IV. ENFORCEMENT AND COMPLIANCE REVIEW MECHANISMS

122. We tentatively conclude that any closed captioning requirements we ultimately adopt will best be enforced through the existing types of complaint processes. We propose to permit private parties and government agencies to file complaints with the Commission regarding the implementation of our transition requirements for closed captioning. We also propose to require the complaining party to notify the video programming provider of the complaint. We propose to require that all complaints be accompanied by the best available documentation, such as viewing logs or video tapes. If we determine that the complaint appears valid, we would notify the video programming provider of this determination. The video programming provider would then be permitted to respond to the complaint. We seek comment on this proposal. Commenters should address the potential effectiveness of the proposed process. We also encourage commenters to suggest modifications to this process which may improve its effectiveness and efficiency. Finally, commenters should address what elements we should require for a valid complaint. For instance, in the case of subscriber complaints, should we require more than one complaint. We note that the legislative history provides that the remedies under Sections 207 and 208 of the Communications Act are available to enforce compliance with Section 713.[218] We seek comment on the applicability of these provisions.

123. We are also concerned with maximizing administrative efficiency and minimizing complaints that are better resolved by the video program provider or through informal processes. Accordingly, we seek comment on a proposal to require complainants to first notify the video programming provider before filing with the Commission and allowing the video programming provider a period of time to resolve the complaint at the local level. Under this proposal, a party would be permitted to file with the Commission only after the video provider fails to respond to the complaint or does not satisfactorily resolve the problem. We believe that this proposal may serve to minimize the administrative burden on all parties involved in the process, including the Commission. We seek comment on this alternative as well as any others that might minimize the administrative burden and potential delays in resolution of valid complaints.

124. We further seek comment on alternative methods or information needed to verify compliance. We could require that each entity responsible for compliance with our closed captioning rules retain in a public file, or have available on request, records sufficient to verify compliance. For example, we could require video programming providers to demonstrate their compliance by placing information regarding the amount of closed captioned programming they distribute in a public file. Commenters should address the possible effectiveness of this type of procedure. We seek comment on this mechanism and how it might be implemented.

[218] Conference Report at 184.

V. ADMINISTRATIVE MATTERS

A. Initial Regulatory Flexibility Analysis for the Notice of Proposed Rulemaking

125. Pursuant to Section 603 of the Regulatory Flexibility Act ("RFA"),[219] the Commission has prepared the following initial regulatory flexibility analysis ("IRFA") of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice* but they must be have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall cause a copy of this *Notice* to be sent to the Chief Counsel for Advocacy of the Small Business Administration ("SBA") in accordance with Section 603(a) of the RFA.[220]

126. *Reason for Action and Objectives of the Proposed Rule*: The 1996 Act requires the Commission to promulgate rules designed to maximize the availability of closed captioned programming.[221] The Commission is issuing this *Notice* to seek comment on proposed rules intended to implement this provision of the 1996 Act.

127. *Legal Basis*: This *Notice* is adopted pursuant to Sections 4(i), 4(j) and 713 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 613.

128. *Description and Number of Small Entities Affected*: The Regulatory Flexibility Act defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act.[222] 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.[223]

129. *Small MVPDs*: SBA has developed a definition of a small entity for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts.[224] This definition includes cable system operators, closed circuit television

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[219] 5 U.S.C. § 603. The Regulatory Flexibility Act has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996)("CWAAA"). Subtitle II of the CWAAA is the "Small Business Regulatory Enforcement Fairness Act of 1996" ("SBREFA"), codified at 5 U.S.C. § 601 *et seq.*

[220] 5 U.S.C. § 603(a).

[221] 47 U.S.C § 613.

[222] Regulatory Flexibility Act, 5 U.S.C. § 601(3) (1980).

[223] 15 U.S.C. § 632.

[224] 13 C.F.R. § 121.201 (SIC 4841).

services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Bureau of the Census, there were 1423 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992.[225] We will address each service individually to provide a more succinct estimate of small entities. We seek comment on the tentative conclusions below.

130. *Cable Systems*: The Commission has developed its own definition of a small cable company for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide.[226] Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995.[227] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules proposed in this *Notice*.

131. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% 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."[228] The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[229] Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1450.[230] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number

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[225] U.S. Bureau of the Census, 1992 Economic Census, 1992 Census of Transportation, Communications and Utilities at Firm Size 1-123.

[226] 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 (1995).

[227] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[228] 47 U.S.C. § 543(m)(2).

[229] 47 C.F.R. § 76.1403(b).

[230] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

132. *MMDS*: The Commission refined the definition of "small entity" for the auction of MMDS as an entity that together with its affiliates has average gross annual revenues that are not more than $40 million for the preceding three calendar years.[231] This definition of a small entity in the context of the Commission's *Report and Order* concerning MMDS auctions that has been approved by the SBA.[232]

133. The Commission completed its MMDS auction in March 1996 for authorizations in 493 basic trading areas ("BTAs"). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MMDS is an especially competitive service, with approximately 1573 previously authorized and proposed MMDS facilities. Information available to us indicates that no MDS facility generates revenue in excess of $11 million annually. We tentatively conclude that for purposes of this IRFA, there are approximately 1634 small MMDS providers as defined by the SBA and the Commission's auction rules.

134. *ITFS*: There are presently 2032 ITFS licensees. All but one hundred of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business.[233] However, we do not collect annual revenue data for ITFS licensees and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1932 licensees are small businesses.

135. *DBS*: As of December 1996, there were eight DBS licensees. However, the Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. Although DBS service requires a great investment of capital for operation, we acknowledge that there are several new entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

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[231] 47 C.F.R. § 21.961(b)(1).

[232] *See Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act - Competitive Bidding,* MM Docket No. 94-31 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589 (1995).

[233] SBREFA also applies to nonprofit organizations and governmental organizations such as cities, counties, towns, townships, villages, school districts, or special districts, with populations of less than 50,000. 5 U.S.C. § 601(5).

136. *HSD*: The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled.[234] HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming packager. Thus, HSD users include: (1) viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.[235]

137. According to the most recently available information, there are approximately 30 program packagers nationwide offering packages of scrambled programming to retail consumers.[236] These program packagers provide subscriptions to approximately 2,314,900 subscribers nationwide.[237] This is an average of about 77,163 subscribers per program packager. This is substantially smaller than the 400,000 subscribers used in the Commission's definition of a small MSO. Furthermore, because this an average, it is likely that some program packagers may be substantially smaller. We seek comment on these tentative conclusions.

138. *OVS*: The Commission has certified three OVS operators. On October 17, 1996, Bell Atlantic received approval for its certification to convert its Dover, New Jersey Video Dialtone ("VDT") system to OVS.[238] Bell Atlantic subsequently purchased the division of Futurevision which had been the only operating program package provider on the Dover system, and has begun offering programming on this system using these resources.[239] Metropolitan Fiber Systems was granted certifications on December 9, 1996, for the operation of OVS systems in

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[234] *1996 Competition Report*, FCC 96-496 ¶ 49.

[235] *Id.*

[236] *Id.*

[237] *Id.*

[238] *Bell Atlantic-New Jersey, Inc. (Certification to Operate an Open Video System)*, 11 FCC Rcd 13249 (CSB 1996)("*Bell Atlantic OVS Certification*").

[239] Bell Atlantic, *Bell Atlantic Now Offering Video Services in Dover Township New Jersey* (news release), Nov. 1, 1996.

Boston and New York, both of which are being used to provide programming.[240] On October 10, 1996, Digital Broadcasting Open Video Systems received approval to offer OVS service in southern California.[241] Because these services have been introduced so recently, little financial information is available. Bell Atlantic and Metropolitan Fiber Systems have sufficient revenues to assure us that they do not qualify as small business entities. Digital Broadcasting Open Video Systems however is a general partnership just beginning operations. Accordingly, we tentatively conclude that one OVS licensee qualifies as a small business concern.

139. *SMATVs*: Industry sources estimate that approximately 5200 SMATV operators were providing service as of December 1995.[242] Other estimates indicate that SMATV operators serve approximately 1.05 million residential subscribers as of September 1996[243] The ten largest SMATV operators together pass 815,740 units.[244] If we assume that these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we tentatively conclude that a substantial number of SMATV operators qualify as small entities.

