

In the Matter of)
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Implementation of)
LPTV Digital Data Services Pilot Project)
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must meet.⁴ The Commission is not required to use notice and comment rule making under 5 U.S.C. § 553 to promulgate these regulations and the other provisions of that section are also inapplicable.⁵ Further, the DDSA specifies that the Commission require quarterly reports from the specified LPTV stations participating in the project, including information with respect to interference and market success in providing digital data service.⁶ In addition, the Commission is required to collect fees with respect to the new service.⁷ Finally, on June 30, 2001 and on June 30, 2002, the Commission is required to submit a report to Congress, under Section 143(b) of the new law, "evaluating the utility of using low-power television stations to provide high-speed digital data service," based on the pilot projects.

II. DISCUSSION

A. Authorization and Filing Requirements

3. Eligibility. The DDSA specifies twelve LPTV stations eligible to participate in the pilot project. These are: KHLM-LP, Houston, Texas; WTAM-LP, Tampa, Florida; WWRJ-LP, Jacksonville, Florida; WVBG-LP, Albany, New York; KHHI-LP, Honolulu, Hawaii; KPHE-LP (K19DD), Phoenix, Arizona; K34FI, Bozeman, Montana; K65GZ, Bozeman, Montana; WXOB-LP, Richmond, Virginia; WIIW-LP, Nashville, Tennessee; WSPY-LP, Plano, Illinois; and W24AJ, Aurora, Illinois. The DDSA also includes in the LPTV stations eligible to participate in the pilot project a station and repeaters to be determined by the Federal Communications Commission for the sole purpose of providing service to communities in the Kenai Peninsula Borough and Matanuska Susitna Borough in Alaska.⁸ We invite LPTV stations in these locations to come forward and present their proposals to commence such a pilot project. The proposal should be submitted in an informal application complying with the requirements set out in this Order.

4. Services to be provided. The DDSA defines permissible digital data services to include:
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- (A) requirements as to the form, manner, and information required for submitting requests to the Commission to provide digital data service as a pilot project;
- (B) procedures for testing interference to digital television receivers caused by any pilot project station or remote transmitter;
- (C) procedures for terminating any pilot project station or remote transmitter or both that causes interference to any analog or digital full- power television stations, class A television station, television translators or any other users of the core television band;
- (D) specifications for reports to be filed quarterly by each low power television licensee participating in a pilot project;
- (E) procedures by which a low power television licensee participating in a pilot project shall notify television broadcast stations in the same market upon commencement of digital data services and for ongoing coordination with local broadcasters during the test period; and
- (F) procedures for the receipt and review of interference complaints on an expedited basis consistent with paragraph (5)(D).

⁴ 47 U.S.C. § 336(h)(4).

⁵ 47 U.S.C. § 336(h)(3).

⁶ 47 U.S.C. § 336(h)(5)(C).

⁷ 47 U.S.C. § 336(h)(6).

⁸ 47 U.S.C. § 336(h)(2).

digitally based interactive broadcast service and wireless Internet access.⁹ Wireless Internet can be provided on a one-way or two-way basis on the LPTV channel and may be portable or fixed. The DDSA also provides that the service may be connected to the Internet “via a band allocated to Interactive Video and Data Service.” Use of frequencies for this service, now called 218-219 MHz service under Part 95, subpart F, must be in accordance with the licensing and other rules established for that service. Specifically, an entity will be permitted to use 218-219 MHz Service frequencies for provision of digital data services pursuant to the DDSA by obtaining a 218-219 MHz Service license via competitive bidding or by entering into an agreement with a 218-219 MHz Service licensee regarding use of its spectrum (e.g., through partitioning and/or disaggregation agreements under 47 C.F.R. § 95.823).¹⁰ The DDSA specifically indicates that LPTV digital data services may be delivered via multiple transmitters at multiple locations. Therefore, we will fashion the requirements for this service to allow the authorized LPTV facility to be converted to a main base station and to allow additional base stations to be authorized as on-channel boosters.

