Harvest limits	Open season
15 wolves	Aug. 10–Apr. 10.
Wolverine:	
5 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping:	
Coyote:	
No limit	Nov. 1–Apr. 15.
Fox, Arctic (Blue and White Phase):	
No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Apr. 15.
Lynx:	
No limit	Nov. 1–Apr. 15.
Marten:	
No limit	Nov. 1–Apr. 15.
Mink and Weasel:	
No limit	Nov. 1–Jan. 31.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 1–Apr. 30.
Wolverine:	
No limit	Nov. 1–Apr. 15.

Dated: July 27, 1995.

Richard S. Pospahala,

Acting Chair, Federal Subsistence Board.

Dated: July 28, 1995.

Robert W. Williams,

Regional Forester USDA-Forest Service.

[FR Doc. 95–19484 Filed 8–14–95; 8:45 am]

BILLING CODE 3410–11–M; 4310–55–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH40–1–5784b; AD–FRL–5276–8]

Approval and Promulgation of Small Business Assistance Program; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Ohio for the purpose of establishing a Small Business Assistance Program. In the Final Rules section of this **Federal Register**, USEPA is approving the State's SIP revision as a direct final rule without prior proposal, because the USEPA views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to these actions, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received on or before September 14, 1995.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Regulation Development Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Regulation Development Branch, Regulation Development Section (AR–18J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6067.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 23, 1995.

William E. Muno,

Acting Regional Administrator.

[FR Doc. 95–20018 Filed 8–14–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–268; FCC 95–315]

Broadcast Services; Advanced Television Systems

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking, Notice of inquiry.

SUMMARY: This Fourth Further Notice of Proposed Rule Making and Third Notice of Inquiry examines a broad range of issues related to the conversion of our current broadcast television to digital technology. In previous orders in this Advanced Television (''ATV'') proceeding, our focus was on fostering the development of High Definition Television. Technological evolution now obliges us to revisit some of those decisions, which we do in this document. Accordingly, we invite comment on a broad range of issues related to the conversion by television broadcasters to digital television, including eligibility requirements,

spectrum issues, definition of the service, public interest obligations, transition issues, recovery of spectrum, length of the application/construction period, issues related to small markets and noncommercial stations, all-channel receiver issues, and must-carry and retransmission consent, to ensure that the rules that we fashion in this proceeding serve the public interest in all respects. We also institute an inquiry to invite comment as to where in the spectrum broadcasters should eventually be located and as to the amount, value and uses of the spectrum that could eventually be recovered when the conversion to digital television is completed.

DATES: Comments are due by October 18, 1995, and reply comments are due by December 4, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Saul Shapiro (202–418–2600) or Roger Holberg (202–776–1653), Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Fourth Notice of Proposed Rule Making and Third Notice of Inquiry in MM Docket No. 87–268, FCC 95–315, adopted July 28, 1995, and released August 9, 1995. The complete text of this *NPRM and NOI* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of Notice of Proposed Rule Making

1. With this Fourth Further Notice of Proposed Rule Making and Third Notice of Inquiry (''Notice''), we continue the process of moving toward the next era of broadcast television: *digital* broadcast television. In previous orders in this Advanced Television (''ATV'')[1] proceeding,[2] our focus was on fostering the development of High Definition Television (''HDTV'').[3] Technological evolution now obliges us to revisit some of those decisions and consider new information, which we do in this document.

2. The current technology allows for multiple streams, or ''multicasting,'' of Standard Definition Television (''SDTV'')[4] programming at a quality at least comparable to, and possibly better than, the current analog signal, as well as CD-quality audio signals and the rapid delivery of huge amounts of data. It allows broadcasters to send, simultaneously, video, voice and data. In addition, it allows broadcasters to provide a range of services dynamically, that is, it allows them to switch easily and quickly from one type of service to another.

3. Revisiting our earlier decisions is consistent with our statutory responsibility to ''encourage the provision of new technologies and services to the public,'' 47 U.S.C. 157, as well as with our general statutory obligations to promote the public interest, since these developments have the potential to provide profound benefits to the American public.

4. In deciding what rules should govern the transition to digital television, we recognize our obligation to manage the spectrum efficiently and in the public interest and to take account of the legitimate interests of all those with a stake in that transition. With the foregoing considerations in mind, we will pursue and balance the following goals in this proceeding: (1) Preserving a free, universal broadcasting service; (2) fostering an expeditious and orderly transition to digital technology that will allow the public to receive the benefits of digital television while taking account of consumer investment in NTSC television sets; (3) managing the spectrum to permit the recovery of contiguous blocks of spectrum, so as to promote spectrum efficiency and to allow the public the full benefit of its spectrum; and (4) ensuring that the spectrum—both ATV channels and recovered channels—will be used in a manner that best serves the public interest.

5. It has become apparent that the flexibility of the Grand Alliance system will allow for more applications and alternative uses than we had previously contemplated. We are issuing this Fourth Further Notice of Proposed Rule Making and Third Notice of Inquiry to invite comment on several aspects of this changed ATV environment and their ramifications for this proceeding.

A. Spectrum Issues

6. The Commission previously decided that ATV would be introduced by assigning existing broadcasters a temporary channel on which to operate an ATV station during a transition period and that the spectrum needed for the transition would be obtained from the spectrum currently allocated to broadcasting. We continue to believe that providing 6 MHz channels for ATV purposes represents the optimum balance of broadcast needs and spectrum efficiency. We invite comment, however, on any means of achieving greater spectrum efficiency.

B. Definition of Service

7. We reaffirm in this proceeding our intention to preserve and promote universal, free, over-the-air television. We envision that the 6 MHz channel earmarked for ATV will be used for free, over-the-air broadcasting. The digital transmission system currently proposed would provide broadcasters with new flexibility and new capabilities as they embark on serving the American public with the next generation of television. Broadcasters will be capable of providing through ATV not only a vastly improved high definition picture, but also multiple program steams. In addition, the ATV system is capable of nonbroadcast uses that are nonvideo and/or subscription-based in nature. Allowing at least some level of flexibility would increase the ability of broadcasters to compete in an increasingly competitive marketplace, and would allow them to serve the public with new and innovative services Flexibility could also allow for a more rapid transition to digital broadcasting. Nonetheless, any flexibility afforded broadcasters must not undermine our American system of universal, free, over-the-air television. In establishing a regulatory framework for the provision of ATV in light of this new flexibility, we therefore seek comment on the following questions:

- Should we require broadcasters to provide a minimum amount of HDTV and, if so, what minimum amount should be required?
- To what extent should we allow broadcasters to use their ATV spectrum for uses other than free, over-the-air broadcasting? We recognize that we

[1] Advanced Television (''ATV'') refers to any television technology that provides improved audio and video quality or enhances the current NTSC television system.

