

Dated: August 12, 2021

A.M. Beach,

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 10 and 11

[PS Docket Nos. 15-94 and 15-91; FCC 21-77; FR ID 37637]

Emergency Alert System, Wireless Emergency Alerts; National Defense Authorization Act for Fiscal Year 2021

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communication Commission (the FCC or Commission), implements section 9201 of the National Defense Authorization Act for Fiscal Year 2021, improving the way the public receives emergency alerts from the nation's Emergency Alert System (EAS) and Wireless Emergency Alerts System (WEA) on their mobile phones, televisions, and radios. The Commission adopts rules to ensure that more people receive relevant emergency alerts, to enable EAS and WEA participants to report false alerts when they occur, and to improve the way states plan for emergency alerts.

DATES: Effective September 20, 2021.

FOR FURTHER INFORMATION CONTACT: Christopher Fedeli, Attorney Advisor, Public Safety and Homeland Security Bureau at 202-418-1514 or Christopher.Fedeli@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (*Order*) and Further Notice of Proposed Rulemaking, in PS Docket Nos. 15-94 and 15-91, FCC 21-77, adopted and released on June 17, 2021. The full text of this document is available at <https://www.fcc.gov/document/fcc-further-strengthens-emergency-alerting-0>.

Synopsis

In the Report and Order (*Order*), the Commission takes measures to enhance the efficacy of the EAS and WEA. The nation's EAS and WEA ensure that the public is quickly informed about emergency alerts issued by federal, state, local, Tribal, and territorial governments and delivered over the radio, television, and mobile wireless devices. Specifically, and in

consultation with the Federal Emergency Management Agency (FEMA), the Commission implements Section 9201 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116-283, 134 Stat. 3388, § 9201 (NDAA21), which requires the Commission to complete a rulemaking and adopt rules within 180 days to (a) ensure mobile devices cannot opt out of receiving WEA alerts from the FEMA Administrator; (b) establish a state EAS plan checklist for State Emergency Communications Committees (SECCs) and amend the requirements for SECCs, to ensure they meet, review, and update their EAS plans annually; (c) enable reporting by the FEMA Administrator and State, Tribal, or local governments of false EAS and WEA alerts; and (d) provide for repeating EAS alerts issued by the President, the FEMA Administrator, and any other entity determined appropriate by the Commission, in consultation with the FEMA Administrator. The Commission believes the rules it adopts today will improve the capabilities and efficacy of EAS and WEA as systems for distributing vital alert information to all Americans, and will do so in a cost-effective manner.

The Commission implements section 9201(a) of the NDAA21 by adopting rules to ensure that mobile devices cannot opt-out of receiving WEA alerts from the FEMA Administrator. The Commission implements section 9201(b) of the NDAA21 by adopting rules to (i) encourage chief executives of states and territories to form SECCs if none exist in their states, or if the state has an SECC, to review its composition and governance criteria; (ii) include as a required element in the State EAS Plan, a certification by the SECC Chairperson or Vice-Chairperson that the SECC met (in person, via teleconference, or via other methods of conducting virtual meetings) at least once in the twelve months prior to submitting the annual updated plan to review and update their State EAS Plan—and incorporate such certification into the Alert Reporting System (ARS); (iii) require that the Public Safety and Homeland Security Bureau (Bureau) to approve or reject State EAS Plans submitted for approval within 60 days of receipt—for those instances in which the Bureau finds defects in a submitted plan requiring correction by the SECC, that State EAS Plan will be considered to be temporarily withdrawn, restarting the 60-day review and approval period anew upon resubmission of the corrected plan in ARS; (iv) require the

Bureau to list the approval dates of State EAS Plans submitted on ARS on the Commission's website, and in the event a final decision is made to deny a plan, directly notify the chief executive of the State to which the plan applies of that determination and the reasons for such denial within 30 days of such decision; and (v) adopt an EAS Plan Content Checklist composed of the plan content requirements set forth in § 11.21 of the Commission's rules, 47 CFR 11.21, and direct the Bureau to post the checklist on the Commission's website and incorporate it as an appendix in the ARS user manual.

The Commission implements section 9201(c) of the NDAA21 by adopting rules to enable the Administrator of FEMA and state, local, Tribal, and territorial governments to report false EAS and WEA alerts when they occur. The Commission implements section 9201(d) of the NDAA21 by adopting a rule specifying how alert originators can repeat their alert transmissions. The rules the Commission adopts are intended to facilitate the further development of a robust and redundant system for distributing vital alert information to all Americans.

Accessible Formats

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Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM) in PS Docket Nos. 15-94 and 15-91, 86 FR 16565 (Mar. 30, 2021). The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Final Rules

In the *Order*, the Commission adopts rules to improve the way the public receives emergency alerts on their mobile phones, televisions, and radios via WEA and EAS, in response to the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021. WEA and EAS ensure that the public is quickly informed about emergency alerts issued by federal,

state, local, Tribal, and territorial governments and delivered over the radio, television, and mobile wireless devices. These announcements keep the public safe and informed and have increased in importance in the wake of the emergencies and disasters experienced by Americans in the past few years. Congress has determined that WEA and EAS rule changes are necessary to increase oversight over the distribution of state and local EAS alerts within states, increase the likelihood that the public will receive full alerts pertaining to national security, and increase false alert reporting capabilities to help ameliorate confusion or other harmful effects resulting from false alerts. Consistent with the congressional directives in the NDAA21, the Commission amends its WEA and EAS rules to ensure that more people receive relevant emergency alerts, to enable EAS and WEA participants to report false alerts when they occur, and to improve the way states plan for emergency alerts.

Specifically, the Commission amends its rules to (i) replace WEA's existing Presidential Alert class with a National Alert class that would ensure that WEA-enabled mobile devices could not opt-out of receiving WEA alerts issued by the President (or the President's authorized designee) or by the FEMA Administrator; (ii) require participating Commercial Mobile Service (CMS) providers that use WEA header displays that read "Presidential Alert" to change those alert headers to read "National Alert" or to remove such headers altogether; (iii) encourage chief executives of states to form SECCs if none exist in their states, or if they do, to review their composition and governance, update their State EAS plans annually, and certify that they have met (in person, via teleconference, or via other methods of conducting virtual meetings) at least once in the twelve months prior to submitting the annual updated plan to review and update the plan; (iv) incorporate certain processing actions concerning SECCs' and the FCC's administration of State EAS Plans; (v) enable false EAS and WEA alert reporting by the FEMA Administrator as well as state, local, Tribal, and territorial governments; and (vi) provide for repeating EAS alerts issued by the President, the Administrator of FEMA and any other entity determined appropriate under the circumstances by the Commission, in consultation with the Administrator of FEMA.

The rules adopted in the *Order* are intended to increase participation by state, local, Tribal, and territorial

governments in the administration of State EAS Plans, enhance administration of EAS alerting, hasten corrective action when any false alerts are issued, and better enable alert originators to repeat alerts. They will benefit the public by strengthening national, state, local, Tribal, and territorial alerting activities, minimizing confusion and disruption caused by false alerts, increasing the chances for the public to receive critical alert messages, and will facilitate the further development of a robust and redundant system for distributing vital alert information to all Americans.

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

There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.

The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

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

The RFA directs agencies to provide a description of and, where feasible, an estimate of, the number of small entities that may be affected by the rules, adopted herein. 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 SBA.

Small Businesses, Small Organizations, and Small Governmental Jurisdictions. The Commission's actions may, over time, affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of

small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 30.7 million businesses.

Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments— independent school districts with enrollment of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimates that at least 48,971 entities fall into the category of "small governmental jurisdictions."

Radio Stations. This Economic Census category comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources." The SBA has established a small business size standard for this category as firms having \$41.5 million or less in annual receipts. Economic Census data for 2012 show that 2,849 radio station firms operated during that year. Of that number, 2,806 firms operated with annual receipts of less than \$25 million per year, 17 with annual receipts

between \$25 million and \$49,999,999 million and 26 with annual receipts of \$50 million or more. Therefore, based on the SBA's size standard the majority of such entities are small entities.

