

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[MB Docket Nos. 12–107, 11–43; FCC 13–45]

Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on issues related to rules implementing the requirements of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”). Specifically, the Commission explores whether a multichannel video programming distributor (“MVPD”) service is covered by the emergency information rules and by the video description rules when it permits its subscribers to access linear video programming on mobile and other devices. The Commission also explores whether the Commission should require that secondary audio streams be tagged for the visually impaired to ensure that consumers can find and locate those streams. Finally, the Commission asks whether it should require covered entities to provide customer support services and contact information to assist consumers who are blind or visually impaired.

DATES: Comments are due on or before July 23, 2013; reply comments are due on or before August 22, 2013. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before July 23, 2013.

ADDRESSES: You may submit comments, identified by MB Docket Nos. 12–107, 11–43, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site:* <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.

- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the

Secretary, Federal Communications Commission.

- *People With Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov or phone: (202) 418–0530 or TTY: (202) 418–0432.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act proposed information collection requirements contained herein should be submitted to the Federal Communications Commission via email to PRA@fcc.gov and to Nicholas A. Fraser, Office of Management and Budget, via email to Nicholas_A_Fraser@omb.eop.gov or via fax at (202) 395–5167. For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Diana Sokolow, Diana.Sokolow@fcc.gov, or Maria Mullarkey, Maria.Mullarkey@fcc.gov, of the Policy Division, Media Bureau, (202) 418–2120. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams at (202) 418–2918 or send an email to PRA@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rulemaking*, FCC 13–45, adopted on April 8, 2013 and released on April 9, 2013. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., Room CY–A257, Washington, DC 20554. This document will also be available via ECFS at <http://fjallfoss.fcc.gov/ecfs/>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to fcc504@fcc.gov or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

This FNPRM seeks comment on a potential new or revised information collection requirement. If the Commission adopts a new or revised

information collection requirement, the Commission will publish a separate document in the **Federal Register** inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

Summary of the Further Notice of Proposed Rulemaking

I. Introduction

1. We issue a *Further Notice of Proposed Rulemaking* (“FNPRM”) that:

- Explores whether a multichannel video programming distributor (“MVPD”) service is covered by the emergency information rules adopted herein when an MVPD, as defined in the Commission's rules, permits its subscribers to access linear video programming that contains emergency information via tablets, laptops, personal computers, smartphones, or similar devices;
- Explores whether an MVPD system must comply with the video description rules when it permits its subscribers to access linear video programming via tablets, laptops, personal computers, smartphones, or similar devices;
- Explores whether the Commission should impose a requirement that broadcast receivers detect and decode audio streams marked for the visually impaired, to ensure that consumers can find and locate those streams; and
- Explores whether the Commission should require covered entities to provide customer support services and contact information to assist consumers who are blind or visually impaired to navigate between the main and secondary audio streams.

II. Further Notice of Proposed Rulemaking

2. *Provision of linear programming to mobile and other devices.* We seek comment on whether, when an MVPD, as defined in the Commission's rules,¹ permits its subscribers to access linear video programming that contains emergency information via tablets, laptops, personal computers,

¹ The Commission's rules define an MVPD as “an entity engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming.” *See* 47 CFR 76.1000(e).

smartphones, or similar devices, it is acting as a “video programming distributor”² that is providing “video programming”³ and is covered by the emergency information rules adopted herein.⁴ We also seek comment on whether, under this approach, an MVPD should be required to ensure that any application or plug-in⁵ that it provides to the consumer to access this programming is capable of making the emergency information audible on a secondary audio stream. For example, Cablevision currently permits consumers to access its entire package of video programming, including broadcast channels that contain emergency information, via tablets, laptops, smartphones, and similar devices.⁶ Should Cablevision be required to ensure that any emergency information contained in the programming it makes available on tablets and other devices is audible by means of a secondary stream? We recognize that some MVPDs currently enable subscribers to access linear video programming inside the home as well as outside the home (e.g., TV Everywhere offerings). Should our rules apply to both situations—irrespective of where

² See *id.* 79.1(a)(2) (defining “video programming distributor” to include any television broadcast station, MVPD, and “any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission”).

³ See *id.* 79.1(a)(1) (defining “video programming” to mean “[p]rogramming provided by, or generally considered comparable to programming provided by, a television broadcast station that is distributed and exhibited for residential use”).