5. General Requirements. As participants in this pilot program are LPTV stations, we believe that the LPTV rules, contained in Subpart G of Part 74 of the Commission’s rules, should continue to apply to these stations in all respects, except as specified in the statute and in this Order. First and foremost, the LPTV stations participating in the pilot project will continue to have the secondary regulatory status accorded to all other LPTV stations. Thus, for example, the stations participating in the pilot project must provide protection from interference to all primary uses of the spectrum, including authorized full-service TV stations, authorized full-service DTV stations, and land mobile service provided on a “shared-channel” basis. Furthermore, such stations must provide protection to other secondary uses that were previously authorized or proposed in pending applications relative to the pilot project stations’ underlying LPTV authorizations. Such other secondary uses include other LPTV stations, TV translator stations, and TV booster stations. In addition, protection must be afforded pursuant to the existing LPTV rules to Class A TV stations. Additionally, except as specified herein, all non-technical requirements applied to LPTV stations, such as, for example, the rules and procedures relating to transfer of LPTV stations, shall apply to the stations participating in the pilot project. Any other of the Commission’s rules that apply to LPTV stations also will apply to the participants in the pilot program, except as specified herein.¹¹ In sum, all rules that apply to LPTV stations will apply to the LPTV pilot project stations except as otherwise specified herein.

6. Service Area. Since these stations will be participating in a pilot project to demonstrate the

⁹ Under 47 U.S.C. § 336(h)(2), digital data service includes:

- (A) digitally-based interactive broadcast service; and
- (B) wireless Internet access, without regard to--
 - (i) whether such access is--
 - (I) provided on a one-way or a two-way basis;
 - (II) portable or fixed; or
 - (III) connected to the Internet via a band allocated to Interactive Video and Data Service; and
 - (ii) the technology employed in delivering such service, including the delivery of such service via multiple transmitters at multiple locations.

¹⁰ Permission may be sought under a separate experimental authorization under Part 5 of the Commission’s rules.

¹¹ These include, but are not limited to the rules contained in Subpart-General; Rules Applicable to all Services in Part 74.

feasibility of a new mode of operation for LPTV stations, we conclude that it is appropriate that the protected service area of the pilot project station be within the protected service signal contour of the existing LPTV station under its authorized analog facilities. For eligible LPTV stations that have both a license and a construction permit to modify the licensed facilities, the pilot project station may be operated consistent with either the licensed facilities or the facilities authorized in the construction permit (channel and service area). Participants will not be allowed to operate both the licensed and construction permit facilities at the same time, that is, one for digital data transmissions and the other for analog LPTV broadcast service. If a pilot project station requests use of construction permit facilities, operation of the licensed LPTV facilities must cease when operation of the construction permit facilities commences. This provision is intended to address situations where a station's license and construction permit serve mostly different areas, where they are authorized on different channels or where both conditions exist. We will afford protection to pilot project operations based only on the protection afforded the underlying analog LPTV authorization. If an interfering source would not be required to protect the underlying LPTV station's service (for example interference from a full service analog TV or DTV station), then it will not be required to eliminate or reduce interference to the pilot project operation. Further, if an interfering source would not cause unacceptable interference to the underlying LPTV station (based on the LPTV station operating as authorized to provide analog TV service), then it also will not be required to eliminate or reduce interference to the pilot project operation.

7. Term of pilot project. The DDSA does not specify how long the pilot project should last. Nonetheless, it indicates that our last report to Congress on the pilot project is due on June 30, 2002. Accordingly, we hereby clarify that we will issue experimental letter authorizations for the pilot project that will expire on June 30, 2002, unless the term is extended prior to that date. We delegate authority to the Mass Media Bureau to extend the term of the authorizations for individual participants or for participants as a group, and to do so by Public Notice, in the event that it is determined that the term of the pilot project should be extended.

8. Application requirements. The DDSA requires that we establish "requirements as to the form, manner, and information required for submitting requests to the Commission to provide digital data service as a pilot project."¹² The legislation specifies that digital data services may not be provided unless interference and other criteria are met.¹³ In general, we have determined that it is most appropriate to require submission of an informal application for experimental authority in a manner consistent with Section 73.1510(b) of our rules.¹⁴ All other aspects of Section 73.1510 will not be applicable because they

¹² 47 U.S.C. § 336(h)(3)(A).

¹³ Under 47 U.S.C. § 336(h)(4), participating LPTV stations may not provide digital data service unless:

- (A) the provision of that service, including any remote return-path transmission in the case of 2-way digital data service, does not cause any interference in violation of the Commission's existing rules, regarding interference caused by low power television stations to full-service analog or digital television stations, class A television stations, or television translator stations; and
- (B) the station complies with the Commission's regulations governing safety, environmental, and sound engineering practices, and any other Commission regulation under paragraph (3) governing pilot program operations.