In addition to the U.S. Census Bureau's data, based on Commission data the Commission estimates that there are 4,560 licensed AM radio stations, 6,704 commercial FM radio stations and 8,339 FM translator and booster stations. The Commission has also determined that there are 4,196 noncommercial educational (NCE) FM radio stations. The Commission however does not compile and does not otherwise have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities under the SBA size standard.

The Commission also notes that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. The Commission's estimate therefore likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, to be determined a "small business," an entity may not be dominant in its field of operation. The Commission further notes that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these bases, thus the Commission's estimate of small businesses may therefore be over-inclusive. Also, as noted above, an additional element of the definition of "small business" is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

FM Translator Stations and Low-Power FM Stations. FM translators and Low Power FM Stations are classified in the category of Radio Stations and are assigned the same NAICS Code as licensees of radio stations. This U.S. industry, Radio Stations, comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has established a small business size standard which consists of all radio stations whose annual receipts are \$38.5 million dollars or less. U.S. Census

Bureau data for 2012 indicate that 2,849 radio station firms operated during that year. Of that number, 2,806 operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999 million and 26 with annual receipts of \$50 million or more. Therefore, based on the SBA's size standard the Commission concludes that the majority of FM Translator Stations and Low Power FM Stations are small.

The Commission notes again, however, that in assessing whether a business concern qualifies as "small" under the above definition, business (control) affiliations must be included. Because the Commission does not include or aggregate revenues from affiliated companies in determining whether an entity meets the applicable revenue threshold, its estimate of the number of small radio broadcast stations affected is likely overstated. In addition, as noted above, one element of the definition of "small business" is that an entity would not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific radio broadcast station is dominant in its field of operation. Accordingly, the Commission's estimate of small radio stations potentially affected by the rule revisions discussed in the NPRM includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

Television Broadcasting. This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound." These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having \$41.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of \$25,000,000 or less, and 25 had annual receipts between \$25,000,000 and \$49,999,999. Based on this data the Commission therefore estimates that the majority of commercial television broadcasters are

small entities under the applicable SBA size standard.

The Commission has estimated the number of licensed commercial television stations to be 1,368. According to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on November 16, 2017, 1,258 stations (or about 91 percent) had revenues of \$38.5 million or less, and therefore these licensees qualified as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational television stations to be 390. Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. There are also 2,246 low power television stations, including Class A stations (LPTV), and 3,543 TV translator stations. Given the nature of these services, the Commission will presume that all of these entities qualify as small entities under the above SBA small business size standard.

The Commission notes, however, that in assessing whether a business concern qualifies as "small" under the above definition, business (control) affiliations must be included. The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of "small business" requires that an entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television broadcast 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. Also, as noted above, an additional element of the definition of "small business" is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent.

Cable and Other Subscription Programming. The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of

programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). 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 size standard for this industry establishes as small, any company in this category which receives annual receipts of \$41.5 million or less. According to 2012 U.S. Census Bureau data, 367 firms operated for the entire year. Of that number, 319 operated with annual receipts of less than \$25 million a year and 48 firms operated with annual receipts of \$25 million or more. Based on this data, the Commission estimates that the majority of firms operating in this industry are small.

Cable System Operators (Rate Regulation Standard). The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that there are 4,600 active cable systems in the United States. Of this total, all but five cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records. Thus, under this standard as well, the Commission estimates that most cable systems are small entities.

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 one 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." As of 2019, there were approximately 48,646,056 basic cable video subscribers in the United States. Accordingly, an operator serving fewer than 524,037 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, the Commission finds that all but nine incumbent cable operators are small entities under this size standard. The Commission notes that it 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 million, the Commission is unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

Satellite Telecommunications. This category comprises firms "primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of \$35 million or less in average annual receipts, under SBA rules. For this category, U.S. Census Bureau data for 2012 show that there was a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of less than \$25 million. Consequently, the Commission estimates that the majority of satellite telecommunications providers are small entities.

All Other Telecommunications. The "All Other Telecommunications" category is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for "All Other Telecommunications," which consists of all such firms with gross annual receipts of \$32.5 million or less. For this category, U.S. Census data for

2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million. Thus, the Commission estimates that the majority of "All Other Telecommunications" firms potentially affected by the Commission's action can be considered small.

