

FCC MAIL SECTION

Before the  
Federal Communications Commission  
Washington, D.C. 20554

Apr 19 12 57 PM '00

In the Matter of )  
 )  
 )  
 Closed Captioning and Video Description )  
 of Video Programming ) MM Docket No. 95-176  
 )  
 Implementation of Section 305 of the )  
 Telecommunications Act of 1996 )  
 )  
 Accessibility of Emergency Programming )

**SECOND REPORT AND ORDER**

**Adopted: April 13, 2000**

**Released: April 14, 2000**

By the Commission:

**I. INTRODUCTION**

1. The Commission adopted rules for the closed captioning of video programming, as required by Section 713 of the Communications Act, which was added by the Telecommunications Act of 1996.<sup>1</sup> These rules require that all video programming distributors (e.g., broadcasters, cable operators and satellite distributors)<sup>2</sup> increase gradually the amount of captioned new programming offered over a period of years and, generally require that 100% of new programming be closed captioned at the end of this transition period, subject to certain exceptions.<sup>3</sup> During the transition, however, the rules allow video programming distributors to exercise discretion with respect to what types of closed captioned programming to provide first, and this discretion extends to programming providing emergency information to viewers. When adopting the closed captioning rules, the Commission noted its concern that a video programming distributor could, in the exercise of its discretion, decline to closed caption

<sup>1</sup> *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, MM Docket No. 95-176, Report and Order, 13 FCC Rcd 3272 (1998), Order on Reconsideration, 13 FCC Rcd 19973 (1998); 47 C.F. R. § 79.1; see also Communications Act of 1934, as amended, 47 U.S.C. § 613, Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996).

<sup>2</sup> Video programming distributor is defined in 47 C.F.R. § 79.1(a)(2), and that definition will apply here. See 47 C.F.R. § 79.1(a)(2) (any television broadcast station licensed by the Commission and any multichannel video programming distributor as defined in Section 76.1000 of this chapter, and any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission).

<sup>3</sup> 47 C.F.R. §§ 79.1(b)(1), (b)(3), (d), (e), (f).

such programming for a substantial number of years, thus denying viewers with hearing disabilities access to emergency information being provided to other viewers. Recognizing the significant health and safety issues inherent in emergency information, the Commission stated its intention to issue a Further Notice of Proposed Rulemaking ("FNPRM") to address the accessibility of information regarding emergencies.<sup>4</sup> The Commission issued the FNPRM soliciting comment on this issue.<sup>5</sup>

2. As explained below, we are adopting a rule requiring that emergency information that is provided to viewers be made accessible to persons with hearing disabilities throughout the transition period. Such information may be made accessible either through closed captioning or by using a method of visual presentation. Emergency information is information, about a current emergency, that is intended to further the protection of life, health, safety, and property, i.e., critical details regarding the emergency and how to respond to the emergency. In determining which particular details about the emergency need to be made accessible, programmers may rely on their own good faith judgments.

## II. DISCUSSION

3. Definition of emergency information. In the FNPRM, we asked how to define emergency for the purpose of providing access to individuals with hearing disabilities.<sup>6</sup> We noted that the current broadcast television rule regarding emergency information states that emergency situations in which the broadcasting of information is considered as furthering the safety of life and property include, but are not limited to, the following: tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules resulting from such conditions.<sup>7</sup> We proposed to add to this list warnings and watches of impending changes in weather affecting the safety of viewers. We tentatively concluded that we should define emergency information broadly to ensure that information that affects the safety of viewers is available to persons with hearing disabilities with the same immediacy as it is for other viewers.

4. Commenters provide a wide range of suggestions for defining what situations should be covered by the rule.<sup>8</sup> We find that it is appropriate to define emergency information as information,

---

<sup>4</sup> Report and Order, 13 FCC Rcd at 3386-7 ¶¶ 252-3.

<sup>5</sup> *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, MM Docket No. 95-176, Further Notice of Proposed Rulemaking, 13 FCC Rcd 5627 (1998). Appendix A is a list of commenters.

<sup>6</sup> FNPRM, 13 FCC Rcd at 5630-1 ¶ 8.

<sup>7</sup> 47 C.F.R. § 73.1250(a).

<sup>8</sup> Commenters offered various suggestions for defining emergency information. *See, e.g.*, Stavros I Comments at 1 (all news programming); Letter from Kevin Earp to FCC at Attachment 2 (Feb. 26, 1998), Letter from Trudi Kuibedato to FCC at 1 (Mar. 23, 1998), MCDHH Reply Comments at 3 (all unscheduled programming); SHHH Comments at 3 (broadest scope); TDI Comments at 2 (supporting the addition of: (a) all ongoing broadcasts "during times of extraordinary weather conditions, civil unrest or military actions;" (b) "any news of a federal, state, or international level emergency" such as the Oklahoma City bombing or the Asian stock market crash; "health related announcements" such as mad cow disease or tainted product recalls; and community news "such as proposed construction, changes in county master planning or zoning, tax increases and regional politics."); NAD Comments at 7 (add escaped convicts and man-hunts, widespread or critical services strikes, water contamination, (continued....)

about a current emergency, provided to viewers that is intended to further the protection of life, health, safety, and property, i.e., critical details regarding the emergency and how to respond to the emergency. Examples of the types of emergencies covered could include tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules resulting from such conditions, and warnings and watches of impending changes in weather. These examples are intended to provide guidance as to what is covered by the rules and are not intended to be an exhaustive list. We do not believe an exhaustive list of examples is necessary to convey what is covered by the rule. We also note that some commenters' suggestions lack the urgency of the emergencies the rule is intended to cover.<sup>9</sup> In addition, contrary to some commenters' suggestions that the definition be more general,<sup>10</sup> we find that the specificity provided by our definition is necessary to indicate when emergency information is covered by the rule.

5. We agree with commenters who argue that it is not sufficient simply to identify, in an accessible manner, the mere existence of an emergency situation.<sup>11</sup> Commenters indicate that even stations currently providing emergency crawls alerting viewers to the existence of an emergency can fail to provide additional critical information on the means of protecting one's life, health, safety, or property in response to that emergency.<sup>12</sup> Therefore, our definition of emergency information will include the provision of critical details in an accessible manner.<sup>13</sup> Critical details could include, among other things, specific details regarding the areas that will be affected by the emergency, evacuation orders, detailed descriptions of areas to be evacuated, specific evacuation routes, approved shelters or the way to take shelter in one's home, instructions on how to secure personal property, road closures, and how to obtain relief assistance. In determining whether particular details need to be made accessible, we will permit programmers to rely on their own good faith judgments.

6. Under this rule, distributors are not required to provide in an accessible format all of the information about an emergency situation that they are providing to viewers aurally, only the aural

---

(...continued from previous page)

public health crises (e.g., fish/fruit contamination, quarantines), air pollution warnings, mudslides, volcanic eruptions, avalanches, chemical and nuclear spillage or accidents, burst water mains, electric blackouts, collapsed bridges/roads/dams, bomb threats or explosions, terrorist acts, and warnings or watches of weather changes (e.g., heavy thunderstorms) that may have an impact on the safety of the viewer.

<sup>9</sup> For example, changes in master planning and tax increases.

<sup>10</sup> See ABC Comments at 8 (information which is of timely decisional value to the public in furthering the safety of life and property); Weather Channel Comments at 14-15 (suggesting that emergency information be defined as safety related information having an immediate and direct relation to the preservation of life or property).

<sup>11</sup> See, e.g., NAD Comments at 4, 7; TDI Comments at 1; AAA Reply Comments at 1; Letter from Heidi Sherrie to FCC at 1 (Feb. 23, 1998).

<sup>12</sup> See, e.g., NAD Comments at 7-8; Caption Colorado Comments at 1; SHHH Comments at 2; COR Reply Comments at 5-7; MCDHH Reply Comments at 5-6; Letter from Kevin Earp to FCC at 1 (Feb. 26, 1998); Letter from Leslie to FCC at 1 (Mar. 17, 1998).

<sup>13</sup> References to "emergency information" in this document are to that term as defined in this section.

information intended to further the protection of life, health, safety, and property.<sup>14</sup> As a result of our rule, persons with hearing disabilities will have access to the same critical information to which other viewers have access.

7. Accessibility of Emergency Information. In the FNPRM, the Commission noted that, under the current closed captioning rules, emergency information would be subject to the same closed captioning requirements as other new programming.<sup>15</sup> Under those rules, video programming distributors are required to provide an increasing amount of captioned programming on a per channel, per calendar quarter basis over the transition period.<sup>16</sup> The Commission, therefore, sought comment on how its rules can best ensure that emergency information provided to viewers is accessible to persons with hearing disabilities during the transition period.<sup>17</sup> The Commission asked “whether separate transitional closed captioning requirements are needed for emergency information or whether there are other methods for providing accessibility for this type of programming.”<sup>18</sup> After consideration of the record, we believe that an amendment to our rules is necessary given the importance of emergency information.

8. We adopt a rule requiring emergency information to be accessible during the transition period. The rule requires that emergency information, as defined above, that is provided in the audio portion of the programming must be accessible to persons with hearing disabilities, either through closed captioning or by using a method of visual presentation. Such methods include, but are not limited to, open captioning, crawls or scrolls.<sup>19</sup> These rules apply regardless of whether the provision of information regarding an emergency occurs during a regularly scheduled newscast, an unscheduled break-in during regular programming, as part of continuing coverage of a situation, or in any other fashion.

9. We believe that it is absolutely necessary and appropriate to require that emergency information be accessible to persons with hearing disabilities during the transition.<sup>20</sup> Section 713

---

<sup>14</sup> See Report and Order, 13 FCC Rcd at 3286-7 ¶ 28.

<sup>15</sup> FNPRM, 13 FCC Rcd at 5628-9 ¶ 3.

<sup>16</sup> 47 C.F. R. § 79.1(b). Effective at the end of the transition period, video distributors must caption 100% of their new nonexempt programming. The transition periods for English and Spanish language new programming end on January 1, 2006, and January 1, 2010, respectively. See also 47 C.F. R. § 79.1(d), (f) (programming exempt from the closed captioning requirements).

<sup>17</sup> FNPRM, 13 FCC Rcd at 5630 ¶ 7.

<sup>18</sup> *Id.*

<sup>19</sup> Open captions provide the same information as closed captions (i.e., the entire audio portion of the program in text form), but includes it as part of the primary video signal. Unlike closed captions that are carried on the vertical blanking interval, open captions are available to all viewers and do not require a television set equipped with a decoder. Crawls and scrolls are other methods for displaying text and are often used during a regularly scheduled program (e.g., to report storm warnings). If accompanied by audio, they may not include the entire audio portion of the information being presented. See RTNDA Comments at 4-5.

<sup>20</sup> We disagree with commenters who argue that there is no need for captioning of emergency information because the Commission’s emergency alert system (“EAS”) rules require that EAS messages be accessible to persons with  
(continued....)

requires that the Commission prescribe rules to ensure that new programming is fully accessible to persons with hearing disabilities.<sup>21</sup> We believe that our requirement regarding the accessibility of emergency information is consistent with this statutory requirement. We note that, as the Commission has stated previously, providing all viewers with accurate information regarding emergencies is of great importance.<sup>22</sup> Indeed, by providing this information to its viewers, the station or network already has determined that it is of importance. This information is of equal or greater importance to persons with hearing disabilities, and television plays a critical role in its dissemination.<sup>23</sup> According to commenters representing persons with hearing disabilities, access to emergency information remains at the forefront of their concerns.<sup>24</sup> Currently, in many instances no accessible emergency information is provided at all. As noted above, in those instances where accessible emergency information is provided, it appears that the information often is insufficient because the critical details regarding how to respond to the emergency are not accessible.<sup>25</sup>

10. The record is replete with evidence of the need to make programming providing emergency information accessible to people with hearing disabilities, and many have provided compelling accounts of emergency situations they have faced and of the difficulties and risks created by inaccessible sources of information. Many of these commenters describe how they have been unaware of hurricanes,<sup>26</sup> tornadoes,<sup>27</sup> flooding<sup>28</sup> and winter storms<sup>29</sup> that threatened their safety. One commenter

---

(...continued from previous page)

disabilities. *See, e.g.*, Cosmos Comments at 4-6. The majority of emergencies are covered not as part of the emergency alert system, but rather as part of programming that television stations and nonbroadcast networks provide as a service to their viewers.

<sup>21</sup> 47 U.S.C. § 613(b)(1).

<sup>22</sup> Report and Order, 13 FCC Rcd at 3386 ¶ 252; FNPRM. 13 FCC Rcd at 5630-1 ¶ 8.

<sup>23</sup> Several commenters point out that television is the sole source of emergency information for persons with hearing disabilities. *See, e.g.*, NAD Reply Comments at 5; Stavros II Comments at 3; Letter from Leslie Cotter to FCC at 1 (Mar. 17, 1998).

<sup>24</sup> *See, e.g.*, NAD Comments at 2; Stavros II Comments at 1; MCDHH Reply Comments at 3; COR Reply Comments at 2-3.

<sup>25</sup> *See* para. 5 *supra*. *See also, e.g.*, Caption Colorado Comments at 1; SHHH Comments at 2; MCDHH Reply Comments at 5-6. 47 C.F.R. § 73.1250(h) of the existing broadcast rules require that any emergency information provided by a television station be provided at least visually.