⁴ We do not believe it is necessary to reach the question of whether this service is provided by an MVPD or an “other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission,” as both are covered entities. We note that our inquiry is based on the specific definitions contained in § 79.1 of the Commission’s rules and thus is limited to application of the emergency information requirements in the CVAA, 47 U.S.C. 613(g), and should not be read to imply a classification of these services for any other purpose. We seek comment on this issue.

⁵ A “plug-in” is defined as “[a] program of data that enhances, or adds to, the operation of a (usually larger) parent program.” See H. Newton, *Newton’s Telecom Dictionary* 642 (20th ed. 2004).

⁶ Cablevision delivers programming both to traditional set-top boxes and to IP devices using “its secure and proprietary Advanced Digital Cable television network to deliver cable programming to customers for viewing on the Optimum App for iPad [and other devices] and content is not delivered over the Internet. . . . Customers do not need to have Internet access to use the Optimum App for iPad.” See Cablevision’s New Optimum App Delivers the Full Cable Television Experience to an iPad in the Home, Apr. 2, 2011, available at <http://www.prnewswire.com/news-releases/cablevisions-new-optimum-app-delivers-the-full-cable-television-experience-to-an-ipad-in-the-home-119117379.html>.

the subscriber may physically be when accessing the programming? Does it matter whether the emergency content is being delivered over the MVPD’s IP network or over the Internet?

3. At the same time, we seek comment on whether instead of placing obligations on MVPDs to make the emergency information accessible on the types of devices described above, it should be the obligation of the apparatus manufacturer, under section 203, to ensure that the devices are capable of receiving the secondary audio stream. Or, do both the MVPD and the manufacturer have a role in facilitating the provision of the secondary audio stream on these types of devices?

4. What technological hurdles, if any, prevent or impede the delivery of the secondary audio service on mobile devices and personal computers? How much time is necessary for MVPDs and/or manufacturers to come into compliance and ensure that consumers can access the secondary audio stream on a mobile device or personal computer?

5. *Provision of video description services on mobile or other devices.* We note that the Commission’s existing video description rules currently apply to “MVPD systems.” Specifically, MVPD systems that serve 50,000 or more subscribers must provide 50 hours of video description per calendar quarter during prime time or children’s programming on each of the top five national nonbroadcast networks that they carry on those systems.⁷ Further, MVPD systems of any size must pass through video description provided by a broadcast station or nonbroadcast network, if the channel on which the MVPD distributes the programming has the technical capability necessary to pass through the video description and if that technology is not being used for another purpose related to the programming. In discussions with industry in the context of the current proceeding, it has come to our attention that the pass-through obligations of an MVPD system may not be clear to the extent that the MVPD allows subscribers

⁷ The top five national nonbroadcast networks must reach 50 percent or more of MVPD households and have at least 50 hours per quarter of prime time programming that is not live or near-live or otherwise exempt under the video description rules. 47 CFR 79.3(b)(4). See also *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 76 FR 55585 (2011) (“2011 Video Description Order”). For purposes of the rule, the top five nonbroadcast networks are USA, the Disney Channel, TNT, Nickelodeon, and TBS.

to access “video programming”⁸ via tablets, laptops, personal computers, smartphones, or similar devices. To provide additional clarity on this issue, we seek comment on whether an MVPD system must comply with the video description rules when it permits its subscribers to access linear video programming via tablets, laptops, personal computers, smartphones, or similar devices. Because video description is provided using secondary audio streams, we seek comment on whether an MVPD must ensure that any application or plug-in that it provides to the consumer to access linear video programming is capable of providing or passing through video description on a secondary audio stream, regardless of the type of device (e.g., tablets, laptops, personal computers, smartphones) the consumer uses to access such programming. How, if at all, should we apply in this context the technical capability exception to the video description requirements, pursuant to which the pass-through requirement does not apply when an MVPD lacks the technical capability necessary to pass through video description? What obligations, if any, fall on the manufacturers to ensure that these devices are capable of receiving the secondary audio stream, pursuant to section 203 of the CVAA?

6. We also seek comment on whether additional time is needed for MVPDs and/or manufacturers to comply with the video description rules for linear video programming services provided via tablets, laptops, personal computers, smartphones, or similar devices. We note, for example, that the Commission in the *2011 Video Description Order* gave mobile DTV additional time for compliance. Should the same timeframe apply for both emergency information and video description purposes? We note that, as a technical matter, once the secondary audio stream is received by a device, that stream can be made available regardless of whether it is used for emergency information or video description.

