

Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 29, 2009.

Jane Diamond,

Acting Deputy Regional Administrator, Region IX.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[WT Docket Nos. 08-166, 08-167, and ET Docket No. 10-24; FCC 10-16]

Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band; Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary Stations, Including Wireless Microphones, and the Digital Television Transition

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this Further Notice of Proposed Rulemaking (FNPRM) the Commission seeks to refine and update its rules governing the use of wireless microphones, seeking comment on a range of issues concerning the operation of these devices in the core TV bands.

DATES: Interested parties may file comments on or before February 22, 2010, and reply comments on or before March 15, 2010.

ADDRESSES: You may submit comments, identified by WT Docket No. 08-166, 08-167 and ET Docket No. 10-24, by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Federal Communications Commission's Web site:** <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- **Mail:** Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- **People with Disabilities:** Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Paul D'Ari, Wireless Telecommunications Bureau, (202) 418-1550, e-mail Paul.Dari@fcc.gov, or Hugh L. Van Tuyl, Office of Engineering and Technology, (202) 418-7506, e-mail Hugh.VanTuyl@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's rules noted in the Report and Order and Further Notice of Proposed Rulemaking in WT Docket Nos. 08-166 and 08-167, ET Docket No. 10-24, and FCC 10-16, adopted January 14, 2010, and released on January 15, 2010. This summary should be read with its companion document, the Report and Order summary published elsewhere in this issue of the **Federal Register**. The full text of the Report and Order and FNPRM is available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY-B402, Washington, DC 20554; the contractor's Web site, <http://www.bcpweb.com>; or by calling (800) 378-3160, facsimile (202) 488-5563, or e-mail FCC@BCPIWEB.com. Copies of the public notice also may be obtained via the Commission's Electronic

Comment Filing System (ECFS) by entering the docket numbers, WT Docket No. 08-166, WT Docket No. 08-167, and ET Docket No. 10-24.

Additionally, the complete item is available on the Federal Communications Commission's Web site at <http://www.fcc.gov>.

Synopsis of the Further Notice of Proposed Rulemaking Section of the Report and Order and Further Notice of Proposed Rulemaking

I. Introduction

1. In this Further Notice of Proposed Rulemaking (FNPRM), the Commission addresses the use of wireless low power auxiliary stations, including wireless microphones that operate on the TV bands by entities that are not eligible for a part 74 low power auxiliary station license. In light of the important functions that these types of devices provide to the public, the Commission propose that the Commission should revise its rules to permit the use of wireless microphones and other low power audio devices in the core TV bands on an unlicensed basis under part 15 of the rules by entities that are not currently eligible for licensing under part 74, Subpart H of the rules. The Commission also proposes to adopt technical rules for such operation under part 15. In addition, the Commission seeks comment on whether to provide for some expansion of the eligibility under part 74, Subpart H of the rules to create additional categories of licensed use of wireless microphones or other low power auxiliary stations. The Commission also seeks comment on the adoption in its rules marketing and labeling requirements, including possible requirements pertaining to part 74 low power auxiliary stations that could help ensure that ineligible entities do not obtain such devices. Consistent with the Commission's broader efforts to manage spectrum as effectively and efficiently as possible, the Commission also seek comment on possible long-term reform, based in part on technological innovation such as digital technology, that would enable wireless microphones to operate more efficiently and with improved immunity to harmful interference, thereby increasing the availability of spectrum for wireless microphone and other uses. Finally, the Commission seeks comment on whether there are any changes it could make to other rule parts, including part 90, that would address the needs of wireless microphone users.

2. As discussed in the Report and Order, there are several reasons why this is an appropriate time for the

Commission to examine, in a comprehensive fashion, the rules for wireless microphones in the TV bands. In addition to those discussed above, the Commission adopted rules in November 2008 in the *TV White Spaces Second Report and Order* to permit new types of devices to operate on an unlicensed basis in vacant "white spaces" spectrum in the TV bands. These "TV Band Devices" are regulated under part 15 of the Commission's rules. The rules require TV Band Devices to protect licensed operations in the TV bands, including wireless microphones and other part 74 low power auxiliary stations. A number of petitions for reconsideration of the *TV White Spaces Second Report and Order* raise issues related to the protections afforded wireless microphones in that order. Although the issues in these petitions for reconsideration and the proposals in this FNPRM are related, the Commission does not address herein the specific issues raised in the petitions for reconsideration of the rules regarding wireless microphone operations and TV Band Devices. Rather, the proposals and other issues in this FNPRM are intended to balance the needs of various wireless microphone users, in particular, with other important uses of the spectrum, including new unlicensed devices that can be used for broadband and other applications in portions of the TV bands.

A. Operation in the TV Bands

1. Unlicensed Operation Under Part 15

3. The Commission seeks comment on allowing wireless microphones to operate on an unlicensed basis in the TV bands under part 15 of the rules generally, the technical proposals discussed herein, and the other specific proposals that commenters and other interested parties have made in the record with respect to permitting wireless microphones to operate under part 15 of the Commission's rules.

4. Many users may need only a single or a small number of wireless microphones operating simultaneously, and only one or two vacant TV channels may be required for such users. Even with TV Band Devices operating in the TV bands, the rules that the Commission adopted in the "white spaces" proceeding are designed to ensure that there will be one or more TV channels available for wireless microphones at most locations. Specifically, only fixed TV Band Devices may operate on channels below 21, and fixed TV Band Devices are not permitted to operate adjacent to occupied TV channels, whereas wireless

microphones may do so. Thus, at any given location some TV channels cannot be used by TV Band Devices and should be available for wireless microphones. In addition, in the 13 metropolitan areas where the Private Land Mobile and Commercial Mobile Radio Services are permitted to operate on channels 14–20, TV Band Devices are not permitted to operate on the first vacant TV channel above and below channel 37, thus leaving them available for wireless microphones. The Commission seeks comment on these assumptions and whether allowing wireless microphones to operate on a non-licensed basis in the TV bands under part 15 of the rules may meet the needs of the vast majority of wireless microphone users.

5. In addition, the Commission proposes technical rules for the operation of wireless microphones as unlicensed devices under part 15 of the rules. The Commission proposes to adopt the term "Wireless Audio Devices" for such devices and to define them as intentional radiators used to transmit voice, music or other audio material over short distances. Under this proposal, transmissions would be allowed to use either analog or digital modulation techniques. To ensure that such devices are used only for their intended purpose of transmitting audio material, the Commission proposes to prohibit data transmissions except for short data strings such as recognition codes necessary to ensure the functionality of a system. The Commission also proposes to prohibit transmission of audio material to the public switched telephone network and private and commercial wireless systems and networks to prevent Wireless Audio Devices from being used for applications such as wireless headsets for use with cellular phones, cordless phones and similar devices. Devices that transmit data or operate as telephones can operate under the part 15 TV band device rules or other rule parts, e.g., Section 15.247 or 15.249. The Commission seeks comment on the definition and the proposals. In particular the Commission seeks comment on whether its proposed definition of Wireless Audio Devices is overly broad and could enable a proliferation of devices in the TV bands that already have suitable provisions to operate in other bands. If so, the Commission seeks comment on whether it should specifically limit the applicability of the rules to wireless microphones and how precisely they should be defined. Additionally, the Commission seeks comment on whether any other specifications or restrictions

are needed, such as limiting devices to one-way operation.

