

- N.J.A.C. 7:27B-3.2. Sampling and analytical protocol: acceptable test methods
- N.J.A.C. 7:27B-3.3. Operating conditions during the test
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- N.J.A.C. 7:27B-3.10. Procedures for the determination of volatile organic compounds in surface coating formulations
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- N.J.A.C. 7:27B-3.13. Procedures for the determination of leak tightness of gasoline delivery vessels
- N.J.A.C. 7:27B-3.14. Procedures for the direct detection of fugitive volatile organic compound leaks
- N.J.A.C. 7:27B-3.15. Procedures for the direct detection of fugitive volatile organic compound leaks from gasoline tank trucks and vapor collection systems using a combustible gas detector
- N.J.A.C. 7:27B-3.18. Test methods and sources incorporated by reference.

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[FR Doc. 2010-1111 Filed 1-21-10; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15, and 74

[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: Final rule.

SUMMARY: In this Report and Order, the Commission establishes a deadline for wireless microphones and other low power auxiliary stations to cease operation in the 700 MHz Band. The Commission also adopts an early clearing mechanism by which 700 MHz public safety and commercial licensees can provide notice that they are initiating operations in the 700 MHz Band. In addition, the Commission prohibits the manufacture, import, sale, lease, offer for sale or lease, or shipment of wireless microphones and other low power auxiliary stations intended for use in the 700 MHz Band. With regard to users who are not eligible for, or who do not hold part 74, Subpart H license authorizations, the Commission waive its part 15 rules for a limited period. Finally, the Commission adopts certain disclosure requirements under which manufacturers, dealers, distributors, and other entities that sell or lease these devices must display a consumer disclosure at the point of sale or lease. **DATES:** Effective January 22, 2010, except for §§ 15.216, 74.802(e)(2), and 74.851(h) and (i), which contains information collection requirements that have not been approved by OMB. The FCC will publish a document in the **Federal Register** announcing the effective date.

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: 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 Further Notice of Proposed Rulemaking (FNPRM) 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 Report and Order Section of the Report and Order and Notice of Proposed Rulemaking

I. Introduction

1. In this Report and Order and FNPRM, the Commission takes action to ensure that public safety and commercial licensees can operate in the 700 MHz Band without interference, while providing entities currently operating wireless microphones in the band with an opportunity to relocate to other bands. In particular, the Commission ensures that these devices are cleared from the 700 MHz Band no later than June 12, 2010, consistent with the Commission's long-standing goal of making this spectrum fully available for use by public safety and commercial licensees, and the customers that they serve in the band. The Commission also authorizes, for the first time, the use of wireless microphones, on an unlicensed basis, by entities not currently eligible to obtain licenses. The Commission does this by waiver based on its longstanding unlicensed device rules, which have proved highly successful in permitting the use of low-power wireless devices. In addition, the Commission adopts a number of safeguards designed to ensure both that consumers understand their rights and obligations in operating wireless microphones and that wireless microphones are operated in compliance with our rules and policies. Finally, in the 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.

2. More specifically, in this Report and Order, the Commission adopt the following requirements:

- The Commission prohibits the manufacture, import, sale, lease, offer for sale or lease, or shipment of wireless microphones and other low power auxiliary stations intended for use in the 700 MHz Band in the United States, effective upon the publication of the rules in the **Federal Register**, and adopt related marketing and other requirements.

- The Commission requires that all low power auxiliary stations, including wireless microphones, cease operations in the 700 MHz Band no later than June 12, 2010, one year from the end of the DTV transition.

- The Commission provides for an early clearing mechanism that, to the extent that a public safety or commercial licensee will be initiating operations in the 700 MHz Band on specified frequencies and particular

markets before June 12, 2010, permits a licensee to require users of low power auxiliary stations, including wireless microphones to cease operations 60 days after notice.

- The Commission stresses that the operations of low power auxiliary stations, including wireless microphones, in the 700 MHz Band must cease immediately if at any time users of these devices cause harmful interference to a 700 MHz public safety or commercial licensee.

- With respect to unauthorized operations of wireless microphones and other low power auxiliary stations, the Commission waives its part 15 rules for a limited period to permit unauthorized users of wireless microphones and other low power auxiliary stations to operate on an unlicensed basis under part 15 pursuant to certain specified technical requirements—in the 700 MHz Band until June 12, 2010, and in the core “TV bands” until the effective date of the Commission's actions in response to the FNPRM.

3. In addition, in this Report and Order the Commission takes various actions to ensure that consumers are better informed about its rules and policies concerning wireless microphones, which should facilitate compliance with those rules:

- The Commission establishes disclosure requirements to make certain that buyers of wireless microphone equipment understand the limitations on their use of such equipment. For instance, manufacturers, dealers, distributors, and other entities that sell or lease these devices will have to display a consumer disclosure at the point of sale or lease informing consumers of the conditions that apply to the operation of wireless microphones in the core TV bands.

- As part of the Commissions consumer outreach plan, the Commission will release consumer publications, including a Consumer Fact Sheet, that inform the public of its decisions in this Report and Order and of the need to clear the 700 MHz Band so that the spectrum can be used for the provision of new public safety and commercial services.

- The Commission will work with organizations whose memberships include wireless microphone users so that they help the Commission inform all affected users of its decisions in this Report and Order, particularly the need to clear the 700 MHz Band.

- The Commission will assist consumers, including those who have previously purchased wireless microphones that operate in the 700 MHz Band, by posting information on

its Web site and by making information available from the Commission's consumer service representatives through a toll-free number at the Commission's call center.

- The Commission will make available via its Web site and its call center information regarding which wireless microphones are 700 MHz wireless microphones, what options may be available if consumers do have 700 MHz microphones, and how to contact wireless microphone manufacturers to obtain additional information. Information concerning the Commissions decision today will be posted on its Web site at www.fcc.gov/cgb/wirelessmicrophones.

4. Finally, in the FNPRM, the Commission take the following actions:

- The Commission proposes to revise its rules to provide that low power wireless audio devices, including wireless microphones, may be operated as unlicensed devices under part 15 of the rules in the core TV bands.

- The Commission proposes technical rules to apply to low power wireless audio devices, including wireless microphones, operating in the core TV bands on an unlicensed basis under part 15 of the rules.

- The Commission seeks comment on whether, and to what extent, eligibility for obtaining licenses to operate low power auxiliary stations, including wireless microphones, under part 74 should be expanded, and on whether the Commission should revise part 90 to facilitate wireless microphone use.

The Commission seeks comment on possible longer-term approaches for the operation of wireless microphones. Consistent with the Commissions broader efforts to manage this country's spectrum resources as effectively and efficiently as possible, the Commission here 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.

II. Report and Order

5. In this Report and Order, the Commission establishes a firm deadline of June 12, 2010 (one year from the end of the DTV transition) for wireless microphones and other low power auxiliary stations to cease operation in the 700 MHz Band. The Commission also adopts an early clearing mechanism by which 700 MHz public safety and commercial licensees can provide notice that they are initiating operations in the

700 MHz Band. The operators of wireless microphones and other low power auxiliary stations must clear the band within 60 days after such notice. In addition, the Commission prohibits the manufacture, import, sale, lease, offer for sale or lease, or shipment of wireless microphones and other low power auxiliary stations intended for use in the 700 MHz Band.

6. With regard to users who are not eligible for, or who do not hold part 74, Subpart H license authorizations, the Commission waive its part 15 rules for a limited period to permit all such users to operate on an unlicensed basis subject to a number of conditions in the 700 MHz Band until June 12, 2010 and in the core TV bands while the Commission consider issues raised in the FNPRM. In addition, the Commission adopts certain disclosure requirements under which manufacturers, dealers, distributors, and other entities that sell or lease these devices must display a consumer disclosure at the point of sale or lease informing consumers of the conditions that apply to the operation of wireless microphones and other low power auxiliary stations.

A. Low Power Auxiliary Station Operations in the 700 MHz Band After the End of the DTV Transition

7. In order to make the 700 MHz Band fully available to public safety and commercial licensees, the Commission is revising our rules to clarify that low power auxiliary stations, including wireless microphones, will no longer be allowed to operate in the 700 MHz Band except under the specified conditions, and for the limited time period, as adopted herein. Specifically, the Commission establishes a “hard” date of June 12, 2010—one year from the date of the DTV transition—by which all operations of such devices by all users (including unauthorized users) must have ceased in the band. In addition, the Commission will require that operations of these devices cease earlier than that date, pursuant to certain notification procedures, in those areas where 700 MHz public safety or commercial licensees are or will be entering and operating in the band prior to June 12, 2010. Finally, the Commission underscores that, if at any time users of low power auxiliary stations cause harmful interference to a 700 MHz public safety or commercial licensee, those users must cease operations in the band immediately. The Commission finds that this approach best balances the interests of public safety and commercial licensees to operate without interference while providing entities

currently operating low power auxiliary stations in the 700 MHz Band with a reasonable amount of time to remove their operations from the band and relocate them to other bands. In addition, the Commission outlines below our consumer outreach plan to provide users with information concerning their use of low power auxiliary station devices as they transition from the 700 MHz Band.

8. *Need To Clear the Band.* Based on the record, the Commission finds that the Commission needs to be expeditious in establishing time frames and procedures for clearing wireless microphones from the 700 MHz band on our path to providing an interference-free environment for new services in the 700 MHz Band, especially public safety services that are used to protect safety of life, health, or property. The Commission finds that low power auxiliary stations could interfere with public safety and commercial base and mobile receivers. Such interference raises the potential for a disruption of vital public safety services and commercial services. As V-COMM comments, low power auxiliary stations can operate at similar power levels, and are authorized at even higher power levels (250 milliwatts), compared with the power levels at which public safety devices are expected to operate (200 milliwatts). These power levels employed by the respective devices pose a significant risk of co-channel interference and would be strong enough to disrupt the operations of both public safety and commercial mobiles and base station receivers in the 700 MHz Band. The risk of interference also is present to commercial and public safety systems when the wireless microphones and other low power auxiliary stations are operated at lower power levels, including as low as 10 milliwatts. This risk of interference supports the Commission’s determination to prohibit operation of low power auxiliary stations in the 700 MHz Band. In addition, interference from low power auxiliary stations would lead to relatively large “dead zones” around such devices, resulting in effective loss of coverage to commercial and public safety mobiles and portable devices. The Commission finds the potential for such a result raises a significant threat of interference, which is particularly disturbing when considering that this could occur in public safety spectrum while being used to protect the safety of life, health, or property. In addition, the Commission notes the potential for interference to wireless microphone and other low

power auxiliary station operations by commercial and public safety operations.

