

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the matter of	)	
	)	
Revisions to Broadcast Auxiliary Service Rules in	)	
Part 74 and Conforming Technical Rules for	)	
Broadcast Auxiliary Service, Cable Television	)	ET Docket No. 01-75
Relay Service and Fixed Services in Parts 74, 78	)	
and 101 of the Commission's Rules	)	
	)	
Telecommunications Industry Association,	)	
Petition for Rule Making Regarding Digital	)	RM-9418
Modulation for the Television Broadcast Auxiliary	)	
Service	)	
	)	
Alliance of Motion Picture and Television	)	
Producers, Petition for Rule Making Regarding	)	RM-9856
Low-Power Video Assist Devices in Portions of	)	
the UHF and VHF Television Bands	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: October 15, 2003**

**Released: October 20, 2003**

By the Commission:

**INTRODUCTION**

1. By this action, we address petitions for reconsideration of the *Report and Order (R&O)* in this proceeding, filed by Nassau County Police Department (NCPD) and the Society of Broadcast Engineers, Inc. (SBE).<sup>1</sup> In the *R&O*, the Commission amended the rules in Part 74, Broadcast Auxiliary Service (BAS), Part 78, Cable Television Relay Service (CARS), and Part 101, Fixed Microwave Service (FS) to permit stations in these services to use digital technology. It also made conforming amendments so that the stations in these services, which share frequency bands and use similar transmission technologies, will operate under consistent regulations. Specifically, the actions in the *R&O* permit BAS licensees to use digital modulation in all of the Aural and Television (TV) BAS bands; update and conform BAS and CARS rules with FS rules; simplify and streamline BAS processing via our licensing database, the Universal Licensing System (ULS); and allow the operation of Wireless Assist Video Devices (WAVDs) under Part 74.

2. In this Memorandum Opinion and Order, we grant NCPD's petition to exclude WAVDs from

---

<sup>1</sup> *Revisions to Broadcast Auxiliary Service Rules in Part 74 and Conforming Technical Rules for Broadcast Auxiliary Service, Cable Television Relay Service and Fixed Services in Parts 74, 78 and 101 of the Commission's Rules*, ET Docket No. 01-75, *Report and Order*, 17 FCC Rcd 22979 (2002).

the band 500-506 MHz (UHF-TV channel 19) in the New York/Northeast New Jersey (NY/NJ) area in order to protect incumbent public safety land mobile operations in that area. In addition we exclude, to a lesser extent, WAVD operation on adjacent bands 494-500 MHz (UHF-TV channel 18) and 506-512 MHz (UHF-TV channel 20) in that area. We also deny SBE's petition to treat composite, dual carrier analog/digital TV BAS emissions within a single channel as separate emissions.

## BACKGROUND

3. In the *R&O*, the Commission adopted new rules to permit digital modulation in all of the Aural and TV BAS bands, in order to enable BAS stations to introduce new technologies and create a more efficient BAS that can more readily adapt as the broadcast industry converts to the use of digital technology, such as digital television (DTV).<sup>2</sup> The Commission also updated the BAS and CARS technical rules to conform them with each other and with the FS rules, in situations where these services share the same or adjacent spectrum and are technically and operationally similar. These changes included updating BAS emission masks to accommodate digital emissions and combined analog/digital emissions, aligning various power limitations, and updating coordination procedures for Aural BAS and fixed TV BAS stations above 2110 MHz. The Commission also instituted temporary conditional authority for all BAS services, allowing operation upon filing of a license application, provided certain conditions are met, modified the BAS Remote Pickup (RPU) channel plan to provide compatibility with the channel plan adopted for the Private Land Mobile Radio Service (PLMR), and modified the BAS application rules to make them consistent with the ULS. Finally, the Commission allowed WAVDs to operate on certain unused VHF-TV and UHF-TV channels on a secondary, non-interference basis to services allocated on that spectrum.<sup>3</sup> In this connection, the Commission excluded WAVDs from the band 482-488 MHz (UHF-TV channel 16) in the NY/NJ area, to protect incumbent public safety land mobile operations in that area authorized under waiver of the Commission's rules.<sup>4</sup>

