

Order 13045 because it authorizes a state program.

#### *Compliance With Executive Order 13084*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule is not subject to Executive Order 13084 because it does not significantly or uniquely affect the communities of Indian tribal governments. The State is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in the Indian country within the State.

#### *Paperwork Reduction Act*

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

#### *National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary

consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### **List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian country, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: April 28, 2000.

**Jack W. McGraw,**

*Acting Regional Administrator, Region VIII.*

[FR Doc. 00-11421 Filed 5-8-00; 8:45 am]

**BILLING CODE 6560-50-U**

## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 79**

**[MM Docket No. 95-176; FCC 00-136]**

#### **Implementation of Section 305 of the Telecommunications Act of 1996, Closed Captioning and Video Description of Video Programming: Accessibility of Emergency Programming**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document adopts regulations requiring emergency information that is provided to viewers be made accessible to persons with hearing disabilities. This action is necessary in order to comply with section 305 of the Telecommunications Act of 1996. This action is intended to further the protection of life, health, safety, and property, of persons with hearing disabilities.

**DATES:** The rule in this document contains information collection requirements that are not effective until approved by the Office of Management and Budget. The Commission will

publish a document in the **Federal Register** announcing the effective date of this rule. Written comments by the public on the new information collection are due July 10, 2000.

**ADDRESSES:** In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collection contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to [jboley@fcc.gov](mailto:jboley@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** Marcia Glauber (202) 418-7200, TTY (202) 418-7172, or via Internet at [mglauber@fcc.gov](mailto:mglauber@fcc.gov). For additional information concerning the information collection(s) contained in this document, contact Judy Boley at (202) 418-0214, or via the Internet at [jboley@fcc.gov](mailto:jboley@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Second Report and Order*, FCC 00-136, adopted April 13, 2000; released April 14, 2000. The full text of the Commission's *Second Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257) at its headquarters, 445 12th Street, SW, Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036, or may be reviewed via Internet at <http://www.fcc.gov/csb/> or <http://www.fcc.gov/cib/dro>.

The *Second Report and Order* contains a new information collection subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection contained in this proceeding.

#### **Paperwork Reduction Act**

The *Second Report and Order* contains a new information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection contained in this *Second Report and Order* as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due July 10, 2000. Comments should address: (a) Whether the new collection of information is necessary for the proper performance of the functions of

the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) 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.

*OMB Control Number:* 3060-XXXX.

*Title:* Accessibility of Programming Providing Emergency Information—Section 79.2.

*Form No.:* Not Applicable.

*Type of Review:* New collection.

*Respondents:* Individuals or households; business or other for-profit; not-for-profit institutions; and/or state, local or tribal governments.

*Number of Respondents:* 100 viewers and 100 video program distributors = 200 Total Respondents.

*Estimated Time per Response:* 1 and 2 hours, respectively.

*Total Annual Burden:* 300 hours.

*Cost to Respondents:* \$ 16,200.

*Needs and Uses:* The information will be used by the Commission to enforce new § 79.2. Viewers may file complaints alleging violation of this rule with the Commission. The Commission will notify video programming distributors of the complaint, and the distributor will provide the Commission with a response to the complaint.

## Synopsis of the Second Report and Order

1. The *Second Report and Order* ("Order") adopts a rule requiring that emergency information that is provided to viewers be made accessible to persons with hearing disabilities throughout the transition period established as part of the closed captioning rules. See 47 CFR 79.1. Such information may be made accessible either through closed captioning or by using a method of visual presentation. Emergency information is information, about a current emergency, that is intended to further the protection of life, health, safety, and property, i.e., critical details regarding the emergency and how to respond to the emergency. In determining which particular details about the emergency need to be made accessible, programmers may rely on their own good faith judgments.

2. *Definition of emergency information.* We find that it is appropriate to define emergency information as information, about a current emergency, provided to viewers that is intended to further the protection of life, health, safety, and property, i.e., critical details regarding the emergency

and how to respond to the emergency. Examples of the types of emergencies covered could include tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules resulting from such conditions, and warnings and watches of impending changes in weather. These examples are intended to provide guidance as to what is covered by the rule and are not intended to be an exhaustive list.

3. Our definition of emergency information will include the provision of critical details in an accessible manner. Critical details could include, among other things, specific details regarding the areas that will be affected by the emergency, evacuation orders, detailed descriptions of areas to be evacuated, specific evacuation routes, approved shelters or the way to take shelter in one's home, instructions on how to secure personal property, road closures, and how to obtain relief assistance. In determining whether particular details need to be made accessible, we will permit programmers to rely on their own good faith judgments. Under this rule, distributors are not required to provide in an accessible format all of the information about an emergency situation that they are providing to viewers aurally, only the aural information intended to further the protection of life, health, safety, and property.