9. In addition to co-channel interference, the record indicates that low power auxiliary stations have the potential to cause additional interference, such as adjacent band interference, due to out-of-band emissions (OOBE) and intermodulation interference caused by emissions from multiple devices. These emissions and intermodulation products may potentially be strong enough to cause interference to commercial and public safety base stations and mobile devices. Intermodulation interference can occur when multiple low power auxiliary station transmitters are combined or used in close proximity with each other. Thus, commercial or public safety operations can receive interference at venues where multiple low power auxiliary station transmitters are used, such as at concerts or sporting events. V-COMM, for example, indicates that interference can occur in a wide variety of settings, and also discusses its own experience with co-channel interference in the 700 MHz Band caused by low power auxiliary stations. This potential for interference further supports prohibiting the operation of such devices, including wireless microphones, in the 700 MHz Band.

10. Clearing the 700 MHz Band is consistent with the Commission’s previous findings relating to use of the 700 MHz Band in connection with the DTV transition. When the Commission in 2001 adopted rules for commercial services in a portion of the 700 MHz Band, it declined to grant a request filed by SBE that the Commission “afford continued secondary status to part 74 low power broadcast auxiliary devices (such as wireless microphones) operating in the Lower 700 MHz Band, and to establish a new service in part 95 of our Rules to accommodate their use.” The Commission observed that insofar that the “Lower 700 MHz Band will host extensive broadcast use throughout the DTV transition, it is unlikely that new licensees will rapidly occupy the band to the extent that users of the low power broadcast auxiliary devices of the type SBE discusses will have to immediately cease all operation.” Thus, it contemplated that low power broadcast auxiliary devices would be losing their secondary status and would have to vacate the band upon completion of the DTV transition in a particular local market.

11. In addition, the Commission in 2002 expressly excluded from the 700 MHz Band wireless video assist devices, which are another type of part 74,

Subpart H low power auxiliary station device, because of the reallocation of TV Channels 52–69 to wireless services, including public safety services. The Commission stated that “[wireless video assist devices] will not be allowed to use * * * [Channels 52–69] in the UHF–TV band due to a recent spectrum reallocation of those channels to uses other than broadcasting.” Also, in 2006 the Commission determined in the TV White Spaces proceeding that the new low power, unlicensed devices under consideration there will not be permitted to operate on TV Channels 52–69. The Commission stated that the spectrum “ha[s] been reallocated for services other than broadcast television and will no longer be part of the TV bands after the transition.”

12. The Commission concludes that parties have had time to know, and reason to believe, that authorized low power auxiliary stations would not be allowed to operate in the 700 MHz Band at the end of the DTV transition. The DTV Act was enacted over three years ago, and the Commission, as noted above, has on various occasions indicated that the 700 MHz Band would not be a permanent home for low power auxiliary stations, including wireless microphones. Further, a number of manufacturers warned their customers on their Web sites that, after the end of the DTV transition, frequencies in the 700 MHz Band will no longer be available for wireless microphone use under the Commission’s rules. There has been adequate lead time for low power auxiliary station users, including wireless microphone users, and equipment manufacturers to anticipate and take measures to prepare for the reasonably anticipated consequences resulting from the end of the DTV transition, including the availability of the spectrum for public safety and other uses and the need for entities operating low power auxiliary stations to vacate the 700 MHz Band. Moreover, the need to ensure interference-free operations in the 700 MHz Band as soon as is practicable, particularly for public safety operations, compels the Commission to act to prohibit further use of the band for these wireless microphone and other low power auxiliary station users. Nevertheless, as the Commission discuss below, a short transition period may prevent unnecessary disruption of wireless microphone operations and allow an orderly transition to other spectrum. The Commission’s determination in this Report and Order balances the requirements of those using low power auxiliary stations in the 700 MHz Band

with the needs of new 700 MHz licensees to access the spectrum in a timely fashion.

13. *Transition Date.* In order to provide current low power auxiliary station users a reasonable opportunity to remove their systems from the 700 MHz band, the Commission find that allowing them to continue to operate in the 700 MHz Band for a limited period of time under certain conditions serves the public interest. The Commission finds that all entities currently operating low power auxiliary stations in the 700 MHz Band must vacate the band by June 12, 2010. This deadline of June 12, 2010, coupled with the obligation to cease operations earlier pursuant to notice, as described below, strikes the best balance between the needs of public safety and commercial licensees to operate without interference in the 700 MHz Band with the concern that entities currently operating low power auxiliary station devices in the 700 MHz Band have sufficient time to remove their operations from the band and relocate them to other bands.

14. With respect to the timing for requiring that users of low power auxiliary stations cease operating in the 700 MHz Band, the revised rules provide that entities operating low power auxiliary stations may continue those operations in the 700 MHz Band as late as June 12, 2010, subject to the conditions set forth in this Report and Order. In setting June 12, 2010, as the latest possible date for these entities to transition from the 700 MHz Band under the conditions adopted in this Report and Order, the Commission recognizes that low power auxiliary station users should have a short period to transition their operations not already transitioned out of the 700 MHz Band, which should prevent unnecessary disruption of wireless microphone operations. The record supports a transition period for users of low power auxiliary stations to remove their operations out of the 700 MHz Band, but commenters differ on the length of this period.

15. The Commission finds that the transition period and process that the Commission adopts, which terminates on June 12, 2010, is a reasonable period for those parties that may need to continue to operate in the band and will ensure that this spectrum is cleared on a timely and orderly basis for use by public safety and commercial wireless services. The Commission also finds that these requirements, coupled with the notice procedures described herein, will adequately address any concerns that the operation of low power auxiliary stations in the 700 MHz Band

will cause interference to public safety and commercial 700 MHz Band licensees with the end of the DTV transition. Although entities operating low power auxiliary stations will have until June 12, 2010 to complete their exit from the band and their migration to other bands where they would be authorized to operate, subject to the conditions the Commission adopts herein, the Commission nevertheless encourage such users to cease operations in the 700 MHz Band as soon as possible. In addition, the Commission finds that the public interest is served by applying the transition procedures that the Commission adopts in this Report and Order to users of low power auxiliary stations that do not hold a license. This finding is based upon the Commission’s determination that the public interest will be served by allowing this use in this limited context for the limited duration discussed herein.

16. While the Commission agrees with MSTV/NAB that low power auxiliary station licensees authorized to operate in the 700 MHz should be afforded some opportunity to migrate out of the band, the Commission cannot agree with the time frame they suggest, given the potential for interference with public safety and commercial broadband licensees and the clear determination in Congress’s enactment of the DTV Act of 2005 that the 700 MHz band would no longer be a broadcast band in the near term. In addition, the Commission is not persuaded that low power auxiliary station licensees, many of which are associated with high-power broadcast stations that have had significant notice of the need to vacate the 700 MHz band on a timely basis, should have a different and longer timeframe to vacate the 700 MHz Band than other users in the band, as proposed by MSTV. In addition to the need to clear the band because of the potential for interference, the Commission is concerned that adding another layer of complexity—establishing a different set of band clearing rules for a particular subset of users—is likely to add significantly to consumer confusion as well as to undermine the Commission’s efforts to clear the 700 MHz Band. On this issue, the Commission’s judgment is that keeping a single, uniform nationwide date, rather than adopting two separate transition dates, is essential to clearing the 700 MHz Band in a timely, orderly, and effective fashion in a manner that is equitable to all the affected parties. The Commission also is not persuaded of the need for a shorter timeframe, such as a February 18, 2010, hard date as

suggested by CTIA, Verizon Wireless, and several public safety groups. As discussed above, the Commission is placing operating limitations on low power auxiliary station users and adopting notification procedures that enable new 700 MHz licensees to clear the band of low power auxiliary station users in markets in which they will be operating. Further, the Commission notes that, based on the record and publicly available information, it is anticipated that there will be only limited rollout of new commercial services in the 700 MHz Band prior to mid-year 2010. To the extent that spectrum in the 700 MHz Band needs to be clear of low power auxiliary station use for the initiation of new operations, which includes system testing or trials, the Commission is adopting a clearing mechanism that provides for a 60-day notification process. Accordingly, the Commission finds the additional one-year period after the end of the DTV transition during which these low power auxiliary station users may continue to operate in the 700 MHz Band provides a reasonable amount of time for those entities to migrate from the band, yet also allows for the new 700 MHz licensees to access the spectrum in order to provide new services to the public.

17. *Early Clearing.* In addition to setting June 12, 2010, for the clearing of the 700 MHz Band by wireless microphones, the Commission also provides procedures for clearing low power auxiliary station operations in the 700 MHz Band prior to that time to the extent that a public safety or commercial licensee has initiated, or will be initiating, operations in the 700 MHz Band in particular market(s) before that date. Wireless microphones will be required to cease operations before June 12, 2010, only after they have been provided 60 days' advance notification, as set forth below.

18. The notification process will work as follows. During the transition period, which will end on June 12, 2010, a 700 MHz commercial or public safety licensee may notify the Commission that it will be initiating operations on specified frequencies in particular market(s). The wireless operations initiated by the public safety or 700 MHz commercial licensees can include system testing or trials. Upon such notification, the Wireless Telecommunications Bureau or the Public Safety and Homeland Security Bureau will issue a public notice that will be available on the Commission's Web site and that identifies the affected market area(s). Users of low power auxiliary stations, including wireless

microphone users, in those areas must cease operation within 60 days of the release of the notice. The Commission's Web site will provide a central location for the low power auxiliary station users to find information on markets in which 700 MHz licensees are beginning operations prior to June 12, 2010. In addition, any 700 MHz commercial or public safety licensee may, at its option, notify any entity operating low power auxiliary stations of its intention to initiate operations on specified frequencies in the market in which the low power auxiliary station user is operating. Upon receipt of such notice, the low power auxiliary station user in the affected market area must cease operation within 60 days. For entities that have already initiated such operations, these entities may, upon the effective date of this order, follow the same notifications procedures, triggering the same 60-day cessation obligation for users of low power auxiliary stations.