4. On March 28, 2003, the NCPD filed a Petition for Reconsideration of the *R&O* asking that we exclude WAVDs from the band 500-506 MHz (UHF-TV channel 19) in the NY/NJ area.<sup>5</sup> Additionally, on April 4, 2003, the SBE filed a Petition for Reconsideration asking that we: 1) treat composite, dual carrier analog/digital TV BAS emissions within a single BAS channel as separate emissions; 2) accommodate elective registration of BAS Mobile TV Pick-up (TVPU) receive sites on the ULS; 3) confirm that multiple BAS emissions of reduced bandwidth are permissible on standard TV BAS channels; and 4) clarify that BAS RPUs may continue to operate with 20 and 25 kHz bandwidths in the 450/455 MHz RPU band.<sup>6</sup> No party commented on either Petition.<sup>7</sup>

---

<sup>2</sup> The BAS frequency bands affected by this change include the Aural BAS band at 944-952 MHz and the TV BAS bands, including 1990-2110 MHz, 2450-2483.5 MHz, 6875-7125 MHz, and 12700-13250 MHz. Digital modulation was already permitted for TV BAS bands 6425-6525 MHz and 17700-19700 MHz.

<sup>3</sup> See *R&O* ¶¶ 1-5. WAVDs are needed to aid motion picture and television producers in filming at various locations in a safe and cost effective manner.

<sup>4</sup> *Id.* ¶¶ 153-154.

<sup>5</sup> Nassau County Police Department (NCPD) Petition for Reconsideration of the *R&O* in ET Docket No. 01-75, filed March 28, 2003.

<sup>6</sup> Society of Broadcast Engineers, Inc. (SBE), Petition for Partial Reconsideration of the *R&O* in ET Docket No. 01-75, filed April 4, 2003.

<sup>7</sup> Public Notice, Petitions for Reconsideration of Action in Rulemaking Proceedings, Report No. 2607, 68 FR 23715 (May 5, 2003).

## DISCUSSION

### A. Exclusion of WAVDs from UHF-TV Channel 19 in the NY/NJ Area

5. In the *R&O*, the Commission authorized WAVDs under Part 74, Subpart H, Low Power Auxiliary Stations, to operate on certain unused VHF-TV and UHF-TV channels on a secondary, non-interference basis to incumbent broadcast and mobile services.<sup>8</sup> To protect land mobile operations in the band 470-512 MHz (UHF-TV channels 14-20), the Commission excluded WAVD operations on certain frequencies in each of the geographic areas specified in Section 90.303.<sup>9</sup> In addition to the areas specified in Section 90.303, WAVD operations are excluded from the band 482-488 MHz (UHF-TV channel 16) in the NY/NJ area, in order to protect public safety land mobile operations authorized pursuant to a waiver of the Commission's rules.<sup>10</sup>

6. NCPD's Petition states that public safety operations also use the band 500-506 MHz (UHF-TV channel 19) under waiver in the NY/NJ area, and requests that we amend Section 74.870(c)(4) to exclude WAVD operation in this band as was similarly done for UHF-TV channel 16.<sup>11</sup> NCPD states that the exclusion is needed to protect the over 100 existing public safety land mobile base stations

---

<sup>8</sup> See *R&O* ¶¶ 4, 139. Video assist devices produce low resolution images that can be used by a motion picture or television production crew to make decisions with respect to content, lighting, and image framing. They are often connected via cable, but cable is not always practical due to the distance from the camera to the video monitor or because the camera needs to be mobile to follow the action. Also, cables require tending by a staff person to ensure the safety of actors and crew. Thus wireless connection, *i.e.*, the use of WAVDs, increases the utility, economy, and safety of video assist devices.

<sup>9</sup> The Rules prohibit WAVDs from operating within a radius of 200 km for co-channel and within a radius of 128 km for adjacent channel from the coordinates specified in Section 90.303. See *R&O* ¶¶ 153, 154, 156, 159 and Appendix A, Final Rules, Section 74.870 (c)(4); 47 C.F.R. § 90.303. See also 47 C.F.R. §§ 22.591, 22.621, and 22.651.