<sup>26</sup> Letter from Kevin W. Earp to FCC at 1 (Feb. 26, 1998) (during a hurricane, he did not have needed information and slept in his bed while everyone else sought shelter under their beds or another safe place). Letter from Thomas A. Mayes to FCC at 1 (Feb. 19, 1998) (describing he has relied on neighbors to warn him of impending hurricanes and his experience wandering the streets with other deaf students seeking information after an earthquake struck the San Fernando Valley, California, in 1971).

<sup>27</sup> Letter from Brenda S. Mitchiner to FCC at 1 (Mar. 16, 1998) (not realizing a tornado warning had been issued, went out in a rainstorm); Letter from Arva Priola to FCC at 2 (Feb. 23, 1998).

<sup>28</sup> Caption Colorado Comments at 2 (during the 1997 Sacramento floods, none of the local stations provided captioned information regarding evacuations, road closings, or other dangers).

states that, because of a lack of captioning regarding a flood, he departed for home unaware that a river was approaching flood level and barely made it across the one accessible bridge before it washed out.<sup>30</sup> A child care aide recounts an incident when she discounted a child's report that the tornado sirens were sounding since he often played tricks on her and there was nothing accessible on television regarding a tornado warning. She only learned that there actually was a tornado warning when another staff person returned to the building, thereby delaying the evacuation of the children to a safe place.<sup>31</sup> Other commenters cite incidents of dangerous situations in their immediate neighborhoods, such as bombings, chemical and nuclear waste spills,<sup>32</sup> and water contamination,<sup>33</sup> that could place their lives in danger, yet they were unaware of the danger because of a lack of accessibility. Another commenter states that although she learned that police officers had been shot by lip reading a television report, due to the lack of accessibility, she was not aware that the suspects were at large in her immediate neighborhood.<sup>34</sup> Another commenter reports on a water main break that was announced one morning on television along with an advisory not to drink the water due to possible contamination. Since this report was not accessible to persons with hearing disabilities, many of them used the water for washing, drinking and brushing their teeth and it was several hours before they learned about the health risks they were needlessly incurring.<sup>35</sup>

11. Commenters representing people with hearing disabilities argue that we should require that emergency information provided to viewers be made accessible through the provision of closed captioning as opposed to other means and urge the Commission to give such programming the highest priority.<sup>36</sup> We do not believe it is appropriate, however, to require closed captioning of emergency information before the end of the transition period.<sup>37</sup> By its nature, emergency information typically is

---

(...continued from previous page)

<sup>29</sup> Stavros I Comments at 3; Letter from Heidi Sherrie to FCC at 1 (Feb. 18, 1998).

<sup>30</sup> Letter from Dean Swaim to FCC at 1 (Mar. 24, 1998).

<sup>31</sup> Letter from Amy J. Blough to FCC at 1 (Apr. 8, 1998).

<sup>32</sup> Stavros I Comments at 3, Stavros II Comments at 2; Letter from Lee Nettles to FCC at 1-2 (Feb. 25, 1998); Letter from Richard Pearson to FCC at 1 (Mar. 27, 1998).

<sup>33</sup> Letter from Lee Nettles to FCC at 2 (Feb. 25, 1998).

<sup>34</sup> Letter from Leslie Cotter to FCC at 1 (Mar. 17, 1998).

<sup>35</sup> Letter from Lee Nettles to FCC at 2 (Feb. 25, 1998).

<sup>36</sup> See, e.g., AIM Comments at 1; NAD Comments at 2-3; SHHH Comments at 2; MCDHH Reply Comments at 3; Letter from Paul Meyer to FCC at 1 (Feb. 25, 1998); Letter from Jacalyn Stover to FCC at 1 (Sept. 17, 1998); Letter from Joyce E. Cross to FCC at 1 (Feb. 18, 1998); Letter from Mariann Johnson to FCC at 1 (Mar. 27, 1998); Letter from Celia Maybee to FCC at 1 (Mar. 27, 1998); Letter from Richard Pearson to FCC at 1 (Feb. 23, 1998). Some state that closed captioning is the best method for providing access because it provides the entire text of the audio portion of the program. See, e.g., SHHH Comments at 1; TDI Comments at 1; COR Reply Comments at 6-7; MCDHH Reply Comments at 4; NAD Reply Comments at 6-7.

<sup>37</sup> See, e.g., NCTA Comments at 2; ABC Comments at 2-3; CBS Comments at 4. Commenters representing industry argue against a closed captioning requirement on grounds of cost, arguing, for example, that closed captioning is too expensive to be used on a widespread basis for emergency information, that remote stand-by

(continued...)

live, unscripted programming that would require real-time closed captioning; such programming ordinarily cannot use prerecorded captions prepared in advance or captions created using the electronic newsroom technique, which employs computer software to convert a previously prepared teleprompter script to closed captions. As we have noted in our previous closed captioning orders, we are concerned about the limited real-time captioning resources<sup>38</sup> currently available and about the current costs, especially to smaller entities.<sup>39</sup> In adopting our rules, we declined to require that all new live programming be closed captioned immediately due to concerns about the current limited availability of real-time captioning resources, both in financial and human terms.<sup>40</sup> The rule we are adopting achieves much of the benefits of closed captioning but does not run the risk of unfairly burdening providers or distributors; will not adversely affect their ability to meet their closed captioning deadlines; is consistent with our intention to let the market for closed captioning develop over the course of the transition period; and is only temporary. As we have noted numerous times, we expect that over the course of the transition period the number of captioners will continue to increase, the cost of captioning will continue to decrease, and better methods and technologies for closed captioning will be developed.<sup>41</sup> Indeed, the Commission established the transition period (and the eventual requirement that 100% of new programming be closed captioned at the end of the transition period) precisely because of these factors.

12. We will adopt the suggestion of some commenters that we restrict the application of the rule to the provision of emergency information that is primarily intended for distribution to an audience

---

(...continued from previous page)

captioning is provided at a premium over normally scheduled captioning services, or that it would negatively affect local broadcast stations. *See, e.g.*, ABC Comments at 2-4; CBS Comments at 5; NAB Comments at 4-5; NCTA Comments at 3-6; Paxson Comments at 2; RTNDA Comments at 6; Time Warner Reply Comments at 6-8. Industry commenters also base their arguments on the logistical difficulty of closed captioning emergency programming, arguing, for example, that it would require captioning services or personnel to be available 24 hours per day, or that the facilities to provide remote captioning are frequently unavailable during emergencies. *See, e.g.*, ABC Comments at 2; Cosmos Comments at 1; NAB Comments at 4-5; Paxson Comments at 1; NCTA Comments at 3; NCTA Reply Comments at 2-3. One captioning company asserts that “realities in the marketplace” make a closed captioning requirement inadvisable. MCS Comments at 2-4 *but see* Caption Colorado Comments at 1-2 and CPB/WGBH Reply Comments at 3-4. *See also* Report and Order, 13 FCC Rcd at 3295 ¶ 47.

<sup>38</sup> Real-time captioning is used for live, unscripted programming. Under this method, a specially trained court reporter, called a “stenocaptioner,” transcribes the audio portion of the live program as it airs. The captioner’s computer is linked to the telecast operator center and the captioned material is created for telecast in “real time.”

<sup>39</sup> Report and Order, 13 FCC Rcd at 3311 ¶ 84; Order on Reconsideration, 13 FCC Rcd at 19991-2 ¶ 37. A number of commenters representing persons with hearing disabilities recognize that current limitations on captioning resources and recommend that alternative means of visual presentation be allowed during a transition period as long as all of the essential information of the audio broadcast is provided visually. *See, e.g.*, CTA Comments at 1; SHHH Comments at 4-5; Stavros I Comments at 1; Stavros II Comments at 4 (emergency information should be provided by any means necessary and should be as complete as possible).

<sup>40</sup> Report and Order, 13 FCC Rcd at 33111-2 ¶ 84; Order on Reconsideration, 13 FCC Rcd at 1991-4 ¶¶ 36-42 (limiting the circumstances when captions created using the electronic newsroom technique can count towards compliance with the rules). *See also* 47 C.F.R. § 79.1(e)(3).

<sup>41</sup> *See, e.g.*, Report and Order, 13 FCC Rcd at 3279, 3293 ¶¶ 17, 42. A number of commenters observe that voice recognition technology is currently being developed that may provide a new method for creating captions. *See, e.g.*, NAD Comments at 6; Stavros I Comments at 1; Stavros II Comments at 4; TDI Comments at 2.

in the geographic area in which the emergency is occurring.<sup>42</sup> This limitation is appropriate because it describes the type of programming that is provided presently by broadcast stations and nonbroadcast networks (e.g., local and regional cable news channels) to their viewers and that is the subject of numerous consumers' complaints about the lack of accessibility. As commenters note, viewers do not ordinarily turn to national services for information on how to respond to an emergency.<sup>43</sup> The purpose of the rule is to ensure that critical information which a television station or video programming network chooses to provide to its viewers to further the protection of life, health, safety and property in an emergency is available to every viewer, including persons with hearing disabilities.<sup>44</sup>

13. NAD and others urge the Commission to adopt a rule that prohibits blocking of crawls or scrolls by closed captioning or blocking of closed captioning by such announcements.<sup>45</sup> As was noted in the Fact Sheet on Closed Captioning, the Commission has received numerous reports of the loss of captioning during otherwise captioned programs.<sup>46</sup> The requirement that video distributors "pass through" to viewers all captions they receive<sup>47</sup> is intended to ensure that captioned programs are distributed with captions from beginning to end without exception. The Fact Sheet reminded video distributors that when providing other information, such as school closings or weather warnings, readable captions should continue to be provided. We endorse this interpretation and will amend our rules to require that emergency information provided by means other than closed captioning should not block any closed captioning, and vice versa.<sup>48</sup>

14. Exemptions. Because we are not mandating the use of closed captioning as the sole means for making emergency information accessible, we find that exemptions to this rule are

---

<sup>42</sup> The Weather Channel at 6-9, 12-14 (a principal audience test should be adopted that exempts national services from any requirement because most emergencies are local in nature and are more effectively addressed by local services with more direct access to the situation and the needs of the community); BellSouth Comments at 1-2; DirecTV Comments at 4.

<sup>43</sup> See, e.g., Weather Channel Comments at 8; NAB Comments at 2; RTNDA Comments at 4; NAB Reply Comments at 3; Primestar Reply Comments at 1.

<sup>44</sup> We recognize that there could be a limited number of rare instances where an emergency affects the broadcast station or nonbroadcast network or distributor and it may be impossible to provide accessible emergency information.

<sup>45</sup> NAD Comments at 4-5; Stavros I Comments at 2; MCDHH Reply Comments at 7-8; COR Reply Comments at 7; Letter from Arva Priola to FCC at 2 (Feb. 23, 1998); Letter from Donald J. Kovacic to FCC (Mar. 24, 1998).

<sup>46</sup> See *Closed Captioning of Video Programming*, Fact Sheet (Mar. 1999, revised June 1999); see also *Fact Sheet on Closed Captioning Rules Now Available*, News Release, Report No. CS 99-6 (rel. Mar. 31, 1999).

<sup>47</sup> 47 C.F.R. § 79.1(c).

<sup>48</sup> In recognition of this problem and viewers' frustration when captions are lost during a program, the current rules require video program distributors to transmit the original closed captions of a captioned program to viewers intact unless the program is edited and the captions would have to be reformatted. Video distributors also are responsible for making sure that their equipment is working properly to ensure the accurate transmission of the closed captions. Any loss of captions prior to the end of a program or scrambling of captions would be a violation of this rule. See 47 C.F.R. § 79.1(c). See also Report and Order, 13 FCC Rcd at 3368-9 ¶¶ 211-213.

unnecessary. The rule imposes modest obligations to ensure that emergency information is accessible to persons with hearing disabilities and provides sufficient flexibility to determine the most feasible and affordable method for making such information accessible. The rule, therefore, will impose minimal, if any, economic burden on video programmers or distributors and thus no entity needs to be exempt.<sup>49</sup> Consistent with this conclusion, with respect to entities that are exempt from any aspect of the closed captioning rules, we find that such exemption does not extend to the obligation to provide accessible emergency information.<sup>50</sup> All entities, therefore, must comply with the rule adopted in this Order.<sup>51</sup>

15. Responsibility for and determination of compliance. As with the closed captioning rules, video programming distributors will be responsible for compliance with the rule. Also consistent with the closed captioning rules, video programming distributors will not be responsible for video programming that is by law not subject to their editorial control, including but not limited to the signals of television broadcast stations distributed by multichannel video programming distributors.<sup>52</sup> A local broadcast station licensee, as the video programming distributor, will be responsible for its compliance with the rule regardless of the delivery technology used to deliver its signals to consumers (e.g., cable, direct broadcast satellite service). We note that many local or regional nonbroadcast networks are owned by the multichannel video programming distributors.<sup>53</sup> Where the network is not owned by the multichannel video programming distributor, as we noted in the closed captioning rules, we expect that distributors will incorporate the requirement into their contracts with producers and owners, and that parties will negotiate for an efficient allocation of responsibilities.<sup>54</sup>

16. Those entities that are permitted to count captions created using the electronic newsroom technique<sup>55</sup> still must comply with this rule.<sup>56</sup> Where they cannot provide the required emergency information using this technique, they must use another method of visual presentation to ensure the same

---

<sup>49</sup> Report and Order, 13 FCC Rcd at 3343 ¶ 145.

<sup>50</sup> Expenses for complying with this rule shall not be counted when making calculations of expenditures under 47 C.F.R. § 79.1(d)(11).

<sup>51</sup> A number of commenters representing persons with hearing disabilities urge us to apply the rule even to entities that might otherwise be exempt. *See, e.g.*, NAD Comments at 4, n.3; SHHH Comments at 3; Stavros II Comments at 3; Letter from Lee Nettles to FCC at 4 (Feb. 25, 1998).

<sup>52</sup> 47 C.F.R. §§ 79.1(e)(9).

<sup>53</sup> *See Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, CS Docket No. 99-230, Sixth Annual Report, 14 FCC Rcd 978, 1109-11 (2000) Table D-3.

<sup>54</sup> Report and Order, 13 FCC Rcd at 3286-7 ¶ 28.

<sup>55</sup> The electronic newsroom technique uses computer software to create closed captions from the text in a stations news script computer. Only text transmitted from the scripting computers onto the teleprompter is captioned by this method. Thus, unscripted material, such as breaking news, live reports from the field, and some weather and sports reports, that does not appear on the teleprompter is not captioned when the electronic newsroom technique is used.

<sup>56</sup> *See* 47 C.F.R. § 79.1(e)(3).

accessibility for persons with hearing disabilities as for any other viewer, as required by the rule.<sup>57</sup>

17. Enforcement. With respect to the current closed captioning rules, we noted that the information necessary to demonstrate compliance would be in the hands of the distributor and that it would not be feasible for potential complainants in the first instance to document all the factors necessary to establish a violation, such as identifying the exempt status of a program.<sup>58</sup> As a result, we required complainants to send their complaints first to the distributor before they will be considered by the Commission.<sup>59</sup> This rationale does not apply here, where there are no exemptions and where there does not need to be a calculation of the number of hours captioned per calendar quarter; it will be apparent to a consumer when an alleged violation of the emergency rule occurs. Further, because the determination of whether a violation of the rule has occurred will not be dependent on the number of hours of programming closed captioned during a particular calendar quarter, viewers do not have to wait until after the end of the current calendar quarter before filing, or receiving a response to, their complaints.

18. As the Commission recently stated, “[i]n other areas where we experience complaints from consumers, we have adopted processes that make it easy for consumers to file complaints.”<sup>60</sup> For example, the Commission has created “on-line” complaint forms for the electronic filing of certain complaints against common carriers under section 208 of the Act.<sup>61</sup> In addition, consumers are permitted to transmit complaints arising under section 255 of the Act<sup>62</sup> to the Commission by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, audio-cassette recording, and Braille.<sup>63</sup> Consistent with our efforts to streamline complaint processes, especially in the

---

<sup>57</sup> In the Order on Reconsideration, we limited those entities for which the electronic newsroom technique may count towards compliance with the closed captioning rules. 13 FCC Rcd at 19992 ¶ 38. We stated that, as we move through the transition period, we will continue to review and expand the class of providers that cannot count the electronic newsroom technique towards compliance with the closed captioning rules, and that we expect that the ability to use the electronic newsroom technique will by far be the exception rather than the general rule, and that only those entities that are so small or who present unusual circumstances will be permitted to continue to use the electronic newsroom technique because live closed captioning would be an economic burden. 13 FCC Rcd at 19993 ¶ 40. To the extent we continue to permit entities to use the electronic newsroom technique, we will determine whether these entities will be permitted to continue to use means other than closed captioning for emergency information in the context of reviewing and expanding the limitation on the use of the electronic newsroom technique.

<sup>58</sup> Report and Order, 13 FCC Rcd at 3381 ¶ 241.

<sup>59</sup> Report and Order, 13 FCC Rcd at 3381-3 ¶¶ 240-3; *See also* 47 C.F.R. § 79.1(g).

<sup>60</sup> *Telecommunications Relay Services and Speech to Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, FCC 00-56 (rel. March 6, 2000) at ¶ 117.

<sup>61</sup> *See FCC Adopts New Anti-Slamming Rules and Unveils Further Measures to Protect Consumers from Phone Fraud*, News Release, Report No. CC 98-45 (rel. Dec. 17, 1998).

<sup>62</sup> 47 U.S.C. § 255 (access to telecommunications service, telecommunications equipment and customer premises equipment by persons with disabilities).

<sup>63</sup> *See* 47 C.F.R. §§ 616-6.23.

area of accessibility, we will establish similar procedures here. Complainants should provide the Commission with the name of the video programming distributor against whom the complaint is alleged, the date and time of the omission of emergency information, and the type of emergency. The Commission will notify the video programming distributor of the complaint, and the distributor will have 30 days to respond to the Commission.

### III. PROCEDURAL MATTERS

19. Final Regulatory Flexibility Analysis. A Final Regulatory Flexibility Analysis as required by the Regulatory Flexibility Act, *see* 4 U.S.C. § 604, is contained in Appendix C.

20. Paperwork Reduction Act of 1995 Analysis. The requirements adopted in this *Second Report and Order* have been analyzed with respect to the Paperwork Reduction Act of 1995 (the "1995 Act") and found to impose new or modified information collection requirements on the public. Implementation of any new or modified information collection requirements will be subject to approval by the Office of Management and Budget ("OMB"). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to take this opportunity to comment on the information collection requirement contained in this *Second Report and Order*, as required by the 1995 Act. 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) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

21. Written comments by the public on the information collection requirements are due 60 days from date of publication of this *Second Report and Order* in the Federal Register. Comments should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, S.W., Washington, DC 20554, or via the Internet to [jboley@fcc.gov](mailto:jboley@fcc.gov). For additional information on the information collection requirements, contact Judy Boley at (202) 418-0214 or via the Internet at the above address.

### IV. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED that pursuant to the authority contained 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, the Commission's rules ARE AMENDED by adding a new Section 79.2 as shown in Appendix B. The amendments set forth in Appendix B shall become effective upon approval from the Office of Management and Budget.

23. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *Second Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION  
  
Magalie Roman Salas  
Secretary

## Appendix A

Comments

1. American Academy of Otolaryngology - Head and Neck Surgery, Inc. ("AAO")
2. ABC, Inc ("ABC")
3. BellSouth Corporation ("BellSouth")
4. Californians for Television Access ("Cal-TVA")
5. Caption Colorado, Inc.
6. CBS Corporation ("CBS")
7. Cedar Rapids Television Company ("CRTV")
8. Cosmos Broadcasting Corporation ("Cosmos")
9. DIRECTV, INC. ("DirecTV")
10. Media Captioning Services ("MCS")
11. National Association of Broadcasters ("NAB")
12. National Association of the Deaf ("NAD")
13. National Cable Television Association ("NCTA")
14. Paxson Communications Corporation ("Paxson")
15. Radio-Television News Directors Association ("RTNDA")
16. Self Help for Hard of Hearing People ("SHHH")
17. J. Costa and L. Laferriere, Stavros Center for Independent Living ("Stavros I")
18. A. Ramirez, Stavros Center for Independent Living ("Stavros II")
19. Telecommunications for the Deaf, Inc. ("TDI")
20. The Weather Channel
21. Wireless Cable Association ("WCA")

Informal Comments

1. Access to Independence and Mobility ("AIM")
2. Caption Reporters, Inc.
3. Connecticut Commission on the Deaf and Hearing Impaired ("CCDHI")
4. Janet E. Crowder
5. Florida Association of the Deaf, Inc. ("FAD")
6. Lillian Hoshauer, Springfield, PA
7. Thomas Mayes, Margate, FL
8. Paul Meyer, St. Louis, MO
9. Jeanne Milne
10. Lee Nettles, Greenfield, MA
11. Ohio School for the Deaf Alumni Association ("OSDAA")
12. Arva Priola, Fredericksburg, VA
13. Heidi Sherrie, Edgewater, CO
14. Jacalyn Stover, Millersville, MD
15. Texas School for the Deaf
16. Carol Zahlis

Reply Comments

1. American Academy of Audiology ("AAA")
2. BellSouth Corporation ("BellSouth")
3. California Broadcasters Association ("CBA")
4. CPB/WGBH National Center for Accessible Media ("CPB")
5. Council of Organizational Representatives ("COR")
6. Lincoln Broadcasting Co. ("Lincoln")
7. Minnesota Commission Serving Deaf and Hard of Hearing People ("MCDHH")
8. National Association of the Deaf ("NAD")
9. National Cable Television Association ("NCTA")
10. PRIMESTAR Partners L.P. ("Primestar")
11. Radio-Television News Directors Association ("RTNDA")
12. Telecommunications for the Deaf, Inc. ("TDI")
13. Time Warner Cable ("TWC")
14. Univision Communications, Inc. ("Univision")
15. The Weather Channel
16. Wireless Cable Association International, Inc. ("WCA")

Informal Comments

1. Association of Late-Deafened Adults, Boston Chapter ("ALDA Boston")
2. Janet E. Berens, Englewood, CO
3. Leslie Cotter, Minneapolis, MN
4. Joyce E. Cross, Palm Desert, CA
5. Sally Diane, Des Moines, IA
6. Berneda G. Earle, Detroit MI
7. Kevin Earp, Greenville, NC
8. David Fancher, Columbus, OH
9. Lori Gipson, Marietta, GA
10. Mariann Johnson
11. Burton Kent, Aurora, IL
12. Donald J. Kovacic, Uniondale, PA
13. Trudi Kuibeda & Michael Kuibeda, Waterbury, CT
14. David Joseph Langholtz, San Francisco, CA
15. Celia Maybee, Rexburg, ID
16. Brenda S. Mitchiner, Annandale, VA
17. Megan Noesen, Monterey, CA
18. NorCal Center on Deafness ("NorCal")
19. Richard Pearson, Los Alamos, NM
20. Gail A. Ploman, Seattle, WA
21. Don M. Shaffer
22. Michael R. Stokley
23. Clarence Supalla, White Salmon, WA
24. Michelle Wills, Lancaster, OH
25. Wisconsin Association of the Deaf ("WAD")

## Appendix B

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

AUTHORITY: 47 U.S.C. 613.

2. A new Section 79.2 is added to read as follows:

§ 79.2 Accessibility of Programming Providing Emergency Information.

(a) Definitions.

(1) For purposes of this section, the definitions in § 79.1 apply.

(2) *Emergency information.* Information, about a current emergency, that is intended to further the protection of life, health, safety, and property, i.e., critical details regarding the emergency and how to respond to the emergency. Examples of the types of emergencies covered include tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules resulting from such conditions, and warnings and watches of impending changes in weather.

Note: Critical details include, but are not limited to, specific details regarding the areas that will be affected by the emergency, evacuation orders, detailed descriptions of areas to be evacuated, specific evacuation routes, approved shelters or the way to take shelter in one's home, instructions on how to secure personal property, road closures, and how to obtain relief assistance.

(b) Requirements for Accessibility of Programming Providing Emergency Information.

(1) Video programming distributors must make emergency information, as defined in paragraph (a) of this section, that is provided in the audio portion of the programming accessible to persons with hearing disabilities, either through closed captioning or by using a method of visual presentation.

(2) This rule applies to emergency information primarily intended for distribution to an audience in the geographic area in which the emergency is occurring.

(3) Emergency information provided by means other than closed captioning should not block any closed captioning and any closed captioning provided should not block any emergency information provided by means other than closed captioning.

(b) Complaint Procedures

A complaint alleging a violation of this section may be transmitted to the Commission by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, audio-cassette recording, and Braille, or some other method that would best accommodate the complainant's disability. The complaint should include the name of the video programming distributor against whom the complaint is alleged, the date and time of the omission of emergency information, and the type of emergency. The Commission will notify the video programming distributor of the complaint, and the distributor will reply to the complaint within 30 days.

## Appendix C

### Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (“RFA”),<sup>1</sup> an initial Regulatory Flexibility Analysis (“IRFA”) was incorporated in the *Further Notice of Proposed Rulemaking* (“FNPRM”) in this proceeding.<sup>2</sup> The Commission sought written public comment on the proposals in the FNPRM, including comment on the IRFA. This Final Regulatory Flexibility Analysis (“FRFA”) conforms to the RFA.

#### A. Need for, and Objectives of, this Second Report and Order

2. Section 713 of the Communications Act, which was added by the Telecommunications Act of 1996, required the Commission to make new video programming fully accessible to persons with hearing disabilities.<sup>3</sup> In the course of adopting rules to implement this section of the Act, the Commission noted its concern that viewers with hearing disabilities may not always have access to the same emergency information as is currently available to other viewers and decided to further examine ways to make this programming accessible.<sup>4</sup> This *Second Report and Order* adopts rules to ensure that emergency information is available to persons with hearing disabilities either through closed captioning or by using a method of visual presentation.

