

(e) EPA approves the maintenance plan for the Delaware portion of the Philadelphia-Wilmington, PA-NJ-DE PM<sub>2.5</sub> Nonattainment Area (New Castle County) for the 2006 24-hour fine

particulate matter (PM<sub>2.5</sub>) national ambient air quality standard (NAAQS) submitted by the Secretary of the Delaware Department of Natural Resources and Environmental Control

on December 12, 2012. The maintenance plans include motor vehicle emission budgets in tons per year (tpy) used for transportation conformity purposes for New Castle County, Delaware.

**NEW CASTLE COUNTY MOTOR VEHICLE EMISSIONS BUDGETS FOR THE 2006 24-HOUR PM<sub>2.5</sub> NAAQS**  
[tpy]

Type of control strategy SIP	Year	NO <sub>x</sub>	PM <sub>2.5</sub>	Effective date of SIP approval
Maintenance Plan .....	2017 Interim Budget .....	6,273	199	
	2025 Final Budget .....	6,273	199	9/4/2014

**PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES**

■ 5. The authority citation for Part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

- 6. In § 81.308, the tables for Delaware—1997 Annual PM<sub>2.5</sub> NAAQS [Primary and secondary] and Delaware—2006 24-Hour PM<sub>2.5</sub> NAAQS [Primary and secondary] are amended

by removing footnote number 2 in each table and revising the entries for the Philadelphia-Wilmington, PA-NJ-DE Area to read as follows:

**§ 81.308 Delaware.**

\* \* \* \* \*

**DELAWARE—1997 ANNUAL PM<sub>2.5</sub> NAAQS**

[Primary and secondary]

Designated area	Designation <sup>a</sup>		Classification	
	Date <sup>1</sup>	Type	Date	Type
Philadelphia-Wilmington, PA-NJ-DE: New Castle County .....	8/5/2014	Attainment ....	.....	.....
*	*	*	*	*

<sup>a</sup> Includes Indian Country located in each county or area, except as otherwise specified.

<sup>1</sup> This date is 90 days after January 5, 2005, unless otherwise noted.

\* \* \* \* \*

**DELAWARE—2006 24-HOUR PM<sub>2.5</sub> NAAQS**

[Primary and secondary]

Designated area	Designation <sup>a</sup>		Classification	
	Date <sup>1</sup>	Type	Date	Type
Philadelphia-Wilmington, PA-NJ-DE: New Castle County .....	8/5/2014	Attainment ....	.....	.....
*	*	*	*	*

<sup>a</sup> Includes Indian Country located in each county or area, except as otherwise specified.

<sup>1</sup> This date is 30 days after November 13, 2009, unless otherwise noted.

\* \* \* \* \*

[FR Doc. 2014-18205 Filed 8-4-14; 8:45 am]

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 79**

**[MB Docket No. 11-154; FCC 14-97]**

**Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010; Closed Captioning of Internet Protocol-Delivered Video Clips**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, as part of the Commission's continued implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010 ("CVAA"), it concludes that clips of video programming covered by the statute must be captioned when delivered using Internet protocol ("IP"). The Commission adopts rules governing such captioning and sets out a schedule of deadlines. These requirements will apply where a video programming distributor or provider posts on its Web

site or application a video clip of video programming that it published or exhibited on television with captions on or after the applicable compliance deadline.

**DATES:** Effective September 4, 2014.

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact Diana Sokolow, *Diana.Sokolow@fcc.gov*, of the Policy Division, Media Bureau, (202) 418–2120.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Video Clips Order*, FCC 14–97, adopted on July 11, 2014 and released on July 14, 2014. 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).

#### Paperwork Reduction Act of 1995 Analysis

This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

#### Synopsis

##### I. Introduction

1. One of the Commission's priorities is to ensure that all individuals, especially individuals with disabilities, are able to enjoy the full benefits of broadband technology, including the services that broadband enables such as online video programming. Online viewing of video programming is becoming increasingly significant, and one aspect of this development is that more and more consumers are receiving

news, sports, and entertainment programming in the form of online video clips. In this Second Order on Reconsideration ("Video Clips Order"), as part of our continued implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010 ("CVAA"), we conclude that clips of video programming covered by the statute must be captioned when delivered using Internet protocol ("IP") and set out a schedule of deadlines.

2. When the Commission initially adopted IP closed captioning requirements pursuant to its responsibilities under the CVAA it applied the requirements to full-length video programming and not to video clips.<sup>1</sup> The Commission said that it might in the future extend the IP closed captioning requirements to video clips if it found that consumers who are deaf or hard of hearing are denied access to critical areas of programming, such as news, because the programming is posted online as video clips. In response to a petition for reconsideration filed by consumer groups, and at the Commission's direction, the Media Bureau issued a public notice seeking updated information on the closed captioning of IP-delivered video clips, including the extent to which the industry has voluntarily captioned these clips.<sup>2</sup> After reviewing the record compiled in this proceeding, we find that a significant percentage of video clips continue to remain inaccessible to consumers who are deaf or hard of hearing. In addition, we have reconsidered the Commission's earlier interpretation of the statute and conclude that Congress intended the IP closed captioning requirements to extend to all covered video programming including clips, but left to our discretion the timeline for compliance with this requirement. Accordingly, to implement the statute fully, and in furtherance of Congress's intent to ensure that individuals who are deaf or hard of hearing have better access to online video programming, we reconsider the Commission's earlier decision and revise our regulations to require the provision of closed captioning on video clips delivered using IP when the programming was

published or exhibited on television with captions. As discussed in section III below, this *Video Clips Order* imposes closed captioning requirements on IP-delivered video clips by adopting rules that will:

- Extend the IP closed captioning requirements to IP-delivered video clips if the video programming distributor or provider<sup>3</sup> posts on its Web site or application ("app") a video clip of video programming that it published or exhibited on television in the United States with captions, regardless of the content or length of the video clip.
- Pursuant to our authority to establish an appropriate schedule of deadlines for purposes of the IP closed captioning requirements,<sup>4</sup> adopt a compliance deadline of January 1, 2016 for "straight lift" clips, which contain a single excerpt of a captioned television program with the same video and audio that was presented on television, and January 1, 2017 for "montages," which contain multiple straight lift clips.
- After the applicable deadlines, require IP-delivered video clips to be provided with closed captions at the time the clips are posted online, except as otherwise provided.
- For clips of video programming previously shown live or near-live on television with captions,<sup>5</sup> require captions beginning July 1, 2017 and for the present time allow a grace period of 12 hours after the live programming is shown on television and eight hours after the near-live programming is shown on television before the clip must be captioned online.
- Find that compliance with the new requirements would be economically burdensome for video clips that are in the video programming distributor's or provider's online library before January 1, 2016 for straight lift clips, and January 1, 2017 for montages, and thus exempt this class of video clips from coverage; and
- Generally apply the IP closed captioning requirements to video clips in the same manner that they apply to full-length video programming, which among other things means that the quality requirements applicable to full-length IP-delivered video programming will apply to video clips.

<sup>1</sup> *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 27 FCC Rcd 787, 816–18, para 44–48 (2012) ("IP Closed Captioning Order").

<sup>2</sup> *Media Bureau Seeks Comment on Application of the IP Closed Captioning Rules to Video Clips*, Public Notice, 28 FCC Rcd 16699 (MB, 2013) ("Video Clips PN").

<sup>3</sup> When we use the term "video programming distributor or provider" herein, we invoke the definition of that term in the Commission's IP closed captioning rules, which is "[a]ny person or entity that makes available directly to the end user video programming through a distribution method that uses Internet protocol." 47 CFR 79.4(a)(3).

<sup>4</sup> 47 U.S.C. 613(c)(2)(B).

<sup>5</sup> Industry refers to these video clips as "time-sensitive".

## II. Background

3. In the *IP Closed Captioning Order*, the Commission implemented section 202 of the CVAA by imposing closed captioning requirements on the owners, providers, and distributors of IP-delivered video programming with respect to full-length video programming.<sup>6</sup> The Commission defined “full-length video programming” covered by the rules as video programming that appears on television and is distributed to end users, substantially in its entirety, via IP. By “substantially in its entirety,” the Commission “mean[t] to reference video programming that is distributed via IP as a complete video programming presentation, such as an episode of a television show or movie.”<sup>7</sup>

Accordingly, “full-length video programming” includes, for example, a full-length half-hour program that is missing a few minutes when it is distributed via IP, as well as a full-length program that is posted online in its entirety in multiple segments for easy viewing. The definition of “full-length video programming” excludes “video clips,” which the Commission defined as excerpts of full-length video programming.

4. Although the Commission excluded video clips in the *IP Closed Captioning Order*, it interpreted the legislative history of the CVAA as signaling Congress’s intent to leave open the extent to which the IP closed captioning rules should cover video clips at some point in the future. Hence, the Commission indicated that it might in the future determine that the IP closed captioning requirements should apply to video clips if necessary to provide access to this programming.

Specifically, the Commission stated, “If we find that consumers who are deaf or hard of hearing are not getting access to critical areas of programming, such as news, because of the way the programming is posted (e.g., through selected segments rather than full-length programs), we may reconsider this issue

<sup>6</sup> When we use the term “video programming owner” herein, we invoke the definition of that term in the Commission’s IP closed captioning rules, which is the person or entity that either (i) licenses the video programming to a video programming distributor or provider that makes the video programming available directly to the end user through a distribution method that uses Internet protocol; or (ii) acts as the video programming distributor or provider, and also possesses the right to license the video programming to a video programming distributor or provider that makes the video programming available directly to the end user through a distribution method that uses Internet protocol. 47 CFR 79.4(a)(4).

<sup>7</sup> *IP Closed Captioning Order*, 27 FCC Rcd at 816, para. 44.

to ensure that our rules meet Congress’s intent to bring captioning access to individuals viewing IP-delivered video programming.”

5. In addition, although the Commission did not require closed captioning of IP-delivered video clips, it encouraged video programming owners, providers, and distributors to provide closed captions on such content where they are able to do so. In particular, the Commission “encourage[d] the industry to make captions available on all TV news programming that is made available online, even if it is made available through the use of video clips.”<sup>8</sup> The Commission also said that it might find a violation of the IP closed captioning rules if an entity exhibited a pattern of using video clips as a means of avoiding its closed captioning obligations.

6. A coalition of consumer groups filed a Petition for Reconsideration of the *IP Closed Captioning Order*, arguing, among other things, that the Commission should require captioning of IP-delivered video clips.<sup>9</sup> In an order responding to the Consumer Groups Petition, the Commission noted that consumers were particularly concerned about the availability of captioned news clips, which tend to be live or near-live.<sup>10</sup> Nevertheless, because full-length live and near-live programming became subject to the IP closed captioning requirements only about a month before Consumer Groups filed their petition, the Commission expressed its expectation that entities subject to the IP closed captioning rules would caption an increasing volume of video clips, particularly news clips, given that they would be developing more efficient processes for the captioning of live and near-live programming. The Commission further indicated that it

<sup>8</sup> *Id.* at 818, para. 48.