¹⁴ 47 C.F.R. § 73.1510(b). This Part 73 rule section is made applicable to Part 74 LPTV stations pursuant to 47 C.F.R. § 74.780.

are inconsistent with the DDSA.¹⁵ We will accept applications only from the eligible station specified in the DDSA.¹⁶ Exhibits to the informal applications must fully describe the proposed experimental program and the technical facilities that are proposed. Specifically, for a main base station and any base station boosters, we will require information that is also sought in Form 346, which is used to request authority to construct or make changes to an LPTV, TV translator or TV booster station. The application should contain the general information requested in questions 1-3 of Section I, the legal certification requested in question 10 of Section II, and, for each requested facility, all of the engineering information requested in Section III of Form 346. With respect to the engineering information: the modulation type and bandwidth should be specified; the digital average power should be provided in lieu of the peak analog power; base or fixed station transmitting antenna beam tilt, if any, and polarization should be specified; for response stations, the maximum number of units, the area of anticipated operation, the receive and transmit antenna characteristics including polarization, gain and directional patterns, the largest average digital transmitter output power and effective radiated power contemplated for the pilot project, and the expected worst-case antenna height above ground should be specified. In addition, the application must contain a certification that the facilities in the pilot project will conform to the Commission's environmental impact rules, including explicitly that the proposed operation will not result in RF exposure in excess of the pertinent limits and the provisions set forth below. The application should also contain certifications of the applicant and of the preparer of the engineering information, attesting to the accuracy and completeness of the information furnished. Consistent with the Commission's treatment of applications for other experimental authorizations, this application for digital data services will be fee exempt.

9. RF Safety. We will require pilot project licensees and permittees employing two-way technology to attach labels to every response station transceiver (fixed or portable) in a conspicuous fashion visible in all directions and readable at distances beyond the minimum separation distances. These labels shall give notice of the potential radiofrequency safety hazards, and specify minimum separation distances. Such labels should include reference to the Commission guidelines that apply.¹⁷ The general populations/uncontrolled limits apply to consumer response stations. In addition, pilot project licensees and permittees employing two-way technology must include a full explanation of the labels that appear on their transceivers, as well as reference to the applicable Commission guidelines in the instruction manuals and other information accompanying the transceivers. This information should include advice as to the minimum separation distances required between users and radiating antennas to meet the Commission's exposure guidelines. We will not mandate the specific language that must be used, however we will require the use of the ANSI-specified warning symbol for RF exposure. We also recommend that fixed response antennas be installed by pilot project licensees/permittees or by professional personnel under their direction. Professional installation will minimize the possibility that an antenna will be placed in a location that could expose participants in the pilot project or other persons to the radiated signal at close proximity and for an extended period of time.

10. Description of experiment. Section 73.1510(b) requires the application to include a description of the nature and purpose of the experimentation and of the nature of the experimental signal to be

¹⁵ The prohibition on sponsored programs or commercial announcements during experimental operation in Section 73.1510(c)(4) and the prohibition on charges being made for the experimentation in Section 73.1510(c)(6) are notably inconsistent with the services envisioned by the DDSA.

¹⁶ We include in these entities an LPTV station to provide service to the designated locations in Alaska.

¹⁷ See Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, ET Docket No. 93-62, *Report and Order*, 11 FCC Rcd 15123, 15124, 15152 (1996); 47 C.F.R. §§ 1.1307(b)(1), 1.1310.

transmitted. We will require these applications to specify a program of experimentation that fulfills the requirements of the DDSA. Specifically, the experiments must address a determination of the threshold of perceptible interference to DTV receivers from all types of transmission that the pilot project stations operate with.¹⁸ In so doing, the LPTV participants should assess the potential for causing interference to the reception of nearby DTV stations, including DTV stations that begin operating during the pilot project. For instance, LPTV participants should carefully assess the potential for interference in those situations where pilot project base and/or response stations would operate in the service area of a DTV station operating on a first adjacent channel. Testing should be designed to facilitate the establishment of appropriate operating parameters for all types of proposed transmitting facilities, including desired-to-undesired signal strength ratios for interference situations and the field strength values that represent the range of service. For 2-way service, establishing the service range involves reception both to and from subscriber or consumer transmission/reception facilities (response stations). To the extent possible based on the DTV station environment, testing should determine the distances from DTV receivers at which pilot project stations, including fixed and/or portable response stations, can operate without causing any perceptible interference. We believe meaningful interference testing would include a combination of observations and signal measurements considering such factors as the strengths of desired and undesired signals, the nature of the DTV reception equipment (indoor or outdoor antennas) and the local signal to noise environment. If relevant to the nature of the LPTV data transmissions, interference testing should also consider the effects of the simultaneous transmissions of multiple response stations, compared with the effects of those of single response stations. Testing also must include an evaluation of consumer or marketplace acceptance of the LPTV digital data technology.