<sup>10</sup> See *R&O* ¶¶ 153-154. See also *Waiver of Parts 2 and 90 of the Commission's Rules to Permit New York Metropolitan Area Public Safety Agencies to Use Frequencies at 482-488 MHz on a Conditional Basis*, Order, 10 FCC Rcd 4466 (1995) (*Public Safety Channel 16 Order*) ¶ 20 (granting waiver of Sections 2.106 and 90.311, so that New York City public safety agencies may use frequencies at 482-488 MHz, for a period of at least five years or until any television broadcast licensee in the New York City Metropolitan Area initiates use of UHF-TV channel 16 for advance television service (ATV) broadcast operations). We also note that, in response to a request from the City of New York Police Department, the Commission, on July 7, 2003, adopted a *Notice of Proposed Rulemaking* proposing to reallocate the 482-488 MHz band for land mobile radio service use by public safety agencies in the New York City Metropolitan Area. *Amendment of Parts 2, 73, 74 and 90 of the Commission's Rules to Permit New York Metropolitan Area Public Safety Agencies to Use Frequencies at 482-488 MHz*, ET Docket No. 03-158, MB Docket No. 03-159, *Notice of Proposed Rulemaking*, FCC 03-165, 18 FCC Rcd 15014 (rel. Jul. 10, 2003) (*Channel 16 NPRM*).

<sup>11</sup> See NCPD Petition at 1-2. See also *Application of Nassau County Police Department and Waiver Request for Waiver for a Public Safety License Pursuant to Section 337 of the Communications Act of 1934, as Amended*, File No. 0000400529, *Memorandum Opinion and Order*, 17 FCC Rcd 14252 (2002) (*Nassau Channel 19 Order*). We note that the accommodation of public safety land mobile operations on Channel 19 in the New York area is accomplished via case-by-case waiver, such as the *Nassau Channel 19 Order*, upon application for station authorization, whereas accommodation on Channel 16 is accomplished via the blanket, temporary, conditional waiver granted in the *Public Safety Channel 16 Order* ¶ 20.

operating on UHF-TV channel 19.<sup>12</sup>

7. We agree with NCPD that WAVD operations should be excluded from the band 500-506 MHz (UHF-TV channel 19) in the NY/NJ area. First, we agree with NCPD that there is a need for public safety land mobile use of UHF-TV channel 19, as evidenced by numerous existing public safety operations authorized under waiver on this channel in the NY/NJ area.<sup>13</sup> We find that deployment of WAVDs on this channel in accordance with the rules as adopted in the *R&O*, *i.e.*, absent an exclusion, could thus pose a risk of interference to those public safety land mobile operations. We therefore exclude WAVD operation UHF-TV channel 19 in the NY/NJ area. We also exclude WAVD operation on adjacent UHF-TV Channels 18 and 20 in the NY/NJ area, to a lesser extent, consistent with the approach in the WAVD rules adopted by the *R&O*. We note that, because WAVDs are authorized on all 42 assignable channels, they may use other channels in the NY/NJ area to satisfy their communications needs, and thus this exclusion will not overly constrain WAVD deployment in the NY/NJ area.<sup>14</sup> We also note that no WAVDs have yet been applied for or licensed, and we thus find that no existing WAVD licensee would be affected by this new exclusion. Accordingly, we grant NCPD's Petition and amend Section 74.870(c)(4) to exclude WAVD operation on the band 500-506 MHz (UHF-TV channel 19) for a radius of 200 km around the coordinates listed in Section 90.303 for the NY/NJ area, and on the bands 494-500 MHz (lower adjacent UHF-TV channel 18) and 506-512 MHz (upper adjacent UHF-TV channel 20) for a radius of 128 km around those coordinates.<sup>15</sup>

