PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922 and 6938.

Appendix IX to Part 261—[Amended]

2. In Appendix IX to part 261, table 2 is amended by removing the entry ''Reynolds Metals Company'', Gum Springs, Arkansas''.

[FR Doc. 97–19885 Filed 7–30–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 97–157; FCC 97–245]

Reallocation of TV Channels 60–69, the 746–806 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: By this Notice of Proposed Rule Making (NPRM), the Commission proposes to reallocate the 746–806 MHz band, currently comprising television (TV) channels 60–69. The Commission proposes to allocate 24 megahertz, at 764–776 MHz and 794–806 MHz, to the fixed and mobile services, and to designate this spectrum for public safety use. The Commission proposes to allocate the remaining 36 megahertz at 746–764 MHz and 776–794 MHz to the fixed, mobile, and broadcasting services; and anticipates that licenses in this portion of the band may be assigned through competitive bidding. These allocations would help to meet the needs of public safety for additional spectrum, make new technologies and services available to the American public, and allow more efficient use of spectrum in the 746–806 MHz band. The Commission also considers issues related to protecting existing and proposed TV stations on channels 60–69 from interference until the transition to digital TV (DTV) is complete, but defer specific interference protection standards to a separate proceeding on service rules in the 746–806 MHz band.

DATES: Comments must be filed on or before September 15, 1997, and reply comments must be filed on or before October 14, 1997.

ADDRESSES: Comments and reply comments should be sent to the Office of Secretary, Federal Communications Commission, Washington, DC 20554. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed.

FOR FURTHER INFORMATION CONTACT: Sean White, Office of Engineering and Technology, (202) 418–2453, swhite@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, ET Docket 97–157, FCC 97–245, adopted July 9, 1997, and released July 10, 1997. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Summary of Notice of Proposed Rule Making

1. In this NPRM, the Commission proposes to reallocate 24 megahertz of spectrum at 764–776 MHz and 794–806 MHz to the fixed and mobile services, and reserve this spectrum for the exclusive use of public safety services. The Commission also proposes to reallocate the 746–764 MHz and 776–794 MHz bands to the fixed, mobile, and broadcasting services, and anticipates that licenses in this spectrum will be assigned by competitive bidding.

2. TV channels 60–69 (746–806 MHz) are relatively lightly used for full service television operations. There are currently only 95 full service analog stations, either operating or with approved construction permits on these channels. In the *Sixth Report and Order* in MM Docket No. 87–268 (DTV Proceeding), 62 FR 26684, May 14, 1997, the Commission adopted a Table of Allotments for digital television. This Table provides all eligible broadcasters with a second 6 MHz channel to be used for DTV service during the transition from analog to digital television service. The DTV Table also, *inter alia,* facilitates the early recovery of a portion of the existing broadcast spectrum, specifically, channels 60–69, by minimizing the use of these channels for DTV purposes. The DTV Table provides only 15 allotments for DTV stations on channels 60–69 in the continental United States.

3. In providing for early recovery of spectrum, the Commission also observed that there is an urgent need for additional spectrum to meet important public safety needs, including voice and data communications, and to provide for improved interoperability between public safety agencies. We indicated that spectrum in the region of the 746–806 MHz band may be appropriate to meet some of these needs. The Commission stated that we would initiate a separate proceeding to reallocate the spectrum at channels 60–69 in the very near future, and that we would give serious consideration to allocating 24 megahertz of this spectrum for public safety use and consider allocating the remaining 36 megahertz in the 746–806 MHz band for assignment by auction.

