

impact on small entities, in that operator service providers will no longer be assessed the PICC on payphone lines. In addition, because small and rural incumbent price cap LECs will be able to increase their PICCs or common line carrier charges to offset the reduction in the number of lines being assessed the PICC revenue, their overall common line revenues will not be affected. Thus, the Commission expects that the rule revision will have a *de minimis* impact on these affected small entities. Therefore, the Commission certifies that the requirements of the document will not have a significant economic impact on a substantial number of small entities.

The Commission will send a copy of the document, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. See 5 U.S.C. 801(a)(1)(A). In addition, the document (or summary thereof) and this final certification will be published in the **Federal Register**, and will be sent to the Chief Counsel for Advocacy of the U.S. Small Business Administration. See 5 U.S.C. 605(b).

*Paperwork Reduction Analysis.* The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995, and it contains no new or modified information collections subject to Office of Management and Budget review.

*Ordering Clauses.* Accordingly, pursuant to sections 1, 4(i) and (j), 201–209, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 201–209, and 276, this Order and Order on Reconsideration *is adopted*. One Call's Petition for Reconsideration and Clarification *is granted* to the extent indicated herein and otherwise *is denied*. The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration. The provisions of this Order *shall be effective* on October 1, 2003.

#### List of Subjects in 47 CFR Part 69

Communications common carriers, Telephone.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

#### Rules Changes

■ For the reasons set forth in the preamble, amend part 69 of title 47 of the Code of Federal Regulations as follows:

■ 1. The authority citation continues to read as follows:

**Authority:** 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

■ 2. Amend § 69.153 by adding paragraph (f) to read as follows:

**§ 69.153 Presubscribed interexchange carrier charge (PICC).**

\* \* \* \* \*

(f) The PICC shall not be applicable to any payphone lines.

[FR Doc. 03–18542 Filed 7–21–03; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 02–113; FCC 03–77]

#### Broadcast Services; Television Stations Digital Television (DTV) Construction Deadline

**AGENCY:** Federal Communications Commission.

**ACTION:** Policy statement.

**SUMMARY:** In this document, the Commission adopts a policy to be followed when the staff denies a request to extend a television station's digital television (DTV) construction deadline. The intended effect is to alert stations as to the sanctions that will be applied if they fail to meet their DTV deadline.

**FOR FURTHER INFORMATION CONTACT:** Shaun Maher, Media Bureau, Office of Broadcast Licensing, Video Division, (202) 418–2324.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the *Report and Order* (“*R&O*”) in MM Docket No. 02–113, FCC 02–150, adopted April 4, 2003, and released April 16, 2003. The complete text of this *R&O* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., CY–B402, Washington, DC 20554. The *R&O* is also available on the Internet at the Commission's Web site: <http://www.fcc.gov>.

#### Synopsis

1. The Commission has adopted this *R&O* announcing its policy to be followed when requests to extend digital television (DTV) construction deadlines are denied. The Commission announced a set of graduated sanctions that it will impose. Under the first step

of its approach, the Commission will deny the request for an unqualified extension and admonish the station for its failure to comply with its DTV construction obligation. The station will be required to submit a report within thirty (30) days outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date will be no later than six months from the date of admonishment. Sixty (60) days later, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this six month period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or the Commission otherwise find that the licensee has acted in bad faith, the Commission will consider the imposition of additional sanctions including proceeding immediately to the second step.

2. Under the second step in the approach, if the station has not come into compliance with the DTV construction rule within the six month period, then, absent extraordinary and compelling circumstances, the Commission will impose further sanctions against the licensee. The Commission will issue a Notice of Apparent Liability for forfeiture to the licensee. It will require that the station report every thirty (30) days on its proposed construction milestones and its efforts to meet those milestones. Once again, failure to adequately demonstrate that the station was taking all reasonable steps towards construction and to justify any additional delays that were encountered, will result in the imposition of additional sanctions.