#### B. Treatment of Composite, Dual Carrier Analog/Digital Emissions

8. In the *R&O*, the Commission decided that hybrid TV BAS systems, where an analog signal and a digital signal are transmitted in a single channel, would be treated as a single, aggregate emission regarding emission mask, emission designator, and Equivalent Isotropically Radiated Power (EIRP) determinations in the equipment authorization and station licensing processes.<sup>16</sup> This approach conforms with the treatment of similar equipment used by the FS under Part 101 and best addresses how various emissions fit within a single BAS channel. The Commission also adopted a similar approach for TV BAS composite systems under Part 74.<sup>17</sup> The Commission observed that hybrid and composite systems will accommodate both existing analog and new digital TV signals simultaneously over a common TV BAS channel, which will ease the transition to DTV. These systems provide a migration mechanism from

---

<sup>12</sup> NCPD cites the *Nassau Channel 19 Order* granting NCPD's request for operation under waiver in Nassau County, New York, to relieve serious congestion on existing radio systems and provide interoperability among public safety agencies. *See* NCPD Petition at 2. *See also Nassau Channel 19 Order* ¶ 21.

<sup>13</sup> *See Nassau Channel 19 Order* ¶ 19 (noting that the band 470-512 MHz (UHF-TV channels 14-20) is a principal band for public safety land mobile operations in the surrounding New York metropolitan area).

<sup>14</sup> Section 74.870 specifies that WAVD licenses will be authorized for operation on all frequencies, *i.e.*, all 42 TV channels, available to WAVDs in the bands 180-210 MHz (VHF-TV channels 8-12), 470-608 (UHF-TV channels 14-36), and 614-698 (UHF-TV channels 38-51), subject to the limitations in that Section. *See R&O* ¶¶ 144, 150 and Appendix A, Final Rules, Section 74.870, particularly Sections 74.870(c) and (f); 47 C.F.R. § 74.870.

<sup>15</sup> *See* Appendix A, Final Rules, Section 74.870(c)(4), *infra*.

<sup>16</sup> *See R&O* ¶¶ 34, 41, and 43. For purposes of this discussion, we refer to a system that frequency modulates a single RF carrier with digital and analog signals frequency-division-multiplexed in its baseband, resulting in a single distinct, symmetrical FM emission, as a "hybrid" analog/digital system. We refer to a system that modulates two separate RF carriers with analog and digital signals resulting in two distinct emissions, one analog and the other digital, as a "composite" dual channel analog/digital system. *See R&O* at n. 77.

<sup>17</sup> *Id.* ¶¶ 41, 43.

using an analog signal to a combination analog/digital signal, and eventually to only a digital signal.<sup>18</sup> The Commission stated that conforming the treatment of these systems with existing rules for the FS under Part 101 would simplify manufacturing processes, equipment authorization, and licensing.<sup>19</sup>

9. SBE seeks reconsideration of the decision to require a single aggregate emission designator and EIRP for TV BAS composite emissions.<sup>20</sup> SBE asserts that the aggregate emission designator and EIRP inaccurately characterize dual modulation radios and would result in inaccurate frequency coordination. It urges the use of a separate emission designator and EIRP for each emission, which it states would more accurately reflect the emissions of composite radios. To support its claim with respect to EIRP, SBE highlights that an 8 dB disparity between the analog and digital signals in a composite system is typical. SBE is concerned that aggregate treatment would not allow the determination of whether the digital or analog carrier is on the high or low side of the channel, which SBE considers critical to frequency coordination.

