Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Reallocation of Television Channels 60-69, the 746-806 MHz Band	)	ET Docket No. 97-157
	)	

REPORT AND ORDER

Adopted: December 31, 1997 Released: January 6, 1998

By the Commission:

INTRODUCTION

1. By this action, we are reallocating the 746-806 MHz band, currently comprising television (TV) channels 60-69. As mandated by the Balanced Budget Act of 1997 (Budget Act),[1] we are allocating 24 megahertz at 764-776 MHz and 794-806 MHz, on a primary basis to the fixed and mobile services, and designating this spectrum for public safety use.[2] This allocation will help meet the need of public safety to ensure interoperable communications among various public safety organizations, provide for growth of existing systems, and accommodate new types of services that will strengthen and enhance public safety. As further mandated by the Budget Act, we are allocating the remaining 36 megahertz at 746-764 MHz and 776-794 MHz on a primary basis to the fixed, mobile, and new broadcasting services for commercial use.[3] Licenses in this 36 megahertz of spectrum will be assigned through competitive bidding in accordance with procedures that will be determined in a later proceeding. This 36 megahertz of spectrum can be used to make new technologies and services available to the American public. These proposals are an outgrowth of our digital television (DTV) transition plan. During the DTV transition, channels 60-69 will continue to be used for analog and digital TV broadcasting.[4] We are establishing policies for

[1] *See* Pub. L.No. 105-33, 111 Stat. 251 § 3004 (1997).

[2] *See* infra ¶ 12.

[3] *See* Budget Act § 3004 (adding new § 337 of the Communications Act)

[4] The DTV transition will end December 31, 2006, but may be extended in some markets for the reasons enumerated in the Budget Act § 3003.

The Commission shall extend the date [of the DTV transition period] for any station that

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the protection of such stations during the DTV transition. We are also providing for continued use of TV channels 60-69 on a secondary basis for low power TV and translator stations until the end of the DTV transition period.

BACKGROUND

2. In the *Notice of Proposed Rule Making (Notice)* in this proceeding we proposed to reallocate the 746-806 MHz band, currently comprising TV channels 60-69.[5] We proposed to allocate 24 megahertz, at 764-776 MHz and 794-806 MHz (channels 63, 64, 68, and 69) to the fixed and mobile services, for the exclusive use of public safety services. We proposed to allocate the remaining 36 megahertz, at 746-764 MHz and 776-794 MHz (channels 60-62 and 65-67) to the fixed, mobile, and broadcasting services. We stated in the *Notice* that we anticipated that licenses in this 36 megahertz of spectrum would be assigned through competitive bidding. We also inquired into protection of TV stations on channels 60-69 from interference by new licensees during the DTV transition period, but deferred specific interference protection standards to a separate proceeding on service rules for the 746-806 MHz band. We reaffirmed the secondary status of Low Power TV (LPTV) and TV translators in the entire 746-806 MHz band, and inquired whether we should take any other measures to accommodate LPTV in the band.

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requests such extension in any television market if the Commission finds that--

(i) one or more of the stations in such market that are licensed to or affiliated with one of the four largest national television networks are not broadcasting a digital television service signal, and the Commission finds that each such station has exercised due diligence and satisfies the conditions for an extension of the Commission's applicable construction deadlines for digital television service in that market;

(ii) digital-to-analog converter technology is not generally available in such market; or

(iii) in any market in which an extension is not available under clause (i) or (ii), 15 percent or more of the televisions households in such market--

(I) do not subscribe to a multichannel video programming distributor (as defined in section 602) that carries one of the digital television service programming channels of each of the television stations broadcasting such a channel in such market; and

(II) do not have either--

(a) at least one television receiver capable of receiving the digital television service of the television stations licensed in such market; or

(b) at least one television receiver of analog television service signals equipped with digital-to-analog converter technology capable of receiving the digital television service signals of the television stations licensed in such market.

Budget Act § 3003.

[5] *In re Reallocation of Television Channels 60-69, the 746-806 MHz Band*, ET Docket No. 97-157, *Notice of Proposed Rule Making*, 12 FCC Rcd. 14141 (1997)(hereafter *Notice*).

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3. These proposals were in part an outgrowth of the *Sixth Report and Order* in our *DTV Proceeding*.[6] In that proceeding, we adopted a Table of Allotments for DTV. This Table provides all eligible broadcasters with a second 6 MHz channel to be used for DTV service during the transition from analog to digital TV service. The DTV Table also, *inter alia*, facilitates the early recovery of channels 60-69 by minimizing the use of these channels for DTV purposes. In the *Sixth Report and Order*, we stated our intention to reallocate these channels to include other services. At the same time, we reaffirmed the secondary status of LPTV and TV translators on channels 60-69.

4. Our proposals in the *Notice* also responded to the *Final Report* of the Public Safety Wireless Advisory Committee (PSWAC), which was chartered by the Commission and the National Telecommunications and Information Administration (NTIA) to study public safety requirements. In the *Final Report*, the PSWAC determined that 24 or 25 megahertz of new spectrum would be needed to satisfy the short-term needs of the public safety community for more communications and new capabilities and technologies.[7]

5. Subsequent to adoption of the *Notice*, the President on August 5, 1997, signed the Budget Act into law. In pertinent part, the Budget Act requires the Commission, not later than January 1, 1998, to reallocate 24 megahertz of spectrum in the 746-806 MHz band for public safety services. The Budget Act further requires us, not later than January 1, 1998, to reallocate the remaining 36 megahertz in the band for commercial use to be assigned by competitive bidding, which will occur after January 1, 2001.[8] Finally, the Budget Act requires us to seek to assure that each qualifying low-power TV (LPTV) station is assigned a frequency below 746 MHz to permit its continued operation.[9] We will consider LPTV assignments in a future proceeding.

6. We received 67 comments and 17 reply comments to the *Notice*. Commenters were divided on most of the issues presented in the *Notice* and suggested alternatives in some cases.

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[6] *In re Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service (DTV Proceeding)*, MM Docket No. 87-268, *Sixth Report and Order*, 12 FCC Rcd 14588 (1997).

[7] *See* PSWAC, *Final Report of the Public Safety Wireless Advisory Committee to the Federal Communications Commission, Reed E. Hundt, Chairman, and the National Telecommunications and Information Administration, Larry Irving, Assistant Secretary of Commerce for Communications and Information (Final Report)*(1996)(this report is not numbered), at 7.

[8] Budget Act, § 3004 (adding new § 337(a) and (b) of the Communications Act of 1934, as amended).

[9] *See id.* (adding new § 337(e) of the Communications Act). This section establishes criteria for qualifying LPTV stations.

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DISCUSSION

I. Allocation of the 746-806 MHz Band for Use by Public Safety.

7. In the *Notice*, we observed that increased dependence upon radio communications by public safety agencies has led to a shortage of spectrum available for public safety communications. We agreed with the PSWAC that there is a critical need for more public safety spectrum in the United States, and proposed to allocate 24 megahertz of spectrum in the 746-806 MHz band to the fixed and mobile services for the exclusive use of public safety services.[10]

8. We specifically proposed to allocate the spectrum at TV channels 63, 64, 68, and 69 (the 764-776 MHz and 794-806 MHz bands) for public safety. Because the 794-806 MHz band is subjacent to existing public safety operations in the 806-824 MHz band, it holds the best potential for expansion of and interoperability with existing systems. The close proximity to existing spectrum used for public safety could also reduce the difficulty and cost of designing equipment. Further, most public safety communications systems require some minimum separation between the receive and transmit frequencies, for technical reasons. We tentatively found that a separation of 30 megahertz is adequate for public safety systems.

9. *Comments.* Commenters representing public safety agencies, radio equipment manufacturers, and many states, counties, and municipalities strongly supported reallocating 24 megahertz of channels 60-69 for public safety use.[11] For example, the Association of Public-Safety Communications Officials-International (APCO) states that Congress, the Administration, and the Commission itself have recognized the substantial need to reallocate additional spectrum to public safety. APCO stresses that the reallocation of 24 megahertz from the 746-806 MHz band will address a significant portion of public safety spectrum needs.[12] The State of California (California) applauds the speed with which we have moved

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[10] *See Notice* at ¶ 9.

[11] *See* Association of Public-Safety Communications Officials-International (APCO) Comments at 2. *See also* State of California (California) Comments at 4; Department of California Highway Patrol (CHiP) at 2, Cellular Telecommunications Industry Association (CTIA) Comments at 3; Coalition of American Railroads (CAR) Comments at 2; Compu-Dawn, Inc. (Compu-Dawn) Comments at 1; Ericsson Inc. (Ericsson) Comments at 4; State of Florida (Florida) Comments at 1; International Municipal Signal Association/International Association of Fire Chiefs, Inc. (IMSA/IAFC) Comments at 1; Land Mobile Communications Council (LMCC) Comments at 1; City of Long Beach, CA (Long Beach) Comments at 2; Motorola Comments at 1; National League of Cities, *et al.* (NLC) at 1; National Public Safety Telecommunications Council (NPSTC) Comments at 3; NTIA Comments at 2; Rural Telecommunications Group (RTG) Comments at 1; South Carolina Budget and Control Board, *et al.* (South Carolina) Comments at 3; Cities of Dallas, Austin, Denton, and Plano (Texas Cities) Comments at 1; UTC Comments at 2.

[12] *See* APCO Comments at 2.

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to satisfy public safety spectrum needs, citing its own report which identifies several spectrum related deficiencies in its ability to meet the needs of state agencies.[13] The International Municipal Signal Association and the International Association of Fire Chiefs (IMSA/IAFC) state that the reallocation of spectrum for public safety use is sound public policy.[14] The Land Mobile Communications Council (LMCC) concurs with our proposal to allocate spectrum for public safety services, stating that additional public safety spectrum would help mitigate current spectrum overcrowding, enhance interoperability among public safety agencies, and allow the development of cost effective advanced communications systems.[15] Motorola reminds us that it has strongly supported reallocation of the 746-806 MHz band for public safety throughout the *DTV Proceeding*, and reaffirms its position that such a reallocation would greatly benefit the public interest.[16] In its support for our proposal, the National Public Safety Telecommunications Council (NPSTC) states that public safety agencies cannot accomplish their mission to protect life and property without sufficient spectrum.[17] The Cities of Dallas, Austin, Denton, and Plano (Texas Cities) assert that the Commission's proposal represents an excellent plan that will result in rapid deployment of critically needed public safety spectrum.[18]

10. The Association for Maximum Service Television and the National Assocation of Broadcasters (MSTV), in joint comments, disagree with our proposal to allocate channels 63, 64, 68, and 69 to public safety and recommend allocating channels 66-69 as an alternative. MSTV points out that this retains the benefit of having the new public safety band subjacent to the current land mobile band at 806-824 MHz. At the same time, this band plan would ensure that there is only one point in the band, at 782 MHz, where adjacent-channel interference with broadcasting licensees on channel 65 would be encountered. By contrast, our proposed allocation would create three points where adjacent channel interference between broadcasting and public safety operations would be possible -- 764 MHz, 776 MHz, and 794 MHz. MSTV also points out that some public safety systems operate with as little as three megahertz of transmit/receive separation, and its alternative suggestion would provide up to 12 megahertz transmit/receive separations.[19]

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[13] *See* California Comments at 2.

[14] *See* IMSA/IAFC Comments at 4.

[15] *See* LMCC Comments at 5-6.

[16] *See* Motorola Comments at 2.

[17] *See* NPSTC Comments at 2.

[18] *See* Texas Cities Comments at 1.

[19] *See* MSTV Comments at 2-6. *See also* ALTV Comments at 3; Brooks Broadcasting, LLC Reply Comments at 3.

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11. Several commenters support our proposal to allocate channels 63, 64, 68, and 69 for public safety use.[20] Motorola argues that the 30 megahertz transmit/receive separation provided by our proposal is critical to public safety communications. It states that smaller separations, especially at frequencies as high as the 746-806 MHz band, require larger, heavier, and more expensive filters in radios, to the point where mobile repeater operations and handheld transceivers will be prohibitively expensive and heavy.[21] IMSA/IAFC concurs, noting that the proximity of channels 68-69 to currently allocated public safety bands makes our proposal well suited to public safety needs.[22] NPSTC also points out that 30 megahertz separation is needed for repeater station operations, which are a large part of public safety operations.[23]

12. *Decision.* The Budget Act requires the allocation of 24 megahertz of spectrum for public safety from TV channels 60-69, in consultation with the Secretary of Commerce and the Attorney General, not later than January 1, 1998.[24] There is inadequate spectrum to meet the needs of many public safety organizations, particularly in major metropolitan regions. Public safety requires spectrum to facilitate interoperability and for new types of communications capabilities that will strengthen and enhance public safety. Therefore, as required by the Budget Act, after consulting with and considering the views of the Secretary of Commerce[25] and the Attorney General,[26] we are allocating 24 MHz of spectrum to the fixed and mobile services on a primary basis for public safety services.[27] We have initiated a

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[20] *See* APCO Comments at 4-5; California Comments at 8-9; Ericsson Comments at 5; Florida Comments at 3; IMSA/IAFC Comments at 6-7; Motorola Comments at 3-6, Reply Comments at 6-8. *See also* Ericsson Comments at 3; Florida Comments at 2; NPSTC Comments at 4-5; South Carolina Comments at 3; APCO Reply Comments at 3.

[21] *See* Motorola Comments at 3-6, Reply Comments at 6-8.

[22] *See* IMSA/IAFC Comments at 6-7.

[23] *See* NPSTC Comments at 4.

[24] *See* Budget Act § 3004 (adding new § 337 of the Communications Act).

[25] *See* NTIA Comments (articulating the views of the Department of Commerce).

[26] *See* Letter from Janet Reno, Attorney General, to the Commission (Dec. 3, 1997).

[27] The Budget Act provides that this spectrum is to be allocated "for public safety services according to the terms and conditions established by the Commission, in consultation with the Secretary of Commerce and the Attorney General." Budget Act § 3004(a)(1). Section 3004 of the Budget Act defines public safety services as

> services--
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> (A) the sole or principal purpose of which is to protect the safety of life, health, or property;
>
> (B) that are provided--
>
> (i) by State or local government entities; or

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separate proceeding to establish the rules that will govern how this spectrum will be used by public safety agencies.[28]

13. We will not adopt MSTV's proposal to allocate channels 66-69 for public safety instead of channels 63, 64, 68, and 69. It is not clear that this alternative proposal would reduce adjacent channel interference. Because we are making these channels available for fixed and mobile services, potential for adjacent channel interference to arise from these users remains. In any event, properly crafted technical rules will minimize adjacent channel interference. More importantly, MSTV's proposal would have a severe impact on public safety radio communications equipment. We anticipate that much of the public safety communications in the 746-806 MHz band will be two-way. Two-way radios require filtering to permit simultaneous transmission and reception. Small separations between transmit and receive frequencies increase the size, weight, power requirements, and cost of these radios. The mobile nature of public safety communications requires that these factors be minimized to the extent possible. Manufacturers of radio equipment have expressed confidence in their ability to design two-way public safety radios with transmit/receive separations of 30 megahertz. On the other hand, shorter separations, such as the 12 megahertz suggested by MSTV, would significantly increase the cost and weight of public safety radio equipment. MSTV correctly points out that transmit/receive separations of five megahertz and even three megahertz are used in some public safety bands, but we note that these separations are used in the 450-512 MHz band.[29] Current public safety systems in the 800 MHz band, near the spectrum at issue here, use transmit/receive separations of 45 megahertz. Public safety and manufacturing commenters assert that reduced separations will require more complex, larger, and more expensive radios.[30] Further, the 30 megahertz separation proposed in the *Notice* will allow the design of public safety equipment more compatible with, and more easily integrated into, current public safety systems in the 800 MHz band.[31] Finally, Aeronautical Radio, Inc.

(ii) by nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and

(C) that are not made commercially available to the public by the provider.

Budget Act § 3004(f)(1).

[28] *See In re the Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010; Establishment of Rules and Requirements of Priority Access Service (Public Safety Proceeding)*, WT Docket No. 96-86, *Second Notice of Proposed Rule Making*, FCC 97-373, released October 24, 1997.

[29] *See* MSTV Comments at 6.

[30] *See* Motorola Reply Comments at 7. *See also* NPSTC Comments at 4, Reply Comments at 4.

[31] *See* APCO, Reply Comments at 3.

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(ARINC) warns of possible interference that could be caused to the Global Navigation Satellite Service by the second harmonic of transmitters in channels 60-69.[32] Because the Global Positioning System (GPS) operates at the second harmonic of frequencies in channels 65-67, allocating channels 63, 64, 68, and 69 to public safety ensures that public safety transmitters will not interfere with the GPS.[33] On balance, we believe that channels 63, 64, 68 and 69 are most appropriate for public safety use, and therefore, we are reallocating the 764-776 MHz and 794-806 MHz bands to the fixed and mobile services for this purpose.

II. Allocation of the 746-806 MHz Band for New Services.

14. The Budget Act mandates that the remaining 36 megahertz in the 746-806 MHz band be allocated to commercial services, for assignment by competitive bidding.[34] In the *Notice*, we proposed to allocate the remaining 36 MHz in the band to the fixed, mobile, and broadcasting services, anticipating that licenses in this portion of the band would be assigned by competitive bidding. It was our intention to provide the broadest allocation possible, consistent with international allocations, and to allow market forces to determine the best use for the spectrum.[35] Taking into account our proposal to allocate channels 63, 64, 68, and 69 to public safety, we proposed to reallocate channels 60-62 and 65-67 to the fixed and mobile services, and to retain the existing broadcast allocation. We observe that, subsequent to the Notice, the Budget Act granted the Commission authority to award licenses for broadcasting through competitive bidding.[36] Internationally, the band is allocated on a primary basis to the broadcasting service and on a secondary basis to the fixed and mobile services in Region 2.[37] A footnote to the International Table of Frequency Allocations elevates the allocation to the fixed and mobile services to primary status in the United States, Mexico, and several other Region 2 countries. This spectrum is located near spectrum now used for cellular telephone and other land mobile services, and it could be used to expand the capacities of these services.

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[32] *See* ARINC Comments at 2-3. Radio transmitters produce signals of decreasing power on integer multiples (harmonics) of their operating frequency. Hence, a transmitter operating on 770 MHz will produce signals on 1540 MHz, 2310 MHz, 3080 MHz, etc. Filtering is required to suppress undesired harmonic transmissions and thus avoid interference to services operating on harmonic frequencies.

[33] The Russian system GLONASS operates on the second harmonic of frequencies in channels 68 and 69. We address the need for protection of GLONASS in our service rules proceeding.

[34] *See* Budget Act § 3004 (adding new § 337 of the Communications Act).

[35] *See Notice* at ¶¶ 13-15.

[36] *See* Budget Act § 3002(a).

[37] Region 2 is one of the three regions established by the International Telecommunication Union for international allocation purposes. Region 2 consists of North America; South America; portions of the North Atlantic, South Atlantic, and South Pacific Oceans adjacent to these continents; the Caribbean Sea; Greenland; and most of the North Pacific Ocean. *See* 47 C.F.R. § 2.104.

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We stated that other possible uses for this spectrum could include wireless local loop telephone service, video and multimedia applications, wireless cable services, and industrial communications services. Under our proposal, parties would also be able to obtain licenses in this spectrum to offer new commercial broadcasting services on a primary basis.

15. Several parties oppose our proposal to permit broadcasting in the 36 megahertz of commercial spectrum. For example, NPSTC notes that a full power (one megawatt) DTV transmitter would cause destructive interference to adjacent spectrum used for lower-powered land mobile systems.[38] Similarly, Motorola states that broadcasting and two-way, land mobile applications are fundamentally technically incompatible and will suffer insurmountable mutual interference problems. It further observes that our proposed allocation is ideal for two-way operations, providing a consistent 30 megahertz transmit/receive separation throughout the band. If a broadcasting licensee were to purchase a six megahertz channel, it would "orphan" the corresponding six megahertz channel, which would be paired in a two-way system.[39] In response, MSTV contends that a flexible allocation permitting broadcasting in the band is appropriate, and that technical rules can minimize interference.[40] The Community Broadcasting Association (CBA) also argues that there is no reason to preclude low power broadcasters from competing for non-public safety spectrum in the 746-806 MHz band.[41]

16. Some commenters recommend alternate or additional uses for the 746-806 MHz band, especially the commercial portion of the band. One commenter, Final Analysis, Inc. (Final Analysis), a satellite telecommunications system operator, requests that we allocate 21 megahertz in the band to non-voice, non-geostationary satellites (Little LEOs), pointing to studies showing a need for this much additional spectrum for Little LEOs.[42] The Coalition of America's Railroads (CAR) recommends that we allocate spectrum to private radio services, and asserts that auctions are an inappropriate method for allocating and licensing spectrum in the private radio services. CAR notes that the Commission has recognized that railroads and other industrial licensees use radio services for functions that are essential to the public safety and welfare. CAR goes on to state that these private radio services have lost spectrum to Personal Communications Services and the Mobile-Satellite Service, and that there is now severe crowding in the bands allocated to industrial communications.[43]

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[38] *See* NPSTC Comments at 5.

[39] *See* Motorola Comments at 8-9. *See also* LMCC Comments at 7-8; PCIA Comments at 3-6, 8.

[40] *See* MSTV Reply Comments at 2-4.

[41] *See* CBA Reply Comments at 2-3.

[42] *See* Final Analysis Comments at 1-2.

[43] *See* CAR Comments at 2-5. *See also* PCIA Comments at 8; American Petroleum Institute Reply Comments at 11-13.

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17. *Decision.* The Budget Act requires that we allocate the remaining 36 megahertz of spectrum from channels 60-69 for commercial services that will be assigned by competitive bidding.[44] We believe that an allocation to fixed, mobile and broadcasting is appropriate and consistent with international allocations. Therefore, we are allocating the 746-764 MHz and 776-794 MHz bands to these services on a co-primary basis. Such an allocation will serve the public interest by allowing the broadest range of services in the commercial portions of the 746-806 MHz band. Congress did not, in the Budget Act, define the term commercial services, but we believe that Congress intended to include commercial broadcasting in commercial services, meaning services operated on a for profit basis.

18. We reject the argument that broadcasting should not retain an allocation in this spectrum after the DTV transition. Commenters generally agreed that including full power broadcasting in this spectrum is likely to cause interference problems with other commercial applications, especially low-power mobile applications. We recognize that technical challenges are involved in sharing spectrum between full power broadcasting and land mobile services. However, we plan to address sharing issues in our service rules proceeding, and are not persuaded that such sharing is not feasible.[45] In that proceeding we will specifically address the issue of power disparities among users that NPSTC, Motorola, and others have raised in this docket. We therefore will include broadcasting within the allocated uses for this spectrum. At the same time, we wish to make it clear that analog TV and DTV operations not licensed by competitive bidding as provided by the Budget Act will still be required to vacate this spectrum in accordance with the DTV transition plan.[46] Finally, we find that this allocation will not deter investment in new communications services or systems, because the 746-806 MHz band is highly desirable spectrum for fixed, mobile, and broadcasting operations, any of which are likely to attract investment interest.

19. We do not believe it is feasible or appropriate to allocate some portion of this spectrum to the mobile satellite service for use by Little LEOs, as advocated by Final Analysis. This spectrum is not allocated internationally to satellite services in any part of the world. Thus, any satellite allocation we might make in the band would be in derogation of the international table of allocations, and would cause substantial international coordination problems. Little LEOs tend to be international systems, because their orbits cover all or large parts of the Earth's surface, and thus an allocation of this spectrum for Little LEOs would not be appropriate at this time.

20. We also decline to allocate spectrum in the band exclusively to the private

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[44] *See* Budget Act § 3004 (adding new § 337 of the Communications Act).

[45] It is possible, for example, that a licensee could elect not to operate full-power TV stations, but to provide service using lower power than traditional full-power TV. We also note that TV broadcasting and land mobile services currently share spectrum in the 470-512 MHz band.

[46] *See* Budget Act §§ 3003-3004.

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radio services. The Budget Act requires that we assign this portion of the band for commercial use by auction. Private organizations or industry groups, however, will have the opportunity to seek the desired spectrum by participating in the auction.

III. Other Issues Affecting the 746-806 MHz Band.

21. *DTV Transition and Protection of TV Services.* In the *Notice* we explained that under our DTV transition plan certain analog TV and DTV stations will operate on TV channels 60-69 until the end of the DTV transition period. We stated that it will be necessary to protect these operations against interference from any new services throughout the DTV transition period. We indicated that we would propose specific interference protection standards in a future proceeding that will address licensing and service rules.[47]

22. *Comments.* Several parties filed comments objecting generally to the DTV transition plan and the allocation of channels 60-69 to other services.[48] Broadcasters argue that we should retain TV channels 60-69 to provide spectrum for TV licensees who may encounter difficulties with the transition from analog TV to DTV, and to provide a "safe haven" into which displaced LPTV and TV translator licensees could move during the DTV transition period.[49] These commenters agree that such TV and LPTV licensees could be relocated into the core DTV spectrum at the end of the DTV transition period, whereupon we could reallocate channels 60-69 to other purposes.[50] Broadcasters argue that we must strictly enforce protection of analog TV and DTV operations in the 746-806 MHz band during the DTV transition. The Association of America's Public Television Stations and the Public Broadcasting Service (APTS/PBS) state that without vigilant protection of TV stations during the DTV transition, the public will lose valuable television service, which would undermine the long-standing commitment of the Congress and the Commission to make over-the-air television service available to all Americans.[51]

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[47] *See Notice* at ¶ 17.

[48] *See* Arnold Cruze Comments at 1; Escalante City, UT Comments at 1; KSL Television (KSL) Comments at 3-4; Laredo Community College (LCC) Comments at 1; Trinity Broadcasting Network (Trinity) Comments at 2-3.

[49] *See* KM Broadcasting, Inc. Comments at 5-7. *See also* KUED Television Comments at 3-4; Weigel Broadcasting Co. Comments at 4-5.

[50] *See* ALTV Comments at 2-3; MSTV Comments at 10-11; Cruze Comments at 2; KMC Comments at 2; KSL Comments at 4-5; Latin Communications Group Television, Inc. Comments at 2-3; San Juan County, UT Comments at 4.

[51] *See* APTS/PBS Comments at 4. *See also* Jovon Broadcasting Corporation Comments at 1-2; Rainbow Broadcasting Company, Ltd. Comments at 2; WWAC, Inc. Comments at 2; MSTV Reply Comments at 4-6; Maranatha Reply Comments at 4.

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23. Some commenters, on the other hand, advocate immediate clearing of all TV operations from the band, citing the critical need for more public safety spectrum and the difficulties in spectrum sharing between TV and other services.[52] Others state that we should take measures to hasten the transition to DTV and the relinquishment of TV licenses in the 746-806 MHz band.[53] These commenters suggest several measures. For example, the State of California and others suggest terminating existing TV licenses in the band as of December 31, 2006, requiring annual progress reports from TV licensees in the band on their progress toward DTV transition, providing incentives for TV licensees to vacate the band, and allowing private negotiations to compensate TV licensees in exchange for vacating the band early.[54] APTS/PBS recommend allowing analog TV stations with DTV allotments in the 746-806 MHz band to switch to DTV broadcasting on their core channels without simulcasting analog TV and DTV during the transition. Likewise, APTS/PBS recommend allowing analog TV in the band with DTV allotments in the core to begin DTV broadcasting in the core and cease analog broadcasting in the 746-806 MHz band.[55] The County of Los Angeles supports this recommendation.[56]

24. *Decision.* We observe that our DTV transition plan is currently under review in a separate proceeding, and that additional DTV allotments are under consideration for channels 60-69. However, we reject the argument that we should avoid reallocating this spectrum in order to provide a "safe haven" for addressing problems that may arise during the DTV transition. As an initial matter, we note that the Budget Act directs the Commission to allocate 24 megahertz of this spectrum for public safety use and 36 megahertz for commercial use by January 1, 1998. Thus we do not have the latitude to delay reallocation of this spectrum. Moreover, even if we had the discretion to do so, we do not believe it would be necessary to retain this spectrum as a "safe haven". The DTV transition plan is the product of extensive technical study and review. If problems should arise, in most cases alternative solutions to use of channels 60-69 will be available. The limited potential benefits of retaining channels 60-69 as a "safe haven" are outweighed by the costs of delaying much needed public safety services and opportunities for new services. We also find no merit in the argument that we should remove immediately all TV broadcasting operations from TV channels 60-69. The operation of some TV and DTV stations in this spectrum is clearly required to facilitate the DTV transition; and the Budget Act provides for this, stating "[a]ny

[52] *See* California Public-Safety Radio Association Comments at 2; Tribune Broadcasting Company Comments at 4.

[53] *See* California Comments at 5-6; NPSTC Comments at 11; APTS/PBS Comments at 5-7; APCO Reply Comments at 4; L.A. County Reply Comments at 2-3.

[54] *See* California Comments at 5-6.

[55] *See* APTS/PBS Comments at 5-8.

[56] *See* L.A. County Reply Comments at 2-3.

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person who holds a television broadcast license to operate between 746 and 806 megahertz may not operate at that frequency *after the date on which the digital television service transition period terminates*, as determined by the Commission."[57] We remain committed to full interference protection for TV licensees during the DTV transition. In this regard, we are adding a new footnote NG159 to the Table of Frequency Allocations to indicate that existing and new television and digital television (DTV) broadcasting operations in the 746-806 MHz band will be entitled to protection from new services during the DTV transition. As we stated in the *Notice*, specific protection standards will be finalized in our proceeding for licensing and service rules in the 746-806 MHz band.[58] The recommendation of APTS/PBS and others for early vacation of the 746-806 MHz band is currently being considered in the reconsideration of the *DTV Fifth Report and Order*. We will consider these comments in that proceeding.

25. *Low Power Operations.* LPTV stations and TV translators currently operate on a secondary basis on channels 60-69. In the *Notice*, we observed that in the *DTV Proceeding* we adopted a number of changes to our rules to mitigate the impact of the DTV transition on LPTV and TV translators. These rule changes included allowing LPTV stations displaced by new DTV stations to apply for suitable replacement channels; considering such applications on a first-come, first-served basis without subjecting them to competing applications; and technical rules changes to provide additional operating flexibility for low power stations.[59] We also stated that any industry negotiation and coordination efforts must be open to all parties, including LPTV stations.[60] In addition, LPTV and TV translator operations will not be required to alter or cease their operations until they actually cause interference to new DTV service or to any primary services operating in the 746-806 MHz band. We stated our belief that it may be possible for many low power stations operating on channels 60-69 to co-exist with public safety and other new service operations on a non-interfering basis. For example, in certain regions of the country, such as rural areas and the western mountainous states, low power TV stations and TV translators may not be affected by new service operations, at least not in the near future. In the *Notice*, we sought comment as to whether our proposed allocations might suggest any additional considerations to further mitigate the impact on low power operations on channels 60-69 during the transition period.

26. *Comments.* Commenters were sharply divided as to whether any further actions should be taken to accommodate LPTV and TV translators in channels 60-69. Broadcasting

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[57] Budget Act, § 3004 (adding new § 337(e)(1)) (emphasis added). *See also, e.g., DTV Proceeding, Fifth Report and Order*, 12 FCC Rcd 12810 (1997); *DTV Proceeding, Sixth Report and Order*, 12 FCC Rcd 14588 (1997).

[58] *See Notice* at ¶ 17.

[59] *See DTV Proceeding Sixth Report and Order* at ¶¶ 141-147.

[60] *See DTV Proceeding Sixth Report and Order* at ¶ 182.

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and LPTV interests acknowledge that LPTV is secondary in the band. However, many state that LPTV and TV translators should be protected, at least throughout the DTV transition.[61] Several also observe that, while LPTV and TV translators are a secondary service in the Table of Frequency Allocations, they are the primary means by which many people receive news and entertainment.[62] Indeed, in some parts of the country, LPTV and TV translators are part of state emergency preparedness networks.[63] Other commenters, such as APCO, state that LPTV and TV translators have secondary status and therefore have always been on notice that they must yield to primary services. These parties point out the critical need for public safety spectrum and state that any accommodation we make must not impede the use of the 746-806 MHz band by public safety.[64]

27. In the *Notice*, we inquired whether we should allow incumbent LPTV and TV translator stations to negotiate private arrangements with new licensees under which the new licensees would tolerate otherwise unacceptable levels of interference from LPTV or TV translator stations, and whether we should provide incentives to new licensees to seek such arrangements, such as permitting LPTV and TV translators to compensate new licensees for tolerating otherwise unacceptable interference. Florida and other public safety concerns and local governments oppose the idea of allowing any kind of monetary compensation, because LPTV operators could negotiate an agreement with one licensee, and then use that agreement to resist interference claims of another licensee using the same spectrum. The potential for complex and inconsistent arrangements leads Florida to oppose permitting such negotiated agreements in the public safety portions of the spectrum.[65]

28. *Decision.* We recognize that the DTV transition and the reallocation of TV channels 60-69 to other services will have a significant impact on LPTV and TV translators. Further, we are aware that LPTV operators offer important services to specialized and minority audiences, foreign language communities, and rural areas. While we are committed to take reasonable steps to reduce the impact on such operations, we are obligated to facilitate the DTV transition and to reallocate the TV channels 60-69 as directed under the Budget Act.

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[61] *See* ALTV Comments at 4-5. *See also* Cordillera Communications, Inc. Comments at 2-5; Cruze Comments at 1; KSL Comments at 2-4; Latin Comments at 2-3; Paging Systems, Inc. Comments at 4-5; Paxson Communications Corporation Comments at 3-4; Trinity Comments at 2-4; Univision Communications Inc. Comments at 4-5; Weigel Broadcasting Co. at 4-6.

[62] *See* Cordillera Comments at 2-3. *See also* Escalante Comments at 1-2; KSL Comments at 2; KUED Comments at 3; Latin Comments at 1-2; San Juan County Comments at 1-2; Univision Comments at 2.

[63] *See* KSL Comments at 2-3; San Juan County Comments at 3.

[64] *See* APCO Comments at 6. *See also* LMCC Comments at 10-11; Motorola Comments at 12-13; Texas Cities Comments at 2; IMSA/IAFC Reply Comments at 3-7.

[65] *See* Florida Comments at 2. *See also* Texas Cities Comments at 2; IMSA/IAFC Reply Comments at 5.

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29. Section 3004 of the Budget Act states that anyone holding a television broadcast license in the band "may not operate at that frequency after the date on which the digital television transition period terminates, as determined by the Commission."[66] The Conference Report confirms the plain language of the statute: "The conferees recognize that in clearing this band, the Commission will displace not only full-power licensees but also secondary broadcast services, including low-power licensees and television translator licensees."[67] This provision of the Budget Act leaves us no latitude in clearing LPTV and TV translator stations from the band at the end of the DTV transition period. We will permit LPTV and TV translators to continue to operate on channels 60-69 until the end of the DTV transition period, as long as they do not cause harmful interference to primary services. The DTV transition period is currently scheduled to end December 31, 2006, but may be extended in some markets for several reasons.[68] In many rural areas, LPTV and TV translator licensees will be able to continue broadcasting because demand for spectrum for both public safety and commercial applications is likely to be less in rural areas than in urban areas.

30. LPTV operators also can be accommodated in other ways. With regard to both rural and urban areas, some LPTV stations will be able to find replacement channels below channel 60 during the DTV transition period, and many more replacement channels will be available at the end of the DTV transition period, when analog stations cease transmitting. Further, we agree with some commenters that DTV may indeed open up new opportunities for LPTV, particularly in urban markets. For example, LPTV stations may be able to lease channels in multicast formats used by DTV stations. In addition, our retention of the broadcasting allocation in the commercial portion of the band permits LPTV stations to secure their channels at auction, with primary status. We will consider whether there are any other steps that may be of benefit to LPTV and TV translator operations as we develop service rules for the commercial spectrum. We emphasize that all the provisions we made in the *DTV Proceeding Sixth Report and Order* to accommodate LPTV and TV translator stations also apply to LPTV and TV translator stations in channels 60-69.

31. The request to provide interference protection for LPTV and TV translators is incompatible with the allocations for public safety and commercial services required under the Budget Act. Such action would preclude access to the spectrum throughout much of the nation. There also is no basis for requiring new services to provide monetary compensation to LPTV stations to alter their operations because LPTV stations are authorized to continue to operate on these channels on a secondary basis. However, we encourage, wherever possible,

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[66] *See* Budget Act § 3004 (adding new § 337(e)(1) of the Communications Act).

[67] *See* H.R. Conf. Rep. No. 105-217, 105th Cong., 1st Sess. at 580; 143 Cong. Rec. H6029 (daily ed. July 29, 1997).

[68] Budget Act § 3003 (adding new § 309(j)(14) of the Communications Act) establishes the conditions under which the Commission shall extend the end of the DTV transition period beyond December 31, 2006. *See* n.4 *supra*.

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private negotiations between LPTV stations and new service providers in the commercial portions of the 746-806 MHz band to resolve problems, including interference, in a manner acceptable and/or beneficial to both parties. Such negotiations, however, will bind only the licensees involved, will not change the terms and conditions of any licenses, and will not affect the obligation of LPTV and TV translator stations to vacate the band at the end of the DTV transition period. In the interest of maintaining the availability of clear spectrum for public safety services, we will not permit such negotiations in the public safety portions of the band. We are persuaded by Florida's argument that in the public safety spectrum, there is a danger that an LPTV station could negotiate an agreement with one public safety licensee, and then cause interference to other public safety licensees on other frequencies within the TV channel, in other public safety agencies, or in other jurisdictions. We do not believe it is necessary at this time to adopt any formal provisions or guidelines for such negotiations, however, we may revisit this matter if appropriate in the future. In summary, we believe that we have taken reasonable measures to be responsive to the concerns of LPTV and TV translator operators and the communities they serve. We are retaining the secondary allocation for LPTV and TV translators in the entire 746-806 MHz band until the end of the DTV transition period, and we will further consider LPTV service in a future proceeding. Given their secondary status, we will continue to authorize LPTV and TV translator service on channels 60-69 until the end of the DTV transition period. LPTV operators will be able to bid on spectrum in channels 60-69 and use it after the DTV transition.

32. *Construction Permits and Modifications.* In the *Notice*, we inquired into what actions we should take with regard to construction permits and applications for new TV stations. We stated that, effective May 16, 1997, in addition to the 73 licensed stations on channels 60-69, construction permits have been authorized to 22 stations, of which 11 operate under program test authority. We tentatively concluded that stations for which a construction permit has been granted should be treated the same as operating TV stations and receive protection from new service providers during the DTV transition period.

33. *Comments.* Many commenters who are applicants for or holders of construction permits stated that we should allow construction permittees to continue to build or improve their stations. ALTV endorses our proposal that facilities represented by unbuilt construction permits retain full protection, stating that nothing could be so inimical to a TV start-up than a coverage area diminished by unexpected interference.[69] CBS contends that the *Notice* implicitly demonstrates our intention to protect construction permits, and that a fair reading of Congressional intent in the Budget Act includes protection of construction permits.[70] On the other hand, California and IMSA/IAFC contend that we should also dismiss any construction permits where the holder cannot show a purchase order for a transmitter

[69] *See* ALTV Comments at 4.

[70] *See* CBS Comments at 3-4.

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which cannot be canceled or modified.[71] Florida and others contend that we should require holders of construction permits to build only DTV facilities on their assigned DTV channels, and should not allow them to build analog facilities in channels 60-69.[72]

34. With regard to modifications, Maranatha Broadcasting Company, Inc. (Maranatha) states that TV stations operating on channels 60-69 should be given the opportunity to modify their facilities to increase coverage to maximum values. This will allow TV licensees to maximize their revenues during the DTV transition, which will help to finance their conversion to DTV, according to Maranatha.[73] Maranatha argues that denying TV stations the opportunity to increase their coverage areas would yield little usable spectrum for public safety agencies, and would deny TV licensees the opportunity to raise the funds they need to bear the costs of transition to DTV.[74] ALTV adds that new DTV stations in channels 60-69, built to less than maximum coverage, must be allowed to later increase their coverage.[75] NPSTC, by contrast, states that we should reject any future modifications, in order to avoid delays in clearing the band for public safety and other potential uses.[76]

35. *Decision.* We believe that most holders of construction permits are sufficiently advanced in the licensing process that it would be inequitable to rescind their permits. At the same time, as we pointed out in the *Notice*, there are outstanding construction permits that were issued years ago, on which there has been little progress. In order to ensure that holders of construction permits, both for new facilities and modification of existing facilities, progress in construction, we are establishing a deadline by which construction must be completed. We believe that three years is sufficient time for current construction permits to build or improve their facilities, and also provides a date certain for planning purposes for public safety agencies and commercial entities. Therefore, we will cancel any construction permit issued before the release date of this Report and Order for which no license application has been filed as of January 2, 2001.

36. We disagree that current analog TV licensees should be indefinitely protected up to their maximum possible coverage. Such a measure would deny areas of the country to public safety and commercial licensees, even though the current licensees may never increase their coverage to the maximum. Accordingly, we will protect analog TV licensees up to their

[71] *See* California Comments at 5, IMSA/IAFC Reply Comments at 8.

[72] *See* Florida Comments at 3. *See also* NPSTC Comments at 12.

[73] *See* Maranatha Comments at 2-3.

[74] *See* Maranatha Comments at 2-3, Reply Comments at 2-4.

[75] *See* ALTV Comments at 3-4.

[76] *See* NPSTC Comments at 13.

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actual coverage until the end of the DTV transition period. In this regard, we will process requests for minor modifications to existing analog TV stations and construction permits. However, the planning and development of new services would be impeded if we were to permit modifications that increase service area on an indefinite basis. We believe that licensees have been aware of the DTV transition plan and have had the opportunity to plan necessary modifications. Accordingly, as of six months after the release date of this Report and Order we will no longer accept requests for modifications to increase the service areas of stations operating on TV channels 60-69. With regard to DTV, we will protect the full coverage area until the end of the DTV transition period.[77] We recognize that stations may not be able to provide full coverage initially and we do not wish to impede growth and development of DTV.

37. *Applications and Allotment Petitions.* In the *Notice*, we requested comment on what actions we should take with regard to applications for new TV stations. We stated that, effective May 16, 1997, there are 78 applications on file for 33 stations on these channels which have been accepted or tendered for filing, of which 33 request waivers of the TV filing freeze and have not been accepted for filing.[78] In addition, there are 9 petitions for rule making on file, requesting changes in the TV Table of Allotments to allow applicants to apply for TV broadcasting licenses in channels 60-69. We tentatively concluded that the public is best served by maximizing the potential availability of this spectrum for public safety and new services. We noted that applicants for new broadcast stations were not among the initial eligibles for a second DTV channel and would be required to vacate this spectrum at the end of the DTV transition period. We sought comment on whether we should dismiss these pending applications and petitions for new allotments for new broadcast stations that would operate on channels 60-69, or, in the alternative, should dismiss only those applications requesting a waiver of the 1987 freeze on TV applications in the major metropolitan areas.

38. Many commenters who are applicants argue that we should process all timely filed applications for new stations. They point out that applicants have substantial investments of time, effort, and money in their applications.[79] United Television, Inc. and John C. Siegel also argue that, at a minimum, we should open a window for applicants to amend their

[77] DTV coverage areas are established in the *DTV Sixth Report and Order*, ¶¶ 29-33.

[78] These applications have not been acted upon because we froze applications for TV licensing in the 30 largest markets in the United States in 1987. *See In re Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, RM-5811, *Order*, 52 Fed. Reg. 28,346 (1987).

[79] *See* CBS Comments at 3-5; Givens & Bell, Inc. Comments at 3; KCTS Television Comments at 2-3; Paxson Comments at 4-7; Stead Communications Comments at 2; United Television, Inc. and John C. Siegel (United TV) Comments at 3-4; Winstar Broadcasting Corp. Comments at 2-7; Davis Television *et al.* Reply Comments at 2; KM Reply Comments at 3-4; WB Reply Comments at 9-12.

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applications to request channels within the DTV core spectrum.[80] The WB Television Network (WB) stated that continuing to allow applications for new stations is necessary to fulfill our goal of fostering competition among networks and providing for the creation of new networks.[81]

39. On the other hand, many commenters, especially those representing local governments and public safety agencies, such as APCO, state that it is essential that we maximize the use of the 746-806 MHz band for public safety. In order to do this, they advocate that we dismiss all applications for licenses in the band.[82]

40. *Decision.* In the *DTV Sixth Further Notice of Proposed Rule Making*, we provided a final opportunity for the filing of new applications for analog stations for vacant allotments and rule making petitions to add channels to the TV Table of Allotments, thereby accommodating parties who were in the process of preparing application and rule making submissions.[83] We are aware of the investment in planning, effort, and money that have been put into these and other pending applications and petitions to amend the TV allotment table. We also agree with WB that new stations would help to foster competition between networks. New stations also create opportunities for increased broadcast diversity and new entry. However, we continue to believe that it is important to maximize the utility of the 746-806 MHz band for public safety and new commercial services. In addition, any TV application granted would have no allotment for a DTV channel and would be required to cease analog operations at the end of the DTV transition period.[84] For these reasons, we will not authorize additional new analog full-service television stations on channels 60-69. However, neither do we wish to summarily terminate the pending applications and rule making petitions, and we will at a later date provide applicants and petitioners an opportunity to amend their applications and petitions, if possible, to seek a channel below channel 60. We will thereafter dismiss any applications or allotment petitions that are not satisfactorily amended.

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[80] *See* United TV Comments at 6. *See also* Winstar Comments at 6; KM Reply Comments at 4; WB Reply Comments at 12.

[81] *See* WB Comments at 8-12.

[82] *See* APCO Comments at 7. *See also* California Comments at 5; CHiP Comments at 1; Florida Comments at 3-4; Motorola Comments at 15; IMSA/IAFC Reply Comments at 8.

[83] *Sixth Further Notice of Proposed Rule Making*, MM Docket No. 87-268, 11 FCC Rcd 10968 (1996). The adoption date of this Notice (July 25, 1996) was the last opportunity to file petitions to add channels to the TV Table of Allotments. The application filing deadline (September 20, 1996) was established as 30 days after publication of the Notice in the Federal Register. Regarding these applications, we decided to continue our "cut-off" process for accepting competing applications. We also decided to continue the policy of considering requests for waiver of the 1987 freeze *Order* on a case-by-case basis. (*See Order*, RM 5811, Mimeo No. 4074, released July 17, 1987.)

[84] *See* Budget Act, §3004 (adding new § 337(e)(1) of the Communications Act).

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We direct the Mass Media Bureau to announce the details of this amendment opportunity by Public Notice, at a date after we complete action on our broadcast auction proceeding and the petitions for reconsideration in the DTV proceeding.[85] To encourage settlements among mutually exclusive applicants, we authorize the Bureau to waive for this special amendment opportunity the rule which limits reimbursements of applicants to legitimate and prudent expenses (47 C.F.R. § 73.3525(a)(3)). Finally, we note that all conditions pertaining to the applications and rule making petitions will continue to apply, including the freeze on new applications in the large metropolitan areas; requests for "freeze" waivers will be considered on a case-by-case basis.

41. *Minor Changes to the Table of Frequency Allocations.* In the *Notice*, we stated that there are three footnotes to the Table of Frequency Allocations that permit the operation of non-TV services in the 746-806 MHz band in all or part of the United States.[86] The 716-890 MHz band is available on an interim basis through footnote NG30 to stations in the international fixed public radiocommunication service[87] south of Miami, Florida, on the condition that harmful interference is not caused to the broadcasting service of any country.[88] We stated our tentative conclusion that Footnote NG30 was an interim measure which is no longer needed. The 800-830 MHz band is also currently available through footnote NG43 to fixed stations in the Common Carrier Fixed Point-to-Point Microwave Service[89] in the southeastern corner of Alaska on the condition that harmful interference is not caused to the broadcasting service of any country.[90] There are, however, no licensees operating under footnote NG43. For these reasons, we proposed to delete footnotes NG30 and NG43, to provide clear spectrum for new licensees in the 746-806 MHz band. Additionally, the TV broadcast bands

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[85] *See In re Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, MM Docket No. 97-234, GC Docket No. 92-52, GEN Docket No. 90-264, *Notice of Proposed Rule Making*, FCC No. 97-397, released November 26, 1997.

[86] *See* 47 C.F.R. § 2.106.

[87] *See* 47 C.F.R. Part 23.

[88] Specifically, footnote NG 30 reads: Stations in the international fixed public radiocommunication service in Florida, south of 25° 30' north latitude, may be authorized to use frequencies in the band 716-890 MHz on the condition that harmful interference will not be caused to the broadcasting service of any country. This is an interim allocation the termination of which will later be specified by the Commission when it is determined that equipments are generally available for use in bands allocated internationally to the fixed services.

[89] Most of the services in the Domestic Public Fixed Radio Service were recently merged into Part 101, Fixed Microwave Services. The rules for the Common Carrier Fixed Point-to-Point Microwave Service are at 47 C.F.R. § 101, Subpart I.

[90] Specifically, footnote NG43 reads: Fixed stations in the domestic public radio services in Alaska, south of 56° north latitude and east of 134° west longitude, may be authorized to use frequencies in the band 800-830 MHz, on the condition that harmful interference will not be caused to the broadcasting service of any country.

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are allocated to the Fixed Service to permit subscription TV operations.[91] We proposed to delete this allocation for the 746-806 MHz band, to ensure that no subscription TV operations would be permitted in the public safety portion of the band, and because this allocation by footnote is no longer needed to allow subscription TV operations in the non-public safety portion of the band, should providers of subscription TV choose to seek licenses at auction.

42. Only two commenters, Florida and NPSTC, address this issue, both recommending deletion of the three footnotes.[92] No commenter speaks in favor of retaining the footnote allocations. For the reasons articulated in the *Notice*, we will delete Footnotes NG30 and NG43 from the Table of Frequency Allocations, and amend Footnote NG149 to delete the allocation of the 746-806 MHz band for subscription TV services.

43. *Miscellaneous Issues.* Commenters raised a number of issues that, while relevant to the issues here, are better resolved in our proceeding on licensing and service rules for the 746-806 MHz band. Compu-Dawn, Inc. (Compu-Dawn) advocates allowing non-governmental entities to be licensed in the public safety portion of the 746-806 MHz band. Compu-Dawn claims that this is consistent with Congress' definition of public safety entities in the Budget Act, and that allowing non-governmental, commercial entities to hold public safety licensees will encourage them to develop advanced public safety communications, which they will make available to the public safety community.[93] APCO opposes this idea, stating that Compu-Dawn, as a for profit company, is ineligible for public safety licenses. APCO contends that Congress' inclusion of sanctioned non-governmental entities was intended to allow non-profit organizations like volunteer fire departments to obtain public safety licenses.[94]

44. KSLS, Inc. (KSLS) recommends a possible solution for frequency unavailability caused by the large number of TV licensees in the Los Angeles area. Noting that public safety licensees in the area use frequencies in TV channels 16 and 20, KSLS suggests that these operations move into channels 68 and 69. This will free channels 16 and 20 for TV services allotted channels 68 and 69, in turn freeing these channels for more public safety use.[95] APCO and L.A. County respond that such a measure would be very costly, disruptive to public safety, and would not provide actual relief to spectrum congestion in the

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[91] Specifically, footnote NG149 reads: The frequency bands 54-72 MHz, 76-88 MHz, 174-216 MHz, 470-512 MHz, 512-608 MHz, and 614-806 MHz are also allocated to the Fixed Service to permit subscription TV operations in accordance with Part 73 of the rules.

[92] *See* Florida Comments at 4; NPSTC Comments at 14.

[93] *See* Compu-Dawn Comments at 3-7 (citing Budget Act § 3004 (adding § 337(f)(1)of the Communications Act).

[94] *See* APCO Reply Comments at 6-7.

[95] *See* KSLS Comments at 2-3.

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Los Angeles area.[96]

45. Motorola observes that in the 806-824 MHz band, mobile units are assigned to the lower portion of the band, and higher-powered base units to the upper part of the band. Because of this, Motorola recommends that we designate the higher portion of the 746-806 MHz band for mobile units, so that they will be adjacent to the lower-powered mobile units in the 806-824 MHz band. Motorola is concerned about the potential for interference from high-powered base stations in TV channels 68-69 to mobile units in the lower part of the 806-824 MHz band.[97] No commenting party objects to this designation of bands for mobile and base use.

46. South Carolina has specific proposals for the use of public safety spectrum. It recommends that we allocate a portion of the spectrum for interoperability between public safety agencies, that we designate approximately 25 per cent of the public safety band for high-speed services, and that we regulate the spectrum by regional planning organizations with the Commission playing a national oversight role.

47. ARINC notes that GNSS operate in the 1559-1610 MHz band, which is the second harmonic of a portion of the 746-806 MHz band. ARINC contends that current Part 90 emissions limits allow spurious emissions that would interfere with aircraft reception of GNSS signals, to the detriment of air safety. ARINC asks that we ensure that the technical rules for this band address this potential problem by requiring harmonic attenuation in the 774.5-805 MHz portion of the band consistent with the recommendations of the Radio Technical Committee on Aviation (RTCA).[98] Motorola counters that the RTCA standards may be too stringent.[99]

48. The appropriate forum for all of the foregoing concerns is our service and licensing rules proceeding.[100] We will consider these issues in that proceeding.

49. *Summary of Allocations.* As a result of our actions in this proceeding, the 764-776 MHz and 794-806 MHz bands (TV channels 63-64 and 68-69) will be allocated on a primary basis to the fixed and mobile services, and will be available only to the public safety radio services. The commercial portions of the band, at 746-764 MHz and 776-794 MHz bands (TV channels 60-62 and 65-67), will be allocated to the fixed, mobile, and broadcasting

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[96] *See* APCO Reply Comments at 4-5; L.A. County Reply Comments at 4.

[97] *See* Motorola Comments at 4-6.

[98] *See* ARINC Comments at 2-3.

[99] *See* Motorola Reply Comments at 9-10.

[100] *See Public Safety Proceeding, Second Notice of Proposed Rule Making, supra* n.26.

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services, and licenses in these bands will be assigned by competitive bidding. Broadcasting will have different status in different parts of the 746-806 MHz band. Currently licensed full-power TV broadcasting will retain a primary allocation throughout the band for both their current analog and new DTV operations for the duration of the DTV transition period. At the end of the DTV transition, they will be required to relinquish their licenses for channels 60-69. LPTV and TV translator stations will have secondary allocation status in the entire band until the end of the DTV transition period. New licensees in the commercial portions of the band will be permitted to provide broadcasting, as well as fixed or mobile services, within their service areas, and will have primary status.

ORDERING CLAUSES

50. For the foregoing reasons, IT IS ORDERED that Section 2.106 of the Commission's rules, 47 C.F.R. § 2.106, IS AMENDED in accordance with Appendix A, effective 60 days after publication in the Federal Register. IT IS FURTHER ORDERED that this proceeding is TERMINATED.

PROCEDURAL MATTERS

51. This action is taken pursuant to Sections 4(i), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(c), 303(f), 303(g), and 303(r); and Section 3004 of the Balanced Budget Act of 1997, Pub. L.No. 105-33, 111 Stat. 251 § 3004.

52. *Final Regulatory Flexibility Analysis*: A final regulatory flexibility analysis is contained in Appendix C.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

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APPENDIX A

Final Rules

Part 2 of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 2 -- FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

AUTHORITY: Sections 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154, 302, 303 and 307, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

a. Remove the existing entries for 614-790 MHz and 790-806 MHz.

b. Add entries in numerical order for 614-746 MHz, 746-790 MHz and 790-806 MHz.

c. In the International Footnotes under heading I., add footnotes S5.293, S5.296, S5.300, S5.309, S5.310, S5.311, S5.312, S5.313, S5.314, S5.315, and S5.316 in numerical order.

d. Remove footnotes NG30 and NG43.

The revisions and additions read as follows:

§ 2.106 Table of Frequency Allocations.

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International table			United States table		FCC use designators	
Region 1 – allocation MHz (1)	Region 2 – allocation MHz (2)	Region 3 – allocation MHz (3)	Government Allocation MHz (4)	Non-Government Allocation MHz (5)	Rule part(s) (6)	Special-use frequencies (7)
•	•	•	•	•	•	•
614 – 746 BROADCASTING S5 296 S5 300 S5 311 S5 312	614 – 746 BROADCASTING Fixed Mobile S5 293 S5 309 S5 310 S5 311	614 – 746 FIXED MOBILE BROADCASTING S5 311	614 – 746	614 – 746 BROADCASTING NG128 NG149	RADIO BROADCAST (TV) (73) Auxiliary Broadcasting (74)	
746 – 764 BROADCASTING S5 296 S5 300 S5 311 S5 312	746 – 764 BROADCASTING Fixed Mobile S5 293 S5 309 S5 310 S5 311	746 – 764 FIXED MOBILE BROADCASTING S5 311	746 – 764	746 – 764 FIXED MOBILE BROADCASTING NG128 NG159	PRIVATE LAND MOBILE (90) RADIO BROADCAST (TV) (73) WIRELESS COMMUNICATIONS (27) Auxiliary Broadcasting (74)	
764-776 BROADCASTING S5 312 S5 313 S5 314 S5 315 S5 316	764-776 BROADCASTING Fixed Mobile S5 293 S5 309 S5 310	764-776 FIXED MOBILE BROADCASTING S5 311	764-776	764-776 FIXED MOBILE NG128 NG158 NG159	PRIVATE LAND MOBILE (90) Auxiliary Broadcasting (74)	
776-790 BROADCASTING S5 312 S5 313 S5 314 S5 315 S5 316	776-790 BROADCASTING Fixed Mobile S5 293 S5 309 S5 310	776-790 FIXED MOBILE BROADCASTING S5 311	776-790	776-790 FIXED MOBILE BROADCASTING NG128 NG159	PRIVATE LAND MOBILE (90) RADIO BROADCAST (TV) (73) WIRELESS COMMUNICATIONS (27) Auxiliary Broadcasting (74)	
790-794 FIXED BROADCASTING S5 312 S5 313 S5 314 S5 315 S5 316	790-794 BROADCASTING Fixed Mobile S5 293 S5 309 S5 310	790-794 FIXED MOBILE BROADCASTING S5 311	790-794	790-794 FIXED MOBILE BROADCASTING NG128 NG159	PRIVATE LAND MOBILE (90) RADIO BROADCAST (TV) (73) WIRELESS COMMUNICATIONS (27) Auxiliary Broadcasting (74)	

International table			United States table		FCC use designators	
Region 1 – allocation MHz	Region 2 – allocation MHz	Region 3 – allocation MHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
794-806 FIXED BROADCASTING S5 312 S5 313 S5 314 S5 315 S5 316	794-806 BROADCASTING Fixed Mobile S5 293 S5 309 S5 310	794-806 FIXED MOBILE BROADCASTING	794-806	794-806 FIXED MOBILE NG126 NG158 NG159	PRIVATE LAND MOBILE (90) Auxiliary Broadcasting (74)	
•	•	•	•	•	•	•

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INTERNATIONAL FOOTNOTES

* * * * *

I. New "S" Numbering Scheme

* * * * *

S5.293 *Different category of service:* in Chile, Colombia, Cuba, the United States, Guyana, Honduras, Jamaica, Mexico and Panama, the allocation of the bands 470-512 MHz and 614-806 MHz to the fixed and mobile services is on a primary basis, (see No. S5.33), subject to agreement obtained under Article 14/No. S9.21.

S5.296 *Additional allocation:* in Germany, Austria, Belgium, Cyprus, Denmark, Spain, Finland, France, Ireland, Israel, Italy, Libya, Malta, Morocco, Monaco, Norway, the Netherlands, Portugal, the United Kingdom, Sweden, Switzerland, Swaziland, Syria, Tunisia and Turkey, the band 470-790 MHz is also allocated on a secondary basis to the land mobile service, intended for applications ancillary to broadcasting. Stations of the land mobile service in the countries mentioned in this footnote, shall not cause harmful interference to existing or planned stations operating in accordance with the Table of Frequency Allocations in countries other than those listed in this footnote.

S5.300 *Additional allocation:* in Israel, Libya, Syria and Sudan, the band 582-790 MHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a secondary basis.

S5.309 *Different category of service:* in Costa Rica, El Salvador and Honduras, the allocation of the band 614-806 MHz to the fixed service is on a primary basis (see No. S5.33), subject to agreement obtained under Article 14/No. S9.21.

S5.310 *Additional allocation:* in Cuba, the band 614-890 MHz is also allocated to the radionavigation service on a primary basis, subject to agreement obtained under Article 14/No. S9.21.

S5.311 Within the frequency band 620-790 MHz, assignments may be made to television stations using frequency modulation in the broadcasting-satellite service subject to agreement between the administrations concerned and those having services, operating in accordance with the Table, which may be affected (see Resolutions 33 and 507). Such stations shall not produce a power flux-density in excess of the value −129 dB(W/m^2) for angles of arrival less than 20° (see Recommendation 705) within the territories of other countries without the consent of the administrations of those countries.

S5.312 *Additional allocation:* in Armenia, Azerbaijan, Belarus, Bulgaria, Georgia, Hungary, Kazakhstan, Latvia, Lithuania, Moldova, Mongolia, Uzbekistan, Poland, Kyrgyzstan, Slovakia, the Czech Republic, Romania, Russia, Tajikistan, Turkmenistan and Ukraine, the band 645-862 MHz is also allocated to the aeronautical radionavigation service on a primary basis.

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S5.313 *Alternative allocation:* in Spain and France, the band 790-830 MHz is allocated to the broadcasting service on a primary basis.

S5.314 *Additional allocation:* in Austria, Italy, the United Kingdom and Swaziland, the band 790-862 MHz is also allocated to the land mobile service on a secondary basis.

S5.315 *Alternative allocation:* in Greece, Italy, Morocco and Tunisia, the band 790-838 MHz is allocated to the broadcasting service on a primary basis.

S5.316 *Additional allocation:* in Germany, Bosnia and Herzegovina, Burkina Faso, Cameroon, Côte d'Ivoire, Croatia, Denmark, Egypt, Finland, Israel, Kenya, The Former Yugoslav Republic of Macedonia, Libya, Liechtenstein, Monaco, Norway, the Netherlands, Portugal, Sweden, Switzerland and Yugoslavia, the band 790-830 MHz, and in these same countries and in Spain, France, Gabon, Malta and Syria, the band 830-862 MHz, are also allocated to the mobile, except aeronautical mobile, service on a primary basis. However, stations of the mobile service in the countries mentioned in connection with each band referred to in this footnote shall not cause harmful interference to, or claim protection from, stations of services operating in accordance with the Table in countries other than those mentioned in connection with the band.

* * * * *

NON-GOVERNMENT (NG) FOOTNOTES

* * * * *

NG149 The frequency bands 54-72 MHz, 76-88 MHz, 174-216 MHz, 470-512 MHz, 512-608 MHz, and 614-746 MHz are also allocated to the fixed service to permit subscription television operations in accordance with Part 73 of the rules.

* * * * *

NG158 The frequency bands 764-776 MHz and 794-806 MHz are available for assignment exclusively to the public safety services, to be defined in Docket No. WT 96-86.

NG159 Full power analog television stations licensed pursuant to applications filed before January 2, 2001, and new digital television (DTV) broadcasting operations in the 746-806 MHz band will be entitled to protection from harmful interference until the end of the DTV transition period. After the end of the DTV transition period, the Commission may assign licenses in the 746-806 MHz band without regard to existing television and DTV operations. Low power television and television translators in the 746-806 MHz band must cease operations in the band at the end of the DTV transition period.

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APPENDIX B

COMMENTING PARTIES

COMMENTERS

Aeronautical Radio, Inc. (ARINC)
Ass'n of America's Public Television Stations and Public Broadcasting Service (APTS/PBS)
Ass'n of Local Television Stations, Inc. (ALTV)
Ass'n for Maximum Service Television and the National Ass'n of Broadcasters (MSTV/NAB)
Ass'n of Public-Safety Communications Officials (APCO)
Blue Mountain Translator District (Blue Mountain)
State of California (California)
Calif. Highway Patrol (CHiP)
Calif. Public-Safety Radio Ass'n (CPSRA)
CBS, Inc. (CBS)
Cellular Telecommunications Industry Ass'n (CTIA)
Channel 6, Inc. (Channel 6)
Coalition of American Railroads (CAR)
Community Broadcasting Ass'n (CBA)
Compu-Dawn, Inc. (Compu-Dawn)
Cordillera Communications, Inc. (Cordillera)
Arnold Cruze
Ericsson, Inc. (Ericsson)
Escalante, Utah
Final Analysis, Inc. (Final Analysis)
State of Florida (Florida)
Givens & Bell, Inc. (Givens & Bell)
International Municipal Signal Ass'n and International Association of Fire Chiefs, Inc. (IMSA/IAFC)
Jovon Broadcasting Corporation (Jovon)
KCTS Television (KTCS)
KM Broadcasting, Inc. (KMB)
KM Communications, Inc. (KMC)
KSL Television (KSL)
KSLS, Inc. (KSLS)
KUED Television (KUED)
Land Mobile Communications Council (LMCC)
Laredo Community College (LCC)
Latin Communications Group Television, Inc. (Latin)
Long Beach, Calif. (Long Beach)
County of Los Angeles (L.A. County)
Maranatha Broadcasting, Inc. (Maranatha)
Motorola
Mountain Broadcasting Corp. (Mountain)
Nady Systems, Inc. (Nady)
National League of Cities, et. al. (NLC)

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National Minority T.V., Inc. (NMTV)
National Public Safety Telecommunications Council (NPSTC)
National Telecommunications and Information Administration (NTIA)
National Translator Assocation (NTA)
Nextel Communications, Inc. (Nextel)
Paging Systems, Inc. (Paging Systems)
Paxson Communications Corporation (Paxson)
Personal Communications Industry Ass'n. (PCIA)
Rainbow Broadcasting Company, Ltd. (Rainbow)
Rural Telecommunications Group (RTG)
San Juan County, Utah
Shure Brothers Incorporated (Shure)
South Carolina Budget and Control Board, et. al. (S. Carolina)
Stead Communications (Stead)
Cities of Dallas, Austin, Denton, and Plano (Texas Cities)
Tribune Broadcasting (Tribune)
Trinity Broadcasting Network (Trinity)
City of Tucson, AZ (Tucson)
United Television, Inc. and John C. Siegel (United TV)
Univision Communications, Inc. (Univision)
UTC
Weigel Broadcasting Co. (Weigel)
West Central Illinois Educational Telecommunications Corporation (CONVOCOM)
Western Educational Alliance (WEA)
Winstar Broadcasting Corp. (Winstar)
WRNN-TV Limited Partnership (WRNN)
WWAC, Inc. (WWAC)

REPLY COMMENTERS

American Petroleum Institute (API)
MSTV/NAB
APCO
Audio Technica U.S., Inc. (Audio Technica)
Brooks Broadcasting, LLC. (Brooks)
CBA
L.A. County
Davis Television; Fairmont, LLC; and Ramar Communications, Inc.
EV International, Inc. (EVI Audio)
IMSA/IAFC
KM
Maranatha
Motorola
NPSTC
Palm Beach County
Tribune
The WB Television Network (WB)

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APPENDIX C

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA),[101] the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities in the *Notice of Proposed Rule Making (Notice)* in this proceeding. The Commission sought written public comments on the proposals in the *Notice*, including the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Pub. L.No. 104-121, 110 Stat. 847.[102]

A. Need for and Purpose of this Action.

In this Report and Order, the Commission reallocates the 746-806 MHz band, television (TV) Channels 60-69, to other services. We allocate 24 megahertz at 764-776 MHz and 794-806 MHz for public safety use. We allocate the remaining 36 megahertz at 746-764 MHz and 776-794 MHz to the fixed and mobile services, and to retain the allocation to the broadcasting service in these bands. We further assure the protection of full-power TV stations in the band until the transition to digital television (DTV) is complete, and retain the secondary status in the band of Low Power TV (LPTV) and TV translator stations until the end of the DTV transition period. These allocations will help alleviate a critical shortage of public safety spectrum, make new technologies and services available to the American public, and allow more efficient use of spectrum in the 746-806 MHz band.

B. Legal Basis.

This action is taken pursuant to Sections 4(i), 303(c), 303(f), 303(g), 303(r), and 337(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(c), 303(f), 303(g), 303(r), and 337(a); and Section 3004 of the Balanced Budget Act of 1997, Pub. L.No. 105-33, 111 Stat. 251 § 3004 (1997).

C. Summary of Issues Raised by the Public Comments in Response to the IRFA.

One commenter responded to the IRFA. The Mountain Broadcasting Corporation (Mountain) states that individual small businesses in the televsion broadcasting industry will be harmed by interference and loss of service resulting from our attempts to clear channels 60-69, while providing interference protection for DTV service during the DTV transition. Mountain contends that existing analog UHF stations must be protected from interference from new DTV stations.[103]

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[101] 5 U.S.C. § 603.

[102] Pub. L.No. 104-121, 110 Stat. 847 (1996)(CWAAA, Subtitle II of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), *codified at* 5 U.S.C. § 601 *et seq.*).

[103] *See* Mountain Comments at 5-6.

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D. Changes Made to the Proposed Rules.

In the *Notice* in this proceeding, released July 10, 1997, we proposed to reallocate the 746-806 MHz band, currently comprising TV channels 60-69. We proposed to allocate 24 megahertz, at 764-776 MHz and 794-806 MHz (channels 63, 64, 68, and 69) to the fixed and mobile services, for the exclusive use of public safety services. We proposed to allocate the remaining 36 megahertz, at 746-764 MHz and 776-794 MHz (channels 60-62 and 65-67) to the fixed, mobile, and broadcasting services. We stated in the *Notice* that we anticipated that licenses in this 36 megahertz of spectrum would be assigned through competitive bidding. We also inquired into protection of TV stations on channels 60-69 from interference by new licensees during the DTV transition period, but deferred specific interference protection standards to a separate proceeding on service rules for the 746-806 MHz band. We reaffirmed the secondary status of LPTV and TV translators in the entire 746-806 MHz band until the end of the DTV transition period, and inquired whether we should take any other measures to accommodate LPTV in the band.

This Report and Order contains no substantial changes to the *Notice*. The only commenter who addressed the IRFA in the *Notice* addressed potential DTV-to-analog TV interference problems. This was not an issue in this proceeding; it was therefore impossible to address the comment in this Report and Order.

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

1. Definition of a "Small Business"

Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. § 601(6). The RFA, 5 U.S.C. § 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. § 632. 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"). According to the SBA's regulations, entities engaged in television broadcasting Standard Industrial Classification ("SIC") Code 4833 -- Television Broadcasting Stations, may have a maximum of $10.5 million in annual receipts in order to qualify as a small business concern. This standard also applies in determining whether an entity is a small business for purposes of the RFA.

2. Issues in Applying the Definition of a "Small Business"

As discussed below, we could not precisely apply the foregoing definition of "small business" in developing our estimates of the number of small entities to which the rules will apply. Our estimates reflect our best judgments based on the data available to us.

An element of the definition of "small business" is that the entity not be dominant in its field of operation. We were unable at this time to define or quantify the criteria that would

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establish whether a specific television station is dominant in its field of operation. Accordingly, the following estimates of small businesses to which the new rules will 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. An additional element of the definition of "small business" is that the entity must be independently owned and operated. As discussed further below, we could not fully apply this criterion, and our estimates of small businesses to which the rules may apply may be over inclusive to this extent. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

3. Television Station Estimates Based on Census Data

The *Notice of Proposed Rule Making* will affect full service television stations, TV translator facilities, and LPTV stations. The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business.[104] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[105] Included in this industry are commercial, religious, educational, and other television stations.[106] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[107] Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.[108]

There were 1,509 television stations operating in the nation in 1992.[109] That number has remained fairly constant as indicated by the approximately 1,551 operating television

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[104] 13 C.F.R. § 121.201, Standard Industrial Code (SIC) 4833 (1996).

[105] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995).

[106] Id. See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes "Television Broadcasting Stations (SIC Code 4833) as:

> Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

[107] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 7, Appendix A-9.

[108] Id.; SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services (producers of live radio and television programs).

[109] FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, supra note 7, Appendix A-9.

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broadcasting stations in the nation as of February 28, 1997.[110] For 1992[111] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments, or approximately 77 percent of the 1,509 establishments.[112] Thus, the rules will affect approximately 1,551 television stations; approximately 1,194 of those stations are considered small businesses.[113] These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies. We recognize that the rules may also impact minority and women owned stations, some of which may be small entities. In 1995, minorities owned and controlled 37 (3.0%) of 1,221 commercial television stations in the United States.[114] According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and non-commercial television stations in the United States.[115]

There are currently 4,977 TV translator stations and 1,952 LPTV stations which would be affected by the allocation policy and other policies in this proceeding.[116] The Commission does not collect financial information of any broadcast facility and the Department of Commerce does not collect financial information on these broadcast facilities. We will assume for present purposes, however, that most of these broadcast facilities, including LPTV

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[110] FCC News Release No. 7033, March 6, 1997.

[111] Census for Communications' establishments are performed every five years ending with a "2" or "7". See Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, supra note 7, at III.

[112] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[113] We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 1997 total of 1551 TV stations to arrive at 1,194 stations categorized as small businesses.

[114] Minority Commercial Broadcast Ownership in the United States, U.S. Dep't of Commerce, National Telecommunications and Information Administration, The Minority Telecommunications Development Program ("MTDP") (April 1996). MTDP considers minority ownership as ownership of more than 50% of a broadcast corporation's stock, voting control in a broadcast partnership, or ownership of a broadcasting property as an individual proprietor. Id. The minority groups included in this report are Black, Hispanic, Asian, and Native American.

[115] See Comments of American Women in Radio and Television, Inc. in MM Docket No. 94-149 and MM Docket No. 91-140, at 4 n.4 (filed May 17, 1995), citing 1987 Economic Censuses, Women-Owned Business, WB87-1, U.S. Dep't of Commerce, Bureau of the Census, August 1990 (based on 1987 Census). After the 1987 Census report, the Census Bureau did not provide data by particular communications services (four-digit Standard Industrial Classification (SIC) Code), but rather by the general two-digit SIC Code for communications (#48). Consequently, since 1987, the U.S. Census Bureau has not updated data on ownership of broadcast facilities by women, nor does the FCC collect such data. However, we sought comment on whether the Annual Ownership Report Form 323 should be amended to include information on the gender and race of broadcast license owners. Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities, Notice of Proposed Rule Making, 10 FCC Rcd 2788, 2797 (1995).

[116] FCC News Release No. 7033, March 6, 1997.

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stations, could be classified as small businesses. As indicated earlier, approximately 77 percent of television stations are designated under this analysis as potentially small business. Given this, LPTV and TV translator stations would not likely have revenues that exceed the SBA maximum to be designated as small businesses.

4. Alternative Classification of Small Television Stations

An alternative way to classify small television stations is by the number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity ("EEO") rule for broadcasting.[117] Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and record keeping requirements.[118] We estimate that the total number of commercial television stations with 4 or fewer employees is 132 and that the total number of noncommercial educational television stations with 4 or fewer employees is 136.[119]

We have concluded that the 746-806 MHz band can be recovered immediately, and that it is in the public interest to reallocate this spectrum to uses in addition to TV broadcasting. We believe that such a reallocation is possible while continuing to protect TV. There are 95 full power TV stations, either operating or with approved construction permits, in Channel 60-69. There are also nine proposed stations, and approximately 15 stations will be added during the DTV transition period, for a total of approximately 110 nationwide. There are also approximately 1,366 LPTV stations and TV translator stations in the band, operating on a secondary basis to full power TV stations. We propose to immediately reallocate the 746-806 MHz band in order to maximize the public benefit available from its use.

The RFA also includes small governmental entities as a part of the regulatory flexibility

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[117] The Commission's definition of a small broadcast station for purposes of applying its EEO rule was adopted prior to the requirement of approval by the Small Business Administration pursuant to Section 3(a) of the Small Business Act, 15 U.S.C. § 632(a), as amended by Section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Pub. L. No. 102-366, § 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Pub. L. No. 103-403, § 301, 108 Stat. 4187 (1994). However, this definition was adopted after public notice and an opportunity for comment. See Report and Order in Docket No. 18244, 23 FCC 2d 430 (1970).

[118] See, e.g., 47 C.F.R. § 73.3612 (Requirement to file annual employment reports on Form 395-B applies to licensees with five or more full-time employees); First Report and Order in Docket No. 21474 (In the Matter of Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395), 70 FCC 2d 1466 (1979). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. Order and Notice of Proposed Rule Making in MM Docket No. 96-16 (In the Matter of Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines), 11 FCC Rcd 5154 (1996). One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees. Id. at ¶ 21.

[119] We base this estimate on a compilation of 1995 Broadcast Station Annual Employment Reports (FCC Form 395-B), performed by staff of the Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

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analysis.[120] The definition of a small governmental entity is one with a population of fewer than 50,000.[121] There are approximately 85,006 governmental entities in the nation.[122] This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number have populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,566, or 96 percent, have populations of fewer than 50,000.[123] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the approximately 85,006 governmental entities, we estimate that 96 percent, or 81,600, are small entities that may be affected by our rules.

F. Description of Projected Reporting, Record Keeping and Other Compliance Requirements.

None.

G. Significant Alternatives Considered and Rejected.

We do not provide LPTV and TV translator stations with the same protection afforded to full-power TV stations. Because of the large number of such stations, protecting them would significantly diminish the utility of the 746-806 MHz band to both public safety and commercial users. Also, LPTV and TV translator stations are secondary in this band, and we have made public safety and commercial services primary in the band. We affirm measures which will allow as many LPTV and TV translator stations as possible to remain in operation until the end of the DTV transition period. We continue the secondary status of these stations, so that they will not be required to change or cease their operations until they actually interfere with one of the newly-allocated services.

H. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.

None.

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[120] 5 U.S.C. § 601(5).

[121] *Id.*

[122] 1992 Census of Governments, U.S. Bureau of the Census, U.S. Department of Commerce.

[123] *Id.*

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