[2] Our earlier Notices and Orders are: Notice of Inquiry, 52 FR 34259, September 10, 1987; Tentative Decision and Further Notice of Inquiry, 53 FR 38747, October 3, 1988; First Report and Order, 55 FR 39275, September 26, 1990; Notice of Proposed Rule Making, 56 FR 58207, November 18, 1991; Second Report and Order/Further Notice of Proposed Rule Making, 57 FR 21744 & 21755, May 22, 1992; Second Further Notice of Proposed Rule Making, 57 FR 38652, August 26, 1992; Memorandum Opinion and Order/Third Report and Order/Third Further Notice of Proposed Rule Making in MM Docket No. 87–268, 57 FR 53679 & 53588, November 12, 1992.

[3] High Definition Television offers approximately twice the vertical and horizontal resolution of NTSC, which is a picture quality approaching 35 millimeter film, and has sound quality approaching that of a compact disc.

[4] Standard Definition Television (''SDTV'') is a digital television system in which picture quality is approximately equivalent to the current NTSC television system.

currently allow broadcasters to use a portion of their analog spectrum for ancillary and supplementary uses that do not interfere with or detract from their primary broadcast function. Should such uses of the ATV spectrum be permitted and, if so, how should they be defined? What portion of the ATV system's capacity should be allowed to be used for ancillary and supplementary services?

- To what extent should we allow braodcasters to use their ATV spectrum for services that go beyond traditional broadcast television or ancillary and supplementary uses analogous to those allowed under our current regulatory regime? Should broadcasters be permitted to provide nonbroadcast and/or subscription services?[5] If so, how should such services be defined and how much of the ATV system's capacity should be allowed for such uses? If allowed, what regulation, if any, would be appropriate for such services?

8. In responding to the above questions, if commenters propose that licensees be required to meet any requirements (such as a minimum HDTV requirement) or be limited in providing ancillary and supplementary services, they should include comment on the administrative processes we would use to implement any requirements or limitations. For instance, how should we measure use—by the amount of time, data packet ''headers,'' or by some other means? Should the time of day when broadcast or other video service is offered have any significance? What administrative process should we use to enforce such a requirement—self reporting, complaints from the public, operating logs, etc.—and what costs would be associated with each?

C. Eligibility Issues

9. The Commission has previously established that during the initial period, existing broadcasters would have the first opportunity to acquire ATV channels. Included in the class of existing broadcasters were: (a) All full-service television broadcast station licensees; (b) permittees authorized as of October 24, 1991, and (c) all parties with applications for a construction permit on file as of October 24, 1991, who are ultimately awarded full-service broadcast station licenses.

10. We continue to believe that initial eligibility should be limited to existing broadcasters given the shortage of suitable spectrum and our decision not to allocate additional spectrum for this purpose. We are still asking existing broadcasters to inaugurate a television service that will deliver a signal of superior quality. Furthermore, we are not creating a new service, and our eligibility restriction does not ultimately result in more spectrum for broadcasters or less spectrum for others. We are merely moving each existing broadcaster from one channel to a different channel in a one-for-one exchange designed to accomplish a number of long-term public interest goals.[6] Broadcasters will be required to cease their analog operations after a relatively short period, thereby permitting a swift, certain transition to digital technology and a rapid recovery of spectrum for the benefit of the public.

11. We believe that we are not precluded by *Ashbacker Radio Corp.* v. *FCC,* 326 U.S. 327 (1945), from limiting initial eligibility to incumbent broadcasters, even if we permit flexible use of the digital system and especially since the broadcasters' ''analog'' operations will be shut down and one of the channels will be relinquished.[7] Under Section 309 of the Communications Act, as applied by the Supreme Court in *United States* v. *Storer Broadcasting Co.*,[8] we are authorized to set licensee eligibility standards. As an independent matter, we note that we also have authority under Section 316 of the Communications Act, 47 U.S.C. 316, to modify existing licenses as the public interest requires. In so doing, our actions are not governed by the hearing and other requirements of Section 309 of the Act.[9] In light of our authority under both *Storer* and Section 316 of the Act, we invite comment on our tentative conclusion that no *Ashbacker* problem is presented by our proposals.

12. While we reiterate our tentative conclusion to limit initial eligibility for ATV frequencies to existing broadcasters, we seek comment on the potential impact our proposal would have on the Commission's long standing policy of fostering programming and ownership diversity. Specifically, we seek comment on what measures, if any, the Commission may adopt to include new entrants into this emerging era of digital television.

13. Some parties have suggested that we should auction the spectrum intended to be used for ATV service. Section 309(j) of the Communications Act of 1934, as amended, limits the uses of spectrum that is subject to being auctioned. It specifically requires that, ''the principal use of such spectrum will involve, or is reasonably likely to involve, the licensee receiving compensation from subscribers. * * *'' Our experience and our judgment concerning market conditions lead us to believe that the broadcasters would use this spectrum for free over-the-air broadcast service; therefore, it cannot be auctioned under Section 309(j). For this reason, as well as those set forth above, we reiterate our previous decision to limit initial eligibility to existing licensees. Commenters may address whether any changed circumstances should alter this conclusion.

14. Given our decision not to allocate additional spectrum for television broadcasting, the number of transition channels is limited. Therefore, we also solicit comment on granting eligibility status to those broadcasters that are in bankruptcy, off-the-air, have construction permits or are otherwise non-operational, or otherwise incapable of engaging in the transition to digital television. We specifically request comment on whether the transition channels identified for these licensees or permittees would be better used to support service to the public if instead they were made available to new entrants.

D. Public Interest Obligations

15. Our rules imposing public interest obligations on broadcast licensees flow from the statutory mandate that broadcasters serve the ''public interest, convenience and necessity,''[10] as well as other provisions of the Communications Act. Broadcasters are

[5] We note that, under our current rules, a licensee may provide video programming primarily on a subscription basis. We also note pending legislative proposals that contemplate granting us the authority to require licensees to pay annual spectrum fees where licensees charge the public for the new services provided on the conversion channels. We will publish a Public Notice or other appropriate document with respect to the effect on our ATV decisions of any relevant law enacted.

[6] There is ample precedent for our reallocation of spectrum in the public interest, even where such reallocation results in displacement of current users of the spectrum, and it is clear that we have broad discretion to do so. We have, in a number of contexts, moved users of spectrum to different bands.

[7] The Court of Appeals has held that *Ashbacker* applies only to parties whose applications have been declared mutually exclusive and does not apply to ''prospective applicants.'' *Reuters Ltd.* v. *FCC,* 781 F.2d 946, 951 (D.C. Cir. 1986). No *Ashbacker* rights would be triggered because we are defining the category of eligible applicants rather than rejecting one *bona fide* applicant without comparing it to the others.

[8] 351 U.S. 192 (1956).

[9] Section 316 does not require us to accept petitions to deny an application filed as a result of a proposed modification, but it does require us to consider protests filed by other licensees or permittees who believe their own licenses or permits would be modified by the Section 316 modification. See 47 U.S.C. § 316(a)(3).