10. We continue to believe that conforming the treatment of composite systems under Part 74 with the aggregate treatment of hybrid systems under Parts 74 and 101 would simplify equipment authorization and licensing for these systems without complicating or compromising frequency coordination. We note that, under the rules adopted in the *R&O*, manufacturers only need to ensure compliance with a single bandwidth, emission mask, and EIRP to obtain certification for their equipment, rather than conducting separate measurements for the analog and digital portions of their signal. Moreover, because TV BAS licenses in the 2 GHz band designate the upper and lower edges of the licensed channel, rather than the assigned center frequency, our approach provides licensees with flexibility to accommodate multiple signals within their assigned channel.<sup>21</sup> Requiring separate emission designators, as requested by SBE, would reduce this flexibility because each emission must then be associated with a specific frequency. In addition, because such a change would entail a wholesale restructuring of the way TV BAS is licensed in the 2 GHz band, making the requested change would entail a restructuring of the ULS and a requirement for many licensees to modify their licenses to conform. With respect to frequency coordination, we reiterate that for specific composite systems, coordinators could determine individual technical and operational details and interference protection criteria via the manufacturer and model shown in the individual license record in the ULS or, when necessary, contact the licensee to obtain this information through the normal coordination process, as is appropriate wherever additional technical or operational details are needed. In response to SBE's concern regarding the determination of whether the analog or digital carrier is on the low or high side of the channel, we note that the licensee could similarly be contacted. Finally, because the need to accommodate analog emissions will likely decrease after transition to DTV, we believe that the utility of these transitional analog/digital systems, as well as any need to obtain additional technical details for frequency coordination, will be relatively short-lived. Accordingly, we do not find that frequency coordination would be unnecessarily complicated by aggregate treatment of BAS emissions within a channel, and consequently deny SBE's Petition. We therefore find separate treatment of analog and digital emissions unnecessary.

### C. Additional Requests

11. Elective Registration of BAS TVPU Receive Sites: In its Petition, SBE asks that we allow

---

<sup>18</sup> *Id.* ¶ 41 and n. 56.

<sup>19</sup> *Id.* ¶ 43.

<sup>20</sup> *See* SBE Petition at 1-2.

<sup>21</sup> *See* para. 13, *infra*.

licensees to electively register fixed receive sites associated with BAS TVPU stations in the ULS.<sup>22</sup> SBE states that this information would be used to protect TVPU receive sites, especially during frequency coordination along international borders.<sup>23</sup> As noted by SBE, frequency coordination of BAS TVPU stations necessitates information on TVPU receive sites, and registration of such receive sites may offer some benefit to frequency coordination by facilitating their identification. However, we find that, because registration of BAS TVPU receive sites in the ULS was neither at issue nor addressed by the *R&O*, it is beyond the scope of this Memorandum Opinion and Order. At this time, we find that such elective registration is unnecessary.<sup>24</sup> However if parties continue to believe that such a requirement would be beneficial they may file a petition for rulemaking seeking the imposition of TVPU receive site registration.

12. Reduced Bandwidth on TV BAS Channels: SBE seeks clarification of several issues related to the use of digital links in the TV BAS bands. First, SBE asks that the Commission clarify that the Commission will not routinely dismiss applications specifying narrowband digital emissions.<sup>25</sup> SBE notes that only a wideband (25 MHz) channel plan currently exists for the 7 and 13 GHz bands, but some newer digital equipment operates with only 6.5 MHz bandwidths. Second, SBE asks that the Commission clarify that a narrowband channel may operate on a frequency offset from the channel center.<sup>26</sup> Finally, SBE asks the Commission to clarify that licensees may stack multiple narrowband emissions within a channel.<sup>27</sup>

13. As an initial matter, we note that the Commission does not routinely dismiss applications for underutilization of the spectrum.<sup>28</sup> If no other deficiencies exist, an application for narrowband emissions within a wideband channel will not be routinely dismissed.<sup>29</sup> In addition, we note that the Commission grants licenses for these bands by specifying a band of operation, not a specific operating frequency.<sup>30</sup> Therefore, a licensee has flexibility to locate its emissions within a channel where it is most advantageous. Finally, to promote spectrum efficiency, we note that the rules allow licensees to multiplex

---

<sup>22</sup> See SBE Petition at 5.

<sup>23</sup> *Id.* at 5. In addition, we note that in its related Request for Temporary Stay of PCN Requirements in the *R&O* (Stay Request), SBE also asserts that without this information, a commercial frequency coordinator, unfamiliar with the local TV BAS environment, would be unable to undertake a valid coordination based on just the ULS. See SBE, Request for Temporary Stay of PCN Requirement in the *R&O* in ET Docket 01-75, filed April 4, 2003 (Stay Request), at 5.