140. *LMDS*: Unlike the above pay television services, LMDS technology and spectrum allocation will allow licensees to provide wireless telephony, data, and/or video services. A LMDS provider is not limited in the number of potential applications that will be available for this service. Therefore, the definition of a small LMDS entity may be applicable to both cable and other pay television (SIC 4841) and/or radiotelephone communications companies (SIC 4812). The SBA definition for cable and other pay services is defined in paragraph 129 *supra*. A small radiotelephone entity is one with 1500 employees or less.[245] However, for the purposes of this *Notice* on closed captioning, we include only an estimate of LMDS video service providers.

141. LMDS is a service that is expected to be auctioned by the FCC in 1997. The vast majority of LMDS entities providing video distribution could be small businesses under the

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[240] *See Metropolitan Fiber Systems/New York, Inc.* (*Certification to Operate an Open Video System*), Consolidated Order, __ FCC Rcd __, DA 96-2075 (CSB Dec. 9, 1996).

[241] *See Public Notice*, DA 96-1703 (Oct. 10, 1996). Digital Broadcasting Video Systems proposes to use local exchange company facilities for the transmission of video services.

[242] *1996 Competition Report* FCC 96-496 ¶ 81.

[243] *Id.*

[244] *Id.*

[245] 13 C.F.R. § 121.201.

SBA's definition of cable and pay television (SIC 4841).[246] However, in the *Third NPRM*, we proposed to define a small LMDS provider as an entity that, together with affiliates and attributable investors, has average gross revenues for the three preceding calendar years of less than $40 million.[247] We have not yet received approval by the SBA for this definition.

142. There is only one company, CellularVision, that is currently providing LMDS video services. Although the Commission does not collect data on annual receipts, we assume that CellularVision is a small business under both the SBA definition and our proposed auction rules. We tentatively conclude that a majority of the potential LMDS licensees will be small entities, as that term is defined by the SBA.

143. *Small Broadcast Stations*: The SBA defines small television broadcasting stations as television broadcasting stations with $10.5 million or less in annual receipts.[248]

144. *Estimates Based on Census and BIA Data*: According to the Bureau of the Census, in 1992, 1155 out of 1478 operating television stations reported revenues of less than $10 million for 1992. This represents 78% of all television stations, including noncommercial stations.[249] The Bureau of the Census does not separate the revenue data by commercial and noncommercial stations in this report. Neither does it allow us to determine the number of stations with a maximum of 10.5 million dollars in annual receipts. Census data also indicates that 81% of operating firms (that owned at least one television station) had revenues of less than $10 million.[250]

145. We also have performed a separate study based on the data contained in the BIA Publications, Inc. Master Access Television Analyzer Database, which lists a total of 1141 full

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[246] *See supra* ¶ 129 for an estimate of the number of entities under SIC 4841.

[247] *In the Matter of Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services and Suite 12 Group Petition for Pioneer's Preference*, ("*Third NPRM*") CC Docket No. 92-297, 11 F.C.C. Rcd. 53 (1995), ¶ 188.

[248] 13 C.F.R. § 121.201.

[249] *See 1992 Census of Transportation, Communications, and Utilities, Establishment and Firm Size*, May 1995, at 1-25.

[250] Alternative data supplied by the SBA Office of Advocacy indicate that 65% of television station owners (627 of 967) have less than $10 million in annual revenue and that 39% of television stations (627 of 1591) have less than $10 million in annual revenue. These data were prepared by the U.S. Bureau of the Census under contract to the SBA. These data show a lower percentage of small businesses than the data supplied directly to the Commission by the Bureau of the Census. Therefore, for purposes of our worst case analysis, we will use the data supplied directly to us by the Bureau of the Census.

power commercial television stations.[251] It should be noted that, using the SBA definition of small business concern, the percentage figures derived from the BIA database may be underinclusive because the database does not list revenue estimates for noncommercial educational stations, and these therefore are excluded from our calculations based on the database.[252] The BIA data indicate that, based on 1995 revenue estimates, 440 full power commercial television stations had an estimated revenue of $10.5 million or less. That represents 54% of full power commercial television stations with revenue estimates listed in the BIA program. The database does not list estimated revenues for 331 stations. Using a worst case scenario, if those 331 stations for which no revenue is listed are counted as small stations, there would be a total of 771 stations with an estimated revenue of 10.5 million dollars or less, representing approximately 68% of the 1141 full power commercial television stations listed in the BIA data base.