4. In 1995, the Commission, along with the National Telecommunications and Information Administration, established the Public Safety Wireless Advisory Committee (PSWAC) to study public safety telecommunications requirements. The PSWAC was chartered, *inter alia,* to advise the Commission on total spectrum requirements for the operational needs of public safety entities in the United States through the year 2010. On September 11, 1996, the PSWAC issued its *Final Report.* The PSWAC found that the currently allocated public safety spectrum is insufficient to support current voice and data needs of the public safety community, does not provide adequate capacity for interoperability channels, and is inadequate to meet future needs, based on projected population growth and demographic changes. In the *Final Report,* the PSWAC stated that data communication needs are also expected to grow rapidly in the next few years, and wireless video needs are expected to expand quickly. In addition, new spectrum is required to support new capabilities and technologies, including high speed data and video. The PSWAC found that, in the short term, 24 or 25 megahertz of new public safety spectrum is needed, and concluded that public safety users should be granted access to portions of the unused spectrum in the 746–806 MHz band.

5. The Commission tentatively proposes to allocate the spectrum at TV channels 63, 64, 68, and 69 (the 764–776 MHz and 794–806 MHz bands) for public safety. There are several reasons why the Commission believes these channels would best serve the needs of public safety. These channels are relatively lightly used by full service television broadcasting, so this spectrum would offer the fewest restrictions on public safety operations. Further, since the 794–806 MHz band is subjacent to existing public safety operations in the 806–824 MHz band, it holds the best potential for expansion of

and interoperability with existing systems. The close proximity to existing spectrum used for public safety could also reduce the difficulty and cost of designing equipment. The Commission is aware that public safety systems typically employ systems that for technical reasons require some minimum separation between the receive and transmit frequencies, and believes the proposed allocation would permit systems to be deployed with adequate separation between transmit and receive frequencies.

6. The Commission proposes to reallocate the remaining 36 MHz of spectrum in the 746–806 MHz band to the fixed and mobile services, and retain the existing broadcast allocation. This would allow the maximum diversity in service offerings and the broadest licensee discretion, consistent with international allocations. Internationally, the band is allocated on a primary basis to the broadcasting service and on a secondary basis to the fixed and mobile services in Region 2. A footnote to the International Table of Frequency Allocations elevates the allocation to the fixed and mobile services to primary status in the United States, Mexico, and several other Region 2 countries. This spectrum is located near spectrum now used for cellular telephone and other land mobile services, and it could be used to expand the capacities of these services. Other possible applications for this spectrum include wireless local loop telephone service, video and multimedia applications, wireless cable services, and industrial communications services. Additionally, under the proposal, parties would be able to obtain licenses in this spectrum to offer broadcasting.

7. The Commission solicits public comment on the proposed allocation, and defers consideration of protection of TV transmission in the bands, licensing, and service rules to a separate proceeding.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act,[1] the Commission has prepared an Initial Regulatory Flexibility Analysis of the expected significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rule Making* (NPRM). Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided above. The Secretary shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[2]

A. Need for and Objectives of the Proposed Rules

This NPRM proposes to reallocate the 746–806 MHz band, television (TV) Channels 60–69, to other services. We propose to allocate 24 megahertz at 764–776 MHz and 794–806 MHz for public safety use. We propose to allocate the remaining 36 megahertz at 746–764 MHz and 776–794 MHz to the fixed and mobile services, and to retain the allocation to the broadcasting service in these bands. We further propose to protect full-power TV stations in the band until the transition to digital television (DTV) is complete, and to retain the secondary status in the band of Low Power TV (LPTV) and TV translator stations. These allocations would help alleviate a critical shortage of public safety spectrum, make new technologies and services available to the American public, and allow more efficient use of spectrum in the 746–806 MHz band.

B. Legal Basis

The proposed action is taken pursuant to sections 4(i), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), and 303(r).

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

1. Definition of a ''Small Business''

Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). According to the SBA's regulations, entities engaged in television broadcasting Standard Industrial Classification (''SIC'') Code 4833—Television Broadcasting Stations, may have a maximum of $10.5 million in annual receipts in order to qualify as a small business concern. This standard also applies in determining whether an entity is a small business for purposes of the RFA.

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

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

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

3. Television Station Estimates Based on Census Data

The NPRM will affect full service television stations, TV translator facilities, and LPTV stations. The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business.[3] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[4] Included in this industry are commercial, religious, educational, and other television stations.[5] Also included

[1] 5 U.S.C. 603.