11. Resolution of interference. The DDSA requires that the Commission establish procedures “for the receipt and review of interference complaints on an expedited basis...”¹⁹ In addition, the legislation provides that the Commission may limit the provision of such service if irremediable interference is caused.²⁰ Section 74.703 of the Commission’s rules specifies the applicable requirement for LPTV stations correcting a situation of actual interference.²¹ Stations participating in this pilot project must comply

¹⁸ Under 47 U.S.C. § 336(h)(3)(B), the Commission must establish procedures “for testing interference to digital television receivers caused by any pilot project station or remote transmitter.”

¹⁹ 47 U.S.C. § 336(h)(3)(F).

²⁰ Under 47 U.S.C. § 336(h)(5)(A):

The Commission may limit the provision of digital data service by a low-power television station to which this subsection applies if the Commission finds that--

- (i) the provision of 2-way digital data service by that station causes any interference that cannot otherwise be remedied; or
- (ii) the provision of 1-way digital data service by that station causes any interference.

²¹ 47 C.F.R. § 74.703(b) indicates:

... the responsibility of the licensee of a low power TV, TV translator, or TV booster station to correct at its expense any condition of interference to the direct reception of the signal of any other TV broadcast analog station and DTV station operating on the same channel as that used by the low power TV, TV translator, or TV booster station or an adjacent channel which occurs as a result of the operation of the low power TV, TV translator, or TV booster station. Interference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by the low power TV, TV translator, or TV booster station, regardless of the quality of the reception or the strength of the signal so used. If the interference cannot be promptly eliminated by the application of suitable techniques,

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strictly with the requirements of this rule. In addition, pursuant to the DDSA, we will require stations in the pilot project to take steps to resolve any reported interference promptly.²² Specifically, upon receipt of a valid interference complaint, the licensee or permittee should make every effort to modify or suspend operation within 3 hours to eliminate the interference. An interference complaint is considered valid if the interference is to reception of a station or service that must be protected and it is reasonably determined that the interference is from the operation of the pilot project station (for example, if the interference is to a service on a channel where predicted interference is a concern and the interference commenced when a new mode of pilot project station operation began). If the complaint is received from any source other than the affected broadcaster or station, the pilot project participant should fax a copy of the complaint to the affected station within 48 hours of its receipt. If the pilot project station claims that it is not causing the interference or that the interference is not to protected service, it must fax the interference complaint and its opposition to the Commission's Mass Media Bureau, Video Services Division within 48 hours.²³ If the complaint is received from any source other than the affected broadcaster or station, the pilot project participant should at the same time fax a copy of the complaint to the affected station. In addition, the pilot project participant should fax a copy of its opposition to the affected broadcaster or station even if the complaint is received from that broadcaster or station. Thereafter, the Commission's staff will review the situation and issue a decision as quickly as possible, but in any case within the 60 days provided in the DDSA.²⁴

12. Technical operation. We believe that we should permit as much flexibility as possible with respect to technical operation. We want to allow each station to choose a type of digital modulation that it determines appropriate. Where the type of modulation differs from the standard DTV system 8-VSB, we will require a full description of the modulation the station is proposing to use and an exhibit demonstrating that its use would not be expected to cause interference to DTV and analog TV service. Such an exhibit is also required if a proposed 8-VSB transmission would not comply with the out-of-band emission requirements specified in the DTV rules.²⁵

13. We anticipate the possibility that several types of transmission facilities may be involved in each pilot project station. First, we expect that most, if not all, of these projects will involve digital transmissions from a main base station at the authorized site of the underlying LPTV station. Unless the evaluation of its digital modulation method requires otherwise, we will assume that operation of such a facility will not represent a significantly increased interference threat compared to the authorized LPTV station if the antenna height is not increased and the digital average power does not exceed 10 percent of the authorized analog LPTV power (10 dB less power). In DTV service, this level of digital power is adequate to provide coverage of the same area. Accordingly, the Commission's staff will not evaluate at the application stage the interference potential of a main digital base station conforming to this restriction.