<sup>9</sup> Consumer Groups, Petition for Reconsideration of the Commission’s Report and Order, at iii, 1–17 (filed Apr. 27, 2012) (“Consumer Groups Petition”). We use the term “Consumer Groups” to reference the signatories of the Consumer Groups Petition or a subset thereof: Telecommunications for the Deaf and Hard of Hearing, Inc.; National Association of the Deaf; Deaf and Hard of Hearing Consumer Advocacy Network; Association of Late-Deafened Adults; Hearing Loss Association of America; Cerebral Palsy and Deaf Organization; and Technology Access Program at Gallaudet University. The Consumer Groups’ petition for reconsideration was published in the Proposed Rules section of the *Federal Register*. See *Petitions for Reconsideration of Action in Rulemaking Proceeding*, MB Docket No. 11-154; Rpt No. 2951, 77 FR 30,485, May 23, 2012.

<sup>10</sup> *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Order on Reconsideration and Further Notice of Proposed Rulemaking*, 28 FCC Rcd 8785, 8804, para. 30 (2013).

would monitor industry actions on the captioning of IP-delivered video clips, and it directed the Media Bureau to issue a public notice to seek updated information on the topic within six months. If the record developed from the public notice “demonstrates that consumers are denied access to critical areas of video programming due to lack of captioning of IP-delivered video clips,” the Commission indicated that it might reconsider its decision not to subject video clips to the IP closed captioning rules.

7. At the Commission’s direction, the Media Bureau issued a public notice seeking updated information on the closed captioning of IP-delivered video clips, including the extent to which industry has voluntarily captioned these clips. In the public notice, the Media Bureau asked whether the Commission should require captioning of IP-delivered video clips, and it invited comment on any issues relevant to this determination. Commenters representing both the industry and consumer groups submitted detailed filings on these issues. The record demonstrates the large volume of IP-delivered video clips currently available to consumers, culled from a multitude of full-length video programs.

## III. Discussion

8. As discussed fully below, we hereby reconsider our prior decision and conclude that the CVAA covers video clips as well as full-length video programming shown online.

Accordingly, at this time we apply the IP closed captioning requirements to video clips if the video programming distributor or provider posts on its Web site or app a video clip of video programming that it published or exhibited on television in the United States with captions. Specifically, for “straight-lift” clips, which contain a single excerpt of a captioned television program with the same video and audio that was presented on television, the IP closed captioning requirements will apply beginning January 1, 2016. For “montage” clips, a single file containing multiple straight lift clips, we adopt an extended compliance deadline of January 1, 2017.<sup>11</sup> We find that it would

<sup>11</sup> We distinguish here between a single file containing multiple straight lift clips and situations where one or more single files are played sequentially, such as through a playlist. For example, a video programming distributor might automatically begin playing a related video file immediately after the initial video retrieved by the consumer concludes, such as another news clip about the same topic or another highlight from the same sporting event. That would not be an example of a montage, but rather, would be straight lift clips that are played in sequence.

be economically burdensome to apply the new requirements to video clips that are in the video programming distributor's or provider's library before the relevant compliance deadline, and accordingly we exempt such video clips from coverage.<sup>12</sup> Further, we will require captioning for video clips of live and near-live programming beginning July 1, 2017, and we will permit such clips to be posted online initially without captions, but require that captions be added to clips of live programming within 12 hours and to clips of near-live programming within eight hours after the conclusion of the television display of the associated video programming<sup>13</sup> that contained the clip.<sup>14</sup> Finally, we generally apply the Commission's IP closed captioning rules for full-length programming, including the quality requirements, to video clips.<sup>15</sup> Below, before addressing the substance of our video clips requirements, we first discuss threshold issues regarding legal authority and procedure, as well as the benefits of requiring closed captioning for IP-delivered video clips. As discussed fully below, we hereby reconsider our prior decision and conclude that the CVAA covers video clips as well as full-length video programming shown online. Accordingly, at this time we apply the IP closed captioning requirements to video clips if the video programming distributor or provider posts on its Web site or app a video clip of video

<sup>12</sup> As in the *IP Closed Captioning Order*, herein we use the term "library" to describe the collection of content a video programming provider or distributor makes available to consumers online. In the *Further Notice*, we seek comment on application of the IP closed captioning requirements to video clips that are added to the video programming distributor's or provider's library after the relevant compliance deadline but before the programming is shown on television with captions ("advance" video clips).

<sup>13</sup> When we use the term "associated video programming" or "associated video program," we mean the televised programming from which the video clip was excerpted.

<sup>14</sup> Throughout this item, when we discuss grace periods of a certain number of hours after the programming is shown on television with captions within which video clips must be captioned online, we will consider the grace period to begin upon the conclusion of the television display of the associated video program. Given the current state of captioning technology, waiting until the conclusion of the program is the most reasonable approach at this juncture since, at that time, the caption file is complete.

<sup>15</sup> We also adopt a *Further Notice* considering four specific issues. Among the issues considered in the *Further Notice* is application of the IP closed captioning requirements to "mash-ups," which occur when a single file contains a compilation of one or more video clips that have been shown on television with captions along with additional content that has not been shown on television with captions. We thus defer, at this time, application of our rules with respect to mash-ups.

programming that it published or exhibited on television in the United States with captions. Specifically, for "straight-lift" clips, which contain a single excerpt of a captioned television program with the same video and audio that was presented on television, the IP closed captioning requirements will apply beginning January 1, 2016. For "montage" clips, a single file containing multiple straight lift clips, we adopt an extended compliance deadline of January 1, 2017.<sup>16</sup> We find that it would be economically burdensome to apply the new requirements to video clips that are in the video programming distributor's or provider's library before the relevant compliance deadline, and accordingly we exempt such video clips from coverage.<sup>17</sup> Further, we will require captioning for video clips of live and near-live programming beginning July 1, 2017, and we will permit such clips to be posted online initially without captions, but require that captions be added to clips of live programming within 12 hours and to clips of near-live programming within eight hours after the conclusion of the television display of the associated video programming<sup>18</sup> that contained the clip.<sup>19</sup> Finally, we generally apply the Commission's IP closed captioning rules for full-length programming, including the quality requirements, to video

<sup>16</sup> We distinguish here between a single file containing multiple straight lift clips and situations where one or more single files are played sequentially, such as through a playlist. For example, a video programming distributor might automatically begin playing a related video file immediately after the initial video retrieved by the consumer concludes, such as another news clip about the same topic or another highlight from the same sporting event. That would not be an example of a montage, but rather, would be straight lift clips that are played in sequence.

<sup>17</sup> As in the *IP Closed Captioning Order*, herein we use the term "library" to describe the collection of content a video programming provider or distributor makes available to consumers online. In the *Further Notice* below, we seek comment on application of the IP closed captioning requirements to video clips that are added to the video programming distributor's or provider's library after the relevant compliance deadline but before the programming is shown on television with captions ("advance" video clips).

<sup>18</sup> When we use the term "associated video programming" or "associated video program," we mean the televised programming from which the video clip was excerpted.

<sup>19</sup> Throughout this item, when we discuss grace periods of a certain number of hours after the programming is shown on television with captions within which video clips must be captioned online, we will consider the grace period to begin upon the conclusion of the television display of the associated video program. Given the current state of captioning technology, waiting until the conclusion of the program is the most reasonable approach at this juncture since, at that time, the caption file is complete.

clips.<sup>20</sup> Below, before addressing the substance of our video clips requirements, we first discuss threshold issues regarding legal authority and procedure, as well as the benefits of requiring closed captioning for IP-delivered video clips.

#### A. Threshold Issues Regarding Legal Authority and Procedure

9. We find that the CVAA mandates that all "video programming delivered using Internet protocol that was published or exhibited on television with captions after the effective date of such regulations," including clips of that programming, be provided with closed captioning.<sup>21</sup> The statutory text, quoted above, does not distinguish between full-length video programming and video clips; therefore, as explained below, we believe the statute is most reasonably interpreted as covering excerpts of full-length programming as well as complete and substantially complete programs. To the extent the *IP Closed Captioning Order* stated that the CVAA's captioning provisions did not cover clips of video programming or did not cover them until some future date, we reconsider and reject that statutory interpretation. Rather, we find that video clips are included within the definition of video programming, and thus the statute mandates that clips of video programming covered by the statutory definition be captioned when delivered by IP.

10. Clips of programming shown on television meet the statute's definition of "video programming," which is "programming by, or generally considered comparable to programming provided by a television broadcast station, but not including consumer-generated media (as defined in section 153 of this title)."<sup>22</sup> As we stated in the *IP Closed Captioning Order*, "programming 'that was published or exhibited on television' by definition constitutes 'video programming,' since anything that was published or exhibited on television must be provided by, or be comparable to programming provided by, a television broadcast station." There is nothing in the definition of "video programming" that expressly excludes video clips or

<sup>20</sup> We also adopt a *Further Notice* considering the four specific issues listed above. Among the issues considered in the *Further Notice* is application of the IP closed captioning requirements to "mash-ups," which occur when a single file contains a compilation of one or more video clips that have been shown on television with captions along with additional content that has not been shown on television with captions. We thus defer, at this time, application of our rules with respect to mash-ups.

<sup>21</sup> 47 U.S.C. 613(c)(2)(A).

<sup>22</sup> *Id.* 613(h)(2).

excerpts of programming. Indeed, only one category of programming is expressly excluded from the definition and that is “consumer-generated media,” a category not relevant for purposes here. The CVAA does not further explain what is meant by programming that is “generally considered comparable to programming provided by a television broadcast station.” However, nothing in the statutory text suggests an excerpt of programming may not be considered “comparable” to broadcast programming under section 202.<sup>23</sup> To the contrary, section 202 instructs us to take into account, in establishing compliance deadlines, whether the programming is “edited for Internet distribution,” indicating that Congress contemplated that the version of a television program provided online may differ, and in fact, be provided in truncated form, from the original airing shown on television. We therefore reject the argument that the term “video programming” does not encompass video clips on the theory that “television broadcasters and multi-channel video programming distributors do not transmit free-standing clips.”<sup>24</sup>

<sup>23</sup> A similar definition of “video programming” appears in other provisions of the Communications Act of 1934, as amended (the “Act”). See, e.g., 47 U.S.C. 522(20) (“‘video programming’ means programming provided by, or generally considered comparable to programming provided by, a television broadcast station”). We note the Commission has not construed that term in other contexts to exclude excerpts or clips from the definition. See, e.g., *Closed Captioning and Video Description of Video Programming*, Report and Order, 13 FCC Rcd 3272 (1997) (“1997 Closed Captioning Order”) (implementing the requirement of Section 713 of the Act that video programming be closed captioned on television); *Closed Captioning of Video Programming*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 2221 (2014) (adopting captioning quality standards and technical compliance rules for video programming).