[2] *See id.* § 603(a).

[3] 13 CFR § 121.201, Standard Industrial Code (SIC) 4833 (1996).

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

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

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in

Continued

are establishments primarily engaged in television broadcasting and which produce taped television program materials.[6] Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.[7]

There were 1,509 television stations operating in the nation in 1992.[8] That number has remained fairly constant as indicated by the approximately 1,551 operating television broadcasting stations in the nation as of February 28, 1997.[9] For 1992 [10] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments, or approximately 77 percent of the 1,509 establishments.[11] Thus, the rules will affect approximately 1,551 television stations; approximately 1,194 of those stations are considered small businesses.[12] These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies. We recognize that the rules may also impact minority and women owned stations, some of which may be small entities. In 1995, minorities owned and controlled 37 (3.0%) of 1,221 commercial television stations in the United States.[13] According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and non-commercial television stations in the United States.[14]

There are currently 4,977 TV translator stations and 1,952 LPTV stations which would be affected by the allocation policy and other policies in this proceeding.[15] The Commission does not collect financial information of any broadcast facility and the Department of Commerce does not collect financial information on these broadcast facilities. We will assume for present purposes, however, that most of these broadcast facilities, including LPTV stations, could be classified as small businesses. As indicated earlier, approximately 77 percent of television stations are designated under this analysis as potentially small business. Given this, LPTV and TV translator stations would not likely have revenues that exceed the SBA maximum to be designated as small businesses.

4. Alternative Classification of Small Television Stations

An alternative way to classify small television stations is by the number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity (''EEO'') rule for broadcasting.[16] Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and recordkeeping requirements.[17] We estimate that the total number of commercial television stations with 4 or fewer employees is 132 and that the total number of noncommercial educational television stations with 4 or fewer employees is 136.[18]

We have concluded that the 746–806 MHz band can be recovered immediately, and that it is in the public interest to reallocate this spectrum to uses in addition to TV broadcasting. We believe that such a reallocation is possible while continuing to protect TV. There are 95 full power TV stations, either operating or with approved construction permits, in Channel 60–69. There are also nine proposed stations, and approximately 15 stations will be added during the DTV transition period, for a total of approximately 119 nationwide. There are also approximately 1,366 LPTV stations and TV translator stations in the band, operating on a secondary basis to full power TV stations. We propose to immediately reallocate the 746–806 MHz band in order to maximize the public benefit available from its use.

The RFA also includes small governmental entities as a part of the regulatory flexibility analysis.[19] The definition of a small governmental entity is one with a population of fewer than 50,000.[20] There are approximately 85,006 governmental entities in the

this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

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

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

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

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

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

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

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

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

[14] *See* Comments of American Women in Radio and Television, Inc. in MM Docket No. 94–149 and MM Docket No. 91–140, at 4 n.4 (filed May 17, 1995), *citing* 1987 Economic Censuses, *Women-Owned Business*, WB87–1, U.S. Dep't of Commerce, Bureau of the Census, August 1990 (based on 1987 Census). After the 1987 Census report, the Census Bureau did not provide data by particular communications services (four-digit Standard Industrial Classification (SIC) Code), but rather by the general two-digit SIC Code for communications (#48). Consequently, since 1987, the U.S. Census Bureau has not updated data on ownership of broadcast facilities by women, nor does the FCC collect such data. However, we sought comment on whether the Annual Ownership Report Form 323 should be amended to include information on the gender and race of broadcast license owners. *Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities*, Notice of Proposed Rule Making, 10 FCC Rcd 2788, 2797 (1995), 60 FR 06068, February 1, 1995.