[10] 47 U.S.C. 307(c). See also id. § 307(a).

required to air programming responsive to community needs and interests. They are required to air programming designed to ''serv[e] the educational and informational needs of children.'' They must provide ''reasonable access'' to candidates for federal elective office, and must afford ''equal opportunities'' to candidates for any public office. Broadcasters are also obliged to refrain from airing certain programming, such as indecent programming outside the ''safe harbor'' period. Finally, in order to promote diversity of viewpoint, broadcasters must refrain from discriminating in employment and must establish and maintain an equal employment opportunity (''EEO'') program designed to provide equal employment opportunities for minorities and women. Our previous orders reflect the assumption that public interest obligations would attach to ATV broadcasting. Indeed, that broadcasters ''have an obligation to serve the public interest'' is one of our reasons for limiting initial eligibility for ATV channels to existing broadcasters.

16. We remain committed to enforcing our statutory mandate to ensure that broadcasters serve the public interest. Our current public interest rules, including those implementing specific statutory requirements, were developed for broadcasters essentially limited by technology to a single, analog video programming service. The potential for more flexible and dynamic use of the advanced television channel than what broadcasters currently enjoy gives rise to important questions about the nature of public interest obligations in the digital broadcasting world. We request comment on how the conversion to digital broadcasting should affect broadcasters' obligation to serve the public interest.

17. Our future rules may allow broadcasters to use their advanced television channels to provide a high definition television service, multiple standard definition television services and perhaps other services, some of which may be on a subscription basis. Should a licensee's public interest obligations depend on the nature of the services it chooses to provide and, if that is the case, how so? For example, if a broadcaster chooses to provide multiple standard definition services, should public interest obligations attach to each one? What if one or more of those services are provided on a subscription basis? Alternatively, should public interest obligations be seen as attaching not to services but to licensees, each of whom would be required to operate the facilities associated with its 6 MHz ATV channel in the public interest? We note that attaching a public interest requirement on one type of ''service'' could skew broadcaster investment away from providing that service—a situation that could potentially result in a net public interest loss. Commenters are requested to discuss whether, if Congress grants the Commission the requisite authority, we should consider imposing spectrum fees for that portion of the spectrum used by broadcasters to provide subscription services. We note that the use of spectrum fees may allow the Commission to establish a regulatory framework that does not discourage broadcasters from providing free over-the-air channels or other services to which public interest obligations might attach. We also invite comment on whether the conversion to digital broadcasting justifies other changes in our public interest framework.

18. Finally, we express our intention to continue to apply EEO requirements on broadcasters. We ask, however, whether there are additional means available to further our objective of promoting diversity of viewpoints in a digital world.

E. Transition

1. Simulcast Requirement

19. Previously, we determined that ATV licensees should simulcast on their NTSC stations the programming offered on their ATV stations. We preliminarily decided that, beginning one year after the six year application and construction period, ATV licensees would have to simulcast 50 percent of their ATV programming, increasing to 100 percent two years later. Additionally, we indicated that we would review this schedule at the time of our initial review of the pace of conversion at the end of the application/construction period and immediately prior to the imposition of 100 percent simulcasting.

20. Our concern was, and remains, that consumers not be prematurely deprived of the benefits of existing television equipment. We also stated that requiring simulcasting would assist us in reclaiming the analog channel as soon as possible by minimizing broadcaster and consumer reliance on the ATV and NTSC channels carrying separately programmed services. Additionally, we believed that a simulcast requirement would ''give added impetus to ATV receiver penetration by eliminating the need for dual mode receivers capable of receiving both NTSC and ATV,'' thereby helping to lower the cost of ATV receivers, spurring increased penetration.

21. These decisions were appropriate and practical when it appeared that ATV would primarily consist of the broadcast of a single HDTV program service. However, it is apparent that a digital TV system can be used to transmit multiple simultaneous SDTV program services. Obviously, a licensee would be unable to simulcast multiple program services on its NTSC channel. Under such circumstances, it is clear that our simulcasting requirement must be revisited and we must consider alternatives.

22. The simulcasting requirement was in large measure intended to allow consumers to avoid being prematurely deprived of the benefits of their NTSC video equipment. We hoped to avoid having broadcasters move their best programs to HDTV, with the result that large numbers of viewers that do not have HDTV equipment would lose much of the value of broadcast television service. At the present time, this no longer appears to be a likely prospect. We do not foresee broadcasters taking their best programming off of their NTSC stations and putting it on HDTV where potential audiences will, at first, be small. Similarly, we do not see broadcasters moving their best programming off of NTSC and on to ATV early in the conversion process. We believe that, instead, the market will continue to serve consumer demand by assuring the continued presence of good programming on NTSC channels. However, we still perceive a need for a simulcast requirement, albeit different from that first envisioned.

23. Some number of consumers, unaware of the transition to digital television or unable to afford replacement equipment, may continue viewing analog television throughout the transition period. At the end of the transition period, we may be confronted with the choice of either terminating analog service, causing such viewers to lose their only source of free broadcast service, or, alternatively, allowing analog broadcasting to continue, thereby depriving the broad general public of the benefits that we believe are to be found from the recovery of one of the channels. We wish to avoid either alternative and believe that a simulcasting requirement may be useful in speeding the migration of these consumers from analog to digital broadcasting. Accordingly, we propose to require the simulcast of all material being broadcast on the licensee's NTSC station (with the exception of commercials and promotions) on a

program service of the ATV channel. If a program is available only on the analog service, then all viewers (those with digitally capable and analog-only sets) will need to watch it in the analog service. In a simulcast environment, the number of consumers who will lose access to a specific program service will be reduced by the number who have a digitally capable set or set top converter.

24. We ask parties to comment on this proposal, including assessing its impact on broadcasters' ability to provide HDTV service, and to offer other viable alternatives, keeping in mind our goals of avoiding a reliance on NTSC service and assuring recovery of large blocks of contiguous spectrum at the conclusion of a speedy and smooth transition process. We are open to suggestions and will consider any option that does not slow the conversion to digital television. For instance, commenters may wish to comment on whether the simulcast requirement should be tradeable. That is, should a licensee be permitted to purchase time on a competitor's ATV station on which to broadcast its analog programming?

25. Also, we seek comment on the phasing in of a simulcasting requirement. We believe that at the beginning of the transition a broadcaster should be required to simulcast little or no NTSC programming. Few viewers would have ATV receivers at that stage. Later, as fewer consumers depend upon analog television and ATV equipment proliferates, we tentatively believe that the simulcasting requirement should be increased. Commenters are invited to comment on the relevant time periods for each phase and the amount of simulcasting that should be required in each such phase.

2. Licensing of ATV and NTSC Stations

26. We revisit the question of whether licensees' NTSC and ATV station licenses should be considered a single license or two separate and distinct licenses. We previously decided to treat the licensee as having two paired licenses. That is, each licensee's NTSC and ATV station would receive a separate license. Because the licenses were to be paired, however, if a licensee's NTSC license were to be revoked or not renewed while its ATV application was pending, the licensee would lose its priority eligibility status. Also, if either a licensee's NTSC or ATV license were revoked or not renewed, the remaining license would automatically suffer the same fate. We nonetheless indicated that we would consider permitting a licensee to voluntarily surrender its NTSC channel while retaining the corresponding ATV channel on a case-by-case basis in the interest of spectrum efficiency.