19. In the event that both of these notice provisions are used to provide notice to a particular user of a low power auxiliary station(s), the user will be required to cease operations in the market(s) in accordance with whichever notice provides for earlier termination of such operations. This process should place only a limited burden on public safety and commercial licensees, which have the primary rights to use 700 MHz Band spectrum. Further, as noted above, notwithstanding any early clearing mechanisms adopted herein, low power auxiliary station users that cause harmful interference to a 700 MHz commercial or public safety licensee must cease operations immediately consistent with the Commission's rules for secondary use. The Commission also intends to be in continuous communication with the public safety community to ascertain the extent of public safety use of the 700 MHz Band to help ensure that public safety agencies are able to operate free from harmful interference.

20. *Other Arguments.* The Commission is not persuaded by certain commenters that the Commission should delay the transitioning of low power auxiliary stations and discontinue our efforts to clear the 700 MHz Band of wireless microphones for public safety and commercial use because some LPTV stations, TV translators, and Class A stations are continuing to operate in the 700 MHz Band after the transition. The Commission need to establish expeditious time frames and procedures for clearing wireless microphones from the 700 MHz band on the Commission's

path to providing an interference-free environment for new services in the 700 MHz Band, especially public safety services that are used to protect safety of life, health, or property. Considerations affecting broadcast services other than full-power television broadcast operations should not delay the clearing of wireless microphones.

21. The Commission also declines to adopt Nady's proposal that our transition plan should provide for the negotiation of relocation. As stated above, entities currently operating low power auxiliary stations, including wireless microphones, may continue to operate in the 700 MHz Band until June 12, 2010, subject to the conditions set forth in this Report and Order. Accordingly, the Commission is allowing them to operate in the 700 MHz Band for some time during the transition period. These operators, however, must accept interference from other licensees in the band and must not cause interference to 700 MHz licensees during this transition period, and also are subject to the other conditions the Commission adopt herein, including the requirement to cease operations under the early clearing notification procedures.

22. The Commission denies as well the requests by WCA and PISC that the Commission not provide a transition but adopt a waiver procedure for licensed wireless microphone operations in the 700 MHz Band after the end of the DTV transition. The Commission finds that the waiver procedures requested by these parties are not necessary. First, parties may always request a waiver under the general waiver provisions in our rules. Second, the Commission does not find that a separate waiver provision is warranted because of our determination to allow a limited transition period during which users may operate low power auxiliary stations. The Commission is making clear in its rules that entities operating low power auxiliary stations, including wireless microphones, in the 700 MHz Band may continue to operate on those frequencies until June 12, 2010, subject to the conditions adopted herein. Some operations by low power auxiliary station users in the band may be required to end prior to that time under the 60-day notice procedure that the Commission is adopting. The Commission therefore denies their requests that the Commission adopt a waiver procedure for authorized wireless microphones and other low power auxiliary stations operating in the 700 MHz Band.

23. Furthermore, the Commission finds that the steps the Commission is

taking in this order sufficiently address arguments raised by some parties that there is insufficient spectrum for wireless microphone users outside of the 700 MHz Band, or that replacement spectrum should be made available for wireless microphone operations. As explained elsewhere in this Report and Order, the Commission is adopting an approach that will permit wireless microphone operations to continue on a temporary basis in the 700 MHz Band and in the core TV bands while the Commission considers final rules on the issues addressed in the FNPRM. Under the first step for moving ahead under this approach, the Commission is waiving its part 15 rules to permit unauthorized wireless microphone users to operate in the 700 MHz Band on an unlicensed basis until June 12, 2010, and to permit operation of wireless microphones in the core TV bands on the same unlicensed basis until the effective date of the rules that will be adopted in response to the FNPRM. Under the next step, the Commission proposes and seeks comment in the FNPRM on specific rules for operation of wireless microphones under part 15 of the rules in the TV bands, and the Commission seeks comment on some expansion of the licensee eligibility for part 74 low power auxiliary stations. The Commission also seeks comment on possible revisions to its part 90 rules for licensed operation of wireless microphones. The FNPRM will allow the Commission to consider the use of certain spectrum outside of the 700 MHz Band by wireless microphones, and provides a reasonable and efficient path forward to examine the future of wireless microphone operations.

24. Finally, the Commission concludes that the steps the Commission has taken in this Report and Order are sufficient to address concerns that the presence of low power auxiliary station users operating in the 700 MHz Band would impede the ability of 700 MHz commercial licensees to comply with their build-out requirements such that they should be granted additional time to meet these requirements. Given that the steps the Commission take enable these 700 MHz licensees to begin operating in areas in the band based on the licensees' own timetables, the Commission finds that these licensees' ability to meet their build-out obligations will not be hampered by interference from low power auxiliary stations, and the Commission rejects proposals to delay implementation of 700 MHz construction requirements. For these

same reasons, the Commission also rejects MetroPCS's argument that a delay in clearing the band could constitute a *de facto* modification of its licenses.

25. The rules adopted in this Report and Order with respect to the clearing of the 700 MHz Band by June 12, 2010 and the early clearing procedures will take effect upon the publication of a summary of this Report and Order in the **Federal Register**. The Commission finds that there is good cause for departure from the 30-day delay in the effective date under the Administrative Procedure Act. In this Report and Order, the Commission is taking steps to expedite the availability of unencumbered spectrum for public safety and new commercial licensees, in order that such licensees will be able to operate without interference in the 700 MHz Band. The Commission finds that under these circumstances, a further delay in the effective date of the clearing procedure rules would be contrary to the public interest.

B. Prohibition of the Manufacture, Import, Sale, Lease, Offer for Sale or Lease, or Shipment of 700 MHz Band Low Power Auxiliary Stations

26. The Commission revises its rules to prohibit the manufacture, import, sale, lease, offer for sale or lease, or shipment of low power auxiliary stations for operation in the 700 MHz Band in the United States, effective upon the publication of a summary of this Report and Order in the **Federal Register**. The Commission finds that this prohibition serves the public interest because it will provide greater assurance that the 700 MHz Band will be made available to public safety and new commercial licensees.

27. The Communications Act of 1934, as amended, authorizes the Commission "consistent with the public interest, convenience, and necessity, [to] make reasonable regulations * * * governing the interference potential of devices which in their operation are capable of emitting radio frequency energy by radiation, conduction, or other means in sufficient degree to cause harmful interference to radio communications" and these regulations "shall be applicable to the manufacture, import, sale, offer for sale, or shipment of such devices * * *, and to the use of such devices." The Act further provides that "[n]o person shall manufacture, import, sell, offer for sale, or ship devices * * *, or use devices, which fail to comply with regulations promulgated pursuant to this section."

28. The Commission's decision to prohibit the manufacture, import, sale,

lease, offer for sale or lease, or shipment of low power auxiliary stations that operate in the 700 MHz Band is necessary to ensure that new services in this valuable spectrum will be provided without interruption to benefit all Americans. Public safety agencies are already making use of the 700 MHz Band, and deployment of additional public safety systems is expected to proceed at a rapid pace. Commercial wireless providers are currently preparing to deploy advanced systems that will support new and faster wireless broadband services, once the spectrum is available at the conclusion of the DTV transition.

29. This prohibition is a reasonable corollary to the Commission's decision in this Report and Order to prohibit the operation of low power auxiliary stations in the 700 MHz Band permanently after June 12, 2010, subject to conditions that would require their operation to cease at an earlier date. Since low power auxiliary station equipment will no longer be allowed to operate in the 700 MHz Band after June 12, 2010, the Commission must also prohibit the manufacture, sale, and all other steps that would make wireless microphones available for use in the 700 MHz Band. The prohibition on manufacture, sale, and lease of devices addresses concerns about the potential for increased interference to 700 MHz licensees, including public safety users, by decreasing the number of devices available for use in the band. For the same reason, it also addresses concerns about the proliferation of unauthorized uses in the band. The Commission notes that Shure, one of the largest manufacturers of wireless microphone equipment, states that it no longer manufactures 700 MHz equipment for use in the U.S., and that Audio-Technica, another large manufacturer of wireless microphones, ceased development of new 700 MHz equipment approximately eight years ago. In addition, allowing the sale or lease of devices that can operate in the 700 MHz Band is inconsistent with our goal of taking all steps necessary to make this spectrum available both to public safety and commercial licensees.

30. The Commission rejects Sennheiser's argument that the Commission delays the implementation of the ban on the marketing of devices. The Commission neither agrees that the lead time for implementation of the ban is unreasonable, nor that the Commission must wait for actual interference to occur. As the Commission discusses in this section, in adopting the ban the Commission is particularly concerned with the use of

the spectrum at a time when the spectrum is to be available for new licensees and new services. Moreover, contrary to Sennheiser's assertions, and as the Commission discusses elsewhere in this Report and Order, the Commission finds that sufficient notice was provided indicating that the use of the 700 MHz Band by wireless microphones and other low power auxiliary stations would no longer be authorized. Elsewhere in this Report and Order, the Commission finds that entities operating low power auxiliary stations in the 700 MHz Band must cease operations of those devices in the band after June 12, 2010, subject to the early clearing conditions set forth in this Report and Order. Therefore, it would not serve the public interest to permit the manufacturing and marketing of equipment that can be used in the 700 MHz Band beyond June 12, 2010, and earlier where the clearing mechanisms the Commission are adopting are utilized.

