. as may be necessary in the execution of its functions," and to "[m]ake such rules and regulations . . . not inconsistent with law, as may be necessary to carry out the provisions of this Act . . . "[184] Developing and maintaining an effective, reliable, integrated, flexible, and comprehensive EAS system is a fundamental and longstanding FCC mission under the Communications Act.

57. Requiring EAS Participants to receive state-level alerts delivered pursuant to, and upon adoption by FEMA of CAP advances the Commission's policy objectives and serves the public interest by ensuring the ability of state governors to disseminate emergency information via EAS facilities. State governments play an essential role in providing emergency information to the public. The Commission's EAS regulations always have accounted for the importance of state-level alerts, but we now conclude that mandating receipt of state-level EAS messages will further our core public safety mission.

58. Exercising ancillary jurisdiction to require EAS participants to receive messages delivered to them by a state governor also furthers other statutory goals. Section 615 requires the Commission to "encourage and support efforts by States to deploy comprehensive end-to-end emergency communications infrastructure and programs,"[185] while Section 706 grants specific, communications-related powers to the President in time of war or national emergency. In such event, the President may, for example, take control of, or suspend or amend the rules and regulations applicable to, any or all cable and radio and television broadcast stations within the Commission's jurisdiction. Commission authority to regulate participation by cable systems in the emergency alerting process stems primarily from section 624(g) of the Act.[186] That provision requires the Commission to ensure that cable viewers are afforded the same access to emergency communications as broadcast viewers and listeners. Additionally, the Americans with Disabilities Act strives to make all facets of our society fully accessible to individuals with disabilities.[187] Finally, in light of the President's 2006 *Executive Order*, which directs the Commission to adopt rules to ensure that communications systems have the capacity to transmit alerts and warnings to the public as part of the public alert and warning system, we note that our action today is consistent with that Presidential directive as well as with emergency preparedness goals expressed by Congress in other statutes.[188]

59. Accordingly, we reject as without merit NAB's argument that the Commission lacks authority to mandate participation in state-level EAS alerts. NAB points out that section 706 concerns Presidential communications, and the executive orders delegating authority to the FCC pursuant to section 706 largely concern the development of a national-level communications capability to serve

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[184] *Id.* at §§ 154(i), 303(r). *See also id.* at § 154(o) (requiring the Commission, "[f]or the purpose of obtaining maximum effectiveness from the use of radio and wire communications in connection with safety of life and property," to study "methods of obtaining the cooperation and coordination of these systems.").

[185] 47 U.S.C. § 615 (support for universal emergency telephone number). While generally supporting our subject matter jurisdiction in this area, we acknowledge that "nothing in this section shall be construed to authorize or require the Commission to impose obligations or costs on any person." *Id.*

[186] 47 U.S.C. § 544(g).

[187] *See also Individuals with Disabilities in Emergency Preparedness*, Exec. Order No. 13347, 69 Fed. Reg. 44,573 (2004).

[188] "The Congress recognizes that the organizational structure established jointly by the Federal Government and the States and their political subdivisions for emergency preparedness purposes can be effectively utilized to provide relief and assistance to people in areas of the United States struck by a hazard. The Federal Government shall provide necessary direction, coordination, and guidance, and shall provide necessary assistance, as authorized in this subchapter so that a comprehensive emergency preparedness system exists for all hazards." 42 USCA § 5195 (Declaration of Policy).

Presidential needs, rather than state or local needs.[189] Section 706 is not the only source of FCC authority to impose EAS requirements, however. The Commission's core public safety mission under Title I is not limited to national emergencies,[190] nor is our Title III authority to grant radio licenses in the public interest so limited.[191] Indeed, the *Executive Order* broadly affirms that "[i]t is the policy of the United States to have an effective, reliable, integrated, flexible, and *comprehensive system* to alert and warn the American people ... , *taking appropriate account of ... all levels of government in our Federal system* ..."[192] We could not ensure a "comprehensive" system without taking state governments into account. The FCC's past reliance on voluntary state-level EAS participation reflects a policy judgment, rather than a lack of authority, as NAB suggests.

60. NAB also argues that the Commission cannot rely on section 1 because requiring state-level EAS participation implicates programming content. The only support that NAB offers for this argument is the D.C. Circuit's statement in *Motion Picture Ass'n of America, Inc. v. FCC* that "[o]ne of the reasons why § 1 has not been construed to allow the FCC to regulate programming content is because such regulations invariably raise First Amendment issues."[193] NAB's reliance on this statement is misplaced. In the *MPAA* decision, the Commission was relying on Title I alone to regulate programming content in the face of a statutory provision regarding video descriptions that the court interpreted as limiting FCC authority.[194] Here, in contrast, we rely on Title III as well as Title I to mandate the carriage of emergency information. Requiring the carriage of emergency information also is a longstanding function of the Commission. NAB fails to explain how requiring state-level EAS participation implicates programming content in a manner different from the longstanding requirement of national-level EAS participation, which NAB does not challenge.

61. In addition to the source of our legal authority to require participation in state-level EAS, we also must consider the facilities and architecture of the various EAS Participants in determining how best to implement a state-level EAS requirement. We note that the existing EAS network architecture is based on a broadcast model of localized receipt and distribution by radio, television, and cable service providers using ENDEC units situated throughout their service areas. We recognize that certain other EAS Participants may have organized their service infrastructure on a national, not regional, basis. For example, the Commission recognized in the *First Report and Order* that SDARS "is by nature a national service and that as a result the development of methods to ensure receipt of state and local alerts by

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[189] *See* Joint Comments of the National Association of Broadcasters and the Association for Maximum Television Service, Inc. in EB Docket No. 04-296 at 25-27 (filed Oct. 29, 2004) (NAB Comments).

[190] *See* 47 U.S.C. § 152(a) (establishing the Commission to regulate interstate and foreign communications for the purpose of "promoting safety of life and property through the use of wire and radio communication").

[191] *Id.* at §§ 301, 307(a), 309(a).

[192] *Executive Order*, section 1 (emphasis added).

[193] *Motion Picture Ass'n of America, Inc. v. FCC*, 309 F.3d 796, 805 (D.C. Cir. 2002) (*MPAA*). NAB erroneously attributes this quote to the Supreme Court in *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 651 (1994). *See* NAB Comments at 30.