27. We decided that broadcasters would be operating two distinct facilities having different characteristics and, frequently, transmitting from different locations. Treating the ATV and NTSC channels as separately licensed facilities would, we concluded, simplify enforcement and administration. However, we paired the two licenses to prevent the separate transfer of one channel of the pair because we believed that would make it impossible to recapture one of the 6 MHz channels at the end of the transition period and still leave the existing licensee with a broadcast outlet.

28. We tentatively conclude that substantial benefits could be obtained if, instead of licensing the NTSC and ATV facilities separately, we authorized both under a single, unified license. It would ease administrative burdens on the Commission and broadcasters alike by reducing the number of applications that would have to be filled out, filed and processed. Licensing the two facilities under a single authorization is also consistent with our view that the authorizations may be issued pursuant to our broad authority under Section 316 of the Act to modify an existing license. Finally, treating the two facilities under a single license would retain the sound policy announced in the Second Report/Further Notice of treating both facilities the same from the revocation/non-renewal standpoint. We seek comment on this tentative conclusion.

29. Commenters advocating separate licenses for the ATV channels may wish to address whether, if NTSC and ATV licenses were licensed separately, we should allow the sale of an authorization for an unbuilt ATV facility. Allowing such transfers could speed the transition to digital ATV by putting transition spectrum into the hands of parties willing and able to construct ATV facilities. Commenters should be mindful, however, that even if NTSC and ATV licenses were to be issued separately and unpaired the NTSC licensee would have to cease its NTSC operations at the end of the transition period. Moreover, unpairing the NTSC and ATV licenses would raise complex issues regarding simulcast and retransmission/must carry rights. In the event we adopt an NTSC–ATV simulcast requirement, should the transfer of a separated ATV license be permitted only if the programming on the accompanying NTSC license were simulcast in digital?

F. Transition Period

30. In the Third Report/Further Notice we made a preliminary decision to establish a transition period that concludes 15 years from the date of adoption of an ATV system or a final Table of ATV Allotments is effective, whichever is later. In addition, we adopted a schedule of periodic reviews to permit us to monitor the progress of ATV implementation and to make any necessary adjustments. We decided that the transition period should not be modified without a substantial showing that the change is in the public interest. We reiterated that we planned to award broadcasters interim use of an additional 6 MHz channel to permit a smooth, efficient transition to an improved technology with as much certainty and as little inconvenience to the public and the industry as possible. Finally, we clarified that, in general, broadcaster who do not convert to ATV will nevertheless have to cease broadcasting in NTSC at the end of the 15-year transition period.

31. There may now be reasons to expect that broadcasters will adopt ATV more rapidly than was anticipated in 1992, when we last analyzed the transition period. The broadcast industry, including equipment manufacturers, have been at the forefront of developing digital technology for television. Other new services, such as ''video dialtone,'' that would use digital transmission technologies are also being initiated or planned. In this environment, broadcasters have added incentive to convert more rapidly in order to remain competitive.

32. Consumers will buy or rent digitally capable receivers or set-top converters as their choice of digitally-based video products expands. For each household which transitions to any of the new media, including over-the-air digital, there will be at least one less television set reliant upon over-the-air NTSC analog transmissions. Given the degree of competition that exists between suppliers of electronic equipment, and expected economies of scale resulting from the proliferation of digitally based media, we anticipate that declining costs will translate into reduced prices and increased sales of digital receivers and converters to consumers.

33. We previously cautioned that broadcasters' cessation of NTSC transmission and surrender of a 6 MHz channel would depend on ATV becoming the prevalent medium, stemming in part from our concern over the number of households that might

continue to rely on NTSC transmissions. As discussed above, purchase of an ATV receiver or converter is not the only meaning of ending reliance on NTSC transmission, so projections solely of ATV receiver penetration may not be the most accurate benchmark for deciding when broadcasters should cease NTSC transmission and surrender a 6 MHz channel.

34. We now wish to consider whether some objective benchmark(s) could be used to determine when broadcasters should cease NTSC transmission. Is it possible to end the transition period in a market by tying the transition period to some objective benchmark(s)? If so, what benchmark(s) should be used? The conversion could be considered complete when the number of households that rely on NTSC has fallen to a given percentage. We ask parties to comment on tying the transition period and final conversion date to the percentage of households in a market that rely on NTSC transmission. If the final conversion date is triggered when the number of households that rely on NTSC falls to a given percentage, what should the threshold percentage be that triggers the final conversion date? How would we measure the number of households that rely on NTSC transmission from year to year? Should we measure households or television sets? What other objective benchmarks should we consider in determining the transition period and the final conversion date? To what extent should the availability of inexpensive digital receivers and converters be used as a benchmark in determining the length of the transition period?

35. We previously reasoned that by adopting a target date approach we could speed the transition to digital technologies. Are there mechanisms other than the date certain approach that we adopted in 1992, that we could put in place to create incentives for rapid adoption of ATV by consumers, broadcasters, manufacturers, and others? For example, should we consider having the transition period end at the earlier of a date certain or attainment of an objective benchmark? We seek information on how broadcasters could assist consumers by providing alternate methods of acquiring or leasing digital equipment in the short term so that the transition costs can be reduced and the transition schedule can be shortened. Could broadcasters in a market cooperate in leasing converters and/or ATV receivers to consumers? Would cooperation between broadcasters in a market raise anti-competitive concerns? If so, how could the cooperative arrangements of broadcasters be adapted to reduce household reliance on NTSC transmission without raising these concerns?

G. Recovery of Spectrum

36. We have put broadcasters on notice that when ATV becomes the prevalent medium, they will be required to surrender a 6 MHz channel and cease broadcasting in NTSC, reiterated that we are awarding broadcasters interim use of an additional 6 MHz channel, and clarified that broadcasters who do not convert to ATV will nevertheless have to cease broadcasting in NTSC.

37. The rationale underlying the recovery of spectrum was the freeing of spectrum of significant value for other uses. The spectrum to be used for the transition to ATV has significant value for other services and benefits and that any delay in reclaiming the reversion spectrum carries potential costs to the public.

38. When the transition to digital technologies is complete, we must have some mechanism in place to recover the extra 6 MHz channel. One option would be to continue renewing licenses for five year periods but explicitly terminate authority to use one of the 6 MHz channels at the end of the transition period. If we were to adopt a ''two-license'' approach, one of the two licenses could expire at the end of the transition period. We ask parties to comment on the advantages and disadvantages of each approach.