31. Consistent with the arguments of Shure and Sennheiser, the Commission does not prohibit manufacturers from manufacturing low power auxiliary stations, including wireless microphones, for export. The provisions of Section 302 of the Act, as amended, which addresses, among other matters, the prohibition of the manufacture, import, sale, offer for sale, or shipment of devices, are not applicable to "devices or home electronic equipment and systems manufactured solely for export. * * *" Accordingly, the Commission clarifies that its decision today to prohibit the manufacture, import, sale, lease, offer for sale or lease, or shipment of low power auxiliary stations that operate in the 700 MHz Band is not applicable to devices manufactured solely for export. Finally, the Commission revises its rules to require that any person who manufactures, sells, leases, or offers for sale or lease low power auxiliary stations, including wireless microphones, that are destined for non-U.S. markets and that are capable of operating in the 700 MHz Band shall include labeling in all sales, marketing, and packaging materials, including online materials, related to such devices. The labeling must make clear that the devices cannot be used in the United States. The Commission finds that this rule is consistent with the public interest, convenience, and necessity.

32. To protect consumers in the United States, and to help ensure that no wireless microphones and other low power auxiliary stations that operate in the 700 MHz Band continue to be made available for use in contravention of our

efforts to remove those devices from the band in the United States, the Commission require retailers to remove from display (including online display) any low power auxiliary stations, including wireless microphones, that can operate in the 700 MHz Band, as well as any marketing material that does not comply with the requirements adopted herein.

33. The rules relating to the prohibition on the manufacture, import, sale, lease, offer for sale or lease, or shipment of low power auxiliary stations that operate in the 700 MHz Band will take effect upon the publication of a summary of this Report and Order in the **Federal Register**, except the labeling requirement for devices manufactured solely for export. The Commission finds that there is good cause for departure from the 30-day delay in the effective date under the Administrative Procedure Act. In this Report and Order, the Commission is taking steps to expedite the availability of unencumbered spectrum for public safety and new commercial licensees consistent with the Commission's long-standing goal of making the spectrum fully available for those licensees. Under these circumstances, the Commission finds that a delay in the effective date of the prohibition would be contrary to the public interest. With respect to the labeling requirement for devices manufactured solely for export, the Commission find that this requirement should take effect 90 days after release of this Report and Order (*i.e.*, April 15, 2010). This period provides sufficient time for entities that manufacture, sell, lease, or offer for sale or lease low power auxiliary stations that are destined for non-U.S. markets and that are capable of operating in the 700 MHz Band to comply with this labeling requirement.

C. Procedures To Modify Licenses

34. For the reasons set forth above, the Commission concludes that the public interest would be best served by clarifying that entities operating low power auxiliary stations, including wireless microphones, in the 700 MHz Band may continue to operate in that band until June 12, 2010, but only under the conditions adopted in this Report and Order. Accordingly, through this rulemaking proceeding, the Commission hereby modifies the licenses of all low power auxiliary stations that authorize operation in the 700 MHz Band (*i.e.*, 698–806 MHz) to delete the authorization to operate on this particular spectrum, effective June 12, 2010. In the event that any low power auxiliary station must cease operations

prior to June 12, 2010 under the clearing mechanisms the Commission adopts in the Report and Order, then the license relating to that low power auxiliary station will be modified automatically without Commission action to delete the authorization to operate on the 700 MHz Band effective on the date that operations are required to cease in the band. In taking this action, the Commission implements its decisions to ensure that the effective use of the 700 MHz Band by public safety and commercial licensees at the end of the DTV transition is not compromised, and that these new licensees will be able to operate free from interference by low power auxiliary stations operating in the 700 MHz Band.

35. Most low power auxiliary station licensees that are authorized to operate in the 700 MHz Band are also authorized to operate in a number of other bands that are specified in Section 74.802 of the Commission rules. These multiple band licensees may continue to operate in other bands identified in their licenses without further Commission action. Those licensees, however, whose current authorization limits them in whole or in significant part to operations in the 700 MHz Band can be accommodated with the use of spectrum from other spectrum bands that are available for low power auxiliary station operations under Section 74.802 of the rules. Such licensees may wish to consult with a local Society of Broadcast Engineers (SBE) coordinator to identify suitable spectrum from the core TV bands that are available for low power auxiliary station operations under Section 74.802 of the rules. Once replacement spectrum has been identified, as a matter of administrative convenience, the licensee should file an application to modify its authorization to include the identified frequencies. This will enable the Wireless Telecommunications Bureau (Bureau) to modify the affected license in conformance with the revised rules adopted in this order.

D. Unlicensed Operation of Wireless Microphones Under Part 15; Waivers

36. The Commission concludes that it serves the public interest to waive two of its part 15 rules, to permit unauthorized users of low power auxiliary stations, including wireless microphones, to operate on an unlicensed basis under part 15 pursuant to certain specified technical requirements, in the 700 MHz Band until June 12, 2010 and in the core TV bands until the effective date of Commission action taken in response to the FNPRM. The Commission

anticipates that such unlicensed operations in the core TV bands pursuant to waiver will remain in place only for a short period of time, as the Commission intends to act expeditiously on its proposal to promulgate final rules that would authorize these operations on a permanent basis. Accordingly, the Commission waives Sections 15.201(b) and 15.209(a) of our part 15 technical rules. These waivers will permit entities that operate wireless microphones in the 700 MHz Band without the required license to continue those operations subject to the band clearing mechanisms that the Commission adopts in this Report and Order, and permit them to relocate their operations to the core TV bands on the same part 15 unlicensed basis. The waivers also will permit operation of wireless microphones outside of the 700 MHz Band without the required authorization. The operation of wireless microphones in the 700 MHz Band under these limited term waivers will be subject to the band clearing mechanisms the Commission adopts in this Report and Order. Thus, all entities may continue operating wireless microphones in the 700 MHz Band until June 12, 2010, unless they must cease operations sooner under the early band clearing mechanisms discussed above. During the temporary waiver period, any entity that chooses to operate a wireless microphone under these waivers must comply with the waiver conditions, including compliance with specified technical requirements that are identical to those the Commission is proposing in the FNPRM for the operation of wireless microphones under part 15. *See* Amendment of Part 101 of the Commission's Rules to Accommodate 39 Megahertz Channels in the 6525–6875 MHz Band; Amendment of Part 101 of the Commission's Rules to Provide for Conditional Authorization on Additional Channels in the 21.8–22.0 GHz and 23.0–23.2 GHz Band; Fixed Wireless Communications Coalition Request for Waiver, Notice of Proposed Rulemaking and Order in WTB Docket No. 09–114 and RM–11417, at paras. 23–24 (released Jun. 29, 2009) (granting request for waiver of Section 101.31(b)(vii) to allow for conditional authority under conditions that were proposed as rule changes in the NPRM portion of the decision).

37. Under these waivers, wireless microphones may be operated as part 15 devices without a license in the 700 MHz Band under the conditions adopted in this Report and Order, and they can also operate in the core TV

bands. Operation under these waivers is subject to the following conditions. First, the wireless microphones must comply with specified technical requirements under part 15, which are the same technical rules that the Commission is proposing in the FNPRM for wireless microphone operations under part 15 (as set forth in Appendix E, below). Second, the devices must be certificated under the rules applicable to certification under our part 74, Subpart H rules. Third, the devices shall not cause harmful interference and must accept any interference received pursuant to Section 15.5 of our Rules. Finally, users operating in the 700 MHz Band must comply with the conditions for continued operation in that band during the transition period, including the early clearing procedures discussed above. The waivers will be effective upon the release of the Report and Order.

38. Section 1.3 of the Commission's rules provides that "[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown" subject to the provisions of the APA and its own rules. A waiver is appropriate when "particular facts would make strict compliance inconsistent with the public interest." A waiver cannot undermine the purposes of the rule, and there must be a stronger public interest benefit in granting the waiver than in applying the rule. As discussed below, the Commission finds that good cause exists to waive Sections 15.201(b) and 15.209(a) of our part 15 technical rules in order to allow operation of wireless microphones in the 700 MHz Band and the core TV bands for a limited period.

39. The Commission is allowing operation of wireless microphones under these waivers to use a power of up to 50 milliwatts. The waivers should allow wireless microphones to operate outside of the 700 MHz Band in a manner that is largely consistent with their current operations. While 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, two equipment manufacturers indicate that the actual power levels for most wireless microphones operating in the 700 MHz Band are in the 10–50 milliwatts range. We also note that a large majority of wireless microphones are certificated to operate with a power level of 50 milliwatts or less. These appear to be the most popular devices because the 50 milliwatts or less is sufficient for most uses and extends

battery life. While some wireless microphones operate at power levels of 250 milliwatts, it appears most of these devices are used for professional applications requiring a longer operating range with a short duration of operation, such as electronic news gathering or movie production users that hold part 74 authorizations. 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 under the terms of this waiver would transmit over a shorter distance. Therefore, the Commission believes that the operations that the Commission is allowing under the waivers will effectively accommodate users that are currently unauthorized. The Commission is not extending the waiver to permit these wireless microphone users to operate at power levels higher than 50 milliwatts because, unless operated on a licensed basis pursuant to part 74 requirements, use of these devices generally poses a greater interference risk to TV band licensees. Only Part 74 licensees are permitted to operate their devices at power levels higher than 50 milliwatts.

40. The Commission recognizes, however, that there may be instances where operation at a power level higher than 50 milliwatts may be needed and can be allowed without causing interference. The Commission finds that such instances should be evaluated based on their individual facts and circumstances to ensure that interference will not occur. The Commission therefore grants delegated authority to the Office of Engineering and Technology and Wireless Telecommunications Bureau to modify the limited waiver of the part 15 rules on a case-by-case basis to permit entities to operate wireless microphones at power levels higher than 50 mW where it can be shown there is no significant risk of harmful interference to other users of the spectrum, particularly to TV broadcast service.