7. *Tagging of the secondary audio stream.* As explained in the *Report and Order*, we are concerned that some consumers may be unable to find and activate an audio stream tagged as “visually impaired” (“VI”), which is the label dictated by the digital television standard, and that the audio stream used for video description must be labeled as “complete main” (“CM”)

⁸ See 47 CFR 79.3(a)(4) (defining “video programming” as “[p]rogramming provided by, or generally considered comparable to programming provided by, a television broadcast station, but not including consumer-generated media”).

instead.⁹ Further, it has been reported that some television receivers do not properly handle two audio tracks identified as English, and thus to ensure compatibility, broadcasters often tag the video description stream as a foreign language, even though the content of the stream is video description. Although the *NPRM*, 77 FR 70970, sought comment on this issue, the record is not yet sufficiently detailed for us to address these very technical matters. We recognize that broadcasters and MVPDs have not yet developed a solution pursuant to which tagging the video description stream as VI, to help consumers locate the stream, would be compatible with accessing the secondary audio stream on all equipment, including older equipment. In the absence of an industry solution to this problem, should the Commission mandate that the video description stream include a particular tag, and that all apparatus subject to the rules adopted herein enable consumers to access a video description stream with that tag? If so, is the “visually impaired” (“VI”) tag the one that the Commission should mandate? What would broadcasters and manufacturers need to do to comply with such a requirement? What deadline should the Commission impose by which broadcasters and manufacturers must comply with any such requirement? How can the Commission ensure that such a requirement does not affect consumers who have not upgraded their equipment? How can we minimize any confusion or cost to such consumers, and specifically, how can we mitigate the need for consumers to purchase new equipment to take advantage of the tagging requirements discussed herein? What other steps should the Commission take to ensure that the content of the secondary audio stream is properly tagged, for example so that a video description stream is tagged as video description and not as foreign language audio? We also invite comment on any other issues relevant to this portion of the *FNPRM*.

8. *Customer support services.* As explained in the *Report and Order* published elsewhere in this publication, although we request, but do not at this time require, that entities subject to the requirements adopted herein pursuant to sections 202 and 203 of the CVAA provide dedicated customer support services to assist consumers who are blind or visually impaired with accessing the secondary audio stream,

⁹In this context, a “tag” refers to the metadata accompanying an audio stream that signals to the receiving device what type of audio stream it is.

we seek further comment on this issue. Should the Commission require covered entities to provide customer support services that are specifically designed to assist consumers who are blind or visually impaired to navigate between the main and secondary audio streams? Should customer support services consist of a dedicated telephone number, an accessible chat feature on the covered entity’s Web site, or a different means by which regulated entities should provide customer support? How should such a requirement apply to manufacturers, which may not maintain an ongoing direct-to-consumer relationship? Should the Commission adopt contact information requirements comparable to those applicable to the television closed captioning rules, to require covered entities to make available contact information for the receipt and handling of immediate emergency information or video description complaints or concerns during a program’s progress, and for the receipt and handling of written emergency information or video description complaints that do not raise immediate issues? What contact information should the Commission require of entities subject to the requirements adopted herein, and how should that information be made available to consumers? Instead of following the model of the television closed captioning rules, should we adopt contact information requirements comparable to those applicable to the IP closed captioning rules? Are there other ways by which entities subject to the requirements adopted herein can best provide assistance to consumers who are blind or visually impaired with accessing the secondary audio stream? Finally, we invite comment on any additional issues relevant to this portion of the *FNPRM*.

III. Procedural Matters

A. Initial Regulatory Flexibility Analysis

9. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”),¹⁰ the Commission has prepared this present Initial Regulatory Flexibility Analysis (“IRFA”) concerning the possible significant economic impact on small entities by the policies and rules proposed in the *Further Notice of Proposed Rulemaking* (“*FNPRM*”). Written public comments

¹⁰ See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 through 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (“CWAAA”).

are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the item. The Commission will send a copy of the *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (“SBA”).¹¹ In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.¹²

1. Need for, and Objectives of, the Proposed Rule Changes

10. The *FNPRM*:

- Explores whether a multichannel video programming distributor (“MVPD”) service is covered by the emergency information rules adopted herein when an MVPD, as defined in the Commission’s rules, permits its subscribers to access linear video programming that contains emergency information via tablets, laptops, personal computers, smartphones, or similar devices;

- Explores whether an MVPD system must comply with the video description rules when it permits its subscribers to access linear video programming via tablets, laptops, personal computers, smartphones, or similar devices;

- Explores whether the Commission should impose a requirement that broadcast receivers detect and decode audio streams marked for the visually impaired, to ensure that consumers can find and locate those streams; and

- Explores whether the Commission should require covered entities to provide customer support services and contact information to assist consumers who are blind or visually impaired to navigate between the main and secondary audio streams.