4. *Accessibility of Emergency Information.* The rule we are adopting requires that emergency information that is provided in the audio portion of the programming must be accessible to persons with hearing disabilities, either through closed captioning or by using a method of visual presentation. Such methods include, but are not limited to, open captioning, crawls or scrolls. These rules apply regardless of whether the provision of information regarding an emergency occurs during a regularly scheduled newscast, an unscheduled break-in during regular programming, as part of continuing coverage of a situation, or in any other fashion. We will adopt the suggestion of some commenters that we restrict the application of the rule to the provision of emergency information that is primarily intended for distribution to an audience in the geographic area in which the emergency is occurring.

5. As was noted in the June 1999 Fact Sheet on Closed Captioning, the Commission has received numerous reports of the loss of captioning during

otherwise captioned programs. The requirement that video distributors "pass through" to viewers all captions they receive is intended to ensure that captioned programs are distributed with captions from beginning to end without exception. The Fact Sheet reminded video distributors that when providing other information, such as school closings or weather warnings, readable captions should continue to be provided. We endorse this interpretation and amend our rules to require that emergency information provided by means other than closed captioning should not block any closed captioning, and vice versa.

6. *Exemptions.* Because we are not mandating the use of closed captioning as the sole means for making emergency information accessible, we find that exemptions to this rule are unnecessary. Consistent with this conclusion, with respect to entities that are exempt from any aspect of the closed captioning rules, we find that such exemption does not extend to the obligation to provide accessible emergency information. Expenses for complying with this rule shall not be counted when making calculations of expenditures under 47 CFR 79.1(d)(11). All entities, therefore, must comply with the rule adopted in this Order.

7. *Responsibility for and determination of compliance.* As with the closed captioning rules, video programming distributors will be responsible for compliance with the rule and video programming distributors will not be responsible for video programming that is by law not subject to their editorial control, including but not limited to the signals of television broadcast stations distributed by multichannel video programming distributors. A local broadcast station licensee, as the video programming distributor, will be responsible for its compliance with the rule regardless of the delivery technology used to deliver its signals to consumers (e.g., cable, direct broadcast satellite service). We note that many local or regional nonbroadcast networks are owned by the multichannel video programming distributors. Where the network is not owned by the multichannel video programming distributor, as we noted in the closed captioning rules, we expect that distributors will incorporate the requirement into their contracts with producers and owners, and that parties will negotiate for an efficient allocation of responsibilities.

8. Those entities that are permitted to count captions created using the electronic newsroom technique still must comply with this rule. Where they

cannot provide the required emergency information using this technique, they must use another method of visual presentation to ensure the same accessibility for persons with hearing disabilities as for any other viewer, as required by the rule.

9. In the *Order on Reconsideration* in this proceeding, 63 FR 55959 (October 20, 1998), we limited those entities for which the electronic newsroom technique may count towards compliance with the closed captioning rules. We stated that, as we move through the transition period, we will continue to review and expand the class of providers that cannot count the electronic newsroom technique towards compliance with the closed captioning rules, and that we expect that the ability to use the electronic newsroom technique will by far be the exception rather than the general rule, and that only those entities that are so small or who present unusual circumstances will be permitted to continue to use the electronic newsroom technique because live closed captioning would be an economic burden. To the extent we continue to permit entities to use the electronic newsroom technique, we will determine whether these entities will be permitted to continue to use means other than closed captioning for emergency information in the context of reviewing and expanding the limitation on the use of the electronic newsroom technique.

10. In recognition of this problem and viewers' frustration when captions are lost during a program, the current rules require video program distributors to transmit the original closed captions of a captioned program to viewers intact unless the program is edited and the captions would have to be reformatted. Video distributors also are responsible for making sure that their equipment is working properly to ensure the accurate transmission of the closed captions. Any loss of captions prior to the end of a program or scrambling of captions would be a violation of this rule.

11. *Enforcement.* Complaints may be filed with the Commission and viewers do not have to wait until after the end of the current calendar quarter before filing, or receiving a response to, their complaints. A complaint alleging a violation of this section may be transmitted to the Commission by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, audio-cassette recording, and Braille, or some other method that would best accommodate the complainant's disability. The complaint should include the name of the video

programming distributor against whom the complaint is alleged, the date and time of the omission of emergency information, and the type of emergency. The Commission will notify the video programming distributor of the complaint, and the distributor will reply to the complaint within 30 days.

12. *Effective Date.* The rule will be effective upon OMB approval.