[194] *See MPAA*, 309 F.3d at 804 ("Section 1 does not address the *content* of the programs with which accessibility is to be ensured."). NAB's contention that mandating state-level EAS participation contravenes section 4(o) of the Act is specious. NAB Comments at 29. Whereas the *MPAA* decision on which NAB relies concerned section 713 of the Act, which Congress had recently adopted and which the Court interpreted as withholding authority under title I, section 4 of the Act enumerates various functions of the agency and has long co-existed with the FCC's regulatory authority over EAS. *See* NAB Comments at 28, citing *MPAA*, 309 F.3d at 807 (concurring opinion of Henderson, J.).

SDARS licensees is likely to be challenging."[195] Requiring these carriers to establish monitoring capability in every state where they do business could prove to be unduly burdensome. Satellite carriers, in particular, have expressed a need for a single receive point for EAS alerts that would complement their organizational structure.

62. We do not require SDARs and DBS providers to accommodate state-level alerts given the national nature of their broadcast area. We note that SDARS and DBS cannot accommodate state-level alerts at present and might not be able to do so even after the full implementation of Next Generation EAS. In the United States, there are two licensed SDARS operators: Sirius Satellite Radio, Inc. ("Sirius") and XM Radio, Inc. ("XM").[196] Both licensees transmit their programming via satellite directly to subscribers' receivers on a nationwide basis.[197] In the *First Report and Order*, the Commission required the SDARS licensees to transmit national level EAS messages on all channels on their systems.[198] In the *Further Notice*, the Commission sought comment on how technologies like SDARS, which are designed to receive and deliver national programming, could deliver state and local alerts.[199] Although some potential, developing functionalities may enable SDARS to support geo-targeting, such as state-level alerts, in the future, XM expressed concerns that its current system cannot support geographical targeting of even state-level alerts to affected subscribers.[200] XM states that there are two impediments for SDARS to transmit state or local alerts -- a satellite radio provider does not have an ENDEC unit located in every area where a local alert might originate, and a satellite radio provider's programming reaches subscribers nationwide.[201] Because SDARS providers face technical difficulties in distributing even state-level alerts to their subscribers, we will not at this time require SDARS to provide geographically-targeted alerts, including state-level alerts.

63. Likewise, DBS satellite service providers, such as EchoStar (Dish Network) and DIRECTV, transmit video programming on a nationwide basis to subscribers over a wide area. DIRECTV and PanAmSat state that currently DBS systems cannot distribute state and local alerts without interrupting programming across a wide area.[202] DIRECTV also states that its system currently does not have the capability to receive, sort, and disseminate state and local EAS messages only to the subscribers in the affected areas.[203] Because DBS providers also face technical difficulties in distributing alerts to portions of their subscribers, we will not at this time require DBS to provide geographically-targeted alerts, including state-level alerts.

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[195] *First Report and Order*, 20 FCC Rcd at 18643-44, ¶ 46.

[196] SDARS is commonly known as "satellite radio."

[197] *First Report and Order*, 20 FCC Rcd at 18639-640, ¶ 40.

[198] *Id.* at 18641-42, ¶ 43.

[199] *Further Notice*, 20 FCC Rcd at 18652-53, ¶ 68.

[200] *See, e.g.*, June 9, 2006 *ex parte* meeting with Anthony Masiello, Senior Vice President, Broadcast Operations, and John Archer, Vice President, Operations, XM Radio, Inc.

[201] XM Comments at 4.

[202] DIRECTV Comments at 2; PanAmSat Comments at 5-6.

[203] DIRECTV Comments at 2. DIRECTV already provides state and local emergency information to many subscribers by retransmitting state and local alerts aired by local television broadcast stations in over 140 markets where it provides local-into-local service. *Id.* at 3.

b. Geographically Targeted Alerts at Less than State-Level

64. Although we are limiting the requirement that EAS Participants receive state level messages to messages received from state governors (or their designees) pursuant to CAP, we do not seek to restrict state use of the EAS network to only emergency messages that require statewide distribution. A governor could, for example, determine that certain emergencies warrant use of the EAS network to deliver a geographically-targeted alert to particular regions. Employing CAP will facilitate such geo-targeting, at least in connection with some technologies. Accordingly, we also require EAS Participants to deliver emergency alerts to areas smaller than a state. In order to transmit such targeted alerts, however, EAS Participants must be provided with CAP-formatted messages containing appropriate codes.[204] Further, EAS Participants may comply with this requirement by utilizing geographic-specific alerts such as subscripts utilizing localized information. Expanding our state-level alert transmission requirement to include geographically targeted alerts will afford each state governor the ability to determine the types and geographic scope of emergency alerts provided to residents via the EAS network, in coordination with the ability of EAS Participants in his or her state to accommodate such alerts. Importantly, however, in adopting this requirement, we note that terrestrial broadcasters may not presently have the technical ability to restrict delivery of a targeted alert solely to the affected portion of their service area. This type of restriction is not necessary in order to comply with the requirements established in this Order.[205]

E. Coordination with State and Local Governments

1. Background

65. State and local participation in the EAS is not currently required by the Commission's rules. Nevertheless, all states, the District of Columbia, as well as many local jurisdictions, have elected to participate in the EAS to varying degrees. In order to participate in the EAS, entities must file an EAS plan with the Commission for review and approval "prior to implementation to ensure that they are consistent with national plans, FCC regulations, and EAS operation."[206] In the *2004 NPRM*, the Commission noted the importance of state and local EAS plans and requested comment on whether to require periodic updating and review of these plans.[207] In the *Further Notice*, the Commission reiterated this request and also asked whether it should require state and local entities to notify the Commission of any revisions to their EAS plans or their EAS designations (for example, NP, LP1, LP2, SR, and LR).[208] The Commission also inquired whether it should require state and local entities to annually confirm their plans and designations.[209]

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[204] CAP incorporates geospatial elements to permit precise geographic targeting of alerts. For example, a CAP-formatted message could include the Federal Information Processing Standards (FIPS) Codes that correspond to the counties and independent cities expected to be affected by a storm.