<sup>24</sup> See DiMA Comments at 3; see also NCTA Reply at 3. DiMA asserts that “a 2-minute clip from ‘The Late Show with David Letterman’ is not ‘comparable to’ a full-length television show any more than 2-pages from a compilation of the Communications Act is ‘comparable to’ the full text of the statute.” DiMA Mar. 20 *Ex Parte* Letter at 1. We disagree, and conclude instead that a portion of a program that was shown on television with captions is no less “comparable to programming provided by a television broadcast station” than the complete program itself. Contrary to DiMA’s interpretation, the CVAA is not limited to programming comparable to *full-length* programming provided by a television broadcast station. See also Reply Comments of the Association of Public Television Stations and the Public Broadcasting Service at 3 (“PTV Reply”) (arguing that the dictionary meaning of “programming” and “program” implies that “programs” subject to the CVAA’s IP closed captioning requirements are full-length shows and not video clips). We disagree with PTV’s approach because, as explained above, we find it consistent with the statutory text to conclude that “video programming” encompasses video clips.

For the reasons stated herein, we believe the better reading of the statute is that clips of video programming are covered by section 202.

11. We also reject the contention that the legislative history of the CVAA compels us to interpret section 202 to exclude video clips from the IP closed captioning requirements. The Senate and House Committee Reports state that Congress “intends, at this time, for the regulations to apply to full-length programming and not to video clips or outtakes.” On reconsideration, we reject the Commission’s statements in the *IP Closed Captioning Order* suggesting that this legislative history indicated Congress’s intent to authorize the Commission to adopt rules requiring closed captioning of IP-delivered video clips at some future time.<sup>25</sup> After examining this issue in more detail, we believe the better reading of this language is that Congress intended that the statutory captioning requirements cover video clips, but gave the Commission discretion to defer the compliance deadline for video clips when the Commission set the schedule of compliance deadlines under section 202. This interpretation is consistent with the statute, which gives the Commission considerable discretion in establishing “an appropriate schedule of deadlines for the provision of closed captioning” and directs the Commission to consider factors that may affect compliance.<sup>26</sup> If Congress had intended to exclude excerpts from the scope of section 202, we would expect it to have expressly done so in the statute, as it did with respect to “consumer-generated media.”<sup>27</sup> Similarly, if Congress had intended to delay to some future date Commission authority to adopt rules for video clips, we would expect it to have included such a limitation in the statute. For these reasons, we believe our reading of the legislative history on reconsideration is most consistent with the statutory language. As discussed below, we now set phased-in compliance deadlines for captioning of IP-delivered video clips that fall within the definition of video

<sup>25</sup> We are unpersuaded by Consumer Groups’ argument that the legislative history’s reference to “video clips” meant to refer to material that is exempt from the television closed captioning rules. Consumer Groups Mar. 28 *Ex Parte* Letter at 2. The television closed captioning rules exempt “[i]nterstitial material, promotional announcements, and public service announcements that are 10 minutes or less in duration.” 47 CFR 79.1(d)(6). Had Congress merely meant to carry over this exemption to IP-delivered programming, it would have cited that rule or used similar language. This exemption does not use the term “video clips.”

<sup>26</sup> 47 U.S.C. 613(c)(2)(B).

<sup>27</sup> See *id.* 613(h)(2).

programming (“programming by, or generally considered comparable to programming provided by a television broadcast station, but not including consumer-generated media (as defined in section 153 of this title)”).<sup>28</sup>

12. Commenters who argue that Congress did not intend the Commission to apply the IP closed captioning regulations to video clips ignore the statutory language. For example, the Digital Media Association (“DiMA”) disagrees with the Commission’s interpretation of “at this time” in the legislative history, and asserts instead that the phrase actually means that video clips are not covered “under this statute.”<sup>29</sup> To the contrary, had Congress intended to carve out video clips from coverage of video programming, it could have said so clearly, rather than using the phrase “at this time,” which suggests merely a temporal meaning. If the reports had said that Congress “intends for the regulations to apply to full-length programming and not to video clips,” that would suggest that Congress understood video clips not to be covered by the statutory language. But the use of the phrase “at this time” suggests that the Commission’s regulations could require captioning in the future. That could only happen if video clips fall within the ambit of “video programming.” Further, applying the IP closed captioning requirements to video clips is consistent with both the text and stated purpose of the CVAA, which was “to help ensure that individuals with disabilities are able to fully utilize communications services and better access video programming.”<sup>30</sup> Requiring closed captioning of IP-delivered video clips will help ensure that individuals who are deaf or hard of hearing will have access to all covered video programming. And, as discussed above, the temporal reference in the legislative

<sup>28</sup> *Id.* 613(h)(2).

<sup>29</sup> According to DiMA, the reference to outtakes in the legislative history supports its interpretation because it argues outtakes are never shown on television, and thus it cannot be that Congress intended the Commission to reconsider covering outtakes at some point in the future. Neither the statute nor the legislative history indicates what the Congressional reports mean by use of the term “outtakes.” For purposes of the IP captioning rules the Commission defined “outtakes” not covered by the rules as “[c]ontent that is not used in an edited version of video programming shown on television.” 47 CFR 79.4(a)(2), (13). Thus, outtakes that have never been shown on television need not be captioned when provided online. To the extent content that could be described in common parlance as “outtakes” does appear on television with captions, however, it must be captioned when provided online.

<sup>30</sup> Senate Committee Report at 1; House Committee Report at 19.

history is consistent with the text of the statute, which gives the Commission discretion to adopt an appropriate schedule of compliance deadlines taking into consideration factors that may warrant a longer compliance period.

13. Further, we conclude that it is procedurally appropriate for us to act on this issue now. We disagree with those commenters who suggest that the Consumer Groups Petition was procedurally defective under section 1.429(b) of the Commission's rules. Consumer Groups argued earlier in the proceeding that video clips (as the Commission has defined the term)<sup>31</sup> should be subject to the IP closed captioning rules, and Consumer Groups requested reconsideration, arguing that the Commission wrongly decided the issue. We find that the Consumer Groups Petition does not rely entirely on arguments that the Commission already considered and rejected because it explicitly describes how the video clips exemption is denying consumers who are deaf or hard of hearing access to critical areas of programming, and it presents more up-to-date information than that available at the time the Commission released the *IP Closed Captioning Order*. In any event, even if the petition does rely on facts or arguments not previously presented to the Commission, grant of the petition still would be proper under our rules because of the clear public interest benefits of requiring closed captioning of IP-delivered video clips, as discussed below. The Commission's rules provide that grant of a petition for reconsideration that "relies on facts or arguments which have not previously been presented to the Commission" is permissible if "[t]he Commission determines that consideration of the facts or arguments relied on is required in the public interest."<sup>32</sup> For these reasons, it is procedurally appropriate to consider the Consumer Groups Petition.

14. We do not believe that seeking further comment is necessary or appropriate before we can impose any closed captioning requirements on IP-delivered video clips. DiMA claims that the Commission should issue a notice of proposed rulemaking before imposing any closed captioning requirement on IP-delivered video clips, to provide interested parties with an opportunity to comment and to obtain feedback on

<sup>31</sup> Consumer Groups did, however, previously support a narrow exclusion for video clips under 30 seconds in length that contain only promotional materials or advertising for full-length programming. See Comments of the Consumer Groups on the NPRM at 18–20.

<sup>32</sup> See 47 CFR 1.429(b)(3).

specific proposed rules. We find that a further notice of proposed rulemaking is neither procedurally necessary nor useful prior to imposing the requirements we adopt in this *Video Clips Order*. This proceeding has included a petition for reconsideration filed by Consumer Groups urging the Commission to require IP-delivered video clips to be captioned.<sup>33</sup> Following the filing of that petition, the Commission released an order on reconsideration deferring a final ruling on the video clips issue raised in the Consumer Groups Petition and directing the Media Bureau to seek updated information on this issue. A public notice was published in the **Federal Register** seeking comment to further inform the Commission's consideration of the video clips issue and asking "whether, as a legal and/or policy matter, the Commission should require captioning of IP-delivered video clips."<sup>34</sup> Thus, adequate notice of the proposed rules has been provided and issuing a further notice of proposed rulemaking before imposing the closed captioning requirements for IP-delivered video clips adopted herein would be redundant. Instead, we proceed to this *Video Clips Order* based on the ample record already compiled, including the additional comments filed recently in response to the public notice. In contrast, for those issues on which we do not have an adequate record for a decision, we seek further comment in the Further Notice of Proposed Rulemaking.

#### B. Impact of Requiring Closed Captioning of Internet Protocol-Delivered Video Clips

15. While we commend the industry for its voluntary efforts to caption IP-delivered video clips, we also recognize that many such video clips remain uncaptioned. The record demonstrates that over the past few years, industry has been exhibiting an increasing volume of online video programming in the form of video clips, and these clips are increasingly captioned. Specifically, while Consumer Groups found in May

<sup>33</sup> See *Petitions for Reconsideration of Action in Rulemaking Proceeding*, MB Docket No. 11–154; Rpt No. 2951, 77 FR 30,485, May 23, 2012.

<sup>34</sup> *Video Clips PN*, 28 FCC Rcd 16699. The *Video Clips PN* was published in the proposed rules section of the **Federal Register**. In seeking comment on the video clips proposal, the *Video Clips PN* also referenced the Initial Regulatory Flexibility Analysis included in the *NPRM* in this proceeding, which identified small entities that might be affected. See *Media Bureau Seeks Comment on Application of the IP Closed Captioning Rules to Video Clips*, MB Docket No. 11–154; 78 FR 78,319, December 26, 2013. We received comments from both the industry and consumer groups in response to the *Video Clips PN*.

2013 that 23 percent of news clips and 10 percent of non-news clips were captioned, the more recent data that Consumer Groups submitted in February 2014 indicates that 57 percent of news clips and 18 percent of non-news clips are captioned.<sup>35</sup> Nonetheless, despite this increase in captioning of IP-delivered video clips, many consumers are denied access to the large volume of clips that remain uncaptioned. A Commission requirement for captioning IP-delivered video clips will ensure that the content, including critical news programming, will be accessible to individuals who are deaf or hard of hearing, thus significantly benefiting consumers and serving the stated public interest goal of the CVAA. Such a requirement is particularly important because, as stated above, more and more consumers are receiving news, sports, and entertainment programming in the form of online video clips. Consumer Groups explain that a Commission requirement is necessary because, although some video programming providers and distributors "have greatly increased their use of captions for video clips, many others captioned few or none of their clips."<sup>36</sup> The record demonstrates that because of the large volume of IP-delivered video programming that is posted online as video clips, much of which is not captioned, consumers who are deaf or hard of hearing are being denied access to critical areas of programming, such as news, contrary to the intent of the CVAA.<sup>37</sup>

<sup>35</sup> We acknowledge that some errors in the Consumer Groups study detract from Consumer Groups' claims, such as the study's inclusion of some clips of programming that were not shown on television in this country with captions, its failure to consider that some closed captioning problems experienced may have resulted from the use of apparatus that were not yet required to comply with the Commission's rules governing the accessibility of video apparatus (see 47 CFR 79.103), and its failure to properly categorize certain material as "clips" that were not required to be captioned as opposed to "segments" for which captioning was required. Notwithstanding these shortcomings, the remaining data provided by the Consumer Groups confirms that a significant number of IP-delivered video clips today are not captioned.