#### Final Regulatory Flexibility Analysis

13. As required by the Regulatory Flexibility Act ("RFA"), 5 U.S.C. 603. The RFA, 5 U.S.C. 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Public Law No. 104-121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"). An initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Further Notice of Proposed Rulemaking* ("FNPRM") in this proceeding. *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, MM Docket No. 95-176, Further Notice of Proposed Rulemaking, 63 FR 3070 (January 21, 1998). The Commission sought written public comment on the proposals in the FNPRM, including comment on the IRFA. This Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.

#### A. Need for, and Objectives of, This Second Report and Order

14. Section 713 of the Communications Act, which was added by the Telecommunications Act of 1996, required the Commission to make new video programming fully accessible to persons with hearing disabilities. 47 U.S.C. 613. In the course of adopting rules to implement this section of the Act, the Commission noted its concern that viewers with hearing disabilities may not always have access to the same emergency information as is currently available to other viewers and decided to further examine ways to make this programming accessible. *See Report and Order*, 62 FR 48487 (September 16, 1997). This *Second Report and Order* adopts rules to ensure that emergency information is available to persons with hearing disabilities either through closed captioning or by using a method of visual presentation.

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

15. Telecommunications for the Deaf, Inc. ("TDI") filed the only comment on the IRFA in the context of its general comments. It proposes that all video programming providers be required to contribute to a Commission administered fund based on their gross revenues. This fund would be used for rebates to small entities (*e.g.*, low power television stations, small cable operators) for the costs incurred when providing captioned emergency information. We decline to adopt this proposal since our rule does not require the closed captioning of emergency information. The rule imposes modest obligations on video programming distributors and provides each entity sufficient flexibility to determine the most feasible and affordable method for making emergency information accessible to persons with hearing disabilities.

16. TDI also states that we should not adopt a reporting requirement, except where a specified number of complaints have been logged for non-compliance, because a reporting requirement would impose an undue burden. TDI Comments at 4. The Commission decided that no reporting requirement was necessary to implement the rule, but rather to rely on a complaint process to ensure compliance. Therefore, we will not adopt TDI's suggestion to minimize reporting requirements.

#### C. Description and Estimate of the Number of Small Entities to Which the Rule Will Apply

17. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules. 5 U.S.C. 603(b)(3). The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction" and "the same meaning as the term 'small business concern' under the Small Business Act" unless the Commission has developed one or more definitions that are appropriate for its activities. 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). 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 SBA 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**." Below we address the video programming distributors (i.e., multichannel video programming distributors ("MVPDs") and broadcast stations) subject to the rule adopted in this Order and provide estimates of the affected small entities.

18. *Small MVPDs*. The SBA has developed a definition of small entities for cable and other pay television services under Standard Industrial Classification 4841 (SIC 4841), which covers subscription television services, which includes all such companies with annual gross revenues of \$11 million or less. 13 CFR 121.201. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,423 such cable and other pay television services generating less than \$11 million in revenue that were in operation for at least one year at the end of 1992. The following provides a more precise estimate for each MVPD service individually.

19. *Cable Services or Systems*. The Commission has developed, with SBA's approval, its own definition of a "small cable company" and "small system" for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide. 47 CFR 76.901(e). The Commission developed this definition based on its determinations that a small cable company is one with annual revenues of \$100 million or less. Based on our most recent information, we estimate that there were 1,439 cable companies that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable companies. Consequently, we estimate that there are fewer than 1,439 small entity cable companies that may be affected by the proposal adopted in this *Second Report and Order*. The Commission's rules also define a "small system," for the purposes of cable rate regulation, as a cable system with 15,000 or fewer subscribers. 47 CFR 76.901(c). We do

not request nor do we collect information concerning cable systems serving 15,000 or fewer subscribers and thus are unable to estimate at this time the number of small cable systems nationwide.

20. The Communications Act also contains a definition of a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." 47 U.S.C. 543(m)(2). The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers is deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate. 47 CFR 76.1403(b). Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

21. *Multichannel Multipoint Distribution Service ("MMDS")*. In its IFRA in this proceeding, the Commission included an analysis of local multipoint distribution systems ("LMDS"). At that time, there was one video programming distributor using LMDS frequencies to provide video services. Since the FNPRM, that distributor ceased operation and it appears that LMDS licensees will use these frequencies for services other than video distribution. MMDS systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS"). The Commission has defined "small entity" for purposes of the auction of MDS frequencies as an entity that, together with its affiliates, has average gross annual revenues that are not more than \$40 million for the preceding three calendar years. 47 CFR 21.961(b)(1).