[205] Thus, to the extent that there is a tornado warning for Gaithersburg, MD, it would be acceptable for a station to broadcast the alert in the entire D.C. Metropolitan area.

[206] Section 11.21 of the Commission's rules states that EAS plans "must be reviewed and approved by the Director, Office of Homeland Security, Enforcement Bureau [now, Chief, Public Safety and Homeland Security Bureau], prior to implementation to ensure that they are consistent with national plans, FCC regulations, and EAS operation." 47 C.F.R. § 11.21.

[207] *2004 NPRM*, 19 FCC Rcd at 15784, ¶ 25.

[208] *Further Notice*, 20 FCC Rcd at 18654, ¶ 73.

[209] *Id.*

2. Discussion

66. For nearly half a century, the Commission has encouraged state and local participation in the EAS (and its predecessor, the EBS), and we take additional steps today in this *Order* that will ensure the effective and efficient participation by states and local jurisdictions in the EAS. We note that the SECCs, industry participants, and state and local officials have worked closely with Commission staff to ensure the efficacy of the EAS, resulting in EAS plans for all 50 states.[210] The Commission has reviewed and approved EAS plans for a number of states,[211] and continues to have a cooperative, highly effective relationship with the SECCs.[212]

67. As a result of the actions we take today to ensure that state governors have a robust and reliable EAS network at their disposal, states will likely need to revise their EAS plans to specify how and what types of EAS alerts they will transmit to EAS Participants. Such information will enable the Commission, FEMA, affected EAS Participants, and other interested parties to ensure that these plans are implemented successfully. While we do not dictate specific plan revisions other than those set forth herein for implementing mandatory state-level alerts, we encourage states to include information regarding redundant distribution of EAS alerts. Since state EAS plans will be required to contain information concerning our new requirement that EAS Participants must distribute EAS alerts delivered by state governors, plans should specify how the governor's CAP-formatted EAS messages will be transmitted to all EAS Participants who provide services in the state. We also encourage states to submit an electronic data file specifying monitoring assignments and the paths for the Emergency Action Notification (EAN) from the NP to each station in their plans. We believe that such an electronic submission would facilitate the Commission's revision of the EAS "Map Book" required under the EAS rules.[213] We also urge states to provide detailed information identifying the monitored and monitoring broadcast stations.

68. In order to ensure that the Commission has sufficient notice of revised EAS plans, we will require state and local entities to file modified plans with the Commission at least 90 days before the effective date of any revision to their EAS plans or their EAS designations. In addition, we will require state and local entities to annually confirm their plans and designations.

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[210] "The Emergency Alert Systems (EAS): An Assessment," Partnership for Public Warning, February 2004, PPW Report 2004-1, pg. 52.

[211] *See* www.fcc.gov/pshs/eas/Welcome.html.

[212] Commenters, including broadcasters and SECCs, support a mandatory state EAS plan filing requirement. *See, e.g.*, AFB 10/29/04 Comments at 2 (every state and municipality should adopt an EAS plan); California Broadcasters Assoc. 11/10/04 Comments at 12; ComLabs, Inc. 10/29/04 Comments at 8; Hearst-Argyle Television 10/29/04 Comments at 3-5 (all states would be required to file EAS plans and update them at least once every five years; National Center for Missing and Exploited Children 10/29/04 Comments at 5; New Hampshire SECC 10/27/04 Comments at 5; NC Association of Broadcasters 10/29/04 Comments at 9; Partnership for Public Warning 10/25/04 Comments at 4); State of Ohio Emergency Management Agency 10/27/04 Comments at 2; TFT 10/22/04 Comments at 6; Thomas Newell 10/29/04 Comments at 2; WTOP 10/29/04 Comments at 6. In addition, several commenters filed comments to the *FNPRM* recommending mandatory state plans. *See, e.g.*, Wireless RERC Comments at 9; NPSTC Comments at 6 (no entity is responsible for ensuring that every state adopts a plan); SBE Comments at 19-20.

[213] *See* 47 C.F.R. § 11.21(c).

69. We also agree with commenters and the specific recommendation of the Independent Panel that the Commission should proactively provide EAS training to interested parties.[214] We agree with Contra Costa that education to public safety and citizens is critical in making any type of infrastructure successful.[215] We also believe that the Alaska Broadcasters Association and the State Emergency Communications Committee (Joint Parties) in our EAS proceeding are correct in recommending that training be provided for emergency managers as well as subject broadcasters, cable systems and other media operators.[216] We take particular note of the argument of the Ohio Association of Broadcasters that proper training (and retraining) is a critical component of EAS, and supports training programs at the local level. OAB believes the Federal government also should be responsible for providing guidance to ensure that an appropriate minimum level of training of emergency management personnel is provided. According to OAB, a national training standard would ensure that training of persons who administer and activate EAS is uniform throughout local communities, states, and among federal, state and local government agencies.[217] Accordingly, we hereby instruct the Commission's Public Safety and Homeland Security Bureau to coordinate with FEMA on the appropriate requirements for and resources to conduct EAS training programs to ensure states and other interested parties can implement the Next Generation EAS.

F. Assessing EAS Operation

70. In the *Further Notice*, we asked whether performance standards are necessary to ensure that Next Generation technologies deliver alerts to the American public in a timely and accurate fashion.[218] We noted that proposed standards could include the length of time it takes to receive a message and the accuracy of the message.[219]

71. It is vital that the EAS operates as designed in an emergency. We intend to examine several potential mechanisms to ensure that is the case. In the Further Notice of Proposed Rulemaking, we seek comment on several options, including: (1) additional testing; (2) station certification of compliance; and (3) assessments of EAS performance after an alert has been triggered. We will revisit the issue of performance standards if it appears that they are warranted.

IV. FURTHER NOTICE OF PROPOSED RULEMAKING[220]

72. *Non-English Speakers*. We recognize the need for *all* Americans – including those whose primary language is not English – to be alerted in the event of an emergency. We therefore seek

[214] Some commenters have suggested that the Commission develop training programs and model state plans in conjunction with DHS and the Media Security and Reliability Council ("MSRC"). *See, e.g.*, SBE Comments at 19-21 (training sessions for emergency managers and broadcasters); NPSTC Comments at 7 (implementation of MSRC's recommendations); State Associations Comments at 14 (educate state and local emergency management); NYC Comments at 4 (training programs); State of Ohio Emergency Management Agency 10/27/04 Comments at 5 (recommending training).

[215] Contra Costa 10/29/04 Comments at 3.

[216] Joint Parties 11/1/04 Comments at 5.

[217] OAB Comments at 12-13.

[218] *Further Notice*, 20 FCC Rcd at 18654, ¶ 72.

[219] *Id.*

[220] Given the importance of these issues, we intend to issue an order addressing the issues set forth below within six months.

comment on how non-English speakers may best be served by national, state and local EAS. In particular, we invite comment on how localities with non-English speakers should be identified. In which markets should special emergency alert rules apply? As MMTC et al. propose, should state and local EAS plans designate a "Local Primary Multilingual" station to transmit emergency information the relevant foreign language in local areas where a substantial proportion of the population has a fluency in a language other than English?[221] How should we quantify the "substantial proportion"? Should at least one broadcast station in every market, or some subset of markets, be required to monitor and rebroadcast emergency information carried by a "Local Primary Multilingual" station. And, should stations that remain on the air during an emergency be required to broadcast emergency information in the relevant foreign language to the extent that the "Local Primary Multilingual" station loses transmission capability. What criteria should the originator of an EAS message use in determining which languages to require EAS Participants to transmit? Should more than two languages be transmitted in certain areas? We seek comments on the technical, economic, practical, and legal issues, including the Commission's authority, involved in making emergency information accessible to persons whose primary language is not English. We would especially welcome comments on state-level or other efforts designed to address these issues. We note, for example, that Florida has implemented a program to promote the provision of emergency information to non-English speakers in that state, and that California and Texas have addressed the issue in their EAS plans filed with this Commission.[222] We direct the Public Safety and Homeland Security Bureau to convene a meeting – or series of meetings – as soon as possible concerning EAS as it relates to the needs of non-English speakers. The Bureau should thereafter submit into the record a progress report on these discussions within 30 days of this Order's release.

73. *Persons with Disabilities.* In this *Further Notice of Proposed Rulemaking* we reexamine the best way to make EAS and other emergency information accessible to persons with disabilities. We request comments on this subject, including, but not necessarily limited to the following key issues: (1) presentation of the audio feed in text format, and vice-versa; (2) making emergency information available to various devices commonly used by persons with disabilities; and (3) providing emergency messages in multiple formats to meet the needs of persons with disabilities. We also seek comment on the interaction between our Part 11 rules and section 79.2 of our rules. We welcome comments on the technical, economic, practical, and legal issues, including the Commission's authority, involved in making emergency information accessible to persons with disabilities.

74. *Other local official alerts.* Our action today enables state governors (or their designees) to initiate state-level and geo-targeted alerts for mandatory transmission by EAS Participants. Since, as stated above, EAS activations to date have been overwhelmingly related to weather and state and local alerts, we seek comment on whether EAS Participants should be required to receive and transmit alerts initiated by government entities other than a state governor. Should local, county, tribal, or other state governmental entities be allowed to initiate mandatory state and local alerts? How should the Commission decide which public officials should be permitted to activate the alert? Should the expansion of mandatory state and local alerts be limited to certain types of alerts? We seek comment on whether the Commission should specify the types of emergency alerts that these local officials should be

[221] MMTC et. al at 4.

[222] Written Statement of Mr. C. Patrick Roberts, President of the Florida Association of Broadcasters, On the Lifesaving Role of Accurate Hurricane Predication, Before the Subcommittee on Disaster Prevention and Prediction of the Committee on Commerce, Science and Transpiration, United States Senate, at 3, 4, 5, 11 (Sept. 20, 2005), available at http://commerce.senate.gov/pdf/roberts.pdf. California EAS Plan, at 7 (revised July 2002); Texas EAS Plan,at 5 (revised March 2004).

permitted to activate? Should only certain classes of EAS Participants be required to transmit such alerts by entities other than the governor? Does CAP allow for proper delivery of such alerts, or should such alerts be mandatory only in the context of Next Generation EAS? What other considerations should govern the appropriate use of a mandatory alerting process by entities other than a governor? We seek comment generally on how this type of requirement should be implemented.

75. *Assessing EAS Operation.* We seek comment on several options for ensuring that EAS operates as designed in an emergency, including whether we should require: (1) additional testing of the EAS,[223] and specifically CAP; (2) station certification of compliance; and (3) assessments of EAS performance after an alert has been triggered. We will revisit the issue of performance standards if it appears that they are warranted. In particular, we seek comments on the technical, economic, practical, and legal issues involved.

V. PROCEDURAL MATTERS

A. *Ex Parte* Presentations

76. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[224] Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.[225] Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.

B. Comment Filing Procedures

77. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. **All filings related to this Order and the Further Notice of Proposed Rulemaking should refer to EB Docket No. 04-296**. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://www.fcc.gov/cgb/ecfs/ or the Federal eRulemaking Portal: http://www.regulations.gov. Filers should follow the instructions provided on the website for submitting comments.

    - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

[223] *See* 47 C.F.R. § 11.61(a) (distinguishing 'additional' EAS tests from 'required' tests).

[224] 47 C.F.R. §§ 1.200 *et seq.*

[225] *See* 47 C.F.R. § 1.1206(b)(2).

- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

  Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

  - The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

  - U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

C. Accessible Formats

78. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

D. Regulatory Flexibility Analysis

79. As required by the Regulatory Flexibility Act of 1980, *see* 5 U.S.C. § 604, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. The FRFA is set forth in Appendix B.

80. As required by the Regulatory Flexibility Act of 1980, *see* 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA is set forth in Appendix D. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to this Further Notice of Proposed Rulemaking as set forth in paragraph 77, and have a separate and distinct heading designating them as responses to the IRFA.

E. Paperwork Reduction Act Analysis

81. This Second Report and Order contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 ("PRA"), Public Law 104-13. It will be submitted to the Office of Management and Budget ("OMB") for review under Section 3507(d) of the PRA.

F. Congressional Review Act

82. The Commission will send a copy of this Second Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act ("CRA"), *see* 5 U.S.C. § 801(a)(1)(A).

VI. ORDERING CLAUSES

83. Accordingly, IT IS ORDERED that pursuant to sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g),706 and 715 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i) and (o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 615. the Second Report and Order and Further Notice of Proposed Rulemaking in EB Docket No. 04-296 IS ADOPTED, and that Part 11 of the Commission's Rules, 47 C.F.R. Part 11, is amended as set forth in Appendix C. The Order shall become effective 30 days after publication in the Federal Register, except that new or modified information collection requirements contained in Appendix C will not become effective prior to OMB approval; and

84. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Second Report and Order and Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

APPENDIX A

List Of Commenters

Comments in EB Docket No. 04-296

Commenters	Abbreviation
Active Data Exchange, Inc.	Active Data
Airit2me, Inc.	Airit2me
Alert Systems, Inc.	Alert Systems
American Association of Paging Carriers	AAPC
American Foundation for the Blind	AFB
Association of Maximum Service Television	AMST
Association of Public Broadcasting	APB
AT&T	AT&T
Azos AI, LLC	Azos
Bell, Frank W.	Bell
BellSouth	BellSouth
Brooks, Rex	Brooks
Brown, Robert	Brown
Cellular Telecommunications & Internet Association	CTIA
City of New York	NYC
Cingular	Cingular
Cohen, Philip	Cohen
Community Broadcasters Association	CBA
Consumer Electronics Association	CEA
Cox Broadcasting	COX
DIRECTV	DIRECTV
Dodds, Betty	Dodds
EchoStar	EchoStar
Emergency E-Mail & Wireless Network	EEWN
Ericsson Inc.	Ericsson
Harris Corporation	Harris
Jones, Elysa	Jones
Marks, Alan R.	Marks
Merrell, John	Merrell
Minority Media & Telecommunications Council, Independent Spanish Broadcasters, *et. al.*	MMTC
Named State Broadcasters Associations	State Associations
National Association of Broadcasters	NAB
National Cable & Telecommunications Association	NCTA
National Public Safety Telecommunications Council	NPSTC
Notification Technologies, Inc.	NT
PanAmSat, *et. al.*	PanAmSat
Putkovich, Kenneth	Putkovich
RadioShack Corporation	RadioShack
Rehabilitation Engineering Research Center on Mobile Wireless Technologies	RERC Wireless
Research Center on Telecommunications Access	RCTA
Rural Cellular Association	RCA

Society of Broadcast Engineers, Inc.	SBE
Sprint Nextel	Sprint Nextel
Telecommunications for the Deaf and Hard of Hearing	TDI
TFT, Inc.	TFT
T-Mobile	T-Mobile
U.S. Geological Survey	USGS
USA Mobility, Inc.	USA Mobility
VeriSign	VeriSign
Verizon	Verizon
WFSA-TV Montgomery, AL	WFSA-TV
WGBH National Center for Accessible Media and Rehabilitation Engineering	WGBH
XM Radio Inc.	XM

Reply Commenters	**Abbreviation**
3G Americas, LLC	3G
Airit2me, Inc.	Airit2me
Association for Maximum Service Television, Inc.	AMST
AT&T	AT&T
Bell, Frank W.	Bell
Cingular Wireless LLC	Cingular
Communication Service for the Deaf, Inc.	CSD
CTIA - The Wireless Association™	CTIA
Dominion Video Satellite Inc.	DVS
EchoStar Satellite LLC	EchoStar
Minority Media & Telecommunications Council, Independent Spanish Broadcasters, *et. al.*	MMTC
National Association of Broadcasters	NAB
National Cable & Telecommunications Association	NCTA
National Public Safety Telecommunications Council	NPSTC
NYC Department of Information Technology and Telecommunications	NYC
Putkovich, Kenneth	Putkovich
Rural Cellular Association	RCA
Telecommunications for the Deaf and Hard of Hearing, Inc.	TDI
TFT, Inc.	TFT
T-Mobile USA, Inc.	T-Mobile
USA Mobility, Inc.	USA Mobility

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act ("RFA"),[226] an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the Further Notice of Proposed Rulemaking in EB Docket 04-296 ("*First Report and Order and FNPRM*").[227] The Commission sought written public comment on the proposals in the *EAS NPRM*, including comment on the IRFA. This Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.

A. Need for, and Objectives of, the Rules

2. This *Second Report and Order* adopts rules that set the framework for a Next Generation EAS. In this Order, we take the following actions to establish service requirements for a Next Generation EAS, and establish schedules by which industry segments must transition to the new system: (1) require EAS Participants to configure their systems to accept EAS alerts formatted in the Common Alerting Protocol ("CAP") format no later than 180 days after FEMA announces the technical standards and requirements for CAP-formatted messages; (2) require EAS Participants to configure their systems to authenticate and validate EAS alerts formatted in the CAP format no later than 180 days after FEMA announces the standards for authentication and validation of CAP-formatted messages; (3) require EAS Participants to receive and transmit state-level messages delivered to the Participant by the state's governor (or the governor's designee) within 180 days from the date FEMA adopts CAP, so long as such delivery is explicitly described in a state EAS plan that is submitted to and approved by the Commission; (4) require wireline common carriers that provide video programming service to receive and distribute EAS messages; and (5) delegate authority to the Chief, Public Safety and Homeland Security Bureau to perform actions that will facilitate proper implementation of our rules and resolution of issues as set forth herein.

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

3. There were no comments filed that specifically addressed the IRFA.

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[226] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[227] *See Review of the Emergency Alert System*, EB Docket No. 04-296, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 18625 (2005) ("*First Report and Order and FNPRM*").

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

4. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.[228] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[229] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[230] 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").[231]

5. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[232] Nationwide, as of 2002, there were approximately 1.6 million small organizations.[233] The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[234] As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.[235] This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2 percent) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.[236]

6. *Television Broadcasting*. The SBA has developed a small business sized standard for television broadcasting, which consists of all such firms having $13 million or less in annual receipts.[237] Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound."[238] According to Commission staff review of BIA Publications, Inc. Master Access

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[228] 5 U.S.C. § 604(a)(3).

[229] 5 U.S.C. § 601(6).

