second FNPRM seeks comment on whether the Commission should adopt rules establishing an approval mechanism for new connectors and associated content protection technologies to be used with unidirectional digital cable products. Consumer electronics manufacturers may be required to seek such approval prior to implementing new connectors and associated content protection technologies in unidirectional digital cable products. We welcome comment on modifications of this proposal to lessen any potential impact on small entities, while still remaining consistent with our policy goals.

38. The Second FNPRM also seeks comment on the potential applicability of certain transmission standards for digital cable systems to systems with an activated channel capacity of 550 MHz or greater. Since such cable systems are often owned by small cable operators, we seek comment on the potential impact of this proposed rule upon small cable operators and whether some relief mechanism, such as waivers, would help alleviate any potential impact on small entities.

39. With respect to the proposed requirement for consumer electronics manufacturers to provide consumers with pre-sale information regarding the functionalities of unidirectional digital cable televisions, we seek comment on how this might affect small manufacturers. We also seek comment on whether the potential economic burden on small entities might be lessened, while still generally retaining the requirement or the intended effect of the requirements.

40. Finally, the Second FNPRM seeks comment on whether to permit or ban the down-resolution by MVPDs of non-broadcast MVPD programming. We believe this requirement would largely impact the DBS industry, which is primarily composed of large entities. To the extent that small entities might be adversely affected by this potential requirement, we welcome comments on

possible small entity-related alternatives.

41. *Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals.* None.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 03-2930, MB Docket No. 03-210, RM-10791]

#### Digital Television Broadcast Service; Elmira, NY

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; correction.

**SUMMARY:** The Federal Communications Commission published in the **Federal Register** of October 7, 2003, (68 FR 57861), a document to change the DTV Table of Allotments to reflect the substitution of DTV channel 33 for DTV channel 2 at Elmira, New York. This document contained incorrect dates.

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

#### Correction

In the **Federal Register** of October 7, 2003, on page 57861, correct the reply comment date to read: December 10, 2003.

Dated: November 20, 2003.  
Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Division, Media Bureau.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 03-3561, MB Docket No. 03-233, RM-10699]

#### Digital Television Broadcast Service; Pocatello, ID

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Compass Communications of Idaho,

Inc., licensee of station KFXP-TV, NTSC channel 31-, proposing the allotment of DTV channel 38 at Pocatello. DTV Channel 38 can be allotted to Pocatello, Idaho, at reference coordinates 42-55-15 N. and 112-20-44 W.

**DATES:** Comments must be filed on or before January 5, 2004, and reply comments on or before January 20, 2004.

**ADDRESSES:** The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97-113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners.

Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) 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, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lee G. Petro, Fletcher, Heald & Hildreth, PLC, 11th Floor, 1300 North 17th Street, Arlington, Virginia 22209-3801 (Counsel for Compass Communications of Idaho, Inc.).

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03-233, adopted November 6, 2003, and released November 14, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC