

appropriate, we will consider incorporating those standards into our rules as additional safe harbors.

VI. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

127. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”),⁵²² the Commission has prepared a Final Regulatory Flexibility Analysis (“FRFA”) relating to this *Report and Order* in MB Docket No. 11-154. The FRFA is set forth in Appendix C.

B. Final Paperwork Reduction Act of 1995 Analysis

128. We analyzed this *Report and Order* with respect to the Paperwork Reduction Act of 1995 (“PRA”)⁵²³ and it contains modified information collection requirements.⁵²⁴ It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA.⁵²⁵ The Commission, as part of its continuing effort to reduce paperwork burdens, invites OMB, the general public, and other interested parties to comment on the information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002,⁵²⁶ we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.⁵²⁷

C. Congressional Review Act

129. The Commission will send a copy of this *Report and Order* in MB Docket No. 11-154 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

D. Additional Information

130. For additional information on this proceeding pertaining to Section 202 of the CVAA, contact Diana Sokolow, Diana.Sokolow@fcc.gov, of the Policy Division, Media Bureau, (202) 418-2120. For additional information on this proceeding pertaining to Section 203 of the CVAA, contact Jeffrey Neumann, Jeffrey.Neumann@fcc.gov, of the Engineering Division, Media Bureau, (202) 418-7000.

VII. ORDERING CLAUSES

131. Accordingly, **IT IS ORDERED** that, pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751, and the authority found in Sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as

⁵²² *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, 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). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (“CWAAA”).

⁵²³ The Paperwork Reduction Act of 1995 (“PRA”), Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

⁵²⁴ Information collections include the mechanism used to keep VPDs informed about video programming that must be captioned when delivered using IP; making VPD contact information available for the receipt and handling of written closed captioning complaints; petitions for exemption based on economic burden; requests for Commission determinations of technical feasibility and achievability; requests for purpose-based waivers; and the filing and processing of written complaints alleging violations of the Commission’s rules.

⁵²⁵ 44 U.S.C. § 3507(d).

⁵²⁶ The Small Business Paperwork Relief Act of 2002 (“SBPRA”), Pub. L. No. 107-198, 116 Stat. 729 (2002) (codified in Chapter 35 of title 44 U.S.C.); *see* 44 U.S.C. § 3506(c)(4).

⁵²⁷ *NPRM*, 26 FCC Rcd at 13765, ¶ 63.

amended, 47 U.S.C. §§ 154(i), 154(j), 303, 330(b), 613, and 617, this *Report and Order* **IS ADOPTED**, effective thirty (30) days after the date of publication in the *Federal Register*, except for Sections 79.4(c)(1)(ii), 79.4(c)(2)(ii)-(iii), 79.4(d)(1)-(4) and (6)-(9), 79.4(e)(1)-(6), and 79.103(b)(3)-(4), which shall become effective upon announcement in the *Federal Register* of OMB approval and an effective date of the rule(s).

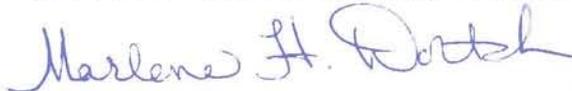
132. **IT IS ORDERED** that, pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751, and the authority found in Sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303, 330(b), 613, and 617, the Commission's rules **ARE HEREBY AMENDED** as set forth in Appendix B.

133. **IT IS FURTHER ORDERED** that we delegate authority to the Media Bureau and the Consumer and Governmental Affairs Bureau to consider all requests for declaratory rulings pursuant to Section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, all waiver requests, and all informal requests for Commission action pursuant to Section 1.41 of the Commission's rules, 47 C.F.R. § 1.41, filed under these rules and pursuant to Sections 202(b) and 203 of the CVAA.

134. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Report and Order* in MB Docket No. 11-154, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

135. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of this *Report and Order* in MB Docket No. 11-154 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

APPENDIX A**List of Commenters****Comments filed in MB Docket No. 11-154**

American Cable Association (“ACA”)
AT&T
Collaborative for Communication Access via Captioning (“CCAC”)
Consumer Electronics Association (“CEA”)
Consumer Groups (Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI); National Association of the Deaf (NAD); Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN); Association of Late-Deafened Adults (ALDA); Hearing Loss Association of America (HLAA); Communication Services for the Deaf (CSD); Cerebral Palsy and Deaf Organization (CPADO); Technology Access Program at Gallaudet University (TAP); and IT-RERC at Trace Center, University of Wisconsin-Madison)
CTIA-The Wireless Association (“CTIA”)
Digital Media Association (“DiMA”)
DIRECTV, Inc.
Entertainment Software Association (“ESA”)
Eternal World Television Network, Inc. (“EWTN”)
Google Inc.
HDMI Licensing, LLC
Independent Telephone & Telecommunications Alliance (“ITTA”)
Media Access Australia (“MAA”)
Microsoft Corporation
Motion Picture Association of America, Inc. (“MPAA”)
National Association of Broadcasters (“NAB”)
National Cable & Telecommunications Association (“NCTA”)
National Center for Accessible Media at WGBH (“NCAM”)
National Court Reporters Association (“NCRA”)
Rovi Corporation
Starz Entertainment, LLC
TechAmerica
Telecommunications Industry Association (“TIA”)
TVGuardian, LLC
Verizon and Verizon Wireless (“Verizon”)
Ronald H. Vickery (“Vickery”)

Reply Comments filed in MB Docket No. 11-154

American Cable Association (“ACA”)
Association of Public Television Stations and the Public Broadcasting Service (“APTS/PBS”)
AT&T
CBS Corporation
Coalition of Organizations for Accessible Technology (“COAT”)
Consumer Electronics Association (“CEA”)
Consumer Groups (Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI); National Association of the Deaf (NAD); Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN); Association of Late-Deafened Adults (ALDA); Hearing Loss Association of America (HLAA); Communication Services for the Deaf (CSD); Cerebral Palsy and Deaf Organization (CPADO); American Association of People with Disabilities (AAPD); Technology

Access Program at Gallaudet University (TAP); and IT-RERC at Trace Center, University of Wisconsin-Madison)

Content Interests

CTIA-The Wireless Association (“CTIA”)
DIRECTV, Inc.
DISH Network L.L.C.
dotSUB
Google Inc.
Harris Corporation
HDMI Licensing, LLC
Information Technology Industry Council (“ITI”)
Microsoft Corporation
Motion Picture Association of America, Inc. (“MPAA”)
Named State Broadcasters Associations (“State Associations”)
National Association of Broadcasters (“NAB”)
National Cable & Telecommunications Association (“NCTA”)
Public Knowledge (“PK”)
Research in Motion Ltd. (“RIM”)
Rovi Corporation
Time Warner Cable Inc. (“TWC”)
Time Warner Inc. (“Time Warner”)
TVGuardian, LLC
Verizon and Verizon Wireless (“Verizon”)
Ronald H. Vickery (“Vickery”)
World Wide Web Consortium (“W3C”)

In addition, individual consumers filed comments in this proceeding.