[230] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 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 Small Business Administration 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." 5 U.S.C. § 601(3).

[231] 15 U.S.C. § 632.

[232] 5 U.S.C. § 601(4).

[233] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[234] 5 U.S.C. § 601(5).

[235] U.S. Census Bureau, Statistical Abstract of the United States: 2000, Section 9, pages 299-300, Tables 490 and 492.

[236] *See* SBA, Programs and Services, SBA Pamphlet No. CO-0028, 40 (Jul. 2002).

[237] 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 515120.

[238] Office of Management and Budget, North American Industry Classification System: United States, 1997, at 509 (1997). This category description continues, "These establishments operate television broadcasting studios and (continued....)

Television Analyzer Database, as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States had revenues of $12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations[239] must be included.[240] Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,127 low power television stations ("LPTV").[241] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA size standard.

7. *Radio Stations.* The revised rules and policies potentially will apply to all AM and commercial FM radio broadcasting licensees and potential licensees. The SBA defines a radio broadcasting station that has $6.5 million or less in annual receipts as a small business.[242] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[243] Included in this industry are commercial, religious, educational, and other radio stations.[244] Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.[245] However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number.[246] According to Commission staff review of BIA Publications, Inc. Master Access Radio Analyzer Database on March 31, 2005, about 10,840 (95 percent) of 11,410 commercial radio stations have revenue of $6 million or less. We note, however, that many radio stations are affiliated with much larger corporations having much higher revenue. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action.

8. *Cable and Other Program Distribution.* The SBA has developed a small business size standard for cable and other program distribution, which consists of all such firms having $12.5 million or less in annual receipts.[247] According to Census Bureau data for 1997, in this category there was a total

(Continued from previous page)
facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources." Separate census categories pertain to businesses primarily engaged in producing programming. *Id.* at 502-05, NAICS code 512120, Motion Picture and Video Production; NAICS code 512120, Motion Picture and Video Distribution; NAICS code 512191, Teleproduction and Other Post-Production Services; and NAICS code 512199, Other Motion Picture and Video Industries.

[239] "Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 C.F.R. § 121.103(a)(1).

[240] "SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic concern's size." 13 C.F.R. § 121.103(a)(4).

[241] *Broadcast Station Totals as of September 30, 2002*, FCC News Release (rel. Nov. 6, 2002).

[242] *See* 13 C.F.R. § 121.201, NAICS code 515112.

[243] *Id.*

[244] *Id.*

[245] *Id.*

[246] *Id.*

[247] 13 C.F.R. § 121.201, NAICS code 517510.

of 1,311 firms that operated for the entire year.[248] Of this total, 1,180 firms had annual receipts of under $10 million, and an additional 52 firms had receipts of $10 million to $24,999,999.[249] Thus, under this size standard, the majority of firms can be considered small. In addition, limited preliminary census data for 2002 indicate that the total number of cable and other program distribution companies increased approximately 46 percent from 1997 to 2002.[250]

9. *Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.[251] We have estimated that there were 1,065 cable operators who qualified as small cable system operators at the end of 2005.[252] 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, the Commission estimates that there are now fewer than 1,065 small entity cable system operators that may be affected by the rules and policies proposed herein.

10. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, ("Act") also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[253] The Commission has determined that there are 67,700,000 subscribers in the United States.[254] Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[255] Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,065.[256] The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[257] and therefore are unable,

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[248] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, *Establishment and Firm Size (including Legal Form of Organization)*, Table 4, NAICS code 513220.

[249] *Id.*

[250] *See* U.S. Census Bureau, 2002 Economic Census, Industry Series: "Information," Table 2, Comparative Statistics for the United States (1997 NAICS Basis): 2002 and 1997, NAICS code 513220 (issued Nov. 2004).

[251] 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determination 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), 60 FR 10534 (February 27, 1995).

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

[253] 47 U.S.C. § 543(m)(2).

[254] *See FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (2001) ("*Jan. 24, 2001 Public Notice*").

[255] 47 C.F.R. § 76.901(f).

[256] *See Jan. 24, 2001 Public Notice.*

[257] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. *See* 47 C.F.R. § 76.909(b).

at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Act.

11. *Multipoint Distribution Systems.* The established rules apply to Multipoint Distribution Systems ("MDS") operated as part of a wireless cable system. 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.[258] This definition of small entity in the context of MDS auctions has been approved by the SBA.[259] The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas. Of 67 winning bidders, 61 qualified as small entities. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees.

12. MDS also includes licensees of stations authorized prior to the auction. As noted above, the SBA has developed a definition of small entities for pay television services, cable and other subscription programming, which includes all such companies generating $13.5 million or less in annual receipts.[260] This definition includes MDS and thus applies to MDS licensees that did not participate in the MDS auction. Information available to us indicates that there are approximately 392 incumbent MDS licensees that do not generate revenue in excess of $11 million annually. Therefore, we estimate that there are at least 440 (392 pre-auction plus 48 auction licensees) small MDS providers as defined by the SBA and the Commission's auction rules which may be affected by the rules adopted herein. In addition, limited preliminary census data for 2002 indicate that the total number of cable and other program distribution companies increased approximately 46 percent from 1997 to 2002.[261]

13. *Instructional Television Fixed Service.* The established rules would also apply to Instructional Television Fixed Service ("ITFS") facilities operated as part of a wireless cable system. The SBA definition of small entities for pay television services also appears to apply to ITFS.[262] 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.[263] 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 are small businesses and may be affected by the established rules.

14. *Incumbent Local Exchange Carriers ("LECs").* We have included small incumbent LECs in this present IRFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[264] The SBA's Office of Advocacy

[258] 47 C.F.R. § 21.961(b)(1).

[259] *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).

[260] 13 C.F.R. § 121.201, NAICS code 515210.

[261] *See* supra note 250.

[262] 13 C.F.R. § 121.201, NAICS code 515210.

[263] 5 U.S.C. § 601(3).

[264] 15 U.S.C. § 632.

contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[265] We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[266] According to Commission data,[267] 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed rules.