146. Alternatively, if we look at owners of commercial television stations as listed in the BIA database, there are a total of 488 owners. The database lists estimated revenues for 60% of these owners, or 295. Of these 295 owners, 156 or 53% had annual revenues of less than $10.5 million. Using a worst case scenario, if the 193 owners for which revenue is not listed are assumed to be small, of small entities would constitute 72% of the total number of owners.

147. In summary, based on the foregoing worst case analysis using Bureau of the Census data, we estimate that our rules will apply to as many as 1150 commercial and noncommercial television stations (78% of all stations) that could be classified as small entities. Using a worst case analysis based on the data in the BIA data base, we estimate that as many as approximately 771 commercial television stations (about 68% of all commercial televisions stations) could be classified as small entities. As we noted above, these estimates are based on a definition that we tentatively believe greatly overstates the number of television broadcasters that are small businesses. Further, it should be noted that under the SBA's definitions, revenues of affiliates that are not television stations should be aggregated with the television station revenues in determining whether a concern is small. The estimates overstate the number of small entities since the revenue figures on which they are based do not include or aggregate such revenues from nontelevision affiliated companies.

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[251] This figure excludes low power television ("LPTV") stations and translator stations from the calculations. As of May 31, 1996, there were 1880 LPTV stations and 4885 television translators in the United States. FCC News Release, *Broadcast Station Totals as of May 31, 1996,* Mimeo No. 63298, released June 6, 1996. Given the nature of LPTV stations, we will presume that all LPTVs qualify as small businesses. Because television translators pass through the signal of the parent station, we do not believe that any closed captioning requirements we may adopt will result in regulatory burden on those stations.

[252] APTS reports that there are 30 public televisions stations (out of 197 public television licensees) with annual operating budgets of less than $1.5 million. Interview with Lonna M. Thompson, Director of Legal Affairs for APTS (December 3, 1996).

148. *Program Producers and Distributors*: The Commission has not developed a definition of small entities applicable to producers or distributors of television programs.[253] Therefore, we will utilize the SBA classifications of Motion Picture and Video Tape Production (SIC 7812),[254] Motion Picture and Video Tape Distribution (SIC 7822),[255] and Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (SIC 7922).[256] These SBA definitions provide that a small entity in the television programming industry is an entity with $21.5 million or less in annual receipts for SIC 7812 and 7822, and $5 million or less in annual receipts for SIC 7922.[257] The 1992 Bureau of the Census data indicates the following: (1) there were 7265 U.S. firms classified as Motion Picture and Video Production (SIC 7812), and that 6987 of these firms had $16,999 million or less in annual receipts and 7002 of these firms had $24,999 million or less in annual receipts;[258] (2) there were 1139 U.S. firms classified as Motion Picture and Tape Distribution (SIC 7822), and that 1007 of these firms had $16,999 million or less in annual receipts and 1013 of these firms had $24,999 million or less in annual

[253] The term "television programs" is used in this context to include all video programming outlets, e.g., cable, DBS.

[254] "Establishments primarily engaged in the production of theatrical and nontheatrical motion pictures and video tapes for exhibition or sale, including educational, industrial, and religious films. Included in the industry are establishments engaged in both production and distribution. Producers of live radio and television programs are classified in Industry 7922." Standard Industrial Classification Manual, SIC 7812, Executive Office of the President, Office of Management and Budget (1987) (OMB SIC Manual).

[255] "Establishments primarily engaged in the distribution (rental or sale) of theatrical and nontheatrical motion picture films or in the distribution of video tapes and disks, except to the general public." OMB SIC Manual, SIC 7822.

[256] "Establishments primarily engaged in providing live theatrical presentations, such as road companies and summer theaters. . . . Also included in this industry are producers of . . . live television programs." OMB SIC Manual, SIC 7922.