<sup>24</sup> Because such registration as requested would be elective, and not mandatory, we question the effectiveness of promulgating such changes to the ULS as requested by SBE. Nevertheless, we note that if SBE or any members of the BAS community desire a registry, *e.g.*, a website, they are free to establish it without our involvement, whether by themselves or via a third party, such as a commercial frequency coordinator.

<sup>25</sup> See SBE Petition at 3-4. SBE asserts that applications for such emissions have in the past been returned for underutilization of the channel.

<sup>26</sup> *Id.* at 4.

<sup>27</sup> *Id.*

<sup>28</sup> However, we note that the Commission always strives to ensure efficient spectrum utilization.

<sup>29</sup> We note that determination of the spectral efficiency or suitability of a specific request, *e.g.*, whether accommodation of a specific bandwidth, path length, and reliability would be spectrally efficient in the 7 or 13 GHz band, or would be more suitable in the 18 GHz band, can only be made upon review of the individual application by Wireless Telecommunications Bureau (WTB) licensing staff.

<sup>30</sup> See 47 C.F.R. § 74.602. TV BAS frequency assignments in these bands are licensed by channel band edges. Thus, specification of offset frequencies is not required and would not be identified in the ULS or on the license.

multiple signals within a channel.<sup>31</sup> Under this rule, licensees may provide information using multiple narrowband channels within the larger channel subject to the condition that the composite emissions meet the rules for out-of-band emissions. In these instances, we note that spectral efficiency will be further enhanced if the presence of systems operating on frequencies other than the channel center is accounted for in the frequency coordination process.

14. RPU BAS with 20 kHz and 25 kHz Bandwidths: Finally, in its Petition, SBE notes that the Commission, in the *R&O*, rechannelized the BAS RPU 450/455 MHz band into 6.25 kHz blocks, stackable to 50 kHz maximum channel bandwidth, and adopted certain Part 90 technical standards, including the Section 90.210 emission mask requirements, for authorized bandwidths of 30 kHz or less.<sup>32</sup> SBE, claiming that the Part 90 technical standards only allow a maximum channel width of 12.5 kHz, requests that we clarify that licensees may continue to use channel widths up to 25 kHz.<sup>33</sup> The rules adopted in the *R&O*, which permit narrowband channels to be stacked to form wider channels, have not changed and are not restricted by the Part 90 limitations on channel bandwidth. Thus, licensees may continue to stack these channels as needed, up to a maximum channel bandwidth of 50 kHz. However, we encourage licensees to operate with spectrally efficient equipment and use the minimum bandwidth necessary for their operation.

## PROCEDURAL MATTERS

### A. Final Regulatory Flexibility Certification

15. The Regulatory Flexibility Act of 1980, as amended (RFA)<sup>34</sup> requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."<sup>35</sup> The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>36</sup> In addition, the term "small business" has the same meaning as

---

<sup>31</sup> See 47 C.F.R. § 74.631(d).

<sup>32</sup> 47 C.F.R. § 90.210.

<sup>33</sup> See SBE Petition at 4. SBE asserts that digital modulation with bandwidth of 12.5 kHz would produce intelligibility to which the general public is unaccustomed and which would likely disrupt radio remote news and sports operations. SBE appears to be concerned that the Commission's adoption, in the *R&O*, of Part 90 Private Land Mobile Radio Service (PLMR) emission mask, frequency stability, and transient frequency behavior requirements, in Sections 90.210, 90.213, and 90.214, respectively, for BAS RPU operations in the newly rechannelized 450/455 MHz band, encompasses the bandwidth restrictions newly imposed on PLMR in Section 90.209. 47 C.F.R. §§ 90.209, 90.210, 90.213, and 90.214. See *Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies*, WT Docket No. 99-87, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 18 FCC Red 3034 (2003) (*Part 90 Narrowbanding R&O*).

<sup>34</sup> The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act (SBREFA).