This definition of a small entity in the context of MDS auctions has been approved by the SBA. The Commission completed its MDS auction in March

1996 for authorizations in 493 basic trading areas ("BTAs"). Of 67 winning bidders, 61 qualified as small entities. One of these small entities, O'ahu Wireless Cable, Inc., was subsequently acquired by GTE Media Ventures, Inc., which did not qualify as a small entity for purposes of the MDS auction.

22. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, which includes all such companies generating \$11 million or less in annual receipts. 13 CFR 121.201. This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of \$11 million annually. Therefore, for purposes of the FRFA, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules.

23. The SBA definition of small entities for pay television services, which includes such companies generating \$11 million in annual receipts, appears applicable to ITFS. 13 CFR 121.201. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. SBREFA also applies to nonprofit organizations and governmental organizations such as cities, counties, towns, townships, villages, school districts, or special districts, with populations of less than 50,000. 5 U.S.C. 601(5). However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

24. *Satellite Master Antenna Television ("SMATV") Systems*. The SBA definition of small entities for cable and other pay television services specifically includes SMATV services and, thus, small entities are defined as all such companies generating \$11 million or less in annual receipts. 13 CFR 121.201. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.05 million residential subscribers as of September 1996. The ten largest SMATV operators together pass 815,740 units. If we assume that

these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

25. *Direct Broadcast Satellite ("DBS") Service.* The SBA includes DBS service in its classification of cable and other pay television services. Therefore, a small DBS service is defined as a company generating \$11 million or less in annual receipts. 13 CFR 121.201. As of November 1999, there were four DBS licensees, one of which was not in operation. Providing DBS service requires a great investment of capital to build, launch, and operate satellite systems. Typically, small businesses do not have the financial ability to become DBS licensees because of the high implementation costs associated with launching satellites. Most recent industry statistics suggest that the revenue attributed to DBS subscribers for EchoStar was \$682.8 million for the year of 1998 and \$1.55 billion for DirecTV. We do not have similar revenue information for the third operating licensee, Dominion Video Satellite, Inc. However, we do not believe that any DBS licensees could be categorized as a small business.

26. *Home Satellite Dish ("HSD") Service.* The market for HSD service is difficult to quantify. HSD owners have access to more than 500 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 350 channels are scrambled and approximately 150 channels are unscrambled. To receive scrambled channels, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming packager. Thus, those HSD users that subscribe to a programming package are similar to consumers that subscribe to cable and other pay television services. Accordingly, it appears that the definition of small entity under SIC 4841 (i.e., all such companies generating \$11 million or less in annual receipts), 13 CFR 121.201, would be applicable to this service.

27. According to the most recently available information, there are approximately 20 to 25 program packagers nationwide offering packages of scrambled programming to retail consumers. As of June 1999, these program packagers provide subscriptions to approximately 1,783,411 subscribers nationwide. This is an average of about 90,000 subscribers per program packager. This is substantially smaller than the 400,000 subscribers used in the Commission's definition of a small multiple system operator ("MSO"). Furthermore, because this is an average, it is likely that some program packagers may be substantially smaller.

28. *Open Video System ("OVS") Service.* As part of the Telecommunications Act of 1996, Congress established the OVS framework for the delivery of multichannel video programming service. 47 U.S.C. 571. This new service is similar to cable television and other pay television services. Although OVS is not specifically enumerated under SIC 4841, it is appropriate to include OVS in this classification and to apply the SBA definition of small entity, which includes all such companies generating \$11 million or less in annual receipts, to OVS service. 13 CFR 121.201. The Commission has issued 37 certifications to operate OVS systems. Of these 37 certifications, MFS has withdrawn its two certifications for New York City and Boston because it does not intend to operate open video systems in these areas and Bell Atlantic shut down its Dover, New Jersey, system in favor of its distribution agreement with DirecTV. Of these 37 certifications, only one OVS operator, RCN, is providing service in various service areas across the United States. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. We believe that one OVS licensee may qualify as a small business concern. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

29. *Small Broadcast Stations.* The SBA defines small television broadcasting stations as television broadcasting stations with \$10.5 million or less in annual receipts. 13 CFR 121.201, SIC 4833. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are

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

30. There were 1,509 full-service television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,616 operating full-service television broadcasting stations in the nation as of September 1999. For 1992, the number of television stations that produced less than \$10 million in revenue was 1,155 establishments. The amount of \$10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information. Thus, the rule will affect approximately 1,616 television stations; approximately 77%, or 1,244, of those stations are considered small businesses. We use the 77% figure of television stations operating at less than \$10 million for 1992 and apply it to the 1999 total of 1,616 television stations to arrive at stations categorized as small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

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

31. This *Second Report and Order* does not adopt any required reporting or recordkeeping. However, when a video programming distributor is notified by the Commission that a complaint alleging violation of the rule has been received, the distributor may submit records, certifications, or other documentation that demonstrate compliance with the rule.

