U.S.[37] Therefore, the 2011 CSAPR modeling did not project downwind contribution of emissions from Utah, but projected contributions from states east of Utah, including Kansas and Nebraska. The CSAPR modeling indicated that Kansas and Nebraska, states located much closer to the Allegheny County receptor and with higher $PM_{2.5}$ precursor emissions than Utah,[38] were modeled to be below 1% (the contribution level at which eastern states were considered ''linked'' to downwind receptors in the CSAPR and CSAPR Update rulemakings) of the 1997 annual and 2006 24-hr $PM_{2.5}$ NAAQS at the Allegheny County receptor. These factors, in addition to the very large distance (1,525 miles) from the Allegheny County receptor to the Utah border, indicate that emissions from Utah will not interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS at the projected Allegheny County receptor.

Based on these analyses, the EPA is proposing to determine that Utah emissions will not contribute significantly to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state, and we therefore propose to approve the December 22, 2015 submittal.

III. Proposed Action

Based on our review of Utah's January 31, 2013, June 2, 2013, December 22, 2015 and May 8, 2018 infrastructure submissions, and our analysis of additional relevant information, we propose to determine that emissions from Utah will not significantly contribute to nonattainment, or interfere with maintenance, of the 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS in any other state. Accordingly, we propose to approve the January 31, 2013, June 2, 2013, December 22, 2015 and May 8, 2018 Utah SIP submissions as satisfying the requirements of CAA section 110(a)(2)(D)(i)(I) for these NAAQS. The EPA is soliciting public comments on this proposed action and will consider public comments received during the comment period.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: June 10, 2019.

Debra Thomas,

Acting Regional Administrator, EPA Region 8.

[FR Doc. 2019–12948 Filed 6–19–19; 8:45 am]

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[37] In these rules, ''Eastern'' states refer to all contiguous states east of the Rocky Mountains, specifically not including: Montana, Wyoming, Colorado and New Mexico.

[38] See Tables 7–1 and 7–2 in ''Emissions Inventory Final Rule Technical Support Document (TSD)'' for CSAPR, June 28, 2011, Document number EPA–HQ–OAR–2009–0491–4522 in *www.regulations.gov.*

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket Nos. 07–42 and 17–105; FCC 19–52]

Leased Commercial Access; Modernization of Media Regulation Initiative

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, which is part of the Commission's Modernization of Media Regulation Initiative, the Commission proposes to modify the leased access rate formula so that rates will be specific to the tier on which the programming is carried. The Commission also seeks comment on whether it should make additional adjustments to the formula. Finally, it also seeks comment on whether leased access requirements can withstand First Amendment scrutiny in light of video programming market changes.

DATES: Comments are due on or before July 22, 2019; reply comments are due on or before August 5, 2019.

ADDRESSES: You may submit comments, identified by MB Docket Nos. 07–42 and 17–105, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the

Commission's Secretary, Office of the Secretary, Federal Communications Commission.

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

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 Second Further Notice of Proposed Rulemaking, FCC 19–52, adopted on June 6, 2019 and released on June 7, 2019. The full text 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. 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).

Synopsis

1. In the Second Further Notice of Proposed Rulemaking, we update our leased access rules as part of the Commission's Modernization of Media Regulation Initiative and propose to modify the leased access rate formula. The leased access rules, which implement the statutory leased access requirements, direct cable operators to set aside channel capacity for commercial use by unaffiliated video programmers.[1] In 2018, the Commission adopted a Further Notice of Proposed Rulemaking (FNPRM)[2] addressing leased access proposals filed in response to the *Media Modernization Public Notice.* With this proceeding, we continue our efforts to modernize media regulations and remove unnecessary requirements that can impede competition and innovation in the media marketplace.

2. The video marketplace has changed significantly since the Commission initially adopted its leased access rules. Specifically, today a wide variety of media platforms are available to programmers, including in particular online platforms that creators can use to distribute their content for free. This change has reduced the importance of leased access and, thus, the justification for burdensome leased access requirements.