[257] 13 C.F.R. § 121.201.

[258] U.S. Small Business Administration 1992 Economic Census Industry and Enterprise Report, Table 2D, SIC 7812, (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration)(SBA 1992 Census Report). The Census data does not include a category for $21.5 million therefore, we have reported the closest increment below and above the $21.5 million threshold. There is a difference of 15 firms between the $16,999 and $24,999 million annual receipt categories. It is possible that these 15 firms could have annual receipts of $21.5 million or less and therefore, would be classified as small businesses.

receipts;[259] and (3) there were 5671 U.S. firms classified as Theatrical Producers and Services (SIC 7922), and that 5627 of these firms had less than $5 million in annual receipts.[260]

149. Each of these SIC categories are very broad and includes firms that may be engaged in various industries including television.[261] Specific figures are not available as to how many of these firms exclusively produce and/or distribute programming for television or how many are independently owned and operated. Consequently, we tentatively conclude that there are approximately 6987 small entities that produce and distribute taped television programs, 1013 small entities primarily engaged in the distribution of taped television programs, and 5627 small producers of live television programs that may be affected by the proposed rules in this *Notice*.

150. *Reporting, Recordkeeping and Compliance Requirements*: The *Notice* tentatively proposes requiring video programming providers (including broadcast licensees and MVPDs) to substantially increase the volume of closed captioned video programming carried over a period of time. Virtually all future programming and a gradually increasing volume of previously released programming is expected to be captioned over time. If this proposal is adopted ideo programming providers may be choose to maintain records of the volume of closed captioned programming carried in order to resolve any disputes which may arise regarding compliance.[262]

151. In addition to seeking comment on a complaint process, the Commission invites comments regarding alternative enforcement procedures including a requirement that video programming providers their compliance with by placing information regarding the amount of closed captioning they distribute in a public file. The Commission invites commenters to address the possible effectiveness of this alternative enforcement mechanisms and how it might be implemented.[263]

152. *Federal Rules Which Overlap, Duplicate or Conflict With the Commission's Proposal*: None.

153. *Any Significant Alternatives Minimizing the Impact On Small Entities and Consistent With the Stated Objectives*: The statutory language provides for exemptions from any

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[259] SBA 1992 Census Report, SIC 7812. The Census data does not include a category for $21.5 million therefore, we have reported the closest increment below and above the $21.5 million benchmark. There is a difference of 6 firms between the $16,999 and $24,999 million annual receipt categories. It is possible that these 6 firms could have annual receipts of $21.5 million or less and therefore, would be classified as small businesses.

[260] SBA 1992 Census Report, SIC 7922.

[261] We tentatively conclude that cable networks that are essentially program distributors are included in this category.

[262] Section IV *supra*.

[263] *Id.*

closed captioning requirements the Commission may adopt, when imposing those requirements would create an economic burden.[264] Consistent with this directive, the *Notice* seeks comment on several mechanisms which would allow small entities to be exempt in whole or in part from the closed captioning requirements. These measures are intended, in part, to minimize the regulatory impact on small entities.

154. Section 713(d)(1) provides that the Commission may exempt classes of video programming or video providers where closed captioning would be economically burdensome. Pursuant to this provision, the Commission proposes to establish a general classification or a number of classifications of programming for which captioning would be economically burdensome.[265] Thus, the Commission seeks comment on whether a definition of economic burden should be based on relative size, degree of distribution, audience ratings or share, relative programming budgets or revenue base, lack of repeat value, or a combination of factors.

155. Section 713(d)(3) permits video programming providers or program owners to petition the Commission for an exemption where our video captioning requirements would constitute an undue burden.[266] Section 713(d)(3) further provides specific factors to be considered when resolving such petitions.[267] Accordingly, the Commission seeks comment on how to apply these factors and whether there are any factors which should be considered when determining if a requirement for closed captioning results in an undue burden for an individual video programming provider or program owner.[268]

B. Initial Paperwork Reduction Act of 1995 Analysis

156. This *Notice of Proposed Rulemaking* (*Notice*) may contain either proposed or modified information collections. As part of its continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on the information collections contained in this *Notice*, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on the *Notice*. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected; and (c) ways to minimize the burden of the collection of information on the

[264] 47 U.S.C. § 613(e).