Broadband Radio Service and Educational Broadband Service. Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).

BRS—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, the Commission estimates 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 86 incumbent BRS licensees that are considered small entities (18 incumbent BRS licensees do not meet the small business size standard). After adding the number of small business auction licensees to the number of incumbent licensees not already counted, there are currently approximately 133 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding

three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

EBS—Educational Broadband Service has been included within the broad economic census category and SBA size standard for Wired Telecommunications Carriers since 2007. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.” The SBA’s small business size standard for this category is all such firms having 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small. In addition to Census data, the Commission’s Universal Licensing System indicates that as of October 2014, there are 2,206 active EBS licenses. The Commission estimates that of these 2,206 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.

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 is included in the category of “Wired Telecommunications Carriers.” The Wired Telecommunications Carriers industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or 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 size standard considers a wireline business is small if it has fewer than 1,500 employees. U.S. Census Bureau data for 2012 indicates that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on that data, the Commission concludes that the majority of wireline firms are small under the applicable SBA standard. Currently, however, only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV (owned by AT&T) and DISH Network. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, the Commission must conclude that internally developed FCC data are persuasive that, in general, DBS service is provided only by large firms.

Wireless Telecommunications Carriers (except Satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees, and 12 firms had employment of 1,000 employees or more. Thus, under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

AWS Services (1710–1755 MHz and 2110–2155 MHz bands (AWS-1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS-2); 2155–2175 MHz band (AWS-3)). For the AWS-1 bands, the Commission has defined a “small business” as an entity with average annual gross revenues for

the preceding three years not exceeding \$40 million, and a “very small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. For AWS-2 and AWS-3, although the Commission does not know for certain which entities are likely to apply for these frequencies, it notes that the AWS-1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS-2 or AWS-3 bands but proposes to treat both AWS-2 and AWS-3 similarly to broadband PCS service and AWS-1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.

Narrowband Personal Communications Services. Two auctions of narrowband personal communications services (PCS) licenses have been conducted. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards.

Broadband Personal Communications Service. The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a “small business” for C- and F-Block licenses as an entity that has average gross revenues of \$40 million or less in the three previous calendar years. For F-Block licenses, an additional small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These standards defining “small entity”, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved

small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D-, E-, and F-Blocks. On April 15, 1999, the Commission completed the reauction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

On January 26, 2001, the Commission completed the auction of 422 C- and F-Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status. Subsequent events concerning Auction No. 35, including judicial and agency determinations, resulted in a total of 163 C- and F-Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A-, C-, and F-Blocks in Auction No. 71. Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses. On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78. Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.

Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these small business size standards. In the Commission’s auction for geographic area licenses in the WCS there were seven winning bidders that qualified as “very small business” entities, and one that qualified as a “small business” entity.

Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. 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 established a small business size standard for this industry of 1,250 employees or less. U.S. Census Bureau data for 2012 shows that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees, and 6 establishments operated with 2,500 or more employees. Based on this data, the Commission concludes that a majority of manufacturers in this industry are small.

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

The *Order* imposes additional reporting, recordkeeping and/or other compliance obligations on certain small, as well as other, entities that process WEA alerts and manufacture mobile devices that receive such alerts, and could impose additional reporting, recordkeeping and/or other compliance obligations on small, as well as other entities that administer State EAS Plans, process and transmit EAS alerts, and manufacture equipment designed to process EAS alerts. While the Commission is not in a position to determine whether small entities will have to hire professionals to comply with its decisions and cannot quantify the cost of compliance for small entities, as discussed in the *Order*, the approaches it has taken to implement the requirements of NDAA21 have minimal or de minimis cost implications for impacted entities.

In the *Order*, the Commission adds a national alert category to WEA that WEA-enabled mobile device users cannot opt-out of receiving. The national alert category changes the name of the current Presidential Alerts category to National Alerts and includes alerts from both the President and the FEMA Administrator. Participating CMS providers that use WEA header displays and settings menus that currently display “Presidential Alert” will have to change the display to read “National Alert” or discontinue their voluntary use of WEA header displays.