3. Under the third and final step in the approach, if the station still had failed to come into compliance with the DTV construction rule within an additional six-month period of time (*i.e.*, one year from the date of the formal admonition), then, absent extraordinary and compelling circumstances, the Commission will consider its construction permit for its DTV facilities to have expired and will rescind the station's DTV authorization. The Commission concluded that no hearing was necessary prior to rescinding the station's DTV authorization. The Commission also concluded that it would not make the station's vacant

DTV allotment available. The Commission also announced that the station will be required to surrender its analog authorization at the end of the DTV transition.

#### Administrative Matters

4. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> and Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Order and Notice of Proposed Rulemaking*, 67 FR 38459, June 4, 2002.<sup>2</sup> The Commission sought written public comment on the proposals in the *Order and Notice of Proposed Rulemaking* including comment on the IRFA. The comments received are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>3</sup>

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

5. The Commission adopts these remedial measures to prevent undue delay in the required build out of DTV facilities.

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

6. New Life Evangelistic Center, Inc (NLEC) filed comments on the IRFA. NLEC complains that television stations will have to spend millions of dollars to comply with the DTV construction requirement. However, that matter was previously considered in the DTV rulemaking proceeding wherein the Commission adopted the DTV construction requirement and timetable. In the instant proceeding, the Commission only considered what steps to take when a station fails to meet its construction requirement. Therefore, NLEC's comments were not on point.

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

7. 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.<sup>4</sup> The RFA defines the term "small entity" as having the same meaning as "small

business," "small organization," and "small governmental jurisdiction."<sup>5</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>6</sup> 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 SBA.<sup>7</sup>

8. The proposals in the *R&O* will affect only full-power television broadcasters. As of September 30, 2001, the Commission had licensed a total of 1,686 full-power television stations.<sup>8</sup> SBA defines television broadcasting establishments that have \$12 million or less in annual receipts as a small business.<sup>9</sup> According to Census Bureau data for 1997, there were 906 firms in this category, total, that operated for the entire year.<sup>10</sup> Of this total, 728 firms had annual receipts of under \$10 million, and an additional 71 had receipts of \$10 million to \$24,999,999. Thus, under this size standard, the majority of the firms are considered small.

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

9. The *R&O* contains a new reporting requirement. Stations that fail to construct their DTV stations by the requisite deadline and fail to justify an extension of their DTV construction permit will fall into the remedial measures set forth in the document. Among the remedial measures, is the requirement that the station submit periodic reports detailing their efforts to comply with the extended DTV construction deadline. The reports will be filed in letter form with the Secretary's office.

<sup>5</sup> *Id.* 601(6).

<sup>6</sup> *Id.* 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 32). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register.**" 5 U.S.C. 601(3).

<sup>7</sup> *Id.* 632.

<sup>8</sup> News Release, "Broadcast Station Totals as of September 30, 2001" (released October 30, 2001).

<sup>9</sup> NAICS Code 513120.

<sup>10</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size," Table 4, NAICS code 513120 (issued Oct. 2000).

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

10. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>11</sup>

11. The *R&O* contains remedial steps for failure of broadcast stations to comply with the DTV construction schedule. These steps are applied only after a station has failed to demonstrate this it qualifies for an extension of its schedule. The Commission's rules and policies already contain flexible measures for allowing stations in smaller markets to seek an extension of their DTV construction deadline. Those measures remain unchanged by the *R&O*.

12. One of the sanctions that may be used is the issuance of a notice of apparent liability for forfeiture to stations that do not comply with their DTV construction obligation. We already take small entity status, including potential inability to pay, into account when assessing the need for, and amount of, monetary forfeitures.<sup>12</sup>

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

13. None.

##### G. Report to Congress

14. The Commission will send a copy of the *R&O*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>13</sup> In addition, the Commission will send a copy of the *R&O* including this FRFA to the Chief Counsel for Advocacy of the SBA. A copy of the *R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**.<sup>14</sup>

15. *Authority.* This *R&O* is issued pursuant to authority contained in

<sup>11</sup> 5 U.S.C. 603(c).