6. The Commission is not proposing to allow operation under the part 15 rules of unlicensed video devices similar in fashion to those used by motion picture and television producers as an aid in composing camera shots under the part 74 Wireless Assist Video Devices rules. No party has indicated that there is a need to permit the operation of similar devices by parties other than those eligible for licensing under part 74. Further, part 15 already allows devices to operate with sufficient bandwidth to transmit video in a number of bands, albeit at a lower power level or with different technical requirements from part 74, including the 902–928 MHz and 2400–2483.5 MHz bands. In addition, part 15 allows devices to operate in the TV bands under the TV Band Device rules. The Commission invites comment.

7. The technical rules the Commission is proposing for unlicensed Wireless Audio Devices are in many respects similar to the technical rules applicable to wireless microphones licensed under part 74 as low power auxiliary stations. The Commission is making this proposal because these part 74 rules have been used in the development of a wide variety of wireless microphones that consumers have found useful and that apparently are capable of operating in the TV bands without interference. Further, by modeling the proposed part 15 rules after the technical features of the part 74 rules, the Commission expects that most manufacturers will be able to obtain approval for equipment with few or no modifications from currently available designs. The Commission is proposing to place the technical requirements for Wireless Audio Devices in a new section in part 15, Subpart C, which contains the rules for intentional radiators (*see* proposed rules).

8. The Commission proposes to allow Wireless Audio Devices to operate in the core TV bands spectrum on channels 2–51 (excluding channel 37, which is allocated for non-broadcast purposes nationwide). The Commission proposes to prohibit operation of Wireless Audio Devices on channel 17 in Hawaii, which is allocated for non-broadcast purposes. To prevent interference to co-channel TV stations, the Commission proposes to prohibit operation of Wireless Audio Devices co-channel to operating TV stations at the following distances, which are the same separation distances required for part 74 wireless microphones.

- Channels 2–4 (54–72 MHz) and 5–6 (76–88 MHz)
 - Zone I: 105 km (65 miles)
 - Zones II and III: 129 km (80 miles)
- Channels 7–13 (174–216 MHz)
 - Zone I: 97 km (60 miles)
 - Zones II and III: 129 km (80 miles)
- Channels 14–36 (470–608 MHz) and 38–51 (614–698 MHz)
 - All zones: 113 km (70 miles)

9. The Commission proposes to permit Wireless Audio Devices to operate with a power level to the antenna of up to 50 milliwatts in both the VHF and UHF TV bands. The Commission notes that the part 74 rules permit wireless microphones to operate on VHF TV channels with a power level to the antenna of 50 milliwatts and on UHF channels with a power level of 250 milliwatts. However, most wireless microphones currently operate at a lower power level to increase battery life and because higher power is not necessary for most applications. For example, Shure has indicated that the majority of wireless microphones operate with a power level between 10 and 50 milliwatts. Therefore, the Commission's proposed power level may be appropriate for most users, particularly because the Commission expects that parties using part 15 wireless microphones will typically be entities operating in smaller venues that do not require the longer range operation that higher power allows. In this regard, the Commission notes that devices authorized under part 74 as low power auxiliary stations are "intended to transmit over distances of approximately 100 meters" and may operate with a power level of 250 milliwatts. The Commission anticipates that wireless microphones operating up to 50 milliwatts would transmit over a shorter distance. The Commission seeks comment on this proposal. The Commission also seeks comment on whether the equipment certification rules should prevent component parts such as amplifiers from being attached after market to a microphone and whether the rules should specify a maximum field strength or other emission limits for equipment.

10. The Commission proposes to require Wireless Audio Devices to comply with the same channelization, frequency stability, and bandwidth requirements as permitted under the technical rules for part 74 wireless microphones. Specifically, the Commission proposes to require that operation be offset from the upper or lower channel edge by 25 kHz or an integral multiple thereof and that the operating frequency tolerance be

0.005%. The Commission also proposes to specify that one or more adjacent 25 kHz segments within a TV channel may be combined to form an operating channel with a maximum bandwidth not to exceed 200 kHz. Consistent with the measurement requirements for other part 15 transmitters, the Commission further proposes to require that the frequency tolerance be maintained over a temperature variation of –20 degrees to +50 degrees C at normal supply voltage, for a variation in the supply voltage from 85% to 115% of the rated supply voltage at a temperature of 20 degrees C, and that battery operated equipment be tested using a new battery. The Commission expects that the proposed 25 kHz offset requirement would prevent wireless microphones from operating at the edge of a TV channel where they could interfere with TV stations on adjacent channels, and the proposed frequency tolerance requirement would ensure that devices do not drift from the designated frequencies. The limit on the bandwidth that a wireless microphone may occupy will leave room for multiple microphones within a channel. The Commission seeks comment on these proposals.

11. The Commission proposes to require that out-of-band emissions from Wireless Audio Devices comply with the same emission limits that apply to part 74 wireless microphones. Specifically, the Commission proposes to require that the mean power of out-of-band emissions comply with the following:

- On any frequency removed from the operating frequency by more than 50% and up to 100% of the authorized bandwidth: At least 25 dB;
- On any frequency removed from the operating frequency by more than 100% and up to 250% of the authorized bandwidth: At least 35 dB;
- On any frequency removed from the operating frequency by more than 250% of the authorized bandwidth: $43 + 10 \log P$ dB where P is the mean output power in watts.

12. The Commission seeks comment on whether these out-of-band emission levels are appropriate. The Commission also seeks comment on whether it should apply the Section 15.209 limits outside the TV channel where a wireless microphone operates. Furthermore, the Commission seeks comment on whether these out-of-band emissions are adequate to protect both land mobile systems operating in the TV bands and new services operating on or within TV channel 52, 698–704 MHz, and on other frequencies in the 700 MHz Band.

13. The Commission seeks comment on whether the Commission should prohibit Wireless Audio Devices from operating on co-channel basis with land mobile stations. The Commission also seeks comment on whether the Commission should adopt any other technical rules to prevent interference to land mobile systems operating in the TV bands. In addition, the Commission seeks comment on whether the Commission needs to adopt isolation distances from the land mobile operations, similar to those proposed to protect TV stations. In addition, the Commission seeks comment on whether the Commission needs to adopt similar rules to protect new services operating on or within Channel 52 (698–704 MHz), or on other frequencies in the 700 MHz Band.

14. The Commission seeks comment on its assessment that the rules adopted for TV Band Devices are not likely to be suitable for Wireless Audio Devices. For example, TV Band Devices are required to have geolocation capability and the ability to connect to the Internet to register with a central data base. If wireless microphone "features" were to be added to these devices, it might result in a substantial increase in costs for these devices. Certain features currently required for TV Band Devices, such as periodic sensing of the airwaves for other devices, may also be incompatible with the operation of a real-time always-on device such as a wireless microphone. In addition, the Commission observes that there are similarities between the rules the Commission is proposing for wireless audio devices and the rules that were adopted for TV Band Devices. For example, the Commission allowed TV band personal/portable devices operating on an adjacent TV channel to use a power of up to 40 mW, whereas the Commission is proposing to allow wireless audio devices to use a power of up to 50 mW. These similarities mean that, from a power and spectrum sharing standpoint, one type of device should not have a significant advantage over the other. The Commission invites comment on this assessment.

15. The Commission proposes to require devices that have already been certificated under the procedures established for part 74 devices and that will be marketed for operation under part 15 to obtain a new equipment authorization to ensure compliance with whatever rules the Commission may adopt in this proceeding. The nature of the filings, such as whether new test data may need to be submitted, will depend on whether the technical rules

the Commission adopt are identical to or different from part 74.

16. If the Commission were to adopt technical rules for operation under part 15 that are different from the existing part 74 rules, the Commission proposes to allow a transition period where the existing equipment could be marketed and operated under part 15 before obtaining a new equipment authorization. Typically design and manufacturing cycles take 1 to 2 years. The Commission invites comment on whether there should be a transition period and, if so, what should be the length of the transition period? The Commission also seeks comment on whether the Commission should apply the transition to the date after which a product is marketed, a date after which the product is manufactured or imported, or some other measure.

17. Finally, the Commission seeks comment on whether any other technical requirements need to be specified for Wireless Audio Devices. For example, the part 74 rules for low power auxiliary stations have additional requirements for wireless microphones including a maximum frequency deviation specification when frequency modulation is used. Additionally, part 74 states that a transmitter may be either frequency synthesized or crystal controlled. The Commission seeks comment on whether these or any other requirements should be incorporated into the part 15 rules for Wireless Audio Devices.

2. Licensed Operation Under Part 74

18. Certain users of wireless microphones that are not currently eligible for a low power auxiliary station license under part 74 may have needs that are similar to existing eligible licensees and may have a need for the interference protection that a license affords. In this section, the Commission seeks comment on whether to revise its rules and provide for a limited expansion of eligibility that would permit such users to hold a part 74 license in the TV bands. The Commission also seeks comment on whether license eligibility should be expanded to permit the use of low power auxiliary stations inside nuclear power plants. In examining whether to expand licensee eligibility, the Commission must balance the needs of the different users of the TV band spectrum.

19. The Commission seeks comment on the extent to which part 74 eligibility for licensing should be expanded, if the Commission decides to do so. For example, should such eligibility be limited to include large theaters,

entertainment complexes, sporting arenas, and religious facilities, because these large venues may require multiple vacant TV channels to accommodate all of the wireless microphones needed and they may need the additional protections afforded part 74, Subpart H licensees in the TV bands? The Commission seeks comment on whether to revise its rules in this manner, and how best to specify which particular entities, and under what circumstances, they should be eligible for a license. As discussed above, a number of commenters and other parties have urged the Commission to expand eligibility for part 74 licenses to varying degrees, and the Commission seeks comment as well on those expanded eligibility proposals.

20. Some wireless microphone operators, such as certain producers of live professional arts, entertainment, and sporting events may require multiple vacant TV channels to accommodate all of the wireless microphones needed. Many of these events are broadcast or recorded, and thus producers of these events may already be eligible for a part 74 license. On the other hand, some of these events that rely on numerous wireless microphones are live programs that will not be broadcast or recorded, and thus producers of these live events are not currently eligible for a part 74 license, but yet may have the same wireless microphone requirements. Live programs of professional arts, entertainment, and sporting events that require multiple vacant TV channels to accommodate numerous wireless microphones may be sufficiently analogous to the uses now permitted by part 74 as to be a reasonable basis for expanding licensee eligibility. Moreover, such operations may warrant the interference protection that can only be assured under a license. For example, the Commission's provisions for TV Band Devices provide for licensed low power auxiliary stations to be registered in a data base to assure protection against harmful interference. The Commission recognizes, however, that some of these live arts, entertainment, and sporting events may only require the use of a few wireless microphones and thus have greater flexibility to select TV band channels that are free of interference. Events that use only a few wireless microphones may not require the assurance of interference protection afforded by a license.

21. Certain other wireless microphone uses, such as those at services conducted by religious organizations, may also warrant provisions for licensed operation under part 74 because they

bear important similarities to the uses now permitted by part 74. For example, some events at venues used for religious purposes also may require multiple vacant TV channels to accommodate all of the wireless microphones needed. While it is not clear from the record currently before us, in some cases religious organizations may already be eligible for a part 74 license if they broadcast or record events at religious venues and they hold a recognized broadcast license or qualify as television or motion picture producers under the rules. In other cases, as with theatrical productions and sporting events, some events at religious facilities are live programs that will not be broadcast or recorded, and thus producers of these live events are not currently eligible for a part 74 license, but yet have the same wireless microphone requirements. In contrast, it may be that at many religious facilities services are conducted using only a few wireless microphones and may have greater flexibility to select TV channels that are free of interference. These religious facilities may not require the assurance of interference protection afforded by a license.

22. The Commission seeks comment on whether to authorize licensed wireless microphone use by the entities discussed above, at large theaters, entertainment complexes, sporting arenas, and religious facilities, and whether there is a need by these entities for the additional protections afforded part 74, Subpart H licensees in the TV bands. In this regard, the Commission seeks comment on how the Commission could more completely and precisely define the types of additional entities eligible for licensing so that the Commission can easily implement the licensing criteria that the Commission adopts for entities that merit licensee status while also ensuring that such status is limited to only eligible entities. For example, how should the Commission define professional arts, entertainment, or sporting events or eligible religious facilities? Should the Commission, for instance, base the eligibility on the size of the venue, such as specifying a minimum seating capacity? Should the Commission base eligibility on a minimum number of wireless microphones that these entities use on a regular basis, and if so, what should that number be? Should the Commission establish criteria for determining which specific users are eligible for a license and simply leave it, for example, to the religious organization or producer of live events to determine whether they need the

interference protection of a license? What other characteristics of the entities that potentially could be licensed if eligibility is expanded should be specified in the rules? Should licensing be limited to the owner or operator of a theater or stadium or religious facility or should the Commission allow a performing group or sports team or religious organization to hold the license for a specific venue at a specific time? Should it make a difference if the use is permanently housed at the venue (e.g., the home team at a specific stadium)? If the Commission were to expand license eligibility, the Commission also seeks comment on what modifications the Commission should make to the rules regarding scope of service and permissible transmissions.

23. The Commission also invites comment on the impact of expanding part 74 licensing to include additional entities on the availability of spectrum for use by TV Band Devices. Would limiting these new licensees' use to certain venues—such as large theaters, entertainment complexes, sporting arenas, and religious facilities—protect microphone use only at locations that can easily be identified and included in the TV Band Device database and only for particular dates/times and frequencies coinciding with actual use? The Commission asks that commenters address the practicability of producers of live arts, sporting events, and religious organizations providing up-to-date information on venues and times of operation to the TV Band Device database on an ongoing basis, and how best to ensure that they do so. The Commission is particularly concerned that licensees may find it impractical to maintain the database with up-to-date information and instead may call for interference protection on all channels on a continuous basis, which could completely block access by TV Band Devices and therefore may lead to less efficient use of the spectrum. The Commission invites comment on this analysis.

24. The Commission also seeks comment on whether the Commission should modify the eligibility requirements for a part 74 license to include other entities that use wireless microphones, such as those operating at convention or trade shows, certain other cultural events, or governmental or educational institutions. Do these or other additional entities need interference protection from TV Band Devices that is afforded to part 74, Subpart H licensees? Or would, instead, the operation of wireless microphones by these and other users effectively be

accommodated were they to operate on an unlicensed basis under part 15, similar to the TV Band Devices? To the extent that commenters propose that these or other entities be eligible for part 74 licensing, the Commission seeks comment on which particular entities merit protection. The Commission also seeks comment on how, precisely, the Commission should define any additional class of entity that should be eligible to hold a license and the protections afforded by the database. As discussed above, the Commission seeks comment on whether wireless microphone use would be protected at locations that can easily be identified and included in the TV Band Device database and only for particular dates/times and frequencies coinciding with actual use. Commenters should address the practicality of whether any additional entities would provide up-to-date information on venues and times of operation to the TV Band Device database on an ongoing basis, such that they would only have database protection at times of use and not otherwise block access to the spectrum for use by TV Band Devices, which could lead to inefficient use of the TV bands spectrum.

25. The Commission seeks to balance the needs of potential new classes of wireless microphone licensees with other users of the TV bands. The Commission notes that, while some commenters have advocated for changes in the eligibility requirements to allow particular groups of users to operate wireless microphones in the TV bands, no commenter has advocated allowing anyone who desires to operate a wireless microphone to apply for or obtain a part 74 license and associated terms and conditions. If the Commission were to expand part 74, Subpart H to include all of the existing users and applications, the eligibility would be expanded so extensively that virtually anyone would be eligible for a license. The Commission is concerned that such an approach may not be viable. Because part 74 licensees have protection against interference from unlicensed part 15 devices, such a broad expansion of eligibility could seriously reduce the amount of spectrum available for unlicensed TV Band Devices. This could be particularly true in heavily populated places, where there might be significant demand for operation of TV Band Devices as well. This expansion would significantly increase the number of part 74 licensees submitting information for inclusion in the TV Band Device database, thus increasing the cost and complexity of operating the

database. The Commission invites comment on this analysis and the impact of expanding eligibility on the viability of TV Band Devices.

26. The Commission notes that any expansion of the part 74 license eligibility will have an impact on the primary users of the TV bands (e.g., TV broadcasting stations) as well as on unlicensed wireless microphones and TV Band Devices that will be introduced in the future. Is it practical for newly eligible users to comply with all of the part 74 requirements that apply to existing eligibles, such as the requirement to coordinate frequencies? How might an expansion of eligibility affect the viability of frequency coordination for all of the existing eligible users? Should the Commission place any additional requirements or limitations, for example, on the amount of spectrum that can be used in a given location by the newly eligible users? Consistent with the current Section 74.832(d) rule, which limits operation of low power auxiliary stations by non-broadcast entities to frequencies in the TV bands, the Commission seeks comment on whether any expanded part 74 eligibility cover operations in only the TV bands and not the non-TV band frequencies listed in Section 74.802(a).

27. The Commission underscores that irrespective of whether it revises the eligibility requirements under part 74, entities that use wireless microphones would be permitted to operate wireless microphones under the Commission's proposed part 15 rules, and also under part 90 which is discussed below. In short, even if the Commission does not significantly expand eligibility under part 74, the Commission notes that users would still be able to operate wireless microphones under the Commission's proposed part 15 rules or under the part 90 rules.

28. *License Terms.* The Commission seeks comment on the length of initial and renewal license terms for authorizations issued to entities that obtain licenses under any expanded eligibility categories that the Commission adopts under part 74 of the Commission's rules. Under Section 74.15 of the rules, low power auxiliary station licensees have license terms that either run concurrently with the license of the associated broadcast station, or for a period running concurrently with the normal licensing period for broadcast stations located in the same area of operation. Broadcast or low power TV station licensees are issued low power auxiliary station licenses with a term that runs concurrently with the license term of the associated broadcast station. Broadcast network

entities, cable television system operators, motion picture producers, and television program producers have license terms that run concurrently with the normal licensing period for broadcast stations located in the same area of operation. This results in an initial term that is no more than eight years but may be substantially less than eight years, because low power auxiliary station licenses may be obtained in the middle of the license terms of broadcast stations located in the same area of operation.

29. In this FNPRM, the Commission is seeking comment on a limited expansion of the eligibility provisions for part 74, Subpart H licenses. In the event that there is an expansion in eligibility, the Commission seeks comment on whether the license terms for any new classes of eligible users of low power auxiliary stations should be the same as the license terms that currently apply to part 74, Subpart H licensees, as discussed above. The Commission also seeks comment on whether some other license term should apply to these new eligible users in the event that the Commission revises the eligibility categories. The Commission notes that if the Commission were to apply the existing rules governing license terms for low power auxiliary stations, their license terms would run concurrently with the normal licensing period for their local broadcast stations. In some cases, this would result in a license term that would be substantially less than the local broadcaster's term of eight years, because some low power auxiliary station licensees may obtain their licenses in the middle of their local broadcaster's license term. The Commission invites comment on whether some other license term should apply to parties that would be eligible under revised rules. For example, should licenses obtained by a newly eligible person or organization be issued for a term not to exceed ten years from the date of initial issuance or renewal or should some other period be adopted and, if so, what should be the length of the license term? The Commission notes that the Commission's rules generally provide for a license term of ten years for wireless licenses.

30. *Nuclear Energy Institute and Utilities Telecom Council Petition for Waiver*. The Commission notes that the Nuclear Energy Institute and Utilities Telecom Council (NEI/UTC) has recently petitioned the Commission for a waiver of the "allocation and licensing provisions" of the part 2 and 90 rules to permit "Power Licensees" as defined in Section 90.7 of the Commission's rules to obtain licenses under part 90 for the

use of certain equipment certificated for use under Subpart H of part 74 of the rules, inside nuclear power plants. The Commission seeks comment on whether it would serve the public interest to extend the license eligibility under Subpart H of part 74 of the rules to permit the use of low power auxiliary stations inside nuclear power plants. How should the Commission define eligibility for such licenses? Are there any specific concerns associated with permitting operations under Subpart H of part 74 inside commercial nuclear power plants or any special conditions that should apply to any license for such use? To the extent the Commission may decide to expand license eligibility to include users in commercial nuclear power plants, the Commission seeks comment on the spectrum bands that should be made available for this category of users. The Commission also seeks comment on whether any other modification to the part 74 rules would be necessary to accommodate such use inside commercial nuclear power plants.

3. Marketing and Labeling Issues for Part 74 Low Power Auxiliary Stations

31. The Commission seeks comment on issues related to the marketing of part 74 low power auxiliary stations that could help ensure that entities that are not eligible to operate these devices do not purchase them. The Commission expects that some devices will be certificated to operate under only part 74 of the rules, either because the output power level exceeds the part 15 limits or simply because the manufacturer chose not to obtain a part 15 certification. In seeking comment, the Commission recognizes that, under its proposed dual regulatory approach for operating wireless microphones in the TV bands, it is possible that some devices could meet the technical requirements in both parts 15 and 74 of the rules and be certificated to operate under both of those parts. Such devices could be operated by any party without a license, and by eligible parties that have obtained a part 74 license.

32. The Commission seeks comment on whether a marketing restriction should be imposed on manufacturers with respect to equipment that is certificated for use by part 74 licensees. For example, the Commission seeks comment on whether the Commission should adopt a rule requiring that the marketing of equipment certificated under part 74, Subpart H of the Commission's rules be directed solely to parties eligible to operate the equipment. The Commission also seeks comment on whether, as a part of such

a rule, that the Commission provide that marketing of such equipment in any other manner may be considered grounds for revocation of the grant of certification issued for the equipment. In addition, The Commission seek comment on whether some other restriction, or additional restrictions, should be adopted, including record keeping requirements for manufacturers to track to whom their products are marketed, or to ensure that these devices are marketed in a manner that is consistent with the restrictions on their use.

33. The Commission seeks further comment on whether any rules are necessary to ensure that purchasers of low power auxiliary stations that are certificated under only part 74 of the rules are made aware of the part 74 licensing requirements. For example, should manufacturers be required to provide a label visible at the time of purchase advising of the requirement to obtain a license? Should there be a label on the device itself indicating that a license is required? Should the instruction manual contain advisory information about the licensing requirements? What labeling or advisory information should be required?

34. Similarly, the Commission seeks comment on any responsibility that manufacturers, retailers, and distributors should have to notify customers about the licensing requirements or steps they could take ensure that low power auxiliary stations are not marketed to ineligible users. Should there be some form of responsibility or accountability placed upon one or more of these entities at the point of sale and, if so, what should it be? The Commission seeks comment, for example, on whether the Commission should prohibit manufacturers, retailers and distributors from selling or distributing low power auxiliary stations, including wireless microphones unless such sale is to a party that has committed in writing that the party is a bona fide reseller or a party eligible to be a low power auxiliary station licensee pursuant to part 74 of the Commission's rules. The Commission also seeks comment on whether manufacturers, importers, and retailers should be required to retain records of such written commitments for at least two years from the date of sale of the device. The Commission also seeks comment on whether manufacturers, retailers, or distributors could require a facility identification number associated with a Commission license, or some other form of identification which shows that the purchaser is a licensee. Another

alternative would be for the manufacturer, retailer, or distributor to cross-check a purchaser against information, perhaps in a database provided by the Commission, to determine whether a purchaser is an eligible user. The Commission seeks comment on whether any of these alternatives should be adopted in order to provide a sufficient level of responsibility or accountability at the point of sale, or whether some variation or some other method should be adopted instead.

4. Possible Longer-Term Solutions

35. The Commission invites comment on additional changes it should consider that could help ensure that a variety of wireless microphone uses can best be accommodated with other uses in the bands over the longer term, and that spectrum is used efficiently and effectively by wireless microphones. Efficient wireless microphone operations should increase spectrum availability for other uses, including the continued development of wireless broadband. In this FNPRM the Commission proposes to allow wireless microphones to operate on an unlicensed basis in the TV bands under part 15 of the rules. Under this proposal, wireless microphones would share spectrum with TV band devices, and the Commission seek comment on the extent to which wireless microphones can operate more efficiently in order to make spectrum available for other uses.

36. The Commission note that the majority of wireless microphones currently in use are frequency modulated analog devices that operate with a bandwidth of up to 200 kHz. For various reasons, such as the need to avoid intermodulation interference among the devices, the maximum number of wireless microphones that operate simultaneously in a 6 megahertz TV channel may be as few as six or eight. In other words, only 1.2–1.6 megahertz of the 6 megahertz TV channel may only be used while the remainder is effectively left fallow. In locations where many wireless microphones are being used simultaneously, this can result in inefficient use of valuable spectrum. The Commission seeks comment on this use of spectrum by wireless microphones, and on what steps the Commission can take to ensure that wireless microphones are using spectrum more efficiently.

37. The Commission notes that most other radio communications services have shifted from analog to digital technology to improve spectrum efficiency and resistance to interference.

The Commission seeks comment on the state of technological developments that could similarly enable wireless microphones to operate more efficiently and/or improve their immunity to harmful interference, which could make more spectrum available for other users. What steps could the Commission take that would encourage the use of new digital technology or other equipment that would allow more microphones to be used in a single channel? The Commission also seeks comment on whether there are devices currently available that would provide for such operations, on the length of time it may take to transition to such technology, and on what incentives the Commission could adopt to facilitate this transition.

38. Finally, the Commission seek comment on any other steps that the Commission should take in the long term to encourage technological improvements with the goal of ensuring that the core TV spectrum, which is shared by many users, is more efficiently used and thus more available to a range of users for new and innovative products and services. Are there approaches to spectrum management, such as authorizing a band manager, that would achieve the efficient use of spectrum by these devices?