3. In the Second Further Notice of Proposed Rulemaking (Second FNPRM), we address the leased access rate formula. Specifically, as discussed below, we propose one modification to the formula that would permit cable operators to calculate the ''average implicit fee'' for leased access based on the tier on which the leased access programming actually will be carried. In addition, we seek comment on whether to make other modifications to the existing rate formula. Finally, we seek comment on whether leased access requirements can withstand First Amendment scrutiny in light of video programming market changes.

4. Congress authorized the Commission to adopt maximum reasonable rates for commercial leased access as part of the Cable Television Consumer Protection and Competition Act of 1992 and also provided that the price, terms, and conditions for leased access must be ''sufficient to assure that such use will not adversely affect the operation, financial condition, or market development of the cable system.'' The Commission adopted leased access rate regulations in 1993, and the Commission subsequently modified its leased access regulations in 1996 and 1997. The Commission's implementing rules, which the D.C. Circuit upheld in 1998, included a formula for calculating maximum carriage rates that cable operators could charge leased access programmers.

5. Specifically, in order to permit cable operators to recover their costs and earn a profit, the Commission adopted a maximum reasonable rate formula for full-time leased access carriage based on the ''average implicit fee'' that other programmers implicitly charge for carriage.[3] The Commission then prorated that formula for part-time programming. Thus, these rate rules require that an operator calculate the average implicit fee for all eligible tiers rather than just the individual tier where the channel will be placed. The Commission reasoned that ''because the Communications Act requires cable operators to transmit must-carry and PEG access channels on the basic service tier, the average programming cost on that tier will tend to be lower.''

6. Although the Commission revised its commercial leased access rate rules in its *2008 Leased Access Order,* these rules never went into effect. Thus, the leased access rate rules adopted in the *1993 Rate Regulation Order,* as subsequently amended, remain in effect.

7. As suggested by commenters, we propose to make leased access fee calculations specific to the tier on which the programming will be carried. In this regard, we propose to permit cable operators that carry leased access programming on the basic service tier[4] ''to calculate the average implicit fee based on a basic tier-specific calculation, rather than based on the blended calculation required under the existing formula,'' as proposed by NCTA.[5] NCTA avers that it would ''be much simpler to calculate the leased access rate for basic tier placement on a tier-specific basis, rather than on a blended tier basis.'' We similarly propose that the rate formula should be a tier-specific calculation even if the leased access programming is carried on a tier other than the basic service tier. We seek comment on these proposals. Are there other advantages or disadvantages to this approach that we should consider?

8. We also seek comment on whether there are other changes we should make to our rate formula. In response to the FNPRM's request for information on whether the Commission should adopt any new rules governing leased access rates, commenters put forth a wide range of proposals to address their concerns. The record indicates that the current rate formula may be insufficient to compensate cable operators for their leased access administrative costs, particularly for small cable systems, and

[1] The leased access rules are in subpart N of part 76, which was listed in the *Media Modernization Public Notice* as one of the principal rule parts that pertains to media entities and that is the subject of the media modernization review.

[2] Federal Communications Commission, Leased Commercial Access; Modernization of Media Regulation Initiative, 83 FR 30639 (June 29, 2018).

[3] To illustrate, as the Commission stated in the *1997 Leased Access Order,* ''if subscribers pay an average of $0.50 per channel for a particular tier, and the average programming or license fee on the tier is $0.10, then, on average, programmers on the tier are implicitly 'paying' the operator $0.40 for carriage.''

[4] The Commission stated in the *1993 Rate Regulation Order* that the basic service tier ''includes, at a minimum, the broadcast signals distributed by the cable operator (except for superstations), along with any public, educational, and government (PEG) access channels that the local franchise authority requires the system operator to carry on the basic tier.''