The *Order* also requires that each updated State EAS Plan submitted

annually to the Commission for approval include a certification by the SECC Chairperson or Vice-Chairperson that the SECC has met (in person, via teleconference, or via other methods of conducting virtual meetings) at least once in the twelve months prior to submitting the annual updated plan to review and update their State EAS Plan. The certification requirement will be included in the rules governing State EAS Plans and will be incorporated into the Alert Reporting System (ARS). The certification requirement can be met via an on-screen ARS click-box, rather than requiring SECCs to complete extra paperwork to generate a certification document to attach in ARS.

To address the NDAA21’s requirements for reporting by government entities on false EAS or WAS alerts, the *Order* revises the Commission’s WEA and EAS rules to provide for voluntary reporting by the FEMA Administrator, State, local, Tribal, or territorial governments using an email reporting system. The rules provide guidance on the types of false alerts that are suitable to report—discouraging reporting alerts where the incorrect information is de-minimis. The Commission also provides guidance on the types of information in a report that it would find helpful, such as the time and date of the reported alert event, the geographic location where the alerts were received, the message the alert conveyed, how they became aware of the alert, over what medium the alert was transmitted (e.g., broadcast or cable), whether it was an EAS or WEA event, and who originated the alert (if known).

To satisfy the alert repetition requirements in the NDAA21 the *Order* modifies the EAS rules to add a new section, 11.44 “Alert Repetition,” specifying that an alert originator may “repeat” an alert by releasing the alert anew—i.e., re-originating the alert—at least one minute subsequent to the time the message was initially released by the originator, as reflected in the repeat alert’s JJJHHMM header code to meet its alert repetition obligation.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources

available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for such small entities.”

The actions taken by the Commission in the *Order* were considered to be the least costly and minimally burdensome for small and other entities impacted by the rules. As such, the Commission does not expect the adopted requirements to have a significant economic impact on small entities. Below the Commission discusses actions it took in the *Order* to minimize any significant economic impact on small entities and some alternatives that were considered.

The rules adopted creating a WEA National Alert class which adds the FEMA Administrator as an authorized originator of these alerts in addition to the President of the United States, does not create any costs for small entities. Renaming the existing Presidential Alert class to National Alerts and allowing for use of the existing WEA handling code and other infrastructure already in place for Presidential Alert was the least costly way possible to implement the NDAA21 requirement to ensure that subscribers may not opt out of receiving FEMA Administrator alerts. This change requires few, if any, technical changes to be made to participating CMS provider networks or the mobile devices of their subscribers. With respect to the amendment requiring participating CMS provider handset display updates to discontinue the display of “Presidential Alert,” the Commission provides participating CMS providers flexibility in the approach they use to ensure compliance, allowing the requirement to be satisfied by any approach that ensures that “Presidential Alert” is not displayed on a user’s mobile device, either by changing the displayed header or not displaying the header at all. The Commission notes that no commenting party disputed its estimate that these costs would be minimal to the industry. The Commission also reduces the burden on participating CMS providers by exempting from the requirement any network infrastructure that is technically incapable of meeting this requirement, such as legacy devices or networks that cannot be updated to support this functionality.

With respect to the amendments involving SECCs and State EAS Plan provisions, the Commission declined to adopt recommendations for SECC membership and/or a model governance structure for SECCs. There are SECCs

currently operating in all 50 states and all, but 2 territories and each state and territory is different with unique needs that no single framework may fit.

Regarding the requirement for certification by the SECC Chairperson or Vice-Chairperson that the SECC has met (in person, via teleconference, or via other methods of conducting virtual meetings) at least once in the twelve months prior to submitting the annual updated plan to review and update their State EAS Plan, the Commission does not believe the costs to the SECC members will be more than de minimis. The Commission allows for virtual meetings, which lessens the cost and burden of meeting in person. Further, as mentioned in the previous section, the Commission allows the meeting certification to be effectuated by clicking a button on the ARS online menu, which is significantly less burdensome for small entities than having to make some other showing, such as a paper filing.