41. The Commission finds that good cause for a limited waiver exists in this particular case, given the totality of the circumstances including the short-term nature of these waivers and the need to facilitate clearing of the 700 MHz band for use by the public safety and commercial licensees. For the same reasons that the Commission finds good cause exists for granting this waiver, as discussed in this Report and Order, the Commission has determined that there

would be good cause under Section 553(b)(3)(B) of the APA, 5 U.S.C. 553(b)(3)(B), for establishing interim rules that permit the same range of operations as the waiver. The Commission also finds that it serves the public interest to provide access to other spectrum for entities that are operating wireless microphones in the 700 MHz Band while this rulemaking is pending. Our primary goal in this proceeding is to clear all wireless microphones from the 700 MHz Band, thereby simplifying the process of making this spectrum fully available for public safety and commercial broadband licensees. In order to attain this goal, the Commission intends to have any wireless microphone user, authorized or not, transition out of the 700 MHz band and onto other available frequencies no later than June 12, 2010. Granting these waivers will allow currently unauthorized users that vacate the 700 MHz Band to operate in the 700 MHz Band temporarily under the umbrella of unlicensed part 15 operation. At the same time, the conditions the Commission imposes serve the public interest intent behind each of the two specific part 15 rules being waived, which is to prevent interference to authorized radio services. The power limits, minimum co-channel TV broadcast station distance provisions, specific frequency operation, and out-of-band emissions limits established herein provide safeguards to ensure that the policy objectives served by Sections 15.201(b) and 15.209(a) are met. Finally, the Commission notes that any operation of wireless microphones pursuant to the waivers is subject to the Section 15.5 interference restrictions. Taken together, these safeguards ensure that any operation done pursuant to the waivers will not undermine the purposes of, and public interest protected by, Sections 15.201(b) and 15.209(a).

42. The record in this proceeding includes a number of comments that describe the need for and the significance of wireless microphones in providing quality audio technology for performances and programs in theaters, classrooms, lecture halls, houses of worship, stadiums, and other venues. The Commission finds that temporarily waiving these two rules in order to permit the continued operation of wireless microphones, including wireless microphones that are used for these purposes, pending our final decisions of the issues raised in the FNPRM will provide this Commission with the opportunity to develop a full and balanced record before it adopts

final, comprehensive rules that address the operation of wireless microphones by those entities that lack the required license. In addition, the Commission notes that some entities will be acquiring new wireless microphone equipment to operate in bands outside of the 700 MHz Band to replace their existing equipment, while some equipment that operates in the 700 MHz Band may be capable of being modified to operate in the core TV band spectrum. The waivers permitting operations will allow at least some of these users to make informed decisions with respect to new equipment purchases, or where applicable the modification of existing equipment, until the issues raised in the FNPRM are resolved. The Commission emphasizes that there are a variety of unique facts surrounding grant of this waiver, and the Commission does not anticipate that the Commission will soon encounter such a convergence of factors as these to warrant the type of accommodation afforded here.

43. While the Commission finds good cause for granting the limited term waivers, as discussed above, we stress that these waivers are temporary and that the granting of these waivers will not prejudice the outcome of this proceeding or otherwise limit the Commission's choices therein. Under this approach, the Commission will be able to compile a record and consider more fully the issues and proposals in response to the FNPRM concerning currently unauthorized users of wireless microphones, including whether to expand eligibility for licenses under part 74.

44. In order to address the potential for interference from the operation of wireless microphones in the core TV Bands, the Commission requires that all wireless microphones operating under the waivers are subject to the same technical limitations that the Commission is proposing in the FNPRM for the operation of "Wireless Audio Devices" under part 15. These technical rules provide for distances from existing co-channel TV broadcast stations, specific frequency operation, power limits, and out-of-band emissions. In addition, the unlicensed operators of wireless microphones that operate under the waivers will be subject to the restrictions in part 15 of the rules. The immediate and potential future harm to current TV band licensees of continued widespread use of previously unauthorized wireless microphones appears to be negligible, in light of the conditions the Commission is imposing on the waivers, including that the wireless microphones must comply

with the specified technical requirements (consistent with those proposed for part 15 wireless microphone operations in the core TV bands, as set forth in the proposed rules) and that they must not cause harmful interference to licensed TV band users. The Commission notes that licensees that operate low power auxiliary devices under part 74 authorization will still receive interference protection with respect to wireless microphones that will be operating through these temporary waivers as unlicensed devices.

45. Given the actions the Commission is taking today, the Commission does not adopt PISC's remaining proposals, including that the Commission provide a "general amnesty" to certain unauthorized wireless microphone users. The Commission finds that various steps that the Commission is taking today appropriately address, on a going forward basis, the issues relating to the proliferation and use of wireless microphones that have not heretofore been authorized. Finally, the Commission does not rule at this time on PISC's proposal to create a General Wireless Microphone Service that would be licensed by rule pursuant to Section 307(e) of the Act. The Commission does not address at this time questions relating to the unauthorized use of wireless microphones prior to our actions today. The Commission instead seeks to address its concerns in the order that considers the issues set forth in the FNPRM.

E. Disclosure Requirements and Consumer Outreach

46. Based on this record, the Commission adopts certain measures, including point-of-sale disclosure requirements, to address concerns regarding a lack of consumer awareness of our rules, so that the Commission can best ensure the operation of wireless microphones and other low power auxiliary stations in conformance with the relevant policies and rules. Specifically, the Commission adopts a disclosure requirement for anyone selling, leasing, or offering for sale or lease wireless microphones or other low power auxiliary stations that operate in the core TV spectrum. Under this requirement, manufacturers, dealers, distributors, and other entities that sell or lease these devices will have to display a Consumer Disclosure, at the point of sale or lease, informing consumers of the conditions that apply to the operation of wireless microphones in the core TV bands during the temporary waiver period.

This disclosure requirement will apply until the effective date of the final rules addressing the issues raised in the FNPRM. In addition, the Commission will implement a comprehensive consumer outreach program that will include a Consumer Fact Sheet and other consumer publications, as well as other steps on the part of the Commission, to complement the expected outreach and education efforts on the part of low power auxiliary station manufacturers.

47. *Disclosure Requirement.* The Commission requires anyone selling, leasing, or offering for sale or lease wireless microphones or other low power auxiliary stations that operate in the core TV bands to provide certain written disclosures to consumers. These entities must display the Consumer Disclosure, the text of which will be developed by the Commission staff, at the point of sale or lease, in a clear, conspicuous, and readily legible manner. In addition, the Consumer Disclosure must be displayed on the Web site of the manufacturer (even in the event the manufacturer does not sell wireless microphones directly to the public) and of dealers, distributors, retailers, and anyone else selling or leasing the devices.

48. The Commission takes this step in recognition that a significant number of currently unauthorized users of wireless microphones and other low power auxiliary stations in the 700 MHz Band may have to purchase new equipment to transition into the core TV bands pursuant to temporary waivers. The Commission is intention in requiring display of the Consumer Disclosure is to make certain that these users understand their rights and obligations regarding the use of low power auxiliary stations in the core TV bands. For example, wireless microphone purchasers will need to know that they must not operate the device at a power level in excess of 50 milliwatts or in situations where it may cause harmful interference, and that they must accept any interference received from other devices. The Consumer Disclosure should help assure that purchasers of low power auxiliary stations operate their devices in a manner in compliance with the Commission's rules and policies and thereby do not cause interference to authorized radio services in the core TV bands.

49. The Commission finds that the only practicable way to ensure that users receive this information is to require clear disclosure at the point of sale or lease, and on manufacturer and distributor Web sites. A number of parties in comments and *ex parte* filings

have urged the Commission to adopt labeling requirements so that users of wireless microphones and other low power auxiliary stations will be aware of eligibility requirements and other restrictions for the use of those devices. The Commission agrees with these parties that disclosure requirements are necessary to ensure compliance with the Commissions rules and to help consumers operate the equipment in a manner that does not cause interference.

50. The Commission delegates authority to the Wireless Telecommunications Bureau and the Consumer and Governmental Affairs Bureau to prepare the specific language that must be used in the Consumer Disclosure and publish it in the **Federal Register**.

51. There is more than one way in which the point-of-sale Consumer Disclosure may be provided to potential purchasers or lessees of wireless microphones, but, as discussed above, each of them must satisfy all the requirements set out above, including that the disclosure be provided in writing at the point of sale in a clear, conspicuous, and readily legible manner. One way to fulfill this disclosure requirement would be to display the Consumer Disclosure in a prominent manner on the product box by using a label (either printed onto the box or otherwise affixed to the box), a sticker, or other means. Another way to fulfill the disclosure requirement would be to display the text immediately adjacent to each low power auxiliary station offered for sale or lease and clearly associated with the model to which it pertains. For wireless microphones offered online or via direct mail or catalog, the disclosure must be prominently displayed in close proximity to the images and descriptions of each wireless microphone. This requirement will remain in effect until the effective date of final rules adopted in response to the FNPRM.

52. The Commission will require manufacturers, dealers, distributors, and other entities that sell or lease wireless microphone devices for operation in the core TV bands to comply with the disclosure requirements no later than February 28, 2010, and the Commission encourages these entities to provide consumers with the required information earlier. In this Report and Order, the Commission is taking steps to ensure that low power auxiliary stations, including wireless microphones, are cleared from the 700 MHz Band no later than June 12, 2010, so that public safety and commercial licensees will be able to operate without

interference in the band. As noted above, many currently unauthorized users of wireless microphones and other low power auxiliary stations in the 700 MHz Band will have to purchase or lease new equipment to transition into the core TV bands, and the consumer disclosure will provide information on the operation of those devices in the core TV bands. The Commission finds that delaying the effective date of the disclosure rules until some later time would be contrary to the public interest.

53. *Consumer Outreach.* In addition, the Commission finds that several means should be employed to provide as much notice as possible to users of the need to clear the 700 MHz Band of low power auxiliary stations, including wireless microphones.

54. The Commission will release consumer publications, including a Consumer Fact Sheet and answers to Frequently Asked Questions (FAQs), that inform the public of the Commissions decisions in this Report and Order. Specifically, the Consumer Fact Sheet will serve the public interest by explaining the need to clear the 700 MHz Band in order that the spectrum can be used for the provision of new public safety and commercial services. The Consumer Fact Sheet will explain that entities currently operating low power auxiliary stations, including wireless microphones, may continue to operate in the 700 MHz Band until June 12, 2010, subject to the conditions set forth in this Report and Order, including the early clearing mechanisms. The Consumer Fact Sheet will provide information concerning the early clearing mechanisms for the 700 MHz Band that the Commission is adopting in this Report and Order. It will also inform the public how to use the Commission's Web site to view public notices that identify the markets in which 700 MHz licensees are initiating operations. In addition, the Consumer Fact Sheet will provide information concerning our decision to prohibit the manufacture, import, sale, lease, offer for sale or lease, or shipment of low power auxiliary stations for operation in the 700 MHz Band in the United States. The Commission also will provide on its Web site answers to FAQs relating to this proceeding.