<sup>36</sup> Consumer Groups Comments at 17.

<sup>37</sup> An additional benefit of requiring closed captioning of IP-delivered video clips relates to the Commission's current distinction between video clips and segments. Specifically, while the *IP Closed Captioning Order* exempted video clips from the IP closed captioning requirements, it required that IP-delivered video programming be captioned when the full-length video program is posted online in multiple segments. Today's decision to require closed captioning of IP-delivered video clips and not just segments will eliminate confusion for consumers looking for captioning and for industry seeking to comply with our requirements, since there will be no need to determine whether a particular piece of short-form content is a video clip or a segment.

16. Contrary to the suggestions of some commenters, accessing captioned full-length programming online or reading an article about the topic covered in an uncaptioned video clip is not a full substitute for viewing a captioned video clip. If such suggestions were true, the Internet would not contain the large volume of video clips that it does because access to such alternatives would adequately serve viewers who are not deaf or hard of hearing. Public Citizen states that the lack of closed captioning on IP-delivered video clips “disadvantages and marginalizes deaf and hard of hearing people.” We agree that the very fact that programmers make video clips available when the full-length program is also available online demonstrates the intrinsic value of these clips. For these reasons, we believe that interpreting section 202 to cover video clips is necessary to fully effectuate the statutory purpose and that it is appropriate to require compliance with the statute under the schedule we adopt in this order.

17. As explained above, we interpret the statute as requiring closed captioning of IP-delivered video clips and we find that there are obvious public interest benefits of imposing such a requirement. Industry commenters assert, however, that they will face some financial and technical challenges in complying with such a requirement. One of the biggest challenges, they claim, is ensuring that the captions are properly synchronized. Synchronization is of particular concern because if captions lag behind the audio, which often occurs during live programming, part of the applicable captions may be missing when a clip is excerpted from the programming. As a result, some industry commenters indicate that they must re-author the caption file for video clips. Some industry commenters assert that captioning online clips is time-consuming, labor-intensive, and costly, particularly given the enormous volume of IP-delivered video clips. While future technological developments will likely automate the process, they report that the development of this technology remains ongoing. Industry commenters also caution that a requirement to caption video clips might cause some entities to cease posting video clips online. Contrary to the industry’s claims about the time-consuming nature of captioning video clips, however, one captioning company, VITAC, indicates that it captions over 50 short-form videos (30–60 seconds each) per day for one client, and that captioners create the

captions for each of these videos within 15–20 minutes of receiving them.

18. Based on the record before us, we find that compliance with a captioning requirement for IP-delivered video clips will not be overly burdensome. This is particularly true given the reasonable timeframes we are providing for entities to come into compliance, as well as the grace period within which captions may be added to video clips of live and near-live programming. Further, consistent with the text of the CVAA, the scope of the IP closed captioning requirements is limited to video programming “that was published or exhibited on television with captions,”<sup>38</sup> such that online captions only will be required for content that already has been televised with captions. The fact that some video programming distributors already caption a portion of their video clips demonstrates that the necessary technology exists and that captioning video clips is economically feasible. We expect that the lengthy compliance deadlines of January 1, 2016 for straight lift clips and January 1, 2017 for montages will alleviate the asserted difficulties with captioning IP-delivered video clips, particularly given information provided on the record by captioners and others indicating that solutions already exist to facilitate captioning of IP-delivered video clips.

#### *C. Closed Captioning Requirements for Internet Protocol-Delivered Video Clips*

##### **1. Covered Video Clips**

19. The CVAA directs the Commission to require closed captioning of IP-delivered video programming when the programming “was published or exhibited on television with captions after the effective date of [the] regulations.”<sup>39</sup> Accordingly, while the closed captioning requirements for IP-delivered video clips will apply to clips of video programming that was shown on television with captions, they will not apply to clips of video programming that was not shown on television with captions.<sup>40</sup> To the extent that a video clip posted online contains an audio track that is substantially different from that aired on television, we will not consider the video clip to have been shown on television with captions and thus captions will not be required online. For example, we understand that sometimes a video clip from a sporting

event is later posted online with different audio than the audio that accompanied the same video on television. The online version of the video clip with different audio would not be covered by the CVAA because the video programming at issue was not shown on television with captions; rather, where the audio is substantially different, the televised captions would not correspond to the audio that accompanies the online clip.

20. We interpret the CVAA to require closed captioning of IP-delivered video clips regardless of the content or length of the clip.<sup>41</sup> Some commenters have argued that we should apply the closed captioning requirements only to clips with certain content or only to clips above a certain length. We disagree. Rather, we find that it was Congress’s intent in enacting the CVAA to ensure that consumers who are deaf or hard of hearing have access to video programming that is shown on television with captions, including video programming posted online as video clips, regardless of whether the video clips contain news, sports, entertainment, or any other type of content. A finding to the contrary is not supported by the CVAA’s overarching goal to provide full programming access to individuals who are deaf or hard of hearing. Similarly, we do not limit the applicability of the closed captioning requirements only to clips of a certain length. We find no basis on which to distinguish between clips that last 10 seconds and those that last 10 minutes. By deciding to make a clip available via the Internet, a video programming distributor or provider has made a decision that it has value for the general public, and the CVAA requires that when the same programming was shown on television with captions, the clip must also be made accessible online to consumers who are deaf or hard of hearing. This comprehensive approach will be more administratively efficient for industry because companies will not need to determine whether clips contain certain content or are of a certain minimum length.

21. At the present time, the closed captioning requirements for IP-delivered video clips will apply if the video programming provider or distributor (as those terms are defined in the IP closed captioning rules) posts on its Web site or app a video clip of video programming that it published or exhibited on television in the United

<sup>38</sup> 47 U.S.C. 613(c)(2)(A).

<sup>39</sup> 47 U.S.C. 613(c)(2)(A).

<sup>40</sup> We clarify, however, that the addition of a brief introduction or advertisement to an otherwise covered video clip will not exempt the clip from the IP closed captioning rules.

<sup>41</sup> Except as otherwise provided herein, as with IP closed captioning of full-length video programming, once the captioning requirement is triggered we will expect captions to be available immediately for IP-delivered video clips.

States with captions on or after the applicable compliance deadline. NAB and the National Cable and Telecommunications Association (“NCTA”) propose that the requirements for closed captioning IP-delivered video clips only apply to a person or entity that (a) exhibits the television program with captions on its linear channel or network; (b) has the rights to exhibit a clip of that program with captions via IP; and (c) makes the clip available via a Web site or app operated solely by the person or entity.<sup>42</sup> NAB and NCTA are concerned that a broader application of the IP closed captioning rules to video clips may hold entities responsible for issues that they do not control. In recognition of these concerns, we will limit the current application of the rules as described above. For example, if XYZ Network posts a video clip on a Web site or app that it operates, and the video clip is from programming that appeared on XYZ Network with captions after the compliance date, then the IP closed captioning requirements would apply. If, however, XYZ Network posts the video clip on a third party Web site, then the IP closed captioning requirements would not apply. We defer application of the IP closed captioning rules with respect to the provision of video clips by third party video programming providers and distributors, such as Hulu, or other services that may embed or host video programming, such as news Web sites, pending action on the *Further Notice*.

## 2. Compliance Deadline

22. At the outset, we clarify that there are several types of video clips at issue. First, the industry uses the term “straight lift” clips to reference a single excerpt of a captioned television program with the same video and audio that was presented on television. Such video clips will be subject to the January 1, 2016 deadline discussed below. Second, the industry uses the term “montage” to reference a single file that contains multiple straight lift clips, and as explained below, the industry has persuasively argued that compliance may be more difficult with regard to such clips. Accordingly, montages will be subject to an extended deadline of January 1, 2017. Third, the industry uses the term “mash-up” to reference a single file that contains a compilation of

<sup>42</sup> NAB and NCTA have not explained the meaning or relevance of some terms in their proposal. Specifically, we are unclear what they mean by “linear” channel or network and by “rights to exhibit.” Accordingly, we believe our formulation stated above better captures the universe of covered entities.

one or more video clips that have been shown on television with captions and additional content that has not been shown on television with captions. For the reasons discussed in the *Further Notice*, we seek further comment on the proper treatment of this category of video clips in the *Further Notice*. With respect to closed captioning of IP-delivered video clips of video programming shown live or near-live on television, we require captions beginning July 1, 2017. At the same time, due to the time-sensitive nature of the posting of a live or near-live video clip we grant a grace period that requires that captions be added to clips of live programming within 12 hours and to clips of near-live programming within eight hours after the associated video programming is published or exhibited on television in the United States with captions. As discussed below, the later deadlines for montages and video clips taken from associated live and near-live television programming provide additional time because of the challenges associated with captioning these types of clips, and to allow for the development of technological advances that will facilitate a streamlined process for posting these clips with captions online. If we receive a petition seeking to extend these deadlines and find that technology has not progressed as expected with respect to posting these clips online, we will act promptly on the petition and extend the compliance deadlines if the petition demonstrates that technology is not available to achieve compliance.

23. As stated above, we will require compliance with the new requirements for closed captioning of IP-delivered video clips by January 1, 2016 for “straight lift” video clips. We define “straight lift” video clips as those that contain a single excerpt of a captioned television program with the same video and audio that was presented on television. As of that date, IP-delivered video clips must be provided with closed captions if the associated video programming is published or exhibited on television in the United States with captions on or after January 1, 2016. Consumer Groups and captioning companies support a one-year deadline. In contrast, some members of the industry have requested a two-year phase-in because of the volume of video clips and the difficulty in captioning them,<sup>43</sup> while others have supported a

<sup>43</sup> In the absence of record information on the NCTA proposal, including for example the volume of clips that do not include time-coded captions (that is, captions which directly reference the pieces

deadline of 18 months after adoption of the rules. Members of the industry have cautioned that they may have compliance difficulties if faced with a requirement for captioning IP-delivered video clips at this juncture, when they are still working to implement the IP closed captioning requirements for full-length video programming. Balancing consumers’ desire for prompt access to this content and the industry’s claims about the difficulty with compliance, we adopt a deadline of January 1, 2016 for closed captioning of IP-delivered “straight lift” video clips. The first compliance deadline for closed captioning of full-length IP-delivered video programming was six months after the date the *IP Closed Captioning Order* was published in the **Federal Register**, as supported by the Video Programming Accessibility Advisory Committee (“VPAAC”), which consisted of representatives from both the industry and from consumer groups. Given that in general the same requirements that apply to captioning a full-length IP-delivered video program will apply to captioning an IP-delivered video clip, and that the industry has now had nearly two years of experience with captioning programming online, we find that the January 1, 2016 deadline will be sufficient for the industry to achieve compliance. During this time, we encourage the industry to work toward automating closed captioning of IP-delivered video clips and to eliminate problems associated with distorting closed caption files that may occur when video clips are created, thus reducing the labor and costs involved.