B. Licensed Operation Under Part 90

39. The Commission seeks comment on steps the Commission should take to revise the part 90 wireless microphone rules to make them more useful to wireless microphone users. In particular, the Commission seeks comment on why relatively few entities operate under the current part 90 rules. For example, are too few frequencies available under part 90? Does the narrower bandwidth permitted under part 90 (54 kHz) as compared to part 74 (200 kHz) affect the audio quality of part 90 wireless microphones? Does the part 90 eligibility or licensing requirements discourage use of part 90 wireless microphones by some parties? Are part 90 wireless microphones readily available to entities that wish to purchase them? What rule parts other than part 90 and part 74 should the Commission consider for licensing wireless microphones?

II. Procedural Matters

Initial Regulatory Flexibility Analysis

40. As required by the Regulatory Flexibility Act, see 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies

and rules proposed in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to this FNPRM and have a separate and distinct heading designating them as responses to the IRFA.

Initial Regulatory Flexibility Analysis

41. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice of Proposed Rule Making (FNPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided in Section V.F.2. of the item. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

42. The FNPRM addresses the use of wireless low power auxiliary stations, including wireless microphones, that operate on TV channels 2–51, excluding channel 37, (“the TV bands”) by entities that are not eligible for a part 74 license. In light of the important functions that these types of devices provide to the public, the Commission believes that developing rules to provide for the unlicensed use of wireless low power auxiliary stations, including wireless microphones, in the TV bands would serve the public interest. While wireless microphones are available for use on an unlicensed basis in the 49 MHz, 902–928 MHz and 2.4 GHz bands and on a licensed basis by some entities under part 90 in the 170 MHz band, many entities are using wireless microphones designed for use in the TV bands on an unauthorized basis. The reasons for the use of TV band wireless microphones are varied including, for example, the amount of spectrum that is available for their use in the TV bands can accommodate multiple microphones at one venue and the sound fidelity that is achieved by TV band microphones is much higher than that of microphones that operate in other bands.

43. Certain users of wireless microphones that are not currently eligible for a low power auxiliary station

license under part 74 may have needs that are similar to existing eligible licensees and may have a need for the interference protection that a license affords. The FNPRM seeks comment on whether to revise the Commission's rules to provide for a limited expansion of eligibility that would permit such users to hold a part 74 license in the TV bands. For example, the FNPRM seeks comment on whether to expand eligibility for licensing under part 74, Subpart H of the rules to include large theaters, entertainment complexes, sporting arenas, and religious facilities. The FNPRM also seeks comment on whether the Commission should modify the eligibility requirements for a part 74 license to include other entities that use wireless microphones, such as those operating at convention or trade shows, certain other cultural events, or governmental or educational institutions.

B. Legal Basis

44. The proposed action is authorized under Sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307.

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

45. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operations; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

46. Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA. A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a

population of less than fifty thousand." Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. The Commission estimates that, of this total, 84,377 entities were "small governmental jurisdictions." Thus, the Commission estimates that most governmental jurisdictions are small.

47. In the Report and Order, the Commission concludes that low power auxiliary stations authorized under part 74 of the Commission's rules—including wireless microphones—will not be permitted to operate in the 700 MHz Band after the DTV transition. The Commission also concludes to prohibit the manufacture, import, sale, offer for sale, or shipment of devices that operate as low power auxiliary stations in the 700 MHz Band, effective upon the publication of a summary of the Report and Order in the **Federal Register**. Under Section 74.832 of the Commission's rules, only certain entities may be issued licenses authorizing the use of low power auxiliary stations. In particular, these entities fall within the following categories: (1) Licensees of AM, FM, TV, or International broadcast stations or low power TV stations; (2) broadcast network entities; (3) certain cable television system operators; (4) motion picture and television program producers as defined in the rules; and (5) certain entities with specified interests in Broadband Radio Service (BRS), Educational Broadcast Service (EBS) licenses, i.e., BRS licensees (formerly licensees and conditional licensees of stations in the Multipoint Distribution Service and Multi-channel Multipoint Distribution Service), or entities that hold an executed lease agreement with a BRS licensee or conditional licensee or entities that hold an executed lease agreement with an Educational Broadcast Service (formerly Instructional Television Fixed Service) licensee or permittee.

48. *Radio Stations*. This Economic Census category "comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources." The SBA has established a small business size standard for this category, which is: such firms having \$7.0 million or less in annual receipts. According to Commission staff review of BIA Publications, Inc.'s *Master Access Radio Analyzer Database* on March 31, 2005, about 10,840 (95%) of 11,410 commercial radio stations had revenues of \$6 million or less. Therefore, the

majority of such entities are small entities.

49. The Commission note, however, that in assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included. In addition, to be determined to be a "small business," the entity may not be dominant in its field of operation. The Commission notes that it is difficult at times to assess these criteria in the context of media entities, and the Commission's estimate of small businesses may therefore be over-inclusive.

50. *Television Broadcasting*. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public." The SBA has created a small business size standard for Television Broadcasting entities, which is: Such firms having \$14.0 million or less in annual receipts. The Commission has estimated the number of licensed commercial television stations to be 1,379. In addition, according to Commission staff review of the BIA Publications, Inc.'s Master Access Television Analyzer Database on March 30, 2007, about 986 of an estimated 1,374 commercial television stations (or approximately 72 percent) had revenues of \$13 million or less. The Commission therefore estimates that the majority of commercial television broadcasters are small entities.

51. The Commission note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

52. In addition, the Commission has estimated the number of licensed

noncommercial educational (NCE) television stations to be 380. These stations are non-profit, and therefore considered to be small entities. There are also 2,295 low power television stations (LPTV). Given the nature of this service, the Commission will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

53. *Cable Television Distribution Services*. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services the Commission must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having \$13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million. Thus, the majority of these firms can be considered small.

54. *Cable Companies and Systems*. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have fewer than 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

55. *Cable System Operators*. The Communications Act of 1934, as

amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. The Commission note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, and therefore the Commission is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

56. *Motion Picture and Video Producers*. This economic census category comprises "establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials." The SBA has developed a small business size standard for firms within this category, which is: firms with \$27 million or less in annual receipts. According to Census Bureau data for 2002, there were 7,772 firms in this category that operated for the entire year. Of this total, 7,685 firms had annual receipts of under \$25 million and 45 firms had annual receipts of \$25 million to \$49,999,999. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

57. *Broadband Radio Service (formerly Multipoint Distribution Service) and Educational Broadband Service (formerly Instructional Television Fixed Service)*. Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In its BRS/EBS Report and Order in WT Docket No. 03–66, the Commission comprehensively reviewed its policies and rules relating to the ITFS and MDS services, and replaced the MDS with the Broadband Radio Service and ITFS with the Educational

Broadband Service in a new band plan at 2495–2690 MHz. In connection with the 1996 MDS auction, the Commission defined "small business" as an entity that, together with its affiliates, has average gross annual revenues that are not more than \$40 million for the preceding three calendar years. The SBA has approved of this standard.

58. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which is: All such firms having \$13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million. Thus, under this size standard, the majority of firms can be considered small.

59. *Low Power Auxiliary Device Manufacturers: Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing*. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 had employment of less than 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

60. *Low Power Auxiliary Device Manufacturers: Other Communications Equipment Manufacturing*. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment)." The SBA has developed a small business size standard for Other Communications Equipment Manufacturing, which is: All

such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 503 establishments in this category that operated for the entire year. Of this total, 493 had employment below 500, and an additional 7 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

61. *Radio, Television, and Other Electronics Stores.* The Census Bureau defines this economic census category as follows: "This U.S. industry comprises: (1) Establishments known as consumer electronics stores primarily engaged in retailing a general line of new consumer-type electronic products; (2) establishments specializing in retailing a single line of consumer-type electronic products (except computers); or (3) establishments primarily engaged in retailing these new electronic products in combination with repair services." The SBA has developed a small business size standard for Radio, Television, and Other Electronics Stores, which is: all such firms having \$8 million or less in annual receipts. According to Census Bureau data for 2002, there were 10,380 firms in this category that operated for the entire year. Of this total, 10,080 firms had annual sales of under \$5 million, and 177 firms had sales of \$5 million or more but less than \$10 million. Thus, the majority of firms in this category can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

62. The FNPRM seeks comment on whether to expand the eligibility to operate wireless microphones under part 74 of the rules, and to allow wireless microphones to operate in the TV bands under part 15 of the rules.

63. Parties operating low power auxiliary stations in the TV bands under part 74 of the rules are required to be licensed. Only entities that fall within the following categories are currently eligible for a part 74 license: (1) Licensees of AM, FM, TV, or International broadcast stations or low power TV stations; (2) broadcast network entities; (3) certain cable television system operators; (4) motion picture and television program producers as defined in the rules; and (5) certain entities with specified interests in Broadband Radio Service (BRS) Educational Broadcast Service (EBS) licenses, i.e., BRS licensees, or entities that hold an executed lease agreement with a BRS licensee or conditional licensee or entities that hold an executed lease agreement with an

Educational Broadcast Service licensee or permittee. The FNPRM seeks comment on whether to revise the Commission's rules to provide for a limited expansion of eligibility that would permit such users to hold a part 74 license in the TV bands. For example, the FNPRM seeks comment on whether to expand the eligibility for licensing to allow the use of wireless microphones or other low power auxiliary audio devices in large theaters, entertainment complexes, sporting arenas, and religious facilities. The FNPRM also seeks comment on whether the Commission should modify the eligibility requirements for a part 74 license to include other entities that use wireless microphones, such as those operating at convention or trade shows, certain other cultural events, or governmental or educational institutions. If license eligibility is expanded, the additional entities eligible for licensing would have to apply for a license in the same manner as currently eligible parties.

64. Most non-licensed transmitters are required to be authorized under the Commission's certification procedure as a prerequisite to marketing and importation. The FNPRM proposes to allow wireless microphones to operate in the TV bands on a non-licensed basis under part 15 of the rules, and the proposed new types of wireless microphones would be subject to the same certification requirement. Operation of part 15 wireless microphones would not be limited to a defined group of eligible entities, so parties that are not eligible to operate wireless microphones on a licensed basis under part 74 of the rules would be able to operate these devices under part 15. The proposed technical requirements for part 15 wireless microphones are very similar to those for part 74 wireless microphones, except that the proposed maximum output power for part 15 wireless microphones is lower to reduce the risk of interference. The proposed power level is 50 milliwatts, while part 74 wireless microphones are permitted to operate with 50 milliwatts in the VHF band and 250 milliwatts in the UHF band.

65. The FNPRM seeks comment on whether a marketing restriction should be imposed on manufacturers with respect to equipment that is certificated for use by part 74 licensees. For example, the FNPRM seeks comment on whether the Commission should adopt a rule requiring that the marketing of equipment certificated under part 74, Subpart H of the Commission's rules be directed solely to parties eligible to operate the equipment.

66. The FNPRM seeks further comment on whether any rules are necessary to ensure that purchasers of low power auxiliary stations that are certificated under only part 74 of the rules are made aware of the part 74 licensing requirements. For example, the FNPRM seeks comment on whether manufacturers should be required to provide a label visible at the time of purchase advising of the requirement to obtain a license? Similarly, the FNPRM seeks comment on any responsibility that manufacturers, retailers, and distributors should have to notify customers about the licensing requirements or steps they could take to ensure that low power auxiliary stations are not marketed to ineligible users. Should there be some form of responsibility or accountability placed upon one or more of these entities at the point of sale and, if so, what should it be? The FNPRM seeks comment, for example, on whether the rules should prohibit manufacturers, retailers and distributors from selling or distributing low power auxiliary stations, including wireless microphones unless such sale is to a party that has committed in writing that the party is a bona fide reseller or a party eligible to be a low power auxiliary station licensee pursuant to part 74 of the Commission's rules. In addition, the FNPRM seeks comment on whether manufacturers, retailers, or distributors could require a facility identification number associated with a Commission license, or some other form of identification which shows that the purchaser is a licensee. Another alternative would be for the manufacturer, retailer, or distributor to cross-check a purchaser against information, perhaps in a database provided by the Commission, to determine whether a purchaser is an eligible user.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

67. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption

from coverage of the rule, or any part thereof, for small entities.”

68. The Commission is considering the extent to which it should expand eligibility to allow more parties to obtain a license to operate wireless microphones under part 74. It seeks comment on whether to expand eligibility to permit parties operating large theaters, entertainment complexes, sporting arenas and religious facilities to obtain part 74 licenses because these applications are similar to others which are currently permitted under part 74. The Commission also seeks comment on whether it should modify the eligibility requirements for a part 74 license to include other entities that use wireless microphones, such as those operating at convention or trade shows, certain other cultural events, or governmental or educational institutions. The Commission is considering whether the expansion should be limited, because a broad expansion in eligibility for licensing under part 74 could significantly reduce the amount of spectrum available for part 15 TV band devices, which have to protect licensed part 74 operations.