39. We remain committed to the recovery of spectrum. In addition, we believe that spectrum will be of greater value if available in large contiguous nationwide blocks. To create contiguous blocks of spectrum following the transition period, it may be necessary to move some digital broadcast stations to new channels that are contiguous with others. This would have the effect of condensing broadcast assignments to a narrower band of spectrum without eliminating any licenses. Today, television broadcasters have over 400 MHz assigned to them, but NTSC technology does not permit all of the channels to be used in the same geographic area. We believe that the ''Grand Alliance'' digital system does not have these difficulties. By moving some digital broadcast stations, we would be able to obtain a more spectrum-efficient arrangement by condensing broadcasting assignments to less than 400 MHz. We believe that information concerning spectrum recovery and moving some digital broadcast stations to new channels should be solicited at this time to assure the future availability of contiguous spectrum and encourage immediate planning and investment in new services. We request comment on our tentative plans to create contiguous blocks of spectrum.

40. While broadcasters have been given notice that they must surrender a 6 MHz channel after full conversion to digital technologies, no final decisions have been made concerning which of the two channels would be surrendered. Allowing licensees to determine which 6 MHz channel they would use for digital transmission and which channel they would surrender may result in broadcasters providing digital services on channels scattered throughout the VHF and UHF broadcast band. Allowing this would inhibit the formation of large contiguous blocks of spectrum. To minimize the number of digital broadcast stations that may need to be moved to new channels to facilitate the creation of large contiguous blocks of VHF and/or UHF spectrum, it will likely be necessary for us, not the licensee, to determine which 6 MHz channel the broadcaster must use for digital transmission and which channel must be surrendered. Also, we believe that by making these decisions early we can aid broadcasters in their investment decisions.

41. In order to create the maximum amount of contiguous spectrum following the transition period, it may be necessary to move some digital broadcast stations to new channels. We recognize that there are costs associated with moving stations to new channels. We request comment on the benefits and costs of moving stations to new channels. We also seek comment on how to minimize the costs of moving stations to new channels. Finally, we ask parties to comment on whether each broadcaster should pay for its own move, whether all broadcasters should pay for the costs of relocation, or whether the licensee the bumps the broadcaster should pay to move the broadcaster, as was done in the emerging technologies band for PCS.

H. Length of Application/Construction Period

42. We previously granted existing broadcasters three years from the effective date of ATV system selection or an ATV Allotment Table, whichever is later, in which they exclusively may apply for a preferred or ''set-aside'' ATV channel, and a total of six years to both apply for and construct an ATV facility. We previously stated that such factors as the time needed to raise the necessary capital to invest in ATV technology, to plan for the creation of a new station, including, in some cases, having to

locate a new transmitter site, and to allow ATV equipment to become available, required that we establish these application and construction periods.

43. We propose to establish a procedure by which broadcasters have six months in which to make an election and confirm to the Commission that they want an ATV license. After that, they would have the remainder of the three-year period in which to supply supporting data as we may require. If they elect not to construct an ATV facility, or elect to construct but do not proceed to do so, their NTSC licenses will expire at the end of the ATV conversion period and they will have to cease broadcasting. This process would have the benefit of identifying early on locations where existing broadcasters do not want to transition to ATV and where applications from new entrants for ATV stations could therefore be considered.

44. We ask that commenters address all aspects of the construction period. Is the current six-year period appropriate, too long, or is it insufficient? We believe that the exclusive eligibility period can be shortened, primarily by requiring licensees to make an election within the first six months after the adoption of an ATV standard or final Table of Allocations, whichever is later, as to whether to convert. This should not place an undue burden on licensees. Broadcasters have now been on notice for a number of years of the general direction in which we are moving toward digital television and some, we understand, have begun planning in earnest for the transition. Moreover, much digital broadcasting equipment has been developed and demonstrated. Commenters should provide information on their ability to apply for and construct ATV facilities and discuss the difficulties they would have in meeting a shorter time frame.

45. Nevertheless, we are mindful of the difficulties to be encountered by television broadcasters converting to ATV. Sources of financing may be limited and their willingness to support the conversion is unknown. For some stations tower sites may need to be found, leases negotiated and towers built. Equipment will have to be purchased and installed, and the capacity of industry to supply over 1500 broadcasters with new equipment, from cameras to transmitters to antennas, all within the same time frame is not currently known. Given the different aspect ratio for ATV as opposed to NTSC, new studio sets may have to be designed and constructed in order for stations to originate programming. We fully appreciate that this transition will not be an easy task. Accordingly, we request comment on the practical difficulties licensees will have in successfully undertaking the conversion and on proposed solutions.

I. Small Markets

46. We previously decided not to adopt a ''staggered approach'' to initial ATV implementation with large markets required to implement first and small markets last. While recognizing that small market stations produce less revenue than those in large markets, adversely affecting their ability to finance the transition, we also noted that our extension of the application/construction period to a total of six years, and our ''sliding scale'' approach [11] should provide small market stations adequate relief. Nevertheless, we indicated that if the application/construction period appeared insufficient, we could adjust it at later reviews.

47. We now seek comment on whether we should reconsider this decision, and if so, on what type of relief should be provided from the six year deadline and to whom? For example, should there be a general extension of the deadline for a certain class of stations? If so, for how long and to whom? Should it be to stations that make a showing of financial hardship and if so how would that be defined? Should there be a different rule for small markets? What about stations serving economically disadvantaged areas? How should ''small markets'' or ''economically disadvantaged areas'' be defined? Commenters should address whether such a general extension would result in slowing the implementation of advanced television in these markets.

48. We also seek comment on whether a waiver would be an appropriate way to address the issues of stations who can not afford to make the transition to digital. If commenters believe a waiver would be an appropriate mechanism, they should specify what factors the Commission should consider in granting such a waiver. They should also address ways to reduce the administrative burden of such a waiver process on the Commission and on licensees.

[11] Under the sliding scale approach, parties applying early in the six-year application/construction period would have the remainder of the application period and the full three-year construction period in which to construct. Thus, they would have a longer time to devote to construction of ATV facilities than those applying later. Should we adopt our proposal to require an election by the end of the sixth month, licensees filing earlier in the remaining two-and-one-half years would still have more time in which to construct than those filing later in that period.

49. Finally, we seek comment on an alternative proposal which would allow the Commission to automatically extend the deadline for a licensee that has not built after the six-year period if no one else files for the ATV license. If, at the end of the six-year period, another party applies to construct the unbuilt ATV facility, should we permit the incumbent broadcaster to retain its preferential status if it makes a sufficient showing in this regard? Such a policy would recognize that in some markets economic factors may not support all of the stations introducing digital broadcast within the six-year time frame. If, however, there is a new entrant who can provide service immediately, then the public might be better served by the immediate initiation of service.

J. Noncommercial Stations

50. We earlier sought comment on whether some additional measures of relief or further action should be taken on behalf of noncommercial stations with respect to the presumptive six-year application/construction deadline. We indicated that we would consider a wide array of alternatives to mitigate the problems faced by noncommercial broadcasters.