24. We find that an extended compliance deadline of January 1, 2017 is justified for “montages.” We define a montage as programming contained in a single file that includes multiple straight lift clips.<sup>44</sup> That is, a montage is a single online file containing multiple video clips “taken from different parts of a captioned full-length TV program or from different captioned TV programs.”<sup>45</sup> The record demonstrates that an extended compliance deadline is needed for such programming because industry is concerned that technology

of video they describe), the difficulties with captioning clips that do not include time-coded captions, and why solutions to such difficulties cannot be implemented prior to the compliance deadline, we decline to adopt a distinction between video clips that include embedded or time-coded captions and those that do not.

<sup>44</sup> These multiple straight lift clips may be sequential (*i.e.*, in the same order in which they appeared on television) or non-sequential (*i.e.*, in a different order than the order in which they appeared on television).

<sup>45</sup> NCTA Apr. 25 Ex Parte Letter at 2.

does not currently exist to use the same caption files that were used on television. The record supports our expectation that by January 1, 2017, technology will be better able to automate this process, enabling the industry to modify the televised captions associated with each video clip, rather than re-authoring captions where a single file contains multiple straight lift clips.<sup>46</sup> Accordingly, closed captions will be required where a single IP-delivered file contains multiple straight lift clips beginning January 1, 2017, if the associated video programming is published or exhibited on television in the United States with captions on or after January 1, 2017. We expect that the industry will not use this extended compliance deadline to delay compliance with the closed captioning requirements, for example, by creating a single file that contains two video clips that otherwise would have been posted separately with captions and then claiming that it is subject to the later January 1, 2017 compliance deadline.

25. We find the addition of a brief introduction or advertisement to an otherwise covered video clip will not exempt the clip from the IP closed captioning rules, regardless of whether the video clip is a straight clip or a montage.<sup>47</sup> At the same time, we understand that often, a single file may contain a compilation of one or more video clips that have been shown on television with captions, interspersed with additional content that has not been shown on television with captions. The industry refers to such program files as “mash-ups.” We seek comment on the application of the CVAA to mash-ups in the *Further Notice*.

26. Commenters have expressed concerns about captioning IP-delivered video clips that serve a promotional purpose, but these concerns are largely focused on promotional clips that are posted online before the programming is shown on television, an issue that will be explored in the *Further Notice*.<sup>48</sup> A non-advance promotional video clip

<sup>46</sup> If industry finds that sufficient automation does not exist by the deadline, it may file a request to extend the deadline.

<sup>47</sup> Of course, a brief introduction that was not captioned on television would not be required to be captioned when accompanying an IP-delivered video clip. Only the portion of the video clip that was televised with captions would need to be captioned online.

<sup>48</sup> We note that at this time, any difficulty with tracking down video clips will be minimized by the fact that application of the requirement to caption advance clips is under consideration in the *Further Notice*, and because the requirement currently only applies where the video programming provider or distributor posts on its Web site or app a video clip of video programming that it published or exhibited on television.

may be a single “straight-lift” excerpt of captioned televised content, in which case we see no reason that the January 1, 2016 deadline discussed above should not apply. Once the IP closed captioning requirements are triggered by the content being shown on television with captions, the CVAA does not differentiate between clips of promotional material and other types of clips, but rather, broadly requires video programming that has been shown on television with captions to be made accessible to those consumers who are deaf or hard of hearing. We see nothing in the CVAA or its legislative history that suggests Congress intended to exclude from coverage video clips that are promotional in nature. For the same reasons, a non-advance promotional video clip that contains multiple straight lift clips of video programming that has been shown on television with captions, and thus is a montage, will be subject to the January 1, 2017 deadline discussed above.

### 3. Video Clips of Live and Near-Live Programming

27. In general, as with IP closed captioning of full-length video programming, once the captioning requirement is triggered we will expect captions to be available immediately for IP-delivered video clips. In other words, at the time of being posted online, covered video clips must be closed captioned. While Hulu has indicated that a “grace period” may be necessary in some instances if technical, editorial, or administrative issues arise, we expect industry to work prior to the compliance deadline to develop processes that will enable them to make captions available for IP-delivered video clips without any delay once the video programming has been shown on television with captions. The record does not support a contrary approach, with an exception for video clips of live or near-live programming.

28. We find that there are unique concerns with IP-delivered video clips of live and near-live programming given its time sensitivity. If distributors were prohibited from posting video clips of live and near-live programming<sup>49</sup> online until captions are available, then all consumers would be denied access to potentially time-sensitive information during that time. A grace period would provide distributors with flexibility to

<sup>49</sup> “Live programming” is “[v]ideo programming that is shown on television substantially simultaneously with its performance.” 47 CFR 79.4(a)(7). “Near-live programming” is “[v]ideo programming that is performed and recorded less than 24 hours prior to the time it was first aired on television.” 47 CFR 79.4(a)(8).

post time-sensitive clips online without delay. CBS requests a “grace period of several hours” before we require video clips of live or near-live programming to be captioned online, explaining that otherwise entities other than the authorized video programming providers and distributors may be the first to distribute the content online. CBS explains that “[t]his is not important simply to help build a programmer’s solid ‘first-to-the-news’ reputation, but it is also important from an accessibility perspective. If a clip goes viral and generates a large number of views over time, it is important that it be a version controlled by the station, which can augment the clip with online captions once they are generated.” In contrast, NAB and NCTA acknowledge the feasibility of a 12-hour grace period, while DIRECTV requests a 24-hour grace period. Further, DiMA indicates that it is more difficult to caption video clips of live programming than to caption video clips of prerecorded programming.

29. Given the above difficulties associated with captioning video clips of live and near-live programming, we will not require compliance for this category of video clips until July 1, 2017.<sup>50</sup> Additionally, for the present time, we will permit closed captions to be provided on IP-delivered video clips of live programming up to 12 hours after the associated video programming is published or exhibited on television in the United States with captions, and we will permit closed captions to be provided on IP-delivered video clips of near-live programming up to eight hours after the associated video programming is published or exhibited on television in the United States with captions.<sup>51</sup>

<sup>50</sup> Consumer Groups argue that we should consider a more limited category of video clips than clips of live and “near live” programming, and “that the industry should bear the onus of articulating a workable definition that encompasses only *truly* time-sensitive’ clips. . . .” We disagree, and find instead that industry’s concerns about captioning this category of video clips apply broadly to video clips of live and near-live programming. Additionally, attempting to define this category based on video clips with content that has the potential to “go viral,” as Consumer Groups suggest, would be inherently subjective and inevitably reflect the perspective and values of the person evaluating the content.

<sup>51</sup> We reiterate that we will consider the grace period to begin upon the conclusion of the television display of the associated video program. In addition, while NAB and NCTA have requested that we limit the 12-hour grace period to business hours, we decline to do so because many programs are captioned around the clock, and a 12-hour grace period will allow daytime staff to assist with captioning of video clips posted online overnight. The 12-hour grace period for video clips of live programming will address DIRECTV’s concerns with what we refer to as “NFL Highlight Clips” and “Short Cuts.” When a viewer is watching one

This means that unlike other IP-delivered video clips, video clips of live and near-live programming may be posted online without captions initially, with captions added within 12 hours (for live) or eight hours (for near-live) of the video programming being shown on television.<sup>52</sup> We find that the 12- and eight-hour grace periods appropriately balance industry's concern with captioning time-sensitive IP-delivered video clips, with the fact that it is just as important for individuals who are deaf or hard of hearing to have access to these clips as it is for other members of the general public. One company has indicated that a grace period of "several hours" is workable. We find that 12 and eight hours are reasonable timeframes for all companies subject to the requirement to follow beginning July 1,

National Football League ("NFL") game on a mobile device, he or she may opt to view NFL Highlight Clips from another game. Short Cuts are commercial-free replay compilations of highlights from every NFL regular season game, allowing subscribers to view a game in 30 minutes or less by removing all broadcast "down time," such as huddles, time-outs, and instant replay review. DIRECTV expresses concerns about captioning IP-delivered NFL Highlight Clips and Short Cuts. Specifically, DIRECTV explains that the volume of NFL Highlight Clips and the speed at which they are created and distributed makes DIRECTV unable to provide them with "intelligible captioning." For both Short Cuts and NFL Highlight Clips, DIRECTV states that "[t]he process of breaking the game feed into such video clip highlights can cause the captioning to become garbled and unrecognizable" and that the process of recreating or restoring the captions "would introduce delays that would substantially undermine the business rationale for these time-sensitive products." The rules for video clips of live programming will apply to NFL Highlight Clips and thus will address DIRECTV's concerns. The rules for video clips of live programming also will apply to Short Cuts to the extent Short Cuts are not televised with captions. We understand that a version of Short Cuts is made available on television without captions, and DIRECTV states that "[t]he television version of Short Cuts is exempt from the captioning requirement due to the very limited gross revenues associated with this service." We take no position in this *Video Clips Order* as to whether a television closed captioning exemption in fact applies to Short Cuts. We clarify, however, that if the televised version of Short Cuts is captioned when shown on television in the future, then the online version will be subject to the IP closed captioning rules already applicable to full-length programming to the extent that they are in essence the same program. See 47 CFR 79.4(b). In other words, once Short Cuts become subject to the IP closed captioning requirements for full-length programming (*i.e.*, they are televised with captions), the extended compliance deadline and grace period applicable to video clips of live programming will no longer apply.

<sup>52</sup> To the extent that a straight lift clip contains video clips of live or near-live programming, it will be subject to the later July 1, 2017 compliance deadline and may utilize the 12-hour or eight-hour grace period. To the extent that a montage contains video clips of live or near-live programming, the portions of the montage that contain such programming will be subject to the later July 1, 2017 compliance deadline, and those portions may utilize the applicable grace period.

2017. To the extent that a video programming provider or distributor is unable to post video clips of live programming within these grace periods by July 1, 2017 because, for example, it lacks the resources to do so, it may petition for an exemption of this requirement.<sup>53</sup> We find that a shorter grace period is appropriate for video clips of near-live programming than for video clips of live programming, because we find that there is more time to add captions to an IP-delivered video clip of programming that is produced and recorded even a short time before it is shown on television with captions. In addition, we encourage the industry to make video clips of live and near-live programming available with captions at the time the clips are posted online, or as soon as possible thereafter, whenever possible, especially if such captioning already is being done. In the future, we intend to decrease or eliminate this grace period for video clips of live and near-live programming, because we expect that technology will automate the process such that a grace period for captioning is no longer needed. Accordingly, in the *Further Notice* we seek comment on the timeframe within which we should decrease or eliminate the grace period applicable to video clips of live and near-live programming.