2. Legal Basis

11. The proposed action is authorized pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 330(b), 613, and 617.

3. Description and Estimate of the Number of Small Entities to Which the Proposals Will Apply

12. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules if adopted.¹³ The RFA

¹¹ See 5 U.S.C. 603(a).

¹² See *id.*

¹³ 5 U.S.C. 603(b)(3).

generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹⁴ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹⁵ 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”).¹⁶

13. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of “Wired Telecommunications Carriers,” which is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.” The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small.

14. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that all but ten cable operators nationwide are small under this size standard. In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 6,101 systems

nationwide, 4,410 systems have under 10,000 subscribers, and an additional 258 systems have 10,000–19,999 subscribers. Thus, under this standard, most cable systems are small.

15. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, 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.” The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Industry data indicate that all but nine cable operators nationwide are small under this subscriber size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

16. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.” The SBA has created the following small business size standard for Television Broadcasting firms: Those having \$14 million or less in annual receipts. The Commission has estimated the number of licensed commercial television stations to be 1,387. In addition, according to Commission staff review of the BIA Advisory Services, LLC’s *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of \$14 million or less. We therefore estimate that the majority of commercial television broadcasters are small entities.

17. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or

aggregate revenues from affiliated companies. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

18. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396. These stations are non-profit, and therefore considered to be small entities.

19. *Direct Broadcast Satellite (“DBS”) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. DBS, by exception, is now included in the SBA’s broad economic census category, “Wired Telecommunications Carriers,” which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and EchoStar Communications Corporation (“EchoStar”) (marketed as the DISH Network). Each currently offers subscription services. DIRECTV and EchoStar each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

20. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of \$15 million or less in average annual receipts, under SBA rules. The second has a size standard of \$25 million or less in annual receipts.

21. The category of “Satellite Telecommunications” “comprises establishments primarily engaged in

¹⁴ *Id.* 601(6).

¹⁵ *Id.* 601(3) (incorporating by reference the definition of “small-business concern” in the 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.”

¹⁶ 15 U.S.C. 632.

providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.” Census Bureau data for 2007 show that 607 Satellite Telecommunications establishments operated for that entire year. Of this total, 533 establishments had annual receipts of under \$10 million or less, and 74 establishments had receipts of \$10 million or more. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

22. The second category, *i.e.*, “All Other Telecommunications,” comprises “establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.” For this category, Census Bureau data for 2007 shows that there were a total of 2,639 establishments that operated for the entire year. Of those 2,639 establishments, 2,333 operated with annual receipts of less than \$10 million and 306 with annual receipts of \$10 million or more. Consequently, the Commission estimates that a majority of All Other Telecommunications establishments are small entities that might be affected by our action.

23. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs)*. SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA’s broad economic census category, “Wired Telecommunications Carriers,” which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or

fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small.

24. *Home Satellite Dish (“HSD”) Service*. HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers’ receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of “Wired Telecommunications Carriers.” The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small.

25. *Broadband Radio Service and Educational Broadband Service*. Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also

includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission’s rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

26. In addition, the SBA’s placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based Educational Broadcasting Services. Since 2007, “Wired Telecommunications Carriers” have been defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.” Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming

distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. For these services, the Commission uses the SBA small business size standard for Wired Telecommunications Carriers, which is 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. In addition to Census data, the Commission's internal records indicate that as of September 2012, there are 2,241 active EBS licenses. The Commission estimates that of these 2,241 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.

27. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. At present, there are approximately 31,428 common carrier fixed licensees and 79,732 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. There are approximately 120 LMDS licensees, three DEMS licensees, and three 24 GHz licensees. The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, we will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.*, an entity with no more than 1,500 persons. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of "Wireless Telecommunications Carriers (except Satellite)," Census data for 2007 show that there were 11,163 firms that operated for the entire year. Of this total, 10,791 firms had employment of 999 or fewer employees and 372 had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of firms can be considered small. We note that the number of firms

does not necessarily track the number of licensees. We estimate that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

28. *Open Video Systems.* The open video system ("OVS") framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers." The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities.