APPENDIX B

Final Rules

The Federal Communications Commission amends Parts 15 and 79 of Title 47 of the Code of Federal Regulations (CFR) as follows:

PART 15 – Radio Frequency Devices

1. Amend § 15.38 to remove and reserve § 15.38(b)(10).

§ 15.38 Incorporation by reference

* * * * *

(b) * * *

(10) [reserved]

* * * * *

2. Redesignate and amend §15.119 as § 79.101.

§ 15.119 [Reserved] This section now located at § 79.101.

3. Redesignate and amend § 15.122 as § 79.102.

§ 15.122 [Reserved] This section now located at § 79.102.

PART 79 – Closed Captioning and Video Description of Video Programming.

4. Amend the authority citation for Part 79 to read as follows:

AUTHORITY: 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, 617.

5. Amend § 79.1 as follows:

§ 79.1 Closed captioning of video programming.

(a) * * *

(4) *Closed captioning.* The visual display of the audio portion of video programming pursuant to the technical specifications set forth in this part.

* * * * *

(c) *Obligation to pass through captions of already captioned programs.* All video programming distributors shall deliver all programming received from the video programming owner or other origination source containing closed captioning to receiving television households with the original closed captioning data intact in a format that can be recovered and displayed by decoders meeting the standards of this part unless such programming is recaptioned or the captions are reformatted by the programming distributor.

* * * * *

6. Add § 79.4 to read as follows:

§ 79.4 Closed captioning of video programming delivered using Internet protocol.

(a) *Definitions.* For purposes of this section the following definitions shall apply:

(1) *Video programming.* Programming provided by, or generally considered comparable to programming provided by, a television broadcast station, but not including consumer-generated media.

(2) *Full-length video programming.* Video programming that appears on television and is distributed to end users, substantially in its entirety, via Internet protocol, excluding video clips or outtakes.

(3) *Video programming distributor or video programming provider.* Any person or entity that makes available directly to the end user video programming through a distribution method that uses Internet protocol.

(4) *Video programming owner.* Any person or entity that either:

(i) licenses the video programming to a video programming distributor or provider that makes the video programming available directly to the end user through a distribution method that uses Internet protocol; or

(ii) acts as the video programming distributor or provider, and also possesses the right to license the video programming to a video programming distributor or provider that makes the video programming available directly to the end user through a distribution method that uses Internet protocol.

(5) *Internet protocol.* Includes Transmission Control Protocol and a successor protocol or technology to Internet protocol.

(6) *Closed captioning.* The visual display of the audio portion of video programming pursuant to the technical specifications set forth in this part.

(7) *Live programming.* Video programming that is shown on television substantially simultaneously with its performance.

(8) *Near-live programming.* Video programming that is performed and recorded less than 24 hours prior to the time it was first aired on television.

(9) *Prerecorded programming.* Video programming that is not “live” or “near-live.”

(10) *Edited for Internet distribution.* Video programming for which the television version is substantially edited prior to its Internet distribution.

(11) *Consumer-generated media.* Content created and made available by consumers to online websites and services on the Internet, including video, audio, and multimedia content.

(12) *Video clips.* Excerpts of full-length video programming.

(13) *Outtakes.* Content that is not used in an edited version of video programming shown on television.

(14) *Nonexempt programming.* Video programming that is not exempted under paragraph (d) of this section and, accordingly, is subject to closed captioning requirements set forth in this section.

(b) *Requirements for closed captioning of Internet protocol-delivered video programming.* All nonexempt full-length video programming delivered using Internet protocol must be provided with closed captions if the programming is published or exhibited on television in the United States with captions on or after the following dates:

(1) [insert date six months after Federal Register publication], for all prerecorded programming that is not edited for Internet distribution, unless it is subject to paragraph (b)(4) below.

(2) [insert date 12 months after Federal Register publication], for all live and near-live programming, unless it is subject to paragraph (b)(4) below.

(3) [insert date 18 months after Federal Register publication], for all prerecorded programming that is edited for Internet distribution, unless it is subject to paragraph (b)(4) below.

(4) All programming that is already in the video programming distributor's or provider's library before it is shown on television with captions must be captioned within 45 days after the date it is shown on television with captions on or after [insert date two years after Federal Register publication] and before [insert date three years after Federal Register publication]. Such programming must be captioned within 30 days after the date it is shown on television with captions on or after [insert date three years after Federal Register publication] and before [insert date four years after Federal Register publication]. Such programming must be captioned within 15 days after the date it is shown on television with captions on or after [insert date four years after Federal Register publication].

(c) *Obligations of video programming owners, distributors and providers.*

(1) *Obligations of video programming owners.* Each video programming owner must:

(i) Send program files to video programming distributors and providers with captions as required by this section, with at least the same quality as the television captions provided for the same programming. If a video programming owner provides captions to a video programming distributor or provider using the Society of Motion Picture and Television Engineers Timed Text format (SMPTE ST 2052-1:2010: "Timed Text Format (SMPTE-TT)" 2010) (incorporated by reference, *see* § 79.100), then the VPO has fulfilled its obligation to deliver captions to the video programming distributor or provider in an acceptable format. A video programming owner and a video programming distributor or provider may agree upon an alternative technical format for the delivery of captions to the video programming distributor or provider.

(ii) With each video programming distributor and provider that such owner licenses to distribute video programming directly to the end user through a distribution method that uses Internet protocol, agree upon a mechanism to inform such distributors and providers on an ongoing basis whether video programming is subject to the requirements of this section.

(2) *Obligations of video programming distributors and providers.* Each video programming distributor and provider must:

(i) Enable the rendering or pass through of all required captions to the end user, maintaining the quality of the captions provided by the video programming owner and transmitting captions in a format reasonably designed to reach the end user in that quality. A video programming distributor or provider that provides applications, plug-ins, or devices in order to deliver video programming must comply with the requirements of Section 79.103(c)-(d).