The amendments the Commission adopted to create a system for false alert reporting by government entities minimize any impact of compliance for small entities and others by virtue of the reporting system being a voluntary reporting process. For government entities that choose to report false alerts, they can do so by simply sending the relevant information to the Commission via email to the FCC Operations Center. As mentioned above, the Commission declined to require a list of elements that must be reported, which could make the process unduly burdensome and deter government entities from filing false alert reports. The Commission also declined to adopt a definition of what constitutes a false alert which could be too limited and burdensome for reporting government entities. Instead, the Commission offers guidance on the type of information about false alerts that would be meaningful to the Commission, and note that the voluntary reporting process adopted in the *Order* does not alter the meaning of false alerts that has been applied in other parts of the Commission rules, including § 11.45(a) and (b).

With respect to the process for enabling Alert Originators to repeat EAS alerts for national security, the requirement to repeat EAS messages can be addressed under the Commission’s existing rules. The Commission therefore kept the current EAS rules governing alert (re)transmission intact and added a new § 11.44 that clarifies how alert originators can repeat their alert transmissions. The Commission’s decision to clarify how alert originators

can repeat (or re-originate) EAS alerts does not impose any additional costs, as such repetition has been a function available to alert originators from the inception of the EAS.

Finally, the Commission notes two additional actions it took that minimizes the significant economic impact of the *Order* on small entities. The Commission declined to adopt a new national security-related originator code or event code in light of the record, which suggests that adding new codes will introduce costs to EAS Participants that are difficult to justify given the complexity and costs associated with their adoption. The Commission also declined to adopt a requirement for implementation of automated repetition of alerts by EAS Participants’ EAS devices. To do so would result in substantial burdens that are unnecessary, and the potential disruption and costs associated with implementing automated repeating in EAS devices is likely to be significant and could yield unintended consequences detrimental to EAS operations.

Paperwork Reduction Act Analysis

This document contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), it previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Congressional Review Act

The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

Accordingly, *it is ordered*, pursuant to sections 1, 2, 4(i), 4(o), 301, 303(r),

303(v), 307, 309, 335, 403, 624(g), 706, and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), and 606, as well as by sections 602(a), (b), (c), (f), 603, 604 and 606 of the WARN Act, 47 U.S.C. 1202(a), (b), (c), (f), 1203, 1204 and 1206, Section 202 of the Twenty-First Century Communications and Video Accessibility Act of 2010, as amended, 47 U.S.C. 613, and the National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283, 134 Stat. 3388, section 9201, 47 U.S.C. 1201, 1206, that this Report and Order and Further Notice of Proposed Rulemaking in PS Docket Nos. 15–94 and 15–91 is hereby adopted.

It is further ordered that the rule amendments adopted herein will become effective September 20, 2021. The new or revised portions of §§ of 10.11(b), 10.520(d)(2), 11.21, 11.21(a), 11.45(c), and 11.21(a)(8) contain new or modified information collection requirements that require OMB review under the PRA. The Commission directs the Public Safety and Homeland Security Bureau (Bureau) to announce the compliance dates for these rules after OMB has reviewed and approved those information collections in a document published in the Federal Register, delegates authority to the Bureau to cause the July 31, 2022 deadline in § 10.11(b) to be revised accordingly as necessary if more time is needed to secure OMB’s review, and delegates authority to the Bureau to revise §§ 10.11(c), 10.520(d)(3), 11.21(g), and 11.45(d) once OMB review has been obtained. The compliance dates that the Bureau announces for the new or revised portions of § 11.21(a) at Appendix A shall supply sufficient time to comply with the § 11.21 rule revisions adopted in Emergency Alert System, Report and Order, PS Docket Nos. 15–94 and 15–91, (83 FR 37750, Aug. 2, 2018).

It is further ordered that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 10

Communications common carriers, Radio.

47 CFR Part 11

Radio, Television.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 10 and 11 as follows:

PART 10—WIRELESS EMERGENCY ALERTS

1. The authority citation for part 10 is revised to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (o), 201, 303(r), 403, and 606, 1202(a), (b), (c), (f), 1203, 1204, and 1206.]