[265] Section III D *supra*.

[266] 47 U.S.C. § 613(d)(3).

[267] *Id.*

[268] Section III F *supra*.

respondents, including the use of automated collection techniques or other forms of information technology.

C. Procedural Provisions

157. *Ex parte Rules - Non-Restricted Proceeding.* This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules.[269]

158. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before February 28, 1997, and reply comments on or before March 24, 1997. To file formally in this proceeding, you must file an original plus six copies of all comments, reply comments, and supporting comments. If you would like each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus 11 copies. We also encourage commenters to include a computer disk copy of their comments with their official filings whenever possible, as this will allow the comments to be easily transferred to the Commission's Internet site. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W. Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street N.W., Washington D.C. 20554.

159. Written comments by the public on the proposed and/or modified information collections are due 60 days after publication of this *Notice* in the Federal Register. A copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to dconway@fcc.gov.

D. Ordering Clauses

160. This action is taken pursuant to authority found in Sections 4(i), 303(r), and 713 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 613.

161. IT IS FURTHER ORDERED that the Secretary shall send a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601 *et seq.* (1981)

162. For further information, contact Marcia Glauberman, John Adams or Alexis Johns, Policy and Rules Division, Cable Services Bureau, at (202) 418-7200, TTY (202) 418-7172.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A

List of Commenters

Comments

1. A&E Television Networks
2. ALDA/Potomac
3. Alexander Graham Bell Association for the Deaf, Inc.
4. Alliance for Community Media
5. Aloha State Association of the Deaf
6. American Academy of Audiology
7. American Foundation for the Blind
8. American Society for Deaf Children
9. Joan Andrews
10. Association of America's Public Television Stations
11. Association of Late-Deafened Adults
12. Association of Local Television Stations, Inc.
13. Atlanta Hears Chapter/Self Help for Hard of Hearing People
14. Audio Optics, Inc.
15. AudioVision, Inc.
16. Bell Atlantic
17. Boston Chapter of Self Help for Hard of Hearing People
18. Broward County Library Access Services
19. Dick Burkhalter
20. Burlington Chapter of North Carolina Association of the Deaf
21. Californians for Television Access
22. Cape Organization for Rights of the Disabled
23. Capital Cities/ABC, Inc.
24. Caption Database, Inc.
25. CaptionMax
26. Joan Cassidy
27. CBS Inc.
28. Barbara Liss Chertok
29. City of St. Louis Communications Division
30. Joe Clark
31. Mary Clepper
32. Laurence Anne Coe
33. Colorado Assistive Technology Project, DakotaLink (South Dakota Tech Act Project), Georgia Tools for Life, Hawaii Assistive Technology Training and Service, Iowa Program for Assistive Technology, Louisiana Assistive Technology Access Network, Maine Consumer Information and Technology Training Exchange (CITE), Maryland Technology Assistance Program, Massachusetts

Assistive Technology Partnership, Minnesota System of Technology to Achieve Results (STAR) Program, Missouri Assistive Technology Project, New Hampshire Technology Partnership Project, Oklahoma ABLE Tech, Oregon Technology Access Through Life Needs, Pennsylvania's Initiative on Assistive Technology, Rhode Island Assistive Technology Access Project, Texas Assistive Technology Partnership, WisTech (Wisconsin Assistive Technology Program)