(ii) With each video programming owner from which such distributor or provider licenses video programming for distribution directly to the end user through a distribution method that uses Internet protocol, agree upon a mechanism to inform such distributor or provider on an ongoing basis whether video programming is subject to the requirements of this section, and make a good faith effort to identify video programming subject to the requirements of this section using the agreed upon mechanism. A video programming distributor or provider may rely in good faith on a certification by a video programming owner that the video programming need not be captioned if:

(A) The certification includes a clear and concise explanation of why captioning is not required; and

(B) The video programming distributor or provider is able to produce the certification to the Commission in the event of a complaint.

(iii) Make contact information available to end users for the receipt and handling of written closed captioning complaints alleging violations of this section. The contact information required for written complaints shall include the name of a person with primary responsibility for Internet protocol captioning issues and who can ensure compliance with these rules. In addition, this contact information shall include the person's title or office, telephone number, fax number, postal mailing address, and e-mail address. Video programming distributors and providers shall keep this information current and update it within 10 business days of any change.

(3) A video programming provider's or owner's *de minimis* failure to comply with this section shall not be treated as a violation of the requirements.

(d) *Procedures for exemptions based on economic burden.*

(1) A video programming provider or owner may petition the Commission for a full or partial exemption from the closed captioning requirements of this section, which the Commission may grant upon a finding that the requirements would be economically burdensome.

(2) The petitioner must support a petition for exemption with sufficient evidence to demonstrate that compliance with the requirements for closed captioning of video programming delivered via Internet protocol would be economically burdensome. The term "economically burdensome" means imposing significant difficulty or expense. The Commission will consider the following factors when determining whether the requirements for closed captioning of Internet protocol-delivered video programming would be economically burdensome:

(i) The nature and cost of the closed captions for the programming;

(ii) The impact on the operation of the video programming provider or owner;.

(iii) The financial resources of the video programming provider or owner; and

(iv) The type of operations of the video programming provider or owner.

(3) In addition to these factors, the petitioner must describe any other factors it deems relevant to the Commission's final determination and any available alternatives that might constitute a reasonable substitute for the closed captioning requirements of this section including, but not limited to, text or graphic display of the content of the audio portion of the programming. The Commission will evaluate economic burden with regard to the individual outlet.

(4) The petitioner must electronically file its petition for exemption, and all subsequent pleadings related to the petition, in accordance with § 0.401(a)(1)(iii) of this chapter.

(5) The Commission will place the petition on public notice.

(6) Any interested person may electronically file comments or oppositions to the petition within 30 days after release of the public notice of the petition. Within 20 days after the close of the period for filing comments or oppositions, the petitioner may reply to any comments or oppositions filed.

(7) Persons who file comments or oppositions to the petition must serve the petitioner with copies of those comments or oppositions and must include a certification that the petitioner was served with a copy. Any petitioner filing a reply to comments or oppositions must serve the commenting or opposing party with a copy of the reply and shall include a certification that the party was served with a copy. Comments or oppositions and replies shall be served upon a party, its attorney, or its other duly constituted agent by delivering or mailing a copy to the party's last known address in accordance with § 1.47 of this chapter or by sending a copy to the e-mail address last provided by the party, its attorney, or other duly constituted agent.

(8) Upon a finding of good cause, the Commission may lengthen or shorten any comment period and waive or establish other procedural requirements.

(9) Persons filing petitions and responsive pleadings must include a detailed, full showing, supported by affidavit, of any facts or considerations relied on.

(10) The Commission may deny or approve, in whole or in part, a petition for an economic burden exemption from the closed captioning requirements of this section.

(11) During the pendency of an economic burden determination, the Commission will consider the video programming subject to the request for exemption as exempt from the requirements of this section.

(e) Complaint procedures.

(1) Complaints concerning an alleged violation of the closed captioning requirements of this section shall be filed in writing with the Commission or with the video programming distributor or provider responsible for enabling the rendering or pass through of the closed captions for the video programming within sixty (60) days after the date the complainant experienced a problem with captioning. A complaint filed with the Commission must be directed to the Consumer and Governmental Affairs Bureau and submitted through the Commission's online informal complaint filing system, U.S. Mail, overnight delivery, or facsimile.

(2) A complaint should include the following information:

(i) The name, postal address, and other contact information of the complainant, such as telephone number or e-mail address;

(ii) The name and postal address, website, or e-mail address of the video programming distributor, provider, and/or owner against which the complaint is alleged, and information sufficient to identify the video programming involved;

(iii) Information sufficient to identify the software or device used to view the program;

(iv) A statement of facts sufficient to show that the video programming distributor, provider, and/or owner has violated or is violating the Commission's rules, and the date and time of the alleged violation;

(v) The specific relief or satisfaction sought by the complainant; and

(vi) The complainant's preferred format or method of response to the complaint (such as letter, facsimile transmission, telephone (voice/TRS/TTY), e-mail, or some other method that would best accommodate the complainant).

(3) If a complaint is filed first with the Commission, the Commission will forward complaints satisfying the above requirements to the named video programming distributor, provider, and/or owner, as well as to any other video programming distributor, provider, and/or owner that Commission staff determines may be involved. The video programming distributor, provider, and/or owner must respond in writing to the Commission and the complainant within 30 days after receipt of the complaint from the Commission.

(4) If a complaint is filed first with the video programming distributor or provider, the video programming distributor or provider must respond in writing to the complainant within thirty (30) days after receipt of a closed captioning complaint. If a video programming distributor or provider fails to respond to the complainant within thirty (30) days, or the response does not satisfy the consumer, the complainant may file the complaint with the Commission within thirty (30) days after the time allotted for the video programming distributor or provider to respond. If a consumer re-files the complaint with the Commission (after filing with the distributor or provider) and the complaint satisfies the above requirements, the Commission will forward the complaint to the named video programming distributor or provider, as well as to any other video programming distributor, provider, and/or owner that Commission staff determines may be involved. The video programming distributor, provider, and/or owner must then respond in writing to the Commission and the complainant within 30 days after receipt of the complaint from the Commission.

(5) In response to a complaint, video programming distributors, providers, and/or owners shall file with the Commission sufficient records and documentation to prove that the responding entity was (and remains) in compliance with the Commission's rules. Conclusory or insufficiently supported assertions of compliance will not carry a video programming distributor's, provider's, or owner's burden of proof. If the responding entity admits that it was not or is not in compliance with the Commission's rules, it shall file with the Commission sufficient records and documentation to explain the reasons for its noncompliance, show what remedial steps it has taken or will take, and show why such steps have been or will be sufficient to remediate the problem.

(6) The Commission will review all relevant information provided by the complainant and the subject video programming distributors, providers, and/or owners, as well as any additional information the Commission deems relevant from its files or public sources. The Commission may request additional information from any relevant entities when, in the estimation of Commission staff, such information is needed to investigate the complaint or adjudicate potential violation(s) of Commission rules. When the Commission requests additional information, parties to which such requests are addressed must provide the requested information in the manner and within the time period the Commission specifies.