2. Section 10.11 is amended by designating the current text as paragraph (a) and by adding paragraphs (b) and (c) to read as follows:

§ 10.11 WEA implementation timeline.

* * * * *

(b) If a Participating CMS Provider’s network infrastructure would generate and display WEA headers with the text “Presidential Alert” to subscribers upon receipt of a National Alert, or include the text “Presidential Alert” in a mobile device’s settings menus, then by July 31, 2022, that Participating CMS Provider’s network infrastructure shall either generate and display WEA headers and menus with the text “National Alert,” or no longer display those headers and menu text to the subscriber. Network infrastructure that is technically incapable of meeting this requirement, such as situations in which legacy devices or networks cannot be updated to support header display changes, are exempt from this requirement.

(c) Compliance date(s)—paragraph (b) of this section contains an information-collection and recordkeeping requirement. Compliance with paragraph (b) will not be required until after approval by the Office of Management and Budget. The Commission will publish a document in the Federal Register announcing compliance date(s) with this paragraph and revising this paragraph accordingly.

3. Section 10.320 is amended by revising paragraph (e)(3) to read as follows:

§ 10.320 Provider alert gateway requirements.

* * * * *

(e) * * *

(3) Prioritization. The CMS provider gateway must process an Alert Message on a first in-first out basis except for National Alerts, which must be

processed before all non-National Alerts.

* * * * *

4. Section 10.400 is amended by revising paragraph (a) to read as follows:

§ 10.400 Classification.

* * * * *

(a) National Alert. A National Alert is an alert issued by the President of the United States or the President’s authorized designee, or by the Administrator of FEMA. National Alerts may be either nationwide or regional in distribution.

* * * * *

5. Section 10.410 is revised to read as follows:

§ 10.410 Prioritization.

A Participating CMS Provider is required to transmit National Alerts upon receipt. National Alerts preempt all other Alert Messages. A Participating CMS Provider is required to transmit Imminent Threat Alerts, AMBER Alerts and Public Safety Messages on a first in-first out (FIFO) basis.

6. Section 10.420 is revised to read as follows:

§ 10.420 Message elements.

A WEA Alert Message processed by a Participating CMS Provider shall include five mandatory CAP elements—Event Type; Area Affected; Recommended Action; Expiration Time (with time zone); and Sending Agency. This requirement does not apply to National Alerts.

7. Section 10.500 is amended by revising paragraph (f) to read as follows:

§ 10.500 General requirements.

* * * * *

(f) Presentation of alert content to the device, consistent with subscriber opt-out selections. National Alerts must always be presented.

* * * * *

8. Section 10.520 is amended by redesignating paragraph (d) as paragraph (d)(1) and by adding paragraphs (d)(2) and (3) to read as follows:

§ 10.520 Common audio attention signal.

* * * * *

(d)(1) * * *

(2) If the Administrator of the Federal Emergency Management Agency (FEMA) or a State, local, Tribal, or territorial government entity becomes aware of transmission of a WEA false alert to the public, they are encouraged to send an email to the Commission at the FCC Ops Center at FCCOPS@fcc.gov, informing the Commission of the event

and of any details that they may have concerning the event.

(3) Compliance date(s)—paragraph (d)(2) of this section contains an information-collection and recordkeeping requirement. Compliance with paragraph (d)(2) will not be required until after approval by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing compliance date(s) with this paragraph and revising this paragraph accordingly.

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PART 11—EMERGENCY ALERT SYSTEM (EAS)

■ 9. The authority citation for part 11 is revised to read as follows:

Authority: 47 U.S.C. 151, 154 (i) and (o), 303(r), 544(g), 606, 1201, 1206].

■ 10. Section 11.21 is amended by revising the introductory text and paragraph (a) introductory text and adding paragraphs (a)(8) and (g) to read as follows:

§ 11.21 State and Local Area plans and FCC Mapbook.