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

[16] The Commission's definition of a small broadcast station for purposes of applying its EEO rule was adopted prior to the requirement of approval by the Small Business Administration pursuant to section 3(a) of the Small Business Act, 15 U.S.C. § 632(a), as amended by section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Public Law 102–366, § 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Public Law 103–403, § 301, 108 Stat. 4187 (1994). However, this definition was adopted after public notice and an opportunity for comment. *See Report and Order* in Docket No. 18244, 23 FCC 2d 430 (1970), 35 FR 8925, June 6, 1970.

[17] *See, e.g.*, 47 CFR § 73.3612 (Requirement to file annual employment reports on Form 395-B applies to licensees with five or more full-time employees); *First Report and Order* in Docket No. 21474 (In the Matter of Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395), 70 FCC 2d 1466 (1979), 44 FR 6722, February 2, 1979. The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. *Order and Notice of Proposed Rule Making* in MM Docket No. 96–16 (In the Matter of Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines), 11 FCC Rcd 5154 (1996), 61 FR 09964, March 12, 1996. One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees. *Id.* at ¶ 21.

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

[19] 5 U.S.C. § 601(5).

[20] *Id.*

nation.[21] This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number have populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,566, or 96 percent, have populations of fewer than 50,000.[22] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the approximately 85,006 governmental entities, we estimate that 96 percent, or 81,600, are small entities that may be affected by our rules.

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

None.

E. Significant Alternatives to Proposed Rules which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives

We do not propose to provide LPTV and TV translator stations with the same protection afforded to full-power TV stations. Because of the large number of such stations, protecting them would significantly diminish the utility of the 746–806 MHz band to both public safety and commercial users. Also, LPTV and TV translator stations are secondary in this band, and we have proposed to make public safety and commercial services primary in the band. We remain concerned, however, for the interests of LPTV and TV translator stations because they are a valuable part of the American telecommunications structure and economy. For this reason, we seek measures which will allow as many LPTV and TV translator stations as possible to remain in operation. At a minimum, we propose to continue the secondary status of these stations, so that they will not be required to change or cease their operations until they actually interfere with one of the newly-allocated services. We also request comment on a number of measures which may alleviate the impact of reallocation of the 746–806 MHz band on LPTV and TV translator stations. We request comment on these options, with emphasis on how we can ensure fairness to all licensees, and how we can best balance the interests of current and future licensees to the benefit of the public.

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

None.

List of Subjects in 47 CFR Part 2

Frequency allocations and radio treaty matters, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–20078 Filed 7–30–97; 8:45 am]

BILLING CODE 6712–01–P

[21] 1992 Census of Governments, U.S. Bureau of the Census, U.S. Department of Commerce.

[22] *Id.*

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–161; RM–9111]

Radio Broadcasting Services; Susquehanna, PA and Walton, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by KG Broadcasting, Inc., proposing the substitution of Channel 223B1 for Channel 223A at Susquehanna, Pennsylvania, and the modification of Station WKGB–FM's license accordingly. To accommodate the upgrade, petitioner also proposes the substitution of Channel 248A for Channel 221A at Walton, New York, and the modification of Station WDLA–FM's license accordingly. Channel 223B1 can be allotted to Susquehanna in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.9 kilometers (3.7 miles) east to accommodate petitioner's requested site. The coordinates for Channel 223B1 at Susquehanna are North Latitude 41–56–05 and West Longitude 75–32–00. *See* Supplementary Information, *infra.*

DATES: Comments must be filed on or before September 15, 1997, and reply comments on or before September 30 , 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Benjamin J. Smith, President, KG Broadcasting, Inc., 776 Conklin Road, Binghamton, New York 13903 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–161, adopted July 16, 1997, and released July 25, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Additionally, Channel 248A can be allotted to Walton in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.5 kilometers (3.4 miles) southeast to avoid a short-spacing to the licensed site of Station WYXL(FM), Channel 247B, Ithaca, New York. The coordinates for Channel 248A at Walton are North Latitude 42–08–10 and West Longitude 75–04–48. Since Susquehanna and Walton are located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–20166 Filed 7–30–97; 8:45 am]

BILLING CODE 6712–01–P