(7) If the Commission finds that a video programming distributor, provider, or owner has violated the closed captioning requirements of this section, it may employ the full range of sanctions and remedies available under the Communications Act of 1934, as amended, against any or all of the violators.

(f) *Private rights of action prohibited.* Nothing in this section shall be construed to authorize any private right of action to enforce any requirement of this section. The Commission shall have exclusive jurisdiction with respect to any complaint under this section.

7. Add § 79.100 to read as follows:

§ 79.100 Incorporation by reference.

(a) The materials listed in this section are incorporated by reference in this part. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the Federal Register. The materials are available for purchase at the corresponding addresses as noted, and all are available for inspection at the Federal Communications Commission, 445 12th St., SW., Reference Information Center, Room CY-A257, Washington, DC 20554, (202) 418-0270, and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(b) The following materials are available for purchase from at least one of the following addresses: Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112, (800) 854-7179, or at <http://global.ihs.com>; or American National Standards Institute, 25 West 43rd Street, 4th Floor, New York, NY 10036, (212) 642-4900, or at <http://webstore.ansi.org/ansidocstore/default.asp>; or Society of Cable Telecommunications Engineers, 140 Philips Road, Exton, PA 19341-1318, (800) 542-5040, or at <http://www.scte.org/standards/index.cfm>.

(1) EIA-608: "Recommended Practice for Line 21 Data Service," 1994, IBR approved for §79.101.

(2) EIA-708-B: "Digital Television (DTV) Closed Captioning," 1999, IBR approved for §79.102.

(c) The following materials are available from the Society of Motion Picture & Television Engineers (SMPTE), 3 Barker Ave., 5th Floor, White Plains, NY 10601, or at the SMPTE website: <http://www.smpte.org/standards/>: SMPTE ST 2052-1:2010: "Timed Text Format (SMPTE-TT)" 2010, IBR approved for §§ 79.4 and 79.103.

8. Redesignate and amend § 15.119 as follows:

§ 79.101 Closed caption decoder requirements for analog television receivers.

(a)(1) Effective July 1, 1993, all television broadcast receivers with picture screens 33 cm (13 in) or larger in diameter shipped in interstate commerce, manufactured, assembled, or imported from any foreign country into the United States shall comply with the provisions of this section.

Note: This paragraph places no restriction on the shipping or sale of television receivers that were manufactured before July 1, 1993.

(2) Effective January 1, 2014, all television broadcast receivers shipped in interstate commerce, manufactured, assembled, or imported from any foreign country into the United States shall comply with the provisions of this section, if technically feasible, except that television broadcast receivers that use a picture screen less than 13 inches in size must comply with the provisions of this section only if doing so is achievable pursuant to § 79.103(b)(3).

* * * * *

(m) *Labeling and consumer information requirements.* The box or other package in which the individual television receiver is to be marketed shall carry a statement in a prominent location, visible to the buyer before purchase, which reads as follows:

This television receiver provides display of television closed captioning in accordance with FCC rules.

* * * * *

9. Redesignate and amend § 15.122 as follows:

§ 79.102 Closed caption decoder requirements for digital television receivers and converter boxes.

(a)(1) * * *

(3) Effective January 1, 2014, all digital television receivers and all separately sold DTV tuners shipped in interstate commerce or manufactured in the United States shall comply with the provisions of this section, if technically feasible, except that digital television receivers that use a picture screens less than 13 inches in size must comply with the provisions of this section only if doing so is achievable pursuant to § 79.103(b)(3).

(b) Digital television receivers and tuners must be capable of decoding closed captioning information that is delivered pursuant to EIA-708-B: "Digital Television (DTV) Closed Captioning" (incorporated by reference, *see* §79.100).

* * * * *

10. Add § 79.103 to read as follows:

§ 79.103 Closed caption decoder requirements for all apparatus.

(a) Effective January 1, 2014, all digital apparatus designed to receive or play back video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States and uses a picture screen of any size must be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming pursuant to the provisions of this section, if technically feasible, except that apparatus that use a picture screen less than 13 inches in size must comply with the provisions of this section only if doing so is achievable as defined in this section.

Note to paragraph (a): Apparatus includes the physical device and the video players that manufacturers install into the devices they manufacture before sale, whether in the form of hardware, software, or a combination of both, as well as any video players that manufacturers direct consumers to install after sale.

(b) *Exempt apparatus.* (1) *Display-only monitors.* Apparatus or class of apparatus that are display-only video monitors with no playback capability are not required to comply with the provisions of this section.

(2) *Professional or commercial equipment.* Apparatus or class of apparatus that are professional or commercial equipment not typically used by the public are not required to comply with the provisions of this section.

(3)(i) *Achievable.* Manufacturers of apparatus that use a picture screen of less than 13 inches in size may petition the Commission for a full or partial exemption from the closed captioning requirements of this section pursuant to § 1.41, which the Commission may grant upon a finding that the requirements of this section are not achievable, or may assert that such apparatus is fully or partially exempt as a response to a complaint, which the Commission may dismiss upon a finding that the requirements of this section are not achievable.

(ii) The petitioner or respondent must support a petition for exemption or a response to a complaint with

sufficient evidence to demonstrate that compliance with the requirements of this section is not “achievable” where “achievable” means with reasonable effort or expense. The Commission will consider the following factors when determining whether the requirements of this section are not “achievable:”

(A) The nature and cost of the steps needed to meet the requirements of this section with respect to the specific equipment or service in question;

(B) The technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies;

(C) The type of operations of the manufacturer or provider; and

(D) The extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points.

(4) *Waiver.* Manufacturers of apparatus may petition the Commission for a full or partial waiver of the closed captioning requirements of this section, which the Commission may grant, upon a finding that the apparatus meets one of the following provisions:

(i) The apparatus is primarily designed for activities other than receiving or playing back video programming transmitted simultaneously with sound; or

(ii) The apparatus is designed for multiple purposes, capable of receiving or playing back video programming transmitted simultaneously with sound but whose essential utility is derived from other purposes.

(c) *Specific technical capabilities.* All apparatus subject to this section shall implement the following captioning functionality:

(1) *Presentation.* All apparatus shall implement captioning such that the caption text may be displayed within one or separate caption windows and supporting the following modes: text that appears all at once (pop-on), text that scrolls up as new text appears (roll-up), and text where each new letter or word is displayed as it arrives (paint-on).