55. Commission staff also will identify and contact organizations that represent entities that are known to be users of low power auxiliary stations, including wireless microphones in the 700 MHz Band, including groups that represent theaters, houses of worship, and sporting venues. The Commission will inform these entities of its decisions in this Report and Order,

particularly the need to clear the 700 MHz Band in order that the spectrum can be used for the provision of new public safety and commercial services.

56. Further, the Commission expects all manufacturers of wireless microphones and other low power auxiliary stations to make significant efforts to ensure that all users of such equipment capable of operating in the 700 MHz Band are fully informed of the decisions in this Report and Order. Specifically, the Commission expects these manufacturers, at a minimum, to ensure that these users are informed of the need to clear the 700 MHz Band in order that the spectrum can be used for the provision of new public safety and commercial services. Manufacturers also should inform users of wireless microphones and other low power auxiliary stations that they may continue to operate in the 700 MHz Band until June 12, 2010, but only subject to the conditions set forth in this Report and Order, including the early clearing mechanisms. Further, the Commission expects all manufacturers to contact dealers, distributors, and anyone else who has purchased wireless microphones and other low power auxiliary stations, and inform them of the Commission's decisions in this Report and Order to help clear the 700 MHz Band. Manufacturers should also provide information on the decisions in this Report and Order to any users that have filed warranty registrations for 700 MHz Band equipment with the manufacturer. The Commission also expects manufacturers to post this information on their Web sites and include it in all of their sales literature.

In addition, the Commission urges all manufacturers to extend their rebate offers and trade-in programs for any 700 MHz Band low power auxiliary stations, including wireless microphones, and widely publicize these programs to ensure that all users of wireless microphones are fully informed. To the extent manufacturers do not offer a rebate or trade-in program for 700 MHz Band low power auxiliary stations, the Commission strongly encourage them to create or re-establish such programs. In contacting dealers and distributors, the Commission expects manufacturers to inform these entities that they should: (1) Inform all customers who have purchased low power auxiliary stations, including wireless microphones, that are capable of operating in the 700 MHz Band of our decision to clear the 700 MHz Band of such devices; (2) post such and (4) provide information in sales literature, including on their Web sites, on the availability of any manufacturer rebate offerings and trade-in programs

related to low power auxiliary stations operating in the 700 MHz Band; and that they must comply with the disclosure requirements that we are adopting in this Report and Order.

III. Procedural Matters

Final Regulatory Flexibility Act Analysis

57. As required by the Regulatory Flexibility Act of 1980 ("RFA"), the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") relating to this Report and Order. Although Section 213 of the Consolidated Appropriations Act 2000 provides that the RFA shall not apply to the rules and competitive bidding procedures for frequencies in the 746–806 MHz Band, the Commission nevertheless believes that it would serve the public interest to analyze the possible significant economic impact of the policy and rule changes in this band on small entities. Accordingly, the FRFA includes an analysis of this impact in connection with all spectrum that falls within the scope of the Report and Order, including spectrum in the 746–806 MHz Band.

Final Regulatory Flexibility Analysis

58. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Federal Communications Commission (Commission) included an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the policies and rules considered in the *Notice* in WT Docket No. 08–166 and WT Docket No. 08–167. The Commission sought written public comment on the *Notice*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

59. Although Section 213 of the Consolidated Appropriations Act of 2000 provides that the RFA shall not apply to the rules and competitive bidding procedures for frequencies in the 746–806 MHz Band, the Commission believes that it would serve the public interest to analyze the possible significant economic impact of the proposed policy and rule changes in this band on small entities. Accordingly, this FRFA contains an analysis of this impact in connection with all spectrum that falls within the scope of the *Report and Order*, including spectrum in the 746–806 MHz Band.

A. Need for, and Objectives of, the Rules

60. As noted in the *Report and Order*, the DTV Act set a firm date by which the 700 MHz Band (698–806 MHz), currently occupied by television

broadcasters in TV Channels 52–69, must be vacated to allow for use of the spectrum by public safety and commercial wireless services. In the DTV Delay Act, which was enacted on February 11, 2009, Congress extended the DTV transition deadline from February 17, 2009, to June 12, 2009. In the *Report and Order*, the Commission takes several actions relating to the operation of low power auxiliary stations, including wireless microphones, in the 700 MHz Band, that are designed to ensure that these devices are cleared from the 700 MHz Band in order that, consistent with the Commission's long-standing goals, this spectrum is made fully available for use by the public safety and commercial licensees, and the customers that they serve, in the band following the DTV transition.

61. In the *Report and Order*, the Commission determines that entities currently operating part 74 low power auxiliary stations, including wireless microphones, in the 700 MHz Band will not have the right to operate on those frequencies except pursuant to certain specified conditions and only for a limited transition period of no more than one year from end of the DTV transition (June 12, 2010). In adopting this transition period, the Commission seeks to balance the needs of public safety and commercial licensees to operate without interference in the 700 MHz Band with the concern that entities currently operating low power auxiliary stations in the 700 MHz Band have sufficient time to remove their operations from the band and relocate to other bands. Furthermore, in certain areas, it may be necessary to end the transitional operations of low power auxiliary stations in the 700 MHz Band prior to that time, where public safety and commercial licensees are entering the 700 MHz Band. Specifically, to the extent that a 700 MHz public safety or commercial licensee chooses to notify the Commission that it will be initiating operations on specified frequencies in particular market(s), the Commission will issue a public notice to inform users of low power auxiliary stations in the 700 MHz Band in those market(s) that they will be required to cease operations within 60 days after such notice is issued. Alternatively, any 700 MHz public safety or commercial licensee may, at its option, notify any user of low power auxiliary stations of its intention to initiate operations on specified frequencies in the market in which the low power auxiliary station user is operating. Upon receipt of such notice, the entity operating low power

auxiliary stations in the affected market area must cease operation within 60 days. Finally, the Report and Order underscores that if, at any time during this transition period, users of low power auxiliary stations cause harmful interference to a 700 MHz public safety or commercial licensee, those users must cease operations in the band immediately.

62. Through this determination in the *Report and Order*, the Commission is acting to ensure that these low power auxiliary stations are cleared from the 700 MHz Band in order to make this spectrum fully available for use by the public safety and commercial licensees. This determination respecting operation of wireless microphones in the 700 MHz Band also is consistent with the Commission's previous concerns about the potential for interference in the band because low power auxiliary stations could interfere with public safety and commercial base and mobile receivers. Such interference raises the potential for a disruption of vital public safety services and commercial services.

63. Consistent with the Commission's goal of ensuring that 700 MHz Band spectrum is available for public safety and commercial users following the DTV transition, the Report and Order prohibits the manufacture, import, sale, offer for sale, or shipment of low power auxiliary stations designed to operate in the 700 MHz Band in the United States at any time following the publication of a summary of the Report and Order in the **Federal Register**. The Report and Order adopts additional marketing and labeling requirements designed to prevent the continued sale and distribution of low power auxiliary stations that operate in the 700 MHz Band. This prohibition is not applicable to devices manufactured solely for export. The prohibition on manufacture, import, sale, and shipment of low power auxiliary stations designed to operate in the 700 MHz Band in the United States serves the public interest by providing greater assurance that the 700 MHz Band will be made available to public safety and new commercial licensees. The Commission finds that good cause exists to have this prohibition take effect on less than 30 days notice in order to expedite the availability of unencumbered spectrum for public safety and new commercial licensees consistent with the statutory directive that the DTV transition end as of June 12, 2009.

64. The *Report and Order* also modifies the licenses of all low power auxiliary station licensees that currently are authorized to operate in the 700 MHz Band, removing any part of the

authorization pertaining to the band, subject to the condition that if a licensee is unable to cease operations in the band by that date, it may continue to operate under its existing authorization within the transition limitations adopted in the *Report and Order*. The Commission takes this action to ensure that the effective use of the 700 MHz Band by public safety and commercial licensees after the end of the DTV transition is not compromised, and that these new licensees will be able to operate free from interference by low power auxiliary stations operating in the 700 MHz Band. The Commission also adopts procedures whereby existing low power auxiliary station licensees currently operating in the 700 MHz Band can have their licenses modified should it be necessary to add to their authorizations other spectrum bands that are available for low power auxiliary station operations under the rules.

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

65. Nady Systems, Inc. (Nady) indicates that its comments also address the IRFA. In its comments, Nady addresses the suggestion by PISC that the Commission should order all wireless microphone manufacturers that engaged in illegal marketing to pay the cost of replacing microphone systems for those wireless microphone operators required to cease operation in the 700 MHz Band after the end of the DTV transition. Nady comments that a gradual migration of wireless microphone users out of the 700 MHz Band strikes a reasonable balance that protects competing interests, and comments that the Commission should provide a transition that includes voluntary negotiations between parties. According to Nady, the majority of wireless microphone manufacturers are "small entities" which "would go bankrupt if they had to finance migration of all wireless microphones operating in the 700 MHz Band." Nady also comments that wireless microphones will be migrating to the "white spaces" below the 700 MHz Band, and that these microphones require protection from interference by emerging technologies in the white spaces. A number of commenters, including Nady, argue that a delay in the effective date of the ban is needed to prevent unnecessary disruption of operations and costs, and the Commission has adopted a short time period for low power auxiliary station users to transition their operations out of the 700 MHz Band. Many

commenters addressed issues regarding the use of wireless microphones without the required license.

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

66. 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 term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

67. When identifying small entities that could be affected by the Commission's new rules, this FRFA provides information describing the number of small entities that currently hold low power auxiliary station licenses, as well as estimates of the number of small entities that currently manufacture low power auxiliary stations. In order to analyze the total number of potentially affected small entities, the Commission estimates the number of small entities that may be affected by the rule changes adopted in the *Report and Order*.

68. 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.

69. In the *Report and Order*, the Commission concludes that low power auxiliary stations authorized under part 74 of our 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.

70. 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.

71. The Commission notes, 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 our estimate of small businesses may therefore be over-inclusive.

72. 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.

73. The Commission notes, 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 our 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.