51. Commenters addressing the difficulties of noncommercial broadcasters in converting to digital television chiefly seek relief with respect to the financial qualifications that they would have to demonstrate. The Association of America's Public Television Stations, Corporation for Public Broadcasting, and Public Broadcasting Service (''Public Television'') argue that, because of funding constraints, it will take substantially longer than three, or even six years, for public stations to be able to obtain necessary funds to convert to ATV. Public Television asks that noncommercial educational stations be allowed to file ATV applications without certifying or demonstrating financial qualifications on the filing date. Rather, it believes such licensees should be given three years after the filing of an ATV application to demonstrate, with a business plan, how they will raise matching funds and that public broadcasters should not have to make any showing with respect to having sufficient access to funds to meet their operating costs in the first 90 days of operation. Public Television asks that we accept no competing applications while that application is being processed. In this way, public broadcasters would be able to timely file and avoid the possibility of being able to obtain only a short-spaced UHF

channel, a VHF transition channel, or no channel at all.

52. The National Association of College Broadcasters (''NACB'') asks that the Commission reserve ATV channels in the same proportion as they are reserved on NTSC. Arizona State also urges that each vacant noncommercial allocation be kept in reserve for future public ATV use. Both NACB and Arizona State ask that we provide noncommercial educational television stations with additional time in which to apply for, and construct ATV facilities.

53. It is clear from comments received that noncommercial licensees will face unique problems in their transition to ATV, chiefly in the area of funding, where noncommercial broadcasters appear to be subject to the vagaries of forces and parties beyond their control. Indeed, historically, we have recognized ''that in making our statutory findings as to financial qualifications, greater leeway must be accorded the educational station because of its very nature.'' *NTA Television Broadcasting Corp.*, 44 FCC 2563, 2574 (1961). (Citation omitted.)

54. Commenters should address whether noncommercial broadcasters would obtain sufficient relief in the event that we adopt for all existing broadcasters a paired channel assignment scheme and requirements such as proposed above. If we do not adopt that proposal or, if adopted, it does not provide sufficient relief for noncommercial broadcasters, we ask for comment on what further relief would be appropriate and will permit them to participate in the channel assignment process on an equitable basis. In particular, commenters may address the implications of our system instead of a fixed channel scheme.

55. A second problem that noncommercial broadcasters commented on was the length of the application/construction period. We have previously expressed our belief that to provide different schedules for commercial and noncommercial broadcasters would not be conducive to the goal of a speedy and smooth transition. It is still our preference to establish a firm transition schedule, but with the safeguard of having that schedule subject to periodic review. Additionally, unique problems can be dealt with on a case-by-case basis. We believe this may be preferable to establishing two separate classes of broadcasters, each with its own schedule, causing confusion to the public and additional administrative burdens to the Commission.

56. Additionally, commenters should address other things that the Commission can do to assist them in their conversion to ATV. For instance, the broadcast of ''advertisements'' is currently prohibited by Section 399B of the Communications Act. Commenters may want to address whether this should be viewed as applying only to one program service or, if to all program services broadcast by noncommercial broadcasters, whether it would be desirable for the Commission to seek legislative alteration of this prohibition. We also ask commenters to discuss whether the transition to digital by noncommercial broadcasters might be facilitated through re-defining what ''noncommercial'' means. If the Commission mandated only that the minimum required broadcast programming must be ''noncommercial,'' would it be possible for noncommercial broadcasters to finance the transition through commercial and flexible uses of the spectrum that would not interfere with the noncommercial broadcast stream? Is there other relief that we can grant noncommercial broadcasters to minimize restrictions on their operations and allow them greater flexibility?

K. All-Channel Receiver Issues

57. In 1962, Congress adopted the All Channel Receiver Act, which authorizes us to require that television receivers ''be capable of adequately receiving all frequencies allocated by the Commission to television broadcasting.'' [12] Pursuant to this authority we required that all TV receivers be capable of UHF channel reception and adopted standards to make reception of UHF channels comparable with reception of VHF channels.[13] We previously determined in this proceeding that the All Channel Receiver Act does not mandate the manufacture of dual-mode (ATV and NTSC) receivers. We expressed concern that such a requirement might overly or prematurely burden consumers, and sought comment on whether there is any need to require that manufacturers produce receivers capable of both NTSC and ATV reception during the period prior to full conversion to ATV.

58. With ATV now considered to include both HDTV and SDTV, we request comment on whether SDTV receivers should be required to have the ability to receive an HDTV signal or vice versa, and whether we should regulate how such a signal must be displayed. We understand that companies are working on receiver designs that would display the Grand Alliance HDTV signal as a lower resolution SDTV picture. Such as conversion could result in relatively inexpensive receivers or converter boxes for NTSC receivers, compared with the projected HDTV receiver costs. We seek comment on whether permitting the manufacture and sale of receivers that display only NTSC, SDTV, or HDTV signals, or a combination of two but not all three, would be consistent with the All Channel Receiver Act or otherwise would be in the public interest. Should we require that, during the transition period, all sets be capable of receiving and displaying NTSC and SDTV signals? Should we require ''all-format'' receivers capable of receiving and displaying NTSC, SDTV and HDTV signals, and, if so, how should we require HDTV signals to be displayed, in a true HDTV fashion or as a lower resolution SDTV picture? What impact should a decision not to require HDTV broadcasting have on whether we should require all receivers to have HDTV reception and display capabilities? Should a decision on one be coupled with the other? What impact should a decision to adopt only minimal broadcast SDTV requirements have on this question? Would limiting the sale of NTSC equipment help consumers by assuring that they do not purchase equipment that will soon be obsolete, or harm them by, for example, depriving them of access to equipment they may need to obtain the benefit of other video equipment they have, such as VCRs? If we permit the sale of NTSC equipment, should we require a visible label warning that, as of a date certain, it will no longer be able to provide over-the-air broadcast reception? Or, if we permit the sale of NTSC equipment after the specified date, should we require that the sale of such equipment be accompanied by the provision of or ability to use a digital converter? We believe that the All Channel Receiver Act provides us with adequate authority to address these issues. We ask for comment on how we should exercise it.

L. Must Carry and Retransmission Consent

59. We have not previously addressed the impact of ATV on cable television carriage or retransmission consent obligations. Sections 614 and 615 of the Communications Act of 1934 contain the cable television ''must carry'' requirements. Section 325 contains revised ''retransmission consent'' requirements, pursuant to which cable operators may be required to obtain the

[12] 47 U.S.C. 303(s).

[13] See 47 CFR 15.117.

consent of broadcasters before retransmitting their signals. Within local market areas broadcasters have an option to proceed under either the retransmission consent or the mandatory carriage requirements. These provisions were added by the Cable Television Consumer Protection and Competition Act of 1992,[14] subsequent to the adoption of our last decision in this proceeding.

60. Under the mandatory carriage provisions, cable operators, subject to certain capacity based limitations, are generally required to carry the signals of local television stations on their cable systems.[15] Section 614(b)(4)(B) of the Act requires that, at the time we prescribe standards for advanced television, we ''initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed to conform with such * * * standards.'' While we have not yet prescribed standards for advanced television, in the sense of having defined or determined final standards, we believe it timely to begin our consideration of must-carry obligations at this point.