(2) *Character color.* All apparatus shall implement captioning such that characters may be displayed in the 64 colors defined in CEA-708 and such that users are provided with the ability to override the authored color for characters and select from a palette of at least 8 colors including: white, black, red, green, blue, yellow, magenta, and cyan.

(3) *Character opacity.* All apparatus shall implement captioning such that users are provided with the ability to vary the opacity of captioned text and select between opaque and semi-transparent opacities.

(4) *Character size.* All apparatus shall implement captioning such that users are provided with the ability to vary the size of captioned text and shall provide a range of such sizes from 50% of the default character size to 200% of the default character size.

(5) *Fonts.* All apparatus shall implement captioning such that fonts are available to implement the eight fonts required by CEA-708 and § 79.102(k). Users must be provided with the ability to assign the fonts included on their apparatus as the default font for each of the eight styles contained in § 79.102(k).

(6) *Caption background color and opacity.* All apparatus shall implement captioning such that the

caption background may be displayed in the 64 colors defined in CEA-708 and such that users are provided with the ability to override the authored color for the caption background and select from a palette of at least 8 colors including: white, black, red, green, blue, yellow, magenta, and cyan. All apparatus shall implement captioning such that users are provided with the ability to vary the opacity of the caption background and select between opaque, semi-transparent, and transparent background opacities.

(7) *Character edge attributes.* All apparatus shall implement captioning such that character edge attributes may be displayed and users are provided the ability to select character edge attributes including: no edge attribute, raised edges, depressed edges, uniform edges, and drop shadowed edges.

(8) *Caption window color.* All apparatus shall implement captioning such that the caption window color may be displayed in the 64 colors defined in CEA-708 and such that users are provided with the ability to override the authored color for the caption window and select from a palette of at least 8 colors including: white, black, red, green, blue, yellow, magenta, and cyan. All apparatus shall implement captioning such that users are provided with the ability to vary the opacity of the caption window and select between opaque, semi-transparent, and transparent background opacities.

(9) *Language.* All apparatus must implement the ability to select between caption tracks in additional languages when such tracks are present and provide the ability for the user to select simplified or reduced captions when such captions are available and identify such a caption track as “easy reader.”

(10) *Preview and setting retention.* All apparatus must provide the ability for the user to preview default and user selection of the caption features required by this section, and must retain such settings as the default caption configuration until changed by the user.

(11) *Safe Harbor.* Apparatus which implement Society of Motion Picture and Television Engineers Timed Text format (SMPTE ST 2052-1:2010: “Timed Text Format (SMPTE-TT)” 2010) (incorporated by reference, *see* § 79.100) with respect to the functionality in subparts (1) through (10) of this paragraph shall be deemed in compliance with subpart (c) of this section.

Note to paragraph (c): Where video programming providers or distributors subject to § 79.4 of this part display or render captions, they shall implement the functional requirements contained in subsections (1) through (10) unless doing so is economically burdensome as defined in § 79.4(d).

(d) *Interconnection.* All video outputs of covered apparatus shall be capable of conveying from the source device to the consumer equipment the information necessary to permit or render the display of closed captions.

11. Add § 79.104 to read as follows:

§ 79.104 Closed caption decoder requirements for recording devices.

(a)(1) Effective January 1, 2014, all apparatus designed to record video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States, must comply with the provisions of this section except that apparatus must only do so if it is achievable as defined in § 79.103(b)(3).

(b) All apparatus subject to this section must enable the rendering or the pass through of closed captions such that viewers are able to activate and de-activate the closed captions as the video programming is played back as described in § 79.103(c).

(c) All apparatus subject to this section must comply with the interconnection mechanism requirements in § 79.103(d).

APPENDIX C

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”),¹ an Initial Regulatory Flexibility Analysis (“IRFA”) was incorporated in the *Notice of Proposed Rulemaking* in this proceeding.² The Federal Communications Commission (“Commission”) sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. The Commission received no comments on the IRFA, although some commenters discussed the effect of the proposals on smaller entities, as discussed below. This present Final Regulatory Flexibility Analysis (“FRFA”) conforms to the RFA.³

A. Need for, and Objectives of, the Report and Order

2. Pursuant to our responsibilities under the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”),⁴ this *Report and Order* adopts rules governing the closed captioning requirements for the owners, providers, and distributors of video programming delivered using Internet protocol (“IP”).⁵ This *Report and Order* also adopts rules governing the closed captioning capabilities of certain apparatus on which consumers view video programming. Closed captioning is the visual display of the audio portion of video programming, which provides access to individuals who are deaf or hard of hearing.⁶ Prior to the adoption of the CVAA, the Communications Act of 1934, as amended (the “Act”), required the use of closed captioning on television,⁷ but not on IP-delivered video programming that was not part of a broadcaster or multichannel video programming distributor (“MVPD”) service. That changed with the enactment of the CVAA, which directed the Federal Communications Commission (“Commission”) to revise its regulations to require closed captioning of IP-delivered video programming that is published or exhibited on television with captions after the effective date of the new regulations.⁸ Further, the CVAA directed the Commission to impose closed captioning requirements on certain apparatus that receive or play back video programming, and on certain recording devices.⁹ The rules we adopt herein will better enable individuals who are deaf or hard of hearing to view

¹ 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). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (“CWAAA”).

² See *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Notice of Proposed Rulemaking, 26 FCC Rcd 13734 (2011) (“*NPRM*”).

³ See 5 U.S.C. § 604.

⁴ Pub. L. No. 111-260, 124 Stat. 2751 (2010). See also Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA).

⁵ The CVAA defines “Internet protocol” as including “Transmission Control Protocol and a successor protocol or technology to Internet protocol.” Pub. L. No. 111-260, § 206(5).

⁶ See *supra* App. B, § 79.4(a)(6) (defining “closed captioning” as “The visual display of the audio portion of video programming pursuant to the technical specifications set forth in this part.”).

⁷ See 47 C.F.R. § 79.1 (setting forth the requirements for closed captioning of video programming on television); 47 U.S.C. § 613 (as originally enacted).

⁸ 47 U.S.C. § 613(c)(2)(A).

⁹ 47 U.S.C. § 303(u)(1), (z)(1).

IP-delivered video programming, as Congress intended. Moreover, we believe these benefits of our rules to deaf or hard of hearing consumers will outweigh the affected entities' costs of compliance.