[5] The ''average implicit fee'' is the maximum commercial leased access rate that a cable operator may charge. The current fee calculation is ''blended'' insofar as it utilizes a ''weighting scheme that accounts for differences in the number of subscribers and channels'' on multiple tiers, and not just on the basic service tier.

that the current method for calculating rates is unduly complex. On the other hand, AIM indicates that current rates are ''a de facto barrier to entry for a significant number of independent programmers.'' We seek comment on the pros and cons of the varying rate proposals in the record, and on any other rate proposals we should consider. Should we adopt any of these suggestions if we adopt our proposal to make the rate formula tier-specific? Even with this change, would the rate formula yield rates that are unduly low? For example, is there basis for concern that the current rate formula yields rates that are so low that it encourages a programmer with limited content to lease a channel and then air its programming on repeat? Alternatively, we seek comment on whether we should retain our existing rate formula. We seek input on the potential costs and benefits of the various proposals in the record.

9. We also seek comment today on whether the First Amendment concerns identified in paragraphs 39 and 40 of the Report and Order, FCC 19–52, apply to the Commission's rules and statutory provisions concerning full-time leased access requirements. In this regard, one commenter opines that ''[t]hese matters have already been addressed by the courts and they have upheld the leased access provisions enacted by Congress. Only the courts and Congress can change these provisions. In the meantime, the Commission is obligated to carry out the directions given to them by Congress.'' On the other hand, we note that the D.C. Circuit decision upholding the constitutionality of the statutory leased-access provisions largely antedates the market developments described in this order and arguably turned on the facts that existed at that time. We seek comment on this analysis. Can the statutory leased access requirements or the Commission's other leased-access rules continue to withstand First Amendment scrutiny in light of the market changes discussed in the Report and Order? If not, what discretion does the Commission have to reduce the burdens that those provisions impose on protected speech?

10. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities by the policies and rules proposed in the Second Further Notice of Proposed Rulemaking (Second FNPRM). Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the FNPRM. The Commission will send a copy of the Second FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In summary, the Second FNPRM:'' (1) Proposes to modify the leased access rate formula so that rates will be specific to the tier on which the programming is carried; (2) seeks comment on whether we should make additional adjustments to the formula; and (3) seeks comment on whether leased access requirements can withstand First Amendment scrutiny in light of video programming market changes. The proposed action is authorized pursuant to sections 4(i), 303, and 612 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 532. The types of small entities that may be affected by the proposals contained in the FNPRM fall within the following categories: Cable Television Distribution Services, Cable Companies and Systems (Rate Regulation), Cable System Operators (Telecom Act Standard), Cable and Other Subscription Programming, Motion Picture and Video Production, and Motion Picture and Video Distribution. The projected reporting, recordkeeping, and other compliance requirements are: (1) Proposing one modification to the leased access rate formula that would permit cable operators to calculate the ''average implicit fee'' for leased access to be based on the tier on which the leased access programming actually will be carried; and (2) seeking comment on whether to make other modifications to the existing rate formula. There is no overlap with other regulations or laws. The record indicates that the current rate formula may be insufficient to compensate cable operators (including small operators) for their leased access administrative costs, and that the current method for calculating rates is unduly complex. Modifying the rate formula could address these concerns, thus easing the burdens of leased access on cable operators, including small entities. The Commission seeks comment on the pros and cons of the varying rate proposals in the record, and on alternative rate proposals it should consider.

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

12. *Permit-But-Disclose.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules.[6] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

13. The proposed action is authorized pursuant to sections 4(i), 303, and 612 of the Communications Act of 1934, as

[6] 47 CFR 1.1200 *et seq.*

amended, 47 U.S.C. 154(i), 303, and 532.

List of Subjects in 47 CFR Part 76

Administrative practice and procedure, Cable television, Reporting and recordkeeping requirements.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2019–13135 Filed 6–19–19; 8:45 am]

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