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operation of the offending low power TV, TV translator, or TV booster station shall be suspended and shall not be resumed until the interference has been eliminated.

²² Under 47 U.S.C. § 336(h)(3)(C), the Commission must establish procedures "for terminating any pilot project station or remote transmitter or both that causes interference to any analog or digital full-power TV stations, class A television station, television translators or any other users of the core television band."

²³ The Video Services fax number is currently (202) 418-2827.

²⁴ 47 U.S.C. § 336(h)(6).

²⁵ 47 C.F.R. § 73.622(h).

14. The second type of transmission facility might consist of one or more additional base stations (boosters) located at sites away from the authorized LPTV transmitter site. We propose to treat such stations as we have analog TV booster stations except that each booster may originate its own data messages. As such, we expect such facilities to be limited to a site location, power and antenna height combination that does not extend the coverage area of the main base station in any direction. We will require an exhibit demonstrating that booster coverage is contained within main base station coverage, based on the digital field strength predicted from the main base station at the protected contour of the underlying analog LPTV authorization. Further, we will assume that such an operation will not cause additional interference unless an interference situation is demonstrated in an informal objection to the application. Absent such an objection, the Commission's staff will not evaluate at the application stage the interference potential of an additional digital base station conforming to this restriction.

15. A third possible type of transmission facility is a fixed response station communicating with a base station.²⁶ We are concerned about the interference potential of such facilities, but want to allow sufficient flexibility for such stations to allow productive testing of desirable power levels and permitted range in terms of distance from base station. On balance, we conclude that such response stations in this pilot project should use as low an effective radiated power (ERP) as is consistent with satisfactory communication with a base station, and in no case should the ERP (digital average power) exceed 10 watts. We will not specifically limit the range of operation from the main or additional base stations, but caution participants in this pilot project that they must protect other stations from interference in accordance with the discussion above.

16. A fourth possible type of transmission facility is a portable response station. Again, while we are concerned about the interference potential of such a station, we want to allow productive testing of desirable power levels and permitted range in terms of distance from a base station. Accordingly, we conclude that such response stations should use as low an effective radiated power (ERP) as is consistent with satisfactory communication with the base station, and in no case should the digital average ERP exceed 3 watts. In addition, the transmitting antenna should be built into the portable transceiver. We will not specifically limit the range of operation from the main or additional base stations, but caution participants in this pilot project that they must protect other stations from interference in accordance with the discussion above and will not be protected at locations beyond the underlying LPTV station's protected signal contour.

17. Additional types of transmission facilities may be proposed, as may facilities that conform to one of the listed types, but do not meet the specified restrictions. For such requests, the applicant must provide sufficiently detailed analysis to allow the Commission staff to conclude that interference is unlikely.

18. Processing. We intend to accept these applications in the same manner used in processing other experimental applications. The normal "broadcast applications" public notice will be issued, and a copy of the application will be available in the public reference room. Where an application is found to be acceptable, the Mass Media Bureau is delegated authority to authorize the proposed operation by an informal letter grant within 60 days, subject to any appropriate conditions that we may impose in the authorization. As this is an informal application, we will not entertain petitions to deny. Informal objections can be filed any time before the application is granted.

²⁶ See, for example, the definition of a Multipoint Distribution Service response station given in 47 C.F.R. § 21.2.

19. Facilities changes. The DDSA establishes criteria by which to evaluate requests by participants for facilities changes.²⁷ We interpret this provision as applying to any requested changes to the underlying analog LPTV authority. Thus, an application to change channel or location must be filed on Form 346 seeking a construction permit to make changes in a licensed LPTV station or a modification of an existing LPTV station construction permit. Following grant of the change in the authorized facilities of the underlying LPTV station, an informal application to modify the pilot project authorization may be filed in accordance with the above procedures.