3. As discussed in Section III of the *Report and Order*, we adopt the following closed captioning requirements for the owners, providers, and distributors of IP-delivered video programming under Section 202(b)-(c) of the CVAA. Specifically, we adopt rules that will:

- Specify the obligations of entities subject to Section 202(b) by:
 - Requiring video programming owners (“VPOs”) to send required caption files for IP-delivered video programming to video programming distributors and providers (“VPDs”) along with program files;
 - Requiring VPDs to enable the rendering or pass through of all required captions to the end user, including through the hardware or software that a VPD makes available for this purpose;
 - Requiring VPOs and VPDs to agree upon a mechanism to make available to VPDs information on video programming that is subject to the IP closed captioning requirements on an ongoing basis;¹⁰ and
 - Requiring VPOs to provide VPDs with captions of at least the same quality as the television captions for the same programming, and requiring VPDs to maintain the quality of the captions provided by the VPO.¹¹
- Create a schedule of deadlines under which:
 - All prerecorded programming that is not edited for Internet distribution and is subject to the new requirements must be captioned if it is shown on television with captions on or after the date six months after publication of these rules in the Federal Register;
 - All live and near-live programming subject to the new requirements must be captioned if it is shown on television with captions on or after the date 12 months after publication of these rules in the Federal Register;
 - All prerecorded programming that is edited for Internet distribution and is subject to the new requirements must be captioned if it is shown on television with captions on or after the date 18 months after publication of the rules in the Federal Register;¹² and
 - Archival content must be captioned according to the following deadlines: Beginning two years after publication of these rules in the Federal Register, all programming that is subject to the new requirements and is already in the VPD’s library before it is shown on television with captions must be captioned within 45 days after it is shown on television with captions. Beginning three years after publication of these rules in the Federal Register, such programming must be captioned within 30 days after it is shown on television with captions. Beginning four years after publication of these rules in the Federal Register, such programming must be captioned within 15 days after it is shown on television with captions.¹³
- Craft procedures by which VPDs and VPOs may petition the Commission for exemptions from

¹⁰ See *Report and Order* Section III.A.2.

¹¹ See *id.* Section III.A.3.

¹² See *id.* Section III.B.

¹³ See *id.* Section III.A.2.

the new requirements based on economic burden;¹⁴

- Not treat a *de minimis* failure to comply with the new rules as a violation, and permit entities to comply with the new requirements by alternate means, as provided in the CVAA;¹⁵ and
- Adopt procedures for complaints alleging a violation of the new requirements.¹⁶

4. In addition, we adopt the following closed captioning requirements for the manufacturers of devices used to view video programming under Section 203 of the CVAA. Specifically, we adopt rules that will:

- Establish what apparatus are covered by Section 203:¹⁷
 - All physical devices designed to receive and play back video programming, including smartphones, tablets, personal computers, and television set-top boxes;
 - All “integrated software” in covered devices (that is, software installed in the device by the manufacturer before sale or that the manufacturer requires the consumer to install after sale); and
 - All recording devices and removable media players;¹⁸
- Exclude professional and commercial equipment from the scope of Section 203;
- Exempt display-only monitors as set forth in Section 203, and establish procedures for finding a lack of achievability or technical feasibility;¹⁹
- Establish the requirements for devices covered by Section 203:
 - Specify how covered apparatus must implement closed captioning by adopting functional display standards;²⁰
 - Require apparatus to render or pass-through closed captioning on each of their video outputs;²¹
 - Decline to grant blanket waivers or exempt any device or class of devices from our rules based on achievability or the waiver provisions set forth in Section 203;
- Establish general complaint procedures and modify our existing television receiver closed captioning decoder requirements to conform to screen size and achievability provisions;²² and
- Establish a deadline for compliance of January 1, 2014 by which devices must comply with the

¹⁴ See *id.* Section III.C.

¹⁵ See *id.* Section III.D.

¹⁶ See *id.* Section III.E.

¹⁷ See *id.* Section IV.A.

¹⁸ See *id.* Sections IV.A, IV.D.

¹⁹ See *id.* Section IV.B.

²⁰ See *id.* Section IV.C.

²¹ See *id.* Section IV.E.

²² See *id.* Sections IV.I, IV.F.

requirements of Section 203.²³

Finally, we adopt a safe harbor for use of a particular interchange and delivery format.²⁴

B. Legal Basis

5. The authority for the action taken in this rulemaking is contained in the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751, and Sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303, 330(b), 613, and 617.

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

6. No comments were filed in response to the IRFA. In response to the *NPRM*, commenters express their approval of proposals that gave appropriate consideration to smaller entities.²⁵

7. The American Cable Association (“ACA”) and the National Association of Broadcasters (“NAB”) also express concerns about the burdens of the mechanism proposed in the *NPRM* on smaller entities.²⁶ As explained in the *Report and Order*, instead of adopting the proposed mechanism, we will permit VPOs and VPDs to agree upon a mechanism.²⁷ This flexibility will alleviate the concerns of ACA and NAB.

8. Further, ACA argues that MVPDs, especially smaller operators, should not have to comply with multiple sets of rules aimed at achieving the same purpose.²⁸ In response, the *Report and Order* clarifies that the IP closed captioning rules will not apply to a broadcaster’s or MVPD’s provision of programming that is subject to the Commission’s television closed captioning rules.²⁹

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

9. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules if adopted.³⁰ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”³¹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.³² A “small

²³ See *id.* Section IV.H.

²⁴ See *id.* Section V.

²⁵ See, e.g., Comments of the American Cable Association at 14, 17 (“ACA Comments”) (supporting the proposed responsibilities of video programming providers and distributors, and the proposed complaint procedures); Comments of the National Association of Broadcasters at 22 (“NAB Comments”) (supporting the proposed factors to consider in evaluating an exemption petition); Reply Comments of the American Cable Association at 18-19 (“ACA Reply”) (supporting the proposed allocation of responsibilities).

²⁶ ACA Comments at 16; NAB Comments at 27.

²⁷ See *Report and Order*, Section III.A.2.

²⁸ ACA Reply at 1, 4-5.

²⁹ See *Report and Order*, ¶ 11.

³⁰ 5 U.S.C. § 603(b)(3).

³¹ 5 U.S.C. § 601(6).

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”).³³

10. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards.³⁴ First, nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.³⁵ In addition, a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”³⁶ Nationwide, as of 2007, there were approximately 1,621,315 small organizations.³⁷ Finally, the term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”³⁸ Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States.³⁹ We estimate that, of this total, a substantial majority may qualify as “small governmental jurisdictions.”⁴⁰ Thus, we estimate that most governmental jurisdictions are small.

11. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.

(Continued from previous page)

³² 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.”

³³ 15 U.S.C. § 632.

³⁴ See 5 U.S.C. §§ 601(3)-(6).