29. *Cable and Other Subscription Programming.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers." The SBA has developed a small business size standard for this category, which is: All such firms having \$15 million dollars or less in annual revenues. To gauge small business prevalence in the Cable and Other Subscription Programming industries, the Commission relies on data currently available from the U.S.

Census for the year 2007. Census Bureau data for 2007 show that there were 659 establishments in this category that operated for the entire year. Of that number, 462 operated with annual revenues of \$9,999,999 million dollars or less, and 197 operated with annual revenues of 10 million or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

30. *Small Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers in this present RFA analysis. A "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

31. *Incumbent Local Exchange Carriers ("LECs").* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category "Wired Telecommunications Carriers." Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small.

32. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers."* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category "Wired Telecommunications Carriers." Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with

more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities.

33. *Motion Picture and Video Production.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials." We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce and/or distribute programming for cable television. The SBA has developed a small business size standard for this category, which is: All such firms having \$29.5 million dollars or less in annual revenues. To gauge small business prevalence in the Motion Picture and Video Production industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 9,095 firms in this category that operated for the entire year. Of these, 8,995 had annual receipts of \$24,999,999 or less, and 100 had annual receipts ranging from not less than \$25,000,000 to \$100,000,000 or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

34. *Motion Picture and Video Distribution.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in acquiring distribution rights and distributing film and video productions to motion picture theaters, television networks and stations, and exhibitors." We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce and/or distribute programming for cable television. The SBA has developed a small business size standard for this category, which is: All such firms having \$29.5 million dollars or less in annual revenues. To gauge small business prevalence in the Motion Picture and Video Distribution industries, the Commission relies on

data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 450 firms in this category that operated for the entire year. Of these, 434 had annual receipts of \$24,999,999 or less, and 16 had annual receipts ranging from not less than \$25,000,000 to \$100,000,000 or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

35. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." The SBA has developed a small business size standard for "Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing," which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were 919 establishments that operated for part or all of the entire year. Of those 919 establishments, 771 operated with 99 or fewer employees, and 148 operated with 100 or more employees. Thus, under that size standard, the majority of establishments can be considered small.

36. *Audio and Video Equipment Manufacturing.* The SBA has classified the manufacturing of audio and video equipment under in NAICS Codes classification scheme as an industry in which a manufacturer is small if it has less than 750 employees. Data contained in the 2007 Economic Census indicate that 491 establishments in this category operated for part or all of the entire year. Of those 491 establishments, 456 operated with 99 or fewer employees, and 35 operated with 100 or more employees. Thus, under the applicable size standard, a majority of manufacturers of audio and video equipment may be considered small.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

37. Certain proposals discussed in the *FNPRM* would affect reporting,

recordkeeping, or other compliance requirements.

38. The *FNPRM* inquires whether, when an MVPD, as defined in the Commission's rules, permits its subscribers to access linear video programming that contains emergency information via tablets, laptops, personal computers, smartphones, or similar devices, this service is covered by the emergency information rules adopted in the *Report and Order*. An MVPD may seek a waiver of the emergency information requirements for good cause pursuant to § 1.3 of the Commission's rules. An MVPD may also be required to respond to complaints alleging a violation of the emergency information rules and the emergency information and video description apparatus rules.

39. The *FNPRM* also considers whether covered entities should provide customer support services that are specifically designed to assist consumers who are blind or visually impaired to navigate between the main and secondary audio streams. If the Commission adopts rules requiring the provision of such customer support services, covered entities may be required to keep records. For example, covered entities may be required to make available contact information for the receipt and handling of immediate emergency information or video description complaints or concerns during a program's progress, and for the receipt and handling of written emergency information or video description complaints that do not raise immediate issues.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

40. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹⁷

41. First, the *FNPRM* seeks comment on whether an MVPD service is covered by the emergency information rules adopted in the *Report and Order* when

¹⁷ 5 U.S.C. 603(c)(1) through (c)(4).

an MVPD, as defined in the Commission's rules, permits its subscribers to access linear video programming that contains emergency information via tablets, laptops, personal computers, smartphones, or similar devices. The *FNPRM* considers whether there are technological hurdles, if any, that will prevent or impede the delivery of the secondary audio service on mobile devices and personal computers, and whether obligations should be shared between MVPDs and apparatus manufacturers. These considerations will allow the Commission to consider the impact of the requirements on covered entities, including smaller entities.