#### 4. Video Clips in the Online Library Before the Compliance Deadline

30. We recognize that some video programming providers and distributors will have a large number of video clips in their online library<sup>54</sup> before the compliance deadline of January 1, 2016 for straight lift clips and January 1, 2017 for montages. As explained fully below, we find that compliance with the closed captioning requirements for IP-delivered video clips would be economically burdensome for this class of video clips, and accordingly we exempt this class from coverage of our rules.<sup>55</sup>

31. The CVAA permits the Commission to exempt from coverage of its IP closed captioning rules "any

<sup>53</sup> See 47 CFR 79.4(d) (setting forth procedures for individual exemptions based on economic burden).

<sup>54</sup> As in the *IP Closed Captioning Order*, herein we use the term "library" to describe the collection of content a video programming provider or distributor makes available to consumers online.

<sup>55</sup> Separately, in the *Further Notice* below, we seek comment on application of the IP closed captioning rules to video clips that are added to the video programming distributor's or provider's library on or after January 1, 2016 for straight lift clips and January 1, 2017 for montages, but before the associated video programming is shown on television with captions. We refer to such video clips as "advance" video clips, and we find that further information on the technological challenges of captioning advance video clips would be useful before we resolve this issue.

service, class of service, program, class of program, equipment, or class of equipment for which the Commission has determined that the application of such regulations would be economically burdensome for the provider of such service, program, or equipment."<sup>56</sup> The Commission has interpreted the comparable statutory provision applicable to television closed captioning.<sup>57</sup>

32. On balance, we find that the costs of captioning video clips that are in the video programming distributor's or provider's online library before the compliance deadline (January 1, 2016 for straight lift clips and January 1, 2017 for montages) outweigh the benefits to be derived from captioning such programming at this time. Some video programming distributors may have hundreds of thousands or even millions of video clips currently in the libraries on their Web sites or apps. Some commenters have suggested that the industry would face significant difficulty complying with closed captioning requirements for this category of IP-delivered video clips. Stated challenges with captioning this category of IP-delivered video clips include the enormous volume of existing video clips in some video programming provider and distributor's online libraries, which have been posted over a period of years, and difficulty determining potentially years after the clips were first posted online whether such clips originated as part of a program that later appeared on television with captions after the effective date of the video clip captioning rules. We are concerned about the impact that requiring closed captioning for this class of video clips may have on entities subject to the rules, including smaller entities that may lack the financial resources to comply. In contrast, we find that the benefits of requiring captioning of these clips may be minimal since video clips may "have a shorter shelf life for viewership than long-form content."<sup>58</sup>

<sup>56</sup> 47 U.S.C. 613(c)(2)(D)(ii).

<sup>57</sup> 1997 *Closed Captioning Order*, 13 FCC Rcd at 3342, paras.143–145. The Commission assesses economic burden more broadly in the context of an entire class than it does in the context of an individual exemption petition. See *Anglers for Christ Ministries, Inc.*, Memorandum Opinion and Order, and Notice of Proposed Rulemaking, 26 FCC Rcd 14941, 14958–60, paras. 33–36 (2011).

<sup>58</sup> See Hulu Apr. 1 *Ex Parte* Letter at 3; NAB June 9 *Ex Parte* Letter at 2. We recognize Consumer Groups' argument that many video clips "are likely to live on the Internet indefinitely," and while that may be true for some video clips, we expect that many of the video clips that will be online prior to the compliance deadlines will be of lesser interest

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We believe that the resources of the entities subject to the rules thus would be better spent captioning clips added to their libraries on a prospective basis. Accordingly, we find that it would be an economic burden to require closed captioning of video clips that are in the video programming distributor's or provider's online library before the compliance deadline with minimal benefits, and we thus exempt this class from coverage of our IP closed captioning rules.

### 5. Application of General IP Closed Captioning Rules to Video Clips

33. Except as otherwise discussed above, the IP closed captioning requirements will apply to video clips in the same manner that they apply to full-length video programming shown online. For example, entities may file a petition for exemption from the IP closed captioning rules based on economic burden.<sup>59</sup> Additionally, this means that video programming owners must provide captions of at least the same quality as the televised captions for the same programming, and video programming distributors and providers must maintain the quality of the captions provided by the video programming owner. Consumer Groups support the application of existing quality requirements for full-length IP-delivered video programming to IP-delivered video clips. The Commission previously stated that an evaluation of whether IP-delivered captions are of at least the same quality as the televised captions may involve the consideration of "such factors as completeness, placement, accuracy, and timing."<sup>60</sup> Along these lines, the Commission recently adopted new requirements governing the quality of television closed captioning that incorporate these factors. Thus, while some commenters have asserted that there are problems with the quality of the captioning of IP-delivered video clips, it is likely that the Commission's new rules governing captioning quality on television will

to consumers than more recent clips that are posted online after the applicable compliance deadline.

<sup>59</sup> See 47 CFR 79.4(d) (setting forth the procedures for exemptions based on economic burden, and stating that the Commission will consider the following factors: "(i) The nature and cost of the closed captions for the programming; (ii) The impact on the operation of the video programming provider or owner; (iii) The financial resources of the video programming provider or owner; and (iv) The type of operations of the video programming provider or owner."). Entities also may avail themselves of the statutory requirement that a *de minimis* failure to comply with the IP closed captioning regulations will not be treated as a violation. See 47 U.S.C. 613(c)(2)(D)(vii).

<sup>60</sup> See *IP Closed Captioning Order*, 27 FCC Rcd at 812, para. 37.

improve the quality of closed captioning on programming delivered via IP as well. For example, when a televised program is in compliance with the new requirement that captions be accurate and complete, then all of the audio accompanying a particular clip of the television program also must be captioned. In recognition of the fact that video clips may in some instances have to be recaptioned, however, we will permit *de minimis* differences between the closed captions accompanying an IP-delivered video clip and the closed captions that appeared on television.<sup>61</sup> We recognize that providing captions for video clips may present technical challenges beyond those associated with captioning full-length programs. We will take this difficulty into account in the event of complaints.<sup>62</sup> It is our hope, however, that advancements in technology by the time the compliance deadlines arrive may substantially ameliorate these challenges. The Commission, through its Consumer and Governmental Affairs Bureau, will work to resolve any informal complaints of noncompliance with the new requirements to caption video clips, but would typically consider enforcement action by its Enforcement Bureau when there is a pattern or trend of possible noncompliance by a covered entity. Importantly, we note that the *IP Closed Captioning Order* makes clear that entities are not responsible for quality issues outside of their control. Thus, it is not necessary for us to adopt specific rules to address NAB's concern that problems with captions of IP-delivered video clips may result from technical problems beyond a station's control.

34. When a video programming provider or distributor provides applications or plug-ins for viewing video programming, it must comply with Section 79.103(c) of our rules,

<sup>61</sup> See 47 U.S.C. 613(c)(2)(D)(vii) (a *de minimis* failure to comply with the IP closed captioning regulations will not be treated as a violation). Accordingly, voice recognition technology can be used to recaption video clips, but only to the extent that the quality requirements are met, with permissible *de minimis* differences between the closed captions accompanying an IP-delivered video clip and the closed captions that appeared on television. We thus decline Disney's request that we permit entities to use "the best available voice recognition technology," because the record contains no evidence to suggest that "the best available voice recognition technology" today would produce captions that meet the captioning quality requirements.

<sup>62</sup> We understand that the captions for live programming may appear on-screen with a delay. In such instances, to ensure that the captions available with an IP-delivered video clip are complete, the caption file may be synchronized to the clip's audio, or the captions may continue on-screen after the clip has concluded until all of the associated captions have appeared.

which requires the inclusion of certain consumer tools such as the ability to change caption font, size, and color. The Commission's rules refer to these consumer tools as "technical capabilities." We understand that some applications include video players that display only video clips, and these players were not designed with closed captioning capability. DiMA has explained that extension of the IP closed captioning rules to video clips will require upgrades to these video players, and in some instances a single video programming distributor may need to upgrade multiple video players. DiMA asserts that it would be difficult for video programming provider- or distributor-provided applications or plug-ins that play video clips but not full-length programming to comply with Section 79.103(c) of our rules and that, in any event, the technical capabilities set forth in our rules are less useful when consumers view video clips as opposed to full-length programming. We are not persuaded by these assertions. Rather, we expect that video programming providers and distributors will be able to comply with the requirements for their applications and plug-ins that play video clips, and we agree with Consumer Groups that the Commission should not enshrine in our rules an exception based on a video programming provider or distributor's decision not to include closed captioning capability in the earlier versions of its video players. To the extent that a video programming provider or distributor determines that compliance with the IP closed captioning requirements for its application or plug-in that only plays video clips would be economically burdensome, it may file an exemption request.<sup>63</sup> The CVA provides that during the pendency of a petition for exemption from the IP closed captioning rules due to economic burden, the "provider or owner shall be exempt from the requirements. . . . The Commission shall act to grant or deny any such petition, in whole or in part, within 6 months after the Commission receives such petition, unless the Commission finds that an extension of the 6-month period is necessary to determine whether such requirements are economically burdensome."<sup>64</sup>

## IV. Procedural Matters

### A. Final Regulatory Flexibility Analysis

35. As required by the Regulatory Flexibility Act of 1980, as amended

<sup>63</sup> 47 U.S.C. 613(d)(3); 47 CFR 79.4(d).

<sup>64</sup> 47 U.S.C. 613(d)(3).

(“RFA”), an Initial Regulatory Flexibility Analysis (“IRFA”) was incorporated into the *Notice of Proposed Rulemaking* in this proceeding. The Federal Communications Commission (“Commission”) sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. The Media Bureau issued a public notice seeking comment on the closed captioning of Internet protocol-delivered video clips, and that public notice also referenced the Initial Regulatory Flexibility Analysis included in the *NPRM* in this proceeding, which identified small entities that might be affected. The Commission received no comments on the IRFA. This present Final Regulatory Flexibility Analysis (“FRFA”) conforms to the RFA.

#### 1. Need for, and Objectives of, the Second Order on Reconsideration

36. One of the Commission’s priorities is to ensure that all individuals, especially individuals with disabilities, are able to enjoy the full benefits of broadband technology, including the services that broadband enables such as online video programming. Online viewing of video programming is becoming increasingly significant, and one aspect of this development is that more and more consumers are receiving news, sports, and entertainment programming in the form of online video clips. In the Second Order on Reconsideration (“*Video Clips Order*”), as part of our continued implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”), we conclude that clips of video programming covered by the statute must be captioned when delivered using Internet protocol (“IP”) and set out a schedule of deadlines.