B. Notification and Reporting Requirements

20. Notification Requirements. The DDSA requires that we establish “procedures by which a low power television licensee participating in a pilot project shall notify television broadcast stations in the same market upon commencement of digital data services and for ongoing coordination with local broadcasters during the test period. ...”²⁸ Accordingly, at least twenty days before an LPTV licensee or permittee commences operations pursuant to the pilot program, it must notify all permittees and licensees of television stations in the same market concerning the particulars of its proposed operation. For this purpose, we will consider the market to include all stations assigned to the Designated Market Area (DMA) in which the LPTV pilot project station is located. Similarly, the pilot project stations must notify any authorized full service TV station whose Grade B contour, authorized DTV station whose predicted service contour²⁹ and any Class A station whose protected service contour overlaps the protected service contour of the pilot project station’s underlying LPTV authorization. The LPTV station that is commencing such operations must notify such other television stations in writing or electronically and must provide a complete description of its technical facilities, including power, modulation format, antenna height, and coordinates of any fixed base or booster facilities; the power, modulation format, anticipated antenna height, and the expected area of operation of any fixed and portable response units; as well as the name and telephone number of a person who may be contacted in the event of interference. We will require the LPTV station to coordinate with such other television stations in its market, as defined in this paragraph, before it makes any change to its facilities or services that might cause interference to those stations, including proposals to expand the range of operation of response units beyond the range initially notified. We will also require the LPTV stations participating in the pilot project to permit local broadcasters to observe the interference testing aspects of the pilot project.

²⁷ Under 47 U.S.C. § 336(h)(5)(B):

The Commission shall grant any such station, upon application (made in such form and manner and containing such information as the Commission may require) by the licensee or permittee of that station, authority to move the station to another location, to modify its facilities to operate on a different channel, or to use booster or auxiliary transmitting locations, if the grant of authority will not cause interference to the allowable or protected service areas of full service digital television stations, National Television Standards Committee assignments, or television translator stations, and provided, however, no such authority shall be granted unless it is consistent with existing Commission regulations relating to the movement, modification, and use of non-class A low power television transmission facilities in order--

- (i) to operate within television channels 2 through 51, inclusive; or
- (ii) to demonstrate the utility of low-power television stations to provide high-speed 2-way wireless digital data service.

²⁸ 47 U.S.C. § 336(h)(3)(E).

²⁹ See 47 C.F.R. § 73.622(e).

21. Reporting requirements. The DDSA requires that the Commission establish quarterly reporting requirements for LPTV stations participating in the pilot project.³⁰ These quarterly reports should be filed by the tenth day of the month following the end of the quarter,³¹ and must include information on the station's experience with interference complaints and the resolution thereof, and information on the station's market success in providing digital data service.³² In addition, the DDSA provides that the reports must include "such other information as the Commission may require in order to administer this subsection."³³ We will require each pilot project station to include a complete description of any interference complaints it receives, any interference it determines it may be causing and any interference it determines it has received, in its required quarterly report to the Commission. We also will require the quarterly reports to include data concerning transmission format, power and antenna height and determinations of the range within which its desired service could be provided, and any other matters of technical or operational significance. The reporting requirement will commence once experimental authority is granted.

C. Fees

22. Under new Section 336(h)(6), the Commission must assess and collect from LPTV stations authorized to participate in the pilot project "an annual fee or other schedule or method of payment comparable to any fee imposed under the authority of this Act on providers of similar services."³⁴ The statute allows the Commission to retain receipts of the fee "as an offsetting collection to the extent necessary to cover the costs of developing and implementing the pilot program authorized by this subsection, and regulating and supervising the provision of digital data service by low-power television stations under this subsection."³⁵ The legislation also provides that excess amounts "shall be deposited in the Treasury in accordance with chapter 33 of title 31, United States Code."³⁶

23. Based on the statute, we believe that the services that will be offered by LPTV licensees in the

³⁰ 47 U.S.C. § 336(h)(3)(D).

³¹ For example, April 10, July 10, October 10 and January 10.

³² 47 U.S.C. § 336(h)(5)(C)(i), (ii).

³³ 47 U.S.C. § 336(h)(5)(C)(iii).