69. The Commission considered and decided to propose allowing wireless microphones to operate in the TV bands on a non-licensed basis under part 15 of the rules. The proposed technical requirements are consistent with the current part 74 technical requirements for wireless microphones, meaning that manufacturers should be able to certify equipment under part 15 with few or no changes from currently available designs, thus minimizing the economic burden on manufacturers. This proposed approach would allow parties such conference and special events centers; schools and other educational facilities; Federal State and local government agencies; tour guides; a variety of small entertainment venues, clubs and other social organizations, meeting and gathering places that are not currently eligible to operate wireless microphones in the TV bands to legally operate them. The proposed approach places part 15 wireless microphones on a more equal footing to TV band devices in terms of interference protection.

70. In seeking comment on whether any rules are necessary to ensure that purchasers of low power auxiliary stations that are certificated under only part 74 of the rules are made aware of the part 74 licensing requirements, the Commission will carefully consider alternatives that would mitigate the impact that such rules may have on small entities. Similarly, to the extent the Commission considers rules that would impose responsibilities on

manufacturers, retailers, and distributors to notify customers about the licensing requirements or steps they could take to ensure that low power auxiliary stations are not marketed to ineligible users, the Commission will seek to examine alternatives that would not be burdensome on small entities. The Commission seeks comment on whether there should be some form of responsibility or accountability placed upon manufacturers, retailers, or distributors, and it is considering a number of alternatives, such as requiring that (1) Sales of equipment only be made to a party that has committed in writing that the party is a bona fide reseller or a party eligible to be a low power auxiliary station licensee pursuant to part 74 of the Commission's rules; (2) a facility identification number associated with a Commission license, or some other form of identification shows that the purchaser is a licensee be developed; and (3) requiring a manufacturer, retailer, or distributor to cross-check a purchaser against information, perhaps in a database provided by the Commission, to determine whether a purchaser is an eligible user.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

None.

Initial Paperwork Reduction Act Analysis

71. This FNPRM does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Congressional Review Act

72. The Commission will include a copy of this Report and Order and Further Notice of Proposed Rulemaking in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Other Procedural Matters

1. *Ex Parte* Presentations

73. The rulemaking shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries

of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. Other requirements pertaining to oral and written presentations are set forth in Section 1.1206(b) of the Commission's rules.

2. Comment Filing Procedures

74. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Effective December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

75. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

76. *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to

fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

For further information regarding the Further Notice of Proposed Rule Making, contact Paul D'Ari, Wireless Telecommunications Bureau, (202) 418–1550, e-mail Paul.Dari@fcc.gov, or Hugh L. Van Tuyl, Office of Engineering and Technology, (202) 418–7506, e-mail Hugh.VanTuyl@fcc.gov.

III. Ordering Clauses

77. *It is further ordered* that the Commission shall send a copy of this Report and Order and Further Notice of Proposed Rulemaking in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

77. *It is further ordered* pursuant to Sections 4(i), 302, 303(e), 303(f), 303(r) and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303(e), 303(f), 303(r) and 307 that this FNPRM in WT Docket No. 08–166, WT Docket No. 08–167 and ET Docket No. 10–24 is adopted.

79. *It is further ordered* that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on the FNPRM on or before 30 days after publication in the **Federal Register** and reply comments on or before 51 days after publication in the **Federal Register**.

80. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this FNPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 15

Communications equipment, Labeling, and Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Proposed Rules

For the reason discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 15 as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation of part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307, 336, and 544A.

2. Section 15.3 is amended by adding a new paragraph (hh) to read as follows:

§ 15.3 Definitions.

* * * * *

(hh) *Wireless Audio Device*. An intentional radiator that is used to transmit voice, music or other audio material over a short distance. Transmissions may be either analog or digital. Data transmissions are not permitted except for short strings such as recognition codes necessary to ensure the functionality of a system. Transmission of audio material to the public switched telephone network and private and commercial wireless systems and networks is not permitted.

3. A new § 15.238 added to read as follows:

§ 15.238 Operation in the bands 54–72 MHz, 76–88 MHz, 174–216 MHz, 470–608 MHz and 614–698 MHz.

(a) Operation under this section is limited to wireless audio devices as defined in § 15.3(hh).

(b) Operation is limited to locations removed from existing co-channel TV broadcast stations by not less than the following distances. See § 73.609 for zone definitions.

- (1) 54.000–72.000 MHz and 76.000–88.000 MHz:
- (i) Zone I 105 km (65 miles)
 - (ii) Zones II and III 129 km (80 miles)
- (2) 174.000–216.000 MHz:
- (i) Zone I 97 km (60 miles)
 - (ii) Zones II and III 129 km (80 miles)
- (3) 470.000–608.000 MHz and 614.000–698.000 MHz: All zones 113 km (70 miles)

(c) Specific frequency operation is required as follows.

(1) The frequency selection shall be offset from the upper or lower band limits by 25 kHz or an integral multiple thereof.

(2) One or more adjacent 25 kHz segments within the assignable frequencies may be combined to form a channel whose maximum bandwidth shall not exceed 200 kHz. The operating bandwidth shall not exceed 200 kHz.

(3) The frequency tolerance of the carrier signal shall be maintained within $\pm 0.005\%$ of the operating frequency over a temperature variation of -20 degrees to $+50$ degrees C at normal supply voltage, and for a variation in the primary supply voltage from 85% to 115% of the rated supply voltage at a temperature of 20 degrees C. Battery operated equipment shall be tested using a new battery.

(d) The unmodulated carrier power at the antenna input may not exceed 50 mW.

(e) The mean power of out-of-band emissions must comply with the following:

(1) On any frequency removed from the operating frequency by more than 50% and up to 100% of the authorized bandwidth: at least 25 dB.

(2) On any frequency removed from the operating frequency by more than 100% and up to 250% of the authorized bandwidth: at least 35 dB.

(3) On any frequency removed from the operating frequency by more than 250% of the authorized bandwidth: $43+10 \log P$ dB where P is the mean output power in watts.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 09–194; DA 10–70]

Empowering Parents and Protecting Children in an Evolving Media Landscape

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment and reply dates.

SUMMARY: This document extends the period of time in which to file comments and reply comments in response to the FCC's Notice of Inquiry (74 FR 61308, Nov. 24, 2009) seeking comment on how to empower parents to help their children take advantage of the opportunities offered by evolving electronic media technologies while at the same time protecting children from the risks inherent in use of these technologies.

DATES: Comments are due February 24, 2010; reply comments are due March 26, 2010.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact David Konczal, Media Bureau, Policy Division at (202) 418–2228 or at David.Konczal@fcc.gov, Kim Matthews, Media Bureau, Policy Division at (202) 418–2154 or at Kim.Matthews@fcc.gov, or Holly Saurer, Media Bureau, Policy Division at (202) 418–7283 or at Holly.Saurer@fcc.gov.

SUPPLEMENTARY INFORMATION: We have received two requests for an extension of time in which to file comments and reply comments in response to the