EAS plans contain guidelines which must be followed by EAS Participants' personnel, emergency officials, and National Weather Service (NWS) personnel to activate the EAS. The plans include the EAS header codes and messages that will be transmitted by key EAS sources (NP, LP, SP and SR). State and local plans contain unique methods of EAS message distribution such as the use of the Radio Broadcast Data System (RBDS). The plans also include information on actions taken by EAS Participants, in coordination with state and local governments, to ensure timely access to EAS alert content by non-English speaking populations. The plans must be reviewed and approved by the Chief, Public Safety and Homeland Security Bureau (Bureau), prior to implementation to ensure that they are consistent with national plans, FCC regulations, and EAS operation. The plans are administered by State Emergency Communications Committees (SECC). The Commission encourages the chief executive of each State to establish an SECC if their State does not have an SECC, and if the State has an SECC, to review the composition and governance of the SECC. The Bureau will review and approve plans, including annual updated plans, within 60 days of receipt, provided that no defects are found requiring the plan to be returned to the SECC for correction and resubmission. If a plan submitted for approval is found defective, the SECC will be notified of the required

corrections, and the corrected plan may be resubmitted for approval, thus starting the 60-day review and approval period anew. The approval dates of State EAS Plans will be listed on the Commission's website.

(a) State EAS Plans contain guidelines that must be followed by EAS Participants' personnel, emergency officials, and National Weather Service (NWS) personnel to activate the EAS. The Plans include information on actions taken by EAS Participants, in coordination with state and local governments, to ensure timely access to EAS alert content by non-English speaking populations. State EAS Plans must be updated on an annual basis. State EAS Plans must include the following elements:

* * * * *

(8) Certification by the SECC Chairperson or Vice-Chairperson that the SECC met (in person, via teleconference, or via other methods of conducting virtual meetings) at least once in the twelve months prior to submitting the annual updated plan to review and update the plan.

* * * * *

(g) Compliance date(s)—the introductory text and paragraphs (a) introductory text and (a)(8) of this section contain information-collection and recordkeeping requirements adopted in the Report and Order and Further Notice of Proposed Rulemaking, *Amendment of the Commission's Rules Regarding the Emergency Alert System; Wireless Emergency Alerts*, PS Docket Nos. 15–91 and 15–94, FCC 21–77 (June 17, 2021). Compliance with the introductory text and paragraphs (a) introductory text and (a)(8) will not be required until after approval by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing compliance date(s) with those paragraphs and revising those paragraphs accordingly.

* * * * *

■ 11. Section 11.44 is added to read as follows:

§ 11.44 Alert Repetition.

An alert originator may “repeat” an alert by releasing the alert anew—*i.e.*, re-originating the alert—at least one minute subsequent to the time the message was initially released by the originator, as reflected in the repeat alert's JJJHHMM header code. Because alerts take time to activate across the EAS alert distribution chain, alert originators should consider an interval between the original and re-originated alert that is long enough to account for

this process. If the re-originated alert is intended to reflect a valid time period consistent with the original, the valid time period code (the +TTTT header code identified in § 11.31(c)) set for the re-originated alert should be adjusted to account for the elapsed time between the original and re-originated alerts. Alert originators should be aware that repeating alerts routinely may cause alert fatigue among the public.

■ 12. Section 11.45 is amended by revising paragraph (b) and adding paragraphs (c) and (d) to read as follows:

§ 11.45 Prohibition of false or deceptive EAS transmissions.

* * * * *

(b) No later than twenty-four (24) hours of an EAS Participant's discovery (*i.e.*, actual knowledge) that it has transmitted or otherwise sent a false alert to the public, the EAS Participant shall send an email to the Commission at the FCC Ops Center at FCCOPS@fcc.gov, informing the Commission of the event and of any details that the EAS Participant may have concerning the event.

(c) If the Administrator of the Federal Emergency Management Agency or a State, local, Tribal, or territorial government entity becomes aware of transmission of an EAS false alert to the public, they are encouraged to send an email to the Commission at the FCC Ops Center at FCCOPS@fcc.gov, informing the Commission of the event and of any details that they may have concerning the event.

(d) Compliance date(s)—paragraph (c) of this section contains an information-collection and recordkeeping requirement. Compliance with paragraph (c) will not be required until after approval by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing compliance date(s) for this paragraph and revising this paragraph accordingly.

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