³⁴ Under 47 U.S.C. § 336(h)(6):

The Commission shall assess and collect from any low-power television station authorized to provide digital data service under this subsection an annual fee or other schedule or method of payment comparable to any fee imposed under the authority of this Act on providers of similar services. Amounts received by the Commission under this paragraph may be retained by the Commission as an offsetting collection to the extent necessary to cover the costs of developing and implementing the pilot program authorized by this subsection, and regulating and supervising the provision of digital data service by low-power television stations under this subsection. Amounts received by the Commission under this paragraph in excess of any amount retained under the preceding sentence shall be deposited in the Treasury in accordance with chapter 33 of title 31, United States Code.

³⁵ 47 U.S.C. § 336(h)(6).

³⁶ Id.

pilot project (digitally-based interactive broadcast services and wireless Internet access) are similar to certain of the services, including ancillary or supplementary services, that may be offered by Digital Television (DTV) licensees. Accordingly, we will impose on the LPTV licensees a comparable fee to that imposed on DTV licensees that offer feeable ancillary or supplementary services. Thus, we will impose a fee of five percent of gross revenues derived from the digital data services provided pursuant to the pilot project to the extent to which these services would be feeable if offered by DTV licensees.³⁷

24. Not only are the digital data services that may be provided by LPTV stations similar to those that may be provided by DTV licensees, but, in addition, we believe that a fee of five percent will not discourage the provision of these services just as we noted that it would not dissuade DTV broadcasters from offering such DTV ancillary or supplementary services.³⁸ The amount of the fee will vary with the gross revenues from these services, *i.e.*, with the willingness of consumers to pay for such services. Under this fee structure, if a given provider of the new service does not find a market and is not profitable, its fee will be low. Finally, we believe that this fee is a relatively simple fee for LPTV stations to calculate and for the Commission to apply. Thus, we believe that it is an appropriate fee.³⁹

25. The fee of five percent of gross revenues will apply to the extent to which the services provided would be feeable if offered by a DTV licensee.⁴⁰ Thus, to the extent that the services are provided for a subscriber fee, they will be feeable. Free over-the-air video program services will not be feeable. If questions arise as to whether certain services are feeable or not,⁴¹ we can address them in the context of an appropriately filed request for declaratory ruling.

26. Collection procedures with respect to the five percent of gross revenues fee will be identical to those that apply to DTV licensees, as outlined in the *Fees R&O*. Since the DDSA requires participating licensees to submit quarterly reports, the annual report, on FCC Form 317, applicable to DTV licensees

³⁷ See 47 C.F.R. 73.624(g); Report and Order in MM Docket No. 97-247, Fees for Ancillary or Supplementary Use of Digital Television Spectrum Pursuant to Section 336(e)(1) of the Telecommunications Act of 1996, 14 FCC Rcd. 3259 (1998) (*Fees R&O*), recon. denied, 14 FCC Rcd. 19,931 (1999) (*Fees Recon.*). Under the DDSA, the fee may be used by the Commission to offset its costs in implementing, regulating, and supervising this program.

³⁸ See *Fees R&O*, ¶¶ 20, 30.

³⁹ See *Fees Recon.*, ¶ 16.

⁴⁰ Included in such feeable ancillary or supplementary services are services for which consumers pay subscriber fees or ancillary or supplementary services "for which the licensee directly or indirectly receives compensation from a third party in return for transmitting material furnished by such third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required)." 47 U.S.C. § 336(e)(1)(B). In addressing the issue of whether a given service is feeable, we will follow the foregoing statutory criteria, as well as Commission rules and precedent established with respect to fees for DTV ancillary or supplementary services.

⁴¹ In the DTV fees proceeding, we declined to decide whether home shopping, infomercials, direct marketing and similar services made via an interactive system (whereby the viewer may be able purchase a product shown on a home shopping program by clicking an icon displayed on the screen and transmitting a purchase order via the licensee's bit stream) provided by the licensee on its DTV bit stream were ancillary or supplementary services subject to a fee. We noted that such services are only at a nascent stage and that the particular circumstances are unclear. *Fees Recon.*, ¶ 26. We see no need to make this determination here as it is unclear whether this service will be provided pursuant to the pilot project or, if so, what the circumstances will be.

will not apply. However, LPTV stations in the pilot project that have provided feeable services at any point during the twelve-month period ending on September 30, will file the FCC's standard remittance form (Form 159) on the subsequent December 1. Such annual fee filings will apply until the end of the pilot project unless continued thereafter by the FCC. For revenues reported December 1, 2001 only, licensees are to certify revenues received from the feeable services provided from the inception date of the services through September 30, 2001 and remit payment of the required fee for that period.