37. When the Commission initially adopted IP closed captioning requirements pursuant to its responsibilities under the CVAA it applied the requirements to full-length video programming and not to video clips. The Commission said that it might in the future extend the IP closed captioning requirements to video clips if it found that consumers who are deaf or hard of hearing are denied access to critical areas of programming, such as news, because the programming is posted online as video clips. In response to a petition for reconsideration filed by consumer groups, and at the Commission’s direction, the Media Bureau issued a public notice seeking updated information on the closed captioning of IP-delivered video clips, including the extent to which the

industry has voluntarily captioned these clips. After reviewing the record compiled in this proceeding, we find that a significant percentage of video clips continue to remain inaccessible to consumers who are deaf or hard of hearing. In addition, we have reconsidered the Commission’s earlier interpretation of the statute and conclude that Congress intended the IP closed captioning requirements to extend to all covered video programming including clips, but left to our discretion the timeline for compliance with this requirement. Accordingly, to implement the statute fully, and in furtherance of Congress’s intent to ensure that individuals who are deaf or hard of hearing have better access to online video programming, the *Video Clips Order* reconsiders the Commission’s earlier decision and revises the Commission’s regulations to require the provision of closed captioning on video clips delivered using IP when the programming was published or exhibited on television with captions. As discussed in Section III of the *Video Clips Order*, it imposes closed captioning requirements on IP-delivered video clips by adopting rules that will:

- Extend the IP closed captioning requirements to IP-delivered video clips if the video programming distributor or provider posts on its Web site or application (“app”) a video clip of video programming that it published or exhibited on television in the United States with captions, regardless of the content or length of the video clip.
- Pursuant to our authority to establish an appropriate schedule of deadlines for purposes of the IP closed captioning requirements, adopt a compliance deadline of January 1, 2016 for “straight lift” clips, which contain a single excerpt of a captioned television program with the same video and audio that was presented on television, and January 1, 2017 for “montages,” which contain multiple straight lift clips.
- After the applicable deadlines, require IP-delivered video clips to be provided with closed captions at the time the clips are posted online, except as otherwise provided.
- For clips of video programming previously shown live or near-live on television with captions, require captions beginning July 1, 2017 and for the present time allow a grace period of 12 hours after the live programming is shown on television and eight hours after the near-live programming is shown on television before the clip must be captioned online.
- Find that compliance with the new requirements would be economically

burdensome for video clips that are in the video programming distributor’s or provider’s online library before January 1, 2016 for straight lift clips, and January 1, 2017 for montages, and thus exempt this class of video clips from coverage; and

- Generally apply the IP closed captioning requirements to video clips in the same manner that they apply to full-length video programming, which among other things means that the quality requirements applicable to full-length IP-delivered video programming will apply to video clips.

In short, while we expect that some small entities will be impacted by these rules, we find that any economic impact of these rules on small entities will be mitigated by the availability of exemptions due to economic burden, and by the provision of the CVAA providing that a *de minimis* failure to comply with these rules will not be treated as a violation.

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

38. No comments were filed in response to the IRFA. Some parties have made filings on the record that address the potential impact on small entities of rules requiring closed captioning of IP-delivered video clips. Specifically, one commenter asserted that small broadcasters that currently voluntarily caption certain televised programming might cease doing so, to avoid triggering a requirement for captioning of online clips of that programming.<sup>65</sup> Another commenter argued that the technology is still developing and stated, “If broadcasters, perhaps particularly smaller ones, were immediately to face FCC complaint procedures and potential enforcement actions for failing to caption online video clips with the requisite quality, this would act as a disincentive to place video clips online, at least until clip captioning technology improves in both quality and reliability.”<sup>66</sup>

<sup>65</sup> Reply Comments of the Association of Public Television Stations and the Public Broadcasting Service at 2, 5–6. *But see* Consumer Groups Reply to Opposition of APTS/PBS, NAB, and NCTA at 5 (arguing that reductions in captioning costs no longer justify the television closed captioning exemption cited by APTS/PBS, in any event, and that the availability of exemptions due to economic burden should alleviate the concerns of APTS/PBS).

<sup>66</sup> Reply Comments of the National Association of Broadcasters at 10. *See also id.* at 5, n. 8 (“Some small market stations report that they can only afford to caption clips online if owned and subsidized by a larger market station, given the cost of clip captioning and the lack of revenue from online video clips.”); Disney June 18 *Ex Parte* Letter at 2 (“[T]he key aspect in crafting a *realistic* regime

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

39. The RFA directs agencies to provide a description of and an estimate of the number of small entities to which the rules will apply. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. 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”). Below are descriptions of the small entities that may be affected by the rules adopted in the *Video Clips Order*, including, where feasible, an estimate of the number of such small entities.

40. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, according to the SBA Office of Advocacy, in 2010, there were 27.9 million small businesses in the United States. In addition, a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, a substantial majority may qualify as “small governmental jurisdictions.” Thus, we estimate that most governmental jurisdictions are small.

41. *Wired Telecommunications Carriers.* The North American Industry Classification System (“NAICS”) defines “Wired Telecommunications Carriers” as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to

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would be a long implementation period so that stations and programmers (both big and small) could budget for and undertake such a reconfiguration.” (emphasis in original).

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.” The SBA has developed a small business size standard for wireline firms for the broad economic census category of “Wired Telecommunications Carriers.” Under this category, a wireline business is small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated for the entire year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

42. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which category is defined above. The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated for the entire year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

43. *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 rate regulation rules, a “small cable company” is one serving 400,000 or fewer subscribers, nationwide. According to SNL Kagan, there are 1,258 cable operators. Of this total, all but 10 incumbent cable companies 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. Current Commission records show 4,584 cable systems nationwide. Of this total, 4,012 cable systems have fewer than 20,000 subscribers, and 572 systems have 20,000 subscribers or more, based on the same records. Thus, under this standard, we estimate that most cable systems are small.

44. *Cable System Operators (Telecom Act Standard).* 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. Based on available data, we find that all but 10 incumbent cable operators are small under this 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. 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 to estimate with greater precision the number of cable system operators that would qualify as small cable operators under this definition.

45. *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 businesses. 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 for the entire year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small. However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small

business size standard formerly titled “Cable and Other Program Distribution.” The definition of Cable and Other Program Distribution provided that a small entity is one with \$12.5 million or less in annual receipts. Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network. Each currently offers subscription services. DIRECTV and DISH Network each reports 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.

**46. 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 businesses. 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 for the entire year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small.

**47. 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 businesses having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

**48. Open Video Services.** 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 businesses having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities. 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, again, at least some of the OVS operators may qualify as small entities.

**49. Wireless cable systems—Broadband Radio Service and Educational Broadband Service.** Wireless cable systems use the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) to transmit video programming to subscribers. 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 \$40 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 10 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.

50. 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, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, we estimate

that the majority of businesses can be considered small entities. 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.

51. *Incumbent Local Exchange Carriers (ILECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. ILECs are included in the SBA's economic census category, Wired Telecommunications Carriers. 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 this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small.

52. *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.

53. *Competitive Local Exchange Carriers (CLECs), 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. These entities are included in the SBA's economic census category, Wired Telecommunications Carriers. 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 this total, 30,178 establishments had

fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small.

54. *Television Broadcasting.* This economic census category "comprises establishments primarily engaged in broadcasting images together with sound." The SBA has created the following small business size standard for Television Broadcasting businesses: Those having \$35.5 million or less in annual receipts. Census data for 2007 shows that 2,076 establishments in this category operated for the entire year. Of this total, 1,515 establishments had annual receipts of \$10,000,000 or less, and 561 establishments had annual receipts of more than \$10,000,000. Because the Census has no additional classifications on the basis of which to identify the number of stations whose receipts exceeded \$35.5 million in that year, the majority of such establishments can be considered small under this size standard.

55. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial television stations to be 1,388 stations. Of this total, 1,221 stations (or about 88 percent) had revenues of \$35.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on July 2, 2014. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 395. NCE stations are non-profit, and therefore considered to be small entities. Therefore, we estimate that the majority of television broadcast stations are small entities.

56. 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.

57. *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 businesses having \$35.5 million or less in annual revenues. Census data for 2007 shows that there were 659 establishments that operated for the entire year. Of that number, 462 operated with annual revenues of fewer than \$10 million, and 197 operated with annual revenues of \$10 million or more. Therefore, under this size standard, the majority of such businesses can be considered small.

58. *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 programming for cable television. 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. The SBA has developed a small business size standard for this category, which is: Those having \$30 million or less in annual receipts. Census data for 2007 shows that there were 9,095 firms in this category that operated for the entire year. Of this total, 8,995 firms had annual receipts of fewer than \$25 million, and 43 firms had receipts of \$25 million to \$49,999,999. Therefore, under this size standard, the majority of such businesses can be considered small.

59. *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 distribute programming for cable television. 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. The SBA has developed a small business size standard for this category, which is: Those having \$29.5 million or less in annual receipts. Census data for 2007 shows that there were 450 firms in this category that operated for the entire year. Of this total, 434 firms had annual receipts of fewer than \$25 million, and 7 firms had receipts of \$25 million to \$49,999,999. Therefore, under this size standard, the majority of such businesses can be considered small.

**60. Internet Publishing and Broadcasting and Web Search Portals.** The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals). The publishing and broadcasting establishments in this industry do not provide traditional (non-Internet) versions of the content that they publish or broadcast. They provide textual, audio, and/or video content of general or specific interest on the Internet exclusively. Establishments known as Web search portals often provide additional Internet services, such as email, connections to other Web sites, auctions, news, and other limited content, and serve as a home base for Internet users." The SBA has developed a small business size standard for this category, which is: All such businesses having 500 or fewer employees. Census data for 2007 shows that there were 2,705 firms that operated for the entire year. Of this total, 2,682 firms had fewer than 500 employees, and 13 firms had between 500 and 999 employees. Therefore, under this size standard, the majority of such businesses can be considered small.

**61. 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 this category, which is: All such businesses having 750 or fewer employees. Census data for 2007 shows that there were 939 establishments that operated for part or all of the entire year. Of this total, 912 establishments had fewer than 500 employees, and 10 establishments had between 500 and 999 employees. Therefore, under this size standard, the majority of such establishments can be considered small.

**62. Audio and Video Equipment Manufacturing.** The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing electronic audio and video equipment for home entertainment, motor vehicles, and public address and musical instrument amplification. Examples of products made by these establishments are video cassette recorders, televisions, stereo equipment, speaker systems, household-type video cameras, jukeboxes, and amplifiers for musical instruments and public address systems." The SBA has developed a small business size standard for this category, which is: All such businesses having 750 or fewer employees. Census data for 2007 shows that 492 establishments in this category operated for part or all of the entire year. Of this total, 488 establishments had fewer than 500 employees, and three had between 500 and 999 employees. Therefore, under this size standard, the majority of such establishments can be considered small.

**63. Closed Captioning Services.** These entities may be indirectly affected by our action. The SBA has developed two small business size standards that may be used for closed captioning services. The two size standards track the economic census categories, "Teleproduction and Other Postproduction Services" and "Court Reporting and Stenotype Services."