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

3. TDI filed the only comment on the IRFA in the context of its general comments. It proposes that all video programming providers be required to contribute to a Commission administered fund based on their gross revenues. This fund would be used for rebates to small entities (e.g., low power television stations, small cable operators) for the costs incurred when providing captioned emergency information.<sup>5</sup> We decline to adopt this proposal since our rule does not require the closed captioning of emergency information. The rule imposes modest obligations on video programming distributors and provides each entity sufficient flexibility to determine the most feasible and affordable method for making emergency information accessible to persons with hearing disabilities.

4. TDI also states that we should not adopt a reporting requirement, except where a specified number of complaints have been logged for non-compliance, because a reporting requirement

---

<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub.L. No. 104-121, 110 Stat. 847 (1996) (“CWAAA”). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”).

<sup>2</sup> *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, MM Docket No. 95-176, Further Notice of Proposed Rulemaking, 13 FCC Rcd 5627, 5634-40 (1998).

<sup>3</sup> 47 U.S.C. § 613.

<sup>4</sup> Report and Order, 13 FCC Rcd at 3386-7 ¶¶ 252-3.

<sup>5</sup> TDI Comments at 3-4.

would impose an undue burden.<sup>6</sup> The Commission decided that no reporting requirement was necessary to implement the rule, but rather to rely on a complaint process to ensure compliance. Therefore, we will not adopt TDI's suggestion to minimize reporting requirements

### C. Description and Estimate of the Number of Small Entities to Which the Rule Will Apply

5. 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.<sup>7</sup> The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction" and "the same meaning as the term 'small business concern' under the Small Business Act" unless the Commission has developed one or more definitions that are appropriate for its activities.<sup>8</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").<sup>9</sup> Below we address the video programming distributors (i.e., multichannel video programming distributors ("MVPDs") and broadcast stations) subject to the rule adopted in this Order and provide estimates of the affected small entities.<sup>10</sup>

6. Small MVPDs. The SBA has developed a definition of small entities for cable and other pay television services under Standard Industrial Classification 4841 (SIC 4841), which covers subscription television services, which includes all such companies with annual gross revenues of \$11 million or less.<sup>11</sup> This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,423 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.<sup>12</sup> The following provides a more precise estimate for each MVPD service individually.

7. Cable Services or Systems. The Commission has developed, with SBA's approval, its own definition of a "small cable company" and "small system" for the purposes of rate regulation. Under

---

<sup>6</sup> TDI Comments at 4.

<sup>7</sup> 5 U.S.C. § 603(b)(3).

<sup>8</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632).

<sup>9</sup> 15 U.S.C. § 632. Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

<sup>10</sup> See 47 C.R.F. § 79.1(a)(2).

<sup>11</sup> 13 C.F.R. §121.201.

<sup>12</sup> 1992 Census, *supra*, at Firm Size 1-123. See *Implementation of Sections of the Cable Telecommunications Consumer Protection and Competition Act of 1992, Rate Regulation and Cable Pricing Flexibility*, MM Docket No. 92-266 and CS Docket No. 96-157, Memorandum Opinion and Order and Notice of Proposed Rule Making, 11 FCC Rcd 9517, 9531 (1996).

the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide.<sup>13</sup> Based on our most recent information, we estimate that there were 1,439 cable companies that qualified as small cable companies at the end of 1995.<sup>14</sup> 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 companies. Consequently, we estimate that there are fewer than 1,439 small entity cable companies that may be affected by the proposal adopted in this *Second Report and Order*. The Commission's rules also define a "small system," for the purposes of cable rate regulation, as a cable system with 15,000 or fewer subscribers.<sup>15</sup> We do not request nor do we collect information concerning cable systems serving 15,000 or fewer subscribers and thus are unable to estimate at this time the number of small cable systems nationwide.

8. The Communications Act also contains a definition of a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."<sup>16</sup> 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 is 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.<sup>17</sup> Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450.<sup>18</sup> 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 of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

9. Multichannel Multipoint Distribution Service ("MMDS").<sup>19</sup> MMDS systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service

---

<sup>13</sup> 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determinations that a small cable company is one with annual revenues of \$100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, MM Docket Nos. 92-266 & 93-215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 (1995).

<sup>14</sup> Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

<sup>15</sup> 47 C.F.R. § 76.901(c).

<sup>16</sup> 47 U.S.C. § 543(m)(2).

<sup>17</sup> 47 C.F.R. § 76.1403(b).

<sup>18</sup> Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

<sup>19</sup> In its IFRA in this proceeding, the Commission included an analysis of local multipoint distribution systems ("LMDS"). At that time, there was one video programming distributor using LMDS frequencies to provide video services. Since the FNPRM, that distributor ceased operation and it appears that LMDS licensees will use these frequencies for services other than video distribution. See *Annual Assessment of the Stations of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 96-133, Fifth Annual Report, 13 FCC Rcd 24284, 24339 (1998) ¶ 87.

("ITFS").<sup>20</sup> The Commission has defined "small entity" for purposes of the auction of MDS frequencies 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.<sup>21</sup> This definition of a small entity in the context of MDS auctions has been approved by the SBA.<sup>22</sup> The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas ("BTAs"). Of 67 winning bidders, 61 qualified as small entities.<sup>23</sup>

10. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, which includes all such companies generating \$11 million or less in annual receipts.<sup>24</sup> This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of \$11 million annually. Therefore, for purposes of the FRFA, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules.

11. The SBA definition of small entities for pay television services, which includes such companies generating \$11 million in annual receipts, appears applicable to ITFS.<sup>25</sup> There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business.<sup>26</sup> 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 1,932 licensees are small businesses.

12. Satellite Master Antenna Television ("SMATV") Systems. The SBA definition of small entities for cable and other pay television services specifically includes SMATV services and, thus, small

---

<sup>20</sup> *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. 94-131 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd at 9589, 9593 ¶ 7 (1995).

<sup>21</sup> 47 C.F.R. § 21.961(b)(1).

<sup>22</sup> *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. 94-131 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589 (1995).

<sup>23</sup> One of these small entities, O'ahu Wireless Cable, Inc., was subsequently acquired by GTE Media Ventures, Inc., which did not qualify as a small entity for purposes of the MDS auction.

<sup>24</sup> 13 C.F.R. § 121.201.

<sup>25</sup> 13 C.F.R. § 121.201.

<sup>26</sup> 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).

entities are defined as all such companies generating \$11 million or less in annual receipts.<sup>27</sup> Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995.<sup>28</sup> Other estimates indicate that SMATV operators serve approximately 1.05 million residential subscribers as of September 1996.<sup>29</sup> The ten largest SMATV operators together pass 815,740 units.<sup>30</sup> 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 believe that a substantial number of SMATV operators qualify as small entities.