61. Clearly, during the transition period, at least the station's NTSC channel will be subject to must carry obligations. During the transition period, when, under our original plan, the NTSC channel would have been carrying 100% of the HDTV programming being aired on the conversion channel, there did not appear to be a must-carry problem because, as long as the two were carrying duplicative programming, the NTSC and commonly owned HDTV stations would not both have had to have been carried.[16] But, if we change the simulcast requirement, programming on the NTSC and ATV channels might not be duplicative, and both might qualify for carriage. Additional issues are raised if the conversion channel is being used for the transmission of multiple SDTV program services. If carriage of all material being broadcast by the station were required, the dedication of, for instance, five cable channels (one for the NTSC programming and, for example, four multicast programs being offered on the conversion channel) might be required. Thus, a review of the must carry and retransmission consent rules now is an important component of this proceeding. In addition, it is necessary to clearly identify any issues regarding cable carriage that need to be factored into the ATV transitional rules, technical standards, and regulatory policies in order to facilitate the most productive possible interaction between ATV broadcasting and cable television service.

62. We seek comment on any relevant differences in rules or policies that might be needed both during the transition and as a consequence of ATV having replaced NTSC broadcasting. For instance, how should channel capacity be defined in a digital environment, i.e., in terms of channels, bandwidth, or bits of data per second? Does ''on-channel'' carriage have the same meaning in a digital as it does in an analog environment? Should ''substantially duplicates'' include duplication of programming in different transmission formats? Will changes in station coverage require changes in carriage obligations? Additionally, what is the meaning of ''primary video'' in the context of digital broadcast transmission?[17] Is there appropriate parallel to line 21 of the vertical blanking interval of NTSC stations for ATV stations? What, if any, flexibility does the Commission have under Section 614(b)(4)(B) to modify requirements applied by the Communications Act to NTSC signals in the new digital environment? For example, does the Commission have authority to address ''A/B'' switch issues to enhance subscriber access to signals or portions of signals that may not receive carriage notwithstanding the existing prohibition? Is a revised definition of ''basic tier'' needed? Is a common retransmission/must carry election required for all of the video programming from an individual broadcast license in a market or just for one ''primary video'' stream, as defined by the broadcast licensee? In the more flexible broadcast environment associated with digital transmission would changes be needed in the rules that mandate that local signals be carried in their entirety even if carried under the retransmission consent option? Are there other issues relating to the retransmission consent process that would need to be addressed?

63. A second set of issues relates to the technical interface and associated coast and rate issues. We expect that there will be parallel development of both cable and broadcast digital video communications. At the same time, it is inevitable that particular cable systems and particular broadcast markets will progress on different time schedules. Accordingly, issues will arise as to how digital broadcasts may be carried on cable systems that are still entirely analog in their opinions, are partially analog and partially digital, or that are entirely digital. With respect to each type of operation there are potential issues relating to headend equipment, transmission plant, subscriber premises equipment, and type of digital transmission system that may arise. Accordingly, we seek information on what technical modifications may be needed to enable cable systems to deliver ATV signals to subscribers and what costs may be associated with these modifications. How should digital broadcast programming be required to be carried? Should it be required to be carried digitally or would it be adequate to have it carried in whatever format the cable operator selects? Does ''material degradation'' in the statute require that HDTV signals be carried in an HDTV format? Further, we need to begin to consider and seek comment on what, if any, changes may be warranted in the rate regulation process, in the technical standards, or in other rules to account for the changes resulting from ATV carriage.

64. Assuming that an appropriate set of rules can be developed for application at the end of the transition period, an interim process is still needed to govern the transition from NTSC to ATV broadcasting. During the period when broadcast licensees are broadcasting in both the existing NTSC analog mode and in the new ATV mode, what should the carriage obligations be? Must both signals be carried and if not should the change from NTSC to the ATV signals be at the discretion of the cable operator or the broadcaster? Alternatively, should it be based on a fixed transition schedule or on an external event such as the market penetration of digital television

[14] Pub. L. 102–385, 106 Stat. 1460, codified at 47 U.S.C. 521 *et seq.*

[15] Although we recognize that there is an ongoing challenge to the constitutionality of the existing requirements, *Turner Broadcasting System* v. *FCC,* 114 S. Ct. 2445 (1994), we assume for purposes of this discussion the validity of the existing statutory provisions. Parties are welcome to comment on the implications of any of the issues involved in this proceeding in terms of the judicial sustainability of any future requirements.

[16] See Section 614(b)(5) of the Communications Act of 1934, as amended (47 U.S.C. § 534(b)(5)).

[17] Section 614 of the Act requires carriage of ''the primary video, accompanying audio, and line 21 closed caption transmission'' of each local commercial broadcast station carried on the cable system. Also required, to the extent technically feasible, is carriage of program-related material carried in the vertical blanking interval or on subcarriers. Similar requirements are found in Section 615 with respect to noncommercial educational stations. However, ''[r]etransmission of other material in the vertical blanking interval or other nonprogram-related material (including teletext and other subscription and advertiser supported information services) shall be at the discretion of the cable operator.''

receivers or the system operator's transmission of its own digital video programming? Given the complex economic and technical interrelationships between broadcasters and cable operators during this transitional period, are there market mechanisms that can be incorporated into the rules to facilitate cooperation?

V. Third Notice of Inquiry

65. Over 400 MHz of spectrum in the VHF and UHF bands is currently allocated to television broadcasting. As part of our long-term plans to promote spectrum efficiency, we are considering reducing the amount of spectrum allocated television broadcasting, which, as explained above, could be accomplished in the digital environment without reducing the number of broadcasters in any market due to the inherent efficiencies of the proposed digital system. If we were to readjust channel assignments, we would need to know where in current broadcast spectrum broadcasters would eventually be located. Although we previously preliminarily viewed UHF as the part of the spectrum to which all television broadcasting would be moved, we now question the tentative conclusion. Accordingly, at this time, we ask parties to comment on the best place for broadcasting. Specifically, we seek comment on which parts of the VHF and UHF bands are most highly valued for broadcast use (e.g., VHF, lower UHF, middle UHF, upper UHF). We also request commenters to identify the costs associated with placing television broadcasting in each of the four possible locations.

66. Today, TV broadcasters have over 400 MHz assigned to them, but because of interference and market forces, on average only 80 MHz is used per market. In the top markets, around 120 MHz is used. Digital broadcasting will allow much more efficient and intensive use of this spectrum. During the transition period, however, digital TV stations must operate alongside NTSC stations. The digital TV system will enable us to authorize these stations under controlled circumstances (each channel will be available only at certain locations with limits on radiated power and effective antenna height) to minimize interference to NTSC and digital TV service. While these digital stations allow for the development of many new broadcast services, they would be of limited value for other users because they generally would not occupy a contiguous block of channels, there would be no common nationwide channels, and their use would be restricted by the need to avoid interference with NTSC analog television sets. When the transition to digital is completed, however, and the analog NTSC stations are turned off, we have an opportunity to create contiguous blocks of spectrum nationwide. Some or all of this spectrum could be allocated and auctioned. We ask commenters to provide estimates of the total amount of contiguous spectrum blocks that could be created following recovery of the NTSC channels. We also seek estimates of the total market value of these contiguous blocks of spectrum. What services would be most efficiently provided using contiguous blocks of spectrum? We request that commenters explain the methodology and analysis used to derive estimates of the amount and value of contiguous spectrum. In addition to the broadcast industry, we solicit comment from other industries (e.g. land mobile and computer) that may have an interest in providing services using these blocks of spectrum.