**64. The first category of Teleproduction and Other Postproduction Services** "comprises establishments primarily engaged in providing specialized motion picture or video postproduction services, such as editing, film/tape transfers, subtitling, credits, closed captioning, and animation and special effects." The SBA has developed a small business size standard for this category, which is: Those having \$29.5 million or less in annual receipts. Census data for 2007

indicates that there were 1,605 firms that operated in this category for the entire year. Of this total, 1,587 firms had annual receipts of fewer than \$25 million, and 9 firms had receipts of \$25 million to \$49,999,999. Therefore, we estimate that the majority of firms in this category are small entities.

**65. The second category of Court Reporting and Stenotype Services** "comprises establishments primarily engaged in providing verbatim reporting and stenotype recording of live legal proceedings and transcribing subsequent recorded materials." The SBA has developed a small business size standard for this category, which is: Those having \$14 million or less in annual receipts. Census data for 2007 indicates that there were 2,706 firms that operated in this category for the entire year. Of this total, 2,687 had annual receipts of fewer than \$10 million, and 11 firms had receipts of \$10 million to \$24,999,999. Therefore, we estimate that the majority of firms in this category are small entities.

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

**66. The rules adopted in the Video Clips Order generally extend the IP closed captioning requirements, which previously applied only to full-length video programming, to video clips.** The *Video Clips Order* does not adopt a new regulatory regime, but rather, applies the existing regime for full-length IP-delivered video programming to IP-delivered video clips, with certain modifications in recognition of the differences between video clips and full-length video programming.

Accordingly, there are no new reporting or recordkeeping requirements. There will, however, be new compliance requirements for small entities. Specifically, the IP closed captioning requirements will extend to IP-delivered video clips if the video programming distributor or provider posts on its Web site or app a video clip of video programming that it published or exhibited on television in the United States with captions. The Commission adopts a compliance deadline of January 1, 2016 for "straight lift" clips, which contain a single excerpt of a captioned television program with the same video and audio that was presented on television, and January 1, 2017 for "montages," which contain multiple straight lift clips. After the applicable deadlines, the new rules will require IP-delivered video clips to be provided with closed captions at the time the clips are posted online, except as otherwise provided. For clips of video

programming previously shown live or near-live on television with captions, the rules will require captions beginning July 1, 2017, and for the present time will allow a grace period of 12 hours after the live programming is shown on television and eight hours after the near-live programming is shown on television before the clip must be captioned online. The Commission finds that compliance with the new requirements would be economically burdensome for video clips that are in the video programming distributor's or provider's online library before January 1, 2016 for straight lift clips and January 1, 2017 for montages, and thus the Commission exempts this class of video clips from coverage. In general, the Commission applies the IP closed captioning requirements to video clips in the same manner that they apply to full-length video programming, which among other things means that the quality requirements applicable to full-length IP-delivered video programming will apply to video clips.

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

67. The RFA requires an agency to describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

68. As explained above, the *Video Clips Order* does not adopt a new regulatory regime, but rather, applies the existing regime for full-length IP-delivered video programming to IP-delivered video clips, with certain modifications in recognition of the differences between video clips and full-length video programming. Accordingly, similar to the rules promulgated in the *IP Closed Captioning Order*, the rules adopted in the *Video Clips Order* may have a significant economic impact in some cases and that impact may affect a substantial number of small entities. Although the Commission has considered alternatives, where possible, to minimize economic impact on small entities, we note that our action is governed by the congressional mandate contained in the CVAA.

69. Notably, the same aspects of the IP closed captioning rules applicable to full-length programming that ease

compliance burdens on small entities also apply to small entities in the context of video clips. Specifically, in the *IP Closed Captioning Order*, the Commission adopted procedures enabling it to grant exemptions to the rules governing closed captioning of IP-delivered video programming pursuant to Section 202 of the CVAA, where a petitioner has shown that compliance would present an economic burden (*i.e.*, a significant difficulty or expense), and pursuant to Section 203 of the CVAA, where a petitioner has shown that compliance is not achievable (*i.e.*, cannot be accomplished with reasonable effort or expense) or not technically feasible. As was the case with regard to full-length programming, this exemption process will allow the Commission to address the impact of the extension of the rules to video clips on individual entities, including smaller entities, and to modify the application of the rules to accommodate individual circumstances. Further, as with full-length IP-delivered video programming, a *de minimis* failure to comply with the requirements adopted pursuant to Section 202 of the CVAA with regard to IP-delivered video clips will not be treated as a violation, and parties may continue to use alternate means of compliance to the rules adopted pursuant to either Section 202 or Section 203 of the CVAA. Individual entities, including smaller entities, may benefit from these provisions.

70. Overall, in crafting its new requirements, the Commission addressed the issues described in Section B above by providing reasonable timeframes within which entities may come into compliance, and by providing a grace period within which captions may be added to video clips of live or near-live programming. All of these provisions should ease the burdens that small entities otherwise would face in complying with these requirements. Further, in recognition of the burdens that would be imposed on regulated entities, in particular smaller entities, if faced with a requirement to caption video clips that are in the video programming distributor's or provider's online library before January 1, 2016 for straight lift clips and January 1, 2017 for montages, the Commission finds that such a requirement would be economically burdensome and thus exempts this category of video clips from coverage. We note, additionally, that a Commission requirement for captioning IP-delivered video clips will ensure that the content, including critical news programming, will be accessible to individuals who are deaf

or hard of hearing, thus significantly benefiting consumers and serving the stated public interest goal of the CVAA.

#### 6. Report to Congress

71. The Commission will send a copy of the *Video Clips Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>67</sup> In addition, the Commission will send a copy of the *Video Clips Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Video Clips Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.<sup>68</sup>

#### B. Paperwork Reduction Act

72. The *Video Clips Order* does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

#### C. Congressional Review Act

73. The Commission will send a copy of the *Video Clips Order* in MB Docket No. 11–154 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).

#### D. Additional Information

74. For additional information on this proceeding, contact Diana Sokolow, *Diana.Sokolow@fcc.gov*, of the Media Bureau, Policy Division, (202) 418–2120.

#### V. Ordering Clauses

75. Accordingly, *it is ordered* that, pursuant to the authority found in Sections 4(i), 4(j), 303, and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, and 613, this *Second Order on Reconsideration IS adopted*, effective thirty (30) days after the date of publication in the **Federal Register**.

76. *It is ordered* that, pursuant to the authority found in sections 4(i), 4(j), 303, and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, and 613, the Commission's rules *are hereby amended* as set forth in the Final Rules below.

77. *It is further ordered* that the Commission's Consumer and

<sup>67</sup> See 5 U.S.C. 801(a)(1)(A).

<sup>68</sup> See *id.* 604(b).

Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Second Order on Reconsideration* MB Docket No. 11–154, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

78. It is further ordered that the Commission shall send a copy of this *Second Order on Reconsideration* in MB Docket No. 11–154 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).

79. It is further ordered that Consumer Groups' Petition for Reconsideration, filed April 27, 2012, is granted in part, to the extent provided herein.

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

Cable television operators, Communications equipment, Multichannel video programming distributors (MVPDs), Satellite television service providers, Television broadcasters.

Federal Communications Commission.

**Marlene H. Dortch,**  
Secretary.

#### Final Rules

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

#### PART 79—ACCESSIBILITY OF VIDEO PROGRAMMING

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

**Authority:** 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, 617.

■ 2. Amend § 79.4 by revising paragraph (b) to read as follows:

##### § 79.4 Closed captioning of video programming delivered using Internet protocol.

\* \* \* \* \*

(b) Requirements for closed captioning of Internet protocol-delivered video programming. (1) All nonexempt full-length video programming delivered using Internet protocol must be provided with closed captions if the programming is published or exhibited on television in the United States with captions on or after the following dates:

(i) September 30, 2012, for all prerecorded programming that is not edited for Internet distribution, unless it is subject to paragraph (b)(1)(iv) of this section.

(ii) March 30, 2013, for all live and near-live programming, unless it is subject to paragraph (b)(1)(iv) of this section.

(iii) September 30, 2013, for all prerecorded programming that is edited for Internet distribution, unless it is subject to paragraph (b)(1)(iv) of this section.

(iv) All programming that is already in the video programming distributor's or provider's library before it is shown on television with captions must be captioned within 45 days after the date it is shown on television with captions on or after March 30, 2014 and before March 30, 2015. Such programming must be captioned within 30 days after the date it is shown on television with captions on or after March 30, 2015 and before March 30, 2016. Such programming must be captioned within 15 days after the date it is shown on television with captions on or after March 30, 2016.

(2) All nonexempt video clips delivered using Internet protocol must be provided with closed captions if the video programming distributor or provider posts on its Web site or application a video clip of video programming that it published or exhibited on television in the United States with captions on or after the applicable compliance deadline. The requirements contained in this paragraph shall not apply to video clips added to the video programming distributor's or provider's library before the video programming distributor or provider published or exhibited the associated video programming on television in the United States with captions on or after the applicable compliance deadline.

(i) The requirements contained in paragraph (b)(2) of this section shall apply with the following compliance deadlines:

(A) January 1, 2016, where the video clip contains a single excerpt of a captioned television program with the same video and audio that was presented on television.

(B) January 1, 2017, where a single file contains multiple video clips that each contain a single excerpt of a captioned television program with the same video and audio that was presented on television.

(C) July 1, 2017, for video clips of live and near-live programming.

(ii) Closed captions must be provided for video clips of live programming within 12 hours after the conclusion of the associated video programming's publication or exhibition on television in the United States with captions. Closed captions must be provided for video clips of near-live programming within eight hours after the conclusion of the associated video programming's

publication or exhibition on television in the United States with captions.

\* \* \* \* \*

[FR Doc. 2014-18203 Filed 8-4-14; 8:45 am]

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#### FEDERAL COMMUNICATIONS COMMISSION

##### 47 CFR Part 90

[WT Docket No. 06-49; FCC 14-79]

##### Rules in the 904–909.75 and 919.75–928 MHz Bands

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this Order, the Commission terminates the Multilateration Location and Monitoring Service (M-LMS) rulemaking proceeding in WT Docket No. 06-49 and concludes that the proposals for broad revisions of the applicable rules do not merit further consideration at this time.

**DATES:** Effective Date: September 4, 2014.

**FOR FURTHER INFORMATION CONTACT:** Paul D'Ari, Wireless Telecommunications Bureau, (202) 418-1550, email [Paul.DAri@fcc.gov](mailto:Paul.DAri@fcc.gov)

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order, WT Docket No. 06-49, FCC 14-79, adopted June 9, 2014 and released June 10, 2014. The full text of this document is available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. Also, it may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY-B402, Washington, DC 20554; the contractor's Web site, <http://www.bcpweb.com>; or by calling (800) 378-3160, facsimile (202) 488-5563, or email [FCC@BCPWEB.com](mailto:FCC@BCPWEB.com). Copies of the R&O and OPM also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number WT Docket 14-79. Additionally, the complete item is available on the Federal Communications Commission's Web site at <http://www.fcc.gov>.

##### I. Introduction and Background

1. In 1995, the Commission established Location and Monitoring Service (LMS) as a new radio service to be licensed in the 902–928 MHz band. LMS shares this band with a variety of users: Federal radiolocation systems;