42. Second, the *FNPRM* seeks comment on whether an MVPD system must comply with the video description rules when it permits its subscribers to access linear video programming via tablets, laptops, personal computers, smartphones, or similar devices. We note that an MVPD is exempt from the pass-through requirement under the video description rules if it does not have the technical capability necessary to pass through the video description. Thus, this exemption is available to small entities that will face more than minimal costs to comply with the pass-through requirement.

43. Third, the *FNPRM* considers whether the Commission should impose a requirement that broadcast receivers detect and decode audio streams marked for the visually impaired, to ensure that consumers can find and locate those streams. The *FNPRM* considers the steps broadcasters and manufacturers would need to take to comply with such a requirement, and whether there are any other steps the Commission should take to ensure that the content of the secondary audio stream is properly tagged. These considerations will allow the Commission to address alternatives that can potentially minimize the burden and costs of compliance for covered entities, including smaller entities.

44. Fourth, the *FNPRM* considers whether the Commission should require covered entities to provide customer support services and contact information to assist consumers who are blind or visually impaired to navigate between the main and secondary audio streams. The *FNPRM* considers alternatives for the provision of customer support services, including whether such services should consist of a dedicated telephone number, an accessible chat feature on the covered entity's Web site, or a different means by which regulated entities should provide customer support. The *FNPRM*

also considers whether the Commission should require covered entities to make available contact information for the receipt and handling of immediate emergency information or video description complaints or concerns during a program's progress, and for the receipt and handling of written emergency information or video description complaints that do not raise immediate issues, as in the television closed captioning context, or whether it should instead adopt contact information requirements comparable to those applicable to the IP closed captioning rules. Further, the *FNPRM* considers whether there are other ways by which entities subject to the emergency information and apparatus requirements can best provide assistance to consumers who are blind or visually impaired with accessing the secondary audio stream. These considerations will allow the Commission to address alternatives that can potentially minimize the burden and costs of compliance for covered entities, including smaller entities.

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

45. None.

B. Paperwork Reduction Act

46. The *FNPRM* may result in new or revised information collection requirements. If the Commission adopts any new or revised information collection requirement, the Commission will publish a notice in the **Federal Register** inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

C. Ex Parte Rules

47. *Permit-But-Disclose*. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that

memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

D. Filing Requirements

48. *Comments and Replies*. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers*: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.

- *Paper Filers*: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All

filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

49. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY-A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

50. *People With Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the FCC's Consumer and

Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

E. Additional Information

51. For additional information on this proceeding, contact Diana Sokolow, Diana.Sokolow@fcc.gov, or Maria Mullarkey, Maria.Mullarkey@fcc.gov, of the Media Bureau, Policy Division, (202) 418-2120.

IV. Ordering Clauses

52. Accordingly, *it is ordered* that, pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111-260, 124 Stat. 2751, and the authority found in sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 330(b), 613, and 617, this *Report and Order and Further Notice of Proposed Rulemaking is adopted*, effective thirty (30) days after the date of publication in the **Federal Register**, except for §§ 79.105(a), 79.105(b)(3), and 79.105(b)(4), and revised § 79.2(c), which shall become effective upon announcement in the **Federal Register** of OMB approval and an effective date of the rules.

53. *It is ordered* that, pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111-260, 124 Stat. 2751, and the authority found in sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 330(b), 613, and 617, the Commission's

rules are hereby amended as set forth in Appendix B.

54. *It is further ordered* that we delegate authority to the Media Bureau and the Consumer and Governmental Affairs Bureau to consider all requests for declaratory rulings pursuant to § 1.2 of the Commission's rules, 47 CFR 1.2, all waiver requests pursuant to §§ 1.3 or 79.105(b)(4) of the Commission's rules, 47 CFR 1.3, 79.105(b)(4), and all informal requests for Commission action pursuant to § 1.41 of the Commission's rules, 47 CFR 1.41, filed under these rules and pursuant to sections 202 and 203 of the CVAA as discussed herein.

55. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order and Further Notice of Proposed Rulemaking* in MB Docket No. 12-107, including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

56. *It is further ordered* that the Commission *shall send* a copy of this *Report and Order and Further Notice of Proposed Rulemaking* in MB Docket No. 12-107 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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