15. *Competitive (LECs), Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers."* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[268] According to Commission data,[269] 769 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 93 have more than 1,500 employees. In addition, 12 carriers have reported that they are "Shared-Tenant Service Providers," and all 12 are estimated to have 1.500 or fewer employees. In addition, 39 carriers have reported that they are "Other Local Service Providers." Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our proposed rules.

16. *Satellite Telecommunications and Other Telecommunications.* The Commission has not developed a small business size standard specifically for providers of satellite service. The appropriate size standards under SBA rules are for the two broad categories of Satellite Telecommunications and Other Telecommunications. Under both categories, such a business is small if it has $12.5 million or less in average annual receipts.[270] For the first category of Satellite Telecommunications, Census Bureau data for 1997 show that there were a total of 324 firms that operated for the entire year.[271] Of this total, 273

[265] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small-business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. *See* 13 C.F.R. § 121.102(b).

[266] 13 C.F.R. § 121.201, NAICS code 517110.

[267] *Trends in Telephone Service,* Table 5.3.

[268] 13 C.F.R. § 121.201, NAICS code 517110.

[269] *Trends in Telephone Service,* Table 5.3.

[270] 13 C.F.R. § 121.201, NAICS codes 517410 and 517910.

[271] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, *Establishment and Firm Size (Including Legal Form of Organization)*, Table 4, NAICS code 513340.

firms had annual receipts of under $10 million, and an additional twenty-four firms had receipts of $10 million to $24,999,999. Thus, the majority of Satellite Telecommunications firms can be considered small.

17. The second category – *Other Telecommunications* – includes "establishments primarily engaged in ... providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems."[272] Of this total, 424 firms had annual receipts of $5 million to $9,999,999 and an additional 6 firms had annual receipts of $10 million to $24,999,990. Thus, under this second size standard, the majority of firms can be considered small.

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

18. In this Second Report and Order, we have taken steps to advance our public safety mission by establishing a framework for the Next Generation of EAS and by expanding the base of EAS participants to include wireline telephone companies that provide programming in competition with broadcast and cable television.

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

19. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."[273]

20. The *First Report and Order and FNPRM* sought comment on a number of alternatives to the imposition of EAS obligations on the digital communications technologies discussed in this Second Report and Order that are increasingly being used by the American public. The Commission has considered each of the alternatives and in this Second Report and Order imposes minimal regulation on small entities to the extent consistent with our goal of advancing our public safety mission by adopting rules that expand the reach of EAS. The affected service providers have generally expressed their willingness to cooperate in a national warning system, and we anticipate that this addition of new providers to EAS can be accomplished swiftly and smoothly.

21. The benefits of requiring additional carriers to participate in the current EAS far outweigh any burdens associated with implementing these requirements. EAS represents a significant and valuable investment that is able to provide effective alert and warning during the time that new, digitally-based public alert and warning systems are being developed. Most commenters contend, and we agree, that the EAS should remain an important component of any future alert and warning system. Further, in most

[272] Office of Management and Budget, North American Industry Classification System, 513 (1997) (NAICS code 517910.

[273] 5 U.S.C. § 603(c)(1) – (c)(4).

cases, the digital platforms affected by this Second Report and Order either have in place the ability to distribute EAS warnings, or can do so in a reasonable amount of time and with minimal cost.

22. Likewise, most commenters agreed that CAP is best-suited to deliver Next Generation EAS. By requiring EAS participants to adopt CAP, we believe that this will best serve our goal of protecting the life and property of all Americans. We acknowledge that compliance with the rules adopted in the order may impose cost burdens on small entities. However, given the great public interest benefits of the rules, we find that the public interest benefits outweigh the economic burdens, if any. In the Initial Regulatory Flexibility Analysis, we sought comment on these rules and no commenter proposed an alternative version that would serve these benefits while lessening the economic burdens. Accordingly, we find that we have discharged our duty to consider burdens imposed on small entities.

23. **Report to Congress:** The Commission will send a copy of the Second Report and Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[274] In addition, the Commission will send a copy of the Second Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Second Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.[275]

[274] *See* 5 U.S.C. § 801(a)(1)(A).

[275] *See* 5 U.S.C. § 604(b).

APPENDIX C

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 C.F.R. Part 11 as follows:

PART 11 – EMERGENCY ALERT SYSTEM (EAS)

1. The authority citation for Part 11 continues to read as follows:

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

2. Revise § 11.1 to read as follows:

§ 11.1 Purpose.

This part contains rules and regulations providing for an Emergency Alert System (EAS). The EAS provides the President with the capability to provide immediate communications and information to the general public at the National, State and Local Area levels during periods of national emergency. The rules in this part describe the required technical standards and operational procedures of the EAS for analog AM, FM, and TV broadcast stations, digital broadcast stations, analog cable systems, digital cable systems, wireline video systems, wireless cable systems, Direct Broadcast Satellite (DBS) services, Satellite Digital Audio Radio Service (SDARS), and other participating entities. The EAS may be used to provide the heads of State and local government, or their designated representatives, with a means of emergency communication with the public in their State or Local Area.

3. Add new § 11.2, as follows:

§ 11.2 Definitions

The definitions of terms used in Part 11 are:

(a) *Primary Entry Point (PEP) System.* The PEP system is a nationwide network of broadcast stations and other entities connected with government activation points. It is used to distribute the EAN, EAT, and EAS national test messages and other EAS messages. FEMA has designated 34 of the nation's

largest radio broadcast stations as PEPs. The PEPs are designated to receive the Presidential alert from FEMA and distribute it to local stations.

(b) *Local Primary One (LP-1).* The LP-1 is a radio station that acts as a key EAS monitoring source. Each LP-1 station must monitor its regional PEP station and a back-up source for Presidential messages.

(c) *EAS Participants.* Entities required under the Commission's rules to comply with EAS rules, *e.g.*, analog radio and television stations, and wired and wireless cable television systems, DBS, DTV, SDARS, digital cable and DAB, and wireline video systems.

(d) *Wireline Video System.* The system of a wireline common carrier used to provide video programming service.

(e) *Participating National (PN).* PN stations are broadcast stations that transmit EAS National, state, or local EAS messages to the public.

(f) *National Primary (NP).* Stations that are the primary entry point for Presidential messages delivered by FEMA. These stations are responsible for broadcasting a Presidential alert to the public and to State Primary stations within their broadcast range.