74. 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, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

75. 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 we 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.

76. 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.

77. 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. We 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 we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

78. 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.

79. 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.

80. 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.

81. 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.

82. 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.

83. 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 for Small Entities

84. The Report and Order adopts transition procedures for entities that have not been able to migrate their operations of low power auxiliary stations out of the 700 MHz Band by the effective date of the new rules. During a one-year transition period from the end of the DTV transition, to the extent that a 700 MHz public safety or commercial licensee chooses to notify the Commission that it will be initiating operations on specified frequencies in particular market(s), the Commission will issue a public notice providing that users of low power auxiliary stations in the 700 MHz Band in those market(s) will be required to cease operations within 60 days after such notice is issued. Alternatively, any 700 MHz commercial or public safety licensee may, at its option, notify any user of low power auxiliary stations of its intention to initiate operations on specified frequencies in the market in which the low power auxiliary station user is operating. Upon receipt of such notice, the entity operating low power auxiliary stations in the affected market area must cease operation within 60 days.

85. To protect consumers in the United States, and to help ensure that no wireless microphones and other low power auxiliary stations that operate in the 700 MHz Band continue to be made available for use in the United States, the Report and Order requires retailers to remove from display (including online display) any low power auxiliary stations, including wireless microphones, that can operate in the 700 MHz Band, as well as any marketing material that does not comply with the requirements adopted herein.

86. Current licensees with authority under part 74, Subpart H to operate low power auxiliary stations in the 700 MHz Band whose current authorization limits them in whole or in significant part to operations in the 700 MHz Band can be accommodated with the use of spectrum from other spectrum bands that are available for low power auxiliary station operations under Section 74.802 of the rules. Once replacement spectrum has been identified, as a matter of administrative convenience, the licensee should file an application to modify its authorization to include the identified frequencies.

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

87. 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 or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for small entities.”

88. In the *Report and Order*, the Commission adopts a single set of rules for all operators and manufacturers of low power auxiliary stations (including those operators and manufacturers that are small entities). The Commission decides on a single set of rules in accordance with its objective of limiting potential interference on the 700 MHz Band to ensure that it is available for public safety and commercial wireless services as of June 12, 2009. In the *Report and Order*, the Commission concludes to amend its rules to make clear that none of the entities currently operating low power auxiliary stations, including wireless microphones, within the 700 MHz Band will have the right to do so after the end of the DTV transition because such operations could cause harmful interference to new wireless services in the band, particularly public safety operations. To adopt a separate set of rules for small entities could undermine the Commission's objective of establishing an unencumbered 700 MHz Band for use by public safety and commercial wireless services after the end of the DTV transition.

89. The rules adopted in the *Report and Order* may have a significant economic impact on a substantial number of small entities. For example, the Commission has determined to amend its rules to provide that low power auxiliary stations licensed under part 74 of the rules (including those operated by small entities) no longer have a right to operate in the 700 MHz Band after the effective date of the rules adopted in the *Report and Order*. The Commission modifies the licenses of all low power auxiliary station licensees that currently are authorized to operate in the 700 MHz Band to remove this part of the authorization and prohibit such operations in the 700 MHz Band after the effective date of the new rules, as conditioned in the *Report and Order*. 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 publication of a summary of the *Report and Order* in the **Federal Register**. This ban includes the manufacture, import, sale, offer for sale, or shipment of such devices by small entities, and the requirements for complying with these rules would be the same for both large and small entities. To the extent that small entities feel this compliance burden more, we have, as noted herein in Section D and below, provided a transition period to lessen this burden.

90. In the *Report and Order*, the Commission takes several steps to minimize the economic impact of its rules on operators of low power auxiliary stations in the 700 MHz Band (including those operators which are small entities). For example, the Commission recognizes that not all entities operating low power auxiliary stations in the 700 MHz Band may succeed, despite their best efforts, in removing their operations from the band by the date of the new rules and finds that a transition period is appropriate for these users. This limited right terminates one year from the end of the DTV transition, subject to the transition procedures. All users of low power auxiliary stations must cease operations in the band immediately if they cause harmful interference to 700 MHz public safety and commercial licensees. To the extent that a 700 MHz public safety or commercial licensee chooses to notify the Commission that it will be initiating operations on specified frequencies in particular market(s), the Commission will issue a public notice providing that users of low power auxiliary stations in the 700 MHz Band in those market(s)

will be required to cease operations within 60 days after such notice is issued. Alternatively, any 700 MHz commercial or public safety licensee may, at its option, notify any user of low power auxiliary stations of its intention to initiate operations on specified frequencies in the market in which the low power auxiliary station user is operating. Upon receipt of such notice, the entity operating low power auxiliary stations in the affected market area must cease operation within 60 days. Alternative procedures that the Commission did not adopt include a longer transition period that may have had an impact on small entities.

91. These transition procedures will apply both to licensed low power auxiliary stations and users of low power auxiliary stations in the 700 MHz Band that did not obtain the required license. By making the procedures available to entities that have not had the required license, it is likely that many small entities will be provided with authority to operate on a limited basis, which has not previously been made available to them. The Commission also concludes that it serves the public interest to waive two of our part 15 rules, to permit unauthorized users of low power auxiliary stations, including wireless microphones, to operate on an unlicensed basis under Part 15 pursuant to certain specified technical requirements, in the 700 MHz Band until June 12, 2010 and in the core TV bands until the effective date of the rules that will be adopted in response to the FNPRM.

92. In addition, the Commission finds that those licensees whose current authorization limits them in whole or in significant part to operations in the 700 MHz Band can be accommodated with the use of spectrum from other spectrum bands that are available for low power auxiliary station operations under Section 74.802 of the rules. The *Report and Order* notes that such licensees may wish to consult with a local Society of Broadcast Engineers (SBE) coordinator to identify suitable spectrum from other spectrum bands that are available for low power auxiliary station operations under the rules. Once replacement spectrum has been identified, as a matter of administrative convenience the licensee should file an application to modify its authorization to include the identified frequencies. This will enable the Wireless Telecommunications Bureau to modify the license in conformance with the revised rules adopted in the *Report and Order*.

93. The Report and Order rejects an alternative proposal for a general amnesty for unauthorized wireless microphone users. The Commission permits wireless microphone users currently operating in the 700 MHz Band, which include many currently unauthorized users, to remain in the band for a limited period of time subject to specific transition procedures, while also permitting many currently unauthorized users the opportunity, on a going-forward basis, to locate wireless microphone operations in the TV band spectrum. In addition, the Report and Order declines to pursue the investigation requested by PISC.

F. Report to Congress

1. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Final Paperwork Reduction Act Analysis

94. The Report and Order contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), the Commission seek specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

95. The Commission finds that there is good cause to seek emergency OMB approval in order that the new information collections adopted in this Report and Order may take effect as soon as possible. The procedures under which public safety and commercial licensees may provide notice of their intention to initiate wireless operations constitute a new information collection under the PRA. The labeling requirements for 700 MHz Band equipment destined for non-U.S. markets also constitute a new

information collection under the PRA. In addition, the consumer disclosure requirements for anyone selling, leasing, or offering for sale or lease low power auxiliary stations that operate in the core TV bands constitute a new information collection under the PRA. The Commission is submitting a request to OMB for approval of these rules under the emergency clearance provisions of the PRA. Accordingly, the information collections adopted in this Report and Order will become effective as follows. The information collections associated with the procedures for early clearing of the 700 MHz Band will become effective upon publication of a summary of this Report and Order in the **Federal Register** or upon OMB approval, whichever is later. The labeling requirements for 700 MHz Band equipment destined for export will become effective 90 days after release of this Report and Order (*i.e.*, April 15, 2010), subject to OMB approval, and the consumer disclosure requirements will become effective on February 28, 2010, subject to OMB approval.

Congressional Review Act

96. The Commission will include a copy of this Report and Order and FNPRM 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).

IV. Ordering Clauses

97. Accordingly, *it is ordered*, pursuant to Sections 1, 2, 4(i), 4(j), 301, 302, 303, 304, 307, 308, 309, 316, 332, 336, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 301, 302a, 303, 304, 307, 308, 309, 316, 332, 336, and 337, that this Report and Order in WT Docket No. 08-166, WT Docket No. 08-167, and ET Docket No. 10-24 is adopted, that parts 2, 15, and 74 of the Commission's rules, 47 CFR parts 2, 15, and 74 are amended as set forth in the final rules, and that the requirements of this Report and Order and the amended rules shall become effective upon the publication of a summary of the Report and Order in the **Federal Register**, except as follows with respect to the information collections: § 74.802(e) in the final rules shall become effective upon publication of a summary of the Report and Order in the **Federal Register**; § 15.216 in the final rules shall become effective on February 28, 2010; § 74.851(h) in the final rules shall become effective 90 days after release of this Report and Order (*i.e.*, April 15, 2010), and these information collections are subject to OMB approval. With respect to

information collections subject to OMB approval, the Commission will issue a public notice announcing the date upon which these provisions shall become effective following receipt of such approval.

98. *It is further ordered* that, pursuant to authority in Section 1.3 of the Commission's rules, 47 CFR 1.3, and Sections 4(i), 302, 303(e), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303(e), and 303(r), Sections 15.201(b) and 15.209(a) of the Commission's rules, 47 CFR 15.201(b), 15.209(a), are waived, consistent with the terms of this Report and Order. This action is effective upon release of this Report and Order.

99. *It is further ordered* that, pursuant to Section 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c), the Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau, and Consumer and Governmental Affairs Bureau are granted delegated authority to implement the policies set forth in this Report and Order and the rules, as revised, set forth in the final rules hereto.

100. *It is further ordered* that, pursuant to Section 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c), the Wireless Telecommunications Bureau and Consumer and Governmental Affairs Bureau are granted delegated authority to prepare the specific language that must be used in the Consumer Disclosure, as set forth in this Report and Order and the rules in the final rules, and publish it in the **Federal Register**.