27. LPTV licensees should use Form 159 (the standard fee remittance form) for the purpose of paying this fee, filing it by December 1. They should follow the instructions for DTV licensees, except instead of paying with respect to feeable ancillary or supplementary services, they will pay with respect to feeable services provided pursuant to the pilot project. They should specify on line 23A the station's call sign; on 24A the payment type code "MDDA"; on line 29A the amount of gross revenues received from feeable services; on line 27A the fee which they remit with Form 159, in the amount of five percent of the amount specified on line 29A; and on line 28 the facility identification number assigned to their station by the Commission. The licensee's signature on line 30 certifies under penalty of perjury the accuracy of the information reported on Form 159.⁴²

28. The Commission delegates authority to the Office of Managing Director to specify by Public Notice any additional procedures for filing and processing the fees required by this Order that are necessary or warranted. The Commission reserves the right to audit each participating licensee's records which support the calculation of the amount specified on line 27A of Form 159. Each such licensee, therefore, is required to retain such records for the duration of the pilot program, or for three years from the date of remittance of fees pursuant to this Order, whichever is longer.

29. While we do not here include automatic confidentiality for information submitted pursuant to this Order, submission of the required reporting form, and/or remittance of fee payment may be accompanied by a request for confidentiality pursuant to 47 C.F.R. § 0.459.

D. Other Requirements

30. Application of experimental rules. In addition to the foregoing, we believe that requirements similar to those contained in Sections 5.93(a) and (b) of the rules should apply to the pilot program.⁴³ Thus, we will require that all transmitting and/or receiving equipment used in the pilot program be owned by, leased to, or otherwise under the control of the LPTV licensee.⁴⁴ Response station equipment may not be owned by subscribers to the experimental data service. This will insure that the LPTV licensee has control of the equipment if and when the pilot program terminates. In addition, we will require the LPTV licensee to inform anyone participating in the experiment, including but not limited to subscribers or consumers, that the service or device is provided pursuant to a pilot program and is temporary.⁴⁵

III. ADMINISTRATIVE MATTERS

31. Paperwork Reduction Act Analysis. This Order may contain either proposed or modified

⁴² Compare Fees R&O, ¶ 58.

⁴³ No other provisions of Part 5 of the Commission's rules apply.

⁴⁴ See 47 C.F.R. § 5.93(a).

⁴⁵ See 47 C.F.R. § 5.93(b).

information collections. As part of our continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on the information collections contained in this Order, as required by the Paperwork Reduction Act of 1996. Public and agency comments are due 60 days after publication in the federal register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected; and (c) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street, S.W., Room C-1804, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW, Washington, DC 20503 or via the Internet to Edward.Springer@omb.eop.gov.

32. Additional Information. For additional information on this proceeding, please contact Gordon Godfrey, Policy and Rules Division, Mass Media Bureau, (202) 418-2120 or Keith Larson, Mass Media Bureau at (202) 418-2600.

33. Final Regulatory Flexibility Analysis. No regulatory flexibility analysis is required because the rules adopted in this Order are being adopted without notice and comment rule making.

34. Congressional Review Act. These rules, promulgated without notice and comment rule making, are not subject to the provisions of the Congressional Review Act.

VIII. ORDERING CLAUSES

35. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1, 2(a), 4(i), 7, and 336 of the Communications Act of 1934 as amended, 47 U.S.C. §§ 1, 2(a), 4(i), 7 and 336, Part 74 of the Commission's rules, 47 C.F.R. Part 74, IS AMENDED as set forth in Appendix A of this Order.

36. IT IS FURTHER ORDERED that the rule amendments set forth in Appendix A SHALL BE EFFECTIVE immediately.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDIX A

Subpart G of Part 74 of the Commission's Rules and Regulations (Chapter I of Title 47 of the Code of Federal Regulations) is amended to read as follows:

1. The authority citation for Part 74 is amended to read as follows:

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

2. A new Section 74.785 is added to read as follows:

§ 74.785 Low power TV digital data service pilot project.

Low power TV stations authorized pursuant to the LPTV Digital Data Services Act (P.L. 106-554, 114 Stat. 4577, December 1, 2000) to participate in a digital data service pilot project shall be subject to the provisions of the Commission *Order* implementing that Act. FCC 01-137, adopted April 19, 2001.