(g) *State Primary (SP).* Stations that are the entry point for State messages, which can originate from the Governor or a designated representative.

4. Amend § 11.11 by revising paragraph (a) and (e) to read as follows:

§ 11.11 The Emergency Alert System (EAS).

(a) The EAS is composed of analog radio broadcast stations including AM, FM, and Low-power FM (LPFM) stations; digital audio broadcasting (DAB) stations, including digital AM, FM, and Low-power FM stations; analog television broadcast stations including Class A television (CA) and Low-power TV (LPTV) stations; digital television (DTV) broadcast stations, including digital CA and digital LPTV stations; analog cable systems; digital cable systems which are defined for purposes of this Part only as the portion of a cable system that delivers channels in digital format to subscribers at the input of a Unidirectional Digital Cable Product or other navigation device; wireline video systems; wireless cable systems which may consist of Broadband Radio Service (BRS), or Educational Broadband Service (EBS) stations; DBS services, as defined in 47 C.F.R. § 25.701(a) (including certain Ku-band Fixed-Satellite Service Direct to Home providers); SDARS, as defined in 47 C.F.R. § 25.201; participating broadcast networks, cable networks and program suppliers; and other entities and industries operating on an organized basis during emergencies at the National, State and local levels. These entities are referred to collectively as EAS Participants in this Part, and are subject to this Part, except as otherwise provided herein. At a minimum EAS Participants must use a common EAS protocol, as defined in § 11.31, to send and receive emergency alerts in accordance with the effective dates listed above and in the following tables:

Analog and Digital Broadcast Stations

EAS Equipment Requirement	AM & FM Class A TV[279]	Digital AM & FM	TV	DTV	FM Class D[276]		LPTV[277]	LPFM[278]
Two-tone encoder[280] [281]	Y	Y 12/31/06	Y	Y 12/31/06	N	N	N	Y
EAS decoder	Y 1/1/97	Y 12/31/06	Y 1/1/97	Y 12/31/06	Y 1/1/97	Y 1/1/97	Y	Y
EAS encoger	Y 1/1/97	Y 12/31/06	Y 1/1/97	Y 12/31/06	N	N	N	Y
Audio message	Y 1/1/97	Y 12/31/06	Y 1/1/97	Y 12/31/06	Y 1/1/97	Y 1/1/97	Y	Y
Video message	N/A	N/A	Y 1/1/97	Y 12/31/06	N/A	Y 1/1/97	N/A	Y

[1] Effective December 31, 2006, digital FM Class D stations have the same requirements.
[2] LPTV stations that operate as television broadcast translator stations are exempt from the requirement to have EAS equipment. Effective December 31, 2006, digital LPTV stations have the same requirements.
[3] LPFM stations must install a decoder within one year after the FCC publishes in the Federal Register a public notice indicating that at least one decoder has been certified by the FCC. Effective December 31, 2006, digital LPFM stations have the same requirements.
[4] Effective December 31, 2006, digital Class A TV stations have the same requirements.
[5] Effective July 1, 1995, the two-tone signal must be 8-25 seconds
[6] Effective January 1, 1998, the two-tone signal may only be used to provide audio alerts to audiences before EAS emergency messages and the required monthly tests.

Analog Cable Systems

[A. Analog cable systems serving fewer than 5,000 subscribers from a headend must either provide the National level EAS message on all programmed channels including the required testing by October 1, 2002, or comply with the following EAS requirements. All other analog cable systems must comply with B.]

	System size and effective dates		
B. EAS Equipment Requirement	>=5,000 but < 10,000 subscribers	>=10,000 subscribers	<5,000 subscribers
Two-tone signal from storage device[1]	Y 12/31/98	Y 10/1/02	Y 10/1/02
EAS decoder[3]	Y 12/31/98	Y 10/1/02	Y 10/1/02
EAS encoder[2]	Y 12/31/98	Y 10/1/02	Y 10/1/02
Audio and Video EAS Message on all channels	Y 12/31/98	Y 10/1/02	N
Video interrupt and audio alert message on all channels,[3] Audio and Video EAS message on at least one channel	N	N	Y 10/1/02

[1] Two-tone signal is only used to provide an audio alert to audience before EAS emergency messages and required monthly test. The two-tone signal must be 8-25 seconds in duration.

[2] Analog cable systems serving <5,000 subscribers are permitted to operate without an EAS encoder if they install an FCC-certified decoder.

[3] The Video interrupt must cause all channels that carry programming to flash for the duration of the EAS emergency message. The audio alert must give the channel where the EAS messages are carried and be repeated for the duration of the EAS message.

Note: Programmed channels do not include channels used for the transmission of data such as interactive games.

Wireless Cable Systems (BRS/EBS STATIONS)

[A. Wireless cable systems serving fewer than 5,000 subscribers from a single transmission site must either provide the National level EAS message on all programmed channels including the required testing by October 1, 2002, or comply with the following EAS requirements. All other wireless cable systems must comply with B.]

	System size and effective dates	
B. EAS Equipment Requirement	>= 5,000 subscribers	< 5,000 subscribers
EAS decoder	Y 10/1/02	Y 10/1/02
EAS encoder \1\ \2\	Y 10/1/02	Y 10/1/02
Audio and Video EAS Message on all channels \3\	Y 10/1/02	N
Video interrupt and audio alert message on all channels; \4\ Audio and Video EAS message on at least one channel	N	Y 10/1/02

\1\ The two-tone signal is used only to provide an audio alert to an audience prior to an EAS emergency message or to the Required Monthly Test (RMT) under § 11.61(a)(1). The two-tone signal must be 8-25 seconds in duration.

\2\ Wireless cable systems serving < 5,000 subscribers are permitted to operate without an EAS encoder if they install an FCC-certified decoder.

\3\ All wireless cable systems may comply with this requirement by providing a means to switch all programmed channels to a predesignated channel that carries the required audio and video EAS messages.

\4\ The Video interrupt must cause all channels that carry programming to flash for the duration of the EAS emergency message. The audio alert must give the channel where the EAS messages are carried and be repeated for the duration of the EAS message.

Note: Programmed channels do not include channels used for the transmission of data services such as Internet.