101. *It is further ordered* that, pursuant to Section 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c), the Office of Engineering and Technology and the Wireless Telecommunications Bureau are granted delegated authority to address requests to modify the limited waiver of Sections 15.201(b) and 15.209(a) of the Commission's rules, 47 CFR 15.201(b), 15.209(a), as set forth in this Report and Order, on a case-by-case basis to permit entities that are operating without a license authorization to operate low power auxiliary stations at power levels higher than 50 milliwatts.

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

103. *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).

List of Subjects

47 CFR Part 2

Communications equipment, Reporting and recordkeeping requirements.

47 CFR Part 15

Communications equipment, Labeling, and Reporting and recordkeeping requirements.

47 CFR Part 74

Communications equipment, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 15, and 74 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: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106, Table of Frequency Allocations, is amended by revising footnotes NG115 and NG159 to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

NON-FEDERAL GOVERNMENT (NG) FOOTNOTES

* * * * *

NG115 In the bands 54–72 MHz, 76–88 MHz, 174–216 MHz, 470–608 MHz, and 614–698 MHz, wireless microphones and wireless assist video devices may be authorized on a non-interference basis, subject to the terms and conditions set forth in 47 CFR part 74, subpart H.

* * * * *

NG159 Any full-power television licensee that holds a television broadcast license to operate between 698 and 806 megahertz (TV channels 52–69) shall be entitled to protection from harmful interference through June

12, 2009, and may not operate at that frequency after June 12, 2009. Auxiliary broadcast stations other than low power auxiliary stations (*i.e.*, low-power TV stations, translator stations, booster stations, and TV auxiliary (backup) facilities) may continue to operate indefinitely in the band 698–806 MHz on a secondary basis to all other stations operating in that band.

* * * * *

PART 15—RADIO FREQUENCY DEVICES

■ 3. The authority citation for part 15 continues to read as follows:

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

■ 4. Part 15 is amended by adding § 15.216 to read as follows:

§ 15.216 Disclosure Requirements for wireless microphones and other low power auxiliary stations capable of operating in the core TV bands.

(a) Any person who manufactures, sells, leases, or offers for sale or lease, low power auxiliary stations capable of operating in the core TV bands (channels 2–51, excluding channel 37) is subject to the following disclosure requirements: (1) Such persons must display the consumer disclosure text, as specified by the Wireless Telecommunications Bureau and the Consumer and Governmental Affairs Bureau, at the point of sale or lease of each such low power auxiliary station. The text must be displayed in a clear, conspicuous, and readily legible manner. One way to fulfill the requirement in this section is to display the consumer disclosure text in a prominent manner on the product box by using a label (either printed onto the box or otherwise affixed to the box), a sticker, or other means. Another way to fulfill this requirement is to display the text immediately adjacent to each low power auxiliary station offered for sale or lease and clearly associated with the model to which it pertains.

(2) If such persons offer such low power auxiliary stations via direct mail, catalog, or electronic means, they shall prominently display the consumer disclosure text in close proximity to the images and descriptions of each such low power auxiliary station. The text should be in a size large enough to be clear, conspicuous, and readily legible, consistent with the dimensions of the advertisement or description.

(3) If such persons have Web sites pertaining to these low power auxiliary stations, the consumer disclosure text must be displayed there in a clear, conspicuous, and readily legible manner

(even in the event such persons do not sell low power auxiliary stations directly to the public).

(b) The consumer disclosure text described in paragraph (a)(1) of this section is set out in an appendix to this section.

Appendix to § 15.216—[Reserved]

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 5. The authority citation for part 74 is revised to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 336(f), 336(h) and 554.

■ 6. Section 74.802 is amended by revising the last two entries in paragraph (a); revising paragraph (b)(3), and by adding paragraph (e), to read as follows:

§ 74.802 Frequency assignment.

- (a) * * *
- 614.000–698.000 MHz
944.000–952.000 MHz
- (b) * * *
- (3) 470.000–608.000 MHz and
614.000–698.000 MHz.
All zones 113 km (70 miles)

* * * * *

(e) *Clearing mechanisms for the 700 MHz Band.* This section sets forth provisions relating to the transition of low power auxiliary stations operating at 698–806 MHz (700 MHz band).

(1) Any low power auxiliary station that operates at frequencies in the 700 MHz band while transitioning its operations out of that band must not cause harmful interference and must accept interference from any commercial or public safety wireless licensees in the 700 MHz band.

(2) Any low power auxiliary station that operates at frequencies in the 700 MHz band will have until no later than June 12, 2010 to transition its operations completely out of the 700 MHz band, subject to the following. During this transition period, any commercial or public safety licensee in the 700 MHz band may choose one or both of the following voluntary methods to notify low power auxiliary stations:

(i) Any commercial or public safety licensee in the 700 MHz band may notify the Commission that it has initiated or will be initiating operations on specified frequencies in a particular market(s) in the 700 MHz band. The wireless operations initiated by the commercial or public safety 700 MHz licensees may include system testing or trials. Following receipt of the notification, the Commission will issue

a public notice providing that operators of low power auxiliary stations, including wireless microphones, in the 700 MHz band in those market(s) will be required to cease operations within 60 days after the Commission's notice is released.

(ii) Any commercial or public safety licensee in the 700 MHz band may notify any low power auxiliary station users operating in the 700 MHz band that it has initiated or will be initiating operations on specified frequencies in the market in which the low power auxiliary station is operating. The wireless operations initiated by the commercial or public safety 700 MHz licensees may include system testing or trials. Upon receipt of such notice, the low power auxiliary station in the affected market area must cease operation within 60 days.

(iii) In the event that both of these notice provisions in paragraphs (e)(2)(i) and (ii) of this section are used with respect to a particular low power auxiliary station, the low power auxiliary station will have to cease operations in the market(s) in accordance with whichever notice provides for earlier termination of its operations.

(3) Notwithstanding this 60 day notice requirement, any low power auxiliary station that causes harmful interference to any commercial or public safety 700 MHz licensee must cease operations immediately, consistent with the rules for secondary use.

■ 7. Section 74.851 is amended by revising the heading and adding new paragraphs (g), (h), and (i) to read as follows:

§ 74.851 Certification of equipment; prohibition on manufacture, import, sale, lease, offer for sale or lease, or shipment of devices that operate in the 700 MHz Band; labeling for 700 MHz band equipment destined for non-U.S. markets; disclosure for the core TV bands.

* * * * *

(g) No person shall manufacture, import, sell, lease, offer for sale or lease, or ship low power auxiliary stations that are capable of operating in the 700 MHz band (698–806 MHz). This prohibition does not apply to devices manufactured solely for export.

(h) Any person who manufactures, sells, leases, or offers for sale or lease low power auxiliary stations, including wireless microphones, that are destined for non-U.S. markets and that are capable of operating in the 700 MHz band shall include labeling and make clear in all sales, marketing, and packaging materials, including online materials, relating to such devices that

the devices cannot be operated in the U.S.

(i) Any person, whether such person is a wholesaler or a retailer, who manufactures, sells, leases, or offers for sale or lease low power auxiliary stations that operate in the core TV bands (channels 2–51, excluding channel 37) is subject to the disclosure requirements in § 15.216 of this chapter. ■ 8. Section 74.861 is amended by revising paragraph (e)(1)(ii) to read as follows:

§ 74.861 Technical requirements.

* * * * *

(e) * * *
(1) * * *

(ii) 470–608 and 614–698 MHz bands—250 mW

* * * * *

[FR Doc. 2010–1216 Filed 1–21–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[WT Docket Nos. 08–166, 08–167, and ET Docket No. 10–24; DA 10–92]

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: Final rule.

SUMMARY: In this order, Wireless Telecommunications Bureau and Consumer and Governmental Affairs Bureau of the Federal Communications Commission adopt the specific language that must be used in the consumer disclosure that is required by Section 15.216 of Appendix B in the *Wireless Microphone Report and Order*.¹

DATES: This rule amends § 15.216, which contains information collection requirements that have not been approved by OMB. The FCC will

¹ 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; Amendment of Parts 15, 74 and 90 of the Commission's Rules Regarding Low Power Auxiliary Stations, Including Wireless Microphones, WT Docket Nos. 08–166, 08–167, ET Docket Nos. 10–24, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 10–16 at para. 99 (rel. October 15, 2010) (“*Wireless Microphone Report and Order*”).

publish a document in the **Federal Register** announcing the effective date.

SUPPLEMENTARY INFORMATION: This is a summary of the Order in WT Docket Nos. 08–166 and 08–167, ET Docket No. 10–24 and DA 10–92, adopted January 15, 2010, and released on January 15, 2010. In this order, the Wireless Telecommunications Bureau and Consumer and Governmental Affairs Bureau of the Federal Communications Commission adopt the specific language that must be used in the consumer disclosure that is required by Section 15.216 of Appendix B in the *Wireless Microphone Report and Order*.² This disclosure requirement is applicable to persons who manufacture, sell, lease, or offer for sale or lease low power auxiliary stations, including wireless microphones, capable of operating in the core TV bands (channels 2–51, excluding channel 37).

Order

1. On January 14, 2010, the Commission adopted a *Wireless Microphone Report and Order*.³ In the *Wireless Microphone Report and Order*, the Commission took action to ensure that low power auxiliary stations, including wireless microphones, are cleared from the 700 MHz Band (689–806 MHz) so that public safety and commercial licensees can operate in the band without interference. The Commission adopted a new rule, Section 15.216, which provides that any person who manufactures, sells, leases, or offers for sale or lease wireless microphones and other low power auxiliary stations capable of operating in the core TV bands must display a consumer disclosure text.⁴

2. The Commission delegated authority to the Wireless Telecommunications Bureau and the Consumer and Governmental Affairs Bureau to adopt the specific language that must be used in the consumer disclosure that is required by Section 15.216 of Appendix B in the *Wireless Microphone Report and Order*.⁵ The Wireless Telecommunications Bureau

² 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; Amendment of Parts 15, 74 and 90 of the Commission's Rules Regarding Low Power Auxiliary Stations, Including Wireless Microphones, WT Docket Nos. 08–166, 08–167, ET Docket Nos. 10–24, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 10–16 at para. 99 (rel. October 15, 2010) (“*Wireless Microphone Report and Order*”).

³ *Id.*

⁴ See *id.*, Appendix B.

⁵ *Id.* at para. 99.