<sup>35</sup> 5 U.S.C. § 605(b).

<sup>36</sup> 5 U.S.C. § 601(6).

the term "small business concern" under the Small Business Act.<sup>37</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>38</sup>

16. In the *Report and Order* in this proceeding, the Commission established Wireless Assist Video Devices (WAVDs), allowing them to operate on certain unused TV channels on a secondary basis to other services. To provide flexibility, WAVDs are authorized on 42 TV channels, which include TV channels 8-12, 14-36, and 38-51, with operation subject to certain separation rules to protect other services. In this connection, WAVD operation is excluded on four channels, TV channels 14-17, in the New York/N. E. New Jersey (NY/NJ) area, to protect incumbent land mobile operations. In this Memorandum Opinion and Order, the Commission excludes WAVD operation on three additional channels, TV channel 18-20, in the NY/NJ area, to protect incumbent public safety land mobile operations authorized pursuant to waivers of the Commission's rules.

17. We believe that these additional exclusions are necessary to protect incumbent public safety land mobile licensees and will have only minimal impact on prospective WAVD licensees. We note that public safety operations are extensive in this area on these frequencies and it is unlikely that perspective WAVD licensees could find the frequencies usable. We find that increasing the number of channels from which WAVD operation is excluded in the NY/NJ area from four to seven, is insignificant given the total number of TV channels generally available to WAVD licensees. We also note that no WAVDs have yet been applied for or licensed, and we thus find that no existing WAVD licensee is affected by these new exclusions. Finally, we note that wherever WAVDs cannot be used, whether due to these exclusions, to other channel separations, or to conflicting frequency usage, cabled video assist devices would remain a viable option for WAVD licensees. We thus conclude that these additional exclusions will have only a minor effect on WAVD operations, and hence a minimal economic impact on WAVD licensees. Therefore, we certify that the requirements of this Memorandum Opinion and Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Memorandum Opinion and Order, including a copy of this final certification, in a report to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A). In addition, the Memorandum Opinion and Order and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the Federal Register. *See* 5 U.S.C. § 605(b).

### ORDERING CLAUSES

18. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 4(i), 302, 303(f), 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 302a, 303(f), 303(r), and 332, this Memorandum Opinion and Order IS ADOPTED.

19. IT IS FURTHER ORDERED that Part 74 of the Commission's Rules IS AMENDED as specified in Appendix A, effective 30 days after publication in the Federal Register. This action is taken pursuant to Sections 1, 4(i), 302, 303(f), 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 302a, 303(f), 303(r), and 332.

---

<sup>37</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

<sup>38</sup> Small Business Act, 15 U.S.C. § 632.



20. IT IS FURTHER ORDERED that the petition for reconsideration of the *Report and Order* in this proceeding filed by Nassau County Police Department (NCPD) IS GRANTED, and the petition for reconsideration filed by the Society of Broadcast Engineers, Inc., IS GRANTED IN PART AND DENIED IN PART, consistent with the terms of this Memorandum Opinion and Order.

21. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Memorandum Opinion and Order, ET Docket No. 01-75, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

22. Finally, IT IS ORDERED that the proceeding in ET Docket No. 01-75 IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A: FINAL RULES**

Part 74 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 74 – EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCASTING AND OTHER PROGRAM DISTRIBUTIONAL SERVICES**

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

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

2. Section 74.870 is amended by revising the entry for New York/N.E. New Jersey in the table of paragraph (c)(4) to read as follows:

**§ 74.870 Wireless video assist devices.**

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

Area	North latitude	West longitude	Excluded frequencies (MHz)	Excluded channels		
				200 km	128 km	52 km
* * * * *	* * * * *	* * * * *	* * * * *	*****	*****	*****
New York/N.E. New Jersey	40° 45' 06.4"	73° 59' 37.5"	470-476 476-482 482-488 488-494 494-500 500-506 506-512	14 15 16  19	17 18  20	
* * * * *	* * * * *	* * * * *	* * * * *	*****	*****	*****

\* \* \*