³⁵ See SBA, Office of Advocacy, “Frequently Asked Questions,” <http://web.sba.gov/faqs> (last visited May 6, 2011; figures are from 2009).

³⁶ 5 U.S.C. § 601(4).

³⁷ INDEPENDENT SECTOR, THE NEW NONPROFIT ALMANAC & DESK REFERENCE (2010).

³⁸ 5 U.S.C. § 601(5).

³⁹ U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2011, Table 427 (2007).

⁴⁰ The 2007 U.S. Census data for small governmental organizations indicate that there were 89,476 local governments in 2007. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 2011, Table 428. The criterion by which the size of such local governments is determined to be small is a population of 50,000 or less. See *supra* n. 38. However, since the Census Bureau, in compiling the cited data, does not state that it applies that criterion, it cannot be determined with precision how many of such local governmental organizations is small. Nonetheless, the inference seems reasonable that a substantial number of these governmental organizations has a population of less than 50,000. To look at Table 428 in conjunction with a related set of data in Table 429 in the Census’s Statistical Abstract of the U.S., that inference is further supported by the fact that in both Tables, many sub-entities that may well be small are included in the 89,476 local governmental organizations, e.g. county, municipal, township and town, school district and special district entities. Measured by a criterion of a population of 50,000, many of the cited sub-entities in this category seem more likely than larger county-level governmental organizations to have small populations. Accordingly, of the 89,746 small governmental organizations identified in the 2007 Census, the Commission estimates that a substantial majority is small.

Transmission facilities may be based on a single technology or a combination of technologies.”⁴¹ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.⁴² Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of such firms can be considered small.

12. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers, nationwide.⁴³ Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.⁴⁴ In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.⁴⁵ Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have fewer than 10,000 subscribers, and an additional 302 systems have 10,000-19,999 subscribers.⁴⁶ Thus, under this second size standard, most cable systems are small.

13. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 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.”⁴⁷ The Commission has determined that 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.⁴⁸ Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.⁴⁹ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated

⁴¹ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers,” (partial definition), <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110> (last visited Oct. 21, 2009).

⁴² U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-lang=en.

⁴³ 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

⁴⁴ These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, “Top 25 Cable/Satellite Operators,” pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, “Ownership of Cable Systems in the United States,” pages D-1805 to D-1857.

⁴⁵ 47 C.F.R. § 76.901(c).

⁴⁶ Warren Communications News, *Television & Cable Factbook 2008*, “U.S. Cable Systems by Subscriber Size,” page F-2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

⁴⁷ 47 U.S.C. § 543(m)(2); see 47 C.F.R. § 76.901(f) & nn. 1-3.

⁴⁸ 47 C.F.R. § 76.901(f); see Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, DA 01-158 (Cable Services Bureau, Jan. 24, 2001).

⁴⁹ These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, “Top 25 Cable/Satellite Operators,” pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, “Ownership of Cable Systems in the United States,” pages D-1805 to D-1857.

with entities whose gross annual revenues exceed \$250 million,⁵⁰ and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

14. *Direct Broadcast Satellite (“DBS”) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. DBS, by exception, is now included in the SBA’s broad economic census category, “Wired Telecommunications Carriers,”⁵¹ which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.⁵² To gauge small business prevalence for the DBS service, the Commission relies on data currently available from the U.S. Census for the year 2007. According to that source, there were 3,188 firms that in 2007 were Wired Telecommunications Carriers. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with more than 1,000 employees. However, as to the latter 44 there is no data available that shows how many operated with more than 1,500 employees. Based on this data, the majority of these firms can be considered small.⁵³ Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and EchoStar Communications Corporation (“EchoStar”) (marketed as the DISH Network).⁵⁴ Each currently offers subscription services. DIRECTV⁵⁵ and EchoStar⁵⁶ each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

15. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of \$15 million or less in average annual receipts, under SBA rules.⁵⁷ The second has a size standard of \$25 million or less in annual receipts.⁵⁸

16. The category of Satellite Telecommunications “comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or

⁵⁰ 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 § 76.901(f) of the Commission’s rules. See 47 C.F.R. § 76.909(b).

⁵¹ See 13 C.F.R. § 121.201, NAICS code 517110 (2007). The 2007 NAICS definition of the category of “Wired Telecommunications Carriers” is in paragraph 11, above.

⁵² 13 C.F.R. § 121.201, NAICS code 517110 (2007).

⁵³ See http://www.factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=600&-ds_name=EC0751SSSZ5&-lang=en.

⁵⁴ See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, 24 FCC Rcd 542, 580, ¶ 74 (2009) (“13th Annual Report”). We note that, in 2007, EchoStar purchased the licenses of Dominion Video Satellite, Inc. (“Dominion”) (marketed as Sky Angel). See Public Notice, “Policy Branch Information; Actions Taken,” Report No. SAT-00474, 22 FCC Rcd 17776 (IB 2007).

⁵⁵ As of June 2006, DIRECTV is the largest DBS operator and the second largest MVPD, serving an estimated 16.20% of MVPD subscribers nationwide. See *13th Annual Report*, 24 FCC Rcd at 687, Table B-3.

⁵⁶ As of June 2006, DISH Network is the second largest DBS operator and the third largest MVPD, serving an estimated 13.01% of MVPD subscribers nationwide. *Id.* As of June 2006, Dominion served fewer than 500,000 subscribers, which may now be receiving “Sky Angel” service from DISH Network. See *id.* at 581, ¶ 76.

⁵⁷ 13 C.F.R. § 121.201, NAICS code 517410.

⁵⁸ 13 C.F.R. § 121.201, NAICS code 517919.

reselling satellite telecommunications.”⁵⁹ Census Bureau data for 2007 show that 512 Satellite Telecommunications firms operated for that entire year.⁶⁰ Of this total, 464 firms had annual receipts of under \$10 million, and 18 firms had receipts of \$10 million to \$24,999,999.⁶¹ Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

17. The second category, *i.e.* “All Other Telecommunications” comprises “establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.”⁶² For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.⁶³ Of this total, 2,346 firms had annual receipts of under \$25 million and 37 firms had annual receipts of \$25 million to \$49,999,999.⁶⁴ Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

18. *Television Broadcasting.* The SBA defines a television broadcasting station as a small business if such station has no more than \$14.0 million in annual receipts.⁶⁵ Business concerns included in this industry are those “primarily engaged in broadcasting images together with sound.”⁶⁶ The Commission has estimated the number of licensed commercial television stations to be 1,390.⁶⁷ According to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) as of January 31, 2011, 1,006 (or about 78 percent) of an estimated 1,298 commercial television stations⁶⁸ in the United States have revenues of \$14 million or less and, thus, qualify as small entities

⁵⁹ U.S. Census Bureau, 2007 NAICS Definitions, “517410 Satellite Telecommunications.”