34. Consumer Action Network
35. Frank P. Corsica
36. Corporation for Public Broadcasting
37. Jeannette Costa
38. Council of Organizational Representatives
39. Deaf Counseling, Advocacy and Referral Agency
40. Disability Law Center, Inc.
41. Sally Dodge
42. Gerald Dominick
43. Anna Dresner
44. Kathy Dunn
45. EEG Enterprises, Inc.
46. Electronic Industries Association, Consumer Electronics Manufacturing Association
47. David S. Evans
48. F&V Channel, L.L.C.
49. Fairfax Cable Access Corporation
50. Mary Ann Foohey
51. Gallaudet University's Technology Assessment Program
52. Dan Glisson
53. Stuart and Marilyn Gopen
54. Great River Valley Chapter of the Coalition of Citizens with Disabilities in Illinois
55. Mildred D. Helyer
56. Home Box Office
57. Lillian and Glenn E. Hoshauer
58. Inclusive Technologies
59. Jerald M. Jordan
60. Lansing School District
61. League for the Hard of Hearing
62. Willis J. Mann, Telecommunications Access Program, Maryland Department of General Services
63. Massachusetts Commission for the Deaf and Hard of Hearing
64. MCAHI
65. Media Captioning Services
66. Metropolitan Washington Ear, Inc. (Comments and Additional Comments)
67. Sandra Miller
68. Motion Picture Association of America, Inc.
69. JoAnn M. Myers

70. Narrative Television Network
71. National Association of Broadcasters
72. National Association of the Deaf
73. National Broadcasting Company, Inc.
74. National Cable Television Association, Inc.
75. National Captioning Institute
76. National Congress of Jewish Deaf/Jewish Deaf Congress, Inc.
77. National Federation of the Blind of Idaho
78. Lucille E. Nestler
79. Lee Nettles
80. Frank L. Neuhauser
81. North Carolina Association of the Deaf, Inc.
82. North Carolina Department of Human Resources, Division of Vocational Rehabilitation Services
83. Northern Virginia Resource Center for Deaf and Hard of Hearing Persons
84. Ohio Educational Telecommunications
85. Pennsylvania Society for the Advancement of the Deaf, Inc.
86. Richard Pokrass
87. Public Broadcasting Service
88. Barbara H. Putney
89. Recording Industry Association of America
90. Regional Audio Information Services Ent.
91. Rochester Recreation Club for the Deaf, Inc.
92. Satellite Broadcasting and Communications Association
93. Schwartz, Woods & Miller on behalf of Ball State University, Connecticut Public Broadcasters, Inc., Detroit Educational Television Foundation, Educational Television Association of Metropolitan Cleveland, Fifteen Telecommunications, Inc., Long Island Educational Television Council, Inc., Louisiana Educational Authority, Maryland Public Broadcasting Commission, Metropolitan Board of Public Education, Mississippi Authority for Educational Television, New Jersey Public Broadcasting Authority, Oregon Public Broadcasting, University of New Hampshire, Window to the World Communications, Inc., University of North Carolina Center for Public Television, WJCT, Inc.
94. Self Help for Hard of Hearing People, Inc.
95. Celia Conlon Shepard
96. D.A. She
97. Louis M. Smith
98. South Carolina Association of the Deaf
99. Bernard J. Sussman
100. Telecommunications for the Deaf, Incorporated
101. U S West, Inc.
102. VITAC
103. Washington County Chapter, Pennsylvania Council of the Blind
104. Weather Channel

105. Charles C. Webster
106. WGBH Educational Foundation
107. Wireless Cable Association International

Reply Comments

1. A&E Television Networks
2. American Council of the Blind
3. American Foundation for the Blind
4. Association of Local Television Stations, Inc.
5. Dick Burkhalter
6. Caption Colorado, Inc.
7. Division of Services for the Deaf and Hard of Hearing
8. Encore Media Corporation
9. Home Box Office
10. Independent Cable & Telecommunications Association
11. International Cable Channel Partnership, Ltd.
12. Liberty Sports, Inc.
13. Maryland Association of the Deaf
14. Metropolitan Washington Ear, Inc.
15. Mid-Hudson Valley Civic Association of the Deaf
16. Motion Picture Association of America, Inc.
17. National Association of the Deaf
18. National Black Deaf Advocates
19. National Cable Television Association, Inc.
20. OpTel, Inc.
21. Herbert L. Pickell, Jr.
22. Rhode Island Association of the Deaf, Inc.
23. Sonny Access Consulting
24. Sunbelt South Tele-Communications, Ltd.
25. Gary Tomlinson
26. Virginia Association of the Deaf, Inc.
27. VITAC
28. Washington State Association of the Deaf
29. Delbert A. Wheeler
30. Wilson Association of the Deaf
31. Wireless Cable Association International, Inc.
32. Wisconsin Association of the Deaf