13. Direct Broadcast Satellite (“DBS”) Service. The SBA includes DBS service in its classification of cable and other pay television services. Therefore, a small DBS service is defined as a company generating \$11 million or less in annual receipts.<sup>31</sup> As of November 1999, there were four DBS licensees, one of which was not in operation. Providing DBS service requires a great investment of capital to build, launch, and operate satellite systems. Typically, small businesses do not have the financial ability to become DBS licensees because of the high implementation costs associated with launching satellites. Most recent industry statistics suggest that the revenue attributed to DBS subscribers for EchoStar was \$682.8 million for the year of 1998 and \$1.55 billion for DirecTV. We do not have similar revenue information for the third operating licensee, Dominion Video Satellite, Inc. However, we do not believe that any DBS licensees could be categorized as a small business.

14. Home Satellite Dish (“HSD”) Service. The market for HSD service is difficult to quantify. HSD owners have access to more than 500 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 350 channels are scrambled and approximately 150 channels are unscrambled.<sup>32</sup> To receive scrambled channels, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming packager. Thus, those HSD users that subscribe to a programming package are similar to consumers that subscribe to cable and other pay television services. Accordingly, it appears that the definition of small entity under SIC 4841 (i.e., all such companies generating \$11 million or less in annual receipts<sup>33</sup>) would be applicable to this service.

15. According to the most recently available information, there are approximately 20 to 25

---

<sup>27</sup> 13 C.F.R. § 121.201.

<sup>28</sup> See *Annual Assessment of the Stations of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 96-133, Third Annual Report, 12 FCC Rcd 4358, 4403-4 (1997) ¶ 81.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> 13 C.F.R. § 121.201.

<sup>32</sup> See *Annual Assessment of the Stations of Competition in Markets for the Delivery of Video Programming*, CS Docket No. 97-141, Fourth Annual Report, 13 FCC Rcd 1034, 1077-8 (1998) ¶ 68.

<sup>33</sup> 13 C.F.R. § 121.201.

program packagers nationwide offering packages of scrambled programming to retail consumers.<sup>34</sup> As of June 1999, these program packagers provide subscriptions to approximately 1,783,411 subscribers nationwide.<sup>35</sup> This is an average of about 90,000 subscribers per program packager. This is substantially smaller than the 400,000 subscribers used in the Commission's definition of a small multiple system operator ("MSO"). Furthermore, because this is an average, it is likely that some program packagers may be substantially smaller.

16. Open Video System ("OVS") Service. As part of the Telecommunications Act of 1996, Congress established the OVS framework for the delivery of multichannel video programming service.<sup>36</sup> This new service is similar to cable television and other pay television services. Although OVS is not specifically enumerated under SIC 4841, it is appropriate to include OVS in this classification and to apply the SBA definition of small entity, which includes all such companies generating \$11 million or less in annual receipts, to OVS service.<sup>37</sup> The Commission has issued 37 certifications to operate OVS systems.<sup>38</sup> Of these 37 certifications, only one OVS operator, RCN, is providing service in various service areas across the United States. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. We believe that one OVS licensee may qualify as a small business concern. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

17. Small Broadcast Stations. The SBA defines small television broadcasting stations as television broadcasting stations with \$10.5 million or less in annual receipts.<sup>39</sup> Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.<sup>40</sup> Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.<sup>41</sup>

---

<sup>34</sup> *Id.* at 1077-8 ¶ 68.

<sup>35</sup> See *Annual Assessment of the Stations of Competition in Markets for the Delivery of Video Programming*, CS Docket No. 99-230, Sixth Annual Report, 14 FCC Rcd 978, 1019 (2000) ¶ 84.

<sup>36</sup> 47 U.S.C. § 571.

<sup>37</sup> 13 C.F.R. § 121.201.

<sup>38</sup> See <http://www.fcc.gov/csb/ovs/csovscer.html>. Of these 37 certifications, MFS has withdrawn its two certifications for New York City and Boston because it does not intend to operate open video systems in these areas and Bell Atlantic shut down its Dover, New Jersey, system in favor of its distribution agreement with DirecTV.

<sup>39</sup> 13 C.F.R. § 121.201, SIC 4833.

<sup>40</sup> Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995).

<sup>41</sup> *Id.*

18. There were 1,509 full-service television stations operating in the nation in 1992.<sup>42</sup> That number has remained fairly constant as indicated by the approximately 1,616 operating full-service television broadcasting stations in the nation as of September 1999.<sup>43</sup> For 1992<sup>44</sup> the number of television stations that produced less than \$10 million in revenue was 1,155 establishments.<sup>45</sup> Thus, the rule will affect approximately 1,616 television stations: approximately 77%, or 1,244, of those stations are considered small businesses.<sup>46</sup> These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

#### **D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

19. This *Second Report and Order* does not adopt any required reporting or recordkeeping. However, when a video programming distributor is notified by the Commission that a complaint alleging violation of the rule has been received, the distributor may submit records, certifications, or other documentation that demonstrate compliance with the rule.

#### **E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

20. In the FNPRM, the Commission sought information and comment regarding the appropriate rules and policies to promote and ensure the accessibility of emergency information to persons with hearing disabilities. We requested comment on whether separate transitional closed captioning requirements are needed for emergency information or whether there are other methods of providing accessibility for this type of programming.<sup>47</sup>

21. In this *Second Report and Order*, the Commission defines emergency information and adopts a requirement that video programming distributors must make emergency information accessible to persons with hearing disabilities either through closed captioning or by using a method of visual presentation. Such methods include, but are not limited to, open captioning, crawls or scrolls. We concluded that a rule requiring closed captioning or a method of visual presentations achieves the goal of ensuring that the same critical information about an emergency is accessible to persons with hearing disabilities as is available to other viewers. The rule also provides significant flexibility to the video

---

<sup>42</sup> FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, Appendix A-9.

<sup>43</sup> FCC News Release, Broadcast Station Totals as of September 30, 1999 (rel. Nov. 22, 1999).

<sup>44</sup> Census for communications' establishments are performed every five years ending with a "2" or "7." See Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, note 53, III.

<sup>45</sup> The amount of \$10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

<sup>46</sup> We use the 77% figure of television stations operating at less than \$10 million for 1992 and apply it to the 1999 total of 1,616 television stations to arrive at stations categorized as small businesses.

<sup>47</sup> FNPRM, 13 FCC Rcd 5630 ¶ 7.

programming distributor by allowing it to determine the most feasible and affordable method for making such information accessible. Therefore, the rule will not impose an economic burden on video programming distributors, including small entities.

**F. Report to Congress:**

22. The Commission will send a copy of this *Second Report and Order*, including this FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this *Second Report and Order* and FRFA (or summary thereof) will also be published in the Federal Register, pursuant to 5 U.S.C.A. § 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.