Administrative Matters

67. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before April 17, 1995, and reply comments on or before May 17, 1995. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in the proceeding, you must file an original plus four copies of all comments, reply comments, and support comments. If you want each Commissioner to receive a personal copy of your comments you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554.

68. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission Rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

Initial Regulatory Flexibility Analysis

I. Reason for Action

69. The Commission seeks comment not only on a variety of new issues central to the development of advanced television service in the United States, but on several of the tentative decisions made earlier in this proceeding because of the rapidly changing nature of digital television. Advanced television, at the time this proceeding was initiated was envisioned primarily as a system for improving higher picture and sound quality, limited to transmitting/receiving a single channel of television. The emergence of digital technology with its extensive flexibility and the approach of the National Information Infrastructure require that the Commission review the issues surrounding high definition television from a new, more expansive perspective.

II. Objectives of the Action

70. The *Fourth Further Notice of Proposed Rulemaking* portion of this decision solicits comment on a variety of issues, several of which are being revisited, in order to establish an accurate, comprehensive, reliable record on which to base the Commission's ultimate decisions in this proceeding. The record established from comments filed in response to this decision, as well as other Commission decisions, and the combined efforts of the Commission, the affected industries, the Advisory Committee on Advanced Television Service, and ATV testing process, will lead to implementation of ATV in the most harmonious fashion and to selection of the most desirable ATV system.

III. Legal Basis

71. Authority for this action may be found at 47 U.S.C. 154 and 303.

IV. Reporting, Recordkeeping and Other Compliance Requirements

72. Such requirements are not proposed in this phase of the proceeding, but may be raised and comment sought in future decisions in this proceeding.

V. Federal Rues Which Overlap, Duplicate or Conflict With These Rules

73. There are no rules which would overlap, duplicate, or conflict with these rules.

VI. Description, Potential Impact and Number of Small Entities Involved

74. There are approximately 1,539 UHF and VHF, commercial and educational television stations, 2,509 UHF translator stations, 2,261 VHF translator stations, and 1,648 UHF and VHF low power television stations which would be affected by decisions reached in this proceeding. The impact of actions taken in this proceeding on small entities would ultimately depend

on the final decisions taken by the Commission. However, the Commission, in taking future action will continue to balance the need to provide the public with affordable, flexible, accessible high definition television service with the economic and administrative interests of the affected industries.

VII. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With Stated Objectives.

75. In re-examining issues discussed in past decisions, the Commission is seeking not only to establish a more comprehensive, reliable record, but, with that intent, is soliciting comments and suggestions that hopefully will represent the views of all of the industries concerned, and thus the commission will be better able to minimize whatever negative impact might face small entities as a result of our decisions.

76. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth above. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Fourth Further Notice of Proposed Rule Making and Third Notice of Inquiry, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq* (1981).

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 95–20243 Filed 8–14–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB75 and 1018–AC09

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Rules To List the Copperbelly Water Snake and Lake Erie Water Snake as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is reopening the comment period on the proposals to list the copperbelly water snake (*Nerodia erythrogaster neglecta*) and the Lake Erie water snake (*Nerodia sipedon insularum*) as threatened species. The copperbelly water snake occupies portions of southern Michigan, northwestern Ohio and adjacent northeastern Indiana, southern Indiana, southeastern Illinois, and western Kentucky. The Lake Erie water snake is found only on the Ohio and Ontario islands of western Lake Erie and the adjacent mainland of Ohio.

DATES: The comment period on the two proposals is reopened, effective immediately, and will close on September 30, 1995.

ADDRESSES: Comments and materials concerning these proposals should be sent to the Division of Endangered Species, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111–4056. Comments and materials received will be available for public inspection, by appointment, during normal business hours at that location (612/725–3536; fax 612/725–3526).

FOR FURTHER INFORMATION CONTACT: Robert Adair, Chief, Division of Endangered Species, at the above address and phone number.

SUPPLEMENTARY INFORMATION:

Background

The copperbelly water snake occurs in two disjunct populations: (1) a southern population in the lower Ohio River Valley and the lower Wabash River Valley in southern Indiana, adjacent Illinois, and western Kentucky; and (2) a northern population in southern Michigan, northeastern Indiana, and northwestern Ohio. The Lake Erie water snake is found only on the islands of western Lake Erie and the nearby mainland of Ohio. Both species are threatened by habitat destruction and direct persecution by humans.

These two snakes were proposed for Federal listing as threatened species on August 18, 1993 (58 FR 43857 and 43860). Public hearings were subsequently held in Port Clinton and Put-in-Bay, Ohio, for the Lake Erie water snake; and in Indianapolis, Indiana, for the copperbelly water snake. Public comment periods were reopened and extended to accommodate these hearings (October 12–November 16, 1993, 58 CFR 52740; March 22–April 21, 1994, 59 CFR 13472; May 13–June 16, 1994, 59 CFR 25024). The comment period for the copperbelly water snake was subsequently reopened two additional times to allow the Service to obtain, and for the public to review, additional data concerning intergradation of *N. e. neglecta* with *N. e. flavigaster* and the status of the species in Kentucky (July 11–November 1, 1994, 59 CFR 35307; December 15, 1994–January 13, 1995, 59 CFR 64647).

On April 10, 1995, Public Law 104–6, the Emergency Supplemental Appropriations and Rescissions for the Department of Defense to Preserve and Enhance Military Readiness Act of 1995 (109 Stat 73), was signed and became effective. Language in that act established a moratorium on the final determinations of species to be threatened or endangered and on the designation of new critical habitat. During this period the Service is prohibited from finalizing rules which list additional species as threatened or endangered. This moratorium is in effect until September 30, 1995.

While the moratorium is in effect the Service will continue to monitor these proposed species, their habitats, and threats to their continued existence. The Service will also continue to discuss the conservation needs of the species and the appropriateness of listing them as threatened or endangered. If opportunities arise, the Service will promote and implement conservation actions for the species.

In order to promote the necessary free and open exchange of information and continued discussions with interested parties, the Service is reopening the comment periods on the proposed listings of the Lake Erie water snake and the copperbelly water snake until September 30, 1995. If the listing moratorium is extended or shortened the Service will modify, by **Federal Register** notice, the closing date of these comment periods, as appropriate.

The Service recognizes that there are no explicit provisions in the Endangered Species Act for this additional evaluation and clarification