⁶⁰ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=900&-ds_name=EC0751SSSZ4&-lang=en.

⁶¹ See *id.*

⁶² <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2007%20NAICS%20Search>.

⁶³ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=900&-ds_name=EC0751SSSZ4&-lang=en.

⁶⁴ See *id.*

⁶⁵ See 13 C.F.R. § 121.201, NAICS Code 515120 (2007).

⁶⁶ *Id.* This category description continues, “These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.” Separate census categories pertain to businesses primarily engaged in producing programming. See Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

⁶⁷ See News Release, “Broadcast Station Totals as of December 31, 2010,” 2011 WL 484756 (F.C.C.) (dated Feb. 11, 2011) (“*Broadcast Station Totals*”); also available at http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0211/DOC-304594A1.pdf.

⁶⁸ We recognize that this total differs slightly from that contained in *Broadcast Station Totals*, *supra* n. 67; however, we are using BIA’s estimate for purposes of this revenue comparison.

under the SBA definition. The Commission has estimated the number of licensed noncommercial educational (“NCE”) television stations to be 391.⁶⁹ We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations⁷⁰ must be included. 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. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

19. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also, as noted, an additional element of the definition of “small business” is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

20. *Open Video Services.* Open Video Service (OVS) systems provide subscription services.⁷¹ The open video system (“OVS”) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.⁷² The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,⁷³ OVS falls within the SBA small business size standard covering cable services, which is “Wired Telecommunications Carriers.”⁷⁴ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for the OVS service, the Commission relies on data currently available from the U.S. Census for the year 2007. According to that source, there were 3,188 firms that in 2007 were Wired Telecommunications Carriers. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with more than 1,000 employees. However, as to the latter 44 there is no data available that shows how many operated with more than 1,500 employees. Based on this data, the majority of these firms can be considered small.⁷⁵ In addition, we note that the Commission has certified some OVS operators, with some now providing service.⁷⁶ Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises.⁷⁷ The Commission does not have financial or employment information regarding the entities

⁶⁹ See *Broadcast Station Totals*, *supra* n. 67.

⁷⁰ “[Business 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).

⁷¹ See 47 U.S.C. § 573.

⁷² 47 U.S.C. § 571(a)(3)-(4). See *13th Annual Report*, 24 FCC Rcd at 606, ¶ 135.

⁷³ See 47 U.S.C. § 573.

⁷⁴ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers”; <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

⁷⁵ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=600&-ds_name=EC0751SSSZ5&-lang=en.

⁷⁶ A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovsr.html>.

⁷⁷ See *13th Annual Report*, 24 FCC Rcd at 606-07, ¶ 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities. The Commission further notes that it has certified approximately 45 OVS operators to serve 75 areas, and some of these are currently providing service.⁷⁸ Affiliates of Residential Communications Network, Inc. (“RCN”) received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

21. *Cable and Other Subscription Programming.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.”⁷⁹ To gauge small business prevalence in the Cable and Other Subscription Programming industries, the Commission relies on data currently available from the U.S. Census for the year 2007. According to that source, which supersedes data from the 2002 Census, there were 396 firms that in 2007 were engaged in production of Cable and Other Subscription Programming. Of these, 386 operated with less than 1,000 employees, and 10 operated with more than 1,000 employees. However, as to the latter 10 there is no data available that shows how many operated with more than 1,500 employees. Thus, under this category and associated small business size standard, the majority of firms can be considered small.⁸⁰

22. *Motion Picture and Video Production.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials.”⁸¹ We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce and/or distribute programming for cable television. To gauge small business prevalence in the Motion Picture and Video Production industries, the Commission relies on data currently available from the U.S. Census for the year 2007. The size standard established by the SBA for this business category is that annual receipts of \$29.5 million or less determine that a business is small.⁸² According to the 2007 Census, there were 9,095 firms that in 2007 were engaged in Motion Picture and Video Production. Of these, 8,995 had annual receipts of \$24,999,999 or less, and 100 had annual receipts ranging from not less than \$25,000,000 to \$100,000,000 or more.⁸³ Thus, under this category and associated small business size standard, the majority of firms can be considered small.

⁷⁸ See <http://www.fcc.gov/mb/ovs/csovscer.html> (current as of February 2007).

⁷⁹ U.S. Census Bureau, 2007 NAICS Definitions, “515210 Cable and Other Subscription Programming”; <http://www.census.gov/naics/2007/def/ND515210.HTM#N515210>.

⁸⁰ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=600&-ds_name=EC0751SSSZ5&-lang=en.

⁸¹ U.S. Census Bureau, 2007 NAICS Definitions, NAICS Code 512110, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=512110&search=2007%20NAICS%20Search>.

⁸² 13 C.F.R. § 121.201, NAICS Code 512110.

⁸³ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=200&-ds_name=EC0751SSSZ5&-lang=en.

23. *Motion Picture and Video Distribution.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in acquiring distribution rights and distributing film and video productions to motion picture theaters, television networks and stations, and exhibitors.”⁸⁴ We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce and/or distribute programming for cable television. To gauge small business prevalence in the Motion Picture and Video Distribution industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Based on the SBA size standard of annual receipts of 29.5 million dollars,⁸⁵ and according to that 2007 Census source, which supersedes data from the 2002 Census, there were 450 firms that in 2007 were engaged in Motion Picture and Video Distribution. Of that number, 434 received annual receipts of \$24,999,999 or less, and 16 received annual receipts ranging from \$25,000,000 to \$100,000,000 or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.⁸⁶

24. *Small Incumbent Local Exchange Carriers (LECs).* We have included small incumbent local exchange carriers in this present RFA 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.”⁸⁷ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not “national” in scope.⁸⁸ 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.

25. *Incumbent Local Exchange Carriers (Incumbent LECs).* 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.⁸⁹ Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.⁹⁰ Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.⁹¹ Consequently, the Commission

⁸⁴ See U.S. Census Bureau, 2007 NAICS Definitions, NAICS Code 512110, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=512110&search=2007%20NAICS%20Search>.

⁸⁵ 13 C.F.R. 121.201, NAICS Code 512110.

⁸⁶ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=200&-ds_name=EC0751SSSZ5&-lang=en.

⁸⁷ 15 U.S.C. § 632.

⁸⁸ 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).

⁸⁹ 13 C.F.R. § 121.201, NAICS code 517110.

⁹⁰ See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (“*Trends in Telephone Service*”).

⁹¹ See *id.*