<sup>12</sup> *See, e.g.*, In the Matter of the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to incorporate the Forfeiture Guidelines, CI Docket No. 95-6, *Report and Order*, 12 FCC Rcd 17087, 17109 (1997).

<sup>13</sup> *See* 5 U.S.C. 801(a)(1)(A).

<sup>14</sup> *See* 5 U.S.C. 604(b).

<sup>1</sup> *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> Remedial Steps For Failure to Comply With Digital Television Construction Schedule, 17 FCC Rcd 9962 (2002) (*Order and Notice of Proposed Rulemaking*).

<sup>3</sup> *See* 5 U.S.C. 604.

<sup>4</sup> 5 U.S.C. 603(b)(3).

sections 4(i), 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 307, and section 202(h) of the Telecommunications Act of 1996.

16. The Request for Reconsideration filed by Sinclair Broadcast Group, Inc., is denied.

#### Ordering Clauses

17. Pursuant to the authority contained in sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, and 310, and section 202(h) of the Telecommunications Act of 1996, this *R&O* is adopted.

18. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *R&O*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

[FR Doc. 03-18510 Filed 7-21-03; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF DEFENSE

### 48 CFR Part 207

[DFARS Case 2002-D036]

#### Defense Federal Acquisition Regulation Supplement; Buy-to-Budget Acquisition of End Items

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 801 of the National Defense Authorization Act for Fiscal Year 2003. Section 801 authorizes DoD to acquire a higher quantity of an end item than the quantity specified in law, under certain conditions.

**DATES:** Effective date: July 22, 2003.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before September 22, 2003, to be considered in the formation of the final rule.

**ADDRESSES:** Respondents may submit comments directly on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: [dfars@acq.osd.mil](mailto:dfars@acq.osd.mil). Please cite DFARS

Case 2002-D036 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan Schneider, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0350. Please cite DFARS Case 2002-D036.

At the end of the comment period, interested parties may view public comments on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Schneider, (703) 602-0326.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This interim rule adds a new subpart at DFARS 207.70 to implement Section 801 of the National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107-314). Section 801 added 10 U.S.C. 2308, which provides that DoD may acquire a higher quantity of an end item than the quantity specified in a law providing for the funding of the acquisition, if the agency head makes certain findings with regard to the acquisition.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

##### B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because any additional quantities acquired as a result of this rule must be acquired without additional funding. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002-D036.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

##### D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 801 of the National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107-314), which authorizes DoD to acquire a higher quantity of an end item than the quantity specified in law, under certain conditions. Section 801 required issuance of final implementing regulations by April 1, 2003. Comments received in response to this interim rule will be considered in the formation of the final rule.

#### List of Subjects in 48 CFR Part 207

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

■ Therefore, 48 CFR Part 207 is amended as follows:

■ 1. The authority citation for 48 CFR Part 207 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

#### PART 207—ACQUISITION PLANNING

■ 2. Subpart 207.70 is added to read as follows:

##### Subpart 207.70—Buy-to-Budget—Additional Quantities of End Items

Sec.

207.7001 Definition.

207.7002 Authority to acquire additional quantities of end items.

207.7003 Limitation.

##### Subpart 207.70—Buy-to-Budget—Additional Quantities of End Items

###### 207.7001 Definition.

*End item*, as used in this subpart, means a production product assembled, completed, and ready for issue or deployment.

###### 207.7002 Authority to acquire additional quantities of end items.

10 U.S.C. 2308 authorizes DoD to use funds available for the acquisition of an end item to acquire a higher quantity of the end item than the quantity specified in a law providing for the funding of that acquisition, if the head of an agency determines that—

(a) The agency has an established requirement for the end item that is expected to remain substantially unchanged throughout the period of the acquisition;

(b) It is possible to acquire the higher quantity of the end item without