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

32. In the FNPRM, the Commission sought information and comment regarding the appropriate rules and policies to promote and ensure the accessibility of emergency information to persons with hearing disabilities. We requested comment on whether separate transitional closed captioning requirements are needed for emergency information or whether there are other methods of providing accessibility for this type of programming.

33. In this *Second Report and Order*, the Commission defines emergency information and adopts a requirement that video programming distributors must make emergency information accessible to persons with hearing disabilities either through closed captioning or by using a method of visual presentation. Such methods include, but are not limited to, open captioning, crawls or scrolls. We concluded that a rule requiring closed captioning or a method of visual presentations achieves the goal of ensuring that the same critical information about an emergency is accessible to persons with hearing disabilities as is available to other viewers. The rule also provides significant flexibility to the video programming distributor by allowing it to determine the most feasible and affordable method for making such information accessible. Therefore, the rule will not impose an economic burden on video programming distributors, including small entities.

#### F. Report to Congress

34. The Commission will send a copy of this *Second Report and Order*, including this FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this *Second Report and Order* and FRFA (or summary thereof) will also be published in the **Federal Register**, pursuant to 5 U.S.C.A. 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

#### Ordering Clauses

35. Pursuant to the authority contained in sections 4(i), 303(r), and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 613, the Commission's rules are amended by adding a new § 79.2 as shown in the rule changes. The amendments set forth in the rule changes shall become effective upon approval from the Office of Management and Budget.

36. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Second Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Part 79

Closed captioning of video programming.

Federal Communications Commission.

**Magalie Roman Salas**,  
Secretary.

#### Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 79 as follows:

#### PART 79—CLOSED CAPTIONING OF VIDEO PROGRAMMING

1. The authority citation for Part 79 continues to read as follows:

**Authority:** 47 U.S.C. 613.

2. Add § 79.2 to read as follows:

#### § 79.2 Accessibility of programming providing emergency information.

(a) *Definitions.* (1) For purposes of this section, the definitions in § 79.1 apply.

(2) *Emergency information.* Information, about a current emergency, that is intended to further the protection of life, health, safety, and property, i.e., critical details regarding the emergency and how to respond to the emergency. Examples of the types of emergencies covered include tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules resulting from such conditions, and warnings and watches of impending changes in weather.

**Note to paragraph (a)(2):** Critical details include, but are not limited to, specific details regarding the areas that will be affected by the emergency, evacuation orders, detailed descriptions of areas to be evacuated, specific evacuation routes, approved shelters or the way to take shelter in one's home, instructions on how to secure personal property, road closures, and how to obtain relief assistance.

(b) *Requirements for accessibility of programming providing emergency information.* (1) Video programming distributors must make emergency information, as defined in paragraph (a) of this section, that is provided in the audio portion of the programming accessible to persons with hearing disabilities, either through closed captioning or by using a method of visual presentation.

(2) This rule applies to emergency information primarily intended for distribution to an audience in the geographic area in which the emergency is occurring.

(3) Emergency information provided by means other than closed captioning should not block any closed captioning

and any closed captioning provided should not block any emergency information provided by means other than closed captioning.

(c) *Complaint procedures.* A complaint alleging a violation of this section may be transmitted to the Commission by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, audio-cassette recording, and Braille, or some other method that would best accommodate the complainant's disability. The complaint should include the name of the video programming distributor against whom the complaint is alleged, the date and time of the omission of emergency information, and the type of emergency. The Commission will notify the video programming distributor of the complaint, and the distributor will reply to the complaint within 30 days.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### RIN 1018-AE43

### Endangered and Threatened Wildlife and Plants; Final Determination of Threatened Status for the Koala

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Service determines threatened status for the Australian koala under the Endangered Species Act (16 U.S.C. 1531 *et seq.*) as amended. The eucalyptus forest and woodland ecosystems on which this arboreal marsupial depends have been greatly reduced. Despite several conservation actions by the Government of Australia and State governments, the limited koala habitat continues to deteriorate. The species also is threatened by fragmentation of the habitat that remains, disease, loss of genetic variation, and death by dogs and motor vehicles due to development. Although differences occur in the health status of local populations, we are not able to designate either the current subspecies or the koalas of particular States as distinct vertebrate population segments. Koalas are no longer exploited for their fur, and it is habitat loss and its secondary effects that now threaten the species. This rule extends the